

# Application of the Hardship Clause to Restore Contractual Equilibrium in Concession Agreements: A Study of Duty-Free Operations in Thailand's Airports

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## **Abstract:**

*This paper examines the contractual dispute between King Power Duty Free Co., Ltd. (KPD) and Airports of Thailand Public Company Limited (AOT) concerning duty-free concession agreements spanning from 2020 to 2034. The unprecedented impacts of the COVID-19 pandemic, combined with a sustained decline in Chinese tourism, shifting domestic fiscal policies, and broader global economic uncertainties, have rendered KPD unable to meet its contractual Minimum Annual Guarantee (MAG). KPD has consequently sought to terminate or renegotiate the contract citing force majeure and hardship. This study provides an in-depth analysis of the dispute by contrasting two legal perspectives: strict civil law, which views these challenges merely as assumed business risks, and administrative law, which recognizes the state's obligation to maintain financial equilibrium within public concession agreements. The findings suggest that by treating the agreement as an administrative contract, KPD's claims gain significant legal legitimacy. Ultimately, this paper proposes that the most legally sound and mutually beneficial course of action is to restructure the existing contracts through negotiation, thereby restoring contractual equilibrium, maximizing public benefit for AOT, and ensuring operational fairness in the post-pandemic era.*

**Keywords:** *Hardship Clause, Concession Agreement, Administrative Law, Force Majeure, Duty-Free Operations, Airports of Thailand (AOT), Contract Restructuring.*

## **Introduction**

Airports of Thailand Public Company Limited (AOT) conducted an auction for the right to operate duty-free shops at major international airports in the country. King Power Duty Free Company Limited (KPD) won the bid and was granted the right to operate under a concession agreement at Suvarnabhumi Airport. Phuket Chiang Mai and Hat Yai have contract terms covering the period between 2020–2033 and until 2034 for Don Mueang Airport. However, the COVID-19 pandemic, along with external and internal factors, has

significantly impacted the business operations of the operators, leading to contract disputes and a request for discussions on considering contract termination.

Pandemic 19 resulted in a severe decline in global air traffic, affecting both passenger numbers, flights, and cargo volume. This caused KPD to face liquidity problems and difficulties in paying minimum contractual compensation. Although Airports of Thailand (AOT) implemented various relief measures, such as payment deferrals and restructuring of compensation arrangements, KPD's revenue has not returned to pre-crisis levels. KPD cited data from April 2015 showing that international passenger volumes recovered to only 93 % and flights to 91 % compared to pre-pandemic levels. Furthermore, the number of Chinese tourists, a key customer base, continued to decline due to both internal and external factors, such as the Chinese domestic economy and safety concerns in Thailand.

KPD has submitted a formal letter to AOT proposing a negotiation approach for the termination of the concession agreement, citing a "force majeure" situation as defined in the relevant contract clauses (Clause 7.5, 7.7 , and 7.9) , which stipulate that the contracting parties must jointly negotiate a fair resolution.

The main reasons KPD used to support his complaint include:

1. Long-term impacts of COVID- 19 : Even after the pandemic ends, cautious spending habits persist, resulting in revenue not meeting expectations. Meanwhile, the Airports of Thailand Public Company Limited (AOT) continues to set minimum compensation payments that do not reflect reality.

2. Impact of fiscal policy: Exempting wine from import duties brings the retail price closer to domestic prices, resulting in decreased wine sales and reduced confidence in the prices of other duty-free goods.

3. Disputes regarding reduced compensation, the cancellation of duty-free shops for imports under government policy, and the return of partial operating areas were included in the compensation calculation, which KPD deemed inconsistent with the actual revenue structure dependent on the number of passengers.

4. Decline in Chinese Tourists: A comparison of data from 2019 with passenger statistics for 2024 and 2025 reveals a significant decrease in the proportion of Chinese passengers. For example, at Don Mueang Airport, the proportion of Chinese passengers was 31.60% in 2019 , but is projected to drop to only 18.90% between January and April 2025. This change directly impacts sales, as Chinese passengers are a key customer segment for duty-free and retail businesses at the airport.

5. Negative domestic and international factors, such as the relocation of multinational corporations' production bases, crime problems, and rising living costs in the country, coupled with uncertainty from war and the global economic slowdown, negatively impact tourism.

This refers to the legal dispute between King Power Duty Free Co., Ltd. ( KPD) and Airports of Thailand Public Company Limited (AOT) regarding the obligation to pay a minimum annual guarantee(MAG) . The MAG case has become a crucial case study, reflecting the challenges of contract enforcement that existed before the COVID- 19 pandemic and

under the drastically changed macroeconomic realities of the post-pandemic era. This dispute is not merely a commercial conflict over rent and minimum returns, but rather a divergence between two legal frameworks: civil and commercial law, which adheres to the principle of contract sanctity ( *Pacta Sunt Servanda* ), and public law, which emphasizes financial equilibrium and public interest .

This article aims to analyze the dispute in depth, highlighting that while KPD 's arguments under civil law may carry little weight and could be considered merely "business risk," a shift in perspective to administrative law—accepting the contract as a "concession agreement," a type of administrative contract—gives KPD 's claims significant legal weight and legitimacy. This study proposes that the most legally sound and beneficial solution for all parties is not to maintain the original contract, but rather to entering into negotiations to restructure contracts to reflect new realities is an obligation of the state as an administrative contracting party.

This analysis outlines possible solutions to address the challenges facing duty-free businesses, aligning with the current situation to maximize benefits for Airports of Thailand (AOT) and ensure fairness to operators. It also recommends the most appropriate course of action.

