
| RESEARCH ARTICLE

The Unresolved Standard for Disadvantageous Contracts under Vietnam's Bankruptcy Recovery Law 2025

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| ABSTRACT

Vietnam's Bankruptcy Recovery Law 2025 (RBL 2025) permits a bankruptcy court to suspend or terminate a debtor's ongoing contract found "liable to cause disadvantage" to the insolvent enterprise, yet neither RBL 2025 nor its two predecessors has ever given that standard operative content. This article reconstructs the standard's legislative lineage across the 2004, 2014, and 2025 statutes to show the gap is inherited, not newly created, and argues it persists for two sequential reasons: the 2025 reform's drafting effort was absorbed by structural innovations elsewhere in the statute, and Vietnamese law lacks a mechanism for generating operative content at the pace an open-textured standard requires, because a judgment becomes binding precedent only once centrally selected by the Judicial Council of the Supreme People's Court. A comparative examination of the business-judgment standard developed through United States bankruptcy case law under section 365 of the Bankruptcy Code illustrates what such a mechanism supplies and why Vietnam's institutions cannot replicate it. The article proposes a two-threshold model within Article 51's existing structure, together with an institutional allocation between a Government decree for the preliminary threshold and a Supreme People's Court resolution for the final one.

| KEYWORDS

Bankruptcy Recovery Law 2025; disadvantageous contracts; business-judgment standard; case-precedent (án lệ) system

| ARTICLE INFORMATION

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1. Introduction

The standard that determines which of a debtor's ongoing contracts a Vietnamese bankruptcy court may suspend or terminate, namely whether a contract is "liable to cause disadvantage" to the insolvent enterprise, has never been given operative content. This absence is not merely a matter of doctrinal tidiness. A counterparty dealing with a financially distressed enterprise cannot know, at the time it enters or continues a contract, what showing would later justify suspending its rights, nor what evidentiary record a court will expect before terminating the agreement altogether. The standard therefore governs real exposure, for real parties, well before any court applies it. An undefined criterion of this kind shifts risk from the insolvent enterprise, which controls the timing and framing of its request, to the counterparty, who controls neither and who can protect itself only by pricing an uncertainty it cannot quantify. This remains true despite the standard's current home, the Bankruptcy Recovery Law 2025 (RBL 2025), being enacted, and described by domestic commentators, as a comprehensive overhaul of Vietnam's insolvency regime (Mai, 2026). This article asks whether the 2025 reform supplies that missing content, and, if it does not, why a statute framed as comprehensive left this particular standard untouched.

The reform was adopted to implement Resolution 68-NQ/TW of the Politburo (4 May 2025), which called for removing structural obstacles in bankruptcy law and modernising insolvency procedure. Yet the criterion that determines whether a specific contract may be suspended or terminated remains exactly as undefined as it was under the two statutes RBL 2025 replaced. That determination carries direct consequences for the insolvent enterprise's counterparties and for the pool of assets available to creditors. The provision at the centre of this inquiry is the current articulation of that standard; its two predecessors are treated throughout as genealogical reference points rather than as parallel subjects of study.

Domestic Vietnamese scholarship has already identified the standard's immediately preceding formulation as problematically subjective: commentators have observed that courts assessing whether a contract is disadvantageous rely on an unarticulated, and therefore unreviewable, judgment (Lữ & Nguyễn, 2021). That critique, however, predates the 2025 reform, addresses the prior text in isolation, and does not ask why the standard has resisted clarification across three successive legislative cycles. No comparable English-language analysis yet exists, a gap explained by how recently the current law has been in force. This article offers a doctrinal reconstruction of the standard's legislative lineage across all three statutes, combined with a structural explanation: the absence of a mechanism capable of generating operative content for a standard this open-textured, applied to its present form.

