



# Industry Standards Policy and Procedures Manual

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Table of Contents

**Record of Updates .....8**

**VSA OFFICIAL MARKS “LOGO” .....8**

**A. INTRODUCTION .....9**

**1. Background .....9**

1.1 Compliance Objectives..... 9

1.2 Purpose of this Manual..... 9

1.3 How this Manual is Organized ..... 9

1.4 Policy and the Authority of the Registrar ..... 10

1.5 Use of the Term “licence” for Motor Dealer Registration ..... 10

**2. Roles and Responsibilities .....11**

2.1 Manager of Industry Standards ..... 11

2.2 Industry Standards Officer ..... 11

The role of the Industry Standards Officer is to:..... 11

2.3 Manager of Investigations ..... 11

2.4 Investigations Officer ..... 12

2.5 Compliance Officer ..... 12

2.6 Advertising Standards Officer ..... 13

2.7 Paralegal..... 13

2.8 Manager of Licensing..... 13

2.9 Licensing Officer..... 14

2.10 Manager of Consumer Services ..... 14

2.11 Compensation Fund Claims Manager ..... 14

2.12 Consumer Services Officer..... 15

2.13 Consumer Services Support Coordinator ..... 15

2.14 Registrar..... 15

2.15 Director of Investigations, Licensing and Legal Services..... 16

2.16 Director of Consumer Services and Industry Standards ..... 16

**B. DEALER LIAISON VISITS .....18**

1.1 Overview ..... 18

1.2 Legislative authority and requirements..... 18

1.3 Policy..... 18

Purpose of liaison visit ..... 18

Type of contact ..... 18

Frequency and documentation..... 18

- C. INSPECTIONS .....19**
- 1. Overview .....19**
  - 1.1 Purpose of inspections..... 19
  - 1.2 Types of inspections..... 19
  - 1.3 Inspection Reports ..... 20
  - 1.4 Legislative Authority and Requirements..... 20
    - Authority to Delegate ..... 20
    - Reasons for Inspection..... 20
    - The Requirement to provide information and access to premises ..... 21
- 2. All Inspections .....21**
  - 2.1 Policy ..... 21
    - Display of VSA Identification..... 21
    - Notice of an Inspection ..... 22
    - Scope of Inspection..... 22
    - Review of Motor Dealer Files..... 22
    - Location of Inspection..... 22
    - Electronic Inspections ..... 23
      - Where location is Shared ..... 23
    - Concluding an Inspection..... 24
    - Motor Dealer Documents for File ..... 25
  - 2.2 Procedures ..... 25
    - Preparing for an inspection ..... 25
    - Conducting an Inspection ..... 25
    - Motor Vehicle Inventory Audit ..... 26
    - Concluding an Inspection..... 26
- 3. Dealer Applicant Inspection .....27**
  - 3.1 Description ..... 27
  - 3.2 Policy and Procedures..... 27
    - Inspection on Request from Licensing..... 27
    - Notice of the Inspection ..... 27
    - Scheduling the Inspection..... 27
    - Inspection Report..... 28
- 4. General Inspection .....28**
  - 4.1 Description ..... 28
  - 4.2 Policy and Procedures..... 28
    - Frequency of Inspection ..... 28

Frequency in Remote Locations.....	28
First Routine Inspection for a New Motor Dealer.....	28
Notice of the Inspection .....	28
Inspection Report.....	29
<b>5. Change Inspection.....</b>	<b>29</b>
5.1 Description.....	29
5.2 Policy and Procedures.....	29
Initiating the Inspection .....	29
Notice of the Inspection .....	29
Inspection Report.....	29
<b>6. Consignment Application Inspection.....</b>	<b>29</b>
6.1 Description.....	29
6.2 Policy.....	30
Inspection on Request from Licensing.....	30
Location of the Inspection .....	30
Notice of the Inspection .....	30
Scheduling the Inspection.....	30
Preparation for the Inspection.....	30
Inspection Report.....	30
6.3 Procedures.....	30
Initiating the Inspection .....	30
Preparation for Inspection.....	30
Concluding the Inspection .....	31
<b>7. Consignment Inspection.....</b>	<b>31</b>
7.1 Description.....	31
7.2 Policy and Procedures.....	31
Frequency and timing of Inspection .....	31
Notice of the Inspection .....	32
Inspection Reports .....	32
<b>8. Off-site Sale Inspection .....</b>	<b>32</b>
8.1 Description.....	32
8.2 Policy.....	32
Initiating the Inspection .....	32
Notice of the Inspection .....	32
Location of the Inspection .....	33
Inspection Report.....	33

8.3	Procedures .....	33
	Initiating The Inspection .....	33
	Conducting The Inspection .....	33
<b>9.</b>	<b>Re-inspection.....</b>	<b>33</b>
9.1	Description.....	33
9.2	Policy.....	34
	When Re-inspection to be Conducted.....	34
	Scheduling the Re-inspection .....	34
	Notice of the Re-inspection .....	34
	Inspection Report.....	34
9.3	Procedures.....	34
	Preparing for a re-inspection .....	34
	Concluding the inspection .....	34
<b>10.</b>	<b>Closure Inspection .....</b>	<b>34</b>
10.1	Description.....	34
10.2	Policy.....	35
	Initiating the inspection .....	35
	Inspection report .....	35
	Inventory audit.....	35
10.3	Procedures.....	35
	Inventory audit.....	35
<b>D.</b>	<b>Serious Compliance Issues.....</b>	<b>36</b>
<b>1.</b>	<b>Overview.....</b>	<b>36</b>
	1.1 Definition.....	36
<b>2.</b>	<b>Reporting .....</b>	<b>36</b>
<b>3.</b>	<b>Consultation .....</b>	<b>36</b>
<b>4.</b>	<b>Compliance Enforcement Model.....</b>	<b>37</b>
	4.1 Application .....	37
<b>E.</b>	<b>PROGRESSIVE ENFORCEMENT .....</b>	<b>38</b>
<b>1.</b>	<b>Overview.....</b>	<b>38</b>
	1.1 Legislative Authority and Requirements.....	39
	Authority to Delegate .....	39
	Conditions on Licence .....	39
	Suspension or cancellation of licence.....	40

Court order under <i>Motor Dealer Act</i> .....	40
Undertaking under the BPCPA and/or MDA.....	40
Compliance Order .....	41
Filing an Undertaking or Order with the Court.....	42
Administrative Penalty.....	42
Amount of Penalty .....	43
Notice of Penalty.....	44
Due Date of Penalty .....	44
Enforcement of Penalty .....	44
Limitation Period for Penalty .....	44
<b>2. General.....</b>	<b>45</b>
2.1 Policy .....	45
Goals when Applying Enforcement Measures.....	45
Determining an Appropriate Enforcement Measure.....	45
Court Order to comply with MDA.....	45
2.2 Procedures .....	46
Applying an Enforcement Measure .....	46
<b>3. Written Warning.....</b>	<b>46</b>
3.1 Policy .....	46
Approval of Warning Letter .....	49
Notice of Service of Warning Letter.....	49
<b>4. Violation ticket .....</b>	<b>50</b>
4.1 Overview .....	50
4.2 Policy .....	50
4.3 Procedures .....	51
4.4 Registrar’s Directives .....	51
<b>5. Undertaking.....</b>	<b>51</b>
5.1 Overview .....	51
5.2 Policy.....	52
5.3 Procedures .....	52
<b>6. Registrar’s Hearing.....</b>	<b>53</b>
6.1 Overview .....	53
6.2 Policy and procedures.....	54
<b>7. Compliance order .....</b>	<b>54</b>
7.1 Overview .....	54

7.2	Policy .....	54
7.3	Procedures .....	54
<b>8.</b>	<b>Administrative Penalty.....</b>	<b>55</b>
8.1	Overview .....	55
8.2	Policy .....	55
8.3	Procedures .....	56
<b>9.</b>	<b>Conditions on Licence .....</b>	<b>56</b>
9.1	Overview .....	56
9.2	Policy .....	56
	General.....	56
	Conditions Imposed by the Manager of Licensing.....	57
	Conditions Imposed by the Registrar.....	57
9.3	Procedures .....	57
	Conditions imposed by the Manager of Licensing.....	57
	Conditions Imposed by the Registrar.....	58
<b>10.</b>	<b>Suspension or cancellation of licence.....</b>	<b>58</b>
10.1	Overview .....	58
10.2	Policy .....	58
	General.....	58
	Suspension .....	59
	Cancellation .....	59
10.3	Procedures .....	59
	Suspension .....	59
	Cancellation .....	59
	<b>ACRONYMS AND ABBREVIATIONS .....</b>	<b>61</b>
	<b>KEY MESSAGES FOR DEALERS .....</b>	<b>62</b>

## Record of Updates

Version	Date	Summary of Update
1	February 2022	Original
2	April 1, 2023	<p>Changes to the policy are made to reflect the adaption of the Alternative Dispute Resolution (“ADR”) model at the VSA.</p> <p>Changed: the description of the Advertising Standards Officer, added the description of the role of the Consumer Services Support Coordinator, updated roles descriptions as required.</p> <p>Added: Part D - Serious Compliance Issues.</p> <p>Changed: previous Part D, Progressive Enforcement, to Part E.</p> <p>Changed: Part C, section 2.2.13 to reflect addition of Part D, Serious Compliance Issues.</p>

### **VSA OFFICIAL MARKS “LOGO”**

The following are the registered Official Marks of the Motor Dealer Council of British Columbia, doing business as the Motor Vehicle Sales Authority of British Columbia (the “VSA”), and may not be used or reproduced in whole or in part, in any combination or individually:

- (a) by motor dealers or salespersons unless authorized or directed to by the Registrar in accordance with the *Motor Dealer Act*, or
- (b) by any other person unless they receive prior written approval from the VSA.

“Motor Vehicle Sales Authority of British Columbia”

“Vehicle Sales Authority”

“VSA”





## A. INTRODUCTION

### 1. Background

#### 1.1 Compliance Objectives

The Registrar has the authority to make inquiries, investigate complaints and inspect registered motor dealers and licensees under the *Motor Dealer Act* (the “MDA”), its regulations and the *Business Practices and Consumer Protection Act* (the “BPCPA”) as it pertains to the sale of motor vehicles to the public for personal and family use.

The objectives of the VSA’s compliance activities are to:

- Inform and educate the licensees on legislative requirements or changes and provide advice on business best practices;
- Ensure all licences and licensees including motor dealers, salespeople, wholesalers, wholesale representatives, broker-agents, and broker-agent representatives comply with the applicable legislation;
- Ensure licence locations, motor vehicles for sale, and licensee records pertaining to the purchase and sale of motor vehicles meet the applicable legislative requirements;
- Develop relationships with all licensees and encourage industry best practices; and
- Become familiar with the general operations of licensees.

#### 1.2 Purpose of this Manual

The purpose of the Industry Standards Policy and Procedures Manual is to document the policy and procedures that support the VSA’s efforts to promote compliance with and enforce the laws regulating the motor vehicle sales industry in BC. It is intended to assist the VSA in maintaining a fair and consistent process for compliance activities and decision-making that meets the requirements of the MDA, the BPCPA, administrative fairness and natural justice.

#### 1.3 How this Manual is Organized

This manual is divided into the following parts:

- [Part A – Introduction](#). This part provides background about this manual, the authority of the Registrar and the roles and responsibilities of VSA staff in compliance and enforcement activities.
- [Part B – Dealer Liaison Visits](#). This part provides the policy and procedures regarding an Industry Standards Officer’s routine liaison contacts with a licensee.

- [Part C – Inspections](#). This part provides the policy and procedures regarding inspections conducted by Industry Standards Officers.
- [Part D – Progressive Enforcement](#). This part provides the policy and procedures for the application of enforcement measures when there has been a contravention by a license or licensee.
- [Acronyms and abbreviations](#). This part lists all of the acronyms and abbreviations used in this manual.
- Appendix. This part includes the [Key Messages for Dealers](#), which provides Industry Standards Officers with points that should be addressed in routine communications with licensees.

## 1.4 Policy and the Authority of the Registrar

The authority to inspect, investigate and enforce the statutory requirements governing the motor vehicle sales industry is granted to the Registrar under the MDA and the BPCPA. Under the MDA, the Registrar is given the authority to delegate any of its powers to VSA staff or any other person the Registrar deems appropriate to exercise those powers. Those acting with the Registrar’s delegated authority are under the same obligations as the Registrar when exercising that authority.