#### 1. Key Issues: Long-term impacts of the COVID- 19 pandemic.

King Power Duty Free Co., Ltd. ( KPD) explained that even though the pandemic has ended, consumer behavior has shifted toward more cautious spending, resulting in per capita spending not growing as much as expected. The company alleges that the Airports of Thailand Public Company Limited (AOT) was aware of the situation but remained silent and continued to enforce the minimum compensation payment since April 1, 2023. The analysis considers the dispute through the framework of private and public law to assess the reasonableness of each party's claims in the context of the drastic macroeconomic changes resulting from the COVID-19 pandemic. The analysis indicates that although KPD 's arguments under the principle of force majeure in civil law carry little weight, when considered through the framework of administrative law, particularly Hardship Theory and the principle of Financial Equilibrium , KPD 's claims possess significant legal weight and legitimacy. Therefore, this article proposed contract restructuring as a strategic solution to create a sustainable partnership aligned with the public interest.

#### Issues in dispute

The dispute between King Power Duty Free ( KPD) and Airports of Thailand (AOT) is not merely a conflict over rental fees or compensation, but rather a crucial issue between "contractual obligations established in the pre-pandemic world" and "macroeconomic realities in the post-pandemic world." KPD argues that the basis used to calculate the Minimum Annual Guarantee (MAG) does not reflect reality, while AOT, as a state agency, has a duty to maintain contractual revenue for the benefit of the state. This analysis will delve into each principle to find out what "justice" should be in this unprecedented situation. Analysis within the framework of civil and commercial law.

If this case were brought before a civil court and viewed as merely a commercial lease agreement between two private parties, KPD would be at a significant disadvantage.

However, if this case considered the principle of force majeure, then the result may be different. This principle is designed to address situations that make fulfilling a contract "impossible," not just "more difficult" or "unprofitable."

The period during which this principle worked (2020-2022).

COVID-19 pandemic. Declaring a state of emergency. Government lockdown orders and the suspension of flights by airlines worldwide. The impact has completely rendered KPD's business operations impossible, as there are no tourists and the store cannot be opened as usual. The Airports of Thailand (AOT) measures to help during this period (debt moratorium) are helpful. With the exception of MAG, this constitutes a de facto acknowledgment of this "force majeure" situation and is fully consistent with civil law principles.

The period in dispute (from April 1, 2023 onwards)

KPD's claims. The long-term impact has led to changes in consumer behavior (more cautious spending), resulting in a lack of growth in "Spend Per Passenger" (SPP).

According to civil law interpretation, this situation is not impossible; KPD can still open the shop. Tourists were walking by. And even if products can be sold, the Supreme Court has clearly established a precedent (e.g., Supreme Court Case No. 2531/2549) that "volatility in raw material prices, economic conditions, or financial problems are considered business risks that entrepreneurs must anticipate and bear themselves."

Under Civil law, KPD can no longer use "force majeure" as a legal reason to ask the court to reduce MAG at this time, as the obstacle has shifted from "impossibility" to "economical inequality."

Analysis within the framework of administrative law.

When we shift our perspective and accept that this is an "administrative contract," specifically a "concession agreement," everything changes completely. A contract is no longer merely a private agreement, but a tool for the state to provide public services (in this case, facilitating and enhancing the experience at the international airport), including mechanisms for sharing benefits between the state and private entities, such as concession fees, minimum revenue to be delivered to the state, or a proportional revenue sharing agreement. This is to mitigate the risk of the state losing benefits and to ensure that citizens receive fair returns from the use of their resources, all under the principles of public law.

Basic principles: Why are they administrative contracts?

Contracting parties is Airports of Thailand Public Company Limited (AOT), a state enterprise (administrative agency). The objective is to allow private entities (KPD) to profit from state assets (airport land) and provide services that are part of public aviation services. The nature of the contract clearly grants special powers to AOT (Airports of Thailand Public Company Limited) over KPD (Korea Power Development) (e.g., Clauses 6 and 7), which are characteristics of "exorbitant clauses" not found in general civil contracts.

However, in an administrative contract, KPD immediately gains legal instruments that empower the state.

#### The Theory of Unexpected Events

Hardship Theory ( Théorie de l' imprévision ) demonstrates a differentiating factor and is more appropriate in this case than force majeure.

The definition is a theory that states that if an unforeseen external event occurs on the date the contract was made, and this event does not make performance of the contract impossible, but "completely disrupts the financial balance of the contract" to the point that continuing to enforce the original contract would create an extremely heavy burden for one party, the government party has a duty to step in to help "alleviate the burden" and "amend the contract."

#### Applications to KPD cases

The COVID- 19 pandemic and the subsequent structural changes in the global economy and tourist behavior were unforeseen by anyone in the world during the 2019 auction year. Original financial balance: The MAG figures proposed by KPD to AOT were not randomly generated, but came from a detailed "feasibility study," calculated based on key assumptions . That is (projected number of passengers x average spending per capita x ( and/or shop visit rate) ( SPP)). This is the "equilibrium" that both parties accept.

Disrupting the Balance: KPD argues that the " SPP" variable has permanently changed, even though the "Passenger Count" variable has recovered. Therefore, enforcing a MAG calculated from the original SPP severely disrupts the financial balance of the contract.

The responsibilities of Airports of Thailand Public Company Limited (AOT). Under this principle, Airports of Thailand Public Company Limited (AOT), as the government contracting party, has a duty to negotiate a new financial balance. Adjusting the MAG ( Measurement Agenda) that does not reflect reality could be considered a neglect of duty under the principles of administrative contracting.

The principle of financial equilibrium and the principle of public interest.

The principle of financial equilibrium refers to the guarantee the government provides to private companies to encourage them to invest in high-risk, high-investment public projects. Without this guarantee, private companies might be hesitant to enter into long-term contracts with the government.

Weighing the public interest: Airports of Thailand Public Company Limited's (defensive) perspective: Public interest means maximizing the state's financial benefits as stipulated in the contract.

