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FORCE MAJEURE UNDER VIETNAMESE CIVIL LAW

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SUMMARY OF DOCTORAL THESIS IN LAW

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1. The Urgency of the Dissertation

In the context of globalization and deep international economic integration, international commitments demand a civil law system that approaches international legal standards on contract risk management. Particularly, the boom of the 4th Industrial Revolution and the digital economy is redefining the structure of civil and commercial transactions. If the law fails to provide clear qualitative and quantitative criteria, the legal system will inadvertently become an impediment, increasing compliance costs and risks for enterprises in the national digital transformation process. In Vietnam, although the 2015 Civil Code has made certain advancements, the concept of force majeure in Article 156 remains highly generalized, lacking principled regulations to clearly distinguish it from neighboring institutions such as contract performance under a fundamental change of circumstances or objective obstacles. The ambiguity regarding the criteria of “unforeseeability” and “insurmountability” necessitates a theoretical reconsideration to establish a fair boundary of civil liability.

Evidently, alongside the shortcomings within the legal provisions on force majeure, the practical application of these regulations remains inefficient. In practice, besides statutory force majeure, parties may opt to agree on contractual force majeure; however, current Vietnamese legislation remains deficient, leading to numerous inadequacies in the application of mutually agreed force majeure events. Regarding law enforcement authorities, judicial perspectives remain inconsistent given the same legal event, and Trial Panels frequently confound force majeure events with other legal institutions, such as a fundamental change of circumstances or objective obstacles. The root causes of these contradictions lie in the lack of clarity, or even comprehensibility, of legal provisions, coupled with judicial omissions in applying force majeure regulations.

These limitations and deficiencies in the statutory framework will inevitably perpetuate difficulties and bottlenecks in practical implementation. Consequently, conducting research to clarify theoretical issues while concurrently evaluating practical application to propose recommendations for legal reform on force majeure remains a highly urgent necessity.

To date, in legal science, there have been many works approaching the study of Force Majeure, but these works have only studied one or some aspects of Force

Majeure, and no work has comprehensively and deeply researched the theoretical basis and legal status of Force Majeure. Consequently, no work has provided a comprehensive system of recommendations and solutions for Force Majeure. Given the above reality, continuing research to provide recommendations and solutions for perfecting the law on Force Majeure is an urgent requirement at present, especially research at the level of dissertation in law. Therefore, selecting and researching the dissertation topic on "Force Majeure under Vietnamese Civil Law" is necessary and will bring profound theoretical and practical value.

2. Research Purpose of the Dissertation

The research purpose of the dissertation is to clarify theoretical issues, the status of legal regulations, as well as the practice of applying the law on Force Majeure. On that basis, the dissertation also proposes recommendations for perfecting the law and solutions to enhance the effectiveness of law implementation regarding Force Majeure.

3. Tasks of the Dissertation

To achieve the research purpose, the dissertation will have the following research tasks:

Firstly, to clarify the theoretical basis of Force Majeure. In this, the dissertation focuses on researching to clarify the nature of Force Majeure, construct its concept, and point out its characteristics. The foundational legal theories governing legal provisions on Force Majeure. To classify Force Majeure according to different bases as well as indicate the necessity of recognizing provisions on Force Majeure. Simultaneously, to point out the differences between Force Majeure and other legal events and the research approach of the dissertation.

Secondly, based on examining theoretical issues, the dissertation continues to research the status of law and the practice of applying law on Force Majeure. Furthermore, the dissertation will also cite research on legal provisions of some foreign nations for comparison with Vietnamese legal provisions. From there, point out the limitations and inadequacies of legal provisions and the difficulties and obstacles in the process of implementing law on Force Majeure. Thirdly, from the research on theory, legal status, and practical application of law, the dissertation proposes recommendations for perfecting the law and solutions to enhance the effectiveness of law implementation regarding Force Majeure.

4. Research Object and Scope of the Dissertation

** Research Object:*

- The dissertation focuses on researching theoretical issues, legal status, and practical application of law on Force Majeure.
- Research scientific materials such as: monographs, textbooks, dissertations, theses, articles related to Force Majeure.
- Research practical cases, judgments related to Force Majeure resolved by Courts at all levels.

