

Standard Contracts Law, 1982

Chapter A: Basic Provisions

Purpose

1. The purpose of this law is to protect customers against unduly disadvantageous conditions of standard contracts.

Definitions

2. In this law- "standard contract" -the text of a contract, all or some of the conditions of which were determined in advance by one party, in order to serve as conditions of many contracts between him and persons undefined as to number or identity;

"condition" -a stipulation in a standard contract, including a condition referred to therein, as well as any stipulation which is part of the engagement, but does not include a stipulation specially agreed upon by a supplier and a customer for the purposes of a particular contract;

"supplier" -a person who proposes that an engagement with him will be in accordance with a standard contract, irrespective of whether he is the giver or recipient of anything;

"customer" -a person to whom a supplier proposes that an engagement between them be in accordance with a standard contract, irrespective of whether he is the recipient or provider of anything;

"Tribunal" -the Standard Contracts Tribunal established under this law.

Unduly disadvantageous condition and its annulment

3. A court and the Tribunal will, under the provisions of this law, annul or change any condition of a standard contract which, having regard to the totality of the contract's conditions and to other circumstances, involves an undue disadvantage to customers or an unfair advantage for the supplier, which is likely to lead to the customers' deprivation (any such condition hereinafter: unduly disadvantageous condition).

Presumptions

4 .The following conditions will be presumed to be unduly disadvantageous:

(a) a condition which relieves the supplier, fully or partly, of any responsibility which he would have to bear under law, if not for that condition, or which restricts the responsibility he would have to bear by virtue of that contract, if not for that condition;

(b) a condition which confers on the supplier an unreasonable right to rescind or to suspend or to defer performance of the contract, or to alter any material obligation imposed on him by the contract;

(c) a condition which confers on the supplier the right to transfer his responsibility to a third party;

(d) a condition which confers on the supplier the right to alter unilaterally, after the contract has been made, a price or any other material obligation imposed on the customer, unless the alteration arises out of factors over which the supplier has no control;

- (e) a condition which requires the customer unreasonably to resort to the supplier or to some other person, or which otherwise limits the customer's freedom to enter or not to enter into an engagement with another person;
- (f) a condition which denies or limits a right or remedy available to the customer under law, or which unreasonably restricts a right or remedy available to him by virtue of the contract, or which makes any such right or remedy conditional on giving notice in unreasonable form or within an unreasonable time or on any other unreasonable requirement;
- (g) a condition which imposes the onus of proof on a person who would not have to bear it, if not for that condition;
- (h) a condition which, with the exception of being part of a customary arbitration agreement, denies or limits the customer's right to make certain pleas before judicial authorities or to take any legal proceeding;
- (i) a condition which stipulates the Law regarding place of jurisdiction or confers on the supplier exclusive right to choose the place of jurisdiction or the place of arbitration for the settlement of a dispute unilaterally;
- (j) a condition which stipulates referral of a dispute to arbitration, when the supplier has greater influence than the customer on the designation of arbitrators or of the place of arbitration.

Limitation of right to apply to judicial authorities

5. A condition in a standard contract, which denies or limits the customer's right to apply to judicial authorities, will be void.

Chapter B: Standard Contracts Tribunal

The Tribunal and its members

- 6. (a) A Standard Contracts Tribunal is hereby established.
- (b) The number of the Tribunal members will not exceed twelve.
- (c) The president and deputy president of the Tribunal will be judges of a district court, appointed by the Minister of Justice in consultation with the President of the Supreme Court.
- (d) The other members of the Tribunal will be appointed by the Minister of Justice and will include at least two representatives of consumer organizations. The number of members who are state employees will not exceed one third of the number of members appointed by the Minister under this subsection.
- (e) The period of tenure of members of the Tribunal will be three years.
- (f) Notice of the members' appointment will be published in Reshumot (The Official Gazette).

Bench of the Tribunal

7. (a) The Tribunal will hear cases by a bench of three, but the president or deputy president of the Tribunal may, before a hearing of a particular case begins, direct it to be heard by a larger number of the members.

(b) The president, or if he is unable to do so, the deputy president, of the Tribunal will select the bench thereof. Each bench will consist of the president or the deputy president of the Tribunal and other members, at least half of whom are not state employees and one of whom is a representative of a consumer organization.