The role of the Industry Standards Policy and Procedures is to assist the Registrar and VSA staff in ensuring that compliance activities and decisions regarding enforcement of statutory requirements are undertaken in an open, structured and consistently fair manner.

The policy and procedures in this manual do not bind the Registrar or otherwise hinder or limit the authority and discretion of the Registrar when making decisions about compliance and enforcement. The principles of natural justice require that the Registrar consider the unique facts and context of each case when making these decisions.

## 1.5 Use of the Term “licence” for Motor Dealer Registration

For convenience, in this manual, the term “licence” is used when referring to motor dealer registration, broker-agent licence, broker-agent representative licence, wholesaler licence, and wholesaler representative. Technically, motor dealers are “registered” under the MDA while licensee refers to a person who holds a licence. The use of the term licence in place of motor dealer registration reflects common usage among industry, VSA staff and the public.

## 2. Roles and Responsibilities

### 2.1 Manager of Industry Standards

The Manager of Industry Standards has overall responsibility for the processes of inspections. The role of the Manager of Industry Standards is to:

- Oversee the Industry Standards staff conduct of inspections, liaison visits, and advertising compliance;
- Determine whether a compliance concern identified by an ISO should go to administrative review before the Registrar or be forwarded to investigations;
- Determine and recommend the best method of progressive enforcement on non-compliant suppliers as required; and
- Provide advice and direction on the conduct of inspections where required, engage in education initiatives with licensees where applicable.

The Manager of Industry Standards is responsible for:

- Providing advice and support to industry standards staff as required; and
- reviewing the results of all consignment application inspections and providing advice on approval of a consignment application to the Manager of Licensing.

### 2.2 Industry Standards Officer

The role of the Industry Standards Officer is to:

- Establish and maintain a relationship with licensees in their region and be the primary, point of contact on compliance issues for licences and licensees in their region;
- Conduct inspections as required; and
- Refer serious compliance issues to the Manager of Industry Standards where required.

The Industry Standards Officer is responsible for:

- Conducting liaison visits and inspections;
- Providing advice on compliance questions and issues to licensees;
- Investigating compliance issues found during inspections and liaison visits and obtaining licensees cooperation with the goal of voluntary compliance; and
- Determining inspection outcomes and referring serious compliance issues to the Manager of Industry Standards.

### 2.3 Manager of Investigations

The Manager of Investigations has overall responsibility for investigations and enforcement activities. The role of the Manager of Investigations is to:

- Oversee the Investigations staff conduct of investigations;
- Provide advice and direction on the conduct of investigations where required;
- Engage in preliminary dispute resolution procedures, such as undertakings, with licensees where applicable; and
- Determine when a compliance issue identified by investigations staff should go to a hearing before the Registrar.

The Manager of Investigations is responsible for:

- Providing advice and support to Investigations staff as required;
- Reviewing the results of all consignment application inspections and providing advice on approval of a consignment application to the Manager of Licensing;
- Reviewing an Investigations Officer's plan for a proactive curber (unlicensed dealer) investigation to ensure the safety and legality of the plan;
- Discussing with licensees early resolution options for non-compliance; and
- Initiating an investigation by an Investigations Officer where the Manager of Investigations, Manager of Industry Standards or the Registrar becomes aware of a systemic or wide-ranging compliance issue.

## **2.4 Investigations Officer**

The role of the Investigations Officer is to:

- Establish and maintain a relationship with licensees in their region and be a primary point of contact on compliance issues for licensees in their region;
- Conduct investigations as required; and
- Refer serious compliance issues to the Manager of Investigations where required.

The Investigations Officer is responsible for:

- Conducting licensee liaison visits;
- Providing advice on compliance issues to licensees;
- Investigating compliance issues, compensation fund claims and the criminal record or offence history of a licensee or applicant for a licence where required and completing investigation reports; and
- Referring serious compliance issues to the Manager of Investigations.

## **2.5 Compliance Officer**

The role of the Compliance Officer is a combination of the roles of Investigations officer and Industry Standards Officer and has the duties and responsibilities of both roles. The purpose of this role is to take a proactive approach to prevent consumer complaints and follow up on any complaints or concerns.

## 2.6 Advertising Standards Officer

The role of the Advertising Standards Officer is to oversee motor vehicle advertising, enforce advertising requirements and support advertising compliance activities through education to provide for consistent application of advertising standards across the province.

The Advertising Standards Officer is responsible for:

- Monitoring and inspecting motor vehicle advertising in all media, including the internet, and identifying compliance issues;
- Addressing compliance issues with licensees, including taking appropriate enforcement action;
- Advising the Manager of Industry Standards of unlicensed motor dealer advertising;
- Liaising with licensees and manufacturers on the application of the VSA's Advertising Guidelines;
- Conducting investigations as required; and
- Researching motor dealer advertising as required to assist Industry Standards Officers with inspections or investigations.
- Referring serious compliance issues, as defined in Part D, section 1.1, to the Manager of Industry Standards where required.

## 2.7 Paralegal

The role of the Paralegal is to support the Director of Investigations, Licensing and Legal Services, the Manager of Investigations, and the Manager of Industry Standards in the preparation of enforcement-related documents and by coordinating selected enforcement processes.

The Paralegal is responsible for:

- Assisting Investigations and Industry Standards Officers with drafting investigation closing letters and warning letters;
- Assisting Investigations and Industry Standards Officers, the Manager of Investigations and the Manager of Industry Standards with drafting affidavits and hearing processes;
- Assisting Investigations Officers with drafting Production Orders;
- Liaising with internal and external legal counsel, court reporters and researching court proceedings;
- Coordinating hearings before the Registrar and drafting legal documents required for hearings and court proceedings; and
- Assisting the Registrar with legal processes as required.

## 2.8 Manager of Licensing

The role of the Manager of Licensing is to consult with the Compliance departments on decisions regarding an application for consignment sales privileges and on the investigation of the criminal record or offence history of a licensee or applicant for a licence.

The Manager of Licensing is responsible for forwarding an application for consignment sales privileges to the Manager of Industry Standards for review and inspection

The role of the Licensing Department is to consult with the Industry Standards department as required to address licensing requirements or compliance issues identified in the licensing process.

The Licensing Department is responsible for requesting an inspection or investigation of an applicant or licensee where required as part of a licence application, change or renewal.

## 2.9 Licensing Officer

The role of the Licensing Officer is to consult with the Investigations department as required to address licensing requirements or Investigations issues identified in the licensing process.

The Licensing Officer is responsible for requesting an inspection or investigation of an applicant or licensee where required as part of a licence application, change or renewal.

## 2.10 Manager of Consumer Services

The Manager of Consumer Services has overall responsibility for the process of receiving and responding to public enquiries and complaints. The role of the Manager of Consumer Services is to:

- Ensure timely processing of public and industry enquiries, and complaints by the Consumer Services department and to assist staff where required;
- Ensure effective information sharing with appropriate VSA departments;
- Identify enquiries and complaints involving allegations of issues capable of current and/or future harm if not confined to the one transaction between a licensee and a member of public (“serious compliance issues”). Serious Compliance issues are defined in part D, section 1.1.

The Manager of Consumer Services is responsible for:

- Overseeing the day-to-day operation of the Consumer Services department and addressing issues as required;
- Reviewing a Consumer Services Officer’s decision to a complaint for lack of jurisdiction;
- Overseeing performance of the VSA’s consumer resources tool My Self-Help and the VSA’s Online Dispute Resolution platform; and
- Identifying potentially serious compliance issues as defined in part D, section 1.1, for immediate notification to Investigations department and Industry Standards department.

## 2.11 Compensation Fund Claims Manager

The role of the Compensation Fund Claims Manager is held by the Manager of Consumer Services.

The Compensation Fund Claims Manager is responsible for overseeing case management for claims against the Motor Dealer Customer Compensation Fund.

## 2.12 Consumer Services Officer

The role of the Consumer Services Officer is to:

- Receive, respond to, and process all public enquiries and complaints in a timely, fair and unbiased manner;
- Facilitate dispute resolution when appropriate;
- Provide case management for formal public and industry complaints to the VSA.

The Consumer Services officer is responsible for:

- Providing information about the VSA's services and the vehicle sales industry to the public;
- Impartially gathering and documenting information about an enquiry or complaint;
- Determining whether a complaint application is complete, and whether the VSA has jurisdiction to act on it;
- Facilitating dispute resolutions including providing information and access to the VSA's Online Dispute Resolution platform for eligible disputes;
- Creating and maintaining a database record for an enquiry or complaint;
- Forwarding the complaint to Investigations department when required;
- Notifying the Manager of Consumer Services of any enquiry or complaint involving any serious compliance issues as defined in part D, section 1.1, that may need the attention of the Industry Standards department or Investigations department.

## 2.13 Consumer Services Support Coordinator

The role of the Consumer Services Support Coordinator is to support Consumer Services Department and other departments of the VSA involved in responding to public and industry enquiries and complaints to the VSA.

Consumer Services Support Coordinator has overall responsibility for:

- Performing clerical and administrative functions during all stages of the enquiry and complaint process;
- Conducting searches of various platforms; and
- Assisting with documents and records management.

## 2.14 Registrar

The role of the Registrar is to:

- Provide overall direction to the Director of Investigations, Licensing and Legal Services, Manager of Investigations, the investigations department, Manager of Industry Standards, the industry standards department, and
- Conduct investigations and consumer complaint hearings as necessary.

The Registrar is responsible for:

- Delegating authority to VSA staff where required to carry out their duties under these policies and procedures;
- Ensuring staff properly exercise their delegated authority;
- Providing advice to the Manager of Investigations and Manager of Industry Standards on compliance issues as required;
- Directing the investigations department to investigate or industry standards department to conduct an inspection when necessary; and
- Conducting hearings on compliance matters and consumer complaints where required.

## **2.15 Director of Investigations, Licensing and Legal Services**

The role of the Director of Investigations, Licensing and Legal Services is to:

- Oversee the Investigations team through the Manager of Investigations to ensure investigations are completed in a timely, consistently fair, thorough, objective and legally defensible manner;
- Oversee the Licensing team through the Manager of Licensing to ensure that licensing applications are reviewed and processed in a thorough, timely and fair manner and accordance with the appropriate legislation;
- Monitor the VSA's administration of the applicable legislation;
- Respond to public and industry complaints about the Investigations department in accordance with VSA Service Complaints Policy;
- Provide legal advice on complex investigations, ensuring the investigation is completed in a timely manner, is legally defensible, and fair;
- Review all legal documents; and
- Represent the VSA and the Motor Dealer Compensation Fund Board as legal counsel before hearings on compliance and consumer complaints matters where required.

## **2.16 Director of Consumer Services and Industry Standards**

The Director of Consumer Services and Industry Standards has overall responsibility for the strategic and operational leadership for the VSA departments with the Registrar's delegated authority – Consumer Services and Industry Standards.

The responsibilities of the Director of Consumer Services and Industry Standards in regard to the Consumer Service department is to ensure that the department functions consistent with the VSA's



mandate, applicable legislation requirements, policy and procedures and, Regulatory Philosophy, and its Compliance Enforcement Principles.

- Oversee the Consumer Services department through the Manager of Consumer Services to ensure information, assistance and case management for formal complaints are provided in a timely, fair, thorough, objective and legally defensible manner;
- Monitor performance of the VSA's My Self-Help tool and VSA's online dispute resolution platform; and
- Respond to public and industry complaints about the Consumer Services department in accordance with VSA Service Complaints Policy.

## **B. DEALER LIAISON VISITS**

### **1.1 Overview**

In addition to conducting inspections, an Industry Standards Officer should have regular contact with licensees to further develop their relationship with licensees outside of the compliance and enforcement context.

The purpose of these liaison visits is to help build rapport between the Industry Standards Officer and the licensees and provide an opportunity for a mutually beneficial exchange of information about the motor vehicle sales industry.

### **1.2 Legislative authority and requirements**

There is no specific legislative authority or requirements for motor dealer liaison visits.

### **1.3 Policy**

#### **Purpose of liaison visit**

- 1.3.1 The purpose of a liaison visit is to help build rapport between the Industry Standards Officer and licensees and to exchange information, including:
- (a) Responding to licensee questions or complaints;
  - (b) Educating licensees about compliance issues and updating them on current issues that could affect their business, including the [Key Messages for Dealers](#);
  - (c) Learning more about the current state of the licensee's business, and
  - (d) Gathering information about the motor vehicle sales industry in the Industry Standards Officer's region.

