

Legal Update

Prakas No. 0113 on Cooling-Off Periods

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On 11 April 2022, the Ministry of Commerce issued Prakas No. 0113 on Cooling-Off Periods (the “**Prakas**”), which shall be implemented 6 months after the effective date of the Prakas. The purpose of the Prakas is to ensure, improve, and promote fair practices in consumer-transactions by providing consumers with a right to unilaterally withdraw from a contract during a cooling-off period. The Prakas applies to any business person (which may be an individual or a legal entity) selling goods or services without face-to-face contact with the consumer (“**Distance**”) or door-to-door (“**D2D**”) in the Kingdom of Cambodia.

The key provisions of the Prakas are as follows:

I. Consumer’s right of withdrawal during the Cooling-Off Period

A consumer (which is defined by reference to the Consumer Protection Law (2019) which, in turn, defines a consumer as a “person receiving goods or services for personal, domestic, or household use” and excludes commercial or industrial use) may unilaterally withdraw from a contract for the sale of goods or services (Distance or D2D) during the cooling-off period by means of written notification to the business person within 7 calendar days in accordance with Article 16 of the Prakas. The consumer is not required to justify the reason(s) for the withdrawal and is not liable for any costs/expenses other than those provided for in Article 19 (*Expenses for returned goods*), Article 20 (*Severely damaged goods*), and Article 21 (*Service charges*) of the Prakas (**see Articles 5 and 7**). The cooling-off period is 7 calendar days, and its commencement date depends on the sales method being:

- a. In the case of Distance sales (**Art.6**):
 - For the supply of a service: the signing date of contract; and
 - For the supply of goods: the date on which the consumer or his/her representative (which is defined to exclude delivery persons) received the goods, or the last delivery of goods that are delivered in more than one batch whether in relation to one purchase order or in relation to a recurring/frequent supply; and
- b. In case of D2D sales (**Art.8**): the date on which the contract is signed at the consumer’s residence.

Any sale-purchase contract (Distance or D2D) which does not state the consumer’s right of withdrawal during the cooling-off period shall be deemed as non-compliant with consumer information standards, and the business person may be subject to a fine pursuant to Article 48 of the Law on Consumer Protection (**see Articles 5 and 7**).

II. Exception of the right to withdraw

The cooling-off period shall not be applicable in the following cases:

1. A sale following trial pursuant to Article 520 of the Cambodian Civil Code (**Art.9**).
2. The supply of goods in the following circumstances (**Art.10**):
 - a. The price of the goods fluctuates following the “financial markets” (this term is not defined) which is out of the business person’s control, and might occur during the cooling-off period;

- b. The goods are only produced as a result of a consumer's order;
 - c. The goods have a short expiry date (less than 30 calendar days from the date of manufacture);
 - d. Perishable goods that have a shelf life of not more than 30 calendar days;
 - e. Goods with packaging that has been torn by the consumer and can not be returned for the reason of sanitary and health protection;
 - f. The supply of beverages;
 - g. The supply of audio or video or a computer program with packaging that has been torn by the consumer after delivery;
 - h. The supply of newspapers, leaflets or magazines, except in the case of subscriptions in relation to the same;
 - i. Goods sold at a public auction;
 - j. The supply of digital content which is not stored on hardware owned by the consumer, and which has been used by the consumer after providing a waiver of rights in relation to the cooling-off period;
 - k. The supply of goods worth KHR 200,000 (approximately US\$50) or less; and
 - l. Gifts and/or discounted goods.
3. The supply of services in the following circumstances (**Art.11**):
- a. The service is fully provided before the end of cooling-off period, and having obtained prior written consent and waiver of rights on the cooling-off period from the consumer;
 - b. The fee for supplying the service fluctuates following the "financial markets" which is out of business person's control, and might occur during the cooling-off period;
 - c. Services that involve maintenance or repair at a consumer's residence, and which have been specifically requested by the consumer;
 - d. Services that relate to accommodation, delivery of goods, vehicle rentals, catering or leisure activities to be provided on a specific date and/or time;
 - e. Any banking services; and
 - f. The supply of services worth KHR 200,000 (approximately US\$50) or less.

III. Obligations of the contracting parties

1. Business Person

A business person is required to:

- a. Provide information and an explanation about a consumer's rights during the cooling-off period, namely (**Art.12**):
 - A withdrawal form or written notification form, and the submission process;
 - Contact details of the business person and the means of communication (which may be electronically or via other applicable means);
 - Information regarding the quality of the returned goods (which must be in a good condition as if unused);
 - Information on delivery fees and/or return fees as provided for in Articles 19 and Article 21 of the Prakas.

If a business person fails to provide the required information, the cooling-off period shall not commence until the date on which such information is provided to the consumer (**Art.13**).

- b. If the consumer withdraws from a contract for the supply of goods/services during the cooling-off period, the business person must provide a full refund (except for the service fees stated in Article 21 of the Prakas) to the consumer within 7 calendar days following the date on which the returned goods or the written notification for withdrawal from the contract is received by the business person. Failure to comply with this obligation shall be deemed to constitute an unfair practice, and may lead to the imposition of a fine in accordance with Article 44 of the Law on Consumer Protection (**Art.14**).
- c. Allow a consumer to exercise his/her right to unitarily withdraw from the contract, without imposing any conditions on the consumer to pay compensation for the business person's loss, save as is otherwise provided for by the Prakas. A violation of this obligation shall be deemed to constitute an

unfair practice, and may lead to the imposition of a fine pursuant to Article 44 of the Law on Consumer Protection (**Art.15**).

2. Consumer

A consumer has the following obligations under the Prakas:

- a. If a consumer wishes to withdraw from a contract during the cooling-off period, the consumer must submit a written notification containing certain information and an explanation for the withdrawal in the form provided by the business person as stated in Article 12 of the Prakas (**Art.16**).
- b. Once a written notification for withdrawal during the cooling-off period is submitted to the business person, the consumer must ensure that there is a proof of submission (**Art.17**).
- c. If a consumer exercises his/her right of withdrawal, he/she must return the goods to the business person or representative of the latter upon the receipt of a full refund, or within 7 calendar days after the date on which the written notification for withdrawal is delivered to the business person (**Art.18**).
- d. When returning goods to a business person, a consumer shall be liable for direct fees arising from the returned goods (unless there is non-conformity to the contract), and any fall in price of the goods due to damages caused by consumer or non-compliance with the contract (**Art.19**).
- e. In case the goods are severely damaged or can't be sold back in the market due to the consumer's actions or omissions, the consumer shall lose his/her right of withdrawal during the cooling-off period (**Art.20**).
- f. For the supply of services, a consumer shall be liable for service fees which are incurred up until the date on which the withdrawal notification is delivered to the business person, or the end of a specific period that doesn't exceed 1 month from the date specified in the contract (**Art.21**).

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