

## SHORT INTRODUCTION OF CONTRACT LAW IN VIETNAM

Le Nguyen Gia Thien (LLM)  
Faculty of Law, University of Economics and Law  
Ward 2, Thu Duc District, Ho Chi Minh City, Vietnam  
thienlg@uel.edu.vn

### **Abstract**

*Contract law is a vital aspect of all jurisdictions. It covers all everyday activities of the social-economic society of all countries, including developed and developing ones. Developed countries, based on strong economic foundations, still perfect the contract law to meet the needs of new situations. For developing countries, if they want to integrate into the international economy, they must continuously improve their laws, and contract law is one of the most important norms. Vietnam, a developing country undergoing the integration, must follow the general regulation which is perfecting its contract law. This short article focuses on the brief history and introduces basic contents of Vietnamese contract law*

**Keywords:** *contract, law, Civil Code*

### **Abstrak**

Hukum kontrak merupakan aspek penting dari semua yurisdiksi. Ini mencakup semua kegiatan sehari-hari masyarakat sosial-ekonomi dari semua negara, termasuk negara maju dan negara berkembang. Negara-negara maju, didasarkan pada fondasi ekonomi yang kuat, masih menyempurnakan hukum kontrak untuk memenuhi kebutuhan situasi baru. Untuk negara-negara berkembang, jika mereka ingin berintegrasi ke dalam ekonomi internasional, mereka harus terus meningkatkan hukum mereka, dan hukum kontrak adalah salah satu norma yang paling penting. Vietnam, negara berkembang mengalami integrasi, harus mengikuti ketentuan umum yang menyempurnakan hukum kontrak. Artikel singkat ini berfokus pada sejarah singkat dan memperkenalkan isi dasar hukum kontrak Vietnam.

**Kata kunci:** kontrak, hukum, Hukum Perdata

### **Introduction**

#### **Short history of Vietnamese contract law and its sources**

Contract law always plays a vital and central role in every jurisdiction. Because contracts cover everyday civil activities, anywhere there are human beings, civil lives have contracts. Roman people studied about this norm a long time ago and it has developed along with the improvement of our civil society. In Vietnam, contract norms have a quite specific developed history. If we talk about the full history of contract law in Vietnam, the time will not allow, so we have just concentrated on two main marks which influenced much in contract law and the Vietnamese legal system: pre-Doi moi and post-Doi moi.

The first mark was the year 1986. This year established a new age for not only the economy and society, but also the nation. Overcoming many difficulties of ten years after

reunification the country, Vietnam determined to innovate (Doi moi) to improve and get involved in the international economy. It is necessary to remember that, before 1986, Vietnam decided to follow the Planned Economy. All manufacturing and business plans had no freedom, all the economic strategies and plans were put under the strict control of the Government. This economic form could not create more values for the society and the living standard of people could not be guaranteed. Methods of legal adjustments in this term was only order and power, there was no equity and freedom in this area. As all laws in the period, contract law was constructed on the State's restrictions. People had no rights to contract freely, they could not run private and owned enterprises due to the restrictions. Citizens just had the legitimate right to buy some products which could be used in the everyday life. The term of "contract" those

days only related to sales of goods between governmental bodies and departments. The “contracts” all performed the political-economic policy, plan and targets that the State created before.

After 1986, freedom was permitted and businesses were untied, private economic features were encouraged and supported, and contract law norms had a great opportunity to improve. Marking the new development of Vietnamese contract norms, the State enacted the Ordinance on Economic Contract in the year 1989 and Ordinance on Civil Contract in 1991. The appearance of those Ordinances showed extreme improvements of all Vietnamese legal systems. Freedom of business and freedom of contract was admitted and protected by State. People were encouraged to attend contractual relationships and their lives became better. However, due to restrictions of new reformed economy, those Ordinances had some matters and needed to be replaced by other papers. A short time later, Vietnam enacted the first Civil Code in 1995 and the first Commercial Law (after the reunification) in 1997. In practice, the Civil Code 1995 covered effectively all contractual relationships and, contributed much to the civil society of Vietnam. On the contrary, Commercial Law 1997 still had administrative bureaucracy, used much orders to stipulate provisions of the law. Therefore the effect of usage in practice was very limited. Followed with the economic development and requirement of integration into international economy, and to guarantee for the process of joining World Trade Organization (WTO), Vietnam found that it must change its system of law. The State enacted new Civil Code and Commercial Law in 2005. These two laws were vital to creating a suitable legal framework for contract law norms in Vietnam, and they still affect our civil society nowadays. It is considered that contract law is very important norm which has large justification and covers many features of the economy and society, so sources of contract law is so diversified.

