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General Corporate Commercial

## Consumers to Have Right to Withdraw from Contract During Cooling-Off Period under New Prakas

On 11 April 2022, the Ministry of Commerce ("**MOC**") issued Prakas No. 0113 on Cooling-off Period ("**Prakas**") that sets out the legal framework that offers consumers the unilateral right to withdraw from a contract for the sale of goods or supply of services during the cooling-off period.

The Prakas applies to all distance and door-to-door sales of goods and/or services in Cambodia. Distance sales refers to indirect sale-purchase transactions conducted without the face-to-face presence of the parties where the consumer does not have an opportunity to inspect the goods and/or services. Door-to-door sales refers to sale-purchase transactions where the businessperson sells the goods and/or services at the consumers' location or public places that are not the location of the businessperson.

The Prakas will be implemented within six months after the date of its issuance by the National Commission for Consumer Protection ("**NCCP**") with the Consumer Protection Competition and Fraud Repression Directorate-General ("**CCF**") as its arm.

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

### 1. Right to withdraw during the cooling-off period

Consumers are allowed to unilaterally withdraw from a contract during the cooling-off period without specifying the reason for such withdrawal. Additionally, consumers will not be held responsible for any costs or expenses as a result of the withdrawal, except those stipulated in Articles 19, 20, and 21 of the Prakas.

The cooling-off period for distance sales are:

- (a) seven calendar days for the supply of services, commencing from the date of contract for the sale-purchase of services.
- (b) seven calendar days for the supply of goods, commencing from the date when:
  - The consumer received the goods;
  - The consumer last received the goods for the sale-purchase transaction requiring multiple deliveries per order; or
  - The consumer last received the goods for multiple supply orders.

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The cooling-off period for the door-to-door sales is seven calendar days commencing from the date of the sale-purchase contract at the consumer's location.

### **2. Exceptions to right of withdrawal**

The cooling-off period is not applicable to trial sales pursuant to Article 520 of the Civil Code of Cambodia.

In any event, the cooling-off period is not applicable to the supply of goods in the following circumstances:

- (a) Where the supply prices fluctuate during the cooling-off period on account of financial markets developments which are beyond the control of the businessperson;
- (b) Where the supply goods are produced as a special order by the consumer where the goods would not be otherwise produced without such order;
- (c) Good with short expiry that are for use for a duration not exceeding 30 days;
- (d) Perishable goods that have a shelf life not exceeding 30 days;
- (e) Goods where its package has been torn by the consumer and cannot be returned for sanitary or health reasons;
- (f) Supply of beverages;
- (g) Supply of audio, videos, or computer programs where the package has been torn by the consumer;
- (h) Supply of newspapers, leaflets, or magazines, except for regular sale-purchase contract for that publication;
- (i) Contracts signed at the time of a public auction;
- (j) Supply of digital content (letter) that is not contained in a physical device and which has been in use after obtaining prior consent and written waiver of rights from the consumer;
- (k) All contracts that are worth no more than KHR200,000 (approx. US\$50); and
- (l) Gifts and/or discounted goods.

The cooling-off period is also not applicable to the supply of services in the following circumstances:

- (a) The service is fully provided before the end of the cooling-off period, and prior consent and a written waiver of the withdrawal rights during the cooling-off period has been obtained from the consumer;
- (b) Costs of service fluctuate during the cooling-off period on account of financial markets developments which are beyond the control of the businessperson;
- (c) Urgent maintenance or repair work at the consumer's home and there are specific requests from the consumer to replace accessories;
- (d) Accommodation, freight, car rental, catering, or leisure activities to be provided on a specific date or time;
- (e) All banking services; and
- (f) All contracts that are worth no more than KHR200,000 (approx. US\$50).

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**3. Consequences of withdrawal**

When a consumer exercises his/her right of withdrawal, the businessperson shall return the full sales price to the consumer within seven calendar days from the date of receipt of the returned goods, or from the date of receipt of the written notice of withdrawal from the consumer in the case of supply of services. It is to be noted that the businessperson shall not impose any conditions on the consumer to pay compensation for any damage when the consumer exercises his/her right of withdrawal, except as otherwise provided by the provisions of the Prakas.