** Research Scope:*

Firstly, regarding content, the dissertation focuses on clarifying theoretical issues about Force Majeure. Simultaneously, the dissertation discusses current legal provisions on Force Majeure, including provisions of the 2015 Civil Code and related legal documents that mention Force Majeure. Furthermore, the dissertation also investigates the practice of applying law on Force Majeure.

Secondly, regarding range, the dissertation mainly focuses on researching legal provisions and the practice of applying law on Force Majeure within the territory of Vietnam. However, the dissertation also cites the law of some countries worldwide (China, France, Russia, Quebec) for comparison with Vietnamese law. Regarding the status of applying law on Force Majeure, the researcher studies typical cases in various provinces and cities across the country. Thirdly, regarding time, the dissertation researches current legal provisions on Force Majeure in the 2015 Civil Code as well as incorporates comparison with related documents such as the 2005 Commercial Law, the 2019 Labor Code, the 2015 Civil Procedure Code... Although the dissertation refers to some expired legal normative documents, it is only for comparison and contrast purposes. Regarding practice, the dissertation researches the practice of applying law on Force Majeure corresponding to current legal documents.

5. Research Methodology and Methods

**Research Methodology:* The dissertation is researched based on the dialectical materialism and historical materialism methodology of Marxism-Leninism, Ho Chi Minh's ideology on state and law, and the policies of the Party

and State. This is considered the guiding principle throughout the author's dissertation implementation process.

* *Research Methods*: Based on the methodology of Marxism-Leninism, during the dissertation research, the researcher will use the following specific methods:

- The comparative law method is used to point out similarities and differences in provisions on Force Majeure between the 2015 Civil Code and the 2005 Civil Code, the 1995 Civil Code, and related legal documents, while also researching the law of some foreign nations. The researcher primarily uses this method in Chapter 1 and Chapter 2 of the Dissertation.

- The analysis and commentary method to explain and clarify provisions on Force Majeure. This method is used by the researcher throughout the Dissertation. Specifically, in Chapter 1, the researcher uses this method to elucidate theoretical issues about Force Majeure, while for Chapter 2 and Chapter 3, this method is mainly used to point out difficulties and obstacles in legal provisions and the practice of applying law on Force Majeure.

- The syndissertation method is used to summarize content after each argumentative section, generalize the legal status of Force Majeure. From there, synthesize to serve as a basis for proposing scientific, theory- and practice-appropriate recommendations for improvement.

- The statistical method is used to provide data on Court summary reports, data on judgments resolved by Courts regarding Force Majeure.

Furthermore, some methods such as the research hypodissertation method, inductive method, deductive method... are also applied by the researcher to clarify the contents developed in the Dissertation.

6. New Contributions of the Dissertation

The research results of the topic: "Force Majeure under Vietnamese Civil Law" may bring the following new points:

Firstly, the dissertation has researched comprehensively, systematically, and in-depth from a theoretical perspective on Force Majeure. Based on researching and approaching the historical formation basis and viewpoints of scientists to thereby construct a unified concept of Force Majeure. From there, the dissertation points out the significance of recognizing provisions on Force Majeure and

determines the characteristics of Force Majeure. Simultaneously, the dissertation has distinguished Force Majeure from other legal events such as Fundamental Change of Circumstances, objective obstacle, and state of necessity.

Secondly, the dissertation has analyzed and clarified related legal theories in constructing provisions on Force Majeure. These theories are the foundation for constructing and governing the content and practical application of law on Force Majeure.

Thirdly, the dissertation has established its own research approach to Force Majeure; determining the research approach helps ensure connectivity between theory and the status of legal provisions, aiming for comprehensive and unified research on Force Majeure.

Fourthly, the dissertation analyzes the content of legal provisions on Force Majeure not only in the 2015 Civil Code but also in specialized laws mentioning Force Majeure, dividing them into three main issues: One, the legal status of elements identifying Force Majeure; Two, the legal status of conditions for applying Force Majeure; Three, the legal status of legal consequences of Force Majeure. From there, the dissertation evaluates the advantages, difficulties, and obstacles of the law on Force Majeure. During the analysis, the researcher compares with compatible provisions of our country's legal documents in previous periods and legal provisions of some countries worldwide.

Fifthly, the dissertation has analyzed the practice of applying law on Force Majeure through researching and surveying typical judgments resolved by the Courts. The researcher presents systematically by listing arguments about the implementation situation and cases proving those arguments. Through this, the dissertation points out limitations and inadequacies in current legal provisions on Force Majeure.

