



# be informed

## Legal update 8/2011

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### Implications of the Consumer Protection Act on legal documents

The purpose of the Act is to give effect to the constitutional right to privacy by safeguarding personal information when the information is processed by a responsible party.

#### What are unfair business practices?

An unfair business practice is any business practice that directly or indirectly has or is likely to have the effect of:

- Harming relations between business and the consumer;
- Deceiving any consumer; and
- Unfairly affecting any consumer.

#### Application of the law

In terms of the transitional provisions of the Consumer Protection Act (CPA), all existing, and not just new or amendments to, fund rules, must comply with the plain language requirement. This was difficult to achieve by 1 April 2011, because all rule amendments must be registered by the Registrar of Pension Funds and approved by SARS.

The plain language requirement is that *“an ordinary consumer of the class of persons, for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort”*.

The plain language rule will also apply to all transactions governed by the CPA including –

- member benefit statements;
- all communications for internal and external use, and
- section 14 transfer communications and member investment choice switches, because a written record thereof must be provided to the consumer, including details of the full name or registered business name.

The CPA (in s22) states that a supplier of goods and services must provide a written record for each transaction to the consumer. This sales record must include amongst others, the VAT registration number (if any) of the supplier (fund), address at or from which the services were supplied, date of the transaction and description of services supplied.

This includes:

- the unit price of any particular goods / services supplied or to be supplied;
- the quantity of any particular goods supplied or to be supplied, and
- the total price of the transactions before any applicable taxes, the amount of any applicable taxes and the total price of the transactions including applicable taxes.

Under the National Credit Act (NCA) and the CPA a notice, document or visual representation (“document”) is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and:

- minimal credit experience (in the context of the NCA), or
- minimal experience as a consumer of the relevant product or service (in the context of the CPA),

could be expected to understand the content, significance and import of the document without undue effort, having regard to the:

- context, comprehensiveness and consistency of the document;
- organisation, form and style of the document;
- vocabulary, usage and sentence structure of the text; and
- use of any illustrations, examples, headings, or other aids to reading and understanding.

A National Consumer Commission is established in terms of the CPA as an organ of state. Under the CPA, the Commission may publish guidelines for methods of assessing whether a document is in plain language. These guidelines will hopefully give us some additional clarity. It is not certain when it will be published.

### **How does this affect Momentum?**

It means that there is now a legal duty on us to draft our customer facing documents in plain language or to convert current documents. Consumers must understand both the terms and the importance of the terms. The bottom line is that the consumer must be able to make an informed decision.

In the past, even highly educated people often struggled to actually understand the meaning of business terms or legal agreements from suppliers or vendors. This is even more difficult for the illiterate (or partially literate) consumer who probably did not understand the terms and consequences of the contract at all. The purpose of the legislation requiring plain and understandable language is therefore quite obvious.

The CPA provides that the Long and Short-Term Insurance legislation must be aligned to the consumer protection measures. This means that insurance policies will have to be aligned to comply with this section too.

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