



ក្រុមហ៊ុនមេធាវី អេសប៊ីអេស

Legal Update Prakas No. 0067 on Unfair Contractual Clause Issued on 01 March 2022

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On 01 March 2022, the Ministry of Commerce issued Prakas No. 0067 on Unfair Contractual Clause (the “**Prakas**”). This Prakas was issued pursuant to the Cambodian Law on Consumer Protection promulgated on 02 November 2019 (the “**Consumer Protection Law**”). This Prakas provides further clarity regarding unfair contractual clauses in standard form contracts with consumers.

The Prakas covers, among other matters, the following key points:

A. Excessive benefits and unfair contractual clauses

It is strictly prohibited to include any contractual clauses in a standard form contract to receive excessive benefits from consumers (**Article 6**). In order to determine whether or not any clause results in a business person receiving excessive benefits from consumers, the actual situation of the contracting parties shall be carefully considered such as the economic dominance, social status, ignorance or inexperience and other circumstances (**Article 7**).

Unfair contractual clauses in standard form contracts include (**Article 9**):

1. Any clauses that exclude or limit the liability of a business person (being a legal or natural person) with respect to statutory guarantees given under certain Articles of the Civil Code (e.g. the obligation under Article 539 of the Civil Code that a business shall deliver products that conform to the contract and that those products shall not be defective).
2. Any clauses that grant right to business persons, without the prior consent of the consumers, to:
 - Materially modify any clauses relating to the price, quantity, and quality of goods or services;
 - Change any “substantial” clauses (i.e. clauses of standard form contracts that are important for a consumer where a business ought to have been aware such clauses were important for the consumer);
 - Unilaterally and arbitrarily interpret and / or terminate the contract at the business person’s sole discretion.

If unfair contractual clauses or excessive benefits are identified in a standard form contract, the consumer may rescind or ratify such clause in a separate written form by his/her signing or affixing with his/her thumbprint (**Article 16**).

B. Requirements for a standard form contract

A standard form contract must comply with the following requirements (**Article 4**):

1. It shall be made in writing with clear and precise manner by using comprehensive words;
2. It shall be written in Khmer Language. The foreign language of the contract can additionally be made upon the request of the consumers;
3. It shall contain the minimum standard information as required by other applicable regulations.

Business persons have additional obligations to (**Article 5**):

1. Clearly explain, highlight and provide information about the substantial clauses in the standard form contract.
2. Clearly explain, for e-commerce (i.e. business activities through electronic system), the substantial clauses of the standard form contract to the consumers, prior to the acceptance.

The business persons can request to preliminarily check the compliance on the standard form contract to the National Committee for Consumer Protection and other competent authorities (**Article 13**).

C. Violation and Interim penalties

The violation of any provisions of this Prakas shall be subject to interim penalties pursuant to Article 41 and 44 of the Consumer Protection Law (**Article 17**), under which a person may face a written warning, suspension, revocation or cancellation of commercial registration or license, and fines (without releasing any person from civil and criminal liability under other laws and regulations).

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