

Consumer Protection Law in Thailand with regard to Contracts*

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Introduction

The provisions on juristic acts, contracts and obligations in the Thai legislation are fundamentally stipulated in Books I and II of the Civil and Commercial Code, which were promulgated in B.E. 2468. Since their entry into force, there has been solely one minor amendment in B.E. 2535, in some wordings in Book I on Juristic Acts. The rationale behind the consistency in the principles enshrined in these Books of the Civil and Commercial Code resides undoubtedly in the fact that, from the logical point of view, the “Cause to Effect” principle with regard to juristic acts and contracts is so justifiable that it is hardly conceivable to opt for any other regime.

As the matter of fact, the Thai law on contracts as stipulated in the Civil and Commercial Code is essentially based on the principles called “Autonomy of Will” and “Freedom of Contract”, whereby the will of the contracting parties shall be legally recognized and enforced. This is because a contract results normally from the free will of the contracting parties, thus the parties are, in principle, free to decide what they really aim at. Consequently, the obligations provided by the contract are presumed to be fair for both parties. In the wake of this consideration, these principles not only protect the parties but also constitute a guarantee for the justice in favor of all contracting parties.

However, at present, the application of these principles causes certain difficulties in practice due to the fact that there are considerable changes in the conclusion of a contract both in the form of the contract itself, and in the situation of the contracting parties. As the matter of fact, the contracts in various businesses are nowadays normally concluded in a standard form. These so-called “Standard Form

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Contracts” or “Adhesion Contracts” are characterized by a unilateral inclusion of the clauses in advance by the contracting party, who is usually the business entrepreneur having an economic and technical bargaining power much superior to that of the other party. In such a case, the equality between the contracting parties, which is an indispensable element for fair terms in the contract, naturally no longer exists and the contract does not result from the equal volition of all parties. Hence, an application *stricto SENSU* of the fundamental principles of the law of contract would certainly lead to an unfair situation to the detriment of the inferior party, which often times, is the consumer.

For this reason, the doctrine is quasi-unanimous as to the necessity for particular protective measures in favor of the consumer or the disadvantaged party. These measures shall be taken with the view to ensuring the fairness of the contract generating the rights and obligations for the contracting parties. Consequently, as a remedial measure, Thailand adopted respectively the laws on the unfair contract terms. or draconian clauses, in B.E. 2540 and 2541 as follows:

1. Unfair Contract Terms Act, B.E. 2540;
2. Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541).

The objectives of these 2 Acts are identical, *VIZ* the special and additional protection of the consumer with regard to the contracts generating the unfair clauses imposed by the advantageous party, who usually is entrepreneur. Nonetheless, the mechanisms for the protection in these 2 Acts are singularly different. While the Unfair Contract Terms Act, B.E. 2540 , aims at the determination of the characteristics and legal consequences of unfair contract terms, which would become beneficial to the consumer in the case where the conflict is brought before the court of law, the Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541), which modified and added, for the first time, specific provisions on the consumer protection in the field of contracts, creates one governmental organ, which is not judicial but rather administrative in nature, the function of which, on the one hand, is to detect and identify unfair contract terms, practically concluded in the actual course of various businesses and, on the other hand, is to denounce and prohibit the relevant practice of unfair contract clauses.

Interestingly , it should be noted that, instead of adopting the *a posteriori* consumer protection when there is effectively a litigation before the court as in the system

of Unfair Contract Terms Act, B.E. 2540, the legislators of the Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541) opted for the system of *a priori* protection by instituting a specific organ endowed with the regulatory power so as to restrict or eradicate the unfair contractual practice before such an unfair contractual practice becomes the root cause of conflicts between the contracting parties.

It is, therefore, necessary for a thorough comprehension of the evolution of the consumer protection legal mechanism in this domain in the practice of Thailand, to respectively focus our analysis on three main areas as follows:

- legal concept and basis;
- responsible organ;
- implementation of the Act and legal consequences, arising from its violation.

1. General Principles for the Consumer Protection with regard to Unfair Contract Terms

The right of the consumer to be protected is announced *expressis verbis* in the Article 57 of the current Thai Constitution, B.E. 2540. Moreover, the Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541) precisely indicates the rights of the consumer, which can be categorized as follows:

- (1) The right to be informed of the appropriate and correct description and quality of the goods or services concerned;
- (2) The right to freely choose or seek the goods or service;
- (3) The right to a safe use of goods or service;
- (4) The right to fairness in the conclusion of a contract;
- (5) The right to be heard by the appropriate competent authorities as well as the right to be compensated in case where there exist damages resulting from a violation of consumer's rights.

