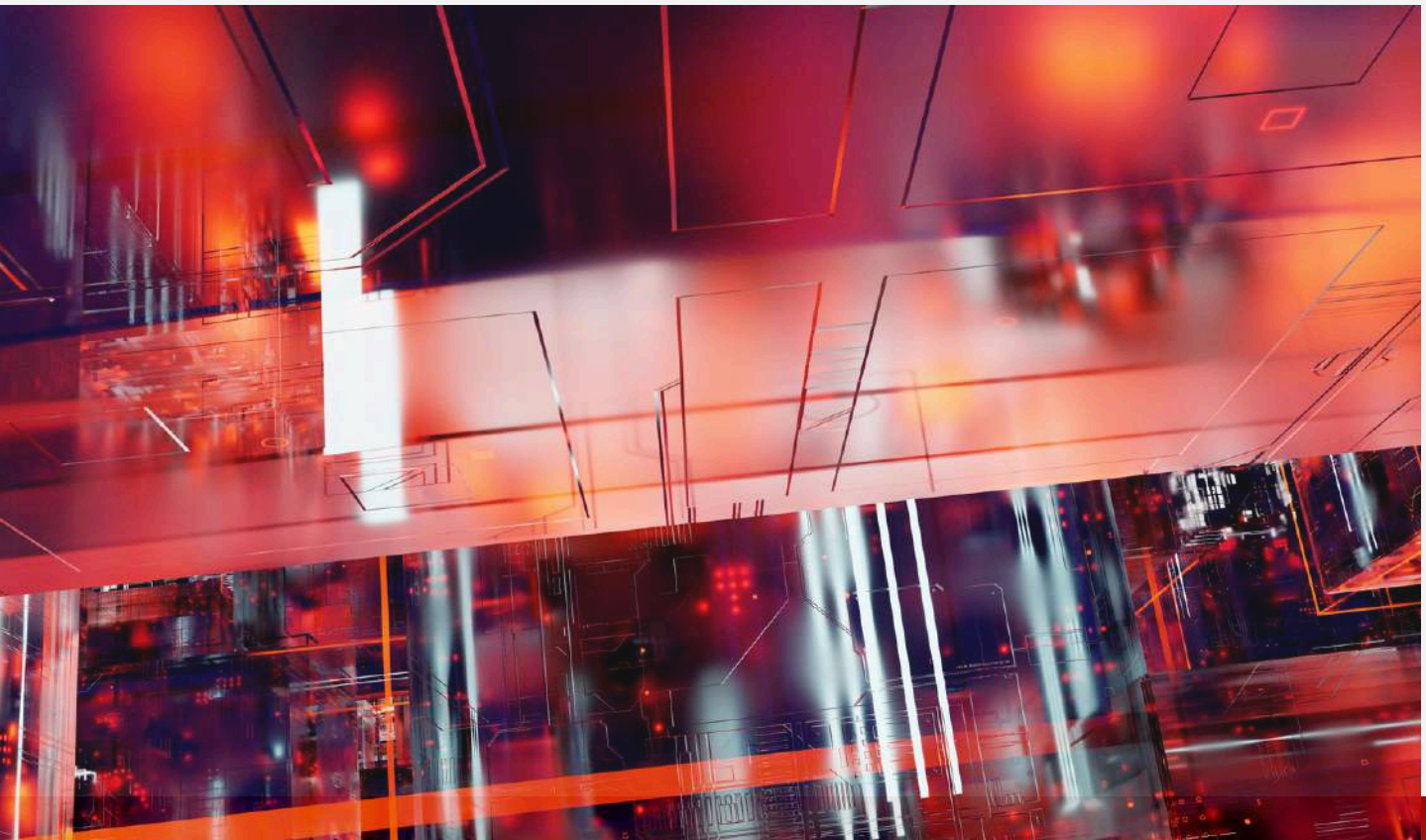


CONTROL RISKS WHEN UNILATERALLY TERMINATING ECONOMIC CONTRACTS



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When it comes to unilaterally terminating an economic contract or what we often call a commercial contract, it is not only about ending a commercial transaction but also raising a series of legal issues, finance, and even issues related to contract penalties, compensation for damages as well as other legal matters. Therefore, the unilateral terminating contract will require the party making the unilateral request to be careful in the unilateral method and clearly understand the agreement content of the parties in the contract.

