

"Do You Know" Series



# Limitation of Liability Clauses in India

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Produced under the project of the Asian Business Law Institute to harmonise contractual clauses in Asia

The Asian Business Law Institute ("ABLI") returns with its popular series on contracting in Asia. All past write-ups in this series are available on ABLI's [LinkedIn](#), with full compilations available [here](#).

The short write-up below discusses exclusion of liability clauses under Indian law. A full compilation on issues concerning exclusion of liability under contracts is available under the title of *Contract Laws of Asia – Limitations of Liability* [here](#).

## Exclusion of liability

Under the Indian legal framework, contractually excluding or limiting liability for breach of contract is possible as long as such exclusion or limitation of liability is in compliance with the requirements of the relevant legislation. Indian courts have recognised that certain statutes may prevent liability from being excluded or limited, and in such cases, the statutes prevail over the terms of the contracts and such contracts are treated as void and unenforceable.

## Requirements

Under section 23 of the Indian Contract Act, 1872, Indian courts enforce exclusion or limitation of liability clauses for contractual breaches to the extent that the enforcement of such clauses does not defeat the provisions of any law or is not considered as immoral or opposed to public policy.

Therefore, if the exclusion or limitation of liability for contractual breach is inconsistent with the main purpose or consideration of the underlying contract, it will be treated as void to the extent of such inconsistency, and where parties are found to have unequal bargaining power, Indian courts may refuse to enforce clauses excluding or limiting liability for breach of contract which are found to be unconscionable.

While there is no statutory bar on exclusion or limitation of liability for breach of contract, Indian courts predominantly refuse to enforce such a clause when:

- the clause is ambiguous or unclear in expressing the intention of one party to another;
- the clause is unfair, unreasonable and unconscionable; or
- the clause is against Indian public policy or an Indian statute.

Therefore, as a general rule, it is advisable to have a well-drafted and clear or unambiguous exclusion or limitation of liability clause. In addition, an exclusion or limitation of liability for contractual breach clause is most likely to be found valid and enforceable where the bargaining power of the parties is equal or almost equal, or where both parties are businessmen and the contract is for a commercial transaction.

## Interpretation

In India, courts have often invoked the rule of *contra proferentem* while interpreting standard-form contracts. As per this rule, when words of a contract are to be construed in a way that results in two alternative interpretations, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction applies.

Therefore, if the exclusion or limitation of liability for contractual breach clause is part of a standard-form contract and is a result of the great disparity in the economic strength of the contracting parties, where a party has no meaningful choice but to consent to a contract and sign on the dotted line in a prescribed or standard form, however unfair, unreasonable and unconscionable the clause may be – such contracts and the related exclusion or limitation of liability for contractual breach clause may be interpreted by Indian courts in a way that would be favourable to the weaker party and against the party who benefits from the exclusion or limitation.

For fuller discussions on the operation of exclusion or limitation of liability clauses in India, readers can refer to the jurisdictional chapter for India in *Contract Laws of Asia – Limitations of Liability* [here](#).

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The experts are contributors to ABLI's latest project that aims at harmonising contractual clauses in Asia, covering 12 key contracting jurisdictions that include Australia, China, England, India, Indonesia, Japan, Malaysia, New York State, the Philippines, Singapore, Thailand and Vietnam.

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