#### **Type of contact**

- 1.3.2 A liaison visit is when an Industry Standards Officer makes contact with a licensee that is not part of conducting an inspection or investigation.
- 1.3.3 A liaison visit may be conducted in person, by telephone, or by email.

#### **Frequency and documentation**

- 1.3.4 Where an Industry Standards Officer has had no other contact with a motor dealer, the Industry Standards Officer will conduct at least one liaison visit with the motor dealer per year.
- 1.3.5 After completing a liaison visit, the Industry Standards Officer will add a description of the visit to the licensee record in the VSA database.

## **C. INSPECTIONS**

### **1. Overview**

#### **1.1 Purpose of inspections**

VSA Industry Standards Officers regularly conduct inspections. Inspections are prioritized based on assessing the motor dealers or generated by the licensing department due to a change by the licensee. The purpose of an inspection is to:

- Determine whether a licensee is operating in compliance with legislation governing licensees and the terms and conditions of the licence;
- Reduce the potential for non-compliance by educating licensees about compliance issues that they may face;
- Develop and maintain a trusted, professional relationship between the Industry Standards Officer and licensees; and
- Gather information about developments and issues that can assist the Industry Standards department in better understanding the motor vehicle sales industry in their region.

#### **1.2 Types of inspections**

While the essential structure of an inspection does not vary, the focus of an inspection will change depending on the circumstances and reason for the inspection. The following types of inspections are described in this manual:

- Motor Dealer Applicant Inspection – conducted before a new motor dealer is licensed;
- Routine Inspection – conducted on a regular basis;
- Change Inspection – conducted when there has been a substantive change to a motor dealership;
- Consignment Application Inspection – conducted before a motor dealer is granted consignment sales privileges;
- Routine Consignment Inspection – conducted on a motor dealer with consignment privileges on a regular basis;
- Re-inspection – conducted as a follow-up to a previous inspection where a compliance issue was identified;
- Off-site Sale Inspection – conducted on a motor dealer who is participating in an off-site sale event; and
- Closure Inspection – conducted after a motor dealer licence has been cancelled.

## 1.3 Inspection Reports

The VSA uses a standardized inspection report to guide the Industry Standards Officer through the inspection process and to provide consistent documentation of the results of an inspection. The use of the inspection report helps to ensure that Industry Standards Officers are inspecting the same aspects of a licensee and applying the same standards across the province.

When conducting an inspection, the Industry Standards Officer will complete all sections of the inspection report that are relevant to the inspection type.

## 1.4 Legislative Authority and Requirements

### Authority to Delegate

1.4.1 The Registrar of Motor Dealers is defined in the MDA which includes a person authorized in writing by the Registrar to perform the Registrar's duties. Therefore, the Registrar may delegate any of his powers to an Industry Standards Officer, Investigations Officer, Licensing officer, Consumer Services officer or any other person the Registrar deems appropriate to carry out its duties. [MDA – s. 1(1) – definition of Registrar]

### Reasons for Inspection

1.4.2 The Registrar may make inquiries and require information

- (a) that the Registrar considers appropriate or necessary to decide whether or not to grant, renew, cancel or suspend a licence; [MDA s. 7(1)(a)]
- (b) respecting the business or proposed business of a motor dealer applicant as authorized by the regulations. [MDA s. 7(1)(b), MDAR s. 7]; or
- (c) Respecting a complaint [MDA s. 25].

1.4.3 The Registrar may, for the purpose of the MDA, review a licence and for the purpose of the review may require any information or material concerning the organization, operating practices and procedures and the financial status of the licensee. [MDAR s. 7]

1.4.4 An Industry Standards Officer may conduct an inspection to

- (a) determine compliance with
  - (i) the BPCPA and the regulations
  - (ii) the MDA and the regulations
  - (iii) the terms and conditions of a licence, or
  - (iv) a compliance order, undertaking or court order made under the MDA and/or BPCPA.
- (b) assess an applicant for a licence. [BPCPA s. 149]

### **The Requirement to provide information and access to premises**

- 1.4.5 It is a condition of registration or renewal of registration that a motor dealer applicant or a licensee provides information and documents respecting the business that the Registrar or another person conducting an inquiry under the MDA requires. [MDA s. 7(2), Broker Licensing Regulation, s. 7(1)(l), Wholesaler Licensing Regulation, s. 7(1)(k)]
- 1.4.6 A licensee must, at a reasonable time during normal business hours, on request of the Registrar or a person authorized in writing by the Registrar, permit the Registrar or authorized person to:
- (a) enter the licensee's place of business;
  - (b) inspect (which includes removing and copying) the records of the business;
  - (c) enter premises in which any motor vehicle owned, possessed, or controlled by the motor dealer for his or her business is kept or stored; and
  - (d) inspect all motor vehicles on the premises. [MDA s. 26]
- 1.4.7 For the purposes of an inspection or investigation under the BPCPA, an Industry Standards Officer may do any of the following:
- (a) enter the business premises of a person at any reasonable time;
  - (b) inquire into any business, affairs, or conduct of a person;
  - (c) inspect, audit or examine any record, goods or other thing or the provision of services in the premises;
  - (d) inspect a motor vehicle or vessel that is being used for business purposes;
  - (e) require any person who has possession or control of any of the records, goods or other things in the premises, motor vehicle or vessel to produce the records, goods or things;
  - (f) make a record, including a record on film, audiotape, videotape or otherwise, of the premises, motor vehicle or vessel and anything in or on the premises, motor vehicle or vessel;
  - (g) remove any record from the premises, motor vehicle or vessel for the purpose of making copies; and
  - (h) remove and retain any record, good or other things that may be required as evidence from the premises, motor vehicle or vessel. [BPCPA s. 150(1)]

## **2. All Inspections**

### **2.1 Policy**

#### **Display of VSA Identification**

- 2.1.1 When conducting an inspection or when conducting an inspection remotely (either by phone, video conference or email) the Industry Standards Officer will provide their name, title and type of inspection to be conducted. The Industry Standards Officer will wear their VSA ID card in a way that is visible during the inspection.

### **Notice of an Inspection**

- 2.1.2 Unless notice is specifically required under this policy, the Industry Standards Officer may conduct an inspection without notice to the licensee. When deciding whether to provide notice, the Industry Standards Officer will consider the following:
- (a) the licensee's past compliance history;
  - (b) any unresolved complaints against the licensee and the nature of the complaint; and
  - (c) any information regarding possible compliance issues (e.g., employing unlicensed salespeople [MDA s. 13.1]).

### **Scope of Inspection**

- 2.1.3 When conducting an inspection, the Industry Standards Officer will complete the designated sections of the inspection report. When conducting a re-inspection, the Industry Standards Officer will complete only those portions of the inspection report that are relevant to the re-inspection.
- 2.1.4 The Industry Standards Officer may inspect items that are not included in the designated sections of the inspection report if the officer believes there may be a Compliance issue not addressed by those sections of the report.

### **Review of Motor Dealer Files**

- 2.1.5 Where an inspection requires the Industry Standards Officer to review licensee records on sales, including leases, consignment agreements or inventory, the Industry Standards Officer will review a minimum of five recent examples of each.
- 2.1.6 Where a review of files indicates possible compliance issues, the Industry Standards Officer will review additional files as required to determine the nature and scope of the issues.

### **Location of Inspection**

- 2.1.7 All inspections will be conducted at the licensee's premises except:
- (a) Where the motor dealer or applicant is based in a remote location and an electronic inspection is permitted;
  - (b) An off-site sale inspection where it is not feasible for the Industry Standards Officer to attend in person; or
  - (c) Any other situation where operational constraints make it necessary to perform the inspection remotely.
- 2.1.8 For the purpose of this policy, the following geographic areas are considered to be remote locations:
- (a) East of Cranbrook;
  - (b) North of Prince George except for the Highway 97 corridor between Prince George and Fort St. John; and

- (c) Any island other than Vancouver Island.

### **Electronic Inspections**

2.1.9 If an applicant or licensee meets any of the conditions in 2.1.7, any inspection, other than a consignment application inspection, may be conducted remotely. Where an inspection is conducted electronically, an inspection at the motor dealer's premises must be completed

- (a) the next time the Industry Standards Officer is in the motor dealer's area; and
- (b) in any event, within 5 years of the previous on-site inspection.

2.1.10 Before conducting the electronic inspection, the Industry Standards Officer contacts the licensee and requests copies of the documents and photographs of the licensed premises required to complete the inspection including, where applicable:

- (a) A copy of the motor dealer's business license;
- (b) A copy of the business license of the motor dealer's contracted service facility;
- (c) A copy of licensee files depending on the type of license and inspection including:
  - (i) Sales
  - (ii) Advertising
  - (iii) Current inventory
  - (iv) Consignment agreements
  - (v) Broker Agent agreements;
- (d) An inventory list and a photograph showing inventory;
- (e) Photographs of the motor dealer including:
  - (i) Street view of the Motor Dealer sign prominently displayed and Motor Dealer inventory
  - (ii) Wide view of Motor Dealer inventory with vehicle tagging in view
  - (iii) Close up view of vehicles and window stickers
  - (iv) Wide View of the office space showing the location of Motor Dealer license, business license and Industry Code of Conduct prominently displayed
  - (v) Secure file storage in use by the licensee; and
- (f) Any other information or documentation that the Industry Standards officer believes may be necessary to complete the inspection.

### **Where location is Shared**

2.1.11 When conducting an inspection on a licensee who shares a location with another licensee, the Industry Standards Officer will inspect each motor dealer at the location unless the type of inspection does not apply to the other licensees or there are operational constraints preventing the inspection.

- 2.1.12 When inspecting a motor dealer who is sharing a location, the Industry Standards Officer will inspect for the following:
- (a) adequacy of display space
    - (i) there should be space for each motor dealer to display a minimum of 3 motor vehicles
    - (ii) the display lots for each motor dealer should be separated
  - (b) adequacy of office space
    - (i) the office space should be large enough to accommodate the licensees
    - (ii) the office should have separate desks, phone lines and filing cabinets for each licensee
  - (c) signage – display lots and individual motor vehicles signed to identify each motor dealer
  - (d) each motor dealer should have their own business licence, and
  - (e) the zoning of the location should allow more than one motor dealer to operate on the premises.
- 2.1.13 Where the motor dealers have few or no staff, they should be encouraged to make arrangements through the Licensing Department that allow them to sell the other motor dealer’s motor vehicles if the other motor dealer is not available to assist customers.

### **Concluding an Inspection**

- 2.1.14 At the end of an inspection, the Industry Standards Officer will discuss any issues identified during the inspection and indicate to the person in charge of the motor dealership whether the motor dealer complies.
- 2.1.15 Where the inspection has revealed compliance issues, the Industry Standards Officer will document the issues in the inspection report, including:
- (a) a time frame for resolution of the issues by the licensee;
  - (b) document on the inspection report any education given related to the inspection;
  - (c) a date on which the Industry Standards Officer will conduct a re-inspection to determine whether the issues have been resolved; and
  - (d) any enforcement action taken.
- 2.1.16 After the Industry Standards Officer has reviewed the results of the inspection, the person in charge of the motor dealer will sign the inspection report. If the inspection was conducted remotely the person in charge of the motor dealer will receive the results by email with confirmation read receipt, if the person the inspection was conducted with differs from the motor dealer’s main contact, the main contact for the motor dealer will receive a copy of the inspection result.
- 2.1.17 If the inspection was conducted remotely the person in charge of the motor dealer will receive the results by email with confirmation read receipt, if the person the inspection was conducted



with differs from the motor dealer's main contact, the main contact for the motor dealer will also receive a copy of the inspection result.

### **Motor Dealer Documents for File**

2.1.18 When conducting a licensee applicant inspection, the Industry Standards Officer will obtain copies of the licensee's business documents identified on the inspection report.

2.1.19 After the initial set of documents is added to the licensee's file, the Industry Standards Officer will refresh the copies of those documents

- (a) based on the inspection interval assessment, or
- (b) whenever there is a change of name, ownership or location.