Sixthly, the dissertation has proposed recommendations aimed at perfecting the law on Force Majeure based on research results on the current legal status and practical application of law. Simultaneously, through analyzing existing issues and inadequacies in practical application, the dissertation proposes solutions to enhance the feasibility and effectiveness of law in practice.

7. Theoretical and Practical Significance of the Dissertation

Theoretical Significance: The research results of the dissertation contribute to providing a solid theoretical basis for Force Majeure. Based on comprehensively analyzing Vietnamese civil law on Force Majeure and comparing with the law of some other countries, the dissertation has clarified the advantages and limitations in legal provisions on Force Majeure.

Practical Significance: The dissertation can be used as a reference material for researching and teaching theory on Force Majeure in the university and academy system. Simultaneously, the research results of the dissertation can also be reference material for individuals, organizations, and state agencies in the work of law construction and practical law enforcement.

8. Structure of the Dissertation

Besides the introduction, overview, conclusion, list of references, and appendices; The content of the dissertation is structured into three chapters:

Chapter 1: Theoretical Issues on Force Majeure

Chapter 2: Status of Law and Practice of Applying Law on Force Majeure

Chapter 3: Recommendations for Perfecting Vietnamese Law on Force Majeure and Enhancing Effectiveness of Applying Law on Force Majeure

Chapter 1

THEORETICAL ISSUES ON FORCE MAJEURE

1.1. Concept and Characteristics of Force Majeure

1.1.1. Concept of Force Majeure

“A force majeure is a legal event that occurs objectively to the subjects in a specific legal relationship, rendering the performance of rights and obligations or the ability to ensure safety impossible permanently or temporarily, and entailing legal consequences prescribed by law or otherwise agreed upon by the parties where permitted by law.”

1.1.2. Characteristics of Force Majeure

Firstly, Force Majeure is a type of legal event with the function of risk allocation.

Secondly, Force Majeure possesses universality in scope of application within civil legal relationships.

Thirdly, Force Majeure occurs objectively to the subject in a specific legal relationship.

Fourthly, Force Majeure contains the element of impossibility in performing obligations or ensuring legal safety.

1.2. Legal Theories Related to Force Majeure

1.2.1. Theory of Impossibility

The origin of the theory of impossibility stems from the principle of impossibility in Roman law. The principle of impossibility originates from Latin maxims (*Impossibilium nulla obligatio est/Ad impossibilia nemo tenetur* - there is no obligation to the impossible/no one is bound to do the impossible). Force Majeure is the direct continuation of principles that appeared since ancient Roman times, recognizing the presence of a superior force majeure event beyond the ordinary human capacity to resist. Although there are differences between civil law and common law systems regarding the theory of impossibility, while civil law emphasizes criteria for identifying Force Majeure, common law focuses on the balancing authority of the court. However, Force Majeure is the modernization and codification of the general principle "not being compelled to perform the

impossible," but binding reasonable effort before enjoying the exemption exception.

1.2.2. Theory of Causation

Liability is only established when there exists a direct and reasonable causal link between the violating act or the operation of the property itself and the damage. Research on Force Majeure cannot be separated from the theory of causation, because Force Majeure is often invoked as a factor that "severs" or "interrupts" the chain of causation, thereby excluding the civil liability of the violating party. Without Force Majeure, damage arises directly from the violating act/operation of the property and is attributed to that act/operation, but when Force Majeure appears, this link is altered: the actual cause of damage is not entirely due to act violation, but involves the impact of an objective, unexpected event, beyond human capacity to foresee and control.

1.2.3. Theory of Risk Allocation

The value of the risk allocation theory is not limited to technical rules in the construction field. When viewed through the lens of general contract law, this theory has created a turning point in resolving the relationship between parties against events beyond human control, most typically the Force Majeure institution. This theoretical connection is demonstrated through the shift in thinking from determining "fault" to determining the "mechanism for allocating exogenous risks." From the perspective of risk allocation theory, Force Majeure is essentially a default rule of the State to intervene in contracts when parties are silent or cannot self-predict. Implementing this theory in the dissertation needs to be carried out through two main content pillars: risk allocation by agreement and risk allocation by law.