In the article below, we want to share with you the issues that need to be noted when drafting unilateral terms in a contract and how to terminate the contract legally.

1. HOW DOES THE LAW REGULATE UNILATERAL CONTRACT TERMINATION?

Terminating a contract ahead of time according to the will of one of the parties is understood as a unilateral action from one party with the desire to terminate that party's rights and obligations to the other party related to the contract. Accordingly, Article 428 of the Civil Code provides for unilateralism as follows:

“Article 428. Unilateral termination of contract performance

1. A party has the right to terminate the contract performance unilaterally and does not have to compensate for damage when the other party seriously violates its obligations in the contract or the parties have an agreement or prescribed by law.
2. The party that unilaterally terminates the contract performance shall immediately notify the other party of the contract termination. If failure to notify causes damage, compensation shall be made.
3. When a contract is unilaterally terminated, the contract terminates from the time the other party receives notice of termination. The parties do not have to continue performing their obligations except for agreements on penalties for violations, compensation for damages, and agreements on dispute resolution. The party that has performed the obligation has the right to request the other party to pay for the performed obligation.
4. The party that suffers damage due to the other party's failure to perform its contractual obligations properly shall receive compensation.

In case the unilateral termination of contract performance does not have the basis specified in Clause 1 of this Article, the party that unilaterally terminates the contract performance is determined to be the party violating its obligations and shall fulfil its civil liability according to the regulations of this Code and other relevant laws due to failure to properly perform contractual obligations.”

According to the above regulations, it is understood that the right to unilaterally terminate the contract before the expiration date of a party in the contract will be based on (i) when one party has a serious violation of obligations in the contract, (ii) according to regulations of law, (iii) the parties agree on the circumstances that are the basis for one party to have the right to terminate the contract unilaterally. Including for:

- The element of contract termination belongs to “Serious violation of contractual obligations or specific regulations of the law”. Accordingly, when one party finds that the other party has seriously violated the obligations of the contract, the aggrieved party has the right to unilaterally. However, this will pose many risks for the unilateral party if the unilateral party cannot determine whether the other party’s violation is serious or less serious. In some cases, the unilateral party believes that it is a serious violation of contractual obligations, but the Court does not accept, and invisibly, the unilateral causing damage to the other party, and the unilateral party shall bear the risks of compensation for damages and penalties for contract violations.
- Unilateral is regulated by law, so the unilateral party will need to check whether its case falls under the cases of unilateral contract termination according to the regulations of law. This will actually be difficult for enterprises because the law does not clearly regulate this issue currently. You will need the advice of a lawyer or your enterprise’s legal department to carefully consider the problem your enterprise is facing and look for legal corridors that are regulating this issue.
- Events agreed upon by the parties in the contract arise and are determined to be the basis for a party to terminate the contract unilaterally.

In this case, the contract will clearly state that one party has the right to unilaterally terminate the contract ahead of time when any event arises. This is considered the clearest basis for a party to determine whether or not unilateral rights arise without having to prove the other party’s violation is considered a serious violation of contractual obligation.

The nature of civil transactions and commercial contracts is to record the agreement of the parties on an agreement condition that is not contrary to law or social ethics. Therefore, to bind the responsibilities of the parties in the contract, as well as force the parties to seriously and comply with the contents that the parties committed, the law allows the parties to record in the contract the cases arise a party has the right to terminate the contract unilaterally.

