

## Prakas on Unfair Contract Clause

In support of the enhancement of the Law on the Consumer Protection (“LCP”) which was promulgated in November 2019, the Ministry of Commerce (“MoC”) issued the Prakas No. 0067 on Unfair Contract Clause (“Prakas”) on 01 March 2022, in order to set out formalities and procedure to govern Standard Form Contracts and unfair contract clauses for the purpose of protecting consumers’ rights against any excessive exploitation of profits and situations in connection with the contractual relationship between the consumers and the business operators in the country.

### I. Standard Form Contracts

A Standard Form Contract refers to a contract or any part of the contract, prepared by a business operator for the provision of goods and/or services to the consumer, the terms of which do not allow the consumer to negotiate or revise, or by any means, make any impact on it.

As per the Prakas, the Standard Form Contract must comply with the following substantive requirements:

- Must be in written and precise form, with concise and understandable term and conditions therein;
- Must be made in Khmer language. The business operator may prepare additional contract in foreign languages in addition to the Khmer version, if requested by the consumer; and
- Must contain minimum standard information in accordance with the requirement provided under the LCP and other relevant applicable laws and regulations.

The business operator must clearly address the key points and provide the information about substantial clauses in the Standard Form Contract.

## **II. An Act of Excessive Benefits**

This Prakas prohibits the inclusion of any terms in the Standard Form Contract, which grant rights to the business operators to gain excessive benefits from the consumers. The criteria to evaluate whether or not the term grants excessive benefits to the business operators is mainly assessed based on (a) the situation of the parties or either party to the contract from every perspective including economic and social dominance, ignorance or inexperience and other key circumstances leading to the contract creation, and (b) the criteria which may be imposed by competent ministries, organizations or regulators from relevant sectors.

## **III. Unfair Contract Clause**

This Prakas prohibits the business operators from including any unfair contract clauses in the Standard Form Contract, which may take the following forms:

- Any clause limiting or excluding the business operator's liabilities on the guarantee of the services and/or goods in accordance with the Civil Code;
- Any clause granting the right to the business operator to materially change the specification, quantity, price and quality of the services and/or goods without prior consent from the consumer;
- Any clause granting the right to the business operator to change any substantial clause of the Standard Form Contract without prior consent from or notice to the consumer; and
- Any clause granting the right to the business operator to unilaterally and absolutely interpret or terminate the contract at his/her own discretion.

To ensure the Standard Form Contract does not contain excessive benefits or any unfair contract clauses, the business operators may request for a compliance check with the following competent authorities:

1. The National Commissioner for Consumer Protection ("**NCCP**") for the business operator who is not under the supervision of the competent regulator; or
2. Any competent state institutions or regulators overseeing the specific sector.

## **IV. Rights of Consumers**

Pursuant to this Prakas, the consumers shall have the following rights:

- Access to any key information they need regarding the products and/or services and clauses of the Standard Form Contract;
- Request for further explanations and clarifications from the business operator and be provided sufficient time to thoroughly peruse the contractual clauses before execution.

## V. Enforcement

NCCP, at its own discretion, may conduct a review over any Standard Form Contract of the business operator by requesting the business operator to provide such contract to NCCP.

Further, if any consumer or related party finds out that there is non-compliance to the Prakas, he/she may file a complaint directly or through consumer association to:

1. NCCP; and
2. Competent state institutions or regulators overseeing the specific sector.

The unfair contract term usage shall be prohibited by this Prakas and deemed as unfair conduct and practice under the LCP. Any violation of any provision under this Prakas shall be subject to penalty provided under Article 41 and Article 44 of the LCP, in addition to the criminal and civil liability, as imposed by other laws and relevant regulations.

Should any additional information be required regarding this legal alert or if you have any further inquiry, please contact our team at [info@anlor.legal](mailto:info@anlor.legal) or reach out to our professionals below:



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