1.2.4. Theory of Reasonable Conduct Standard

For the Force Majeure institution, the theory of reasonable conduct standard is precisely the theoretical foundation for analyzing and evaluating the law and practical application of law regarding the "irremediable" element of Force Majeure. Accordingly, an objective only truly reaches the threshold of force majeure when it exceeds the resistance capacity of a subject who has complied with the highest standard of conduct as prescribed by law or as agreed between the parties. If an obstacle can be resolved by reasonable solutions but the subject

neglects them, the force majeure element will be excluded theoretically. Furthermore, the theory is the basis for establishing the burden of proof and the standard of proof.

1.2.5. Theory of State and Law

State intervention in provisions on Force Majeure is reflected in that legal documents issued by the State have recognized elements identifying a Force Majeure event, and the legal consequences when Force Majeure occurs in specific fields. On that foundation, the law acknowledges the reasonable limits of human control by defining Force Majeure through identification criteria, and the law attaches legal consequences to Force Majeure when it occurs meeting all statutory criteria, accompanied by obligations to perform such as timely notification obligation, obligation to make reasonable efforts to limit and remedy damage.

1.3. Nature of Force Majeure

The nature of Force Majeure is an exogenous that disrupts normal assumptions in legal relationships, used by law as a flexible adjustment tool to handle that disruption, thereby re-establishing fairness, reasonableness, and feasibility in law implementation under abnormal circumstances.

1.4. Classification of Force Majeure

1.4.1. Based on the Foreseeability of Force Majeure

Based on foreseeability, Force Majeure is classified into Force Majeure where the occurrence of the event can be foreseen but its degree of impact/consequences cannot be foreseen, and Force Majeure that is completely unforeseeable.

1.4.2. Based on Origin of Formation

Based on origin of formation, Force Majeure includes natural Force Majeure and social Force Majeure.

1.4.3. Based on the Legal Function of Force Majeure

Based on legal function, Force Majeure can be classified into the function of Force Majeure in contractual relationships and the function of Force Majeure in non-contractual liability relationships.

1.5. Principle of Applying Force Majeure

In principle, when Force Majeure occurs, relevant legal provisions governing the relationship between parties apply automatically; however, in some cases the law allows parties the right to agree on other legal consequences. In other words, legal norms on Force Majeure can include both mandatory norms and discretionary norms. The law's recognition of consequences of Force Majeure only plays the role of a backup solution. However, in cases where parties have no agreement or their agreement violates basic principles of civil law, the provisions of law will apply. Accordingly, when parties remain silent, legal provisions on Force Majeure operate as a system of default rules, and that silence is understood as an implicit acceptance of the fairest and most optimal solution standardized by the State.

1.6. Significance of Recognizing Provisions on Force Majeure

1.6.1. Regarding Theoretical Aspect

Theoretically, provisions on Force Majeure are the way the law acknowledges limits in human control capacity in society, distinguishing between subjective fault and absolute objective factors to avoid unjust expansion of liability.

1.6.2. Regarding Practical Aspect

The importance of continuing to build and perfect a legal framework on Force Majeure can be recognized to serve as a standard for parties to flexibly agree on Force Majeure clauses suitable to each party's specific conditions, while still ensuring compliance with the established legal framework.

1.6.3. Regarding Political Basis

The guiding spirit of the Party and State shows the requirement for “uniformity” and “predictability”, demanding common statutory criteria for Force Majeure and uniform legal consequences in the 2015 Civil Code so that dispute resolution agencies can apply them consistently, avoiding discretion.

1.7. Differences Between Force Majeure and Some Other Legal

1.7.1. Force Majeure and Objective Obstacle

Based on identification elements: Force Majeure is also an objectively occurring event affecting the exercise of civil rights and obligations of subjects; however, Force Majeure requires more stringent conditions compared to objective

obstacle, namely the element of unforeseeability and the element of irremediability.

Based on scope of impact: Force Majeure usually has a broader scope than objective obstacle and spreads across subjects, even having a systemic nature.

Based on legal consequences: Force Majeure has more severe impact, rendering the subject unable to remedy it through reasonable measures within permissible capacity.

1.7.2. Force Majeure and Fundamental Change of Circumstances

Based on identification elements: The characteristic element for identifying Fundamental Change of Circumstances compared to Force Majeure is the condition that the change is so great that parties cannot achieve the original purpose when entering the contract and continued performance of the contract as concluded would cause serious harm to one party.

Based on scope of application: The scope of application of Force Majeure is broader than that of Fundamental Change of Circumstances; Force Majeure applies to both contractual and non-contractual legal relationships.

