

The Legal Framework on Contractual Penalties under South African and Vietnamese Law: A Comparative Law Perspective

Nguyen Cong Tien

Master of Laws, Doctoral Candidate, University of Law, Hue University, Vietnam

Abstract: The contractual penalty is one of the most widely used remedies for breach of contract in private law relations. Vietnamese law and South African law nevertheless approach the purpose of the penalty and the control of its amount in markedly different ways. Vietnamese law treats the penalty primarily as a deterrent and punitive sanction; it leaves the amount to the parties under Article 418 of the Civil Code 2015 but imposes rigid statutory ceilings of eight percent under Article 301 of the Commercial Law 2005 and of twelve percent for construction works in public investment and public-private partnership projects under Article 86 of the Construction Law 2025. South African law, by contrast, has since the Conventional Penalties Act 15 of 1962 enforced penalty stipulations whether they are framed as penalties or as liquidated damages, prohibited the cumulation of a penalty and damages for the same breach, and empowered the courts to reduce a penalty that is out of proportion to the prejudice suffered by the creditor. Using the comparative, analytical and case-study methods, together with arbitral caseload data for the period 2020–2025, this article examines the concept, legal nature and amount of the contractual penalty and its relationship with damages in both systems. In light of the draft law presented to the National Assembly in October 2026 proposing to repeal the chapter on commercial remedies, the article proposes targeted amendments to Article 418 of the Civil Code 2015, Articles 300, 301 and 307 of the Commercial Law 2005, Article 86 of the Construction Law 2025 and Article 25 of the Law on Protection of Consumers' Rights 2023, each drawing on a specific provision of the South African Act.

Keywords: contractual penalty; penalty clause; judicial reduction; damages; comparative law; South Africa; Vietnam.

1. Introduction

The French Civil Code has long been regarded as the "constitution" of the modern civil law tradition and has exerted a profound influence on the civil law of many countries, including Vietnam.¹ The reception of its ideas and legislative techniques in Vietnam occurred in two stages: a passive reception during the colonial period and an active reception during the period of renovation and international integration, notably through the assistance of French experts in the drafting of the Civil Code 1995 and its subsequent revisions. Within this civil law tradition, the contractual penalty is currently governed principally by the Civil Code 2015 and the Commercial Law 2005, supplemented by sector-specific statutes.²

South Africa offers a contrasting and instructive point of comparison. As a mixed legal system in which Roman-Dutch civil law and English common law coexist, South Africa experienced the tension between the civilian acceptance of conventional penalties and the common law hostility towards penalty clauses, and it resolved that tension by legislation. The Conventional Penalties Act 15 of 1962 renders penalty stipulations enforceable whether they are described as penalties or as liquidated damages, prohibits the cumulation of a penalty and damages in respect of the same breach, and confers on the courts the power to reduce a penalty that is out of proportion to the prejudice suffered by the creditor.³ More than six decades of judicial application have produced a stable body of case law on the burden of proof, the concept of prejudice and the limits of judicial intervention. That experience is particularly valuable for a legal system which, like Vietnam, must reconcile the principle of freedom of contract with the requirement of fairness between the contracting parties.

The Vietnamese provisions on contractual penalties continue to raise difficulties concerning their scope of application, the relationship between the penalty and damages, and the mechanism for controlling the amount

¹ Bui Thi Thanh Hang & Do Giang Nam (2011), "Sức sống của Bộ luật Dân sự Việt Nam từ góc nhìn so sánh với Bộ luật Dân sự Pháp, Đức, Hà Lan" [The vitality of the Vietnamese Civil Code from the perspective of comparison with the French, German and Dutch Civil Codes], *Legislative Studies Journal*, No. 16, pp. 38–44.

² Civil Code No. 91/2015/QH13 of 24 November 2015 (in force from 1 January 2017), Articles 3, 360, 418 and 427; Commercial Law No. 36/2005/QH11 of 14 June 2005, as amended, Articles 266, 294, 300, 301, 306 and 307; Civil Procedure Code No. 92/2015/QH13 of 25 November 2015, as amended, Article 91.

³ Conventional Penalties Act 15 of 1962 (Republic of South Africa), assented to on 5 March 1962 and in force from 16 March 1962, as amended by the General Law Amendment Act 102 of 1967, the Justice Laws Rationalisation Act 18 of 1996, the General Law Amendment Act 49 of 1996 and the National Credit Act 34 of 2005, sections 1 to 4.

agreed by the parties. Article 418 of the Civil Code 2015 leaves the amount to the parties, whereas Article 301 of the Commercial Law 2005 caps it at eight percent of the value of the breached part of the obligation, and Article 86 of the Construction Law 2025 caps it at twelve percent for construction works in public investment and public-private partnership projects. The three statutes also adopt different rules on whether a penalty may be combined with damages. These divergences lead to inconsistent application in the resolution of contractual disputes and reduce the compatibility of Vietnamese law with international standards. The question has now become pressing. On 20 October 2026, the Government presented to the second session of the sixteenth National Assembly a draft law amending four laws in the industry and trade sector which proposes to repeal the provisions on contracts and the whole of Chapter VII on remedies of the Commercial Law 2005, with a proposed effective date of 1 March 2027; the verifying Economic and Finance Committee characterised this as an institutional change rather than a mere technical removal of duplication and requested a comparison table and transitional provisions, while some members favoured retaining the provisions.⁴ If the eight percent ceiling disappears without a judicial power of reduction being introduced into the Civil Code, Vietnamese law will move from rigid limitation to unlimited freedom without any corrective device, which is precisely the situation that the South African legislature avoided in 1962.

Against this background, the article addresses three research questions. First, how do Vietnamese and South African law conceive the nature and function of the contractual penalty? Second, how do the two systems regulate the amount of the penalty and its relationship with damages? Third, which specific amendments to Vietnamese law can be derived from the South African experience? The article employs the functional comparative method, legal analysis, case studies and the systematisation of practical data. Section 2 examines the concept and legal nature of the penalty, the regulation of its amount and its relationship with damages in both systems; Section 3 sets out proposals for amending specific provisions of Vietnamese law; and Section 4 concludes.

2. Discussion

2.1. The concept and legal nature of the contractual penalty

a) Vietnamese law

In Vietnamese law, the division between branches of law means that contractual relations are governed by several bodies of norms, principally civil law and commercial law, which leads to certain differences in the regulation of contracts. With regard to the penalty, however, civil law and commercial law are broadly consistent in substance. Under Article 418(1) of the Civil Code 2015, a penalty for breach is an agreement between the contracting parties under which the party in breach of an obligation must pay a sum of money to the aggrieved party. Under Article 300 of the Commercial Law 2005, a penalty is the aggrieved party's demand that the party in breach pay a sum of money as a penalty for breach of contract if the contract so provides, except in the cases of exemption from liability under Article 294 of that Law, namely an exemption agreed by the parties, an event of force majeure, a breach caused entirely by the fault of the other party, and a breach resulting from the implementation of a decision of a competent state authority which the parties could not have known at the time of contracting.