There is still a conception that *civil* contracts should be used for transactions which do not focus on profit and benefit, and only *commercial* contracts are appropriate for transactions with profit and benefit targets. Therefore, until now, there is a division that

civil contracts are governed by the Civil Code and commercial contracts are controlled under Commercial Law. Actually, this division is quite unnecessary because there are many kinds of contracts that cannot be defined exactly as commercial or civil, and we cannot find the suitable law to apply to them. Moreover, the Civil Code 2005 and the Commercial Law 2005 have contradictions, so it is unclear whether contracting parties can chose the applicable law thus determining the legal consequences and, legitimate rights and duties, which might be different under the law not chosen. These days, we are composing the new Civil Code, and hope that we can repair those contradictions. If there are not any changes, we will introduce the first draft of this new Civil Code next year 2014.

For the limitation of Civil Code 2005 and Commercial Law 2005, Civil Code stipulates general aspects of contract law such as offer and acceptance, form, content, effectiveness, basic rights and duties of parties in contract generally and some specific kinds of contract. Commercial Law stipulates matters related to sales of good, supplying services and, logistics. When getting into details, some contracts having special contents, such as factoring, banking guarantee, and insurance, which will be governed by specific statutes, such as the Law on Credit Institutions 2010 and the Law on Insurance Business 2000 (amended in 2010)

### **Main features of Vietnamese contract law Conditions of a contract**

Due to the strong affects from Civil legal systems (especially French), almost all norms of the Vietnamese legal system, including contract law, are related closely to French legal thoughts. Article 122 of the Vietnamese Civil Code 2005 stipulates that an effective contract must contain 4 conditions. Those are:

1. The persons participating in the transaction have civil act capacity;
2. The purpose and contents of the transaction do not violate prohibitory provisions of law and are not contrary to social ethics;
3. The persons participating in the civil transaction act completely voluntarily;
4. The forms of civil transactions shall be the conditions if the law stipulates that.

These are 4 vital conditions and every contract must fulfill all of them. If a contract lacks of one of four conditions, it will become ineffective and cannot perform in practice. French law, under Article 1108 Civil Code, stipulates 4 conditions of a contract containing:

1. The consent of the party who binds himself;
2. His capacity to contract;
3. A certain object forming the matter of the contract;
4. A lawful cause in the bond.

We will go deeper into those conditions as below: *First condition:* A person engaging in a civil transaction/ contract must have appropriate civil act capacity. For the civil act capacity of people, there are several kinds: as adults have full civil act capacity, people from age 6 to under 18 can contract with others in small transaction related to everyday life and suitable legal action, people without civil act capacity, people who lose civil capacity, and people with restrictions on civil act capacity. In those individuals, the adults are the largest and most important in the civil society. The organization has civil act capacity at the time of its establishment.

*Second condition:* The purpose and contents of the transaction do not violate prohibitory provisions of law and are not contrary to social ethics. This condition expresses the target of the contract and confirms that the contract will be invalid when it violates the prohibitions of law and is contrary to social ethics. This provision creates some arguments and there is currently an indefinite understanding among scholars. Everyone has realized that law is common regulation used to justify the society, and the provisions of law must be obeyed, if not, the offender will receive legal sanctions. If a contract is invalid, the law will not protect it. However, the difficulties occur when confirming whether a contract will be contrary to social ethics or not. However, where do social ethics come from? Are they the customary acts or anything else? Social ethics is a large definition because ethics are so difficult to express exactly. Due to the unclear definition in the Point b Clause 1 Article 122 of the Civil Code 2005, the tribunal will have many difficulties when handling a case related to gathering content/ purpose

contrary to social ethics. We also suggest that this point should change "social ethics" into "public order", that would be better.

