Your Business and the Consumer Protection Act

The Consumer Protection Act 68 of 2008 ("the CPA" and/or "the Act") came into effect on the 1st of April 2011 with its main focus to protect consumers and to promote a fair, accessible and sustainable market place. It also has an impact on the way manufacturers, suppliers and retailers do business. The CPA sets out a range of fundamental consumer rights as well as ways to protect these rights.

The CPA places an obligation on business owners not only to be aware of the implications of the Act but also to ensure that the business's terms and conditions are in line with the requirements of the Act. The Act's express purpose is to make sure consumers are not treated unfairly – intentionally or not. This means that using plain language is more crucial than ever. From now on, using obscure and confusing wording, especially in binding contracts, is not allowed. Quite simply, it's illegal!

The Act defines "plain language" as follows:

"For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude 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 document without undue effort."

This means that one won't be permitted to word things so widely that they can be understood in several ways. The Act states that if there is any doubt about the meaning of certain words or terms and conditions, the benefit will go to the consumer.

One of the most frequent questions consumers ask is when goods may be returned under the CPA. There are several sections that allow consumers to return goods to the suppliers. It is important to note, however, that there is no general right of return. For example, when you buy an item from a store and the next day you regret spending so much money, or you simply do not like the item in the morning, you cannot return the item simply because you have had a change of heart. Some retailers do allow you to do this, but it is not your legal right to do so. A change of heart is not a legal reason to return an item.

When is it allowed to return goods, then? There are only four instances when one can return goods under the CPA.

- **The direct marketing cooling-off period.**

If a consumer has bought goods because of direct marketing, the consumer has the right to cancel the entire agreement without penalty and return the goods within five days after receiving the goods, in terms of section 16 of the CPA. The consumer will also be entitled to a full refund. However, the consumer will have to pay the costs to return the goods.

- **Goods which have not been seen before purchase.**

In terms of section 20 (read together with section 19) of the CPA, if a consumer has not had the opportunity to examine or inspect the actual goods received before purchase, he is entitled to inspect the goods on delivery. If, on this initial inspection, the consumer finds that the goods do not meet the 'type' or 'quality' one could reasonably expect from the agreement or if the goods were made in terms of a special or 'custom' order, and the goods do not reasonably conform to the specifications of the order, then:

1. the consumer may refuse delivery,
2. receive a full refund and
3. the consumer may cancel the agreement without penalty.

The supplier will be liable for the costs of returning of the goods in this instance.

- **Goods do not meet particular purposes.**

Should a consumer inform a supplier that goods are being bought to fulfil a particular purpose and the supplier advises that the goods will meet this particular purpose then the consumer may cancel without penalty and return the goods if it is not suitable for the particular purpose within **ten days after receiving the goods,** according to section 55(3) (read together with section 20) of the CPA. The supplier will also be liable in this instance for the costs of returning the goods.

It is important to note that the consumer will **not be entitled to return goods** for any of the reasons explained in 1 to 3 above, if:

- public health or public regulation prohibits the return of those goods to a supplier once they have been supplied to a consumer, or
- the goods have been partially or entirely disassembled, altered, added or combined with other goods or property after having been supplied to a consumer.

- **Implied warranty of quality**

In terms of section 56 (read together with section 55) of the CPA, all goods sold to a consumer are sold with an implied warranty of quality, that cannot be contracted out of or revoked. The warranty gives the consumer the right to receive goods that:

- are reasonably suitable for the purpose that they are intended to be used for,
- are of good quality, free of defects and in good working order and
- will be durable and usable for a reasonable period.

If goods are found not to comply with these requirements, then the consumer may either return the goods or have the goods replaced or repaired within six months after receiving the goods. Any of the above should be without penalty to the consumer at the supplier's cost.

A general "voetstoots" clause will be insufficient. However, a consumer will not be able to return the goods because it was defective or not suitable for the purpose if:

- The consumer was made aware of the specific defects and
- the consumer agreed to receive the goods in the specific condition.

Due to the fact that a supplier has to make mention of the specific defects, a general 'voetstoots' clause will be insufficient to get out of the section 56 warranty.

Each business requires careful scrutiny of its specific relationship with consumers in order to develop appropriate terms and conditions which will not only match the unique circumstances of the business, but also determine which transactions fall within the scope of the Act.

Marguerite Greeff

For more information contact BVSA Legal Services at legal@bvsa.ltd

Where to invest for a better financial future.

Inflation remains the biggest threat to investors, diluting money's purchasing power.

At an inflation rate of 6%, an amount of R10 000, twenty years from today, will be worth only R3 002. At 9% inflation, the amount reduces to R1 641.

How do you ensure that your investment earns inflation-beating returns?

- **Money markets and long-term interest-bearing investments (bonds):**

These investments have become a synonym for safe, secure and reliable investments. They are highly liquid - meaning that it is easy to withdraw cash when you need it.

Although it is a very low risk instrument, it is not completely risk-free. Keeping cash in these instruments for long periods of time opens you up to inflation risk. The reality is that, as people live longer, their built-up retirement funds fast become inadequate to support them in their later years. Real growth (growth after inflation) of about 2% is not enough, especially if tax implications are considered. Money markets generate interest which means that any growth (interest) is subject to income tax.

- **Growth assets: shares and property**

The traditional asset classes are equities, bonds, cash and property. Equities and property, also listed property, are regarded as growth assets. In general, growth assets are expected to yield returns in the form of capital growth and significantly outperform inflation over longer periods of time. They offer greater potential returns but are prone to market fluctuations, especially in the short term and therefore are referred to as higher risk.

So, what do you choose?
Money markets and bonds, or growth assets?

Investors can invest in a diversified unit trust portfolio that offers exposure to all asset classes. Investors can also choose the percentage allocation to each asset class in order to follow every conservative, moderate or aggressive approach, each of which offers different risk / return ratios.

A conservative investor will, for example, choose exposure of no higher than 30% to equities, whilst an aggressive investor will choose more than 60%.

The asset allocation of the portfolio can be reviewed to ensure that the risk approach remains in line with the investor's changing circumstances.

Read our latest article on page 58 of the March edition of the Agri Culture magazine

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BVSA Financial Services offers specialist advice to help you grow and manage your wealth.
We provide advice on both domestic and international investments. Contact us for an appointment.

Alida Roos

BVSA Financial Services

	1 year to 30 October 2017	5 years to 30 October 2017	10 years to 30 October 2017
Listed property	0,1106	14.05%	13.59%
All shares index	0,186	0,1277	9.85%
Money markets	7.10%	6.14%	6.90%
Interest-bearing short term	8.82%	8.06%	0,0897
Inflation	5.04%	5.51%	5.88%