It follows that Vietnamese law characterises the penalty as a consensual sanction arising from the will of the contracting parties. Upon a breach, the aggrieved party may demand payment of the sum fixed in advance in the contract, and the party in breach is obliged to pay it. This mechanism attaches adverse legal consequences to the breach and strengthens the parties' awareness of the need to honour their commitments. Vietnamese legal scholarship has long regarded the penalty as a clause anticipated by the parties in the contract which becomes the basis for its application once a breach occurs.⁵ This approach, however, concentrates mainly on the form and the conditions of application of the penalty and does not fully clarify its purpose.

In substance, the penalty is a sanction for breach of contract agreed in advance, under which the aggrieved party may require the party in breach to pay a sum of money upon the occurrence of the legal event

⁴ Draft Law amending and supplementing a number of articles of the Commercial Law, the Competition Law, the Law on Foreign Trade Management and the Law on Protection of Consumers' Rights, presented at the second session of the sixteenth National Assembly on 20 October 2026; see Cong Thuong Newspaper (20 October 2026), "Bao cao tham tra dong thuan sua doi, bo sung 4 luat nganh Cong Thuong" [The verification report agrees on amending four laws of the industry and trade sector], <https://congthuong.vn/bao-cao-tham-tra-dong-thuan-sua-doi-bo-sung-4-luat-nganh-cong-thuong-477777.html>; and Cong Thuong Newspaper (October 2026), "Mot luat sua 4 luat nganh Cong Thuong – Bai 5" [One law amending four laws of the industry and trade sector – Part 5], <https://congthuong.vn/mot-luat-sua-4-luat-nganh-cong-thuong-bai-5-chinh-sach-dung-nhung-can-kiem-tra-dam-bao-hieu-qua-thuc-thi-478259.html>.

⁵ Hoang The Lien (editor) (2009), *Binh luan khoa hoc Bo luat Dan su nam 2005* [Scientific commentary on the Civil Code 2005], Volume 2, National Political Publishing House, Hanoi, p. 265.

giving rise to liability. In this relationship the aggrieved party holds the right to demand payment, the party in breach bears the corresponding obligation, and the object of the relationship is the sum determined by agreement. In Vietnamese law, therefore, the penalty is a form of legal liability arising from breach of contract in both civil and commercial matters, whose principal function is to deter and to punish the non-performance or improper performance of contractual obligations.

The view that the penalty is a deterrent and punitive measure is widely accepted in Vietnamese legal theory and in the practice of applying the law. On this view, the advance agreement on a penalty creates legal pressure that secures performance and determines beforehand the adverse consequences which the party in breach must bear. To ensure that the penalty operates effectively, the parties must therefore set out clearly and specifically in the contract the grounds giving rise to liability for the penalty.⁶ In practice, a considerable number of disputes arise because penalty clauses are loosely drafted or because the parties do not fully understand the nature and scope of the penalty, with the result that substantial time and cost must be spent on resolving them.

A notable feature of Vietnamese law is that the application of the penalty does not depend on the existence of actual damage. A breach of a contractual obligation and an agreement on the penalty suffice to entitle the aggrieved party to claim the penalty, whether or not damage has occurred. The amount payable is thus determined by the agreement of the parties rather than by the extent of the actual loss, and in many cases an aggrieved party that has suffered no loss at all may nevertheless claim the full agreed sum. This highlights the punitive character of the penalty in Vietnamese law, but it also raises questions concerning the balance of interests between the parties and the principle of good faith and honesty laid down in Article 3(3) of the Civil Code 2015.

b) South African law

South African private law rests on a Roman-Dutch foundation, which accepted the conventional penalty as a valid accessory stipulation. In the period preceding 1962, however, South African courts followed the English doctrine distinguishing between liquidated damages, which are enforceable because they constitute a genuine pre-estimate of the loss likely to result from a breach, and penalties stipulated in terrorem, which are unenforceable.⁷ Under that doctrine the enforceability of an agreed sum turned on its compensatory character, although English scholarship also acknowledges that agreed-sum clauses may at the same time secure performance and compensate loss.⁸

The Conventional Penalties Act 1962 abandoned that distinction. According to its long title, the Act provides for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses. Section 1(1) provides that a stipulation whereby a person "shall, in respect of an act or omission in conflict with a contractual obligation, be liable to pay a sum of money or to deliver or perform anything for the benefit of any other person ... either by way of a penalty or as liquidated damages, shall, subject to the provisions of this Act, be capable of being enforced in any competent court". Section 1(2) defines the penalty as any sum of money, or anything to be delivered or performed, for which a person may so become liable.

Three features of this definition deserve emphasis. In the first place, the definition is functional: whether the parties label the sum a penalty or liquidated damages, the stipulation falls within the Act and is treated in the same way. In the second place, the object of the penalty is broader than money and includes the delivery of property and the performance of an act. In the third place, the penalty is triggered by an act or omission in conflict with a contractual obligation, and the creditor need not prove loss in order to claim it; as Box 2 below shows, the Supreme Court of Appeal has held that a creditor claiming a penalty is not even required to allege prejudice. The penalty therefore performs a deterrent function, since it is intended to discourage breach, and a compensatory function, since it relieves the creditor of the burden of proving the existence and extent of the loss. At the same time, the legislature subjected the penalty to judicial control under section 3 of the Act, so that the penalty is neither a purely punitive instrument nor a purely compensatory one.

c) Comparative assessment

The two systems share several common elements. In both, the penalty is consensual, it is triggered by a breach without proof of loss, and it is enforceable by the courts. The differences, however, are significant. Vietnamese law defines the penalty by its form, as the payment of a sum of money, whereas South African law

⁶ Le Thi Tuyet Ha (2016), *Trách nhiệm pháp lý do vi phạm hợp đồng thương mại ở Việt Nam hiện nay* [Legal liability for breach of commercial contracts in Vietnam today], Doctoral dissertation in Law, Graduate Academy of Social Sciences, Hanoi, p. 4.

⁷ Anson, W. R. (2002), *Anson's Law of Contract*, 28th edition by J. Beatson, Oxford University Press, Oxford.