## **2.2 Procedures**

### **Preparing for an inspection**

2.2.1 Before conducting the inspection, the Industry Standards Officer/Compliance Officer contacts the motor dealer and requests the motor dealer provide copies of the motor dealer documents and photographs of the motor dealer premises required to complete the inspection including, where applicable:

- (a) A copy of the motor dealer's business license
- (b) A copy of the business license of the motor dealer's contracted service facility
- (c) A copy of the motor dealer files for
  - (i) Sales
  - (ii) Advertising
  - (iii) Current inventory
  - (iv) Consignment agreements
- (d) An inventory list and a photograph showing inventory
- (e) Photographs of the motor dealer including
  - (i) Street view of the Motor Dealer sign prominently displayed and Motor Dealer inventory
  - (ii) Wide view of Motor Dealer inventory with vehicle tagging in view
  - (iii) Close up view of vehicles and window stickers
  - (iv) Wide View of the office space showing the location of Motor Dealer license, business license and Industry Code of Conduct prominently displayed
  - (v) Secure file storage in use at the Motor Dealer
- (f) Any other information or documentation that the Industry Standards officer believes may be necessary to complete the inspection.

### **Conducting an Inspection**

2.2.2 At the license location, the Industry Standards Officer locates the person in charge and

- (a) explains the purpose and nature of the inspection, and

- (b) reviews the [Key Messages for Dealers](#) with the person in charge.
- 2.2.3 The Industry Standards Officer inspects the licensee's premises and fills out the designated sections of the inspection report.
- 2.2.4 The Industry Standards Officer obtains copies of all documents required for the inspection and attaches them to the inspection report or forwards them to the VSA office for uploading.
- 2.2.5 Where the inspection reveals compliance issues, the Industry Standards Officer records the details of the compliance issues in the inspection report and determines an appropriate level of enforcement action.

### **Motor Vehicle Inventory Audit**

- 2.2.6 The Industry Standards Officer may complete a Motor Vehicle Inventory Audit form as part of an inspection in the following circumstances:
  - (a) when conducting a closure inspection
  - (b) where rebuilt motor vehicles make up a significant proportion (greater than 25% of annual sales) of a motor dealer's inventory
  - (c) where the Industry Standards Officer has reason to believe that the motor dealer is selling
    - (i) unsafe motor vehicles
    - (ii) motor vehicles on consignment without authorization, or
    - (iii) stolen motor vehiclesand
  - (d) in any other circumstances where the Industry Standards Officer has reason to believe there are compliance issues with the motor dealer's inventory.
- 2.2.7 Following the inspection, the Industry Standards Officer researches the status and history of the motor vehicles in the inventory as required in the circumstances.

### **Concluding an Inspection**

- 2.2.8 After completing the inspection, the Industry Standards Officer
  - (a) reviews the results of the inspection with the person in charge and indicates whether or not the licensee is in compliance or sets a date when the determination will be made; and
  - (b) Uploads the photographs, documents and electronic communication to the inspection record in the VSA database.
- 2.2.9 Where the inspection reveals compliance issues, the Industry Standards Officer
  - (a) establishes a time frame in which the licensee is expected to resolve the issues;
  - (b) schedules a date for a re-inspection to determine whether the issues have been resolved;and

(c) determines whether any enforcement action should be taken.

2.2.10 The person in charge signs the completed inspection report or acknowledges receipt of the report by email.

2.2.11 The Industry Standards Officer uploads the inspection report to the VSA database.

2.2.12 Where the Industry Standards Officer has obtained copies of advertising, the officer forwards the copies to the Advertising Standards Officer if further review is required.

2.2.13 Where an inspection reveals a serious compliance issue, as defined in Part D, section 1.1, or an issue that the Industry/Advertising Standards Officer believes may require an investigation, the officer notifies the Manager of Industry Standards.

### **3. Dealer Applicant Inspection**

#### **3.1 Description**

A motor dealer applicant inspection is initiated by the Licensing department after a review of the motor dealer application.

The purpose of the motor dealer applicant inspection is to ensure that the applicant has established business premises and operations that will comply with the requirements for operating a motor dealership. Therefore, a motor dealer applicant inspection cannot be effectively conducted until the applicant has substantially completed preparations for opening the motor dealership.

#### **3.2 Policy and Procedures**

##### **Inspection on Request from Licensing**

3.2.1 The Industry Standards Officer will conduct a motor dealer applicant inspection at the request of a Licensing Officer before approval of an application for a motor dealer licence.

##### **Notice of the Inspection**

3.2.2 The Industry Standards Officer will provide the applicant with notice of the motor dealer applicant inspection.

##### **Scheduling the Inspection**

3.2.3 A motor dealer applicant inspection will be conducted as soon as possible after a referral from the Licensing Officer, bearing in mind the readiness of the motor dealer applicant and the proposed motor dealer opening date.

3.2.4 The Industry Standards Officer will arrange an appointment with the motor dealer applicant to conduct the inspection.

### **Inspection Report**

3.2.5 When conducting a motor dealer applicant inspection, the Industry Standards Officer will complete the Motor Dealer Applicant portion of the inspection report.

## **4. General Inspection**

### **4.1 Description**

A routine inspection is an inspection that is conducted as a means of ensuring continued compliance, communicating with licensee about compliance, and gathering information about the developments and issues in the motor vehicle sales industry.

### **4.2 Policy and Procedures**

#### **Frequency of Inspection**

4.2.1 The Industry Standards Officer will conduct an on-site routine inspection of a motor dealer based on risk assessment, except where:

- (a) the motor dealership is in a [remote location](#), or
- (b) the motor dealer is required to have a [consignment inspection](#).
- (c) Any other situation where operational constraints make it necessary to perform the inspection remotely.

4.2.2 In addition to scheduled routine inspections, the Industry Standards Officer may conduct a routine inspection at the request of the Registrar or where, in the opinion of the Industry Standards Officer, a routine inspection is required to ensure compliance.

#### **Frequency in Remote Locations**

4.2.3 In a [remote location](#), and after a risk assessment, the Industry Standards Officer will conduct

- (a) an on-site routine inspection at least once every five years, and
- (b) a liaison visit or routine inspection electronically once per year.

#### **First Routine Inspection for a New Motor Dealer**

4.2.4 Where a motor dealer is new, the Industry Standards Officer will conduct an on-site routine inspection

- (a) 6 months after the approval of the motor dealer licence, or
- (b) 12 months after the approval of the motor dealer licence if the motor dealer is in a [remote location](#).

#### **Notice of the Inspection**

4.2.5 The Industry Standards Officer, at the officer's discretion, may conduct a routine inspection without notice to the motor dealer.

### **Inspection Report**

4.2.6 When conducting a routine inspection, the Industry Standards Officer will complete the appropriate portions of the inspection report.

## **5. Change Inspection**

### **5.1 Description**

A change inspection is conducted whenever a licensee changes their registered location, the category of its licence, its name, or its ownership. A change inspection is initiated by the Licensing department after a licensee has notified them of a change of location, name, licence category or ownership.

The purpose of a change inspection is to ensure that the changes to the licensee's business are compliant.

### **5.2 Policy and Procedures**

#### **Initiating the Inspection**

5.2.1 The Industry Standards Officer will conduct a change inspection upon receiving notice from a Licensing Officer that there has been a change to a licensee's:

- (a) location
- (b) licence category
- (c) name, or
- (d) ownership.

#### **Notice of the Inspection**

5.2.2 The Industry Standards Officer will provide the licensee with a notice of the licensee change inspection.

#### **Inspection Report**

5.2.3 When conducting a licensee change inspection, the Industry Standards Officer will complete the appropriate change portion of the inspection report.

## **6. Consignment Application Inspection**

### **6.1 Description**

Every motor dealer who applies for consignment privileges must complete a consignment application inspection before being authorized to conduct consignment sales. A consignment application inspection is initiated by the Licensing department after a review of the motor dealer's consignment application.

The purpose of the consignment application inspection is to ensure that the applicant has established business processes and documentation that will comply with the requirements for conducting consignment sales.

## 6.2 Policy

### Inspection on Request from Licensing

6.2.1 The Industry Standards Officer will conduct a consignment application inspection at the request of the Manager of Licensing before approval of an application for consignment privileges.

### Location of the Inspection

6.2.2 The Industry Standards Officer will conduct a consignment application inspection on the motor dealer's premises regardless of the motor dealer's location.

### Notice of the Inspection

6.2.3 The Industry Standards Officer, at the officer's discretion, may conduct a consignment application inspection without notice to the motor dealer.

### Scheduling the Inspection

6.2.4 A consignment application inspection will be conducted as soon as possible after a referral from the Licensing officer.

### Preparation for the Inspection

6.2.5 The Industry Standards Officer will review the motor dealer's consignment application before conducting a consignment application inspection.

### Inspection Report

6.2.6 When conducting a consignment application inspection, the Industry Standards Officer will complete the Routine and the Consignment Application portions of the inspection report.

6.2.7 The Consignment Application portion of the inspection report will include the Industry Standards Officer's recommendation and reasons regarding approval or rejection of the motor dealer's consignment application.

## 6.3 Procedures

### Initiating the Inspection

6.3.1 The Manager of Licensing contacts the Industry Standards Officer to request a consignment application inspection and forwards the motor dealer's consignment application to the officer.

### Preparation for Inspection

6.3.2 The Industry Standards Officer reviews the motor dealer's consignment application and information on the motor dealer in VSA files or obtained from other sources prior to conducting the application. This includes a review of the motor dealer's:

- (a) trust account information
- (b) the consignment agreement form and purchase agreement for a consigned motor vehicle form for compliance with the requirements in the Motor Dealer Consignment Sales Regulation, and
- (c) compliance history.

### **Concluding the Inspection**

- 6.3.3 When completing the Consignment Application portion of the inspection report, the Industry Standards Officer includes a recommendation and reasons regarding the approval or rejection of the motor dealer's consignment application.
- 6.3.4 The Industry Standards Officer sends a copy of the completed inspection report to:
- (a) the person in charge of the motor dealership, and
  - (b) the Manager of Industry Standards.
- 6.3.5 The Industry Standards Officer forwards the motor dealer's consignment application to the Manager of Industry Standards.
- 6.3.6 The Manager of Industry Standards reviews the application and the inspection report and makes a recommendation regarding approval or rejection of the application to the Manager of Licensing.

## **7. Consignment Inspection**

### **7.1 Description**

A consignment inspection is an inspection that is conducted regularly in addition to a [routine inspection](#) for motor dealers who have consignment privileges. Consignment sales entail a unique relationship of trust between the consumer (consignor) and the motor dealer (consignee) with great potential for loss to the consumer.

The purpose of the consignment inspection is to mitigate this additional risk by ensuring that motor dealers who are authorized to conduct consignment sales are compliant with the law and policy established to protect consumers.

### **7.2 Policy and Procedures**

#### **Frequency and timing of Inspection**

- 7.2.1 At a minimum, a consignment inspection will be conducted approximately one month prior to the motor dealer's licence renewal date to allow for any issues identified in the inspection to be addressed prior to renewal. Inspections may be more frequent based on a risk assessment.

### **Notice of the Inspection**

7.2.2 The Industry Standards Officer, at their discretion, may conduct a consignment inspection without notice to the motor dealer.

### **Inspection Reports**

7.2.3 Where a consignment inspection is conducted once per year, the Industry Standards Officer will complete both the Routine portion and the Consignment portion of the inspection report if a previous routine inspection was not completed within the consignment inspection interval.

7.2.4 Where a consignment inspection is conducted two times per year

- (a) when conducting the first consignment inspection of the year, the Industry Standards Officer will complete the Consignment portion of the inspection report, and
- (b) when conducting the second consignment inspection of the year, the Industry Standards Officer will complete the Consignment portion of the inspection report and will complete the Routine portion of the inspection report based on the risk assessment.

## **8. Off-site Sale Inspection**

### **8.1 Description**

A motor dealer must conduct business solely at the motor dealer's registered premises unless the Registrar has issued a temporary off-site sale permit for a special sales event. An off-site sale inspection is done when a motor dealer has been issued an off-site sale permit.

The purpose of an off-site sale inspection is to ensure that licensees participating in an off-site sale event have received the required legislated authorization, are complying with the requirements for off-site sales in the VSA's [Licensing Policy and Procedures Manual](#), including ensuring all salespersons are licensed and noted in VSA files as with the particular dealer.

### **8.2 Policy**

#### **Initiating the Inspection**

8.2.1 The Industry Standards Officer will, where feasible, plan to conduct an off-site sale inspection upon receiving notice of the off-site sale event from a Licensing officer.