Conflict of interest

8. A person whose other activities might create a conflict of interest with his function as member of a bench of the Tribunal in a particular proceeding, or who has a personal interest in any proceeding, will not be a member of the bench in that proceeding.

Evidence and procedure

9. (a) The Tribunal will not be bound by the rules of evidence, except for rules that relate to the immunity of witnesses or to privileged evidence under chapter three of the Evidence Ordinance (New Version) 1971.

(b) For the purpose of summoning witnesses and the taking of evidence, the president and the deputy president of the Tribunal will have the powers of the chairman of a commission of inquiry under sections 9 to 11 of the Commissions of Inquiry Law 1968.

(c) The Tribunal will apply rules of procedure made by the Minister of Justice; in the absence of such rules, it will proceed in the manner deemed by it to be the most conducive to a just and speedy decision.

Appeal

10. A party who considers himself aggrieved by a decision of the Tribunal may appeal against it to the Supreme Court within 45 days of the day on which he became aware of it.

Register of decisions and publication

11. (a) The Tribunal will keep a register of decisions, which will be open to inspection by the public.

(b) When the Tribunal annuls or changes an unduly disadvantageous condition, it will publish its decision or an abstract thereof in at least two daily newspapers or in any other manner prescribed by regulations. Other decisions may be published by the Tribunal in whatever manner it deems appropriate to the public interest.

Chapter C: Approval of a Standard Contract

Applying for approval of a standard contract

12. (a) A supplier may apply to the Tribunal to approve a standard contract which he concludes or intends to conclude with customers, and to certify that it contains no unduly disadvantageous condition.

(b) The respondents to an application for approval will be the Attorney General or his representative, persons designated as respondents by regulations and any person the Tribunal sees fit to summon as a respondent.

(c) When the state files an application under subsection (a) and the Tribunal is of the opinion that the respondents under subsection (a) are not to be deemed sufficient, the Tribunal may appoint an advocate who is not a state employee to appear and plead before it as a respondent, and he may appeal against its decision, as provided in section 10. His remuneration and expenses, as set by the Tribunal, will be paid by the state treasury.

Approval of a contract

13. The Tribunal may approve a standard contract, or it may refuse to approve it because of an unduly disadvantageous condition, which it will specify. A condition found unduly disadvantageous by the Tribunal will be deemed to have been annulled by it.

Validity of approval

14 .(a) The period of validity of the approval of a standard contract will be five years from the date of the approval, or a shorter period prescribed by the Tribunal.

(b) During the period of validity of an approval the Tribunal will not hear a plea that the standard contract contains an unduly disadvantageous condition, and a court will not hear such a plea in respect of a contract made in accordance with that standard contract, even if that contract was made before the approval.

(c) Notwithstanding the provisions of subsection (b), the Tribunal may, on application by the Attorney General, annul a condition of an approved standard contract even during the period of validity of the approval, if it finds that special reasons justify the annulment.

Indication of an approval

15. When the Tribunal has approved a standard contract, the supplier may indicate that fact on the face of the contracts made by him in accordance therewith; if he does so, he will also indicate the expiration date of the approval.

Chapter D: Annulment of Unduly Disadvantageous Condition

Application to the Tribunal for an annulment of an unduly disadvantageous Condition

16 .(a) The Attorney General or his representative, the Commissioner of Consumer Protection and Fair Trade under the Consumer Protection Law 1981, any customers' organization and public authority designated by regulations, and a customers' organization approved by the Minister of Justice for a particular matter may apply to the Tribunal for the annulment of an unduly disadvantageous condition of a standard contract.

(b) The Minister of Justice may prescribe conditions for the filing of applications with the Tribunal by a customers' organization or public authority specified in subsection (a).

(c) The respondent to the application will be the supplier who

concludes or intends to conclude a standard contract; moreover, a representative organization of suppliers or some other agency concerned with the matter may, with an approval of the Tribunal, join the case as respondent.

Annulment or change of a condition by the Tribunal

17. When the Tribunal finds that a condition is unduly disadvantageous, it will annul it, or it will change it to the extent necessary in order to eliminate the undue disadvantage involved.

