



APPLICATION TO OPEN / AMEND / CLOSE A CONSIGNMENT TRUST ACCOUNT FOR A MOTOR VEHICLE DEALERS LICENCE

MOTOR VEHICLE DEALERS ACT 1973, SECTION 32C

Dealers are required to inform the Commissioner as soon as practicable when a Trust Account is opened, closed or amended.

OPENED **AMENDED** *Date done:* / /

PLEASE ATTACH A COPY OF A BANK STATEMENT SHOWING THE NEW ACCOUNT DETAILS

CLOSED *Date closed:* / /

PLEASE ATTACH A COPY OF THE FINAL BANK STATEMENT SHOWING A NIL BALANCE

CONSIGNMENT TRUST ACCOUNT DETAILS:

FULL TITLE OF TRUST ACCOUNT (The account name must include entity name, trading name, dealer's licence number and the words " consignment trust account ")
NAME OF FINANCIAL INSTITUTION
ADDRESS OF FINANCIAL INSTITUTION

ACCOUNT DETAILS

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BSB

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Account Number

Dealer's Name:			
Dealer's Licence No:	MD		
Dealer's Signature:		<i>Date:</i>/...../.....

Lodge this application by:

- **email:** audits@dmirs.wa.gov.au
- **fax:** 08 6251 2801 or
- **post:** Locked Bag 14 Cloisters Square PERTH 6850 or



**APPLICATION TO APPOINT AN AUDITOR FOR MOTOR VEHICLE
DEALERS SELLING ON CONSIGNMENT**

**MOTOR VEHICLE DEALERS ACT 1973, SECTION 32C AND 32I
MOTOR VEHICLE DEALERS (SALES) REGULATIONS 1974, REGULATIONS 10C AND 10H**

Dealers are required to appoint a Registered Company Auditor, approved by the Commissioner, at the time of opening a Consignment Trust Account and notify the Commissioner of the Auditors details.

PART 1 - DEALER'S DETAILS

Entity Name			
Dealer's Licence No	MD		
Dealer's Signature:		Date	___ / ___ / ___

PART 2 - AUDITOR'S DETAILS

Auditor's Name			
Registered Company Auditor Number			
Auditor's Firm Name			
Auditor's Address			
Auditor's Telephone Number			
Auditor's Email Address			
I hereby notify the Commissioner for Consumer Protection of my consent to the appointment as auditor of all trust accounts held by the motor vehicle dealer nominated in Part 1 of this form ("the Dealer"). I confirm that I am a registered company auditor under Part 9.2 of the <i>Corporations Act 2001</i> . I confirm that I am not related by blood, marriage or de facto relationship and have not had any business dealings with the Dealer, or anyone working with the Dealer. I undertake to disclose to the Commissioner any business dealings I have with or through the Dealer at any time during my appointment as auditor. I understand that my appointment as auditor for the Dealer is continuous unless the Commissioner approves a subsequent change in the appointment.			
Auditor's Signature		Date	___ / ___ / ___

Lodge this application by:

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- Fax: (08) 6251 2801; or
- Post: Locked Bag 14, Cloisters Square PERTH 6850.



**CONSIGNMENT SALES AND THE RAMIFICATIONS THEREOF
INFORMATION SHEET**

Definition

“consignment agreement” means an agreement under which a dealer agrees –

- (a) *to sell a vehicle (including by auction) for a person who is not –*
- (i) *a dealer or a trade owner; or*
 - (ii) *a person acting as an agent of a dealer or a trade owner;*

and

- (b) *to pay the proceeds of sale after the deduction of any agreed commission and charges to, or partly to, each of the following –*
- (i) *any person authorised by the consignor;*
 - (ii) *any person holding a security interest in the vehicle;*

Section 32A Motor Vehicle Dealers Act 1973

Process – Consignments

A Consignment agreement:

- must be in writing signed by the consignee, or his agent, and the consignor; and
- must contain the prescribed particulars, terms and conditions*.

The dealer must ensure that a copy of the consignment agreement is given to the consignor immediately after it is signed by all parties.(S32B).

* Part 10.1 of the terms and conditions for a consignment sale states that the owner will provide the Dealer with a certificate from the Register of Encumbered Vehicles within two (2) business days after signing the contract.

Trust accounts – Consignments

S32C states that a dealer shall not accept a vehicle for sale under a consignment agreement unless the dealer has opened, with a prescribed financial institution, at least one account designated as a trust account.