⁸ Atiyah, P. S. & Smith, S. A. (2005), *Atiyah's Introduction to the Law of Contract*, 6th edition, Clarendon Press, Oxford.

defines it by its function, irrespective of the label chosen by the parties and of whether its object is money, property or an act. The practical importance of this difference is illustrated by Article 86(2) of the Construction Law 2025, which refers to "pre-determined levels of damage" corresponding to the breached obligations alongside the penalty, without specifying whether such pre-determined damages are subject to the rules on penalties, including the twelve percent ceiling in Article 86(3). South African law avoids this problem of characterisation by subjecting penalties and liquidated damages to a single regime.

The functional orientation also differs. Vietnamese law emphasises deterrence and punishment in order to secure contractual discipline, whereas South African law combines the securing of performance, compensation for loss and the maintenance of a balance between the parties through judicial control. The same orientation is found in a leading civil law system: Article 1231-5 of the French Civil Code, as reformed in 2016 and ratified in 2018, defines the penalty clause as an agreed sum payable upon non-performance and empowers the court to moderate or increase a penalty that is manifestly excessive or derisory.⁹ A civilian code and a mixed system thus converge on the view that the penalty serves both to secure performance and to compensate, while judicial control preserves fairness. On that basis, the penalty in Vietnamese law should be understood not merely as a punitive measure but as a mechanism for securing performance that performs both a compensatory function and a deterrent function, with priority given to compensation; the amendments required to give effect to this understanding are set out in Section 3.

2.2. The regulation of the penalty amount

a) Vietnamese law

Regarding the amount of the penalty, Article 418(2) of the Civil Code 2015 provides that the amount is agreed by the parties, unless otherwise provided by a relevant law. This provision inherits the approach of Article 422 of the Civil Code 2005 and affirms respect for the freedom of the parties to agree in contractual relations of private law. The parties may therefore determine the penalty as a fixed sum or as a percentage of the value of the contractual obligation, unless a specialised law imposes a different limit.¹⁰ This approach reflects the principle of freedom and voluntariness of commitment and agreement enshrined in Article 3(2) of the Civil Code 2015 and emphasises the responsibility of the parties to perform their commitments fully and in good faith.

Specialised laws, however, impose rigid ceilings. Article 301 of the Commercial Law 2005 provides that the penalty for a breach of a contractual obligation, or the aggregate penalty for several breaches, is agreed by the parties but may not exceed eight percent of the value of the breached part of the contractual obligation, except in the case of assessment services under Article 266, where the penalty may not exceed ten times the assessment service fee. Article 86(3) of the Construction Law 2025, which entered into force on 1 July 2026, provides that for construction works in public investment projects and public-private partnership projects the penalty may not exceed twelve percent of the value of the breached part of the construction contract.¹¹ The eight percent ceiling in the commercial field has revealed a number of limitations.

First, the statutory maximum may bear no relation to the actual loss suffered by the aggrieved party. In many cases, even where the damage is very substantial, the aggrieved party may recover a penalty only within the limit fixed by law, which considerably weakens the deterrent and preventive function of the penalty.¹²

Second, a rigid ceiling restricts the parties' freedom of will in concluding the contract. A contract is in essence the product of voluntary commitment and agreement; the choice of a penalty level appropriate to the degree of risk, the value of the transaction and the economic interests of the parties should therefore fall within their autonomy. The law should restrict that autonomy only where necessary to protect the national and public interest, social morality or the lawful rights and interests of others, as Article 3(4) of the Civil Code 2015 contemplates. Maintaining the ceiling therefore creates an inconsistency with the Civil Code 2015 and a gap between Vietnamese law and the general direction of modern contract law.

⁹ Pham Thi Lien Huong and others (translators) & Le Thi Ngoc Yen and others (revisers) (2018), *Ban dich Bo luat Dan su Phap* [Vietnamese translation of the French Civil Code], Embassy of France in Vietnam & PrintarT, Article 1231-5, <https://drive.google.com/file/d/1PFv0T6W7AjqtS2mk5EFOca6iFefdUfFF/view>.

¹⁰ Nguyen Viet Khoa (2011), "Che tai phat vi pham hop dong theo Luat Thuong mai nam 2005" [Contractual penalties under the Commercial Law 2005], *Legislative Studies Journal*, No. 15, pp. 46–51.

¹¹ Construction Law No. 135/2025/QH15 of 10 December 2025, in force from 1 July 2026 (with certain provisions in force from 1 January 2026), replacing the Construction Law 2014, Article 86.

¹² Nguyen The Duc Tam (2017), "Che tai phat vi pham hop dong duoi goc do kinh te hoc phap luat" [Contractual penalties from the perspective of law and economics], *People's Court Journal*, No. 23, pp. 42–47.

Third, the method of calculating the penalty as a percentage of "the value of the breached part of the contractual obligation" raises legal problems in application. Judicial practice in Vietnam illustrates the shortcomings of this limitation mechanism, as Box 1 shows.

Box 1. Judgment No. 02/2019/KDTM-ST of the People's Court of Tan Binh District, Ho Chi Minh City

The parties concluded a contract for the supply and installation of equipment with a value of 1,342,000,000 Vietnamese dong. In the course of performance, the buyer paid 595,000,000 Vietnamese dong and still owed 747,000,000 Vietnamese dong. The plaintiff initially claimed a penalty of five percent of the contract value, namely 67,100,000 Vietnamese dong, and subsequently reduced the claim to 59,760,000 Vietnamese dong, corresponding to eight percent of the value of the breached part of the obligation under the Commercial Law 2005. The court accepted the adjusted claim on the basis of Articles 301 and 306 of the Commercial Law 2005.¹³

Observation: even professional business entities experience difficulty in identifying the correct base and amount of the penalty, and the court confined itself to applying the statutory ceiling without assessing the reasonableness of the penalty or its relationship with the actual damage.

The case shows that judicial practice largely stops at declaring the part of the agreement exceeding eight percent invalid, without a full analysis of the reasonableness of the penalty or of the relationship between the penalty and the actual damage. The difficulty is greater where the breached obligation has no readily identifiable monetary value, such as an obligation to complete works by a deadline, to maintain confidentiality or to refrain from competition, since the base on which the percentage is calculated is then uncertain. The coexistence of an eight percent ceiling for construction contracts that are commercial contracts and a twelve percent ceiling for construction works in public investment and public-private partnership projects adds a further layer of complexity. These problems reflect the limits of a model that fixes the penalty by a rigid statutory ceiling.