A broader (proactive) perspective: The public interest lies in having a robust and world-class airport ecosystem . Having major duty-free operators experiencing severe financial difficulties could lead to reducing the quality of service. Reducing investment. Reducing product variety.

Impact on the image of Suvarnabhumi Airport and Thailand.

In the worst-case scenario, bankruptcy or default could occur, causing far greater damage to Airports of Thailand Public Company Limited (AOT) and the public interest than agreeing to short-term revenue reductions.

Administrative Summary: The application of the "Principle of Proportionality" suggests that adjusting the MAG in a way that does not reflect reality may be the approach taken by the Airports of Thailand Public Company Limited (AOT). The current approach is "necessary/does not reflect reality" when compared to the damage already/will be done to KPD and its potential impact on the overall public interest. Therefore, negotiations to find a mutually beneficial solution are a "proportionate" option that will be more advantageous for the country.

#### Data analysis

Legal arguments must be supported by demonstrable evidence.

#### 1. Reasons for the correlation between passenger numbers recovery and spending.

Supporting arguments for AOT (Airports of Thailand): Data from all airports clearly shows a recovery in passenger numbers. Suvarnabhumi Airport has returned to almost 2019 levels. This is the factual basis that AOT uses to support its reintroduction of MAG data.

Supporting evidence for KPD: The information is from Incheon Airport (ICN). The key evidence proving KPD's theory that "passenger volume has decoupled from retail spending" is the fact that while ICN saw a 100% return in passengers, duty-free sales only reached 72% of pre-COVID levels. This confirms that this is a real phenomenon, not just a KPD claim. Data from Dubai (DXB) and Heathrow (LHR): While sales have recovered well, other factors such as the mix of tourists (e.g., those from the Middle East and Europe with high purchasing power) and different marketing strategies may not be directly comparable to Thailand.

2. The vulnerability of the Chinese tourist market. KPD feasibility study in 2019 must have prioritized Chinese tourists as the number one choice, both in terms of numbers and SPP (Spending per passenger). Current data clearly indicates that the Chinese market is recovering slower than expected. The purchasing power of the middle class has decreased. With increased competition from other countries, a weakening of the pillars of the financial model will significantly impact the overall revenue structure.

The interpretation of clauses 6.1, 6.2, and 6.3 grants AOT broad authority to change, amend, or terminate the contract for the public interest, and clearly states that KPD "has no right to claim any compensation." This is the wording that AOT can use to justify its decision. However, KPD can also cite clause 7 of the contract and principles of public law as follows: Clause 7.6 is the most important clause in the contract for KPD.

"... In the event of conflict or unavoidable circumstances...the contracting parties shall negotiate in good faith to find a solution..."

KPD could argue that the "long-term impact of COVID" is an "unavoidable necessity" and that the Airports of Thailand Public Company Limited's (AOT) is failure to comply with the obligation to "negotiate in good faith".

Judicial oversight: Although Article 6 grants significant power to the Airports of Thailand Public Company Limited (AOT), the principles of administrative law dictate that such power must be exercised "proportionately" and "non-discriminatory." The Administrative Court has the power to review whether AOT's exercise of power is legitimate, not merely to scrutinize the letter of the contract.

#### Summary and Strategic Recommendations

The article finds that KPD should receive assistance, but not in the form of a free grant, but rather through "contract restructuring" to reflect the new reality. While AOT (Airports of Thailand Public Company Limited) might win the civil case by adhering to the original contract, there is a high risk of losing the administrative case and causing long-term damage to the ecosystem.

#### Concrete solutions.

1. The calculation of MAG enforcement should be adjusted , and a good faith negotiation process should be initiated in accordance with Clause 7.6.

2. A "Revised Feasibility Study" was jointly conducted , using post- COVID -19 data as the basis for developing a new financial model, focusing on analyzing actual passenger numbers and sales.

3. Adjusting the compensation structure to a real revenue model as follows:  
Contractual agreements that focus on enforcing MAG (Member-Online Marketing) based on actual passenger numbers and sales include:

4. The "Risk -and- Reward Sharing Mechanism" could link compensation formulas to key performance indicators ( KPIs). For example, if the overall SPP falls below the target set in the new model , AOT's share might decrease slightly (e.g., by 1%), but if SPP exceeds the target, AOT's share will increase. This mechanism would shift the relationship from "creditor-debtor" to "business partners" with shared goals. is Encouraging tourists to spend more.

This type of adjustment will create a flexible, resilient, and fair contract , which will ultimately benefit Airports of Thailand (AOT), KPD , and the public interest of Thailand in the long term.

## **2. The impact of government fiscal policy.**

The main point of contention stems from the Ministry of Finance's announcement on February 14, 2024, exempting wine from import duties. This policy has been cited as a significant impact, resulting in very similar prices for wine in duty-free shops and domestically. Not only has this led to decreased wine sales, but it has also affected consumer confidence in the prices of other duty-free goods overall.

Analysis within the framework of civil and commercial law.

From a civil law perspective that emphasizes the sanctity of contracts, this claim remains insufficient to absolve KPD of its contractual obligations, as it is still viewed as a matter of "business risk."

Civil dimension: Policy risk – Force majeure – Principle of good faith

The principle of force majeure states that the wine tax policy does not make KPD's business operations "impossible" or "unmanageable." KPD can still sell wine and other products as usual, even though the tax policy reduces revenue/margins; only its price advantage and profitability are diminished.

Policy risk in long-term business, especially for businesses reliant on tax benefits such as duty-free shops, is a significant and predictable risk factor in long-term contracts under the PACTA sunt servanda principle. A prudent entrepreneur would have assessed this risk in a feasibility study from the outset. Therefore, under strict civil law, this change would be classified as a risk that KPD, as the concessionaire, must bear itself, unless there are clear risk sharing provisions.

