Standard Form Contracts

Advanced Diploma in Drafting, Negotiation And Enforcement Of Contracts - NALSAR

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Speaker profile

- Rohit Kumar, Global General Counsel, UPL Limited
- LLB in 2002
- Started as a litigator
- Worked with JSA, Delhi
- Worked with Herbert Smith Freehills in its Melbourne office
- Currently Global General Counsel of UPL Ltd, one of world’s largest crop protection company

Topics we will cover

- What is standard form contract
- Advantages of using standard form contract
- Issues that arise with standard form contracts
- Do’s and don’t when you are a recipient of standard form
- Do’s and don’t when it is your form

What is standard form contract?

Also referred to as ”boiler plate” contract is a standardized contract between 2 parties that does not offer the opportunity for any realistic negotiation.

Characteristics:

- They contain boilerplate and standardized language and are based on printed forms
- Are used to cater to a mass demand for goods or services
- Are drafted without keeping one person in mind
- Are drafted by one of the parties to the transaction

…What is standard form contract?

- Birth of standard form contract
- Pre-written agreements
- Non-negotiable
- Generally used by parties doing multiple contracts
- Increasingly being used in digital platforms
- Party with most bargaining position controls
- Eg: rental agreement, supply agreement, NDAs

Advantages of standard form contract

- Familiarity of form
- Uniformity
- Reduces risk
- Efficiency and saves time
- Helps in implementing contract lifecycle management

Advantages of standard form contract…

Keep in mind it is enforceable

Issues with standard form contracts

- Question: “contract is meeting of minds”
- Concept of “reasonable notice and opportunity”
- Theory of fundamental breach
- Unreasonable terms
- Benefits the stronger party (real estate agreements, supply agreement with RIL)
- Battle of forms: which “standard to use”
- Long contracts leading to other party signing without understanding
- Because of inherent inequity, works economically against the weaker party

Dos and don’ts when you receive standard form

- Typically, you cannot negotiate standard form contracts
- Several countries have laws protecting weaker party…eg: Fair Trade Act
- Supreme Court of India judgement on DLF matter
- Sale Deeds as per RERA
- Court protection to weaker parties in an unfair contract terms
- Example: agreement between Pepsi and farmer

Dos and don’t when its your form

- Ensure that other party understands the contract
- Ensure that the contract is less unfair
- Dominating party should not exclude or restrict liability for their own breach
- Excluding liability for negligence is not enforceable
- Ask other party to get a lawyer
- Make sure other party understands the terms before signing
- Highlight unusual terms

Questions & Answers

THANK YOU