The practical significance of these ceilings can be seen from the caseload of the Vietnam International Arbitration Centre, the country's principal arbitral institution. As Table 1 and Figure 1 show, the number of disputes accepted by the Centre rose from 221 in 2020 to 475 in 2024 and 532 in 2025, while disputes over the sale of goods and over construction, the two sectors directly subject to the eight percent and twelve percent ceilings, accounted for between 39.8 percent and 63.3 percent of the caseload in the period 2021–2024.¹⁴ In 2025, the sale of goods remained the largest category and construction ranked second.¹⁵ Although these figures do not isolate claims for penalties, sale-of-goods and construction contracts are the categories in which penalty clauses for late delivery and delay are standard, so that the statutory ceilings shape the outcome of a substantial proportion of commercial disputes.

Table 1: Disputes accepted by the Vietnam International Arbitration Centre and the share of sale-of-goods and construction disputes, 2020–2025

Year	Disputes accepted	Sale of goods (%)	Construction (%)	Combined share (%)
2020	221	n/a	n/a	n/a
2021	270	44.4	18.9	63.3
2022	292	37.5	17.1	54.6
2023	424	21.2	18.6	39.8
2024	475	25.0	22.0	47.0
2025	532	Ranked first	Ranked second	n/a

¹³ People's Court of Tan Binh District, Ho Chi Minh City, Judgment No. 02/2019/KDTM-ST of 11 January 2019 on a dispute over a contract for the supply and installation of equipment.

¹⁴ Le Hoang Truc Giang, Nguyen Tran Minh Khoi, Le Khai Hoan & Nguyen Thuy Doan (2025), "Thuc tien giai quyet tranh chap hop dong bang trong tai thuong mai tai Viet Nam" [Practice of resolving contractual disputes by commercial arbitration in Vietnam], *Economic and Financial Research* (online), 24 December 2025, Tables 1 and 5, <https://nghiencuu.tapchikinhthetachinh.vn/thuc-tien-giai-quyet-tranh-chap-hop-dong-bang-trong-tai-thuong-mai-tai-viet-nam-134785.html>.

¹⁵ Vietnam Chamber of Commerce and Industry (2026), "Gan mot nua so vu tranh chap VIAC thu ly co yeu to FDI hoac nuoc ngoai" [Nearly half of the disputes accepted by the Vietnam International Arbitration Centre involve foreign direct investment or foreign elements], <https://vcci.com.vn/news/gan-mot-nua-so-vu-tranh-chap-viac-thu-ly-co-yeu-to-fdi-hoac-nuoc-ngoai>.

Source: compiled by the author from Le Hoang Truc Giang and others (2025), Tables 1 and 5, based on the annual reports of the Vietnam International Arbitration Centre 2020–2024; data for 2025 from the Vietnam Chamber of Commerce and Industry (2026). Another report based on the Centre's data gives 478 disputes for 2024. "n/a" indicates that the data were not published in the sources consulted.

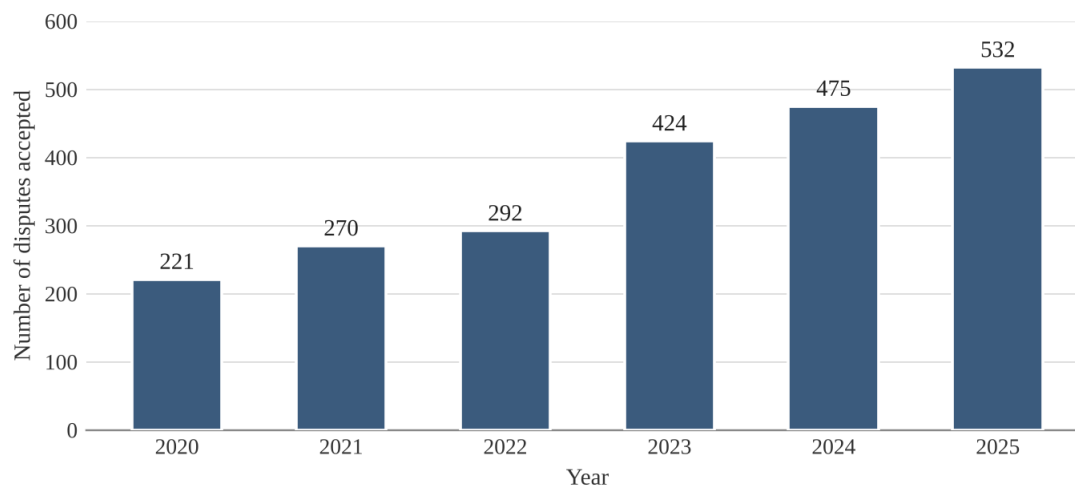


Figure 1: Disputes accepted by the Vietnam International Arbitration Centre, 2020–2025
 Source: as for Table 1

b) South African law

South African law imposes no statutory ceiling on the amount of a penalty. Control is exercised instead after the breach, by the court, under section 3 of the Conventional Penalties Act, which provides: "If upon the hearing of a claim for a penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the creditor by reason of the act or omission in respect of which the penalty was stipulated, the court may reduce the penalty to such extent as it may consider equitable in the circumstances: Provided that in determining the extent of such prejudice the court shall take into consideration not only the creditor's proprietary interest, but every other rightful interest which may be affected by the act or omission in question."

Four elements of this provision define the South African model. In the first place, control is triggered only upon the hearing of a claim for a penalty, so that it operates on the concrete consequences of an actual breach rather than on an abstract percentage fixed in advance. In the second place, the standard is whether the penalty is out of proportion to the prejudice suffered, not whether it exceeds a fixed figure. In the third place, the court's power is a power to reduce the penalty to the extent it considers equitable; the Act does not authorise an increase. In the fourth place, prejudice is wider than pecuniary loss, since the court must take into account not only the creditor's proprietary interest but every other rightful interest affected by the breach.

The allocation of the burden of proof completes the model. The Appellate Division and the Supreme Court of Appeal have consistently held that the debtor who seeks a reduction bears the onus of proving that the penalty is disproportionate to the prejudice suffered and the extent of the disproportion.¹⁶ The creditor, for its part, need only prove the stipulation and the breach. Box 2 illustrates the operation of these rules.

Box 2. Steinberg v Lazard, Supreme Court of Appeal of South Africa, judgment of 31 March 2006

On 6 June 2001 the parties concluded a sale of the appellant's members' interest in a close corporation for 1,365,000 rand. Each party undertook to complete the erection of a dwelling house on a neighbouring portion of land by 30 June 2002, failing which the defaulting party would pay the other a penalty of 50,000 rand per month, or part of a month, of delay. The respondent completed his house on 30 September 2002 and the appellant only on 15 June 2004. The respondent claimed 1,075,000 rand with interest at 15.5 percent per annum, and the High Court granted the claim.¹⁷

The Supreme Court of Appeal dismissed the appeal. It held that the debtor bears the full legal onus, and not

¹⁶ *Smit v Bester* 1977 (4) SA 937 (A) at 942D–G; *National Sorghum Breweries v International Liquor Distributors* 2001 (2) SA 232 (SCA), paragraph 8.

