

Merchants and Trade - Act No 28/1998 respecting Professional Commerce

TRANSLATED FROM ICELANDIC

Section I. General Provisions

Art. 1

The present Act applies to commerce for professional purposes, irrespective of whether it be for own account or the account of another person or in own name or the name of another person. The word "commerce" means any kind of intervention concerning the transfer of direct ownership right to chattels (movables).

The present Act does, however, not apply to special provisions of other Acts stipulating special conditions concerning specific goods or specific branches of work.

In case a dispute arise as to whether commerce be subject to the present Act the Registrar of Firms will decide the issue within thirty days. That decree may be appealed to the Ministry of Commerce within thirty days as of the complainant's receipt of a notice concerning the decree by the Registrar of Firms. The Ministry's decree shall be at hand within thirty days of the receipt of the complaint.

Art. 2

In order to engage in commerce in Iceland or in Icelandic territorial waters a person shall meet the conditions of the present Act and the enterprise shall be registered in conformity with Acts respecting commercial registers, firms and power of procuration.

Art. 3

In the present Act the following words have meanings as follows:-

fixed work station:- accommodation or other space where commerce for professional purpose is operated localized and regularly;

movable work station:- space which is movable and where there is regularly operated commerce for professional purpose, such as automobiles and trailers;

market:- commerce for professional purpose undertaken outside of a fixed work station, irrespective of whether this is indoors or outside (sales at squares);

commercial travellers:- commerce for professional purpose outside of a fixed work station, including movable work stations and markets;

vending machine:- equipment used for commerce and delivery of goods against payment.

Section II. General Conditions for the Right to Engage in Commerce

Art. 4

It is obligatory to register in the Register of Firms or the Register of Limited Companies, according to what is applicable, commerce attended in accordance with Art. 1 of the present Act. A death estate or a bankruptcy estate is entitled to continue engaging in commerce in conformity with the provisions of Acts respecting commercial registers, firms and power of procuration.

Art. 5

At the fixed work station there shall be a sign bearing the name, identification number and address of the party having registered commercial operation. Vending machines shall also be marked in the same manner. Letterheads, order forms and similar documents of the party having registered commerce shall specify the name of the business, identification number and address. The same applies to commerce with telecommunication technique (distant selling) as far as this may be arranged.

In case a buyer wish, anyone operating in the capacity of commercial traveller in accordance with the provisions of the present Act and rules laid down in accordance therewith, is in duty bound to hand a buyer a visiting card bearing the name, identity number and address of the party having registered commercial operations.

Art. 6

The Register of Firms will furnish confirmation to the effect that a business has been registered in accordance with the present Act.

Art. 7

As far as no provisions are laid down in the present Act the resolutions of Municipal authorities shall apply to the rights and duties of those acting as commercial travellers, irrespective of whether or not this is done for professional purposes.

Section III. Sale of Used Chattels

Art. 8

When used chattels are received for resale or on commission these shall be registered and given price-tags.

Art. 9

The Minister is authorized to stipulate further by means of Regulations the implementation of the registration and the preservation of the Register.

Art. 10

A party operating commerce in accordance with the provisions of the present Section shall at all times apply the fullest care upon the purchase and sale of used chattels. In case he deem it necessary he shall require the seller to produce personal identification.

It is not permissible to purchase or receive used chattels for resale from a party not having legal rights.

Section IV. Sale of Used Vehicles

Art. 11

The provisions of this Section apply to the sale of used vehicles subject to registration undertaken in the following manner:-

1. Intermediation concerning the sale of used vehicles subject to registration when such transactions form part of the intermediary's professional operation.
2. Sale of used vehicles subject to registration being the seller's property when such transactions form part of his professional operations.

The provisions of this Section do not apply to the compulsory sale of used vehicles.

Art. 12

Anyone wishing to operate commerce or commission sale involving used vehicles shall have a special permit for the purpose from the Minister of Commerce.

The Ministry of Commerce shall keep a record of those permitted to engage in operations in accordance with the present Section.

An automobile salesman is authorized to deliver his professional licence to the Ministry. He is not permitted to give notice of termination of his professional guarantee insurance until the Ministry's confirmation of the return of the licence has been obtained.

A business on the basis of a professional licence in accordance with para. 1 shall be operated at a fixed work station. At a fixed work station the Manager or head of the business involved shall meet the conditions of subparagraphs 1 - 6 of para. 1, Art. 13. The provision of subparagraph 6 will, however, not apply to the branches of a Public Limited Company or a Private Limited Company having obtained a licence for the sale of used vehicles.

