

Update

Statutory Registration of Standard Terms and Conditions

On 29 June 2015, the Fair Competition Commission (the **Commission**) published a notice (the **Notice**) informing the public that the contents of the **Standard Form (Consumer Contracts) Regulations 2014** (the **Regulations**) would come into effect on 29 December 2015.

This is a very important development, which should be considered by every Tanzanian company and every other company, wherever registered, doing business with consumers and individuals in Tanzania.

Background

Section 36 of the **Fair Competition Act, 2003 (FC Act)** provided that *"whenever the terms and conditions which are to govern any consumer transaction are to be included, whether wholly or in part, in a standard form contract the terms and conditions shall be registered with the Commission in accordance with the regulations under this Act"*.

On 29 August 2014, the Government published, by way of notice, the Regulations which set out the process by which companies were going to be required to register their standard terms and conditions. However, there was no provision within the Regulations setting out when the Regulations would enter force. The effect of the omission was that the Regulations would only enter force once an advert was placed by the Government to that effect. The notice published by the Government on 29 June 2015 constituted an advert to this

effect.

The Fair Competition Act and the regulations

As Section 36 above sets out, the requirement to register the terms and conditions of a standard form contract only applies to a 'consumer transaction.'

Although, 'consumer transaction' itself is left undefined, the FC Act defines 'consumer' as *"any person who purchases or offers to purchase goods or services otherwise than for the purposes of resale but does not include any person who purchases goods or services for the purpose of using them in the production or manufacture of any goods or articles of sale."*

Further, 'Standard Form Contract' is defined by the Regulations as being *"an agreement created by one party that employ [sic] standardized, non-negotiated terms and conditions, usually in pre-printed forms."*

In other words, where a supplier has a contract which meets the definition of 'Standard Form Contract', it would be required to register the contract if it was supplying goods or services to a 'consumer' (within the meaning of the FC Act) under that contract.

However, the FC Act also makes clear that it has extra-territorial reach, as it is not just limited to where the parties to the contract are both located in Mainland Tanzania. Under the FC Act, the requirement to register a standard form of contract shall apply where the contract relates to conduct within Mainland Tanzania, as well as outside Mainland Tanzania when conducted by:

- (a) A citizen of Tanzania or a person 'ordinarily resident' in Tanzania; or
- (b) A body corporate incorporated in Tanzania, or a body corporate carrying on business within Tanzania.

Further, where a company is located outside of Tanzania but is supplying goods or services to an individual in Tanzania, they also fall within the remit of the FC Act.

It would appear that the jurisdiction in which a company is registered is irrelevant; whenever business is

being conducted within Tanzania, or whenever a Tanzanian entity is doing business abroad, any standard forms of contract will need to be registered.

Under the Regulations, any person – natural or legal – who uses a standard form contract must apply to the Commission for registration of the standard contract in the 21 days preceding the execution of the contract. Further, according to the Notice, all standard form contracts which are currently in use must be submitted to the Commission for review.

In other words:

- i) All standard form contracts which were concluded, or which were otherwise in force, prior to 29 December 2014 should be submitted to the Commission for review; and
- ii) With effect from 29 December 2014, any new, standard form contracts should be submitted for review in the 21 days preceding the execution of a contract utilising this standard form.

The application should be made using the prescribed form, SFC Form No. 1, and accompanied by the relevant fee (which is calculated in accordance with the capital of the company). The fees payable are as follows:

Registration Fees	
Capital (Tshs)	Fee to be Charged (Tshs)
< 5 million	15,000
5.1 million – 10 million	30,000
10.1 – 100 million	50,000
101 million – 500 million	200,000
501 million and above	300,000

It remains to be seen what happens where the company is registered abroad, but where it is concluding contracts in Tanzania – the assumption must be that the relevant fee would be determined by converting the company's total share capital into Tanzanian Shillings. However, we shall be watching this point to see whether any more guidance is provided in due course.

Once the Commission has received a standard form of contract, they will review its terms and conditions within 14 days and supply a report to the Director General of the FCC advising them on the unfairness of any terms, along with any recommendations for the applicant.

Under the Regulations, an unfair term is a contractual term which:

Further information

If you would like further information on any issue raised in this update please contact:

Peter Kasanda

Partner, Dar es Salaam
E: peter.kasanda@clydeco.com
T: +255 767 850 054

Michael Strain

Senior Associate, Dar es Salaam
E: michael.strain@clydeco.com
T: +255 768 850 051

Tom Chapple

Associate, Dar es Salaam
E: thomas.chapple@clydeco.com
T: +255 767 850 060

Clyde & Co LLP
11th Floor, Golden Jubilee Towers,
Ohio Street, PO Box 80512
Dar es Salaam, Tanzania

T +255 768 983 000/022
F +255 222 103 004

Further advice should be taken
before relying on the contents
of this summary.

Clyde & Co Tanzania accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co Tanzania. © Clyde & Co Tanzania 2015 registered in England and Wales. Authorised and regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2015

- (a) causes a significant imbalance in the parties' rights and obligations arising under the contract;
- (b) are not reasonably necessary to protect the legitimate interests of the producer; and
- (c) causes financial or non-financial detriment to a consumer.

Having reviewed the contractual terms, the Commission will either approve or reject the standard contract within 21 days of receiving the application. Where the Commission approves the standard terms and conditions, a certificate of approval shall be issued, and where the standard terms and conditions are rejected, the applicant shall be notified within 21 days, along with an explanation.

Similarly, when a company changes its standard contract, it is also required to submit the proposed new standard contract to the Commission for approval.

Offences and mitigation of risks and mitigation of process

Under the Regulations, failure to submit a standard form contract is an offence and, if convicted, a company will be liable to a fine of between TSH 3,000,000 and TSH 5,000,000. If an individual is convicted, the potential fine is smaller; between TSH 500,000 and TSH 2,000,000.

It is important that all companies have their standard form contracts approved by 28 December 2015, as on that date it will be possible for members of the public to make a complaint to the Commission where they feel that a term in a contract is 'unfair' or indeed where they discover a standard form has not been approved by the Commission. To this end, as a way to mitigate against the risk of complaints and also to take into account that the Commission is going to have to deal with a significant influx of requests for approval, companies should make sure that they begin the approval process as soon as possible.