The right to fairness in the conclusion of a contract was recently included in the 2nd revision of the Consumer Protection Act , B.E. 2541, because the Office of the Consumer Protection Board has received a number of complaints from consumers, who regarded various contractual clauses generally imposed by entrepreneurs, as unfair, e.g., those in contracts relating to real estates (regarding land, houses and condominium, etc.);

the ones in vehicle hire-purchase contracts as well as those in loan agreements and on credit cards, etc. As the matter of fact, in these types of contracts, the entrepreneurs usually insert the clauses which are indeed detrimental to the consumers, especially, on the one hand, by the inclusion of an exemption or limitation of liability clause, and, on the other hand, by the imposition of duties or responsibility incumbent upon the consumers on non-reciprocal basis. The examples of such unfair clauses, which are normally found are the following: there is no clear and precise statement as to the date of completion of condominium construction in the condominium purchase contract; the exemption of all liabilities against hire-purchase firms in the case where there exists any defect in hire-purchased goods; the presumption of credit card consumer's responsibilities in all cases etc.

Having recognized the unfair nature of these above-mentioned clauses, the doctrine prescribed, in B.E. 2541, the process for the amendment of the Consumer Protection Act of B.E. 2522, which resulted in the specific right of the consumer to be protected in contractual matters.

The supervision of governmental authorities in connection with the conclusion of contracts between private persons in this case, does not constitute, however, a negation of the principle of "Freedom of Will", given that this principle is applicable only when all parties enter freely into a contract, which, in real term, is obviously not our case. Actually, we are in the presence of a situation of clear unequal contractual terms, where one contracting party is much more superior to the other, either on the technical or economic standpoint. The State intervention in favor of the disadvantageous party in this case is thus indispensable.

Actually there are 2 basic principles to be used as guidelines for the determination of the unfair nature of contractual terms which will be examined respectively as follows.

1.1 The Principle on Equal Protection as or Not Less Favorable Consumer Protection than That Stipulated by the civil and Commercial Code

In principle, it is generally accepted that the parties to the contract may legally conclude a contract differently from what is stipulated by the relevant law, provided that the rules of law in question be *jus dispositivum* but not *jus cogens*. In effect, the

general principle of juristic acts and contracts is based on the assumption that each party is free and negotiate on equal footing in order to create reciprocal rights and duties for each other. Even those being different from what is formally stated by law are also valid, because a contract is a law for the contracting parties.

However, the business practice relating to the conclusion of Standard Form Contract or Adhesion Contract which gives rise to a unilateral imposition of unfair terms of contract to the detriment of the consumers, leads to unjust circumstances, due to the argument advanced by the advantageous party that according to the Article 151 of CCC what is not expressly prohibited is legally permitted.

With the view to resolving this iniquity, the basic principle to protect the consumer's rights and ensure the fairness in the conclusion of the contract should be the rectification of the rights and obligations of the parties, in such a manner that there exists an effective balance of interests between the parties as prescribed by the Civil and Commercial Code (CCC) or at least, not less favorable than that stated by the CCC. For example, the contractual terms limiting the liabilities of the entrepreneur or exempting him from all liabilities shall be valid only in the case of unintentional prejudice or non-gross negligence (Article 373 of the CCC).

The other example is related to the clause which entitles the entrepreneur to unilaterally terminate a contract only when the debtor does not perform the essential obligation in that contract (Articles 387, 388 and 389 of CCC).

Nevertheless, the application of this principle on equal protection as or not less favorable than that of the law in general and especially of the CCC in particular, may encounter a serious problem on account of the fact that many novel business contracts such as a contract of factoring and a contract on hire-purchase financing or leasing are not regulated by any specific legislation. In consequence, the determination of a suitable protection in this situation would not be an easy task, owing to the lack of any point of reference. Moreover, the application of general principles of the law of obligations in Book II of CCC would not always be appropriate and can not cope with the particularities of the rights and duties stemming from these new types of contracts. Therefore, this problem should be considered on the case by case basis, and the competent authority

should have recourse to the principle of good faith as the legal basis for the determination of the appropriate reciprocal obligations of the parties to a contract.

