

Kingdom of Cambodia
Nation Religion King

Unofficial Translation

Ministry of Commerce

No. 0067 P.N.A.KBB.PRK

Prakas
On
Unfair Contract Clause

Minister of Commerce

- Having seen the Constitution of the Kingdom of Cambodia,
- Having seen Royal Decree No. NS/RKT/0918/925 dated 06 September 2018 on the Appointment of the Royal Government of Cambodia,
- Having seen Royal Decree No. NS/RKT/0320/421 dated 30 March 2020 on the Appointment and Adjustment of the Composition of the Royal Government of Cambodia,
- Having seen Royal Kram No. NS/RKM/0618/012 dated 28 June 2018 promulgating the Law on the Organization and Functioning of the Council of Ministers,
- Having seen Royal Kram No. NS/RKM/0196/16 dated 24 January 1996 promulgating the Law on the Establishment Ministry of Commerce,
- Having seen Sub-Decree No. 38 dated 16 March 2020 on the Organization and Functioning of the Ministry of Commerce,
- Having seen Sub-Decree No. 135 ANK.BK dated 27 August 2020 on the Organization and Functioning of the National Commission for Consumer Protection,
- Having seen Decision No. 95 SSR dated 13 October 2020 on the appointment of a composition of the National Commission for Consumer Protection, and
- According to the necessity of the Ministry of Commerce.

Hereby Decides
Chapter I
General Provision

Article 1: Purpose

This Prakas sets out the formalities and procedures to enforce Standard Form Contract and Unfair Contract clauses in order to protect Consumer Rights against any excessive exploitation of profits and situations in relation to the contractual relationship between the Consumer and the Business Operator for the provision of Goods and/or Services in the Kingdom of Cambodia.

Article 2: Scope of Application

This Prakas shall apply to all types of Standard Form Contract made for the provision of Goods and/or Services in the Kingdom of Cambodia to the Consumer as defined under the Law on Consumer Protection.

Article 3: Definition

Key terms stated in this Prakas shall have the meaning as follows:

1. **Business Operator** refers to any person who conducts a Business as defined under the Law on Consumer Protection.
2. **Civil Code** refers to the civil code promulgated by Royal Kram No. NS/RKM/1207/030 dated 8 December 2007 and its subsequent amendment or replacement thereof
3. **Clause** has the same meaning as defined in the Civil Code.
4. **Consumer** has the same meaning as defined in the Law on Consumer Protection
5. **E-Commerce** has the same meaning as defined in the Law on E-Commerce
6. **Goods** refers to any movable property including tangible and intangible thing and exclusive of any currency and immovable property.
7. **Standard Form Contract** refers to a contract or any material clause of a contract which is/are pre-formulated by the Business Operator for the provision of Goods and/or Services to the Consumer without allowing the Consumer to negotiate, to revise or to influence in whatever form
8. **Substantial Clause** refers to any substantial Clause or term of the contract (either the Standard Form Contract or the Electronic Standard Form Contract) that are important for the Consumers or the Consumer deems important for the formation of the contract and the Business Operator should have been aware of the importance of such Clause or term.
9. **Unfair Contract Clause** refers to any Clause of the Standard Form Contract creating an excessive disadvantage to the Consumer.

Chapter II

Requirements for Standard Form Contract

Article 4: Substantive Requirements for the Standard Form Contract

1. The Standard Form Contract shall be made in writing with a clear and precise manner by having Clauses described in comprehensible words.
2. The Standard Form Contract shall be prepared in Khmer language. The Business Operator may prepare the Standard Form Contract in foreign languages in addition to Khmer language for the Consumers to voluntarily opt for.
3. The Standard Form Contract shall contain the standard information as required by the Law on Consumer Protection, the regulations applicable to minimum information standard and other applicable laws and regulations.

Article 5: Explanation of the Standard Form Contract

1. The Business Operator shall explain, highlight and give clear information about the Substantial Clauses in the Standard Form Contract.
2. For E-Commerce, the Substantial Clauses of the Standard Form Contract shall be explained to the Consumers clearly for the Consumer to have the opportunity to read through prior to accepting the Standard Form Contract.

Chapter III

Excessive Benefit

Article 6: Excessive Benefit

In accordance with Article 351 of the Civil Code, the Business Operator shall not include any Clause in the Standard Form Contract to receive excessive benefits from the Consumer

Article 7: Assessment and Evaluation on the Existence of Excessive Benefit

1. The assessment and evaluation on the existence of a Clause of receiving excessive benefits shall be made by strictly considering to any and all of the circumstances of the parties or either party to the Standard Form Contract such as dominance of economic, social situation, ignorance or inexperience, and other circumstances. which is important or lead to the formation of the contract.
2. The criteria for the evaluation of the clause with excessive benefit may be governed under the sectoral regulation to be issued by Ministry, Institution or competent regulator.

