



Ensuring consistency among legal provisions on the unilateral termination of contract performance in Vietnam

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Abstract

In the process of robust development of economic, civil, and commercial life, contracts increasingly play a foundational role in establishing and maintaining the stability of transactions. Within the system of contract law, the institution of unilateral termination of contract performance is recognized as an important legal mechanism for the timely protection of the lawful rights and interests of the parties and for meeting the need for flexibility in the formation and performance of contracts in practice. However, in reality, the current legal provisions governing unilateral termination of contract performance continue to reveal a lack of consistency, and even contradictions, between general law and specialized legislation. Such inconsistencies create difficulties in legal application and entail a potential risk of disputes arising in practice. On this basis, this article focuses on analyzing the theoretical foundations, identifying the current state of inconsistency in legal provisions on unilateral termination of contract performance, and proposing solutions for legal improvement aimed at ensuring coherence, transparency, and effectiveness of Vietnamese contract law in the context of the country's accelerating deep international integration in the new era.

Keywords: Unilateral termination of contract performance, consistency of legal provisions, contract law, general law and specialized legislation, legal reform in Vietnam

Introduction

Unilateral termination of contract performance constitutes an important legal mechanism in contract law, particularly within the framework of remedies for breach of contract. In the context of Vietnam's legal system, this institution is regulated by the Civil Code as the general law and further specified by various specialized statutes. However, the coexistence of multiple legal instruments governing unilateral termination has given rise to inconsistencies in legal terminology, grounds for application, and legal consequences, thereby undermining the coherence and effectiveness of contract law enforcement in practice.

Ensuring consistency among legal provisions on unilateral termination of contract performance is therefore not merely a matter of legislative technique, but a fundamental requirement for enhancing legal certainty, predictability, and the protection of legitimate rights and interests of contractual parties. From a theoretical perspective, legal consistency must be guaranteed both in substantive content and in legislative form, including the uniform use of legal terminology and harmonious interaction between general law and specialized legislation.

Against this backdrop, this article examines the theoretical foundations of ensuring consistency among legal provisions on unilateral termination of contract performance, analyzes the current state of inconsistencies in Vietnamese law, and proposes solutions to improve legislative coherence. Through this approach, the article aims to contribute to the development of a more unified, transparent, and effective contract law system in Vietnam, in line with the requirements of the socialist rule-of-law state and international legal integration.

Materials and Methods

This study adopts a qualitative doctrinal legal research approach. The research materials primarily include

Vietnamese normative legal documents, notably the 2015 Civil Code, the 2005 Commercial Law, and relevant specialized legislation regulating contractual relations, together with policy and reform-oriented resolutions.

The research methods consist of statutory analysis and systematic interpretation to examine the legal basis, conditions, and consequences of unilateral termination of contract performance, as well as to assess the consistency between general law and specialized legislation. In addition, comparative legal analysis is employed by referencing selected international instruments, particularly the CISG, to evaluate the compatibility of Vietnamese law with international legal standards. On this basis, the study proposes recommendations to enhance the coherence and effectiveness of contract law in Vietnam.

Overview of Ensuring Consistency Among Legal Provisions on Unilateral Termination of Contract Performance in Vietnam

Ensuring consistency among legal provisions governing unilateral termination of contract performance constitutes a fundamental theoretical foundation of contemporary contract law. Under the 2025 Law on the Promulgation of Legal Normative Documents, ensuring constitutionality, legality, and internal consistency of legal instruments is recognized as a core legislative principle. In this context, consistency is understood as an indispensable requirement in the development and refinement of the legal system, manifested primarily in both substantive and formal dimension^[1]. Substantively, legal consistency requires that legal norms do not conflict or overlap with respect to regulatory principles, the allocation of rights and obligations, or legal consequences, particularly where multiple legal instruments, whether general or specialized, concurrently regulate the same or closely related legal relationships. While specialized legislation may contain

sector-specific provisions, such specificity must be grounded in and not negate the fundamental principles and guiding norms established by general law. Formally, consistency is reflected in the uniform use of legal terminology, legislative techniques, and regulatory structure, ensuring coherence, clarity, and predictability in legal interpretation and application^[2]. Divergences in form, although not always altering substantive content, may nevertheless generate inconsistent interpretations and undermine legal certainty in practice.