¹⁷ *Steinberg v Lazard* [2006] SCA 53 (RSA), Supreme Court of Appeal of South Africa, Case No. 157/2005, judgment of 31 March 2006, paragraphs 1–5.

merely an evidentiary burden, of proving that the penalty is disproportionate to the prejudice suffered; that the creditor need not allege prejudice; and that the reciprocal undertaking backed by a substantial penalty showed that the parties intended to protect themselves against some form of prejudice. As the appellant had adduced no evidence, the penalty was enforced in full.¹⁸

Observation: the penalty enforced amounted to approximately seventy-nine percent of the purchase price of the members' interest. Under Article 301 of the Vietnamese Commercial Law 2005, the same clause would have been capped at eight percent of the value of the breached part of the obligation, a base that is difficult to determine for an undertaking to complete a building by a deadline.

Beyond the Act, two further layers of control exist. At the level of general contract law, the Constitutional Court has held that a court may decline to enforce a contractual term, or its enforcement in particular circumstances, where this would be contrary to public policy as informed by the values of the Constitution, while emphasising that fairness and reasonableness are not free-standing grounds for refusing enforcement and that the power must be exercised sparingly.¹⁹ At the level of consumer contracts, section 14(3)(b)(i) of the Consumer Protection Act 68 of 2008 allows a supplier to impose only a reasonable cancellation penalty when a consumer cancels a fixed-term agreement; regulation 5(2) of the Consumer Protection Act Regulations lists the factors determining what is reasonable, and regulation 5(3) prohibits a charge that would negate the consumer's right to cancel. Regulation 44(3) presumes unfair, among other terms, a term allowing the supplier to retain a payment where the consumer fails to conclude or perform the agreement without granting the consumer an equivalent right, and a term requiring a consumer in breach to pay damages that significantly exceed the harm suffered by the supplier.²⁰

c) Comparative assessment

The comparison reveals two opposing models. Vietnamese commercial and construction law control the penalty in advance, by an abstract percentage that applies irrespective of the actual consequences of the breach. South African law controls the penalty after the breach, by an individualised assessment of proportionality between the agreed sum and the prejudice actually suffered, with the burden of proof on the debtor. The South African model is consistent with the dominant international approach. French law imposes no ceiling but establishes judicial control: under former Article 1152 and current Article 1231-5 of the French Civil Code, the court may, of its own motion or at the request of a party, moderate or increase a penalty that is manifestly excessive or derisory, and French judicial practice compares the agreed penalty with the actual damage while preserving part of the deterrent function of the clause.²¹ Article 9:509 of the Principles of European Contract Law permits the reduction of an agreed sum that is grossly excessive in relation to the loss resulting from the non-performance, and Article 7.4.13(2) of the UNIDROIT Principles of International Commercial Contracts provides that, notwithstanding any agreement to the contrary, the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances; a similar approach is found in the laws of Finland, Sweden, Denmark and Italy.²²

Two differences between the South African and French models also deserve attention. South African courts may only reduce a penalty, whereas French courts may also increase a derisory one; and the South African standard of prejudice, which embraces every rightful interest of the creditor, is broader than a test based solely on pecuniary loss, which preserves the security function of the penalty where the creditor's interest in performance is not easily quantifiable. From a comparative perspective, the lesson for Vietnam is that, instead of maintaining fixed percentage ceilings, the law should fully recognise the parties' freedom to agree on the penalty

¹⁸ Ibidem, paragraphs 6–11; see also Visser, P. J. (2006), "Steinberg v Lazard [2006] SCA 53 (RSA): Conventional Penalties Act – reduction in amount of penalty – onus of proof", *De Jure*, Volume 39, p. 685.

¹⁹ *Barkhuizen v Napier* 2007 (5) SA 323 (CC); *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* 2020 (5) SA 247 (CC).

²⁰ Consumer Protection Act 68 of 2008 (Republic of South Africa), section 14(3)(b)(i); Consumer Protection Act Regulations, Government Notice R293, Government Gazette No. 34180 of 1 April 2011, regulations 5(2), 5(3), 44(3)(q) and 44(3)(r).

²¹ Du Ngoc Bich (2015), "Góp ý điều khoản phạt hợp đồng và mối liên hệ với bồi thường thiệt hại trong dự thảo Bộ luật Dân sự (sửa đổi)" [Comments on the penalty clause and its relationship with damages in the draft amended Civil Code], Workshop on finalising the draft amended Civil Code, internal document, pp. 8–17.

²² Do Van Dai (2010), *Các biện pháp xử lý việc không thực hiện đúng hợp đồng trong pháp luật Việt Nam* [Remedies for the improper performance of contracts in Vietnamese law], National Political Publishing House, Hanoi, pp. 268–269.

and, at the same time, establish a judicial control mechanism to prevent the abuse of freedom of contract through exploitative or oppressive penalty clauses.

2.3. The relationship between the penalty and damages and the scope of control

Vietnamese law currently contains three different rules on the relationship between the penalty and damages. Under Article 418(3) of the Civil Code 2015, the parties may agree that the party in breach is liable only for the penalty or for both the penalty and damages; where the parties have agreed on a penalty without agreeing that both the penalty and damages are payable, the party in breach is liable only for the penalty. Under Article 307(2) of the Commercial Law 2005, by contrast, where the parties have agreed on a penalty, the aggrieved party is entitled to apply both the penalty and damages, unless that Law provides otherwise. Under Article 86(3) of the Construction Law 2025, in construction works of public investment and public-private partnership projects the party in breach must, in addition to the agreed penalty, compensate the other party and any third party for damage in accordance with the contract. The same clause may therefore produce different results depending on whether the contract is characterised as a civil, commercial or construction contract, and under the cumulative rules the aggrieved party may be compensated twice for the same loss where the penalty itself has a compensatory character.

