

27 May 2010

LEGAL UPDATE 9/2010: CONSUMER PROTECTION ACT - UPDATE ON POSSIBLE CHANGES TO THE LONG TERM INSURANCE ACT AND THE IMPACT ON BENEFITSATWORK

In legal update 9/2009 we introduced you to the provisions of the Consumer Protection Act (CPA). Please familiarise yourself again with its content. The aim of the CPA is to protect consumers against exploitation and unfair practices by unscrupulous businesses, and to empower consumers to make wise purchasing decisions. We also mentioned that the legislature gave the insurance industry 18 months within which to align the Long Term Insurance Act (LTIA) with the CPA, otherwise the provision of the CPA will apply to the insurance industry in its entirety.

To date the Association of Investments and Savings (ASISA) has been hard at work holding workshops and conferring with relevant role players in the industry, to establish exactly what has to happen.

One of the issues which we will be looking at is the applicability of the CPA on retirement funds which will affect the FundsAtWork Umbrella Funds. In terms of the CPA the definition of a 'consumer' includes a person who has entered into a transaction with a supplier, as well as, if the context so requires or permits, a user of the particular goods or a recipient or beneficiary of the services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services. An interpretation of the above means that a fund member will also be regarded as a consumer and therefore any alignment of the provisions of the CPA with the provisions of the LTIA must take into account the rights of members. It is not very clear at this stage what the exact alignment will be and debate appears to be around issues like the duties of trustees, the roles of administrators and participating employers, as well as the roles of intermediaries and fund members.

In our view, many aspects for the protection of consumer rights are already entrenched in existing legislation such as the Financial Advisory and Intermediary Services Act (FAIS), and the accompanying CPA legislation will be applied by general application where gaps are found in existing law applicable to consumer rights in the insurance industry. ASISA and other industry bodies, such as the Institute of Retirement Funds, are still at discussion stage and it is too early to come up with any concrete suggestions regarding the format the alignment with the CPA will take. What follows are some typical issues which may be addressed and no doubt there are already many aspects of what may eventually be included, which we already do.

- Alignment of policy benefits between the quotes document and rules / policy document;
- Verification of accreditation and registration of intermediaries;
- Rules relating to fund rules and policy changes, and whose responsibility it is to inform the member of any changes;

- Application and registration of fund rules – rules should not be discriminatory or prejudice the members;
- Rules relating to administration of member data and protection of personal information;
- Rules relating to the processing of claims and verification of beneficiary details;
- Rules relating to taxation and application for tax on benefits;
- Enforcement for keeping registers for unclaimed benefits;
- Member communication and frequency may be a problem currently and the LTIA may be changed to include more stringent penalties;
- Trustees may have to ensure that administrators have indemnity and fidelity guarantees;
- Ensuring that fund administration is in accordance with the rules of the fund;
- Rules relating to the investment of funds, and liquidation processes (which could merely be the Collective Investment Schemes Act and / or the Pension Funds Act.

The above merely provide examples of the type of alignment the LTIA may have to address in dealing with the principles of the CPA. ASISA and other industry bodies will no doubt work closely with the Financial Services Board (FSB). It will ultimately be the responsibility of the FSB who will have to liaise with the Minister of Finance before any legislation is passed by the Minister into law. We will keep you updated with any further developments.

Max Moonsamy
Legal Adviser
Momentum BenefitsAtWork

Disclaimer:

The information contained in this document is not intended to be legal, tax, or other professional advice. With respect to the content of this document, Momentum Group Ltd does not make any warranty, expressed or implied or statutory, about the accuracy, completeness, or usefulness of any information disclosed herein. Any reliance by you upon any such information obtained in this document is at your sole risk. Finally, in no event will Momentum Group Ltd be liable to anyone for any direct, indirect, special or other consequential damages for any use of information obtained in this document, including lost profits, business interruption, or otherwise.