

Unfair Contract Terms Act, B.E. 2540 (1997)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 14th Day of November, B.E. 2540;

Being the 52nd Year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to enact the law governing unfair contract terms;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act shall be called the "Unfair Contract Terms Act, B.E. 2540 (1997)".

Section 2

This Act shall come into force after the expiration of one hundred and eighty days from the date of its publication in the Royal Gazette.

Section 3

In this Act:

"Contract terms" means terms, agreement and consent, including announcement and notice excluding or restricting the liability.

"Consumer" means a person entering into a contract in the capacity of a buyer, lessee, hire-purchaser, borrower, insured or other person value entering into a contract so as to acquire property, service or any other benefits for however, the said entering into such contract shall not be for trade of such property, service or benefits, and it shall mean to include a person entering into a contract in the capacity of a guarantor of the said person who does not execute the same for trade as well.

"Business, trading or professional operator" means a person entering into a contract in the capacity of a seller, lesser, seller by hire-purchase, lender, insurer or any person entering into a contract so as to supply property, service or any other benefits; in any case, such entering into the contract must be for the trade of such property, service or benefits according to their ordinary course of business.

"Standard form contract" means written contract in which essential terms have been prescribed in advance, regardless whether being executed in any form, and is used by either contracting party in his business operation.

Section 4

The terms in a contract between the consumer and the business, trading or professional operator or in a standard form contract or in a contract of sale with right of redemption which render the business, trading or professional operator or the party prescribing the standard form contract or the buyer an unreasonable advantage over the other party shall be regarded as unfair contract terms, and shall only be enforceable to the extent that they are fair and reasonable according to the circumstances.

In case of doubt, the standard form contract shall be interpreted in favor of the party that does not prescribe the said standard form contract.

The terms with characters or effects in a way that the other party is obliged to comply or bear more burden than that could have been anticipated by a reasonable person in normal

circumstance may be regarded as terms that render an advantage over the other party, such as:

- (1) terms excluding or restriction liability arising from breach of contract;
- (2) terms rendering the other party to be liable or to bear more burden than that prescribed by law;
- (3) terms rendering the contract to be terminated without justifiable ground or granting the right to terminate the contract despite the other party is not in breach of the contract in the essential part;
- (4) terms granting the right not to comply with any clause of the contract or to comply with the contract within a delayed period without reasonable ground;
- (5) terms granting the right to a party to the contract to claim or compel the other party to bear more burden than that existed at the time of making the contract;
- (6) terms in a contract of sale with right of redemption whereby the buyer fixes the redeemed price higher than the selling price plus rate of interest exceeding fifteen percent per year;
- (7) terms in a hire-purchase contract which prescribe excessive hire-purchasing price or which imposes unreasonable burdens on the part of the hire-purchaser;
- (8) terms in a credit card contract which compels the consumer to pay interest, penalty, expenses or any other benefits excessively, in the case of default of payment or in the case related thereto;
- (9) terms prescribing a method of calculation of compound interest that cause the consumer to bear excessive burdens.

In considering whether the advantage rendered by the terms under paragraph three be unreasonable, section 10 shall apply *mutatis mutandis*.

Section 5

The terms restricting the right or freedom in professing an occupation or an execution of a juristic act related to the business, trading or professional operation which are not void, but being the terms that cause the person whose right or freedom has been restricted to bear more burden than that could have been anticipated under normal circumstances, shall only be enforceable to the extent that they are fair and reasonable according to such circumstances.

In determining whether the terms under paragraph one cause the person, whose right or freedom has been restricted, to bear more burden than that could have been anticipated, consideration shall be taken to the scope of the area and the period of restriction of right or freedom, including whose ability and opportunity to profess occupation or to execute juristic act in other form or with other person, as well as all legitimate advantages and disadvantages of the contracting parties.

Section 6

A contract between the consumer and the business, trading or professional operator involving payment of debts by delivery of property to the consumer shall not contain the terms excluding or restricting the liability of the business, trading or professional operator for a defect or disturbance of right, except where the consumer knew of the defect or the cause of such disturbance of right, at the time of making the contract. In such a case, the terms excluding or restricting the liability shall only be enforceable to the extent that they are fair and reasonable according such circumstances.

Section 7

In a contract which prescribes that something is given as earnest if there occurs a case that such earnest to be forfeited is disproportionately high, the court may order that forfeiture be reduced to the actual damage so occurred.

Section 8

The terms, announcement or notice made in advance to exclude or restrict liability for tort or breach of contract respecting loss of life, body or health of another person as a result of an action deliberately or negligently committed by the person making the terms, announcement or notice or by other person for which the person making the terms, announcement or notice shall also be liable, shall not be raised as an exclusion or restriction of the liability.

The terms, announcement or notice made in advance to exclude or restrict the liability in any case other than that mentioned in paragraph one which are not void shall only be enforceable to the extent that they are fair and reasonable according to the circumstances.

Section 9

The agreement or consent of the injured party to an action clearly prohibited by law or which is contrary to public order or good morals shall not be raised as a defense to exclude or restrict the tortious liability.

Section 10

In determining to what extent the terms be enforceable as fair and reasonable it shall be taken into consideration all circumstances of the case, including:

- (1) good faith, bargaining power, economic status knowledge and understanding, adeptness, anticipation, guidelines previously observed, other alternatives, and all advantages and disadvantages of the contracting parties according to actual condition
- (2) ordinary usages applicable to such kind of contract;
- (3) time and place of making the contract or performing of the contract;
- (4) the much heavier burden borne by one contracting party when compared to that of the other party.

Section 11

Any contract terms which prohibit the applicability of this Act, either partly or wholly, shall be void.

Section 12

This Act shall not be applied to the juristic acts or contracts made prior to the date of entry into force of this Act.

Section 13

In the court proceeding filed under this Act, if upon the application of a party or the court thinks fit the court may ask a qualified person or expert to give opinion for its consideration in deciding such case.

Section 14

The qualified person or expert asked by the court to give opinion shall be entitled to remunerations, travel and accommodation expenses in accordance with the regulations laid down by the Ministry of Justice with approval of the Ministry of Finance.

Section 15

The Minister of Justice shall be in charge of this Act, and shall be empowered to issue regulations for the implementation of this Act.

Countersigned by

General Chavalit Yongjaiyoot

Prime Minister

Remark

The reason for the promulgation of this Act is as follows:

Owing to the legal principle relating to the juristic acts or the enforceable contract based on the liberty of people, according to the principle of sacredness of declaration of intention. The state shall not, even though a party has an advantage over the other party, intervene in the matter unless the action is expressly prohibited by law or is contrary to public order and good morals. However, with the current social nature has changed, and a party who has a stronger bargaining power in economy could, by depending on such principle, take advantage of the other party who has a weaker bargaining power in the case. This leads to the unfairness and unrest in society. It, for the state, is supposed to outline the frame of exercising the principle of sacredness of declaration of intention and liberty of people so as to cure unfairness and unrest in society. By means of this, a guideline has been set for Court to consider of what contract or agreement is unfair, and empower the Court to order such unfair contract or agreement be effective in enforcement as it is appropriate and fair depending upon the case. With the reason mentioned, therefore, it is necessary to enact this Act.

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