The gap identified here is not of narrow interest. Vietnam's insolvency regime does not operate in isolation from international capital. Foreign direct investment into Vietnamese manufacturing, real estate, and infrastructure routinely proceeds through long-term supply, lease, and financing contracts with Vietnamese counterparties, any of which could become subject to suspension or termination the moment that counterparty enters bankruptcy proceedings (UNCTAD, 2025). A foreign party assessing that exposure cannot rely on an English-language body of case law or secondary literature, because none exists; it must instead rely on a provision whose operative content this article shows to be absent even in the domestic literature. The absence of operative content is therefore not only a gap in Vietnamese doctrine but a specific, quantifiable source of legal risk for any party, domestic or foreign, who contracts with a Vietnamese enterprise without knowing how a court will eventually read "liable to cause disadvantage." Reconstructing that standard accordingly serves a second audience beyond Vietnamese courts and legislators: comparative insolvency scholars and transactional counsel assessing jurisdictional risk in a market where the underlying statutory language offers no guidance of its own. This article's doctrinal reconstruction is therefore offered with that second audience equally in view. Where Vietnamese legal terminology requires explanation for a reader trained outside the civil-law, socialist-legality tradition, that explanation is supplied in the text instead of assumed. Where a comparison to a common-law mechanism is drawn, the comparison is confined to the single structural feature the two systems share, as the methodology below makes explicit.

The analysis proceeds in three stages. It first sets out the standard's current text and what that text leaves undetermined. It then traces the provision's legislative lineage to show that the gap is inherited, not newly created. The discussion turns, in closing, to a comparative examination of how another legal system generates operative content for a similarly open-textured standard, and to a proposal addressing the gap within the current provision itself.

The article follows a doctrinal method combined with comparative legal analysis. The doctrinal component draws on the statutory text and its two statutory predecessors, together with the single official interpretive instrument ever issued on this subject. The comparative component is limited to one jurisdiction, the United States, selected because its case law has generated operative content for a structurally similar problem: judicial deference to an economic judgment about whether continuing or discontinuing a course of dealing serves an enterprise's interests, built through accumulated precedent instead of statutory elaboration. The comparison is used only to identify the function such a mechanism performs, not to import the substantive content of that doctrine. Vietnam's own case-precedent system differs from the common-law tradition not in its absence but in its mode of operation. A judgment becomes binding only once centrally selected and distilled by the Judicial Council of the Supreme People's Court, rather than accumulating authority through the ordinary course of litigation, and it is this institutional difference, not any difference in the underlying legal problem, that the comparison that follows is designed to isolate. Sources are tiered by authority: statutory and official interpretive texts first, followed by institutional reports, then peer-reviewed scholarship; advocacy or practitioner commentary is used for illustration only.

The central claim advanced here is that the standard remains unresolved for two distinct and sequential reasons. The legislature carried the prior wording forward without independent reconsideration, since the 2025 reform's attention was directed at the macro-architecture of recovery procedure, not at contract disposition. More fundamentally, Vietnamese law currently lacks a mechanism capable of generating, at the pace this standard requires, the content that statutory text alone cannot supply, following the lapse of its one interpretive instrument without replacement. These two causes, developed in turn below, together explain why the 2025 reform's claim to comprehensiveness does not extend to this particular standard.

2. The Standard in Practice: Text, Inheritance, and Causation

The provision now governing suspension and termination of a debtor's ongoing contracts proceeds in two steps, each triggered by a different stage of the bankruptcy process, not by any substantive finding about the contract itself. At the preliminary step, a creditor or the insolvent enterprise may, within five working days of the petition's acceptance, request suspension of a contract found liable to cause disadvantage. The court must then rule on that request, by acceptance or written refusal, within a further five working days. Once the court goes on to open proceedings, the same question must be asked again, this time with finality: within five working days of the opening order, the court must revisit every suspended contract and decide, on the same undefined criterion, whether to allow performance to continue or to terminate it under the companion provision governing restitution and damages. A suspension granted at the first step lapses automatically if the court ultimately declines to open proceedings, and a later addition extends the same inquiry further by allowing the administrator, a creditor, or the enterprise to propose termination of a disadvantageous contract discovered only after proceedings have already opened.