Art. 13

A licence in accordance with Art. 12 shall be granted for a period of five years at a time and will be granted only to individuals or legal persons who satisfy the following conditions:-

1. Are resident in Iceland.
2. Have reached twenty years of age.
3. Have legal rights and have not during the immediate past three years in connection with professional operations been subject to Judgment for an act subject to penalty according to the Penal Code or the Acts respecting Public or Private Limited Companies, book-keeping, annual accounts, bankruptcy or official dues as well as the Acts respecting the sale of used vehicles.
4. Have the administration of their estate.
5. Have submitted a policy in evidence of their having taken guarantee insurance with an approved Insurance Company, acquired a bank guarantee or submitted other guarantees which the Minister deems valid and will indemnify customers in respect of loss which they may cause them by means of their work in the capacity of automobile salesmen. Further provisions concerning the guarantee insurances, i.a. minimum amount and terms of insurance, shall be

determined by means of Regulations.

6. Have attended a course and completed an examination there in accordance with examination requirements which are laid down in Regulations determined by the Minister. Costs on account of courses and examinations shall be paid along with training and examination fees fixed by the Ministry of Commerce. The Minister is authorized to grant an exemption from this provision if special reasons recommend this.

The majority of the Directors of a legal party shall meet the conditions of subparagraphs 1 – 4 of para. 1. Directors who are resident in Member States of the European Economic Area are, however, exempted from the condition for residence in subparagraph 1. The Minister may grant subjects of other States the same exemption.

A party who has been deprived of a permit according to Art. 19 shall attend a course and pass examination requirements, cf. subparagraph 6, prior to being granted a professional licence anew.

Art. 14

An automobile salesman shall acquire information which shall be confirmed in writing by the seller concerning the operation and the condition of a vehicle subject to registration as well as other information necessary for the buyer on account of the purchase. This documentation shall attach to the Deed of Conveyance and the automobile salesman shall also preserve this for one year as of the date of sale of the vehicle concerned.

There shall also be attached a certificate from the register of vehicles showing unequivocally that the seller be the owner of the vehicle being sold or have Power of Attorney for the sale. An automobile salesman shall confirm that a satisfactory description of the condition, cf. para. 1, attach to a vehicle and he shall also verify information relating to its owner and as to whether the vehicle be subject to lien.

The Minister is authorized to stipulate by means of Regulations the minimum information which shall be submitted upon sale of used vehicles and which shall be presented in a Purchase Agreement and Deed of Conveyance on account of the sale thereof. This includes authority for the Minister to stipulate a special list showing the previous owners and a record of damage to the vehicle concerned.

Art. 15

An automobile salesman shall in every respect discharge his work as prescribed by good business practice. He shall take care that his customers enjoy equality concerning information, prices and other terms of business and also that the party be not subjected to unlawful, unreasonable or abnormal terms in agreements. An automobile salesman is responsible for the tasks of his personnel upon the sale of vehicles as if this were his own work. Prior to the finishing of a Deed of Conveyance for a used vehicle an automobile salesman shall advise the buyer in a verifiable manner about his right to let an independent party assess the condition of a vehicle, such as a qualified inspection centre or a qualified workshop. The cost of such an assessment shall be paid by the buyer, unless an alternative arrangement be agreed.

An automobile salesman shall in an obvious manner attract attention to a tariff of sales commission, also when there is a case of the exchange of automobiles. It is also obligatory that a licence on account of the operation be available at the work station.

In case an automobile salesman has reason to assume that there be shortcomings to the condition of a vehicle he shall attract the buyer's attention to that imperfection.

Art. 16

An automobile salesman shall see to it that Purchase Agreement, Deed of Conveyance and other documents be finalized on account of transactions under his auspices and shall mention in the documents, including Offers, Purchase Agreements, Deeds of Conveyance and Bonds as to who has prepared these and shall specify the name unmistakably.

An automobile salesman shall guarantee that notification of a change in ownership be sent to the Register of Vehicles without delay.

Art. 17

In case an automobile salesman, a firm for which he works or other sales personnel engaged in the sale of used vehicles contemplate selling an own vehicle or buying a vehicle with the sale of which the party has been charged, a customer shall be specially advised thereof and this shall also be mentioned in a Purchase Agreement. The same applies to a spouse and close relatives of an automobile salesman or staff involved in the sale.