1.2 The Principle on More Favorable Protection than that Stipulated by the Civil and Commercial Code

Another principle for the consumer protection is to adopt more favorable protection than the treatment formally indicated by the CCC in favor of a consumer because of his inferiority compared to the other party. But the granting of a special protection should be conditional on the proportion of effective disadvantages, which may vary from one circumstance to another. In effect, consumers in developing countries may face with more considerable disadvantages than those in developed countries, where there exists a better system of protection. Furthermore, a consumer of hi-tech goods or service of high value is naturally exposed to more disadvantages than the one of ordinary goods or service. Besides, the consumer who is obliged to enter into an agreement by way of automatic machine or computer should as well be better protected than normal consumers.

Nowadays, Thailand adopts this principle of protection in some specific provisions of the Unfair Contract Terms Act, B.E. 2540, which, entitle the consumer to a more favorable protection than that of the CCC. For example, Articles 5 and 6 of this Act indicate specifically the categories of contracts under their scope of application which are the followings:

The agreement limiting the right to enter the profession and the agreement limiting the freedom to make a transaction relating to the running of business or the entering into a profession (Article 5);

The agreement which exempts the professional or entrepreneur from or limits their liabilities for a defect or eviction of goods delivered to the consumer according to the contract concluded between the consumer and the professional or entrepreneur (Article 6).

However, the provisions of the Unfair Contract Terms Act, B.E. 2540 do not specify the businesses falling under the scope of its application. Consequently, the

problem of interpretation in the application of its provisions may be undoubtedly expected. In addition to this complication, it should be noted at this juncture that a special protection shall be granted only in exceptional cases, because the intervention of the competent authority constitutes an exception but not at all a principle in this context.

2. The Organ in charge of Consumer Protection with regard to Contracts: Committee on Contracts for the Protection of Consumer's Rights and Its Competence

Even though in Thailand, there are specific provisions in regard of the consumer protection, contained namely in the Unfair Contract Terms Act, B.E. 2540, but the scope of protection provided by the relevant legislation is, to a certain extent, limited. In effect, such a protection shall be granted only when there is a dispute between a professional or business entrepreneur and a consumer on the unfair nature of the contractual clauses in question. This protection which is essentially of a judicial nature, constitutes then, a remedy *a posteriori* for the iniquity arising from the application of unfair contract terms. Moreover, this judicial system of protection generally takes a lot of time and a court's decision is binding solely on the parties to the dispute. In other words, the ruling in a specific case can not be automatically applied in favor of other consumers dealing with the same contractual clauses.

For these reasons, a new approach for the *a priori* protection was adopted in the Consumer Protection Act, B.E. 2522 (2nd revision, B.E. 2541). As the matter of fact, with the view to guaranteeing the fairness for the parties in the conclusion of a contract, some clauses included in specific types of contracts shall be examined and supervised by a governmental agency called " the Committee on Contracts ", whose members are nominated by the Consumer Protection Board. The number of the Committee's members shall not be less than 7 and shall not exceed 13 persons. Their mandate is fixed at 2 years. At present, the Committee is composed of representatives from various governmental and private agencies namely: the Council of State; the Ministry of Justice; the Office of Attorney General; the Bar Association; academic institutions; the Association of Lawyers; businessmen specializing in banking, finance, real estate and private consumer organisms. The Committee started working effectively on the 21st of April B.E. 2541.

As to the competence of the Committee on Contracts, it is specified *expressis verbis* in detail in Article 35*bis* on the consumer protection with regard to contracts which contains:

- the provisions concerning the criteria for the determination of businesses to be subjected to its control;
- the criteria for the determination of the characteristics of fair contractual terms used in the businesses under its control and
- prior measures to be taken before a formal declaration on particular businesses under its control and on the characteristics of unfair contract terms.

2.1 The Criteria for the Determination of the Characteristics of Businesses to be Subjected to the Control of the Committee

The Committee is in charge of an identification of businesses which have a potential to cause the problems to a consumer by the inclusion of unfair terms in the relevant business contracts which, in this case, justifies its supervision. In determining which business is to be subjected to its control, the Committee shall take into account the following criteria:

(1) the business concerning a sale of goods or a procurement of service, in which case it is explicitly required by the law or ordinary usage that the contract to be concluded shall be done in written form (Article 35 *bis* of the Consumer Protection Act)¹

(2) The business in which, there exists widespread use of standard form contract.