Based on the principles of good faith and fairness, courts may rely on Section 5 of the Civil and Commercial Code as a basis for interpretation/application to achieve fairness. However, in practice, civil courts usually limit their intervention in the commercial balance that the contracting parties have predetermined. Therefore, in civil law, this claim is insufficient to justify a reduction in compensation.

Analysis within the framework of administrative law.

Considering this to be an "administrative contract," this claim immediately gains weight and could be a crucial turning point in the dispute, as follows:

The principle of "Fait du Prince" (the action of the sovereign) and remedies would be the public law principle most directly relevant to this case, and would carry more weight than the hardship theory. The definition of Fait du Prince is the principle that when a sovereign power body (which may not be a direct contracting party) issues a measure or order that significantly hinders or increases the cost burden for the private party fulfilling the contract, the private party has the right to claim compensation for the increased burden in order to restore the financial balance of the contract to its original state.

Applications

1. "Sovereign" is the government, exercising power through the Ministry of Finance.
2. The "action" refers to issuing a notice exempting wine from import duties.
3. "Impact": This policy has undermined the price advantage that is central to the duty-free shop business for wine, and may have a knock-on effect on confidence in other product categories, potentially destabilizing the financial balance of KPD's contracts with Airports of Thailand Public Company Limited (which is also a government agency).

Under the principle of Fait du Prince, KPD is not merely affected by market conditions, but is "a direct victim of the exercise of state power." Therefore, KPD has a strong right to demand that the government counterparty (AOT) take responsibility for the resulting impact by amending the contract or compensating for lost revenue in order to maintain contract balance.

Interpreting "public interest," the Ministry of Finance's measures are for the overall public interest (e.g., stimulating the economy and tourism). However, when actions taken for the public interest severely impact private contractors, the government's (through the Airports of Thailand Public Company Limited) responsibility for compensating these damages is

considered part of ensuring fairness and safeguarding the "public interest" in terms of credibility and the continuity of concession agreements.

#### Summary and Strategic Impact

The turning point in the dispute: the controversy surrounding the wine tax policy shifted KPD 's status from "affected business" to "victim of state action," a much stronger position under administrative law.

The shift in bargaining power has significantly shifted towards KPD . AOT cannot easily refuse this demand as it would in general cases citing economic recession. Ignoring this demand carries a high risk of AOT loss if the case goes to the Administrative Court.

In practice, Airports of Thailand Public Company Limited (AOT) has a direct responsibility to engage in serious negotiations to assess the financial impact of this policy and find ways to improve the contract, such as reducing the minimum compensation ( MAG) or establishing a new calculation formula that reflects the loss of competitiveness of wine products and other related impacts.

This analysis delves deeper into the issue of "the impact of government fiscal policy," expanding on the *Fait du Prince* legal principle and outlining a concrete negotiating framework to demonstrate why this claim represents a crucial turning point in the dispute. Details of the paradigm shift in dispute resolution, from "business impact" to "state action".

KPD 's inclusion of the Ministry of Finance's policy exempting wine from import duties represents a paradigm shift in the entire dispute. The argument is no longer limited to dealing with the impact of unforeseen external events ( COVID -19) or sluggish market conditions, but rather highlights the "direct action of the State" interfering with and undermining the business foundations of contracts made with other government entities. This is where specific and robust principles of administrative law come into play. The legal aspect that would ultimately carry weight.

#### Part 1: The legal principle " *Fait du Prince*" ( Actions of the Sovereign).

This principle is unique and significantly different from Hardship Theory, with the following definitions and differences:

**Hardship Theory:** Arising from external events not caused by the state (e.g., a pandemic). The global economic crisis, which disrupted the balance of power, necessitates remedies that "relieve the burden," meaning the government may not have to bear the entire responsibility.

***Fait du Prince*:** Arising from an action of the "State" as the direct supreme governing authority (e.g., enacting laws). Changes in tax policy affect contracts between government agencies and private entities. In this case, public law views the "state" as a single entity, even though the acting party (Ministry of Finance) and the contracting party (AOT) are separate entities. Therefore, the remedy is in the form of appropriate "compensation" to restore the private sector to its original balance, as if the action had never occurred.

Elements that need to be proven.

1. It must be an action by the administrative authority as the exercise of state power. The issuance of the Ministry of Finance announcement is a clear example.

2. The measures must be general and not directly targeting specific contracting parties. The wine tax policy applies to all importers, not just KPD.

3. It must have a significant impact on the financial balance of the KPD contract . It must be proven that this policy caused significant damage.

#### Part 2: Causal Impact Analysis (Damage from Wine Tax Policy)

This demonstrates the severity of the impact and allows for analysis of the damage as follows:

##### 1. Direct Impact : Loss of competitive advantage.

The key to duty-free shopping is the "price differential" resulting from tax benefits. When the government abolished import duties on wine, the price differential for this type of product disappeared.

Result: Sales of wine, one of the key revenue drivers for duty-free shops, will decline significantly.

2. Indirect Impact : The "Confidence Contagion Effect " is considered the most severe damage and the core of the KPD argument.

Once informed consumers realize that wine prices at airports are no longer significantly cheaper than outside, they will become suspicious of the prices of "all" duty-free goods.

Through a psychological process, consumers will begin to question, "If wine is no longer cheap, will spirits, cigarettes, perfumes, or cosmetics still be considered cheap? " Trust in the "brand" of " Duty-Free" will be shaken.

The result is not only a decrease in wine sales, but it may also lead to a decline in the penetration rate and conversion rate of other product categories, which will affect overall per capita spending ( SPP) .