Based on degree of impact on contract performance: For Force Majeure, the occurring event affects rendering the performance of contractual obligations by one party not only excessively onerous as in Fundamental Change of Circumstances but impossible to perform, at least for a certain period.

Based on legal consequences: Force Majeure is the basis for the violating party not to bear civil liability, whereas in cases of Fundamental Change of Circumstances, parties must still continue performing their obligations; however, continued performance of the contract without changing its content would cause serious harm to one party.

1.7.3. Force Majeure and State of Necessity

Based on identification criteria: While identification criteria for Force Majeure mainly focus on identifying the event, state of necessity is an institution justifying "rescue acts" based on choices in the face of an existing danger to explain why a damage-causing act is still lawful.

Based on causal relationship between and damage: For state of necessity, the law acknowledges a causal relationship between the act and the damage;

conversely, Force Majeure is the cause leading to damage or non-performance of obligation.

Based on legal consequences: Force Majeure does not legalize an active act causing damage; Force Majeure is only a ground for excluding liability when damage originates from an objective incident.

1.8. Research Approach to Law on Force Majeure

To comprehensively and systematically research the legal status of Force Majeure, the following groups of provisions must be studied:

Group of provisions on constitutive elements of Force Majeure: Researching this group of norms on constitutive elements of Force Majeure aims to ensure accurate identification, avoiding abuse or equating Force Majeure with ordinary business risks.

Group of provisions on conditions for applying Force Majeure: This group of norms functions to determine the legality and validity of invoking Force Majeure in specific legal relationships.

Group of provisions on legal consequences of Force Majeure: Researching legal consequences of Force Majeure aims to resolve relationships between subjects, resolve rights and obligations when Force Majeure occurs.

Chapter 2

STATUS OF LAW AND PRACTICE OF APPLYING LAW ON FORCE MAJEURE

2.1. Status of Law on Force Majeure

2.1.1. Provisions of Current Law on Force Majeure

2.1.1.1. Constitutive Elements of Force Majeure

Force Majeure is an objectively occurring event: An objectively occurring event must be understood as an occurring independently of will and outside the scope of ordinary risk management that the law compels a subject in a specific legal relationship to bear, wherein for contractual relationships it is considered with the obligated party being hindered and for non-contractual relationships with the party liable for compensation.

Force Majeure is an unforeseeable event: Foreseeability is not limited to foreseeing the event but also foreseeing its timing of occurrence, scale, intensity, and degree of impact in relation to the specific legal relationship. The duty to foresee must be attached to the obligated party and requires the subject to maintain diligence and prudence throughout the obligation performance process.

Force Majeure is an irremediable event despite applying all necessary and permissible measures: Requiring the maximum effort and good faith of the subject through encompassing both preventing the event and minimizing the event's consequences. This obligation belongs to the "obligated party" - the subject invoking Force Majeure to enjoy legal benefits. Evaluating effort must be based on actual performed acts rather than presumption, aiming to determine whether the obligated party acted diligently, in good faith, and reasonably under the circumstances and with their own capacity.

2.1.1.2. Conditions for Applying Force Majeure

The occurring event satisfies the constitutive elements of Force Majeure as prescribed by law: An actual is only recognized as Force Majeure when it fully satisfies all three statutory constitutive elements. If the agreed event does not meet statutory elements, it remains a subjective or ordinary commercial risk, and the violating party only enjoys rights when the contract specifically stipulates

consequences, instead of being able to automatically invoke legal provisions on Force Majeure.

Parties have no agreement aimed at invalidating Force Majeure: For Force Majeure to have actual effect, that event must exist in a legal space where the right to invoke is not nullified by the parties' autonomous will or intervention of mandatory legal provisions.

Other conditions: The party invoking Force Majeure must simultaneously perform the notification obligation and the burden of proof.

2.1.1.3. Consequences of Force Majeure

Firstly, Force Majeure is a ground for excluding civil liability including: (i) Force Majeure is a ground for excluding civil liability for breach of contract and (ii) Force Majeure is a ground for excluding civil liability outside contract.

Secondly, Force Majeure is a ground for exercising rights.

Thirdly, Force Majeure is a ground for contract adjustment.

Fourthly, Force Majeure is a ground for determining time limits in some specific cases.