What this sequence repeats at every stage, it never once defines. Neither step specifies a method for weighing the enterprise's interest in continued performance against its interest in release, and neither identifies a factor the court must take into account in reaching that judgment. The phrase "liable to cause disadvantage" simply recurs, unglossed, at each decision point. This absence of a metric is made more consequential by a further development: the predecessor provision had required a party requesting suspension to state, as a mandatory element of the written request, the grounds for the request, so that the applicant's own assessment of disadvantage was placed on the record before the court ever had to rule. That requirement does not reappear in the current text, whose description of the preliminary step now extends only to the court's acceptance or refusal. A safeguard that once forced the requesting party to articulate why a contract was disadvantageous has therefore been removed rather than replaced, leaving the standard's content, at both stages, to judicial discretion unaided by anything the statute itself requires to be argued or recorded.

The practical weight of this omission is easiest to see from the counterparty's vantage point, not the court's. A foreign lender holding a security interest over receivables generated by a long-term supply contract, for example, learns of a Vietnamese counterparty's insolvency petition only after the five-working-day window for a suspension request has already begun to run. It has no text to consult that tells it what showing, if any, it should prepare to rebut, since the statute places the burden of persuasion nowhere and the burden of articulation on no one. The absence is accordingly not a gap that falls equally on all parties. It falls disproportionately on whichever party is least able to anticipate the Vietnamese proceeding's internal timetable, which in practice means the foreign party.

This gap, demonstrated in the text just examined, turns out not to be new. The same undefined criterion has now passed through three legislative cycles. The 2004 statute first authorized suspension of a contract found to worsen the insolvent enterprise's position, without specifying how that comparison was to be drawn. The 2014 statute replaced it but carried the criterion forward essentially unaltered, keeping the same five-working-day periods and the same two classes of applicant. Its only substantive addition was procedural, the grounds requirement just discussed. Even the one legislative cycle that did touch the provision, in other words, addressed its form rather than its content. The current statute preserves the 2014 wording, removes that one addition, and supplies only the post-opening proposal mechanism noted above. Across three enactments and two decades, every change has governed who may apply and when; none has touched what the applicant or the court must show.

This pattern follows from where the current reform in fact placed its attention. A reform's silence on one provision is rarely accidental when its stated ambitions lie conspicuously elsewhere. RBL 2025's principal innovations are structural: an independent rehabilitation procedure detached from the bankruptcy track, broadened standing to initiate proceedings, and a fully electronic case-management regime. These innovations absorbed the drafting effort a genuine overhaul of contract disposition would have required. None of them depended on, or even touched, how individual contracts are treated once proceedings begin. The provision survived the reform, then, not since it was judged adequate, but since the questions the reform set out to answer never required anyone to look at it.

Even had the reform turned its attention to this provision specifically, a further obstacle would have confronted it. A phrase as open-textured as "liable to cause disadvantage" cannot be made operative by drafting alone. Whether a contract worsens an insolvent enterprise's position is an economic judgment, and no general formula can anticipate every such configuration in advance. Content of this kind is ordinarily supplied not by the text itself, but by the accumulated record of how it has been applied. Vietnamese law is not wholly without an institution for this purpose. A formal case-precedent system has existed since 2015, and RBL 2025 itself authorizes judges to apply precedent in resolving rehabilitation and bankruptcy matters (*Hội đồng Thẩm phán Tòa án nhân dân tối cao*, 2015). Authorizing the use of precedent, however, is not the same as possessing a mechanism that generates it. A judgment becomes precedent only once the Judicial Council of the Supreme People's Court selects it and distills its holding into binding form (*Hội đồng Thẩm phán Tòa án nhân dân tối cao*, 2015). A precedent therefore exists from the moment of that centralized selection, not from the moment a court first articulates a reasoned standard. No judgment applying the disadvantage standard has yet been selected, which means that the authorization RBL 2025 provides remains, for this particular standard, a capacity without content.