##### 3. Financial Impact

SPP due to both direct and indirect impacts will cause KPD 's total revenue to fall short of the forecast in the feasibility study.

When total revenue falls below target, but fixed expenses such as minimum compensation (MAG) remain the same, or even if recalculated, they still don't reflect the impact of government policy, it will significantly reduce KPD 's profit structure and may lead to a loss.

#### The cause -and -effect structure of damage ( Causal Chain)

1. Direct impact: The price advantage of wine is lost . Wine sales ( key driver) have declined rapidly.

2. Indirect impacts: Confidence contagion — Consumers doubt "Are duty-free shops really still cheap? " → Decreased penetration/conversion of other categories → Reduced blended SPP across the entire store.

In summary, when the state, through its administrative powers (not necessarily the directly contracting agency), implements general measures that reduce the cost/revenue burden for the concessionaire, thereby altering the financial equilibrium of the contract through no fault of the private entity, the private entity has the right to demand contract adjustments or

compensation to restore the original balance based on the principle of Financial Equilibrium.

The principle of proportion – public benefit: Insisting on the original compensation criteria, even though the base price has been changed by the government, risks impacting the quality of public services and the continuity of operations. The principle of proportionality supports "contract amendment" instead of enforcement, as before, in order to protect the long-term public interest.

In summary, the governance aspect of the wine tax policy directly aligns with the *Fait du Prince* framework, giving KPD a strong legal basis to demand contract adjustments/compensation to restore the original balance.

In short, the controversy surrounding the wine tax policy has elevated the dispute to a point where KPD has strong administrative legal legitimacy to demand remedies under the *Fait du Prince* principle. This action is not a typical business risk, but a direct consequence of the exercise of state power, which creates an obligation for Airports of Thailand Public Company Limited (AOT), as a state agency, to take responsibility and restore the financial balance of the contract. Therefore, negotiations must shift from a matter of "sympathy" to "calculation and compensation" based on the principles of public law justice.

### **3. Issues and controversies surrounding the reduction of compensation from the cessation of operations for duty-free shops in the arrival area.**

The main point of contention stems from the cessation of operations for duty-free shops in the arrival area, in accordance with government policy, effective August 1, 2024. King Power Duty Free Co., Ltd. insists that the Airports of Thailand Public Company Limited's (AOT) reduction in compensation, calculated proportionally to the lost "area," is unfair. The company argues that the original compensation structure was based on "Sharing Per Head," which included arriving passengers. Therefore, a fair reduction should calculate compensation per head based only on the number of passengers still able to use the service, i.e., departing and transit passengers. This same issue is also reflected in AOT's request to reclaim some operating area at Suvarnabhumi Airport (approximately 899.99 sq.m.) and other airports (approximately 491.220 sq.m.) effective July 1, 2024, where compensation reductions are still calculated proportionally to the lost area.

Based on an analysis of the dispute regarding the termination of operations of duty-free shops and the reclaiming of operating areas, an assessment can be made within the framework of civil law as follows:

#### Economic perspective

Area -based logic is based on the concept of property leasing, where every square meter has equal value.

The passenger logic (Per Head/Revenue-Based Logic) dictates that concession agreements are based on revenue from the number of passengers. The loss of a passenger group therefore disrupts the financial equilibrium. "Value" lies in the potential revenue from passengers, not the size of the space. This "value" includes the quality of the space (Grade A

space vs. poorly occupied areas). The loss of a " passenger group " or a " high-income location " significantly alters the financial equilibrium of the contract .

The core of the dispute lies in differing valuations of contracts, with the central point of the conflict being differing perspectives on the "value" of the contract. From a Revenue-Based Logic (KPD) perspective , KPD assesses compensation using a "concession contract" logic, where the true value of the contract is not based on the size of the area, but on the "potential for revenue generation from passengers" passing through that area. The original contract was based on a " Sharing Per Passenger" model ; therefore, when the number of passengers in a particular group decreases, a reduction in compensation should be recalculated, or calculated based on the number of passengers lost.

#### Administrative Law Perspective

KPD 's argument that compensation reductions should be calculated based on the "number of passengers lost " is a weighty and highly legitimate defense, especially from an administrative law perspective. Its key principles are as follows:

According to the *Fait du Prince* 's principle, a state action (Cabinet resolution) that results in the loss of a contractual right gives rise to the right of full compensation. The principle of state prerogative states that when a state unilaterally amends a contract (e.g., reclaims land), it must compensate the contracting party to maintain financial balance. Right to financial equilibrium in concession agreements ensures that the private party to the contract is not unreasonably disadvantaged by the exercise of state power.

The termination of the inbound shop concession falls under the category of *Fait du Prince* (Prince's Failure) because it results from a policy/cabinet resolution (a government action) that reduces the duty-free trade privileges for inbound passengers, a key revenue component of the concession. This directly impacts the financial equilibrium (loss of revenue from inbound passengers), directly affecting the KPD contract . Therefore, KPD is entitled to compensation to restore the contract's "financial equilibrium" to its original state. This compensation measure aligns with the core concept of "financial equilibrium" in French administrative contracts.

#### Inclusion

1. Actions of the state, such as cabinet resolutions, are clearly "actions of the sovereign".
2. Impact on the Contract: This policy requires KPD to cease operations in the inbound retail sector, which is part of the rights and obligations under the concession agreement.
3. Disruption of the financial balance: Eliminating this section destroyed the revenue stream from all inbound passengers, which was a crucial factor in calculating the ability to pay " per head" compensation in the first place.

*Fait du Prince* principle, KPD is entitled to full compensation to restore its financial status to a state as if the policy had never existed. Recalculating compensation is therefore the most appropriate remedy under this principle.

In the case of the space reclamation, the Airports of Thailand Public Company Limited (AOT) used a "state prerogative" to amend the contract, which created an obligation for AOT to compensate KPD for damages and restore financial balance.