(3) The business in which the entrepreneur disposes of a superior bargaining power *vis-à-vis* the consumer, considering their economic situations; understandings and skill.

¹ According to Article 3 of the Consumer Protection Act:

“sale” means any lease, hire purchase or procurement in exchange for money or other benefits, including the offer or invitation to this end;

“goods” means a thing manufactured or destined to be sold;

“service” means performing work, granting any right or permitting anyone else to benefit or giving benefit from the property or any activities in return for the money or other benefits except a hire of work under the labor law.

This first criterion is mandatory in all cases but the others below are fixed in the Royal Decree of B.E. 2542 on the determination of the characteristics and the process in the determination of business in which the relevant contract is to be subjected under the control of the Committee and, are to be examined on a case by case basis and not accumulative.

Actually the Committee on Contracts decided that the following businesses are under its control:

- credit card , as publicly announced in the Royal Gazette of November, 3, B.E. 2542, which, has entered into force since January, 1, B.E. 2543;
- vehicle hire-purchase, as announced in the Royal Gazette of May, 19, B.E. 2543, which has entered into force since September, 1, B.E.2543;
- sale of condominium units, as announced in the Royal Gazette of May, 28, B.E.2543, which has entered into force since September,15 B.E.2543.

Furthermore, the Committee is in the process of examining other businesses such as the sale of real estate, loan by financial institutions, mobile phone services, etc.

2.2 The Criteria for the Determination of the Characteristics of Fair Contract Terms Used in the Business Under the Control of the Committee

The characteristics of fair contract terms in the business under the control of the Committee are indicated as follows:

- (1) the use of indispensable clause without which the consumer party would be unduly disadvantageous *vis-à-vis* a business entrepreneur;
- (2) the non-use of unfair contract terms to the detriment of the consumer;
- (3) the clear declaration of rights and duties on the part of business entrepreneur as well as the giving of necessary and due information about goods or services concerned;
- (4) the non-limitation or the absence of any exemption from liabilities incumbent upon the entrepreneur with regard to the essential obligations without any plausible justifications;
- (5) the taking into account of good faith in the running of business;
- (6) the indication of the remedy within due time, for damages arising out of a breach of contract;

(7) the procurement of a clear evidence as to the intention of the entrepreneur which is regarded as essential for the consumer protection, such as an appropriate size or color of letters in a contract, etc.;

(8) the fact that these criteria do not constitute further undue burdens at the dispense of the entrepreneur.

These above-mentioned legal criteria , which are stated in the same Royal Decree of B.E. 2542, are certainly judicious guidelines for the Committee which is empowered to take a decision as to whether the use of such an such contractual term is legally allowed.

Besides, apart from its power to protect the consumer's rights by supervising the conclusion of the contract involving a specific business, the Committee is also competent to require a detailed list in the receipt of certain business. As the matter of fact, a consumer usually faces with the difficult situation in which there is no issuance of a proof of payment or no detailed evidence showing the performance of his obligation is delivered. In the absence of this convincing evidence, it would, therefore, be very hard for him to institute any claim against the entrepreneur. Though it is expressly required by Articles 326 and 327 of the CCC that the receipt of the payment shall be delivered to the party performing his obligation, but in real practice , this requirement is not much respected. Consequently , the Committee is empowered to supervise the detailed and necessary information in the receipt of payment in some specific businesses, for example, according to the decision of the Committee, officially announced in the Royal Decree of 13 December B.E. 2542, which entered into force on 15 February B.E. 2543, the sale of cooking gas constitutes the business which is subjected to its control, cooking gas vendor is therefore required to issue to consumer a receipt for tank deposit and to make repayment in full when the gas tank is returned. Moreover, its control covers the quality of the gas tank in order to ensure the gas consumer's safety.

2.2 Prior Measures to be taken before the Taking of Decisions on the Businesses under the Control of the Committee and on the Characteristics of Fair Contract Terms

On account of the fact that the control of certain businesses by the Committee, which involves the use of certain fair terms and the prohibition of some contractual terms, would inevitably affect a number of businessmen concerned,

consequently, to make this legislation comprehensive to the public, an undertaking of a collective study on the impacts of such a control is virtually indispensable. Furthermore, with the view to ensuring the efficient implementation of this legislation, it is imperative that before a decision of the Committee on the control of a specific business is taken, prior consultation with both the consumers and entrepreneurs, who would potentially be seriously affected by its decision, need to be organized, either in the form of seminars, conferences or public hearings. However, in the process of such a consultation there need to be a participation of various governmental agencies as well as of the organs in charge of consumer protection and the ones directly involved in such business.