Vietnamese law once possessed a different instrument, better suited to supplying that content quickly because it did not depend on case-by-case selection. A Supreme People's Court resolution interpreting the 2004 statute's equivalent provision translated the open-ended criterion into a comparative test, weighing the loss the enterprise would face from continued performance against the loss it would face from termination (*Hội đồng Thẩm phán Tòa án nhân dân tối cao*, 2005). That instrument lapsed when the 2004 statute it interpreted was repealed, and neither the 2014 statute nor the current one replaced it, although both retained the very provision it had once given content to. The standard has therefore operated for over a decade with neither a binding interpretive text nor a selected precedent behind it, a deficiency the current reform's declared comprehensiveness leaves untouched.

Neither cause, considered alone, would have produced two decades of unresolved content. Legislative inattention of the kind just described is common to every statute and is rarely, by itself, disqualifying. A provision carried forward unexamined can still acquire content through the ordinary operation of adjudication, provided the legal system possesses a channel through which that content accumulates. It is the second cause, the absence of such a channel, that converts an ordinary instance of legislative

carry-over into a standing deficiency. Conversely, an institutional gap of the kind just described would matter less if the legislature periodically revisited the provision it leaves unfilled. A statute re-examined every reform cycle would eventually supply by drafting what case law could not supply by accumulation. The two causes are accordingly not merely sequential but mutually reinforcing: each removes the remedy the other might otherwise have provided, and it is this interaction, rather than either cause in isolation, that explains why the standard has now survived three legislative cycles without acquiring the content its text has always lacked. A reform aimed only at the first cause, for instance one that directed drafters to revisit Article 51 on its own terms, would still leave the standard dependent on whatever formula that single drafting exercise happened to produce, with no subsequent mechanism to correct or refine it as new fact patterns arose. Durable content requires addressing both causes together, which is the structure the proposal in Part 4 adopts.

3. The Business-Judgment Standard in United States Bankruptcy Case Law

3.1 Statutory Framework and the Limited Role of Text

The comparison just introduced requires its own justification, since a comparator earns its place in doctrinal analysis only by testing one specified attribute, not by illustrating range. The attribute at issue here is narrow: not the substance of United States insolvency law, but the capacity of its case-law tradition to generate operative content for a statutory standard that remains, on its face, as open-textured as the Vietnamese one just examined. Section 365 of the United States Bankruptcy Code authorizes a trustee or debtor-in-possession, subject to court approval, to assume or reject an executory contract of the debtor. The text performs this authorizing function and little else. It does not state what makes rejection appropriate in a given case, nor does it supply any criterion by which a court is to evaluate the trustee's or debtor-in-possession's choice.

Section 365 is symmetrical in form: the same unadorned authorization covers assumption as well as rejection, and a debtor seeking to keep a contract in force faces the identical absence of statutory criteria that a debtor seeking to shed one does. The discussion that follows concentrates on rejection, since that is the side of the provision structurally closest to suspension and termination under Article 51, but the point of comparison is the authorizing text itself, which supplies a decision-making power without supplying a decision-making standard regardless of which direction the decision runs.

In this respect the statute shares the same structural feature as Article 51 RBL 2025. A decision with direct consequences for a counterparty's rights is committed to judicial approval without any legislative definition of the standard that approval must apply. The parallel, however, stops at the text. What distinguishes the two systems is not the statute itself but what happens after enactment, and it is that difference the remainder of this Part traces.