South African law adopts a single and coherent rule. Section 2(1) of the Conventional Penalties Act provides that a creditor "shall not be entitled to recover in respect of an act or omission which is the subject of a penalty stipulation, both the penalty and damages, or, except where the relevant contract expressly so provides, to recover damages in lieu of the penalty". Section 2(2) adds that a person who accepts or is obliged to accept defective or non-timeous performance is not entitled to recover a penalty in respect of the defect or delay unless the penalty was expressly stipulated for that defect or delay. Section 4 extends the regime of the Act to forfeiture clauses, that is, stipulations under which, upon withdrawal from the agreement in specified circumstances, the other party forfeits the right to claim restitution of what it has performed or remains liable to perform notwithstanding the withdrawal; such clauses take effect only to the extent and subject to the conditions applicable to penalty stipulations. Vietnamese law contains no equivalent of sections 2(2) and 4. A clause providing that, upon termination for breach, the buyer forfeits all instalments already paid therefore escapes the control applicable to penalties, even though it derogates from the restitution regime of Article 427 of the Civil Code 2015 and has the same economic function as a penalty. Table 2 summarises the main points of comparison.

Table 2: Comparative overview of the legal framework on contractual penalties

Criterion	Vietnam	South Africa
Legal basis	Civil Code 2015, Article 418; Commercial Law 2005, Articles 300, 301 and 307; Construction Law 2025, Article 86	Conventional Penalties Act 15 of 1962, sections 1 to 4; Consumer Protection Act 68 of 2008 and its Regulations
Definition	A sum of money payable upon breach, as agreed by the parties	A sum of money or anything to be delivered or performed, whether framed as a penalty or as liquidated damages
Proof of loss	Not required	Not required; the creditor need not even allege prejudice
Ceiling on the amount	None in the Civil Code; eight percent in commercial contracts; twelve percent in public investment and public-private partnership construction works	None
Judicial control	No power of reduction; the part exceeding the ceiling is disregarded	Reduction where the penalty is out of proportion to the prejudice, including every rightful interest; onus on the debtor
Cumulation with damages	Excluded unless agreed (Civil Code); permitted by default (Commercial Law); required in public construction works (Construction Law)	Prohibited for the same act or omission; damages in lieu of the penalty only if the contract expressly so provides
Acceptance of defective or late performance	No specific rule	No penalty unless expressly stipulated for that defect or delay

Forfeiture clauses	Not subject to penalty control	Subject to the same regime as penalty stipulations
--------------------	--------------------------------	--

Source: compiled by the author from the legislation and case law cited.

3. Proposals for improving Vietnamese law on contractual penalties

The proposals below concern specific provisions and take account of the draft law presented to the National Assembly in October 2026. If Chapter VII of the Commercial Law 2005 is repealed, Article 418 of the Civil Code 2015 will become the general regime governing penalties in commercial contracts, and the judicial control mechanism must be introduced into the Civil Code itself; if the National Assembly decides to retain Chapter VII, the corresponding articles of the Commercial Law 2005 must be amended in parallel. Each proposal incorporates the specific South African provision from which it draws.

First, the concept of the penalty should be defined by its function, and its dual function should be expressly recognised.

In the first place, Article 418(1) of the Civil Code 2015 should be amended to read: "A penalty for breach is an agreement between the contracting parties under which the party in breach of an obligation must pay a sum of money or deliver property to the aggrieved party in order to compensate in advance for damage or to deter the breach; this provision applies irrespective of whether the parties describe that sum or property as a penalty or as pre-determined damages." The amendment draws on sections 1(1) and 1(2) of the South African Conventional Penalties Act, which bring within one regime any sum of money or anything to be delivered or performed "either by way of a penalty or as liquidated damages". It would allow the parties to agree on a penalty with a compensatory character, a deterrent character or both, with priority given to compensation, and it would remove the uncertainty created by the reference to pre-determined damages in Article 86(2) of the Construction Law 2025.

In the second place, if Chapter VII of the Commercial Law 2005 is retained, Article 300 should be amended to read: "A penalty for breach is the aggrieved party's demand that the party in breach pay a penalty for breach of contract if the parties have so agreed, except in the cases of exemption from liability provided for in Article 294 of this Law." Replacing the phrase "if the contract so provides" with "if the parties have so agreed" states the basis of the penalty more clearly and precisely: the right to claim a penalty arises from the agreement of the parties, irrespective of the time at which that agreement is reached, provided that it is lawfully concluded, including a separate agreement or an annex concluded after the main contract.²³ This corresponds to section 1(1) of the South African Act, which attaches enforceability to the stipulation itself rather than to the instrument in which it appears.

Second, the rigid ceilings should be replaced by a judicial power of reduction.

In the first place, a new clause 4 should be added to Article 418 of the Civil Code 2015: "4. Where the penalty agreed by the parties is unreasonably high in relation to the actual damage or to the nature of the breach, the Court or the Arbitral Tribunal may, at the request of the party in breach, reduce the penalty to a reasonable level, but not below the actual damage. In determining the damage, the Court or the Arbitral Tribunal shall take into account not only the material interests but also every other lawful interest of the aggrieved party affected by the breach; the party requesting the reduction bears the burden of proving that the penalty is disproportionate." The provision does not repeat the parties' freedom to determine the amount, which is already guaranteed by Article 418(2). Its first sentence adopts the standard of section 3 of the South African Act, under which the court may reduce a penalty that is out of proportion to the prejudice suffered to the extent it considers equitable; its second sentence incorporates the proviso to section 3 on every rightful interest of the creditor and the rule, established in *Smit v Bester* and confirmed in *Steinberg v Lazard*, that the debtor bears the onus. Express reference to the Arbitral Tribunal is necessary because a large share of commercial disputes is resolved by arbitration, as Table 1 shows. The floor of actual damage ensures that a reduction never deprives the aggrieved party of full compensation, consistently with Article 360 of the Civil Code 2015.

In the second place, if Chapter VII of the Commercial Law 2005 is retained, Article 301 should be amended to read: "The penalty for a breach of a contractual obligation, or the aggregate penalty for several breaches, shall be agreed by the parties; the reduction of an unreasonably high penalty shall be governed by Article 418(4) of the Civil Code." The eight percent ceiling would thus be abolished, as South African law has never imposed a ceiling, while the debtor would be protected by the judicial power of reduction rather than by a

²³ Le Thi Tuyet Ha (2026), "Thuc tien ap dung phap luat ve che tai phat vi pham trong hop dong thuong mai" [The practice of applying the law on penalties in commercial contracts], *Legislative Studies Journal*, No. 02(509).

fixed percentage. If, conversely, Chapter VII is repealed, the transitional article of the amending law should provide that penalty clauses in contracts concluded before its entry into force continue to be governed by Article 301 of the Commercial Law 2005, in order to protect the legitimate expectations of parties who drafted their contracts under the eight percent ceiling.

