

**EXPLANATORY NOTE ON  
PROPOSED CONSUMER PROTECTION (FAIR TRADING)  
(MOTOR VEHICLE DEALER DEPOSITS) REGULATIONS**

**1 General**

1.1 These Regulations seek to implement the proposals of the CPFTA<sup>1</sup> Review Taskforce relating to motor vehicle dealer deposits.

**2 Information requirement (regulation 3)**

2.1 Regulation 3 is intended to enable the consumer to make an informed decision whether to agree to pay the deposit. The regulation will require the motor vehicle dealer (referred to as “dealer”) to inform the consumer in writing of the terms of the dealer’s refund policy, before collecting any deposit in relation to or in contemplation of a motor vehicle sale contract. Any ambiguity in the terms of the refund policy will be interpreted against the dealer.<sup>2</sup>

**3 Retention of deposit by motor vehicle dealer (regulation 4)**

3.1 Motor vehicle dealers often package the purchase and financing of a motor vehicle together. In some cases, the deposit is not refundable if the purchase falls through due to a failed loan application.

3.2 Regulation 4 will ensure that consumers need not rely on unsubstantiated claims that their loan application has failed. If the motor vehicle sale contract involves financing arranged by the dealer on behalf of the consumer, the dealer shall not exercise any right to retain the deposit unless he has within a reasonable time —

- (a) applied for the loan on behalf of the consumer in terms agreed by the consumer; and
- (b) provided the consumer with a written statement from the bank or finance company containing details of the application (including the outcome of the application).

3.2 Failure to apply within a reasonable time for the loan on behalf of the consumer in terms agreed by the consumer will generally prevent the dealer from retaining the deposit. An exception is made where the dealer proves that his failure to do so, and to provide the written statement, did not cause or contribute to the circumstances resulting in the retention of the deposit.<sup>3</sup> For example, if the consumer decided not to proceed with the purchase for some unrelated reason, the provision will not prevent the dealer from retaining the deposit even though he had not applied for the loan and provided the written statement.

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<sup>1</sup> Consumer Protection (Fair Trading) Act (Cap.52A).

<sup>2</sup> Regulation 3.

<sup>3</sup> Regulation 4(4).

## **4 Burden of proof (regulation 5)**

4.1 Regulation 5 provides that section 18A of the CPFTA applies to the requirements in regulations 3(1) and 4. Pursuant to new section 18A, introduced by the proposed Consumer Protection (Fair Trading) (Amendment) Bill 2007, the burden of proof will therefore be on the dealer to prove that he has complied with the requirements in those provisions in court proceedings between the consumer and the dealer in relation to a motor vehicle sale contract.

## **5 Definitions (regulation 2)**

5.1 The term “motor vehicle”, which has the same meaning as in the Road Traffic Act<sup>4</sup>, means a mechanically propelled vehicle intended or adapted for use on roads. It therefore includes not only motorcars, but also motor-cycles, goods vehicles, etc.

5.2 The definition of “motor vehicle sale contract” is restricted to contracts between a consumer and motor vehicle dealer (i.e. a supplier of motor vehicles) for the sale of a motor vehicle to the consumer. The terms “consumer”<sup>5</sup> and “supplier”<sup>6</sup> are as defined in the CPFTA.

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<sup>4</sup> Cap.276.

<sup>5</sup> The term “consumer” is defined in the CPFTA as an individual who, otherwise than exclusively in the course of business —

- (a) receives or has the right to receive goods or services from a supplier; or
- (b) has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual;

<sup>6</sup> The term “supplier” is defined in the CPFTA as a person who, in the course of the person's business —

- (a) provides goods or services to consumers;
- (b) manufactures, assembles or produces goods;
- (c) promotes the use or purchase of goods or services; or
- (d) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers,

and includes any employee or agent of the person;