3.2 Operative Content Generated through Case Law

What the text withholds, case law supplies. Early decisions evaluated a proposed rejection against a "burdensome" test, asking whether the contract imposed an excessive ongoing cost on the estate. Courts gradually abandoned that test in favour of a more deferential standard, a shift commonly traced to the Second Circuit's decision in *In re Minges* (*Control Data Corp. v. Zelman* (*In re Minges*), 1979, p. 42). The standard that emerged, and that the Supreme Court later confirmed in *NLRB v. Bildisco & Bildisco*, asks only whether the evidence shows that rejection represents a good business decision (*NLRB v. Bildisco & Bildisco*, 1984, p. 523). A court approving rejection under this standard does not independently weigh whether the contract is in fact disadvantageous to the estate. It asks instead whether the trustee's or debtor-in-possession's own weighing was rational, a materially narrower inquiry than the one Vietnamese courts face under Article 51, where no comparable business-judgment deference has ever been articulated. The inquiry traces to an older formulation, set out in *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, which treated the business-judgment standard as the appropriate measure of a trustee's discretion over continuing contractual obligations (*Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 1943, pp. 549–550). None of this content appears in the statutory text itself. It was built, case by case, as courts confronted successive disputes over what rejection standard the bare authorization in section 365 implied.

That content, once built, also carries its own limits, and those limits are themselves the product of further adjudication rather than of statutory specification. A court will approve rejection unless the decision is so manifestly unreasonable that it could not be grounded in sound business judgment (*Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 1985, p. 1047). Approval is similarly withheld where the decision was in fact motivated by bad faith, whim, or caprice rather than by a rational assessment of the estate's interests (*Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 1985, p. 1047). A rejection motivated by retaliation against a counterparty, rather than by a rational assessment of the estate's interests, would fall within this same exception, since retaliation is not a judgment about the estate's advantage at all. A further, categorical limit applies to collective bargaining agreements. Since rejecting such an agreement affects employees who are not parties to the bankruptcy proceeding, courts require the debtor to show that rejection is essential to reorganisation and that the equities favour it, a materially heavier burden than the ordinary business-judgment standard imposes elsewhere (*NLRB v. Bildisco & Bildisco*, 1984, pp. 525–526). Each of these qualifications, the manifest-unreasonableness ceiling, the bad-faith carve-out, and the heightened standard for labour agreements, originated in a specific case confronting a specific abuse of the general standard. None originated in a legislative amendment anticipating that abuse in advance. The general standard and its exceptions were therefore built in the same way and by the same process, a point the next subsection takes up directly.

3.3 The Mechanism of Accumulation

What makes this body of content durable, and not merely incidental to the cases that produced it, is the mechanism of accumulation specific to a common-law system. Each decision applying the business-judgment standard becomes available, through systematic reporting, as a resource the next court can draw on under the doctrine of *stare decisis*. The standard's content is therefore not fixed at a single moment of judicial pronouncement. It sharpens incrementally as new fact patterns, such as retaliatory rejection or the treatment of labour agreements, are litigated and resolved, so that a court facing a novel configuration of facts inherits the reasoning of every prior court that faced a related one, without waiting for any central body to ratify that reasoning first.

This is the generative mechanism the preceding Part found absent from Vietnamese law. The Vietnamese case-precedent system requires a prior judgment to be selected and distilled by the Judicial Council before it carries any binding force, so a case that merely articulates a reasoned application of the disadvantage standard adds nothing to the law's operative content unless and until that centralised act of selection occurs. The United States experience demonstrates, by contrast, what the same open-textured statutory language looks like once a jurisdiction's institutions allow case law to accumulate that content as a matter of course rather than by periodic, centralised designation. The difference is not that Vietnamese judges reason less carefully than their American counterparts when they apply an undefined standard; it is that careful reasoning in a Vietnamese judgment has no mechanism by which it becomes anyone else's law. It is this institutional difference, not any difference in the underlying legal problem, that the proposal below must address.

