

UNFAIR CONTRACT TERMS ACT,
B.E. 2540 (1997)

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 is graciously pleased to proclaim that:

Whereas it is expedient to have a law on 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 is called the “Unfair Contract Terms Act, B.E. 2540 (1997)”.

Section 2.¹ This Act shall come into force after one hundred eighty days as from the date of its publication in the Government Gazette.

Section 3. In this Act:

“contract term” means a term, an agreement and consent, including a notification or a notice, for the purpose of excluding or restricting liability;

“consumer” means a person entering into a contract as a buyer, hirer, hirer on hire-purchase, borrower or the insured or a person entering into any other contract for acquiring property, services or any other benefits in consideration of remuneration, provided that the

* Translated by Associate Professor Dr. Pinai Nanakorn, and reviewed by Professor Vichai Ariyanuntaka under contract for the Office of the Council of State of Thailand's Law for ASEAN project.
– Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in the Government Gazette, Vol. 114, Part 72a, dated 16th November B.E. 2540 (1997).

entry into the contract shall not be for the purpose of trade of such property, services or other benefits, and shall also include a person entering into a contract as a surety of the said person when it is not entered into for the purpose of trade;

“trader or professional” means a person entering into a contract as a seller, letter, hire-purchase owner, lender or insurer or a person entering into any other contract for supplying property, services or any other benefits, provided that the entry into such contract must be for the purpose of trade of property, services or any other benefits in the ordinary course of his business;

“standard-form contract” means a written contract, the material terms of which have been pre-formulated, which is used by either party in the operation of his business, whatever form in which it is made.

Section 4. A term in a contract as between a consumer and a trader or a professional or in a standard-form contract or in a sale with the right of redemption which renders the trader or professional or the *proferens* of the standard form contract or the buyer to have an unreasonably excessive advantage over the other party is an unfair contract term and shall be enforceable only insofar as it is fair and reasonable in a particular case.

In case of doubt, a standard-form contract shall be interpreted in favour of the party not formulating such standard-form contract.

A term which possesses the character or produces the effect of requiring the other party to render a performance or assume a burden greater than usually expected by a reasonable person may be regarded as a term giving an advantage over the other party, such as:

- (1) a term excluding or restricting liability for breach of contract;
- (2) a term imposing liability or a burden greater than that imposed by the law;
- (3) a term allowing a contract to be terminated without justifiable reason or entitling termination of the contract without material breach by the other party;
- (4) a term entitling non-performance of any of the terms of the contract or a delayed performance without justifiable reason;

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(5) a term entitling one party to demand or require the other party to bear more burdens than those at the time of the contract;

(6) a term, in a sale with the right of redemption, under which the buyer fixes the price of redemption at a sum in excess of the price of the sale plus the interest at the rate of fifteen percent *per annum*;

(7) a term, in a hire-purchase, fixing an excessively high hire-purchase price or imposing on the hirer an excessively high burden;

(8) a term, in a credit card contract, requiring the consumer to pay interest, penalties, expenses or any other benefits in an excessively high amount in the event of default of payment or in connection therewith;

(9) a term fixing a method for the calculation of compound interest in a manner causing the consumer to bear excessively high burdens.

In making the determination as to whether a term which gives an advantage over the other party under paragraph three renders an unreasonably excessive advantage, section 10 shall apply *mutatis mutandis*.

Section 5. A term restricting the right or liberty to engage in an occupation or to make a juristic act in connection with the operation of trade or a profession which is not void but has the effect of causing the person whose right or liberty is restricted to bear greater burdens than usually expected shall be enforceable only insofar as it is fair and reasonable in a particular case.

In making the determination as to whether the term under paragraph one has the effect of causing the person whose right or liberty is restricted to bear greater burdens than expected, regard shall be had to a territorial boundary and the duration for which the right or liberty is restricted, including the ability and opportunities, on the part of the person whose right or liberty is restricted, to engage in an occupation or enter into a juristic act in other forms or with other persons in conjunction with all legitimate advantages and disadvantages of contractual parties.

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Section 6. A contract as between a consumer and a trader or a professional which involves a performance of an obligation by the delivery of property to the consumer may not contain a term excluding or restricting the trader's or the professional's liability for a defect or an eviction unless the consumer had the knowledge of the defect or the ground for the eviction at the time of the contract, in which case such term excluding or restricting liability shall be enforceable only insofar as it is fair and reasonable in a particular case.

Section 7. In a contract under which a deposit is given, if there arises a ground for forfeiture thereof, the Court may, where such deposit is disproportionately high, reduce it to the amount representing the actual loss.

Section 8. A term, a notification or a notice made or given in advance for excluding or restricting liability for a tortious act or breach of contract with respect to the injury to the life, body or health of another person in consequence of a wilful or negligent act of the person making or giving the term, notification or notice or of another person for whose act the person making or giving the term, notification or notice must also be liable shall not be invoked for excluding or restricting liability.

A term, a notification or a notice made or given in advance for excluding or restricting liability in any case other than those specified under paragraph one which is not void shall be enforceable only insofar as it is fair and reasonable in a particular case.

Section 9. An agreement made or consent given by the injured person to an act expressly prohibited by law or contrary to public order or good morals shall not be invoked for excluding or restricting tortious liability.

Section 10. In making the determination as to such extent of enforceability of a term as to satisfy the requirement of fairness and reasonableness in a particular case, regard shall be had to all circumstances, including:

(1) good faith, bargaining powers, economic standing, knowledge and understanding, skills and expertise, expectation, previous practices, other alternatives and all advantages as well as disadvantages on the part of contractual parties in actual circumstances;

(2) ordinary usages applicable to that kind of contract;

(3) the time and place of the conclusion of the contract and of the performance thereunder;

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(4) the assumption of far more onerous burdens on the part of one party when compared with those assumed by the other party.

Section 11. Any term which excludes the applicability of the provisions of this Act, whether in whole or in part, shall be void.

Section 12. This Act shall not apply to juristic acts or contracts entered into prior to the date on which this Act comes into force.

Section 13. In legal proceedings under this Act, the Court may, upon application by a contractual party or when the Court deems it appropriate, request qualified persons or experts to give opinions to assist in its trial and adjudication.

Section 14. The qualified persons or experts requested by the Court to give opinions shall be entitled to such stipend, travel allowance and accommodation allowance as prescribed by the Rule issued by the Ministry of Justice with the approval of the Ministry of Finance.

Section 15. The Ministry of Justice shall have charge and control of the execution of this Act and shall have the power to issue Rules for the execution of this Act.

Countersigned by:

General Chavalit Yongchaiyudh
Prime Minister

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