#### **Notice of the Inspection**

8.2.2 The Industry Standards Officer, at their discretion, may conduct an off-site sale inspection without notice to the motor dealer.



### **Location of the Inspection**

8.2.3 Where feasible, the Industry Standards Officer will attend the off-site sale event to complete the inspection but may conduct the inspection electronically due to operational constraints, such as remote locations.

### **Inspection Report**

8.2.4 When conducting an inspection, the Industry Standards Officer will note the inspection and the results of the inspection in the motor dealer record in the VSA database.

## **8.3 Procedures**

### **Initiating The Inspection**

8.3.1 Upon receipt of an application for an off-site sale permit, the Licensing Officer immediately notifies the following people of the details of the proposed event:

- (a) Manager of Licensing
- (b) Manager of Industry Standards, and
- (c) the Industry Standards Officer for the region.

8.3.2 The Industry Standards Officer, at their discretion, plans to inspect the proposed event.

8.3.3 When the application for an off-site sales permit is approved the Licensing Officer notifies the Industry Standards Officer.

### **Conducting The Inspection**

8.3.4 The Industry Standards Officer obtains and reviews advertisements for the event for compliance with the requirements for off-site sale advertising in the legislation as summarized in the General Guidelines and Advertising Guidelines.

8.3.5 The Industry Standards Officer contacts the motor dealer prior to the event to confirm that the arrangements for the event are compliant with the requirements for an off-site sale in the General Guidelines and Advertising Guidelines.

8.3.6 Where feasible, the Industry Standards Officer attends the off-site sale event and inspects for compliance.

## **9. Re-inspection**

### **9.1 Description**

A re-inspection is an inspection that is done as a follow-up to a previous inspection in which the Industry Standards Officer identified compliance issues and documented the actions the licensee would take to rectify those issues.

The purpose of the re-inspection is to determine whether the motor dealer has taken action and, if so, whether the action taken has resolved the compliance issues.

## 9.2 Policy

### When Re-inspection to be Conducted

9.2.1 The Industry Standards Officer will conduct a re-inspection whenever they identified compliance issues during a previous inspection and instructed the licensee to take action to address the issues.

### Scheduling the Re-inspection

9.2.2 The Industry Standards Officer will schedule a re-inspection to allow the licensee a reasonable time to address the particular compliance issues identified.

9.2.3 A re-inspection will be conducted within 90 days of the previous inspection unless the licensee reasonably requires more time to address the compliance issues.

### Notice of the Re-inspection

9.2.4 The Industry Standards Officer, at their discretion, may conduct re-inspection without notice to the licensee.

### Inspection Report

9.2.5 When conducting a re-inspection, the Industry Standards Officer will complete the applicable portions of the inspection report.

## 9.3 Procedures

### Preparing for a re-inspection

9.3.1 Prior to conducting a re-inspection, the Industry Standards Officer reviews the previous inspection report and considers the enforcement options that may be appropriate if the re-inspection indicates that the compliance issues have not been resolved.

### Concluding the inspection

9.3.2 Where the re-inspection indicates that the licensee has not resolved the compliance issues identified during the previous inspection, the Industry Standards Officer determines an appropriate level of enforcement action.

## 10. Closure Inspection

### 10.1 Description

A closure inspection is an inspection that is done after a licensee has voluntarily ceased operations or the licensee's licence has been cancelled by the Registrar.

The purpose of a closure inspection is to ensure that the former licensee has completely ceased operations and is no longer conducting business requiring a VSA license.

## 10.2 Policy

### Initiating the inspection

10.2.1 The Industry Standards Officer will conduct a closure inspection upon notification from a Licensing Officer that a motor dealer licence has been cancelled.

### Inspection report

10.2.2 When conducting a closure inspection, the Industry Standards Officer will complete the Dealer Closure portion of the inspection report.

### Inventory audit

10.2.3 Where the disposition of the former licensee's remaining inventory is uncertain, the Industry Standards Officer will complete a [Motor Vehicle Inventory Audit](#) of the inventory and check the disposition of the motor vehicles remaining in inventory.

## 10.3 Procedures

### Inventory audit

10.3.1 Where the Industry Standards Officer has conducted a motor vehicle inventory audit as part of the closure inspection, the officer checks on the disposition of the motor vehicles remaining in inventory approximately 60 days after completing the inspection.

## D. Serious Compliance Issues

### 1. Overview

#### 1.1 Definition

A serious compliance issue includes, but is not limited to the following allegations of misconduct:

- One or more incidents of alleged or actual theft of money, theft of personal information (identity theft) or other items of value from a consumer or other person by a licensee;
- One or more alleged or actual incidents of fraud committed against a consumer or other person by a licensee;
- Alleged or actual Physical violence or the immediate threat of physical violence by a licensee against a consumer or other person;
- Alleged or actual sale of an unsafe vehicle that poses a clear and immediate risk to the physical safety of the consumer who purchased it.

### 2. Reporting

2.1 Where, in the course of performing their job duties, an Industry/Advertising Standards Officer observes or becomes aware of circumstances that may, if proven, constitute a serious compliance issue, the Industry/Advertising Standards Officer is to take the following steps:

- Document the circumstances, noting the alleged serious compliance issue;
- Notify the Manager of Industry Standards in writing as soon as practicable, providing a copy of their Inspection Report and any other documentation that supports the alleged serious compliance issue; and
- Document the observation of the alleged serious compliance issue in Driver.

2.2 Where the Manager of Industry Standards is not available, the Industry Standards Officer is to report the serious compliance issue to the Director of Consumer Standards and Industry Standards or if they are unavailable, the Director of Investigations, Licensing and Legal Services.

### 3. Consultation

3.1 Where the Manager of Industry Standards (or the appropriate Director acting in their place as referred to in section 2.2 above) is notified by an Industry Standards Officer of the existence of an alleged serious compliance issue, they will take the following steps:

- Obtain all relevant documentation from the Industry Standards Officer;
- Prepare a summary of the allegation and forward that by email to the Manager of Investigations as soon as practicable.

## 4. Compliance Enforcement Model

### 4.1 Application

Where alleged or actual conduct is believed to be a serious compliance issue, consideration will be given if an interim measure is necessary to protect the public interest, until a full investigation can be finalized. See the Compliance Enforcement Model. Such measures can include:

- Adding conditions on a licence,
- Short notice hearing before the Registrar to request:
  - (a) a suspension of a licence pending completion of an investigation, or
  - (b) a compliance order prohibiting certain conduct, or requiring specific conduct pending the completion of an investigation,
  - (c) requesting the registrar apply for the appointment of a receiver-manager by the BC Supreme Court,
  - (d) issuing a property freeze order against the licensee or any other person who holds assets of the licensee, and
  - (e) any other order authorized by the Motor Dealer Act or the Business Practices and Consumer Protection Act which is necessary to protect the public interest, pending the finalizing of an investigation.

## E. PROGRESSIVE ENFORCEMENT

### 1. Overview

In addition to the Registrar's authority under the MDA and regulations, the Registrar also has the powers of the "Director" to enforce parts of the BPCPA as they relate to motor dealers and salespeople.

To address non-compliance, the VSA employs a method of progressive enforcement. Progressive enforcement means that the enforcement measures should only become more serious and deterrent in nature if a corrective action is not taken at the earliest detection of unlawful behaviour. Nonetheless, depending on the nature of the non-compliance, the VSA may proceed as needed to any appropriate enforcement measure. The specific enforcement measure used will always depend on the circumstances of each case with the goal of educating and deterring future non-compliance.

The following are the general enforcement practices:

- The Industry Standards Officer will investigate and submit a report to the Manager of Industry Standards.
- The Manager of Industry Standards in consultation with the Director of Consumer Services and Industry Standards, and where appropriate with Director of Investigations, Licensing and Legal Services, will consider what if any enforcement response is appropriate.
- In selecting any enforcement response, the VSA Regulatory Philosophy and Enforcement Principles and the VSA's Compliance Enforcement Model will be applied.
- The Manager of Industry Standards can recommend a licensee voluntarily accept a proposed enforcement response through an undertaking or warning letter. The licensee is free to accept, reject or propose an alternative enforcement response.
- Ultimately, the Registrar is responsible for approving, or if necessary, ordering all enforcement responses.

The following are general enforcement measures that may be used:

- Discussion and advice to allow a licensee to voluntarily come into compliance;
- A written warning;
- A condition added to a licence to be met within a certain time period;
- A violation ticket with a fine;
- An undertaking (a voluntary agreement to undertake conditions with specified consequences for failing to fulfill the agreement); and
- a hearing before the Registrar. After a hearing, the Registrar may impose the following enforcement measures
  - conditions added to a licence;
  - a compliance order (an order issued where there has been a contravention of the MDA and/or BPCPA);
  - an administrative penalty (a monetary penalty assessed where there has been a contravention of the MDA and/or BPCPA);

- a suspension of a licence; and
- cancellation of a licence.

### **Levels of Authority:**

- Investigator: An investigator investigates if a breach of the legislation has occurred and reports their findings to the Manager of Investigations. An investigator cannot impose enforcement on a licensee and should not be making recommendations regarding enforcement.
- Manager of Investigations: Reviews investigation reports and in consultation with the Director of Consumer Services and Industry Standards and where appropriate with legal counsel, recommends what if any enforcement response is appropriate. The Manager of Investigations engages in discussion with the licensee on the proposed enforcement response.
- Director of Investigations, Licensing and Legal Services: Oversees the Manager of Investigations and consults with the Manager of Investigations on enforcement response selection.
- Director of Investigations, Licensing and Legal Services: Provides legal advice on the allegations and enforcement selection.
- Registrar: Must formally approve or order all enforcement responses.

If necessary, a compliance order, administrative penalty and an undertaking made under the MDA and/or the BPCPA may be filed in the BC Supreme Court and enforced as a court order.

## **1.1 Legislative Authority and Requirements**

### **Authority to Delegate**

- 1.1.1 The Registrar may lawfully delegate any of his powers to an Industry Standards Officer, Investigations Officer, Licensing Officer, Consumer Services Officer or any other person the Registrar deems appropriate to exercise those powers. [MDA – s. 1(1) – definition of Registrar]

### **Conditions on Licence**

- 1.1.2 The Registrar may register or renew a licensee registration on terms, conditions or restrictions that the Registrar considers necessary, including a condition requiring an irrevocable letter of credit, in an amount set by the Registrar, as evidence of financial responsibility. [MDA s.4(4) and (5)]
- 1.1.3 The VSA may impose conditions on a licence that the VSA considers necessary. [SL Reg s. 4(1)]
- 1.1.4 The Registrar at any time may, by giving written notice to a licensee, add to or alter the terms, conditions, or restrictions of the licence. [MDA s. 4(6), SL Reg s. 4(3)]

### **Suspension or cancellation of licence**

- 1.1.5 If in the opinion of the Registrar, the financial responsibility or past conduct of an applicant or licensee, registered motor dealer, or its officers or directors, is such that it would not be in the public interest for them to be registered or continue to be registered, the Registrar may:
- (a) refuse to register an applicant or refuse to renew a registration, or
  - (b) cancel a registration, or
  - (c) suspend a registration for a period of time and subject to conditions the Registrar considers necessary. [MDA s. 5]
- 1.1.6 If the conduct of an applicant or licensed salesperson is, in the opinion of the VSA, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the VSA may:
- (a) refuse to issue the licence, or
  - (b) if a person is licensed,
    - (i) cancel the licence, or
    - (ii) suspend the licence for a period of time and subject to conditions the VSA considers necessary. [SL Reg s. 6]
- 1.1.7 If the Registrar proposes to
- (a) refuse to register or renew a motor dealer's registration or to issue or renew a salesperson's licence
  - (b) cancel a registration or licence, or
  - (c) suspend a registration or licence,
- the Registrar must notify the applicant or the licensee, motor dealer or salesperson that
- (d) they have the right to be heard at a date and place specified in the notice, and
  - (e) if they do not attend at that time and place, the matter may be disposed of in the absence of the applicant or the licensee, motor dealer or salesperson. [MDA s. 6, SL Reg s. 7]

### **Court order under *Motor Dealer Act***

- 1.1.8 If it appears to the Registrar that a person is not complying with the MDA, the regulations or an order made under the MDA, even though a penalty may have been or could be imposed in respect of the noncompliance, the Registrar may apply to the court for an order directing that person to comply, and the court may make an order it considers proper. [MDA s. 31]