Chapter IV

Unfair Contract Clause

Article 8: Abuse of Circumstances

The Business Operator shall not abuse the circumstance that the Consumer cannot change the Standard Form Contract to put any Unfair Contract Clause, which creates an excessive disadvantage to the Consumer, into the Standard Form Contract.

Article 9: Clauses Considered as Unfair Contract Clause

Unless otherwise provided under any other sectoral regulations, the Business Operator is restricted from including any Unfair Contract Clause in the Standard Form Contract as the followings:

1. Any Clause excluding or limiting the liabilities of the Business Operator on the guarantee of the Services and/or Goods as provided under Articles 539, 540, 541, 542, 543, 544, and 545 and other related provisions of the Civil Code;
2. Any Clause granting the right to the Business Operator to materially change or modify the type quantity, price and quality of Goods and/or Services without prior consent to the consumer;
3. Any Clause granting the right to the Business Operator to change any Substantial Clause of the Standard Form Contract without prior consent or notice to the consumer; and
4. Any Clause granting the right to the Business Operator to unilaterally and arbitrarily interpret or to terminate the contract with his or her own discretion.

Article 10: Change of Clause

1. Any change of Substantial Clause shall require written consent from the Consumer.
2. The Business Operator shall provide written notification to the Consumer prior to the effective date of any change to any clause other than Substantial Clause.

Article 11: Rights of Consumers

The Consumer shall have right to:

1. Be entitled to access to necessary information in relations to Goods and/or Services and Clauses of the Standard Form Contract.
2. Demand for further clarification and explanation from the Business Operator and have sufficient time to consider the contract especially the Substantial Clause prior to entering into such contract.

Article 12: Competent Regulators

The competent sectoral regulators and authorities may issue other regulations to detail with regards to

1. The rights and obligations of the Consumers as well as the Business Operator in relations to the minimum requirements for the explanation and procedure to enter into the Standard Form Contract; and
2. The detailed rules and requirements in relations to Unfair Contract Clause.

Chapter V Competent Authority

Article 13: Preliminary Review

The Business Operator shall ensure that its Standard Form Contract does not contain any clause of excessive benefit and any Unfair Contract Clause.

In the event that the Business Operator wants its Standard Form Contract to be reviewed for compliance certification, the Business Operator may file such request for the review to:

1. The National Committee for the Consumer Protection for any sector other than the regulated sector, or
2. Any sectoral competent regulator in accordance with the governing laws and regulations.

Article 14: Filing of Complaint

The Consumers or any party may file the complaint on their own or through sectoral consumer association of any non-compliance to this Prakas to:

1. the National Commission for Consumer Protection; or
2. Ministry, Institution, the sectoral competent regulators in accordance with the governing laws and regulations.

Article 15: Competence of the National Committee for the Consumer Protection

The National Committee for the Consumer Protection may initiate investigation over any Standard Form Contract of the Business Operator by requesting the Business Operator to submit or provide its Standard Form Contract for review.

Article 16: Rescission and Ratification

The Consumer may rescind or ratify any clause of excessive benefit and Unfair Contract Clause in accordance with the procedure and requirement as provided under Article 360, 362 and 363 of the Civil Code by signing or affixing his or her thumbprint on a written rescission or ratification form separate to the Standard Form Contract. Such rescission and ratification of all Consumers of the Business Operator shall waive the liabilities of the Business Operator under this Prakas.

Chapter VI

Unfair Conduct, Unfair Practice and Penalties

Article 17: Unfair Conduct, Unfair Practice and Penalties

Any use of Unfair Contract Clause as prohibited under this Prakas shall be considered as an unfair practice governed under Law on Consumer Protection.

Any Business Operator, who violates the provision of this Prakas, shall be subject to a penalty as provided under Article 41 and 44 of the Law on Consumer Protection.

The penalties provided under this Prakas shall not waive the criminal and civil liability as provided under other relevant laws and regulations.

Chapter VII

Final Provision

Article 18: Abrogation

Any provisions that are contrary to this Prakas shall be abrogated.

Article 19: Implementation

Members of the National Committee for Consumer Protection, Chief of the Cabinet, Delegate of the Royal Government of Cambodia in charge as Director-General of the Consumer Protection Competition and Fraud Repression Directorate-General, and heads of all relevant authorities shall be responsible for the implementation of this Prakas in accordance with their respective duties 6 months from the date of signature.

Phnom Penh, 1 March 2022

Minister of Commerce

And Chairman of the National Commission for Consumer Protection

Seal and Signature

PAN Sorasak

Recipients:

- Council of Ministers
- Cabinet of Samdech Akka Moha Sena Padei Techo Prime Minister
- Cabinet of Samdech, His Excellency and Her Excellency Deputy Prime Ministers
- Municipal and Provincial Administrations
- As stated in Article 19
- Royal Gazette
- Documentation and Archive