On this point, KPD argues that the current method of calculating minimum compensation does not align with the essence of the "concession agreement," where revenue is directly tied to "passengers." Therefore, KPD 's arguments are strong and have a high probability of being accepted in the Administrative Court.

In this case, the Airports of Thailand Public Company Limited (AOT) exercised its authority under the "state prerogative" to unilaterally amend the contract for the public good (e.g., to improve airport areas or to stimulate the domestic economy). The legal consequence of exercising this power would create a "duty" for Airports of Thailand Public Company Limited (AOT) to guarantee KPD 's "right to financial equilibrium. " In other words, AOT has the authority to reclaim the area, but also has a duty to fully compensate KPD for any damages.

A perspective within the framework of civil and commercial law.

The law, concerning the principles of good faith and fairness, mandates that contracting parties exercise their rights and perform their duties in good faith. This is enshrined in Section 5 of the Civil and Commercial Code, which courts and legal professionals use as a benchmark for interpreting and/or adapting contracts for fairness when contractual provisions are unclear, incomplete, or in new circumstances.

Good faith and equity stipulate that compensation reductions must reflect actual damage to maintain the financial equilibrium of the contract and prevent the private sector from bearing undue losses. If the contract does not clearly specify the method for calculating compensation reductions, the court will consider the matter based on the principles of good faith and equity. KPD 's argument that the original contract was based on passenger numbers, and therefore the reductions should also be based on passenger numbers, is commercially viable and reasonable. Therefore, it does not reflect the true economic value; instead, the potential for revenue loss must be used as the basis (consistent with the principle of good faith and equity, Article 5).

However, regarding the issue of force majeure, although the case under consideration may not be classified as force majeure in the technical sense of civil law, for the sake of a complete analysis, it is appropriate to mention the legal principle stipulated in Section 8 of the Civil and Commercial Code, which defines force majeure as " an event that cannot be prevented even with reasonable care. "

Although this issue is not directly relevant to the current case, the principle of force majeure may be invoked by contracting parties to justify exceptions to liability or partial debt relief, a legal consequence arising from events beyond their control or prevention. Therefore, contract analysis and liability limitations should take this principle into account for complete interpretation and risk assessment by the contracting parties.

#### Summary and Strategic Impact

KPD 's strong position and arguments in both cases are firmly rooted in the principles of administrative law concerning concession contracts.

The appropriate approach for Airports of Thailand (AOT) is to accept the principle that compensation must be based on "revenue-generating potential from passengers" and should

engage in fair negotiations with KPD to find a method for calculating and adjusting compensation to reflect the actual damages based on financial balance. This is to avoid legal risks and build a good long-term partnership.

This dispute highlights the application of the administrative law framework, particularly the *Fait du Prince* principle and the right to financial balance, clearly supporting KPD 's claims. Quantitative analysis has proven that the method of reducing compensation at Airports of Thailand (AOT) does not reflect either business logic or administrative law principles.

Strategic advice: AOT (Airports of Thailand Public Company Limited) is at a significant legal disadvantage. Insisting on the area-based calculation method will lead to protracted legal disputes and a high probability of losing the case. A prudent and mutually beneficial approach is as follows:

1. Accept the principle: AOT (Airports of Thailand Public Company Limited) should accept the fundamental principle that compensation must be based on "the potential to generate revenue from passengers."

2. Enter into negotiations in good faith, using the calculation framework based on "passengers" and "revenue potential" proposed by KPD as a starting point.

3. Reach a fair resolution, jointly assess the actual damages, and determine a new compensation rate that reflects reality, in order to preserve the partnership and avoid further long-term damage.

4. Maintain alliances. Resolving problems through honest negotiation creates greater economic sustainability than pursuing litigation.

#### **4. The issue is the decline in the number of tourists from key groups.**

The issue of the " sudden decline in Chinese tourists " carries significant weight in administrative law interpretation. While under civil law, this event might be viewed as a " business risk " for the concessionaire, not a force majeure event, in administrative law it can be interpreted as a " significant collapse of a foundational assumption," a crucial factor in calculating compensation throughout the concession period.

Analysis within the framework of civil and commercial law.

The relevant conceptual framework and legal principles are as follows:

The economics of concessions and the " fundamental assumptions ".

Retail concession agreements at airports are based on quantitative and qualitative assumptions regarding passenger numbers (number). The proportion of ethnicity/income group (SPP/ per capita spending) and the expected revenue mix on the bidding day are crucial. Drastic changes in the proportion of key groups (e.g., Chinese tourists) reduce the weighted average of SPP and undermine the functional relationship between " number of people – area – income " that forms the mathematical basis of compensation. This leads to a decrease in Blended SPP and inaccuracies in revenue models tied to passenger count, location, and conversion rate .

Civil dimension: Market risk – Force majeure – Principle of good faith

Market risk , including volatility in demand and competitiveness, is considered. The " foreseeable risk " of the operator ( *pacta sunt servanda* ) unless the contract explicitly provides for a " risk adjustment/sharing mechanism " .

Force majeure: The decrease in Chinese tourists, regardless of the reason, did not render KPD " unable" to open its shops or operate its business. Therefore, fulfilling the contract was not "impossible," and the decrease in Chinese tourists did not make " debt payment/operation " impossible. The private sector could still operate; only revenue decreased. Thus, it does not meet the criteria of force majeure under civil law.

The principle of good faith (Civil and Commercial Code, Section 5) and fairness serve as a benchmark for interpretation/application. However, in practice, civil courts are often cautious in interfering with the balance of commercial interests predetermined by the contracting parties.