Fifthly, other legal consequences of Force Majeure include: (i) Force Majeure is a ground for contract termination; (ii) Force Majeure is a ground for adjournment, suspension of court hearing; (iii) Force Majeure is a ground for reduction, exemption of financial obligations in procedural activities; (iv) Force Majeure is a ground for tender designation, cancellation.

2.1.2. Evaluation of Current Legal Provisions on Force Majeure

2.1.2.1. Achieved Advantages

Firstly, while provisions on identifying Force Majeure when the 1995 Civil Code and 2005 Civil Code were effective were often scattered throughout the Code and other laws, they are now uniformly regulated in Clause 1, Article 156 of the 2015 Civil Code.

Secondly, regarding Force Majeure as a ground for excluding liability for compensation for non-contractual damage, whereas the 1995 Civil Code and 2005 Civil Code had a manual listing nature, the 2015 Civil Code has regulated an

overarching principle covering the entire institution of compensation for non-contractual damage in Article 584.

Thirdly, compared to the 1995 Civil Code and 2005 Civil Code regarding authorization, the 2015 Civil Code has supplemented grounds allowing the authorized person to sub-authorize due to Force Majeure, aiming to optimally protect the rights and interests of the authorizing person from infringement due to objective factors.

2.1.2.2. Limitations Needing Remediation

Firstly, regarding constitutive elements of Force Majeure: The provisions on constitutive elements of Force Majeur are inadequate; provisions on identification elements of Force Majeure are unclear, with many conflicting viewpoints remaining; the 2015 Civil Code does not recognize Force Majeure and implementation of decisions of competent state management agencies as two separate grounds.

Secondly, regarding conditions for applying Force Majeure: overlapping exists between general law and specialized law on conditions for applying Force Majeure; in some cases, the right to veto Force Majeure is unreasonable because it does not ensure the principle of balance of interests; absence of a unified confirmation mechanism due to the lack of procedure for establishing Force Majeure Confirmation Certificates.

Thirdly, regarding legal consequences of Force Majeure: the provision in Clause 2, Article 351 of the 2015 Civil Code is understood as excluding liability entirely or compelling bearing liability entirely; the 2015 Civil Code has no provision allowing parties the right to refuse performance or unilaterally terminate contract due to Force Majeure; lack of uniformity in using terminology regarding legal consequences of excluding liability; the provision on excluding liability due to Force Majeure in cases of ultra-hazardous activities causing damage in Article 601 of the 2015 Civil Code is redundant.

2.2. Practice of Applying Law on Force Majeure

2.2.1. General Overview of the Situation of Applying Law Related to Force Majeure

Firstly, regarding scale and quantitative nature of disputes related to Force Majeure: the number of civil and commercial disputes tends to increase rapidly, but retrieving specific data on the frequency of applying provisions on Force Majeure still faces many obstacles due to a lack of centralized archive.

Secondly, regarding legal awareness and behavior of subjects in contractual relationships. Subjects tend to automatically equate the concept of economic difficulty with Force Majeure or abuse administrative decisions.

Thirdly, regarding adjudication line and legal perspective of the Courts. Most Courts demonstrate a firm stance in not equating any event with Force Majeure.

2.2.2. Practice of Resolving Disputes on Force Majeure

2.2.2.1. Achieved Results

Firstly, competent dispute resolution agencies have relatively uniform perspectives that to be considered Force Majeure, an event must fully satisfy the statutory constitutive elements in Clause 1, Article 156 of the 2015 Civil Code.

Secondly, dispute resolution practice demonstrates uniform thinking of Courts when firmly rejecting requests to exclude liability based on subjective reasons (health, mere financial difficulty) to evade obligations, especially debt repayment obligations.

2.2.2.2. Difficulties, Obstacles, and Causes

**Difficulties and Obstacles in Applying Law on Identification Elements of Force Majeure:*

Firstly, in some cases, Courts have not fully evaluated statutory identification criteria when determining an event as Force Majeure.

Secondly, competent dispute resolution agencies still have many contradictions in determining changes in legal provisions as Force Majeure.

Thirdly, in some cases, Courts have not accurately determined whether the occurring event is an objective obstacle, Fundamental Change of Circumstances, or Force Majeure.

**Difficulties and Obstacles in Determining Conditions for Applying Force Majeure:*

Firstly, in dispute resolution practice, based on the principle of respecting freedom of contract, Courts mostly prioritize applying Force Majeure clauses if parties have agreed.