Within contract law, unilateral termination of contract performance represents a distinct and significant legal institution, particularly within the framework of remedies for breach of contract. In essence, contract termination entails the cessation of the contract's legal effect, releasing the parties from further performance of contractual rights and obligations. The unilateral nature of this mechanism lies in the expression of intent by one party, independent of the consent of the counterparty, as recognized by the 2015 Civil Code. Vietnamese law permits unilateral termination on three principal grounds: a serious breach of contractual obligations by the other party rendering the contractual purpose unattainable; agreement between the parties; or circumstances prescribed by law. This approach reflects respect for contractual autonomy while simultaneously safeguarding legitimate private and public interests. The legal consequences of unilateral termination are distinctive, as the contract ceases to take effect from the time notice is received, and the parties are discharged from further performance, except for obligations relating to penalties, damages, and dispute resolution^[3]. Compared with other contractual remedies, unilateral termination both gives rise to legal liability for breach and extinguishes the ongoing contractual relationship, while remaining more flexible than contract rescission by preserving the validity of obligations already performed^[4]. This balance contributes to transactional stability and mitigates undue disruption to completed legal relationships.

In the current legal context, ensuring consistency among legal provisions on unilateral termination of contract performance is of particular necessity. From the perspective of building a socialist rule-of-law state, law occupies a supreme position as the foundation for social governance and the exercise of state power, requiring a legal system that is coherent, unified, and effectively enforceable^[5]. Given that Vietnamese contract law is constituted by numerous legal instruments with varying legal force and regulatory scope, internal consistency is essential to avoid conflicts, overlaps, and uncertainty in application, which would otherwise diminish legal effectiveness. Moreover, addressing inconsistencies contributes to overcoming legislative shortcomings identified in recent policy resolutions, which have highlighted overlapping, ambiguous, and contradictory provisions that impair legal predictability and equitable enforcement. Finally, in the context of deepening international integration and the rapid growth of cross-border contractual relations, a consistent legal framework governing unilateral termination is critical to enhancing transparency, predictability, and compatibility with international legal standards^[6]. Such consistency not only facilitates compliance and dispute resolution but also strengthens investor confidence, reinforces national legal credibility, and affirms Vietnam's position within the evolving global legal order.

Existing Inconsistencies Among Legal Regulations on Unilateral Termination of Contract Performance in Vietnam

The lack of consistency among legal provisions governing unilateral termination of contract performance remains a prominent issue in Vietnam's current legal framework. One of the most evident manifestations of this inconsistency lies in the divergence of legal terminology and criteria for assessing the seriousness of contractual breaches between the Civil Code 2015 and the Commercial Law 2005. As the general law governing contractual relations in Vietnam, the Civil Code employs the concept of a 'serious breach of contractual obligations' as a basis for exercising the right to unilaterally terminate contract performance. By contrast, the Commercial Law adopts the term 'fundamental breach of contract,' which is largely derived from international legal instruments to which Vietnam is a party, most notably the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG). Although these two concepts are substantively similar in that both refer to breaches depriving the aggrieved party of the contractual purpose, Vietnamese law does not provide any provision clarifying their relationship or establishing unified interpretative criteria. The parallel existence of these terms without clear linkage has resulted in significant difficulties in contractual practice and dispute resolution, as the same breach may justify unilateral termination under the Commercial Law but fail to meet the threshold of a 'serious breach' under the Civil Code, or vice versa. This situation not only undermines legal certainty but also complicates judicial determination of the applicable legal instrument in Vietnam's adjudicative practice.

From the perspective of legislative technique, such terminological inconsistency reflects shortcomings in ensuring a coherent relationship between general law and specialized legislation in Vietnam. As the foundational statute, the Civil Code should ideally establish a highly general and clearly defined concept of contractual breach sufficient to trigger unilateral termination, thereby serving as a reference point for specialized laws. However, the coexistence of distinct concepts without interpretative guidance has weakened the internal coherence of Vietnamese contract law. Moreover, both 'serious breach' and 'fundamental breach' rely primarily on the criterion of frustration of contractual purpose, which is inherently abstract and dependent on the parties' intentions and specific circumstances of each contractual relationship. This qualitative nature increases subjectivity in assessment, making it difficult for parties to prove entitlement to unilateral termination and for courts to apply the law consistently.

