

DISPUTE RESOLUTION ALERT

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CONVERGENCE & NEW MEDIA:

ICASA SHAKES UP THE INDUSTRY WITH DATA EXPIRY AND OUT-OF-BUNDLE DATA RULES

On 30 April 2018, the telecommunications sector regulator, ICASA, published the End-User and Service Subscriber Charter Amendment Regulations 2018 (EUSSC Amendment Regulations), which will come into force on 30 May 2018.

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The review of the End-User and Subscriber Service Charter Regulations 2016 (EUSSC Regulations) was initiated after consumer groups expressed general concerns regarding data expiry and out-of-bundle data rules.

The amendment process has had a long and contentious history. ICASA first published draft amendments to the EUSSC Regulations for comment on 7 August 2017. This draft imposed new timeframes for the expiry of data bundles, introduced obligations on operators to send usage notifications for data depletion and required that end-users be given the option to choose out-of-bundle pricing.

After extensive comments from industry, ICASA published a second draft during November 2017. This draft sought to give effect to s63 of the Consumer Protection Act, No 68 of 2009 (CPA) by requiring that all prepaid data bundles have a minimum duration of three years and by further including provisions relating to the rollover and transfer of unused post-paid data.

Following further industry submissions, ICASA indicated that it had elected not to pursue a provision which would require prepaid data bundles to have a

minimum duration of three years, as the National Consumer Commission, being the custodian of the CPA, should take the necessary steps for parties to comply with s63 of the CPA.

The final EUSSC Amendment Regulations contain four significant changes which relate to usage notifications, the option to rollover data, the option to transfer data and provisions regarding out-of-bundle billing.

The usage notifications require that operators send usage depletion notifications to consumers, in relation to data, voice and SMS services, at depletion levels of 50%, 80% and 100%.

With regard to the rollover of data, operators are required to grant consumers an option to rollover unused data before the date of expiry. Where unused data is rolled over, operators will be required to first apply data usage against the rolled over data, until the data is depleted, and thereafter against any allocated data. The exact practicalities applicable to the implementation of this requirement have not been specified by ICASA.

Tim Fletcher was named the exclusive South African winner of the **ILO Client Choice Awards 2017 – 2018** in the litigation category.



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The EUSCC Amendment Regulations have fundamentally changed the rules applicable to data expiry and out-of-bundle data.

In addition to the rollover of data, operators are required to grant consumers the option to transfer data to other users on the same network. During the public hearings, concerns were expressed regarding this provision, as technical and integrated functionality would need to be deployed by operators to support this option.

With regards to out-of-bundle billing, operators are no longer allowed to charge consumers out-of-bundle rates for data

without the consumer's prior consent and ICASA has determined that operators' out-of-bundle data charges can no longer be set as the default position.

In conclusion, the EUSCC Amendment Regulations have fundamentally changed the rules applicable to data expiry and out-of-bundle data.

*Janet MacKenzie and
Reinhardt Biermann*

Richard Marcus was named the exclusive South African winner of the **ILO Client Choice Awards 2018** in the Insolvency & Restructuring category.



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CHAMBERS GLOBAL 2017 - 2018 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.

Janet MacKenzie ranked by CHAMBERS GLOBAL 2018 in Band 3: Media & Broadcasting.

Julian Jones ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Restructuring/Insolvency.

Tim Fletcher ranked by CHAMBERS GLOBAL 2018 in Band 4: Dispute Resolution.

Pieter Conradie ranked by CHAMBERS GLOBAL 2012 - 2018 in Band 1: Dispute Resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 2: Dispute Resolution.

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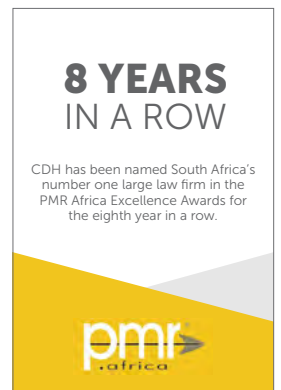
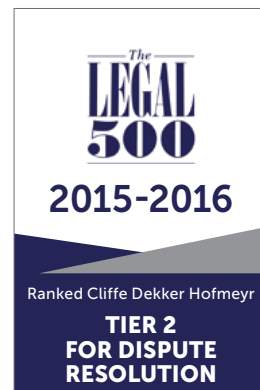
Recognised Faan Coetzee as Lawyer of the Year for Employment Law (Johannesburg).

Recognised Peter Hesseling as Lawyer of the Year for M&A Law (Cape Town).

Recognised Terry Winstanley as Lawyer of the Year for Environmental Law (Cape Town).

Named Cliffe Dekker Hofmeyr Litigation Law Firm of the Year.

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