The predictability this accumulation produces is not incidental to the doctrine; it is close to being its principal output. A transactional lawyer advising a counterparty on whether to continue supplying a financially distressed debtor can locate, within the reported case law, a reasonably precise account of what a court will and will not tolerate, since that account has been assembled publicly, incrementally, and without need for any party to petition a central body to recognize it. The business-judgment standard's content is, in this sense, a public good generated as a byproduct of ordinary litigation rather than a resource that must be separately produced. It is this byproduct that the case-precedent system's selection requirement prevents Vietnamese litigation from generating in the same way, a point the next Part's proposal must take as its starting constraint rather than treat as an incidental observation.

4. Proposals for Vietnam: Operationalizing Article 51 RBL 2025

4.1 A Two-Threshold Model within Article 51's Existing Two-Step Structure

The preceding Part established what a case-law mechanism supplies once it is allowed to accumulate, and the Part before that established why Vietnamese law currently lacks an equivalent mechanism operating at the pace this standard requires. Neither conclusion, however, counsels waiting for precedent to accumulate on its own terms before the standard can be applied with any rigour. A more direct route exists within the text of Article 51 itself: the provision already divides the inquiry into two distinct moments, a preliminary suspension and a final decision, and nothing in that structure prevents each moment from carrying a different evidentiary threshold suited to its function. Article 51 should therefore incorporate a two-threshold model within its existing two-step sequence, rather than undergo a wholesale redesign.

At the preliminary stage, the five-working-day window and the asset-preservation purpose of suspension both argue against requiring the moving party to establish disadvantage conclusively before the court may act. A threshold calibrated to that urgency should require only a plausible, fact-specific showing that continued performance risks worsening the enterprise's position, analogous in function to the showing Vietnamese courts already accept when granting other provisional measures to preserve an insolvent enterprise's assets (Bộ luật Tố tụng Dân sự, 2015, Điều 114). Concretely, this means a creditor or the enterprise would need to identify the specific contractual obligation at issue, the specific cost or exposure that performing it would generate, and a reasoned basis for expecting that cost to outweigh whatever benefit the enterprise still derives from the contract. The court's role at this stage is to screen out requests that fail even this threshold, not to adjudicate the comparison in full.

A threshold set this low, however, is not without cost, and that cost must be confronted rather than assumed away. A creditor whose interest is served by freezing a counterparty's contract, whether to pressure that counterparty into renegotiation or to clear the field for a competing claim of its own, can invoke a plausible-showing standard strategically. The standard asks only whether disadvantage is plausible, not whether the applicant's motive for alleging it is genuine. The current text offers no safeguard against this risk. Article 52 compensates a counterparty when a contract is ultimately terminated, but nothing in the provision compensates a counterparty for the losses a suspension causes where the court later allows the contract to continue. This is the scenario in which a strategic request would have succeeded at the preliminary stage without ever being tested on the merits. A workable low threshold therefore needs an accompanying liability rule. That rule should extend the restitution principle already present in Article 52 to cover losses caused by a suspension that proves, at the final stage, to have been unjustified. The low evidentiary bar at entry is then balanced by exit accountability, rather than left to operate as a one-way option for the applicant.

A further design question follows directly from the liability rule just proposed: what baseline should govern the measurement of an unjustified suspension's losses. The natural baseline is the position the counterparty would have occupied had performance

continued uninterrupted from the moment suspension was requested to the moment the final-stage court allowed the contract to resume, net of whatever benefit the counterparty in fact derived from the interim freeze, if any. A rule framed this way keeps the liability inquiry confined to the consequences of the suspension itself, instead of reopening the merits of the underlying contract, which the final-stage threshold, not the liability rule, is designed to adjudicate. Framing the baseline narrowly in this way also forecloses an obvious objection: that a liability rule of this kind would convert every unsuccessful suspension into a second round of litigation over the contract's substantive value. It would not, since the comparison required is temporal and consequential, not substantive.