In addition to terminological inconsistency, Vietnamese law also reveals divergence in the designation of legal institutions governing contract termination. While the Civil Code 2015 recognizes the institution of 'unilateral termination of contract performance,' the Commercial Law 2005 employs the term 'suspension of contract performance.' Although these mechanisms share similar legal consequences, namely, the cessation of further contractual obligations and the preservation of rights to payment, counter-performance, damages, or penalties, the difference in terminology and legal characterization has

generated interpretative ambiguity. This problem is exacerbated by the absence of clear legal criteria distinguishing purely civil contracts from commercial contracts under Vietnamese law. As a result, the coexistence of these concepts diminishes the transparency and systemic consistency of the legal framework governing unilateral termination of contracts in Vietnam, thereby affecting the effective protection of the parties' lawful rights and interests.

Beyond issues of terminology, inconsistency also arises in determining the legal grounds for unilateral termination between the Civil Code and specialized legislation. Under the Civil Code 2015 and the Commercial Law 2005, the right to unilaterally terminate a contract may arise from the parties' agreement, statutory provisions, or serious or fundamental breaches of contractual obligations. This approach reflects Vietnam's recognition of contractual freedom and party autonomy, provided that such agreements do not contravene the law or social morality. However, in several specialized sectors such as housing, real estate business, construction, and insurance, unilateral termination is regulated in a more restrictive manner, being limited to grounds expressly prescribed by law. In these areas, contractual agreements on termination grounds are often not recognized, significantly narrowing party autonomy. This divergence demonstrates that the principle of respecting agreements, as enshrined in the Civil Code, has not been consistently upheld across Vietnam's legal system. While such restrictions may serve state management objectives and the protection of public interests, excessive limitations risk undermining the voluntary and consensual nature of contractual relations, which is a core principle of modern contract law^[7].

Furthermore, inconsistency is also evident in the legal consequences of unilateral termination, particularly between the Civil Code 2015 and the Law on Insurance Business 2022. The Civil Code clearly provides that upon unilateral termination, from the time the termination notice is received, the parties are released from further contractual obligations, except for obligations relating to penalties, damages, and dispute resolution. This reflects a fundamental principle of Vietnamese contract law that obligations cease when the contractual relationship is lawfully terminated, save for residual liabilities. However, the Law on Insurance Business requires the policyholder to pay insurance premiums up to the time of unilateral termination, thereby maintaining a financial obligation even after lawful termination. Although such premiums may be viewed as obligations accrued during the contract's validity, the Civil Code does not clearly address whether partially performed obligations fall within the category of obligations surviving termination. This regulatory gap intensifies inconsistency between general and specialized legislation in Vietnam. In practice, it creates uncertainty for contracting parties and challenges for adjudicative authorities in determining the priority of applicable laws, while also risking an imbalance of rights and obligations that runs counter to the principles of equality and fairness embedded in the Civil Code. Accordingly, clarifying and harmonizing the legal consequences of unilateral termination between general and specialized laws is essential to strengthening the coherence, predictability, and effectiveness of Vietnam's contract law system.

Recommendations for Legal Reform to Ensure Consistency among Legal Provisions on Unilateral Termination of Contract Performance in Contemporary Vietnam

From the analysis of issues relating to unilateral termination of contract performance, it can be observed that the lack of consistency among the 2015 Civil Code, the 2005 Commercial Law, and several sector-specific statutes in Vietnam does not merely stem from legislative history or the regulatory particularities of individual fields, but also reflects structural shortcomings in the design and operation of the relationship between general law and specialized law. Accordingly, to ensure the coherence of the legal framework governing remedies for breach of contract, it is necessary to adopt appropriate measures for legislative improvement.

First, it is necessary to unify the use of the term 'fundamental breach' as the legal ground for unilateral termination of contract performance throughout the Vietnamese legal system. At present, the 2015 Civil Code employs the term 'serious breach of contractual obligations,' while the 2005 Commercial Law adopts the term 'fundamental breach of contractual obligations.' Although these terms share largely similar legal content and consequences, their parallel existence without any provision clarifying their relationship has caused considerable uncertainty in legal interpretation and application. In substance, both concepts refer to a failure to perform or improper performance of contractual obligations to such an extent that the aggrieved party is deprived of the purpose of contract conclusion. Therefore, unifying the terminology would not alter the regulatory substance or legal nature of the institution of unilateral termination. In this regard, replacing the term 'serious breach' in the 2015 Civil Code with 'fundamental breach' represents a reasonable solution to ensure consistency with the Commercial Law. Moreover, the term 'fundamental breach' aligns with prevailing international legal standards, as reflected in major legal instruments such as the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG), the UNIDROIT Principles of International Commercial Contracts (PICC), and the Principles of European Contract Law (PECL). In the context of Vietnam's deepening international integration, such terminological unification would enhance the compatibility of domestic law with international norms, reduce legal conflicts, and better protect the lawful rights and interests of contractual parties.