Art. 18

Only those having been licensed to sell used vehicles under the present Act are entitled to call themselves automobile salesmen.

Art. 19

Supervision of the activities of automobile salesmen is in the hands of the Chief of Police in the jurisdiction in which an automobile salesman's work station is situated.

In case an automobile salesman does not adhere to Laws and Rules applying to this activity, a request by the Chief of Police notwithstanding, or if he no longer meets the conditions of the Laws, the Chief of Police shall give the Minister of Commerce notice thereof and the latter will then deprive the party concerned of the professional licence.

In case a party operate a business for which a licence is required in accordance with the present Act without having the stipulated rights, the Chief of Police shall forthwith stop such operations, i.a. by means of the closure of the work station.

Section V. Free Auction

Art. 20

Those having a registered commercial operation in accordance with the present Act are authorized to sell chattels at free auction, unless other limitations be imposed in Laws or Rules laid down in accordance therewith.

Free auctions extraneous from a fixed work station are subject to the permission of the Chief Police in the jurisdiction where an auction shall be held on each occasion. The Chief of Police is

right to reject a licence if public interests so require or if he considers that there be considerable shortcomings to the organization of the auction. This does, however, not apply to free auctions of art objects held in other premises than a fixed work station.

Art. 21

A person being responsible for a free auction in the present Section is entitled Auctioneer.

Art. 22

Auctioneers may neither bid at an auction themselves nor let others do so on their behalf .

Art. 23

An Auctioneer shall announce the terms of auction in writing and these shall be read aloud before an auction is commenced.

The terms of the auction shall give an account of charges levied on the sales prices, terms of payment in case there is not a question of cash payments, along with other terms which the Auctioneer is in duty bound to mention and the time when responsibility for the sold objects is transferred from seller to buyer.

The buyer of an auction article cannot plead defect thereof, unless it does not correspond to the name with which it was identified upon the sale, the seller has committed fraud or it be generally considered that he be dishonestly shirking responsibility.

Auctions are open to the public and objects shall be on view for inspection for a suitable time prior to the auction.

Under special circumstances parties may be granted permission to conduct a closed auction for the purpose of supporting approved charity and Church activities, education, science and culture. A 10% charge shall be levied on paintings, pictures and objects of art which are sold at art auctions and this shall accrue to the artists or their heirs in accordance with the Copyright Act. In case copyright has expired or the funds cannot be disposed of these will accrue to professional wages for pictorial artists. The Minister of Culture and Education may lay down further rules concerning the disposal of the charge in consultation with the Association of Icelandic Visual Artists. As it pertains to exemption from Value Added Tax on account of sales at an art auction reference is made to Art. 4 of Act No. 50/1988 respecting Value Added Tax.

Section VI. Penalties for Violations

Art. 24

Violations of the present Act shall be proceeded with as Criminal Cases.

A person neglecting notifications to the Register of Firms under the present Act shall be subject to fines or [imprisonment for up to 2 years]¹. It is permissible to require that a business be deleted from the Register of Firms in conformity with Acts respecting commercial registers, firms and power of procuracy in case a registered business has repeatedly violated the provisions of Laws applying to the operation.

In case a person who is responsible for a business has been sentenced to pay a fine due to a violation committed in the course of his/her work the firm is responsible for paying the fine if collection from the guilty party has reaped no result. If a Judgment for penalty does not contain provisions for a firm's liability the fine will be collected under execution only provided its duty be adjudged in a special Criminal Case.

Violations of the resolutions by Municipal authorities which will be laid down in accordance with the present Act are subject to fines.

1) Act No. 82/1998, Art. 243.

Section VII. Entry into Force et al.

Art. 25

The Minister of Commerce undertakes the implementation of the present Act. He is authorized to lay down further provisions by means of Regulations. For the registration of a business under the present Act a charge will be paid to the Treasury according to Art. 13 of Act No. 88/1991 respecting the Treasury's Extraordinary Revenue.

Art. 26

The present Act enters into force on January 1st, 1999.

Temporary Provisions.

When issued trade licences come up for renewal the commercial activity concerned shall be registered with the Register of Firms or Limited Companies in conformity with the provisions of the present Act. The registration of business operations shall be completed within five years as of the entry into force of the present Act.