
General Corporate Commercial

New Prakas on Unfair Contract Clause for Consumer Protection and Fair Competition

In furtherance of ensuring consumer protection and the promotion of fair competition under the Law on Consumer Protection, the Ministry of Commerce ("**Ministry**") issued Prakas No. 0067 P.N.A.KBB.PRK on Unfair Contract Clause ("**Prakas**") on 1 March 2022. It will be implemented within six months after the date of its issuance.

The Prakas sets out the requirements for standard form contracts and the penalties for non-compliance with these requirements. The Prakas applies to all types of standard form contracts for the provision of goods and/or services to the consumer in Cambodia, which is defined under the Law on Consumer Protection as a person who acquires goods or services for personal, domestic or household use, and not for re-sell or for commercial purposes.

In this Update, we briefly highlight some key aspects covered under the Prakas.

1. Requirements for Standard Form Contracts

A "Standard Form Contract" refers to a contract or material clause which is pre-formulated 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 the contract or influence the business operator in whatever form to amend the contract.

A Standard Form Contract must comply with the following substantive requirements:

- (a) Must be in the written form with clear and precise language;
- (b) Must be in Khmer language; business operator may prepare additional contract in foreign language in addition to the Khmer language upon the request of the consumer; and
- (c) Must contain the minimum standard information in accordance with the Law on Consumer Protection or other related applicable laws and regulations, which include for instance type, method of use, price, packaging, rating, safety, quantity, origin, usage function, maintenance, components, design, installation, promotion or supply, production date and expiration date, information about the production, etc.

2. What Constitutes Unfair Contract Clause

Unfair contract clauses shall not be allowed to be included in any Standard Form Contracts. If an unfair contract clause is found included in a Standard Form Contract, such Standard Form Contract may be rescinded on the ground of the defect of the declaration of intention.

General Corporate Commercial

An unfair contract clause refers to any clause that: (i) allows business operators to gain excessive benefit from the consumers; and (ii) creates an excessive disadvantage to the consumer.

Whether or not a clause is or will be construed as "unfair" will be determined based on certain factors. For instance, whether or not a clause allows business operators to gain "excessive benefit" from the consumer will be assessed based on: (i) the circumstances of the parties or either party to the Standard Form Contract such as economic or social dominance, ignorance of either party, or similar circumstances, and (ii) the criteria imposed under sectoral regulations of the relevant ministries, institutions or regulators.

Examples of unfair contract clauses are clauses:

- Excluding or limiting the liabilities of the business operator on the guarantee of the services and/or goods as provided under the Cambodian Civil Code;
- Granting the business operator the right to change the type, value, quantity, and quality of goods and/or services without obtaining the prior consent of the consumer;
- Granting the business operator the right to change the substantial clause of the Standard Form Contract without the prior consent of or notice to the consumer; and
- Granting the business operator the right to unilaterally and arbitrarily interpret or terminate the contract.

3. Rights of Consumers

Under the Prakas, consumers shall have the following rights:

- (a) Access to necessary information that relates to goods and/or services, and clauses of the Standard Form Contract.
- (b) Prior to entering into the Standard Form Contract, demand further clarification and explanation from the business operator and have sufficient time to consider the contract especially the substantial clauses, for instance, clauses or terms of the contract that are important for the consumers or which the consumers deem important for the formation of the contract.
- (c) Rescind or ratify any clause that is of excessive benefit and unfair contract clause in accordance with the procedure and requirements provided under the Cambodian Civil Code.

4. Compliance

The Prakas sets out the procedure for request for compliance review and the filing of complaint for non-compliance.

Preliminary Review

Business operators may request for compliance review of their Standard Form Contracts with:

- (a) the National Commission for the Consumer Protection for any sector other than the regulated sectors; or
- (b) any competent sectoral regulator in accordance with the applicable laws and regulations.

General Corporate Commercial

Filing of Complaint

If non-compliance with the Prakas is found, the aggrieved consumer or any party on its own or through a sectoral consumer association may file a complaint with:

- (a) the National Commission for Consumer Protection; or
- (b) Relevant ministries, institutions or the competent sectoral regulators in accordance with the applicable laws and regulations.

The National Commission for Consumer Protection may also initiate investigations over any complaint relating to Standard Form Contracts of a business operator.