Secondly, in some cases, competent dispute resolution agencies require the party invoking Force Majeure to perform the notification obligation and burden of proof to enjoy legal consequences.

**Difficulties and Obstacles in Resolving Legal Consequences of Force Majeure:*

Firstly, dispute resolution practice shows that in some cases, Courts apply law on legal consequences of Force Majeure still inaccurately due to overlapping law between general principles and specific provisions.

Secondly, in some cases, competent dispute resolution agencies determine Force Majeure as a ground for contract termination.

2.2.2.3. Causes of Difficulties and Obstacles in Applying Law

Firstly, limitations in legal provisions on Force Majeure.

Secondly, absence of guiding documents and precedents with unified orientation is also a cause of inadequacies in adjudication practice.

Thirdly, limitations in the mechanism for statistics, summarizing practice, and systematizing adjudication data for cases related to Force Majeure. Fourthly, the complexity, diversity, and unpredictable variability of objective events in the modern socio-economic context.

Fifthly, limitations in contract drafting skills and risk management skills are causes of disputes between parties.

Sixthly, gaps in the administrative mechanism supporting judiciary and limitations in accessing official legal information sources.

Chapter 3

RECOMMENDATIONS FOR PERFECTING LAW AND SOLUTIONS TO ENHANCE EFFECTIVENESS OF IMPLEMENTING LAW ON FORCE MAJEURE

3.1. Recommendations for Perfecting Law on Force Majeure

3.1.1. Orientation for Perfecting Law on Force Majeure

Firstly, perfecting law on Force Majeure must ensure comprehensiveness, synchronization, and uniformity.

Secondly, perfecting law on Force Majeure must ensure flexibility, suitability with socio-economic development needs.

Thirdly, perfecting law on Force Majeure must be compatible with international legal provisions.

Fourthly, perfecting law on Force Majeure must fit the context of the Fourth Industrial Revolution.

3.1.2. Some Specific Recommendations Aimed at Perfecting Law on Force Majeure

3.1.2.1. Recommendations for Perfecting Provisions of the 2015 Civil Code on Force Majeure

Firstly, recommend amending and supplementing some provisions related to constitutive elements of Force Majeure:

One, the 2015 Civil Code needs to redesign the position of the definition clause for Force Majeure. This dissertation proposes relocating the provisions on the constitutive elements of force majeure to Part One (General Provisions), Chapter II (Establishment, Exercise, and Protection of Civil Rights) of the 2015 Civil Code

Two, amend provisions on constitutive elements of Force Majeure in Clause 1, Article 156 of the 2015 Civil Code towards more specific constitutive elements with quantitative nature, transparency, and compatibility with international legal principles.

Three, it is necessary to supplement the ground of decisions of competent state agencies in the 2015 Civil Code as an independent ground for exclusion compared to Force Majeure.

Secondly, recommend amending and supplementing some provisions related to conditions for applying Force Majeure:

One, it is necessary to codify the notification obligation and sanctions for acts violating the notification obligation in the 2015 Civil Code.

Two, supplement provisions on the burden of proof for Force Majeure in the 2015 Civil Code. This dissertation recommends supplementing a provision explicitly confirming that the burden of proof rests with the party invoking force majeure within the clause regulating its constitutive elements.

Three, it is necessary to establish provisions limiting agreements invalidating Force Majeure in some cases to ensure fairness and protect the weaker party.

Thirdly, recommend amending and supplementing some provisions related to legal consequences of Force Majeure:

One, amend the provision in Clause 2, Article 351 of the 2015 Civil Code regarding the scope of excluding liability corresponding to the degree of impact of Force Majeure, specifically formulated as follows: *“In the event that the obligated party fails to properly perform their obligation due to force majeure, they shall not bear civil liability for the part of the obligation that cannot be performed or for the damage directly caused by the force majeure event, unless otherwise agreed upon or otherwise provided by law.”*

Two, supplement provisions that Force Majeure is a ground for contract termination in Article 422 of the 2015 Civil Code.

Three, amend Point b, Clause 3, Article 601 of the 2015 Civil Code towards omitting the provision on excluding liability for compensation for damage caused by ultra-hazardous activity in case of Force Majeure.

