
GENERAL NOTICE

NOTICE 458 OF 2006

DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, Minister of Trade and Industry, having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 3092 of 2000 published in Government Gazette No. 21530, dated 08 September 2000, which report was published in Notice 458 in Government Gazette No. 28689 of 30-03-06, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(1)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.



MANDISI MPAHLWA

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

1. In this notice, unless the context indicates otherwise-

"Intermediary" means

any director, manager or employee of, or any person who acts on behalf of, a moneylender or credit provider, and any person, except the moneylender or credit provider who receives an application from any person who intends to borrow money in terms of a money lending or credit transaction or who in any manner acts on behalf of any person intending to become engaged in any negotiations relating to such loan or credit; and any person who purports to act

as an intermediary between a consumer and a business entity.

2. Subject to the provisions of paragraph 14, the business practices -
- (a) whereby an intermediary, directly or indirectly, in respect of an agreement purporting to be a money lending transaction, credit facility, credit transaction, credit guarantee or any combination thereof or an application by any person to borrow an amount of money in terms whereof the applicant's obligation to repay the money is deferred in terms of an agreement in respect whereof any charge, fee or interest ~~is~~ payable, demands, receives or recovers any valuable consideration, or requires the payments of any valuable consideration of any kind to become a member of any institution, association, business or entity for the right to use services offered where the services offered include an application for any money lending transaction, credit facility, credit transaction, credit guarantee or any combination thereof, from the borrower or from any person ~~so~~ applying, whether for his own account or ~~on~~ behalf of any person other than the moneylender or credit provider, but excluding agreements in terms of which the fee of the intermediary ~~is recovered~~ directly from the consumer once the loan or credit application has resulted in the establishment of a loan or credit agreement with a loan or credit provider and in terms whereof the agreement between the intermediary and the consumer must **at least:**
- (aa) specify the exact service to be rendered by the intermediary,
 - (bb) inform the consumer of the cost the loan or credit provider **is** entitled to recover from the applicant,
 - (cc) disclose the intermediary fee to be charged in addition to the costs in (bb) including the basis for calculating the fee, and
 - (dd) specify the fee charged which may not be more than such fee prescribed in applicable legislation;
- (b) whereby a person, directly or indirectly, undertakes the payment, for reward, of amounts to creditors on behalf of a debtor, excluding bank charges or lawfully permissible interest;

whereby a person, who has to confirm in writing his or her registration or appointment status, where applicable in terms of appropriate legislation, directly or indirectly, for a reward, undertakes to negotiate on behalf of a consumer the restructuring of payments, also referred to as voluntary distribution, informal distribution or rehabilitation offers, before negotiations have been successfully performed and written contracts have been concluded with creditors which contract must *inter alia* specify the following:

- name of debtor,
- name of creditor,
- name of debt mediator,
- amount outstanding on date of contract,
- new monthly repayment amount,
- new repayment period,
- total cost, including interest, of amount debtor will finally pay to creditor, and
- a clause in which the debtor acknowledges that his or her debt is being restructured and that he or she is aware that the full sum including additional interest will be paid to the creditor over an extended period of time;

- (d) whereby a person, directly or indirectly, for a reward, gives an instruction on behalf of an employee to an employer to cancel deductions from an employee before a written contract with creditors of the employee has been concluded;
- (e) whereby a person, directly or indirectly, for a reward, does not make a full written disclosure to clients regarding costs, the legal status of any proposed arrangements or the risks involved;
- (f) whereby a person, directly or indirectly, for a reward, receives payment for distribution purposes unless such payment has been deposited into an attorney's trust account, provided such account is covered by the Fidelity Fund provided for under the Attorneys Act 1979 (Act No 53 of 1979) or a separate

trust account, providing the trust account **is** protected **by** legislation;