2. HOW TO UNILATERALLY TERMINATE THE CONTRACT?

The content we shared in section 1 above will be understood as a necessary condition to determine whether there is a basis to terminate the contract unilaterally, so what are the sufficient conditions? The sufficient conditions here are the conditions on the form and method of unilaterally terminating the contract. Currently, the law does not regulate the formation of unilateral notification or the duration of prior notice but only general recognition for the purpose of enterprises applying it to their own specific cases.

The problem is that the form of the notice will be a hand-delivered document, express delivery, or notice via electronic means such as email or fax. This will depend on the agreement of the parties in the contract; the law does not explicitly regulate it.

How long is the notice period, or does it terminate immediately? Article 520 of the 2015 Civil Code explicitly regulates the type of service contracts, according to which the unilateral party shall notify a reasonable period in advance. Still, the law does not guide what a reasonable period is. This regulation is similar to lease contracts, transportation service contracts, and processing contracts. To avoid future disputes related to the advance notice period, the parties need to agree in the agreement on when one party unilaterally terminates the contract, whether this advance notice period applies to all violations or for some exceptional cases where the parties agree to shorten the notice period. The prior notice period will be calculated from the time appropriate to the form of notification, also one of the points that the parties need to clarify in the contract.

3. WHAT ARE THE RISKS WHEN AN ENTERPRISE UNILATERALLY TERMINATES A CONTRACT NOT BY THE LAW?

The law regulations that when the party unilaterally terminates the contract contrary to the law, does not fall under the agreed cases, or gives advance notice. Still, the notice time is unreasonable; the party that unilaterally terminates the contract will compensate the other party for damages and penalties for contract violations, depending on each case.

Regarding this issue, the Court's opinion in Case Law No. 21/2018/AL on guilt and damages in the case of unilateral termination of a property lease contract will be the most complete answer to the question "Why do enterprises need to be careful when drafting unilateral terms in contracts?". The case law was approved by the Council of Judges of the Supreme People's Court on October 17, 2018, and announced according to Decision No. 269/QD-CA dated November 6, 2018, of the Chief Justice of the Supreme People's Court, citing case law as follows:

"[1] On April 10, 2006, Company D leased two steel locomotives to C Joint Stock Company and towed ships in and out at 10-10 port and Khe Day port in Quang Ninh, effective from the date of signing until December 31, 2006 according to Economic Contract No. 1141/HD-CNQN. In the contract, there is no agreement on contract termination conditions. However, on August 17, 2006, C Joint Stock Company issued written No. 2349/INDEVCO announcing the contract termination from August 20, 2006 with the reason "there is no need to rent two locomotives". The time Joint Stock Company C issued a written notice to terminate the contract was too short, causing damage to Company D due to not being able to get another replacement contract immediately. The fault belongs to C Joint Stock Company, so it shall be responsible for the damage caused to Company D. The actual damage that needs to be considered is the vehicle rental fee for the remaining period of the contract."

Thus, to limit risks, your enterprise will need to pay attention to building unilateral terms in the contract in a detailed and precise. Although, in reality, there are many cases where enterprises believe that the above record would be too complicated and unnecessary. However, it may be true that at the initial time of the contract, the relationship between the parties was still good and without any conflicts. However, during the contract implementation process, the parties can evaluate the quality of goods and services and the other party's compliance, thereby determining whether to continue or terminate the contract.

When determining to terminate the contract, the enterprise will need to carefully review and consider the content of the agreement to ensure that the enterprise is allowed to terminate the contract; what needs to be done to terminate the contract? All of these contents need to be guided in detail in the agreement, and this will be the legal basis for the enterprise to apply when unilateral issues arise. Besides, detailed recording will also help enterprises avoid legal risks of compensation for damages or penalties for contract violations.

The article contains general information which is of reference value, in case you want to receive legal opinions on issues you need clarification on, please get in touch with our Lawyer at info@cdlaf.vn

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