3. Implementation of the Consumer Protection Act, B.E. 2522, by the Committee on Contracts: Case Study of Credit Cards Business

By virtue of the provisions of the Consumer Protection Act, B.E. 2522 (2nd revision B.E. 2541) , the Committee recently gave a ruling that credit cards business is to be subjected to its control and prescribed certain fair contractual terms in relevant business as well as the sanction to be imposed in case of a violation of its decision. These measures and issues shall be analyzed respectively before the presentation of some concluding remarks on the legal status of such measures.

3.1 The Ruling of the Committee on the Subjection of Credit Cards Business to Its Control

Since its creation in April B.E. 2541, the Committee has considered a number of businesses and relevant contracts, which are the origin of complaints on unfairness submitted by the consumers. The businesses under its consideration concern principally credit cards, loans and real estates, as well as vehicles hire - purchase. The first business submitted for its consideration, that is effectively subjected to its control, is related to credit cards, following the announcement of its decision in October 26, B.E. 2542, which entered into force in January 1, B.E. 2543. The rationale and content of this decision, as an example of the implementation of this legislation are as follows:

(A) Rationale of the Committee's Decision on the Control over Credit Cards Business

As the matter of fact , the use of credit cards is unarguably very current and popular in Thailand because, on the one hand, it offers several facilities to the

clientele *e.g.*, the consumer needs not pay its debts in cash, and, on the other hand, it grants some credits to a consumer without requiring complicated guarantee, as well as many tempting offers resulting from a considerable competition in this business. Moreover, this popularity is also due to the confidence of the public on the responsible financial institutions, which are reputed as being firm and liable.

Nonetheless , of all the complaints filed with the Office of Consumer Protection Board, credit cards business causes one of the most difficult complications for the consumers, *viz*, the lack of comprehension on the part of the consumer pertaining to the terms of the contract when concluding it, and the insufficiency of information on his obligations imposed by the financial entrepreneur. This insufficiency is evident by the fact that the clauses contained in the contract are usually too complex and sometimes even hardly comprehensible. The terms used are too vague and ambiguous, especially those relating to the liabilities incumbent on the consumer. Moreover, the size of the letters used in the contract is always minuscule and inappropriate to read. Last but not least, the content of the contract is not suitable for the social and economic situation in Thailand, because the contract is practically taken and translated from foreign countries' contract without any adaptation to take into account the particularities of Thai practice. These considerations are very much present in the taking of decision by the Committee on this matter².

(B) The Content of Contract Under Its Control

The decision of the Committee, as promulgated in the Royal Gazette cited, requires that some clauses be included in the credit cards contract and it prohibits the use of certain specific terms regarded as unfair. The mandatory clauses to be used by the business entrepreneur which were totally absent in real practice before this decision are the following:

(1) the clause related to prior notice to be given within legal prescribed delay, to a consumer, who in this case is the card-holder, on the modification of conditions governing the use of the card in the contract;

(2) the clause indicating , in favor of the entrepreneur, precise causes for the termination of the contract as well as the ones for the suspension and revocation of the card ;

² *Cf.* Royal Gazette, General Declaration, Book 116, Special Section no. 89 (d), of November 3, B.E. 2542.

(3) the clause granting the right to a consumer to suspend or cancel at any time, the use of his card without being liable for all the obligations incurred after the receipt of his notice, except for the case of the use of credit card subsequent to that notice by that card-holder himself;

(4) the clause mentioning an exact timeframe and clear process in the sending of the statement of account for the card transactions and the clause enabling the consumer to protest that statement within due period of time;

(5) the clause specifying the obligations of the entrepreneur to suspend the collection of payment or if the payment is already made, to refund immediately it to the consumer in the case where this latter refuses to pay the vendor or service provider for the goods or services ordered by notifying the card number, on the ground that, either the goods or services are not duly delivered or provided or they are obviously defectives, or are not effectively ordered by him.