Second, it is necessary to unify both the grounds for application and the legal consequences of unilateral termination of contract performance. To ensure consistency in the scope of application, sector-specific legislation should be revised to maintain compatibility with the 2015 Civil Code in determining the grounds for exercising the right of unilateral termination. Rather than rigidly enumerating permissible cases, specialized laws should recognize the legal validity of contractual agreements on termination grounds, provided that such agreements do not violate statutory prohibitions or social morality. This approach is consistent with the principle of freedom of contract and reflects the inherently flexible nature of contractual relations in practice. In addition to grounds specifically prescribed by specialized legislation, a general ground based on breach of contractual obligations, particularly breaches that deprive the aggrieved party of the contractual purpose, should be incorporated in accordance with the spirit of the Civil Code.

With respect to legal consequences, specialized laws should be reviewed and adjusted to conform to the general framework established by the Civil Code, under which, upon unilateral termination, the parties are released from further performance of contractual obligations, except for obligations relating to penalties, damages, and dispute resolution. In the field of insurance, the obligation to continue paying insurance premiums after lawful unilateral termination should only be maintained where the insurer has actually borne risks or incurred reasonable costs related to coverage. Outside such cases, the legal consequences of termination should be applied consistently with the Civil Code to ensure a balanced allocation of interests and systemic coherence.

Third, the term ‘suspension of contract performance’ in the 2005 Commercial Law should be replaced with ‘unilateral termination of contract performance’ in line with the 2015 Civil Code. Such a terminological revision is necessary to ensure consistency in the legal framework governing contractual remedies and to reaffirm the guiding role of the Civil Code as the general law. While the Civil Code clearly establishes the institution of unilateral termination and has been further elaborated in various specialized laws, the continued use of divergent terminology in the Commercial Law undermines legal coherence. Moreover, the term ‘suspension’ fails to accurately reflect the legal nature of the institution, as it linguistically implies a temporary halt with the possibility of resumption, whereas under the Commercial Law, its legal consequence is the definitive termination of contractual obligations. This mismatch between terminology and legal effect complicates interpretation and application, particularly in contracts that straddle civil and commercial domains. Unifying terminology and legal consequences would facilitate clearer identification of applicable legal institutions by adjudicatory bodies and contracting parties alike, thereby enhancing transparency, consistency, and effectiveness in the application of Vietnamese contract law.

Conclusion

Unilateral termination of contract performance is a vital legal mechanism within Vietnamese contract law, serving to protect legitimate interests and ensure flexibility in contractual relations. However, the foregoing analysis demonstrates that the current legal framework in Vietnam remains affected by notable inconsistencies among the Civil Code 2015, the Commercial Law 2005, and various sector-specific statutes. These inconsistencies are manifested in divergent legal terminology, fragmented grounds for application, and conflicting determinations of legal consequences, reflecting deeper structural shortcomings in the coordination between general law and specialized legislation.

Such a lack of coherence undermines legal certainty, predictability, and uniform application of the law, thereby increasing risks in contractual practice and complicating dispute resolution. In the broader context of building a socialist rule-of-law state and deepening international integration, ensuring consistency in the regulation of unilateral termination is not merely a matter of legislative technique, but a substantive requirement for safeguarding contractual autonomy, balancing interests among parties, and enhancing the credibility of Vietnam’s legal system. Accordingly, the study underscores the necessity of

harmonizing legal terminology, unifying grounds and legal consequences of unilateral termination, and reinforcing the guiding role of the Civil Code as the general law. Implementing these reforms would contribute to a more coherent, transparent, and effective system of contract law in Vietnam, better aligned with international legal standards and responsive to the practical demands of a modern, integrated economy.

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