*Third condition:* The contract itself is the agreement based on the voluntariness of parties. If there is not this feature, the contract cannot be established. The laws are unanimous on this point; all concede voluntariness is a vital part of a contract. Vietnamese law holds that, voluntariness cannot happen in case of falsity, mistake and deception (related to Article 129, 131 and 132 of Civil Code 2005). Obviously, just in case of guarantee the voluntariness of parties, the contract could become the "law of parties" and "the government law" will protect this "individual law". Combining this condition with the second condition above, we can confirm again that the voluntariness (freedom of contract) of parties just becomes valid in condition that it satisfies the laws and is not contrary to the social ethics.

*Fourth condition:* The contract must be created following the appropriate form. As other legal systems, the forms of civil transaction in general and contract in specific can be established verbally, in acts, in writing and in electronic materials (Article 124 Civil Code 2005). The provision of contract form also brings arguments to scholars. In Vietnamese law of contract, especially before 1986, if the form of the contract was not suitable, the contract would be invalid. This thought was harmonized with the Planned Economy. The market economy needed a softer and more effective solution. The Article 134 Civil Code showed that in cases where it is provided for by law that the forms of civil transactions are conditions for civil transactions to be valid, but the parties fail to comply therewith, the Court or another competent state agency shall, at the request of one or all of the parties, compel the parties to comply with the provisions on forms of transactions within a given period of time; past that time limit, if they still fail to comply with such provisions, the transactions shall be invalid. The period of time will be defined in specific laws.

For the form of electrical devices, there also some matters when conducting e-transactions in practice. Actually, when parties have transactions with high values as millions, billions VND (Vietnamese currency), parties often prefer to use a form of non-digital

writing, because it is steady and useful when there is a dispute occurs. The tribunal is often quite reluctant to accept electronic materials. Although Vietnamese law recognizes the legal value of those electric materials in Law on E-transactions 2005, parties rarely use this form when they contract.

### **Offer and acceptance**

To create a contract, regardless kinds of legal system, there must be two vital aspects which are offer and acceptance. In Vietnamese Civil Code 2005, we have called them offer to enter into contract and acceptance to enter into contract however for presenting easily, they would be abbreviated as offer and acceptance. Firstly, a party, called offerer, will show the will to contract and send an offer to the other, called offeree. The offer shows clearly their intention to contract and must be bound on this offer.

The offer can state the limit the time to reply or not, depending on the offer. If the offer has limited time to reply and the offerer contracts with a third party within that time, the offerer must compensate for any losses the offeree receives. This regulation shows clearly the definition and bind of the offerer. The offerer must have some wills and thoughts to release his offer, and this legal action will bind his responsibilities. In case of the offer without limit time to response, although the provisions does not state clearly whether the offerer can contract with the third party or not, we can infer that the offer has this legitimate right.

When the offerer sends the offer to the offeree, one of the most regular legal matters appears that what time can be considered the validity of the offer. Article 391 Civil Code 2005 expresses two conditions that an offer can take effect when (1) the offerer fixes the validity, and (2) offeree receives the offer. In the first circumstance, it is easy to determine the time of validity of the offer. Although, in this provision, the law does not express the suitable time that the offerer can set the validity of the offer, however, it can be inferred that the time must be reasoned and suitable for the offeree to reply. Kinds of contracts will have various time of validity. With regard to commercial contracts, the suitable time can be used under the *lex-mercatoria* (or called law of merchants/commercial practice). An offer to enter into a

contract shall be considered having already been received in the following cases:

1. The offer is transferred to the place of residence, if the offeree is an individual; to the headquarters, if the offeree is a legal person;
2. The offer is introduced into the official information system of the offeree;
3. When the offeree knew the offer to enter into the contract by another mode.

When the offerer realized that he should have some changes in the offer, he absolutely has the legitimate rights to modify or revoke his offer in cases: if the offeree receives the notice on modification or revocation of offer before or simultaneously with the time of receiving the offer; and/or the conditions for modification or revocation of the offer arise in cases where the offeror has clearly stated the eligibility for modification or revocation of the offer when such conditions arise. When the offeror changes the contents of the offer, such offer shall be considered a new offer (or a counter offer).

The offer just can cancel the offer when it has been clearly stated in the offer, he must notify the offeree and such notification shall take effect only when it is received by the offeree before the offeree replies to accept the offer.