### **Undertaking under the BPCPA and/or MDA**

- 1.1.9 If the Registrar has reason to believe that a person is contravening, is about to contravene or has contravened the BPCPA, MDA or the regulations, the Registrar may accept from the person a written undertaking that is in a form and that contains the terms and conditions the Registrar determines are appropriate in the circumstances. An undertaking may include the following terms and conditions:



- (a) an undertaking to comply with the BPCPA, the MDA and the regulations;
- (b) an undertaking to refrain from engaging in an act or practice;
- (c) an undertaking to compensate consumers or a class of consumers, including reimbursing any money or returning any other property or thing received from consumers in connection with a consumer transaction;
- (d) an undertaking to provide a bond in accordance with the *Bonding Act* or other security and the circumstances under which the security may be realized;
- (e) an undertaking to reimburse to the Registrar the costs of any investigation, including actual legal and hearing costs;
- (f) an undertaking with respect to the form, content and maintenance of trust accounts, records, contracts, advertisements or other documents; and
- (g) if two or more persons give the undertaking, all the persons named in the undertaking are jointly and severally responsible for complying with the undertaking and are jointly and severally liable for the payment of any amounts under the undertaking. [BPCPA s. 154(1) and (2) / MDA s. 26.01]

1.1.10 The Registrar may terminate an investigation of or proceeding against a person on the acceptance of an undertaking from the person. [BPCPA s. 154(3) / MDA s. 26.01(3)]

### **Compliance Order**

1.1.11 After giving a person an opportunity to be heard, the Registrar may order the person to comply with the BPCPA, the MDA and the regulations if satisfied that the person is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations. [BPCPA s. 155(1) / MDA s. 26.02(1)]

1.1.12 A compliance order must

- (a) name the person in respect of whom the order is issued;
- (b) describe the person's act or practice that is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations;
- (c) identify the section of the BPCPA, the MDA or the regulations that is being contravened is about to be contravened or has been contravened;
- (d) be dated and signed by the Registrar issuing the order; and
- (e) inform the recipient that the Registrar may file the compliance order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court. [BPCPA s. 155(2) / MDA s. 26.02(2)]

1.1.13 The Registrar may include one or more of the following orders in a compliance order:

- (a) that a person stop engaging in or not engage in a specified act or practice;
- (b) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;
- (c) that a person compensates other persons or a class of persons who have suffered loss or damage as a result of a contravention of the BPCPA, the MDA or the regulations;

- (d) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations; and
- (e) that a person reimburse to the Registrar all or a portion of the actual costs of any investigation, including actual legal and hearing costs, incurred by the Registrar for the investigation of that person in respect of the contravention referred to in the compliance order. [BPCPA s. 155(3) and (4) / MDA s. 26.02(4)].

1.1.14 The Registrar must serve a copy of the compliance order on the person named in the order. [BPCPA s. 155(5) / MDA s. 26.02(5)]

1.1.15 If a compliance order is made against two or more persons, all the persons against whom the order is made are jointly and severally responsible for complying with the order and are jointly and severally liable for the payment of any amounts the persons are required to pay under the order. [BPCPA s. 155(6) / MDA s. 26.02(6)]

### **Filing an Undertaking or Order with the Court**

1.1.16 The Registrar may file an undertaking or a compliance order issued under the BPCPA or the MDA with the Supreme Court, which when filed are deemed to be orders of the Supreme Court for all purposes except appeal from the undertaking or order, and is enforceable as an order of the court. [BPCPA s. 157 / MDA s. 26.03]

### **Administrative Penalty**

1.1.17 After giving the person an opportunity to be heard, the Registrar may impose an administrative penalty on the person if the person contravenes

- (a) a prescribed provision of the BPCPA, the MDA or the regulations,
- (b) a condition of a licence,
- (c) a compliance order,
- (d) a property freezing order, or
- (e) an undertaking. [BPCPA s. 164(1) / MDA s. 26.04(1)]

1.1.18 Before the Registrar imposes an administrative penalty on a person, the Registrar must consider the following:

- (a) previous enforcement actions for contraventions of a similar nature by the person
- (b) the gravity and magnitude of the contravention
- (c) the extent of the harm to others resulting from the contravention
- (d) whether the contravention was repeated or continuous
- (e) whether the contravention was deliberate
- (f) any economic benefit derived by the person from the contravention, and
- (g) the person's efforts to correct the contravention. [BPCPA s. 164(2) / MDA s. 26.04(2)]

1.1.19 If the Registrar imposes an administrative penalty on a person, a prosecution for an offence under the BPCPA for the same contravention may not be brought against the person. [BPCPA s. 164(3) / MDA s. 26.04(3)]

1.1.20 If a person is convicted of an offence under the BPCPA or the MDA an administrative penalty may not be imposed in respect of the same circumstances that gave rise to the conviction. [BPCPA s. 164(4) / MDA s. 26.04(4)]

1.1.21 If a person can show they exercised due diligence to prevent the contravention

- (a) of provisions referred to in section 189(2), (3) and (4) of the BPCPA,
- (b) of section 189(5) of the BPCPA, and
- (c) of section 164(1)(b) to (f) of the BPCPA

then the Registrar must not impose an administrative penalty or must cancel an administrative penalty for a breach of those provisions of the BPCPA, if one was issued. [BPCPA Reg s. 10]

1.1.22 If a corporation contravenes

- (a) a prescribed provision of the BPCPA, the MDA or the regulations
- (b) a condition of a licence
- (c) a compliance order
- (d) a property freezing order, or
- (e) an undertaking

an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable under this section, whether or not an administrative penalty is imposed on the corporation. [BPCPA s. 164 (5) / MDA s. 26.04(5)]

### **Amount of Penalty**

1.1.23 Under the BPCPA, the following are the maximum administrative penalties:

- (a) on an individual - \$5,000.00, and
- (b) on a corporation - \$50,000.00. [BPCPA s. 165]

1.1.24 The Registrar may impose administrative penalties daily for continuing contraventions of the BPCPA [BPCPA Reg s. 9]

1.1.25 Under the MDA, the following are the maximum administrative penalties:

- (a) on an individual who is operating as a business and at the time a penalty is imposed was the owner and operator - \$100,000
- (b) on a corporation - \$100,000, and
- (c) on an individual - \$50,000.

[MDA s. 26.05]

### Notice of Penalty

- 1.1.26 If the Registrar imposes an administrative penalty on a person, the Registrar must give to the person a notice imposing the administrative penalty that specifies the following:
- (a) the contravention
  - (b) the amount of the penalty
  - (c) the date by which the penalty must be paid
  - (d) the person's right to have this decision reconsidered, and
  - (e) an address to which a request for a reconsideration may be given. [BPCPA s. 166(1) / MDA s. 26.06]

### Due Date of Penalty

- 1.1.27 The person on whom an administrative penalty is imposed must pay the administrative penalty
- (a) within 30 days after the date on which the notice referred to in paragraph [1.2.26](#) is served on the person, or
  - (b) if the person requests a reconsideration, within 30 days after the date on which the decision of the Registrar respecting the reconsideration is served on the person. [BPCPA s. 167 / MDA s. 26.07]

### Enforcement of Penalty

- 1.1.28 Subject to reconsideration or the expiry of the period in which to request a reconsideration, an administrative penalty constitutes a debt payable by the person on whom the penalty is imposed. [BPCPA s. 168(1) / MDA s. 26.08(1)]
- 1.1.29 If a person fails to pay an administrative penalty as required, the Registrar may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice as if it were a judgment of that court. [BPCPA s. 168 (2) / MDA s. 26.08(2)]
- 1.1.30 Before filing a notice of penalty under the BPCPA under paragraph 1.2.28, the Registrar must issue a second administrative penalty in an amount equal to 10% of the first unpaid administrative penalty. [BPCPA Reg s. 11]
- 1.1.31 If a person breaches the BPCPA or fails to pay an administrative penalty, the Registrar may also suspend their licence until they do pay, or cancel their licence. [MDA s. 8.1(4)(b)]

### Limitation Period for Penalty

- 1.1.32 The time limit for giving a notice imposing an administrative penalty is 2 years after the date on which the contravention occurred. [BPCPA s. 170 / MDA s. 26.10]

## 2. General

### 2.1 Policy

#### Goals when Applying Enforcement Measures

2.1.1 The overall goals when applying an enforcement measure are to

- (a) change the behaviour of the non-compliant person
- (b) eliminate any financial gain or benefit due to the non-compliance
- (c) be responsive to and appropriate for the particular facts of the non-compliance
- (d) be proportionate to the nature of the non-compliance and any harm caused by the non-compliance
- (e) restore or remedy the harm caused by the non-compliance where possible and allowed by law
- (f) deter future non-compliance by the person or within the industry as a whole, and
- (g) provide some assurance of future compliance and the reduction of the risk of future harm.

2.1.2 To achieve the goals for applying an enforcement measure, it may be necessary to place conditions on a licence and to monitor a person who previously has been non-compliant.

#### Determining an Appropriate Enforcement Measure

2.1.3 When determining an appropriate enforcement measure, the VSA will consider the [goals of enforcement identified in paragraph 12.1.1](#), the Regulatory Philosophy and Enforcement Principles, the Compliance Enforcement Model, and the individual circumstances of each case, including

- (a) the seriousness of the contravention including the harm or risk of harm resulting from the contravention
- (b) whether the contravention was repeated or systemic, or a one-time occurrence
- (c) whether there have been any similar compliance issues in the past including whether the licensee has received a warning for similar contraventions
- (d) the willingness of the licensee to make changes to address the contravention
- (e) whether there are any unresolved consumer complaints specific to the investigation
- (f) the steps the licensee voluntarily has taken to address the contravention, and
- (g) what is in the public interest given all of the circumstances.

2.1.4 Subject to these policies and procedures, Industry Standards Officers may issue a warning or a violation ticket on their own initiative, but must first consult with the Manager of Industry Standards before taking any other enforcement action.

#### Court Order to comply with MDA

2.1.5 The Registrar will consider applying for a court order under s. 31 of the MDA where

- (a) an unlicensed person is not in compliance with the MDA, or

(b) other enforcement measures have failed to bring a licensee into compliance.

## 2.2 Procedures

### Applying an Enforcement Measure

- 2.2.1 The Industry Standards Officer inspects and investigates as required to determine the nature and circumstances of the non-compliance if any.
- 2.2.2 The Industry Standards Officer considers the nature and circumstances of the non-compliance and the policy on progressive enforcement and determines whether to
- (a) provide a licensee with an opportunity to address the non-compliance and establish a time frame for the issues to be resolved;
  - (b) issue a written warning or a violation ticket; or
  - (c) recommend that the non-compliance be addressed at a hearing before the Registrar.
- 2.2.3 The Industry Standards Officer enters the enforcement measure taken in the VSA database and sends an email to the Manager of Industry Standards with the file number to report the enforcement action.
- 2.2.4 The Manager of Industry Standards reviews the enforcement action taken and follows up with the Industry Standards Officer as required.

## 3. Written Warning

### 3.1 Policy

#### 3.1.1 General Principles

The legal authority to issue a Warning Letter is the Registrar’s authority to issue a compliance order requiring a person to obey the law. If there has been a breach or if there is an expected future breach of the Motor Dealer Act (“MDA”) or its regulations, the legislative authority to issue a compliance order is section 26.02 of the MDA. If there has been a breach or if there is an expected future breach of the Business Practices and Consumer Protection Act (“BPCPA”) or its regulations, the legislative authority to issue a compliance order is section 155 of the BPCPA. Only the Registrar can issue a compliance order.

As a warning letter (compliance order) is a formal order and may be considered against the licensee in any future compliance issues, procedural fairness must be met before a warning letter is issued. The following minimum requirements must be met and documented in order to ensure a fair process that can be defended in court if challenged:

1. The subject licensee must know the allegations against them,
2. The subject licensee must know the evidentiary basis for the VSA to believe the licensee has breached the legislation,

3. The licensee must be given an opportunity to defend against the allegations and provide their own evidence,
4. The decision to issue a warning letter must be a proportionate response to the contravention with the reasons for issuing the warning letter to be transparent, intelligible (makes sense) and justifiable, and
5. The decision to issue must be clear, follow an intelligible and rationale basis for that decision that is justifiable on the evidence.