In the third place, a second sentence should be added to Article 86(2) of the Construction Law 2025: "Pre-determined levels of damage agreed by the parties shall be subject to the provisions of the Civil Code on penalties for breach, including the provisions on the reduction of the penalty." The twelve percent ceiling in Article 86(3) may be retained as a safeguard for public funds in public investment and public-private partnership projects, but the amendment, which reflects the assimilation of liquidated damages to penalties in section 1(1) of the South African Act, would prevent both the ceiling and the judicial control from being circumvented by relabelling a penalty as pre-determined damages.

Third, the relationship between the penalty and damages should be harmonised.

In the first place, if Chapter VII of the Commercial Law 2005 is retained, Article 307(2) should be amended to read: "Where the parties have agreed on a penalty, the aggrieved party is entitled only to the penalty, unless the parties have agreed that the party in breach is liable for both the penalty and damages." The commercial rule would then coincide with Article 418(3) of the Civil Code 2015 and with section 2(1) of the South African Act, under which the creditor may not recover both the penalty and damages for the same act or omission and may recover damages in lieu of the penalty only where the contract expressly so provides.

In the second place, the following sentence should be added at the end of Article 418(3) of the Civil Code 2015: "Where the party in breach is liable for both the penalty and damages in respect of the same breach, the amount of damages shall be reduced by the part of the penalty that compensates the same damage, unless the parties have expressly agreed that the penalty is not intended to compensate damage." This preserves the parties' freedom to agree on a purely deterrent penalty while preventing double compensation, which is the policy underlying the prohibition of cumulation in section 2(1) of the South African Act. For the same reason, the second sentence of Article 86(3) of the Construction Law 2025 should be amended so that the party in breach compensates the damage exceeding the amount of the penalty, unless the contract provides otherwise.

Fourth, the scope of control should be extended to the acceptance of defective or late performance and to forfeiture clauses.

In the first place, a new clause 5 should be added to Article 418 of the Civil Code 2015: "5. An aggrieved party that has accepted performance which is defective in quality or late shall not be entitled to claim a penalty in respect of that defect or delay, unless the penalty was expressly agreed for that defect or delay or the aggrieved party reserved its right at the time of acceptance." The provision follows section 2(2) of the South African Act and gives effect to the principle of good faith in Article 3(3) of the Civil Code 2015 by preventing a party that has accepted performance without reservation from subsequently claiming a penalty for the same defect or delay; the reference to a reservation of rights adapts the rule to the Vietnamese practice of recording acceptance in minutes of handover and acceptance.

In the second place, a new clause 6 should be added to Article 418 of the Civil Code 2015: "6. An agreement under which, upon the termination or rescission of the contract due to a breach, the party in breach loses the right to restitution under Article 427 of this Code of what it has performed, or remains obliged to perform notwithstanding the termination or rescission, shall be treated as an agreement on a penalty for breach and shall be subject to clause 4 of this Article." This proposal transposes section 4 of the South African Act, which subjects forfeiture clauses to the conditions applicable to penalty stipulations, and would bring within judicial control clauses providing for the forfeiture of instalments or advance payments, which are common in real estate and equipment supply contracts.

Fifth, the protection of consumers against disproportionate penalties should be strengthened. Clause 12 of Article 25 of the Law on Protection of Consumers' Rights 2023 currently prohibits terms providing for sanctions that are more disadvantageous to the consumer in the event of breach or termination of the contract, and clause 15 prohibits terms contrary to the principle of good faith that create an imbalance of rights and obligations to the detriment of the consumer.²⁴ These provisions address the asymmetry between the parties but not the disproportion between the penalty and the harm. Since the draft law presented in October 2026 already amends the Law on Protection of Consumers' Rights, clause 12 of Article 25 should be amended to read: "12. Provide for sanctions that are more disadvantageous to the consumer in the event of breach or termination of the

²⁴ Law on Protection of Consumers' Rights No. 19/2023/QH15 of 20 June 2023, in force from 1 July 2024, Article 25, clauses 12 and 15.

contract, or require the consumer to pay a penalty, compensation or termination charge that significantly exceeds the actual damage suffered by the business organisation or individual." The amendment draws on regulation 44(3)(r) of the South African Consumer Protection Act Regulations, which presumes unfair a term requiring a consumer in breach to pay damages that significantly exceed the harm suffered by the supplier, and on section 14(3)(b)(i) of the Consumer Protection Act read with regulations 5(2) and 5(3), which confine cancellation penalties to a reasonable amount that does not negate the consumer's right to cancel.

Sixth, the Council of Judges of the Supreme People's Court should issue guidance on the exercise of the power of reduction. To ensure consistency and practicability, a resolution of the Council of Judges should specify the criteria for determining whether a penalty is "unreasonably high". These criteria should comprise, in the first place, the value of the breached obligation; in the second place, the degree of fault of the party in breach, whether intentional or unintentional; in the third place, the actual damage incurred; in the fourth place, the commercial position and bargaining power of the parties at the time of contracting; and in the fifth place, the other lawful interests of the aggrieved party affected by the breach, following the proviso to section 3 of the South African Act. The resolution should also state that the burden of proving disproportion lies on the party requesting the reduction, in line with Article 91 of the Civil Procedure Code 2015 and the South African case law; that disproportion is assessed at the time the dispute is heard, as section 3 provides; and that a judgment or award reducing a penalty must state the reasons for the reduction. Judgments that apply the new provision with full reasoning should then be selected for development into precedents.

This approach both secures freedom of contract in the spirit of the Civil Code 2015 and preserves the deterrent effect of the penalty, while enabling the Court or the Arbitral Tribunal to intervene where genuinely necessary in order to protect the weaker party and to prevent the abuse of the freedom to agree. It is consistent with the legislative experience of South Africa and with the direction of development of modern contract law.

4. Conclusion

The study of the contractual penalty in Vietnamese law in comparison with South African law shows that the current Vietnamese provisions still contain limitations relating to the nature of the penalty, the conditions for its application, its amount and its relationship with damages. These shortcomings reduce the effectiveness of the penalty in securing the performance of contracts and are not yet fully compatible with the requirements of international legal integration. On the basis of the principles of freedom, voluntary commitment and agreement laid down in the Civil Code 2015, the penalty should be maintained and improved by strengthening the parties' freedom to agree, combined with a judicial control mechanism that ensures a balance of interests in contractual relations.

The South African experience shows that allowing the parties to agree freely on the penalty, irrespective of whether it is described as a penalty or as liquidated damages, while empowering the court to reduce a penalty that is out of proportion to the prejudice actually suffered, prohibiting double recovery and extending control to forfeiture clauses, is an appropriate solution for reconciling freedom of contract with fairness in civil and commercial transactions. The convergence of this approach with Article 1231-5 of the French Civil Code, the Principles of European Contract Law and the UNIDROIT Principles confirms its value as a reference. The draft law presented to the National Assembly in October 2026 provides an opportunity for reform: whether or not Chapter VII of the Commercial Law 2005 is repealed, the introduction of a power of reduction into Article 418 of the Civil Code 2015, together with the coordinated amendments proposed above, would better protect the lawful rights and interests of the parties and enhance the compatibility of Vietnamese law with the development of modern contract law.