### **Contents of a contracts**

As mentioned before, the contents of contract totally depends on the aims or targets of parties who establish, conduct and solve the disputes if needed. Followed the theory of "Freedom of contract", party have their owned right to discuss and bind each other due to their consent. However, the contents cannot violate the law and be contrary to social ethics, followed Vietnamese law contract provisions. The content of a contract is not easy to determine, although it is all the agreements of related parties. The composers of the Civil Code 2005 list 8 main factors of a contract's content. Those are the usual factors appearing in a contract, and it is so necessary to confirm that a contract must not include all eight main factors. If the contract does not include all these factors, it still has effect. Eight main factors are:

1. Object of the contract, which is a property to be handed over, or a task to be performed or not to be performed;

2. Quantity and quality;
3. Price and mode of payment;
4. Time limit, place and mode of performing the contract;
5. Rights and obligations of the parties;
6. Liability for breach of contract;
7. Sanction against breach of contract;
8. Other contents.

These are just 8 main and basic factors, because a contract reflexes ideas of parties so they can agree all which matters which are legal. Vietnamese scholars have thoughts that all kinds of contracts including 3 kinds of factors, those are: compulsory, general and optional factors.

First of all, the compulsory factors are ones that if there are not there in the contract, the contract could not be established. We can list them as: factors of object, quantity, rights and obligations of parties... It is obvious that, the absence of those factors cannot show clearly the content of a contract. Next, the general factors means factors if parties do not mention in the contract, the contract will be applied by common and general standard in the same transactions. Those factors include quality, price, mode of payment, time limit, place and mode of performance, liability for breach... Finally, the optional factors relates to the agreements of parties, if parties do not discuss about them, they will not be applied in practice. We can point out some factors which are packing, colors of goods.

In the past, because the scholars and officers had strong influences from the Planned Economy, they had opinion that all contract must be written very clearly and must include those 8 factors. That was not a useful conception and caused many obstacles in practice. We can find this thought in Article 50 Commercial Law 1997, one of the insufficient laws of our legislation.

### **Interpretation of contract**

In Vietnam, judges or arbitrators (in commercial case) have the right to interpret the contract. The Article 409 Civil Code 2005 stipulates provisions of interpretation of contract. Generally, it is easy to say that those provisions are useful and mainly suitable to laws of developed countries. When a contract contains ambiguous provisions, the interpretation of

such provisions shall be based not only on the wording of the contract but also on the mutual intentions of the parties. It means that the ideas of the contract are as important as the wordings and mutual intentions of the parties. In case of contradictions between the mutual intentions of the parties and the contractual wordings, the mutual intentions of the parties shall be used for interpretation of the contract. Those ideas are totally right, because parties, who enter into contracts, come from many kinds and classes in the society, and sometimes they have wrong wording or grammar in the contracts, though their ideas are clear.

When contractual provisions may be construed in several meanings, the meaning which makes the implementation of such provision most beneficial to the parties shall be selected. If a contract contains wording that may be construed in different meanings, such wordings must be interpreted according to the meaning which is most appropriate to the nature of the contract. The provisions of a contract must be interpreted in the relation to each other, so that the meanings of such provisions conform to the whole contents of the contract. These provisions supply a vision that the laws always respect the agreements of parties and try to protect the legitimate rights of parties. The contract itself is a law of parties, so the governmental law does not want to offend it, however the spirit of the contract must be maintained by the law, because it is a useful way to protect the rights and duties of parties.

If a contract contains a provision or wording that is difficult to understand, such provision or wording must be interpreted according to practices at the place where the contract is entered into. When a contract lacks some provisions, such provisions may be supplemented according to practices at the place where the contract is entered into. This part shows the role of civil practices in the contract interpretation. The tribunal will consider the practice of the place where contract established to judge the acts of parties. And if there are any legal blanks in the contract and the laws, tribunal will base on the practice of the place where parties contract to resolve the disputes.

Finally, in cases where the advantageous party includes in the contract the contents unfavorable for the disadvantageous

party, the interpretation of the contract must be made along the direction of benefiting the disadvantaged party. This provision aims at the weaker in the contract, those are usually consumers. In the formed contracts between traders and consumers, the traders, due to their advantageous position, often compose much handicap in the contract for consumers. So, this provision is very good to protect the consumers, who always are offended because of their weaker position.

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