Nonetheless, the consumer shall lose the right to withdraw if the goods are seriously damaged or cannot be sold back to the market because the goods have been used previously, or the consumer has failed to comply with the conditions set by the businessperson. In these instances, the consumer shall be responsible for the following expenses:

- Direct costs incurred in returning the goods, except when the goods are not in compliance with the sale-purchase agreement; and
- Any drop in the price of goods caused by damage to the goods by the consumer or non-compliance with the conditions set by the businessperson.

Where services are provided to the consumers, they will bear the costs incurred during their use of the services until the date of the notification of the withdrawal or until the end of a period not exceeding one month from the date specified in the contract to terminate the said services.

**4. Penalties**

Sale-purchase contracts for distance or door-to-door sales that do not stipulate the consumer's right to withdraw during the cooling-off period shall be deemed as an act of non-compliance with consumer information standards and is subject to a provisional fine pursuant to Article 48 of the Law on Consumer Protection. This fine shall not exceed KHR10,000,000 (approx. US\$2,500).

Failure of a businessperson to return the sales price to the consumers within the period prescribed by the Prakas, or requiring further conditions for consumers to pay damages when exercising their right to withdraw shall be deemed as unfair practices. These are subject to provisional fine pursuant to Article 44 of the Law on Consumer Protection, which shall not exceed KHR50,000,000 (approx. US\$12,500).

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

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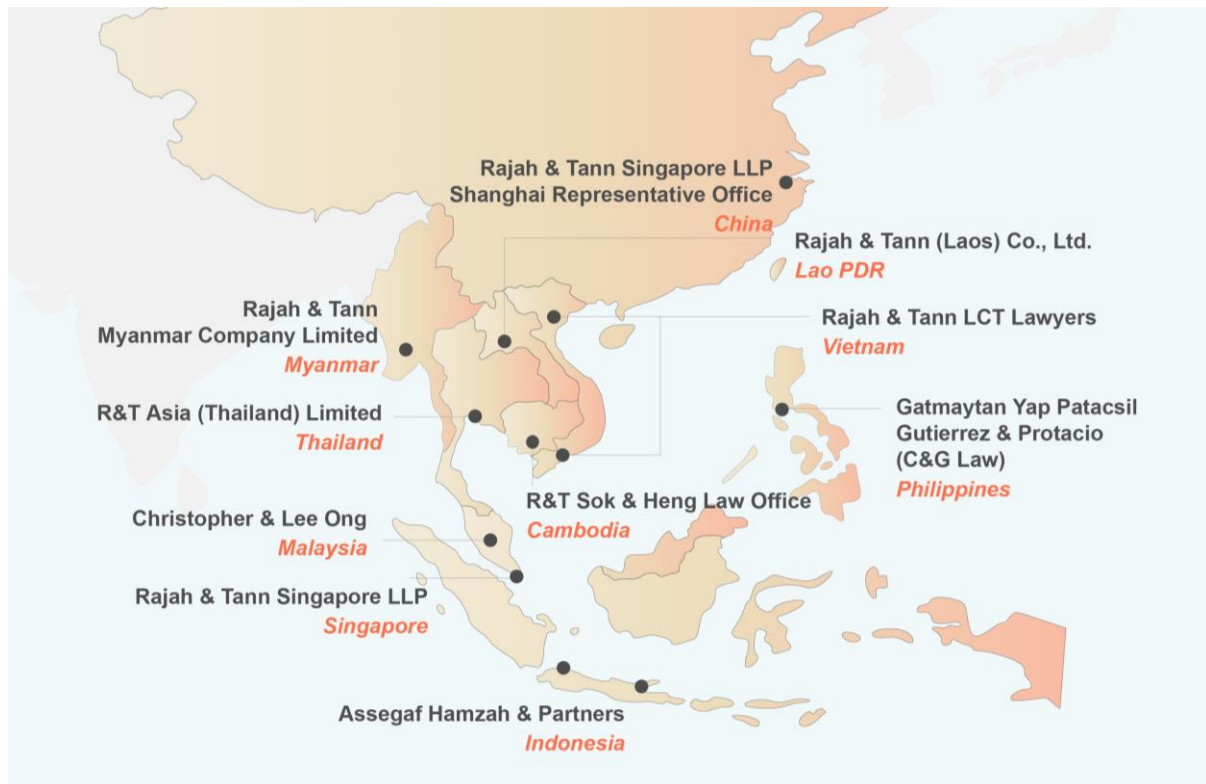
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