Expiry and renewal of fixed term contracts

Scope

Section 14 of the Act addresses the consumer's right to cancel a fixed term contract after the expiry date. The section also specifically speaks to the fact that fixed term contracts may not exceed a certain maximum period. The maximum period shall be prescribed by the Minister and notice given in the Government Gazette.

Who does it apply to?

This section does not apply to any transactions between juristic persons. Therefore by deduction, it applies to transactions between natural persons, or natural persons and juristic persons.

How does it apply?

The consumer may cancel a contract after the expiry date of the contract has been reached. The consumer may do this without incurring any penalty; however they are liable for any amounts owed to the supplier until the date of cancellation.

The consumer may, with the prescribed notice, also cancel a contract before the date of expiry. In this case, the supplier may impose a reasonable cancellation penalty, but the supplier must also credit the consumer with any amount that belongs to the consumer.

Suppliers may, with the prescribed notice, also cancel fixed term contracts if the consumer is not complying with the contractual terms.

After expiration of the fixed term contract, it may continue on a month-to-month basis until such time as it is cancelled or renewed to a new fixed term.

So what?

The impact on contract based businesses is that contracts will be limited to a maximum period; therefore one cannot lock consumers into unreasonably long contracts. Another impact is that post expiration date, the business cannot automatically renew the consumer's contract into another fixed term without express consent.

This article was written by Tumeka Matshoba, Senior lecturer at the University of Johannesburg and member of the SAICA Legal and Compliance Committee.