

**REGULATING UNFAIR TERMS IN MALAYSIA:
THE NEED FOR A GENERAL ACT**

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ABSTRACT

The purpose of this study is to analyse the common law position in dealing with unfair terms and expose the weaknesses of common law, Part IIIA of Consumer Protection (Amendment) Act 2010, compare the law in Germany, Switzerland, Israel, Thailand, and United Kingdom dealing with unfair terms and to propose suggestions and recommendations necessary for the implementation of a general Act dealing with unfair terms in Malaysia. The practices of unfair terms are widespread without our conscious as a consumer or even a trader. The emergence of the many business transactions may cause detriment to the customers as well as traders especially laymen who are doing business and are not fully equipped with the protection against unfair terms in Malaysia. Generally, unfair contract terms arise when the contract is prepared unilaterally ie in standard form of contract. However, a standard form of contract may bring biased advantages to the traders engaging in numerous transactions without bringing the same advantage to consumers due to the fact that the standard form of contracts save time, trouble and expense in bargaining over terms. Currently, the law for unfair terms is provided under the Consumer Protection (Amendment) Act 2010 whereby protection is only provided for consumers within the definition of the CPA without regard to a wider range of consumers which are the parties in Consumer- to- consumer transactions, as well as traders. In relation to this, even in a Business- to- Consumer transaction, the consumers are not fully protected as the protection is only limited to standard form of contract, without regards to the individually negotiated contracts. Accordingly, the placing of the law against unfair terms into Part IIIA of the Consumer Protection (Amendment) Act 2010 has been highlighted to be the major drawback in enforcing the said law. Comparative analyses were made with countries like Switzerland, Israel, Thailand, and United Kingdom with emphasis being made towards Germany which is the oldest legal system and was willingly codify the law and make a general act to govern unfair terms has strengthened our argument on the need for a general act. The implementation of a general act is not to duplicate the laws blindly but merely acting as an appropriate benchmark. Therefore, this research seeks to propose a general where all parties concerned can be protected.

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