In regard of the prohibited unfair clauses, they are categorized as follows:

(1) the clause that the entrepreneur imposes to the consumer any obligations without prior notice in writing;

(2) the clause limiting or exempting the entrepreneur from the liabilities deriving from his breach of contract;

(3) the clause specifying the liability of the consumer for all expenses arising from the use of credit cards by other persons than card-holder;

(4) the clause enabling the entrepreneur to cancel or revoke the credit card from a card-holder at any time, without prior notice or justification;

(5) the clause permitting the entrepreneur to make payments to the vendor of goods or service provider for the goods or services ordered by notifying the card number, without giving any possibility for the consumer to reject his obligations.

These mandatory and prohibited clauses in the credit card contract illustrate the concerns of the competent authority to rectify the unfair practice against the consumer. However, taking into account the inferiority in the position of the consumer, which justifies the precautionary measure as well as special obligations on the part of the entrepreneur, the Committee did focus exclusively on the terms considered unfairly disadvantageous to the consumer.

3.2 Legal Consequences Resulting from the Violation of the Decision of the Committee

The Decision of the Committee has binding effects. The non-performance on the part of the entrepreneur entails certain legal consequences *VIS-à-VIS* the contract in question, the entrepreneur and the consumer that shall be respectively studied.

(A) Legal Consequences *VIS-à-VIS* the Contract in Case of Non-Compliance with the Decision

Articles 35 *tertio* and *quatro* envisage two situations of the non-compliance with the Decision of the Committee, which result in the following legal consequences;

In case of the non-use or incorrect use of mandatory terms, the contract in question shall be deemed to have included the terms or conditions required by the Decision.

In case of the use of prohibited term, the contract in question shall be deemed to have contained no such a term. For example, if in the contract on the use of credit card between a consumer and bank A, it is stipulated that “ bank A is entitled to revoke the credit card from a card-holder and to cancel the card, at any time, without prior notice or justification”, the legal consequences arising out of this term are as follows:

Primo, this stipulation is evidently incompatible with Article 4(4) of the Decision of the Committee on this matter.

The next consequence resulting from the use of prohibited term by virtue of Article 35 *quatro* of the Consumer Protection Act, is that the contract shall be deemed to have contained no such a term. Therefore, bank A is neither entitled to cancel the card nor to revoke the card from the cardholder at any time without prior notice or justification.

The other consequence is that, even it is stipulated otherwise, the contract shall be deemed to have included the clause, prescribed by Article 3(2) of the Committee's Decision on the clear and highlighted indication of the causes justifying the right of bank A to suspend or terminate the contract in case of the breach of contract on the part of the card-holder.

As to the last consequence, owing to the absence of any mention relating to the causes justifying the right of bank A to terminate or suspend the contract, this right shall be in accordance with the relevant law which is the CCC.

(B) Legal Consequences *VIS-à-VIS* the Entrepreneur and Consumers

In the event of non-compliance in general and non-use of the required terms in particular , by virtue of Article 57 of the Consumer Protection Act, the entrepreneur concerned shall be condemned to either an imprisonment of not exceeding 1 year, or a pecuniary penalty of up to 100,000 baht, or both. If the entrepreneur is a juridical person, the sanction shall be imposed on its manager or directors of the company or the persons responsible for its undertakings.

All of the consumers concerned in the business subjected to the control of the Committee on contracts shall be protected by its Decisions, even though there is no effective inclusion of the required terms in the contract, because such terms are deemed to have been inclusive therein. Therefore , in the case of non-compliance, the proceedings may be instituted against the liable entrepreneur by either the prejudiced consumer or by virtue of Article 39 of the Consumer Protection Act, by the Consumer Protection Board on behalf of that consumer, or by virtue of Article 40 of the same legislation, by any association whose objective corresponds with the consumer's protection and, which are recognized by the Consumer Protection Board, on that consumer's behalf.

Conclusion

On account of the State's interventionist role in general and a regulatory power of its competent organ with regard to contracts in particular, the Consumer Protection Act, B.E. 2522 (2nd revision B.E. 2541) constitutes, in this respect, a public law, the objective of which is essentially to protect the weak contracting party against unfair business practices in the field of contracts. The discretionary power of the above-mentioned governmental agency to rectify the imbalance interests and positions of the unequal parties demonstrates remarkably the legislative evolution in Thailand in this matter, from the theoretical "free will" contract based principle to the "fair contract" principle, in favor of the consumer. However, in the application of this principle the Committee on Contracts should be cautious and undertake a prior consultation with all parties concerned in order to achieve the objective and efficient implementation of this novel legislation.

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