The name of the trust account (Reg 10C(1)) **must** include

- the full name of the dealer;
- the dealer’s licence number;
- the trading name of the business (if any); and
- the words “consignment trust account”.

The Department must be notified as soon as practicable (Reg 10C(2)) or within 5 days (Policy 2.12) of the opening or closing of a trust account.



Trust accounts – Consignments continued...

A written receipt (manual or electronic) **must** be issued for every deposit into a trust account (Reg 10E). The receipt must include:

1. The name of the dealer and the dealer's licence number;
2. A number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
3. The date on which the money is received;
4. The name of the person paying the money;
5. The amount of money received;
6. If the receipt is hand written, the name and signature of the person receiving the money.

All monies received from a consignment sale **must** be paid into the trust account no later than the day following the day of receipt (S32D(i)). If part of the sale is a trade in then an amount of cash equivalent to the trade in value must be deposited in the trust account (S32D(ii)).

Withdrawals from the trust account (S32E) can only be made:

- with the written approval of the Department;
- by paying an amount properly payable to the consignor of the vehicle or a person authorised by the consignor of the vehicle;
- by paying an amount properly payable to the holder of an interest security in the vehicle; or
- under the provisions of the **consignment agreement** where most contractual withdrawals are agreed – e.g. commission, repairs etc

Bank fees are not to be withdrawn from the Trust account as they are not authorised withdrawals. Bank fees should be debited to the dealerships operating (general) account.

The provisions of S32E mean that monies held in the trust account are **not** available for the payment of the Dealer's debts. Fees payable on the trust account must be paid from some other source, usually the firm's general trading account.

A dealer must keep full and accurate records of their trust account -

- all proceeds received from consignment sales and all proceeds dispersed in relation to consignment sales;
- all entries must be made by the close of business the following day;
- accounts and records must be kept in an easily auditable manner; and
- all audit accounts **must** be correctly balanced at the end of each month.

Records must be in written form and kept for 6 years (Reg 10D).

Where there have been no transactions through the trust account within a given year, the dealer can provide the Department with a statutory declaration to this effect within 3 months of the end of that audit year (Reg 10F).

Financial institutions must notify the Department if, at any time, a consignment trust account becomes overdrawn (Reg 10G).

The Auditor must be a registered company auditor - ie registered with ASIC (S32I). Audit fees are payable by the dealer (Reg 10M).



Audit report content (Reg 10K)

An auditor's report must contain a statement as to the following matters

- (a) whether the trust account has, in the opinion of the auditor, been kept regularly and properly written up;
- (b) whether the trust account has been ready for examination at the periods appointed by the auditor;
- (c) whether the dealer has complied with the auditor's requirements;
- (d) whether the trust account is, or has been during the period of the audit, overdrawn;
- (e) whether in the opinion of the auditor the trust account is, and has been during the period of the audit, in order or otherwise;
- (f) any matter or thing in relation to the trust account that should in the opinion of the auditor be communicated to the Department.

When and to whom the auditor must report (Reg. 10N)

- (1) The audit period is as per the financial year. The audit report is required to be submitted to the Commissioner for Consumer Protection (Commissioner) within 3 months of the end of that year, "30 September".
- (2) The auditor must within **3 months** after the end of that period
 - (a) deliver to the Department **a report of the result of the audit, verified by a statutory declaration of the auditor, in an approved form**; and
 - (b) deliver a copy of the report so verified to the dealer.
- (3) The dealer must retain the copy of the report and produce it on demand to the auditor making the next succeeding audit of the dealer's trust account.

Audit Period

Changes to motor vehicle dealers' trust account audit requirements

On 1 July 2017, new amendments to the *Motor Vehicle Dealers Act 1973* (Act) and the Motor Vehicle Dealers (Sales) Regulations 1974 (Regulations) came into effect with respect to all motor vehicle dealers who are licensed in Western Australia (Dealers) and engage in consignment sales.

The amendments require all Dealers who maintain consignment trust accounts and have held or received any money in relation to a consignment sale, to have their trust accounts audited "every financial year".

The audit report is required to be submitted to the Commissioner for Consumer Protection (Commissioner) within 3 months of the end of that year, "30 September".

Alternatively, if your business has not held or received any money in relation to a consignment trust account, you may submit a statutory declaration to that effect for the consignment trust account relating to the period as well as bank statements for the audit period.