Placing assets as a completely business risk, and relying primarily on revenue from a single market, is a strategic business decision for entrepreneurs. Fluctuations in that market, regardless of the cause, originate from the economy of the country of origin. Policies of foreign governments or the image of safety of the destination country, all of which are "foreseeable risks" that businesses must assess and plan to deal with. When these risks actually occur, businesses must bear the consequences.

In summary, in the civil dimension, the burden of proof rests heavily on the private sector. A market contraction alone usually does not change the status of " duty to pay compensation, " unless there is a specific contractual clause or a seriously abnormal situation that affects fairness in contract performance until the court agrees to " rebalance " the situation.

Analysis within the framework of administrative law: Hardship/ *Imprévision* And the right to financial equilibrium.

When considering "administrative contracts," this claim carries weight due to the following details:

Hardship Theory and the Impossibility of Financial Models.

The core of a legal battle is proving that a radical change has occurred that disrupts the balance of the contract.

"unforeseeability" KPD could argue that, despite some anticipated market volatility in China, no one could have predicted such a drastic and severe drop in the proportion of Chinese tourists (from 31.60% to 18.90%). This is a result of a complex combination of factors, including China's internal policies and Thailand's serious image problems, involving a multitude of interconnected factors (trust – safety). National policy: origin – destination (External geopolitical/economic factors) Such "structural" changes lie beyond the scope of normal risk assessment and therefore exceed the normal management capabilities of a single private entity.

The result is not a " temporary decrease in revenue ," but rather a change in key parameters of the concession model (e.g., weighted SPP values) that causes the revenue/compensation targets to become irrelevant to the new market base.

The condition of "disrupting the financial equilibrium"

The theory of unpredictability ( Hardship/ Imprévision ) applies to administrative/public contracts when unforeseen and severe external events disrupt the financial balance of the contract through no fault of the private party. This concept does not automatically lead to contract termination, but rather creates a duty to renegotiate the contract in good faith to maintain the continuity of public services and reduce structural risk.

KPD's strongest competitive advantage lies in its financial model used for bidding and calculating the minimum compensation (MAG), which is based on the fundamental assumption that Chinese tourists are the main group with the highest per capita spending ( SPP).

Revenue from this tourist segment is like a "pillar" supporting the entire revenue structure. The loss of almost half of this pillar not only reduces overall revenue but also significantly decreases the " weighted average SPP " ( blended SPP) of all passengers. The weighted average of the sales basket declines across the board.

As a result, the original financial model has been altered, and attempting to achieve the original revenue targets under the new passenger structure is virtually impossible, completely and clearly disrupting the balance of contracts.

The economic impracticability of maintaining the original goals under the new structure creates a disproportionate burden on the private sector and may result in a decline in service quality, ultimately impacting public interest.

Weighing the "public interest"

Public benefit doesn't just mean Airports of Thailand Public Company Limited (AOT) meeting revenue targets on paper, but also having strong business partners who can provide quality services to all tourists.

Enforcing contracts based on unworkable business models risks reducing service quality or even leading to contractor failure, negatively impacting the airport's and the nation's image in the long run. Therefore, negotiating contract revisions to align with new market realities is crucial for safeguarding the overall public interest.

The principle of public benefit and proportionality suggests that enforcing the original contract, even if the "revenue model base" has collapsed, may lead to reduced service quality/failure of the operator, negatively impacting the airport's image and the tourism economy in the long term. Therefore, the proportionality principle supports contract amendments rather than enforcement of the original contract if the collapse of the assumption can be clearly proven.

In administrative contract disputes, the court may examine the legality of a state enterprise/agency's adherence to existing terms and conditions. If it finds that such terms are inconsistent with the public interest and neglect the " duty of good faith negotiation, " the court may prescribe remedies or measures to protect the balance of power.

In summary, from a governance perspective, if it can be proven that the "contraction of the Chinese market" is an external, unpredictable event that undermines the promised revenue core, rendering the original compensation mechanism ineffective, then governance would have a basis for negotiating contract adjustments to restore equilibrium while maintaining continuous and quality public services.

Therefore, when the conditions of "unpredictability," "disruption of financial equilibrium," and the weighing of "public interest" are combined, the administrative conditions carry sufficient weight to create a "joint duty of the contracting parties" to review/negotiate adjustments to the compensation formula to reflect the new reality, not through contract termination, but rather to restore equilibrium.

The argument "China also visits other ASEAN countries": A double-edged sword.

If Airports of Thailand (AOT) uses this reasoning, it would be arguing that the problem isn't with the "market" but with "Thailand." While this might seem like shifting the burden to KPD, in administrative law terms, it's an acknowledgment of a key point raised by KPD, as detailed below.

Airports of Thailand Public Company Limited's (AOT) perspective.

If the Airports of Thailand Public Company Limited (the one using this reasoning) argues that "Chinese tourists are still traveling to other ASEAN countries such as Malaysia, Vietnam, Singapore's continued argument would have the following advantages from the Airports of Thailand (AOT) perspective:

This proves that the Chinese tourist market still exists, demonstrating that the demand for outbound travel from Chinese citizens has not disappeared. If Chinese tourists continue to travel to Malaysia, Vietnam, Singapore, etc., it indicates that overall demand has not vanished. Therefore, the market has not collapsed completely. The problem, therefore, lies specifically with Thailand or with "KPD's competitiveness." This links back to market risk/country risk that the private sector must bear.

It was pointed out that the problem did not stem from universal external factors; rather, it limited the scope of the issue to the fact that it wasn't caused by a weak Chinese economy that led to a complete lack of travel, but rather it was a specific problem, not a universal event affecting all countries/businesses equally, and therefore did not fall under the category of being beyond their control.

AOT could further argue that, since the market exists but KPD is unable to attract customers on its own, it may be because KPD's strategy is ineffective, or because the demand for travel to Thailand has decreased. This constitutes business risk and country risk, which the concessionaire must bear.