References

- [1]. Anson, W. R. (2002). *Anson's Law of Contract* (28th edition by J. Beatson). Oxford University Press, Oxford.
- [2]. Atiyah, P. S., & Smith, S. A. (2005). *Atiyah's Introduction to the Law of Contract* (6th edition). Clarendon Press, Oxford.
- [3]. *Barkhuizen v Napier* 2007 (5) SA 323 (CC), Constitutional Court of South Africa.
- [4]. *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* 2020 (5) SA 247 (CC), Constitutional Court of South Africa.
- [5]. Bui Thi Thanh Hang & Do Giang Nam (2011). *Suc song cua Bo luat Dan su Viet Nam tu goc nhin so sanh voi Bo luat Dan su Phap, Duc, Ha Lan* [The vitality of the Vietnamese Civil Code from the perspective of comparison with the French, German and Dutch Civil Codes]. *Legislative Studies Journal*, No. 16, pp. 38–44.

- [6]. Cong Thuong Newspaper (2026). Bao cao tham tra dong thuan sua doi, bo sung 4 luat nganh Cong Thuong [The verification report agrees on amending four laws of the industry and trade sector], 20 October 2026. <https://congthuong.vn/bao-cao-tham-tra-dong-thuan-sua-doi-bo-sung-4-luat-nganh-cong-thuong-477777.html>
- [7]. Do Van Dai (2010). *Cac bien phap xu ly viec khong thuc hien dung hop dong trong phap luat Viet Nam* [Remedies for the improper performance of contracts in Vietnamese law]. National Political Publishing House, Hanoi.
- [8]. Du Ngoc Bich (2015). Gop y dieu khoan phat hop dong va moi lien he voi boi thuong thiet hai trong du thao Bo luat Dan su (sua doi) [Comments on the penalty clause and its relationship with damages in the draft amended Civil Code]. Workshop on finalising the draft amended Civil Code, internal document, pp. 8–17.
- [9]. Hoang The Lien (editor) (2009). *Binh luan khoa hoc Bo luat Dan su nam 2005* [Scientific commentary on the Civil Code 2005], Volume 2. National Political Publishing House, Hanoi.
- [10]. Le Hoang Truc Giang, Nguyen Tran Minh Khoi, Le Khai Hoan & Nguyen Thuy Doan (2025). Thuc tien giai quyet tranh chap hop dong bang trong tai thuong mai tai Viet Nam [Practice of resolving contractual disputes by commercial arbitration in Vietnam]. *Economic and Financial Research* (online), 24 December 2025.
- [11]. Le Thi Tuyet Ha (2016). *Trach nhien phap ly do vi pham hop dong thuong mai o Viet Nam hien nay* [Legal liability for breach of commercial contracts in Vietnam today]. Doctoral dissertation in Law, Graduate Academy of Social Sciences, Hanoi.
- [12]. Le Thi Tuyet Ha (2026). Thuc tien ap dung phap luat ve che tai phat vi pham trong hop dong thuong mai [The practice of applying the law on penalties in commercial contracts]. *Legislative Studies Journal*, No. 02(509).
- [13]. National Assembly of Vietnam (2005). Commercial Law No. 36/2005/QH11 of 14 June 2005, as amended.
- [14]. National Assembly of Vietnam (2015). Civil Code No. 91/2015/QH13 of 24 November 2015.
- [15]. National Assembly of Vietnam (2015). Civil Procedure Code No. 92/2015/QH13 of 25 November 2015, as amended.
- [16]. National Assembly of Vietnam (2023). Law on Protection of Consumers' Rights No. 19/2023/QH15 of 20 June 2023.
- [17]. National Assembly of Vietnam (2025). Construction Law No. 135/2025/QH15 of 10 December 2025.
- [18]. *National Sorghum Breweries v International Liquor Distributors* 2001 (2) SA 232 (SCA), Supreme Court of Appeal of South Africa.
- [19]. Nguyen The Duc Tam (2017). Che tai phat vi pham hop dong duoi goc do kinh te hoc phap luat [Contractual penalties from the perspective of law and economics]. *People's Court Journal*, No. 23, pp. 42–47.
- [20]. Nguyen Viet Khoa (2011). Che tai phat vi pham hop dong theo Luat Thuong mai nam 2005 [Contractual penalties under the Commercial Law 2005]. *Legislative Studies Journal*, No. 15, pp. 46–51.
- [21]. People's Court of Tan Binh District, Ho Chi Minh City (2019). Judgment No. 02/2019/KDTM-ST of 11 January 2019 on a dispute over a contract for the supply and installation of equipment.
- [22]. Pham Thi Lien Huong and others (translators) & Le Thi Ngoc Yen and others (revisers) (2018). *Ban dich Bo luat Dan su Phap* [Vietnamese translation of the French Civil Code]. Embassy of France in Vietnam & PrintarT. <https://drive.google.com/file/d/1PFv0T6W7AjqtS2mk5EFOca6iFefdUfFF/view>
- [23]. Republic of South Africa (1962). Conventional Penalties Act 15 of 1962, as amended.
- [24]. Republic of South Africa (2008). Consumer Protection Act 68 of 2008; Consumer Protection Act Regulations, Government Notice R293, Government Gazette No. 34180 of 1 April 2011.
- [25]. *Smit v Bester* 1977 (4) SA 937 (A), Appellate Division of the Supreme Court of South Africa.
- [26]. *Steinberg v Lazard* [2006] SCA 53 (RSA), Supreme Court of Appeal of South Africa, Case No. 157/2005, 31 March 2006.
- [27]. Vietnam Chamber of Commerce and Industry (2026). Gan mot nua so vu tranh chap VIAC thu ly co yeu to FDI hoac nuoc ngoai [Nearly half of the disputes accepted by the Vietnam International Arbitration Centre involve foreign direct investment or foreign elements]. <https://vcci.com.vn/news/gan-mot-nua-so-vu-tranh-chap-viac-thu-ly-co-yeu-to-fdi-hoac-nuoc-ngoai>
- [28]. Visser, P. J. (2006). *Steinberg v Lazard* [2006] SCA 53 (RSA): Conventional Penalties Act – reduction in amount of penalty – onus of proof. *De Jure*, Volume 39, p. 685.