- (g) whereby **an** administrator before appointment by the Court, directly or indirectly, receives any payment for his or her services before full written disclosure **of** the following:
- (aa) what the cost of administration will be,
 - (bb) **the** manner in which the cost **will be** determined,
 - (cc) the method of collection, specifying whether the deduction of the administrator's expenses and remuneration will be effected prior to **lodging** the distribution account with the Court **or** whether it will be **collected** through the inclusion of the administrator in the distribution account, failing which any money collected by the administrators without the full written disclosure **should** be deemed **upfront** fees;
- (h) whereby **a** person, including an administrator appointed by the Court, directly or indirectly, **does** not reveal in writing **the** full implications and consequences of being **placed** under administration to **a** person before lodging such an application with Court;
- (i) whereby **a** person, directly or indirectly, markets a scheme for the restructuring of any business for the purpose of circumventing the provision of legislation applicable to such business; and
- (j) whereby a person, directly or indirectly, markets **a** scheme for the switching of any account from one financial institution to another without full written disclosure of **all** cost implications, provided **any** fee charged may not be more than such fee prescribed **by** applicable legislation

are hereby declared unlawful.

3. Subject to the provisions of paragraph 14, the advertising **by** an intermediary, through **any** medium whatsoever - of this service whereby the **payment**, for

reward, excluding **bank** charges or lawfully **permissible** interest, of amounts to creditors on behalf of a debtor **is** undertaken;

- (a) whereby a person, directly or indirectly, for a reward, undertakes to negotiate the restructuring of payments, also referred to as voluntary distribution, informal distribution or rehabilitation offers, before negotiations have been successfully performed and formal agreements have been reached with creditors;
- (b) whereby a person, directly or indirectly, for a reward, does not make a full disclosure to clients regarding costs, the legal status of any proposed arrangements or the risks involved;
- (c) whereby a person, including an administrator appointed by the **Court**, directly or indirectly, does not reveal the full implications and consequences of being placed under administration to a person before lodging such an application to court;
- (d) whereby a person, directly or indirectly, markets a scheme for the restructuring of **any business** for the **purpose** of circumventing the provision of **legislation** applicable to such business; and
- (e) whereby a person, directly or indirectly, markets a scheme for the switching of any account from **one** financial institution to another without full disclosure of **all** cost implications

is hereby declared unlawful.

4. Subject to the provisions of paragraph **14**, any intermediary **is** herewith prohibited, directly or indirectly, from entering into an agreement with a person in respect of a money **lending** transaction, credit facility, credit transaction, credit guarantee or any combination thereof or an application by any person to borrow an amount of money in terms whereof the applicant's obligation to repay the money is deferred in terms of an agreement in respect whereof any

charge, fee or interest is payable, or requiring the payments of any valuable consideration of any kind to become a member of any institution, association, business ~~or~~ entity for the right to use services offered where the services offered include an application for any money lending transaction, credit facility, credit transaction, credit guarantee or any combination thereof, granting such intermediary the right, whether conditionally or unconditionally, to receive or to recover, on his own account or on behalf of any person other than the moneylender or credit provider, any valuable consideration, from the borrower or from any person so applying, but excluding agreements in terms of which the fee of the intermediary ~~is~~ recovered directly from the consumer once the loan ~~or~~ credit application has resulted in the establishment of a loan or credit agreement with a loan or credit provider and in terms whereof the agreement between the intermediary and the consumer must *at least*:

- (a) specify the exact service to ~~be~~ rendered by the intermediary,
 - (b) ~~inform~~ the consumer of the cost the loan or credit provider is entitled to recover from the applicant,
 - (c) disclose the intermediary fee to be charged in addition to the costs in (b) including the basis for calculating the fee, and
 - (d) specify the fee charged which may not be ~~more~~ than such fee prescribed in applicable **legislation**; or
5. Subject to the provisions of paragraph 14, any person is herewith prohibited, directly or indirectly, from entering into an agreement with a debtor, involving the payment, for reward; of amounts to creditors on behalf of that debtor, excluding bank charges or lawfully permissible interest.
6. Subject to the provisions of paragraph 14, any person, including a person who **has** to be registered or appointed in terms of appropriate legislation, is herewith prohibited, directly or indirectly, from undertaking negotiations ~~on~~ behalf of a consumer for the restructuring of payments, also referred to as voluntary distribution, ~~informal~~ distribution or ~~rehabilitation~~ offers, for a reward, before negotiations have been successfully performed and written contracts have been concluded with creditors.

