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FEDERATION OF AUTOMOBILE DEALERS ASSOCIATIONS

804-805-806, Surya Kiran, 19, K G Marg

New Delhi - 110 001 (INDIA)

T +91 11 6630 4852, 2332 0095, 4153 1495

E fada@fada.in

CIN U74140DL2004PNL130324

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FADA Hails for Auto Dealer's Protection Act

27th October'21, New Delhi: The Federation of Automobile Dealers Associations (FADA) today released a Policy Brief to introduce Auto Dealers Protection Act in India.

After GM (2017), MAN Trucks (2018), UM Lohia (2019), Harley Davidson (2020), Ford is the 5th Auto OEM to stop domestic sales thus exiting a large and untapped India Market. Such exits adversely impact the interests of consumers who are often left with no avenues for after-sales services and with resale value of their vehicles nosediving. Ultimately, this casts an unfair burden on the Dealers who have to step in to ensure that their relationships with consumers are not ruined, while also facing the endless barrage of consumer complaints due to the OEM's unilateral actions.

However, the plight and suffering of Dealers is an everyday issue that is often dismissed by OEMs in a *business-as-usual* manner. Automobile Dealers in India are predominantly small and medium enterprises (SMEs) which are either family-owned businesses or partnerships firms and have significantly lower bargaining power in comparison to their OEMs which in-turn are large corporations. The entrenched unethical and imbalanced power structures with OEMs have caused a great deal of anguish to Automobile Dealers as the existing laws are not adequate to protect their interests.

The Study

In light of this, FADA commissioned an in-depth analysis of the relationship between OEMs and Dealers in India, through a detailed study of various dealership agreements. Through this work, a comparative analysis of foreign dealership agreements and legal protections available to Automobile Dealers in different countries such as the USA, Australia and South Africa was also undertaken.

This analysis clearly shows that unlike the imbalanced Indian agreements, foreign agreements often have more balanced and comprehensive clauses on termination, indemnification, repurchase obligations and afford more flexibility to the dealers.

The detailed findings have been incorporated into a Policy Brief which is available at <https://fada.in/press-release-list.php>. The summary of the same is mentioned below:

- Dealership agreements in India do not have a standardized term with certain agreements having tenures as low as 1 year. It takes anywhere between 3-5 years for a dealership business to break even. Short term of agreement is detrimental to the dealers as they do not give adequate opportunity to the dealers to recover the heavy investments made by them.
- Indian dealer agreements also tend to have vague and broad grounds of termination that provide greater flexibility to OEMs, in comparison to dealers. This adversely impacts Dealers' ability to negotiate during OEM exits, causes employment losses, and also affect consumers who are left with no recourse with respect to after-sales services.
- Absence of repurchase obligations under the Indian dealer agreement, which would mandate OEMs to buy back leftover stock including vehicles, spare parts etc. in cases of termination, leads to added costs on the Dealers.
- OEMs are free to open multiple dealerships in the same territory without giving any rationale to the existing dealers. This makes planning difficult and significantly affects the dealer's ability to recoup their investments.



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- Dealers are often made party to consumer complaints even though the liability may lie with the OEM, due to lack of clarity in indemnity provisions.
- Dealers are not afforded the required flexibility in taking business decisions and they also have little to no role in deciding stock projections and targets in a particular financial year. There is very little consultation between the OEM and Dealer in this regard, and Dealers are often forced to accept the stock orders that the OEMs push them on to.
- Dealers are also often forced with procurement and selling of accessories (such as spare parts, aesthetic additions, music systems etc.) consumables (including lubricants, paints etc.), loans and insurance from the OEMs themselves or from a short list of approved vendors. This leads to increase in dealer costs, the burden of which is eventually passed on to the consumers.

The Way Ahead

Based on comprehensive research on how the aforementioned issues are dealt with under foreign jurisdictions, it is clear that OEM-Dealer contracts in India are not balanced or equitable.

Commenting on the same, FADA President Mr. Vinkesh Gulati said, **“Many countries in the world recognize the inherent power imbalance between OEMs and Dealers within the automobile sector and have enacted legislation to level the playing field. Unfortunately, the existing legal regime in India is inadequate to address these specific concerns of Dealers. While OEM-Dealer agreements are governed under the Indian Contract Act, the law does not contain any clear solutions for us.**

India should also urgently consider the introduction of an Automobile Dealers Protection Act to make contracts more balanced and equitable. Such legislation should introduce robust contract enforcement and dispute settlement measures by incorporating a special authority with adequate representation from the Government of India, FADA and SIAM.”

The prevailing OEM practices are extremely problematic and against the principles of equity, justice, and good conscience. FADA hereby requests the intervention of Government of India to level the playing field between financially strong OEMs and the smaller automobile dealers.

----- End of Press Release -----

About FADA India

Founded in 1964, Federation of Automobile Dealers Associations (FADA), is the apex national body of Automobile Retail Industry in India engaged in the sale, service and spares of 2/3 Wheelers, Passenger Cars, UVs, Commercial Vehicles (including buses and trucks) and Tractors. FADA India represents over 15,000 automobile dealers having 26,500 dealerships including multiple Associations of Automobile Dealers at the Regional, State and City levels representing the entire Auto Retail Industry. Together we employ ~4 million people at dealerships and service centres.

FADA India, at the same time also actively networks with the Industries and the authorities, both at the Central & State levels to provide its inputs and suggestions on the Auto Policy, Taxation, Vehicle Registration Procedure, Road Safety and Clean Environment, etc. to sustain the growth of the Automobile Retail Trade in India.