### **3.1.2 Simplified Process – not contested**

If during the investigation it becomes apparent a Licensee is willing to accept a Warning Letter, then the following simplified process can be followed, and meets the minimum fairness requirements noted above:

1. Document the fact that the Licensee was made aware of the allegations and the evidence that supports the allegations. A short letter or email can suffice,
2. Document the fact that the Licensee has had an opportunity to respond to the allegations and provide their own evidence. A short letter or an email from the Licensee can suffice,
3. Confirm with the Manager that a Warning Letter is appropriate in the circumstances and why it is appropriate. Document this process with a short letter or email will suffice,
4. Document the fact that the Licensee is agreeable to a written Warning Letter. A short letter or email can suffice,
5. Prepare the Warning Letter and have the Manager and the Licensee review it and gain their acceptance prior to finalizing the Warning Letter. Document this process with a short letter or an email will suffice,
6. Present the final Warning Letter to the Registrar's office for acceptance and signature of the Registrar. Document this process with a short letter or an email will suffice,
7. Serve the Warning Letter on the Licensee and document this process. A short letter or email will suffice, and
8. Ensure all documentation is properly uploaded to the VSA database.

The above documents should be easily identifiable should they be required for a court challenge.

### **3.1.3 Detailed Process – contested**

Where a Licensee is not agreeable to a Warning Letter, then the following process should be followed to ensure fairness and properly document the process in case there is a court challenge to the Warning Letter.

### **3.1.4 Completing the Investigation Report**

1. The investigator completes an investigation report by following their respective department's investigation policies and procedures.

2. The investigator consults with their manager that the investigation report is complete and no further investigative steps are required. A written record of this discussion must be kept in the investigation file.
3. The investigator provides the licensee/registrant with a copy of the investigation report and supporting evidence and invites the licensee/registrant to comment on the report, the report's supporting evidence and for the licensee/registrant to provide any additional evidence in defence of their position. A written record of this occurring must be kept in the investigation file.
4. The investigator considers the licensee/registrant's comments and any additional evidence and whether to amend their investigation report and where appropriate they do amend their investigation report.
5. The investigator consults with their Manager if they amend their investigation report. A written record of this discussion must be kept in the investigation file.
6. The investigator communicates to the licensee/registrant the investigator's views on any new evidence submitted by the licensee/registrant and their decision to amend or not amend their investigation report. A written record of this discussion must be kept in the investigation file.
7. If the investigator has amended their investigation report, they provide a copy to the licensee/complainant. A written record of this discussion must be kept in the investigation file.

### **Proposed Compliance Selection: Warning Letter**

8. Within 10 days of finalizing their investigation report:
  - (a) The investigator considers the VSA's Regulatory Philosophy and Enforcement Principles and the VSA's Compliance Enforcement Model and determines that a written warning is the appropriate compliance enforcement step to take.
  - (b) The investigator communicates with the licensee/registrant in writing that they are recommending a Warning Letter be issued, why they are making that recommendation and explains that a Warning Letter is the same as a Registrar's Compliance Order to obey the law. A written record of this communication must be kept in the investigation file.
  - (c) The investigator completes the Warning Letter Checklist and Authorization form. The investigator may enlist the assistance of the legal assistant for this.
  - (d) The investigator prepares a proposed Warning Letter in the approved form. The investigator may enlist the assistance of the legal assistant for this.



- (e) The investigator presents the proposed Warning Letter and a completed Warning Letter Checklist and Authorization form to their Manager and to the Director.

### **Approval of Warning Letter**

9. Within 10 days of receiving an investigator's Warning Letter Checklist and Authorization and a proposed Warning Letter
  - (a) The Manager and the Director agree with the recommended Warning Letter or reject the recommendation. If they reject the recommendation, they direct the investigator to take other steps or they consider a different compliance response if any.
  - (b) If the proposed Warning Letter is approved by the Manager and the Director, the legal assistant prepares a Notice of Warning Letter in the approved form for signature by the Director.
  - (c) The Notice of Warning Letter advises the licensee/registrant that the proposed Warning Letter becomes effective 30 days after the Notice of Warning Letter is signed by the Director unless the licensee/registrant files an objection within 21 days of receiving the Notice.
  - (d) The Notice of Warning Letter and proposed Warning Letter are presented to the Office of the Registrar to approve their form before being served on the licensee/registrant.

### **Notice of Service of Warning Letter**

10. If the Notice and the proposed Warning Letter's form is approved by the Registrar's Office,
  - (a) The Notice of Warning Letter and the proposed Warning Letter are served within 1 day of that approval.
  - (b) Service can be completed in any manner authorized by section 30 of the Motor Dealer Act.
  - (c) A written record of the service must be kept in the investigation file.

### **Licensee/Registrant Objection to a Warning Letter**

11. At any time within 21 days of receiving a Notice of Warning Letter, the licensee/registrant may file an objection in writing providing the required information noted in the Notice of Warning Letter. A written record of this objection must be kept in the investigation file.

12. Where the licensee/registrant objects to a proposed Warning Letter, the Director or their delegate discusses the objection with the licensee/registrant to try and resolve that objection.
13. If within 30 days of the licensee/registrant filing an objection, the VSA and the licensee/registrant cannot agree on a resolution to the licensee/registrant's objection, a written hearing before the Registrar is scheduled following the Registrar's hearing process.

#### **Licensee/Registrant does not object to a Warning Letter**

14. If a licensee/registrant,
  - (a) does not file an objection in the required time, or
  - (b) expressly states that they accept the Warning Letter at any time within the 21 days to object,the Registrar then reviews the circumstances of the case and either agree with issuing the proposed Warning Letter or rejects the proposed Warning Letter.
15. If the Registrar agrees with the proposed Warning Letter, the Registrar signs it and provides a copy to the relevant manager for service on the licensee/registrant. The Warning Letter is to be placed on file
16. If the Registrar rejects the proposed Warning Letter, they advise the relevant manager with written reasons why and directions on next steps to take.

## **4. Violation ticket**

### **4.1 Overview**

An Industry Standards Officer may issue a violation ticket to enforce provisions in the MDA and the MDA Regulation where a contravention has been designated as an offence under the Act.

A violation ticket is issued under the Violation Ticket Administration and Fines Regulation (BC Reg. 89/97) of the Offence Act. The amount of the ticket, including an amount added as a victim surcharge, is prescribed in Schedule 2 of the regulation. When a violation ticket is paid, the money is collected by ICBC and goes to the BC government.

The VSA will not renew a licence where the licensee has an unpaid violation ticket and the time to challenge the ticket in court has passed.

### **4.2 Policy**

- 4.2.1 Industry Standards Officers may issue a violation ticket on their own initiative.

- 4.2.2 Generally, a violation ticket should not be issued if
- (a) a written warning will be sufficient to achieve the goals of enforcement identified in paragraph [12.1.1](#)
  - (b) the matter involves a consumer complaint in which the consumer alleges harm and the investigation has substantiated actual harm, which has not been remedied by the licensee responsible, and
  - (c) the licensee's compliance history indicates more than 3 incidents of non-compliance and the Industry Standards Officer believes that the licensee's conduct should be reviewed by the Licensing department.

### 4.3 Procedures

- 4.3.1 After issuing a violation ticket, the Industry Standards Officer
- (a) notes that the ticket has been issued in the VSA database and uploads a copy of the ticket
  - (b) puts a copy of the ticket in the investigation file
  - (c) submits the original ticket to the Advertising Standards Officer for processing to ICBC, and
  - (d) advises the designated Licensing officer that a ticket has been issued to the licensee.

### 4.4 Registrar's Directives

- 14.4.1 The Registrar may issue a directive suspending issuing violation tickets.

## 5. Undertaking

### 5.1 Overview

An Undertaking is a voluntary acknowledgement of a contravention by a licensee. The terms of an Undertaking may include one or many terms and conditions, such as a promise to:

- stop a particular type of conduct
- repay a consumer for any proven losses
- pay for the VSA's investigation costs
- pay an administrative penalty, and
- abide by the law.

The purpose of the voluntary Undertaking is to show that a licensee has recognized they have made an error and are willing to take reasonable steps to correct that error.

Where the Manager of Industry Standards determines that a contravention warrants a hearing before the Registrar, the Manager of Industry Standards may advise the licensee of the opportunity to enter

into an Undertaking rather than have the matter go to a hearing. Alternatively, the Registrar may accept an Undertaking after a hearing on a contravention, but before a formal decision has been made.

Where the contravention relates to the BPCPA, the Undertaking is made under section 154 of the BPCPA and where the contravention relates to the MDA the Undertaking is made under section 26.01 of the MDA. Where required, a BPCPA and a MDA Undertaking may be filed with the BC Supreme Court and enforced as an order of that Court.

Undertakings are published on the VSA website to ensure transparency in the exercise of statutory authority and to support public confidence in the VSA's enforcement regime. The publication also serves to educate the industry regarding compliance and enforcement issues. [MDA s. 13.2]

## **5.2 Policy**

- 5.2.1 Where the Manager of Industry Standards determines that a Registrar's hearing is warranted but the allegations may be addressed by way of an Undertaking, the Manager of Industry Standards will advise the licensee of the option to voluntarily enter into an Undertaking rather than appearing before the Registrar.
- 5.2.2 The Manager of Industry Standards will provide the licensee with sample terms for the Undertaking, for discussion purposes. A licensee is not required to accept the Undertaking provided by the Manager of Industry Standards and may offer any alternate terms.
- 5.2.3 An Undertaking will be published on the VSA website. [MDA s. 13.2]
- 5.2.4 An Undertaking will only be filed with the court where the licensee has failed to comply with the terms of the Undertaking, and no other option to enforce the Undertaking is available or appropriate in the circumstances.

## **5.3 Procedures**

- 5.3.1 Where the Manager of Industry Standards determines that a hearing before the Registrar is warranted, the hearing notice sent to the licensee includes information about the option to enter into an undertaking with sample terms.
- 5.3.2 Where the licensee indicates an interest in entering into an Undertaking, the Manager of Industry Standards contacts the licensee to review and agree to the terms of the Undertaking.
- 5.3.3 After the Manager of Industry Standards and the licensee agree to the terms of the Undertaking, the Manager of Industry Standards prepares the Undertaking for signature by the licensee and then provides it to the Registrar for review and signature.
- 5.3.4 After the Undertaking has been approved and signed by the Registrar, the Legal Administrative Assistant

- (a) prepares an invoice in the VSA database where the terms of the Undertaking include a payment to the VSA by the licensee
- (b) prepares the enforcement documents
- (c) uploads a copy of the Undertaking to the VSA database
- (d) files a copy of the Undertaking in the inspection or investigation file,
- (e) sends the documents to the licensee, and
- (f) arranges for a copy of the Undertaking to be published on the VSA website.

5.3.5 Where the licensee does not wish to enter into an Undertaking or the Manager of Industry Standards and the licensee cannot agree on the terms of an Undertaking, the matter proceeds to a hearing.

5.3.6 The registrar is not required to accept an Undertaking that the Manager of Industry Standards has recommended be accepted. The registrar has the discretion to accept or refuse an Undertaking [MDA, s. 26.01(1) and BPCPA, s. 154]

## 6. Registrar's Hearing

### 6.1 Overview

At a hearing, the Registrar hears evidence presented by the VSA and the licensee and determines whether a contravention has occurred. Where there has been a contravention, the Registrar determines the appropriate enforcement measures.

Where the Registrar determines that a licensee has contravened the MDA and/or the BPCPA or failed to comply with an Undertaking or compliance order under the MDA and/or the BPCPA, the Registrar may

- assess an administrative penalty
- require the licensee to pay a consumer, damages or unwind a transaction (if legally applicable)
- require the licensee to abide by the law or take other steps
- order the licensee to pay the VSA's investigation and hearing costs, and
- cancel a license or motor dealer's registration.

In addition, where the Registrar determines that a licensee has contravened the MDA, the Registrar may cancel, suspend or add conditions to a licence.

If, at a hearing in respect of a complaint, the Registrar determines that the complaint is frivolous or vexatious, or that the complainant engaged in improper conduct during the complaint, the Registrar can make one or more of the orders in section 25.1 of the MDA.

## 6.2 Policy and procedures

The policy and procedures for a Registrar's hearing are contained in the [Hearing Policy and Procedures Manual](#).