7. Subject to the provisions of paragraph 14, any person is herewith prohibited, directly or indirectly, for a reward, from giving an instruction on behalf of an employee to an employer to cancel deductions from an employee before a written contract with creditors of the employee **has been concluded**.
8. Subject to the provisions of paragraph 14, any person is herewith prohibited, directly or indirectly, for a reward, from undertaking any negotiations ~~on~~ behalf of a consumer unless a full disclosure has been made to clients regarding costs, the ~~legal~~ status of any proposed arrangements or the risks involved.
9. Subject to the provisions of paragraph 14, any person is herewith prohibited, directly or indirectly, for a reward, from receiving payment for distribution purposes unless such payment has been deposited into an attorney's trust account, provided such account is covered by the Fidelity ~~Fund~~ provided for under the Attorneys Act 1979 (Act No 53 Of 1979) or a separate trust account **in terms whereof the** trust account ~~is~~ protected by legislation.
10. Subject to the provisions of paragraph 14, any administrator before being appointed by the Court is herewith prohibited, directly ~~or indirectly~~, from receiving any payment for his or her own account for services rendered before full written disclosure of:
 - (a) what the cost of administration ~~will~~ be,
 - (b) the manner in which the cost ~~will~~ be determined, and
 - (c) the method of collection, specifying whether the deduction ~~of~~ the administrator's expenses and remuneration will be effected prior to lodging the distribution account with the Court or whether it ~~will~~ be collected through the inclusion of the administrator in the distribution account.
11. Subject to the provisions of paragraph 14, any person, including an administrator appointed ~~by~~ the Court, is herewith prohibited, **directly** or indirectly, from negotiating with a consumer the **placing of** a person under administration unless the full implications and consequences of being placed under administration ~~has~~ been explained to a person before lodging such an

application to Court.

12. Subject to the provisions of paragraph 14, any person **is** herewith prohibited directly or indirectly, from marketing a scheme for the restructuring of **any** business for the purpose of circumventing the provision of legislation applicable to such **business**.
13. Subject to the provisions **of** paragraph 14, any person **is** herewith prohibited, directly or indirectly, from marketing a scheme for **the** switching of any account from **one** financial institution to another without **full disclosure of all** cost implications.
14. **This** notice **does** not **apply** to-
 - (a) any person **who** practices as an attorney for **his own** account or **as** a partner in a firm of attorneys or as a member of a professional company, **as** defined in section 1 **of** the Attorneys Act, **1979 (Act No. 53 of 1979)**, provided **the** actions undertaken by such person **are** covered **by** the Fidelity Fund as provided **for under** the Attorneys Act (**Act No. 53 of 1979**); or
 - (b) any person who **is** registered **as** an accountant or auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 5 of 1991), provided the actions undertaken by such person are covered in terms of the Fidelity Fund as provide for under **the** Public Accountants' and Auditors' **Act**, 1991 (Act No. 5 of 1991); or
 - (c) estate agents **who** are holders of fidelity fund certificates in terms of section 16 of the Estate Agencies Affairs **Act**, 1976 (Act No. 112 of 1976), provided the actions undertaken by such persons are covered in terms of the Fidelity Fund as provided for under Estate Agencies Affairs Act, 1976 (**Act No. 112 of 1976**); or
 - (d) a moneylender or a credit grantor or a lessor, as defined in section 1 of the Usury **Act**, 1968 (Act No. 73 of 1968), paying **an** intermediary for services rendered by him in connection with any transaction **referred** to

- in Regulation 2 (a); or**
- (e) a banking institution as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); or**
 - (9) an employee or owner of any newspaper, magazine or other advertising medium provided it is in his or her official capacity as employee or owner of any newspaper, magazine or other advertising medium.**

15. This Notice shall come into operation upon the date of publication hereof.