At the final stage, the position is different in kind, not merely in degree. By the time the court revisits a suspended contract, the five-day urgency that justified a lower threshold has passed. The consequence of the decision, termination with downstream restitution and damages under the companion provision, is no longer provisional but conclusive. The threshold at this stage should accordingly require the party proposing termination to substantiate disadvantage through a comparative showing: a demonstration that the loss the enterprise would bear from continued performance exceeds the loss it would bear from termination. This is not a novel formula. It restates, within the current statute's own structure, the comparative test the 2005 interpretive resolution once supplied for the predecessor provision. Placing the burden of that showing on the moving party gives the final decision a reasoned record of the kind the current text no longer requires, having dropped even the grounds requirement the 2014 statute once imposed.

4.2 Restoring a Binding Interpretive Instrument

A two-threshold model of this kind nonetheless remains inert unless some body is authorized to give it binding content, and this is the deeper institutional problem identified earlier. A proposal that merely restates what courts should consider, without identifying who may make that restatement binding, repeats the same defect that has left the standard unresolved for two decades. The institutional placement of the proposal therefore matters as much as its substance, and the two thresholds do not in fact call for the same institutional author.

The current statute supplies an opening its predecessor did not. Article 51 delegates to the Government, rather than to the Supreme People's Court, the authority to issue detailed regulations implementing the preliminary suspension and the post-opening termination mechanism. This allocation fits the preliminary threshold proposed above. A plausible-showing standard, together with the liability rule that must accompany it, is procedural in character. It governs what a timely application must contain and what consequence follows if the application later proves unjustified. This is the kind of implementing detail that Vietnamese legislative practice ordinarily commits to a Government decree rather than to judicial interpretation, and a decree of this kind can typically be drafted and issued without awaiting a live dispute to prompt it.

The final threshold is different. A comparative evidentiary standard, applied by a court to adjudicate the relative loss two parties would suffer under competing outcomes, is substantive in character. Vietnamese legislative practice had, until the 2005 resolution lapsed, committed content of this kind specifically to the Supreme People's Court, whose function includes ensuring the uniform application of law by courts rather than administering a procedure. Assigning the final threshold to a Government decree would therefore reproduce, in a new form, the very mismatch between institution and function that left the standard without content for over a decade: an executive body issuing what is, in substance, an adjudicative rule. The provision governing the court's conclusive determination carries no delegation at all, a silence that leaves the heavier of the two proposed thresholds as unsupported as the standard as a whole was before this proposal.

Closing that gap requires a Supreme People's Court resolution addressing the final-decision stage specifically, in the manner of the 2005 interpretive resolution discussed above but confined, this time, to the provision's final step. Extending the existing delegation to the Government to cover that stage would resolve the vacancy, but it would do so by placing adjudicative content in the wrong institutional hands, reproducing the mismatch just described rather than avoiding it.

It is acknowledged that this proposal, like the delegation it builds on, depends entirely on the timely exercise of an authority the statute grants but does not compel. A decree that is never issued, or a resolution that is never drafted, would leave the two-threshold model as inert as the bare text it is meant to operationalize, reproducing, once again, the condition that followed the lapse of the 2005 resolution. The proposal's dependence on institutional follow-through is therefore not a peripheral caveat but a limitation inherent to any solution built, as this one is, on delegated rather than self-executing authority.

This dependence suggests a further, modest safeguard worth building into the proposal itself rather than leaving to subsequent legislative goodwill: a reporting obligation attached to the delegation, requiring the Government and the Supreme People's Court to confirm, within a fixed period after Article 51 or its implementing instruments take effect, whether the authorized decree and resolution have in fact been issued. A reporting obligation of this kind does not compel issuance, and so does not cure the underlying dependency identified above, but it does convert silent non-issuance into a visible, attributable failure rather than a default that can persist for two decades without any institutional actor being called to account for it. The 2005 resolution's lapse went unremarked for over a decade because no mechanism existed to flag its absence as a problem requiring an institutional response. A reporting obligation of the kind proposed here would not guarantee a different outcome this time, but it would at least ensure that a repeat could not occur unnoticed.