## 7. Compliance order

### 7.1 Overview

After a hearing in which the Registrar finds that a licensee has contravened the BPCPA and/or the MDA, the Registrar may issue a compliance order.

A compliance order contains terms and conditions that the Registrar determines are appropriate. It may include a condition that a licensee reimburses a consumer, compensate other persons who have suffered loss or damage, and reimburse the VSA for investigation and legal costs.

### 7.2 Policy

- 7.2.1 The terms and conditions of a compliance order will be based on the individual circumstances of the licensee and the contravention, and the overall goals for enforcement measures identified in paragraph [2.1.1](#).
- 7.2.2 A compliance order will be filed with the BC Supreme Court where the Registrar determines that doing so is necessary
  - (a) to enforce the terms and conditions of the order, or
  - (b) to facilitate a claim made to the Motor Dealer Customer Compensation Fund.

### 7.3 Procedures

- 7.3.1 The Registrar sets out the terms of the compliance order in the hearing decision.
- 7.3.2 After the Registrar issues the hearing decision, the Legal Administrative Assistant prepares a draft of the order with the terms and conditions identified in the decision and submits it to the Registrar for approval.
- 7.3.3 After the compliance order is approved and signed by the Registrar, the Legal Administrative Assistant
  - (a) obtains 3 certified copies of the order
  - (b) uploads a copy of the order to the hearing record in the VSA database, and
  - (c) files the signed original order and a certified copy in the hearing file.
- 7.3.4 The Legal Administrative Assistant
  - (a) arranges to serve the licensee with a certified copy of the order, and

(b) sends a certified copy of the order to the complainant, where applicable.

7.3.5 Where the Registrar determines that it is necessary, the Legal Administrative Assistant prepares and files the compliance order with the BC Supreme Court.

## 8. Administrative Penalty

### 8.1 Overview

An administrative penalty is a monetary penalty that may be imposed after a person has had an opportunity to be heard before the Registrar where a licensee has contravened the BPCPA and/or the MDA.

For a contravention of the BPCPA, an administrative penalty of up to \$5,000 may be imposed on an individual licensee and up to \$50,000 on a corporation for each breach of the BPCPA. If the licensee does not pay the administrative penalty within 30 days, the Registrar must impose a second penalty equivalent to 10% of the first penalty. The Registrar may impose an administrative penalty for each day that a breach continues.

For a contravention of the MDA, an administrative penalty of up to \$50,000 may be imposed on an individual licensee and up to \$100,000 on an individual operating as a business or on a corporation for each breach of the MDA.

### 8.2 Policy

8.2.1 When determining whether to impose an administrative penalty, the Registrar will consider

- (a) the individual circumstances of the licensee and the contravention including the factors identified in [paragraph 12.1.3](#);
- (b) the overall goals for enforcement measures identified in [paragraph 12.1.1](#);
- (c) The Regulatory Philosophy and Enforcement Principles and the Administrative Penalty Framework in the Compliance Enforcement Model.

8.2.2 When determining the amount of an administrative penalty, the Registrar will consider

- (a) the requirements in the BPCPA and the MDA;
- (b) past decisions of a similar nature;
- (c) the overall goals for enforcement measures identified in [paragraph 12.1.1](#);
- (d) the effectiveness of the penalty as a deterrent for both the licensee on whom the penalty will be imposed and for the industry generally; and
- (e) The Regulatory Philosophy and Enforcement Principles and the Administrative Penalty Framework in the Compliance Enforcement Model.

## 8.3 Procedures

- 8.3.1 The Registrar sets out the nature and amount of the administrative penalty in the hearing decision.
- 8.3.2 After the Registrar issues the hearing decision, the Legal Administrative Assistant prepares a draft notice of administrative penalty as described in the decision and submits it to the Registrar for approval.
- 8.3.3 After the notice of the administrative penalty is approved and signed by the Registrar, the Legal Administrative Assistant
- (a) obtains 3 certified copies of the notice of administrative penalty
  - (b) arranges to serve the licensee with a certified copy of the notice of administrative penalty
  - (c) uploads a copy of the notice to the investigation record in the VSA database, and
  - (d) files the signed original notice and a certified copy in the hearing file.
- 8.3.4 Where the Registrar determines that it is necessary, the Legal Administrative Assistant prepares and files the notice of administrative penalty with the BC Supreme Court.

## 9. Conditions on Licence

### 9.1 Overview

A condition can be placed on a licence by the Manager of Licensing or the Registrar, with written notice to the licensee.

The Manager of Licensing may add a condition to a licence to ensure that licensing requirements are met or where a licensee presents some risk for non-compliance that can be mitigated through conditions on licence. Where the Manager of Licensing intends to impose a condition on a licence, the Manager of Licensing first notifies the licensee, who may request a hearing before the Registrar before the conditions are imposed. The Registrar may allow the licensee an opportunity to be heard by means other than a hearing.

The Registrar may impose conditions on a licence as an enforcement measure as the result of a hearing. The purpose of these conditions may be to mitigate the risk of future non-compliance or may serve other enforcement goals.

### 9.2 Policy

#### General

- 9.2.1 A condition may be added to a licence by the Manager of Licensing or the Registrar.



- 9.2.1 When deciding whether to impose a condition on a licence, the Manager of Licensing or the Registrar will consider the individual circumstances of the licensee and the non-compliance, and the goals for enforcement measures identified in paragraph [12.1.1](#).
- 9.2.2 When deciding on the nature of a condition of the licence, the Manager of Licensing or the Registrar will consider
- (a) the length of time that a condition will remain in effect or the terms that must be met in order for the condition to be removed; and
  - (b) the VSA resources required to appropriately monitor the condition.

### **Conditions Imposed by the Manager of Licensing**

- 9.2.3 The Manager of Licensing may impose a condition on a licence where the Manager of licensing has reason to believe that the condition is necessary to mitigate the risk of non-compliance.
- 9.2.4 Where the Manager of Licensing intends to impose a condition on a licence, the licensee may
- (a) make a written submission to the Manager of Licensing as to why the condition should not be imposed, or
  - (b) request an opportunity to be heard by the Registrar to determine whether the conditions should be imposed.
- 9.2.5 The licensee may request an opportunity to be heard by the Registrar regardless of whether the licensee has or has not made a written submission to the Manager of Licensing.
- 9.2.6 Before imposing a condition on a licence, the Manager of Licensing will inform the licensee of the proposed conditions in writing and indicate that the licensee may make written submissions or request an opportunity to be heard by the Registrar.

### **Conditions Imposed by the Registrar**

- 9.2.7 After giving a licensee an opportunity to be heard, the Registrar may impose a condition on a licence where
- (a) the Registrar believes that the condition is necessary to mitigate the risk of non-compliance, and
  - (b) the condition is intended to address the overall goals for enforcement measures identified in paragraph [12.1.1](#).

## **9.3 Procedures**

### **Conditions imposed by the Manager of Licensing**

- 9.3.1 Where the Manager of Licensing proposes to impose a condition on a licence, the Manager of Licensing sends a written notice to the licensee indicating
- (a) the nature of the proposed conditions, including any terms for removing the conditions, and
  - (b) if the licensee wishes to dispute the proposed conditions, the licensee may within 14 days

- (i) make a written submission to the Manager of Licensing, or
- (ii) request an opportunity to be heard by the Registrar.

9.3.2 Where the licensee provides a written submission, the Manager of Licensing reviews the submission and

- (a) determines whether to confirm, modify or cancel the proposed conditions, and
- (b) informs the licensee of the decision in writing.

9.3.3 Where the licensee requests an opportunity to be heard by the Registrar, the Registrar determines whether to confirm, modify or cancel the conditions proposed by the Manager of Licensing.

9.3.4 The proposed conditions will become effective if the licensee does not provide written submissions or requests with an opportunity to be heard by the Registrar, within 14 days of being notified of the proposed conditions.

9.3.5 The Manager of Licensing enters the conditions in the VSA database and instructs the Licensing Officer to issue a new licence with the conditions as provided in the [Licensing Policy and Procedures Manual](#).

### **Conditions Imposed by the Registrar**

9.3.6 The Registrar sets out the terms of the conditions in the hearing decision.

9.3.7 The Manager of Licensing instructs the Licensing Officer to enter the conditions in the VSA database and issue a new licence with the conditions as provided in the [Licensing Policy and Procedures Manual](#).

## **10. Suspension or cancellation of licence**

### **10.1 Overview**

Suspension and cancellation of a licence are the most serious enforcement measures that may be imposed on a licensee. Only the Registrar may suspend or cancel a licence, and only after giving the licensee an opportunity to be heard.

### **10.2 Policy**

#### **General**

10.2.1 A decision to suspend or cancel a licence may only be made by the Registrar after giving the licensee an opportunity to be heard.

10.2.2 When deciding whether to suspend or cancel a licence, the Registrar will consider the individual circumstances of the licensee and the non-compliance, and the goals for enforcement measures identified in paragraph [12.1.1](#).

### **Suspension**

10.2.3 The Registrar may suspend a licence where

- (a) an investigation of a licensee involves allegations that, if true, could lead to a person suffering harm from the licensee's conduct and further investigation is required to substantiate the allegations
- (b) the conduct of a licensee is of such concern that a violation ticket, compliance order, administrative penalty and imposing conditions on a licence will not be sufficient to achieve the goals for deterrence and the enforcement measures identified in paragraph [12.1.1](#)
- (c) a violation ticket, compliance order or administrative penalty are not legally available measures to address the non-compliance, or
- (d) the licensee agrees to the suspension.

### **Cancellation**

10.2.4 The Registrar will cancel a licence where on all the evidence, the Registrar believes on a balance of probabilities that the licensee poses a risk to the public interest because they may cause future harm and no other enforcement action will provide the necessary assurance of future compliance or sufficiently mitigate the risk of harm.

## **10.3 Procedures**

### **Suspension**

10.3.1 The Registrar sets out the length of a suspension and any other terms in their decision.

10.3.2 After the Registrar has issued the decision, the Legal Administrative Assistant advises the Manager of Licensing and the Manager of Industry Standards that the licence has been suspended.

10.3.3 The Licensing Officer enters the terms of the suspension in the VSA database and processes the suspension as provided in the [Licensing Policy and Procedures Manual](#).

10.3.4 The Industry Standards Officer posts a notice of suspension at the licensee's premises.

### **Cancellation**

10.3.5 The Registrar orders the cancellation in a decision and, where necessary, sets out the length of time that must pass before the licensee may re-apply for a licence and any conditions that must be met for re-application.

- 10.3.6 After the Registrar has issued the decision, the Legal Administrative Assistant advises the Manager of Licensing and the Manager of Industry Standards that the licence has been cancelled.
  
- 10.3.7 The Licensing officer enters the terms of the cancellation in the VSA database and processes the cancellation as provided in the [Licensing Policy and Procedures Manual](#).
  
- 10.3.8 Where a motor dealer’s licence has been cancelled, the Manager of Industry Standards arranges for a motor dealer closure inspection and serve the notice of closure on the motor dealer in question.

## ACRONYMS AND ABBREVIATIONS

BPCPA	<i>Business Practices and Consumer Protection Act, SBC 2004, c 2</i>
BPCPA Reg	<i>Business Practices and Consumer Protection Act Regulation, BC Reg 294/2004</i>
MDA	<i>Motor Dealer Act, RSBC 1996, c 316</i>
MDA Reg	<i>Motor Dealer Act Regulation, BC Reg 447/78</i>
SL Reg	<i>Salesperson Licensing Regulation, B.C. Reg. 241/2004</i>
VSA	<i>Motor Vehicle Sales Authority of British Columbia</i>

## KEY MESSAGES FOR DEALERS

When conducting an inspection or liaising with motor dealers, Industry Standards Officers should communicate the following key messages:

1. Compliance with legislation is in the licensee's best interest.
2. Non-compliance will not be tolerated and will be addressed through the VSA's progressive enforcement measures.
3. It is important that motor dealers exercise due diligence when taking a motor vehicle into inventory and disclose all material facts about a motor vehicle to the consumer.
  - Note that it is not enough to meet the specific disclosure requirements in s. 23 of the MDA Regulation. Full disclosure of all material facts is required under the BPCPA.
4. The statutory disclosures in the MDA and the regulations are legally mandated representations and the manner in which those representations are made must be compliant with the *Business Practices and Consumer Protection Act*.