

## **ANNEXURE A**

**THE WORKING COMMITTEE'S PROPOSED UNFAIR CONTRACTUAL TERMS  
BILL**

**BILL**

To provide that a court may rescind or amend contracts which are contrary to good faith.

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To be introduced by the Minister of Justice

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**BE IT ENACTED** by the President and the Parliament of the Republic of South Africa,  
as follows:

**Court may rescind or amend unfair contractual terms**

1.(1) If a court, having regard to all relevant circumstances, including the relative bargaining positions which parties to a contract hold in relation to one another and the type of contract concerned, is of the opinion that the way in which the contract between the parties came into being or the form or content of the contract or any term thereof or the execution or enforcement thereof is unreasonable, unconscionable or oppressive, the court may rescind or amend the contract or any term thereof or make such other order as may in the opinion of the court be necessary to prevent the effect of the contract being unreasonably prejudicial or oppressive to any of the parties, notwithstanding the principle that effect shall be given to the contractual terms agreed upon by the parties.

(2) In deciding whether the way in which a contract came into existence or the form or content of the contract or any term thereof is contrary to the principles set out above,

those circumstances shall be taken into account which existed at the time of the conclusion of the contract.

### **Application of Act**

2.(1) The provisions of this Act shall apply to all contracts concluded after the commencement of this Act.

(2) Any agreement or contractual term purporting to exclude the provisions of this Act or to limit the application thereof shall be void.

(3) This Act shall be binding upon the State.

### **Short title**

The Act shall be called the Unfair Contractual Terms Act, 19.. .

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