Effect of an annulment or a change by the Tribunal

18 .(a) A condition annulled by the Tribunal will be deemed void in any contract concluded in accordance with the standard contract concerned after the Tribunal's decision; a condition changed by the Tribunal will apply, in any contract as aforesaid, as so changed.

(b) The Tribunal may make the annulment or change also applicable to contracts concluded before the date of its decision and not yet fully performed, and it may attach conditions to such application, but the annulment or change will not apply to any part of the contract performed before the date of the decision.

An annulment or a change of conditions by Court

19 .(a) When, in a proceeding between a supplier and a customer, a Court finds that a condition is unduly disadvantageous, it will annul it in the contract between them or change it to the extent necessary in order to eliminate the undue disadvantage.

(b) In exercising its power under subsection (b), the Court will take the totality of the contract's conditions into account, as well as the special circumstances of the matter before it.

Notice of plea

20. When a plea is made in any Court, that a condition of a contract concluded in accordance with a standard contract is unduly disadvantageous, the Court will give notice of that plea to the Attorney General.

Concurrent proceedings

21 .(a) A proceeding before the Tribunal, concerning a standard contract on which a decision has not yet been given, will not derogate from the power of a Court to consider the plea that a condition in a contract concluded in accordance with a standard contract is unduly disadvantageous.

(b) A proceeding in a Court, concerning a plea that a condition in a contract concluded in accordance with a standard contract is unduly disadvantageous, will not prevent the Tribunal from considering that standard contract or any of its conditions; however, the Tribunal may, if it deems it right under the circumstances of the case before it, postpone the proceeding before it until judgment has been given by the Court.

Chapter E: Miscellaneous Provisions

Status of the State

22. For purposes of this Law, the State will be treated like any other person.

Restrictions on applicability

23 .The provisions of this law will not apply to:

- (a) a condition that determines the monetary consideration to be paid by the customer;
- (b) a condition that conforms with conditions laid down or approved by an enactment;
- (c) a condition that conforms to conditions laid down by an international agreement to which Israel is a party;
- (d) a collective agreement under the Collective Agreements Law 1957, whether it has been submitted for registration under that Law or not, including another collective agreement, provided it was made in writing and prescribes wage rates.

Saving of laws

24. The provisions of this Law will not derogate from the provisions of any Law, under which a contract or a condition of a contract may be void or voidable, and it will not bar a plea against a contract of a condition in a contract.

Implementation and regulations

25 .The Minister of Justice is charged with the implementation of this Law and he may make regulations for its implementation, including regulation on:

- (a) procedure in the Tribunal, the extension of times for the filing of appeals, and the continuity of proceedings;
- (b) people or organizations who may plead in favor of a party or be respondents before the Tribunal;
- (c) ways of appointing an advocate, when the State seeks approval of a standard contract;
- (d) the payment of expenses and of loss of working time allowances to witnesses in proceedings before the Tribunal;
- (e) the form of the indication said in section 15, on the face of a contract;
- (f) imposing on a supplier the obligation to furnish to the Attorney General or to the Commissioner of Consumer Protection and Fair Trade, upon his request, a copy of a standard contract which he has concluded or intends to conclude.

Repeal

26. The Standard Contract Law 1964 (hereinafter: The Previous Law) is hereby repealed.

Effect, application and transitional provisions

27 .(a) This Law will go into effect six months from the date of its publication in Reshumot (the Official Gazette).

(b) The Previous Law will apply to contracts concluded before this Law came into effect; for purposes of application, renewal of a contract will be deemed its conclusion.

(c) Where the Restrictive Trade Practices Board began hearings under the Previous Law before this Law came into effect, it will complete the hearing under the previous Law, even after this Law came into effect.

(d) The approval of a standard contract by the Restrictive Trade Practices Board will be in effect until the end of the period for which it was given.

(e) Notwithstanding the provisions of subsection (b), a decision of the Tribunal under section 18(b) will also apply to a contract concluded before this Law went into effect.

Menachem Begin- Prime Minister

Moshe Nissim- Minister of Justice

Yitzhak Navon- President of the State of Israel