5. Conclusion

Article 51 RBL 2025 leaves the standard for disadvantageous contracts exactly where Article 61 of the 2014 statute left it, and the explanation for that continuity is not legislative oversight but a specific sequence of institutional causes. The legislature carried the 2014 wording forward since the 2025 reform's drafting effort was absorbed elsewhere, in an independent rehabilitation procedure, broadened standing, and electronic case management, none of which required anyone to revisit how individual contracts are treated once proceedings begin. Even a legislature that had turned its attention to this provision specifically would have confronted a second, deeper obstacle: Vietnamese law lacks a mechanism capable of generating operative content for a standard this open-textured at the pace the standard requires. The case-precedent system exists, and RBL 2025 itself authorizes its use, but a precedent becomes binding only once centrally selected by the Judicial Council, not from the moment a court first reasons through the standard. No judgment applying the disadvantage criterion has yet been selected, and the one instrument that once supplied comparable content quickly, the 2005 resolution interpreting the 2004 statute's equivalent provision, lapsed with that statute and was never replaced.

The comparison with United States bankruptcy case law confirms, rather than merely illustrates, this diagnosis. Where a legal system allows case law to accumulate organically, an open-textured economic standard acquires content, limits, and categorical exceptions through successive adjudication, without any corresponding statutory amendment. Vietnam's institutions are not structured to perform that function in the same way, and the gap identified in Article 51 is better understood as a predictable consequence of that institutional difference than as a drafting failure specific to this statute.

This diagnosis carries weight beyond Vietnamese doctrine since the underlying design choice it identifies, treatment of contracts left to an open-textured standard, is one every insolvency law must make and few resolve explicitly. That design choice, who decides, on what showing, and through what accumulated authority, determines how predictably a regime allocates risk between an insolvent enterprise and the counterparties who continue to deal with it. Vietnam's reform demonstrates, in a jurisdiction building its insolvency regime through recurrent legislative cycles instead of accumulated case law, what happens when that design choice is never made explicit: the standard is adopted, inherited, and re-enacted, but never actually decided by any institution empowered to decide it. A comparative insolvency scholar examining Vietnam's experience accordingly gains more than a case study in one country's statutory drafting. The experience documents what a case-law-dependent standard looks like once transplanted into a system lacking the case-law mechanism its open texture presupposes. That configuration is likely to recur wherever similar statutory language is adopted without the common-law infrastructure that gave it workable content in its jurisdiction of origin. For the transactional counsel and foreign creditor invoked at the outset of this article, that documentation has an immediate, practical corollary: until Article 51 acquires the operative content this article proposes, due diligence on a Vietnamese counterparty's contractual exposure cannot rely on precedent to bound the risk, and must instead price the full range of outcomes the undefined standard could produce.

A statute's claim to comprehensiveness is therefore not undermined by the existence of unresolved provisions as such, since no reform addresses every corner of the law it replaces. It is undermined when the standard left unaddressed is one on which a counterparty's contractual exposure depends, and when the reform's own stated ambitions make clear that the provision was never actually examined rather than examined and found acceptable. RBL 2025 meets both conditions: its drafting history shows no independent reconsideration of Article 51, and the standard it left untouched governs a decision with direct, uncompensated consequences for parties who are not before the court when that decision is made.

The two-threshold model proposed here, together with the institutional allocation that would give it binding force, addresses the standard's content without waiting for precedent to accumulate on its own terms. That proposal, however, inherits the same dependency that produced the original gap. A Government decree implementing the preliminary threshold and a Supreme People's Court resolution addressing the final one are both acts the statute permits but does not compel, and a two-threshold model whose authorizing instruments are never issued would leave the standard no more defined than it is today. The 2005 resolution's lapse, and its replacement by nothing instead of by something, is not a historical curiosity confined to the 2004 statute. It is the precedent, in the ordinary sense of that word, that any proposal built on delegated rather than self-executing authority must take seriously before claiming to have resolved anything.

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