

LEGAL UPDATE 2/2011: CONSUMER PROTECTION ACT SUMMARY

The Consumer Protection Act (CPA) focuses on consumer protection by aiming to "promote a fair, accessible and sustainable marketplace for consumer products and services and, for that purpose, to establish national norms and standards relating to consumer protection". It introduces a single, comprehensive legal framework for consumer protection. Its aim is to protect consumers from exploitation and unfair practices by dishonest businesses. Please familiarize yourselves again with the contents of Legal Updates 9/2009 and 9/2010, where this Act was first discussed.

The following summary of consumer rights highlights specific provisions applying to BenefitsAtWork.

Right to privacy	Right to disclosure and information in plain language	Right to fair and responsible marketing
<ul style="list-style-type: none"> • <i>Right to restrict unwanted direct marketing:</i> It might be applicable to the administrator, where we give the member's contact details through to another entity for marketing their products to them. • <i>Regulation of time for contacting consumers:</i> Not applicable to occupational funds. 	<ul style="list-style-type: none"> • <i>Right to information in plain and understandable language:</i> In terms of Section 7D(c) the trustees are required to ensure that adequate and appropriate information is communicated to members and beneficiaries. "Adequate" in respect of information to be disclosed to members or beneficiaries is the type / kind of information that should be disclosed to them in order to be in a position to make an informed decision. "Appropriate" is simply whether the information disclosed is suitable for the purpose for which it is intended to be used. In PF Circulars 86 & 90 the Registrar of Pension Funds provided guidelines to pension funds as regards the minimum information that should be disclosed. In addition PF130 requires that 	<ul style="list-style-type: none"> • <i>General standards for marketing goods or services:</i> Record keeping and advice in terms of the Financial Advisory and Intermediary Services (FAIS) Act already complied with but may require more detail. • <i>Unconscionable conduct; False, misleading or deceptive representations and fraudulent schemes and offers:</i> No provision like this in the Pension Funds Act (PFA) so we'll need to be aware of this provision.

	<p>communication should be done in an adequate, appropriate and cost-effective manner.</p> <ul style="list-style-type: none"> • <i>Disclosure of price of goods or services:</i> Fees and other expenses are disclosed in the quote. The disclosure of the fees complies with the FAIS Act. • <i>Sales records:</i> Record keeping of advice already complied with in terms of FAIS. This is not applicable since BenefitsAtWork is only the product supplier. The product is sold through Momentum Distribution Services. They are required to keep the sales records etc as per FAIS. • <i>Identification of deliverers, installers and others:</i> Not applicable to occupational funds. • <i>Unfair, unreasonable or unjust contract terms;</i> The rules constitute the agreement between the member and the fund. • <i>Notice required for certain terms and conditions and prohibited transactions, agreements, terms or conditions:</i> No such provision in the PFA therefore we are probably not aware of it. • <i>Written consumer agreements:</i> Member certificates and annual benefit 	
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	statements along with rules of the fund should be in line with the CPA, as required by the PFA.	
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