3.1.2.2. Recommendations for Perfecting Provisions of Specialized Laws on Force Majeure

Firstly, recommend amending and supplementing some provisions related to Force Majeure in the 2005 Commercial Law:

1. It is necessary to uniformly use legal terminology when regulating legal consequences excluding civil liability of Force Majeure. Regulations on the exclusion of civil liability upon the occurrence of force majeure need to be amended to consistently utilize a single term: “exclusion of liability”.

2. It is necessary to amend Clause 1, Article 296 of the 2005 Commercial Law towards omitting quantitative time points at Point a and Point b, replacing them with the standard of “reasonable time limit”.

Secondly, recommend amending and supplementing some provisions related to Force Majeure in the 2019 Labor Code:

1. It is necessary to amend Clause 2, Article 129 of the 2019 Labor Code towards not repeating the constitutive elements of Force Majeure, specifically as follows: *“An employee who loses... must pay compensation in accordance with the liability contract; in case of a force majeure event such as natural disasters, fires, enemy sabotage, dangerous epidemics, or catastrophes, no compensation shall be required.”*

2. It is necessary to amend and supplement Clause 4, Article 97 of the 2019 Labor Code towards supplementing the phrase “reasonable” to ensure the rights of employers.

Thirdly, recommend amending and supplementing provisions related to the confirmation mechanism for Force Majeure:

1. It is necessary to establish general provisions on the confirmation mechanism for Force Majeure, encompassing the following contents: confirmation authority, legal validity, and confirmation details.

2. Amend the provision in Clause 1, Article 13 of Resolution 326/2016/UBTVQH14 regulating levels of collection, exemption, reduction, collection, payment, management, and use of court fees and charges towards directly referencing the general confirmation mechanism for Force Majeure.

3.2. Solutions to Enhance Effectiveness of Implementing Law on Force Majeure

3.2.1. General Solutions

Firstly, unify perspectives on application and standardize identification criteria for Force Majeure.

Secondly, improve data infrastructure and professionalize statistical work on adjudication practice related to Force Majeure.

Thirdly, enhance parties' awareness of risk management and promote the role of alternative dispute resolution methods outside Courts.

3.2.2. Specific Solutions

Firstly, constructing and publishing typical Precedents on determining Force Majeure is particularly necessary.

Secondly, establish a mechanism for expert consultation and in-depth appraisal for non-traditional risks.

Thirdly, improve the interdisciplinary coordination process in authenticating information about Force Majeure.

Fourthly, it is necessary to disseminate model clauses on risk management in each specific field.

Fifthly, deploy an in-depth mediation model for disputes related to Force Majeure.

CONCLUSION

The dissertation "Force Majeure under Vietnamese Civil Law" features comprehensive and in-depth research on the theoretical foundation, legal status, as well as practical application of law on Force Majeure in the Vietnamese legal system. Through researching the subjects of the dissertation, the researcher has drawn the following conclusions:

1. In nature, Force Majeure is an objective phenomenon that disrupts normal assumptions which are the foundation for establishing all legal norms, used by law as a tool to re-establish fairness, reasonableness, and feasibility in law implementation under abnormal circumstances.

2. The dissertation has thoroughly analyzed the status of current legal provisions on Force Majeure in the 2015 Civil Code and specialized laws. The research has pointed out progressive points as well as legal gaps, especially the lack of uniformity on Force Majeure between general civil law and specialized law (commercial, construction, aviation). Comparison with international principles (PICC, CISG) and legal experience of some countries has provided empirical arguments to recommend building a more synchronized mechanism for managing force majeure risks.

3. Furthermore, through surveying adjudication and dispute resolution practice, the dissertation has highlighted typical obstacles that judicial agencies and related parties often encounter. These are confusion between Force Majeure and neighboring institutions such as Fundamental Change of Circumstances, objective obstacle, or state of necessity; lack of a transparent Force Majeure confirmation procedure; and inadequacies in evaluating the remedying efforts of the violating party. On that basis, the dissertation has proposed specific amendment recommendations aimed at concretizing criteria for identifying Force Majeure and standardizing accompanying legal consequences.

4. The recommendations analyzed and presented in Chapter 3 of the dissertation will help legislators have a more comprehensive view in the process of amending and supplementing legal provisions. Simultaneously, the solutions proposed by the dissertation aim to build a transparent legal environment, helping civil subjects obtain tools to protect legitimate interests before objective fluctuations, suitable with

the development of the market economy and the trend of international civil and commercial exchange.