5. Consequences of Non-Compliance

Any violation of the Prakas will subject the errant business operator to the penalties provided under the Law on Consumer Protection, which range from written warning to pecuniary fine or suspension, revocation or invalidation of the business operator's certificate of commercial registration or licence.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

Contacts



HENG Chhay
Managing Partner

T +855 23 963 112 / 113
F +855 23 963 116
heng.chhay@rajahtann.com



HOUT Sotheary
Partner

T +855 23 963 112/113
F +855 23 963 116
hout.sotheary@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

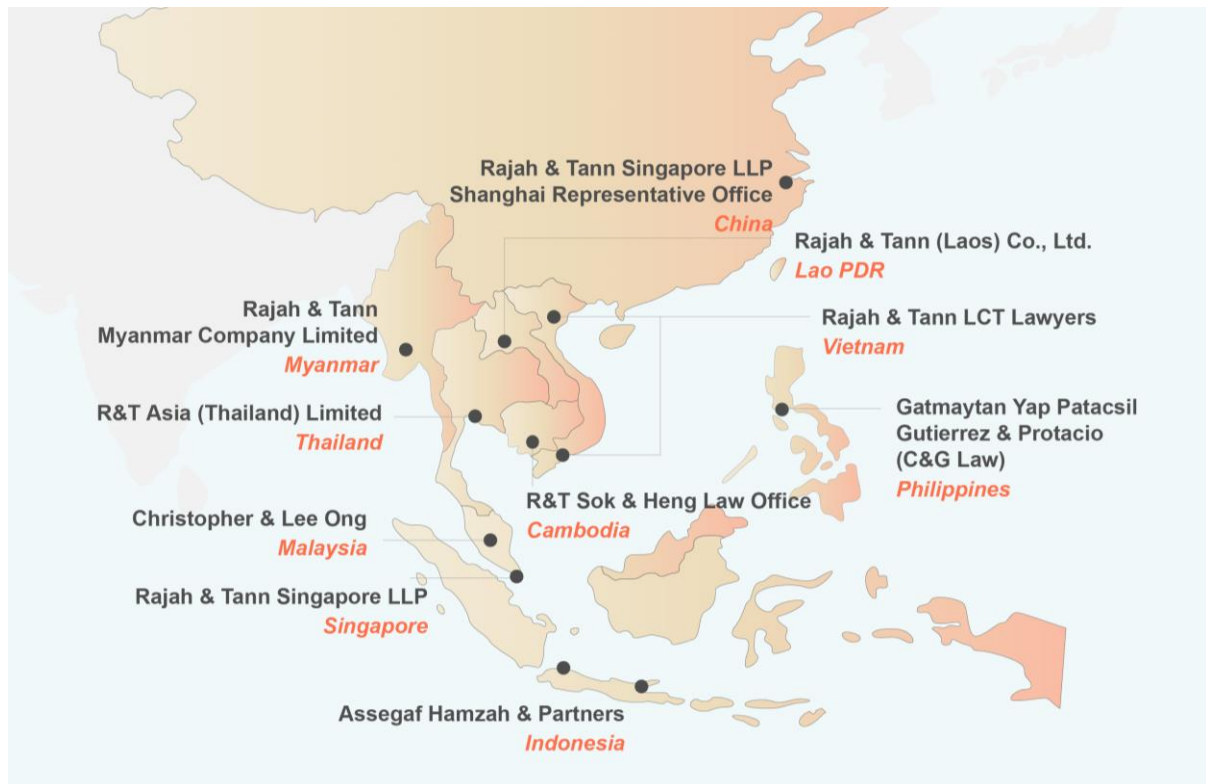
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.

Our Regional Presence



R&T Sok & Heng Law Office provides top quality and incisive legal services to domestic and international clients; in local and cross-border transactions; on day-to-day operations and the most challenging transactions. As one of the leading law firms in Cambodia, R&T Sok & Heng Law Office helps clients achieve their goals by combining international standard with local expertise.

R&T Sok & Heng Law Office is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by R&T Sok & Heng Law Office and subject to copyright protection under the laws of Cambodia and, through international treaties, other countries. No part of this Update may be reproduced, licenced, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of R&T Sok & Heng Law Office.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in R&T Sok & Heng Law Office.