From this perspective, AOT can point out that this incident was not a "force majeure" or "change in circumstances" that affected everyone equally, but rather a problem of "competitiveness" for Thailand and for KPD.

KPD's perspective KPD acknowledges that the "assumption" has changed. This reasoning could become a "double-edged sword" because KPD could turn it into his own advantage as follows:

It is confirmed that a real structural change has occurred. China's increased focus on neighboring countries is empirical evidence of Thailand's "advantageous destination status." KPD will point out that "the fact that Chinese tourists are choosing neighboring countries instead of Thailand is the clearest evidence that the foundational assumption of the 2019 contract no longer reflects reality." The initial assumption in 2019, when the bidding took place, by both Airports of Thailand Public Company Limited (AOT) and KPD, was that Thailand held a "leading position" and was a top destination for Chinese tourists. The financial models and minimum compensation calculations (MAG) were all based on this advantageous position.

The new reality, that Malaysia, Vietnam, or other countries can surpass Thailand in attracting Chinese tourists (according to the latest data from 2025), shows that Thailand has lost its leading status and competitive advantage. This is a significant and unexpected "pattern shift" of considerable severity. The situation lies "beyond private control" —macroeconomic security factors, national image, and the competition policies of other governments are external and exogenous; private entities cannot resolve them themselves.

Supporting administrative hardship occurs when the "national advantage" that has become a parameter in a contract is substantially altered. The state's insistence on the original terms risks violating the principles of proportionality and the public interest. This creates the responsibility for negotiating contract amendments.

KPD's control, and KPD will further argue that the factors causing Chinese tourists to relocate are entirely beyond the scope of KPD's control, such as the country's security image, cannot solve cybercrime, or build national confidence. That is the government's responsibility.

The strategies and policies of competing countries make KPD unable to compete with the tourism promotion policies of the Vietnamese or Malaysian governments.

In short, using the argument "China still travels to other ASEAN countries" is only beneficial within the framework of civil law to highlight market risk. However, within the framework of administrative law, the same argument reinforces the idea that "fundamental assumptions about national potential" have been transformed, thus supporting hardship/imprévision. KPD's points are substantial.

#### Strategic Summary

The Airports of Thailand Public Company Limited's (AOT) argument that "Chinese tourists are still going elsewhere" poses a risk because it implicitly admits that "Thailand is having problems," and these problems are macroeconomic factors that a private company like KPD cannot solve. Therefore, instead of proving that KPD should be held responsible, this argument reinforces KPD's defense under administrative law that an "unforeseen change in circumstances" occurred, disrupting the financial balance of the contract and creating an obligation for the government (AOT) to negotiate and amend the contract to reflect the "new reality" where Thailand is no longer in a leading competitive position as it was in the past.

However, the Airports of Thailand Public Company Limited (AOT) argues that "Chinese tourists are still traveling to other ASEAN countries." This is a double-edged sword. On one hand, it confirms that this is a problem specific to Thailand, not a global

structural change that could be interpreted as falling within the scope of private sector business risk. On the other hand, acknowledging that Thailand has lost its potential to attract Chinese tourists compared to neighboring countries is tantamount to admitting that the "fundamental assumptions of the market and the country's potential" have significantly changed. This supports KPD's argument in administrative law that this case falls under the category of hardship and creates an obligation for the Airports of Thailand Public Company Limited (AOT) to participate in negotiating contract adjustments.

While this claim may not be strong in civil law, it is very powerful in administrative law because it can be linked to the "duty of the state as a contracting party" to maintain fairness and balance in concession contracts under the principle of *imprévision*. Clearly, this can be summarized as follows:

A strong argument is the declining proportion of passengers, highlighting a direct shift in the financial foundation of the contract. Strengthening its negotiating position, combined with the argument regarding the wine tax policy (*Fait du Prince*), gives KPD a very strong negotiating position. KPD can demonstrate that the agreement has been affected by two consecutive waves of severe and unforeseen external factors. This creates obligations for AOT. This fact puts significant legal pressure on AOT to uphold the principles of good faith and fairness in administrative contracts by engaging in serious negotiations. Ignoring this could lead to defeat in the administrative court.

Structural changes in the Chinese tourist market constitute sufficient grounds under administrative law for KPD to request a review and amendment of the concession agreement terms.

#### Policy proposals – promises

1. Define the hardship mechanism in the contract, specifying quantitative triggers (e.g., percentage of core passenger groups/ blended SPP declining by more than X% continuously for Y quarters) and methods for adjusting the compensation formula (e.g., per-head/MAG adjustment factor).

2. The duty to negotiate in good faith and within a timeframe: Establish negotiation procedures/ independent experts to maintain the continuity of public services.

3. Systemic public benefit assessment: Use the principle of proportionality to compare the damages from "freezing the original contract" (reduced service quality/risk of failure) with "conditional contract amendment" (maintaining the quality and image of the airport/country).

4. Market Indicator Monitoring: Airports and concessionaires jointly develop a Market Dashboard to track the proportion of key passengers, SPP (Simple Passenger Power Producer) ratios, conversion rates, and adopt a "bounded automatic adjustment formula" to prevent recurring disputes.

#### **5. Negative situations both domestically and globally.**

KPD 's letter cited several negative factors in Thailand, such as the relocation of foreign companies' manufacturing bases. Rising crime rates and higher living costs have all eroded confidence and led tourists to choose other destinations. Globally, trade wars and regional conflicts have slowed the world economy, directly impacting the tourism industry and passenger purchasing power.

Analysis within the framework of civil and commercial law

KPD 's new claim lacks weight in supporting AOT's (Airports of Thailand). We need further assistance, and here are the details: As follows:

The principle of force majeure cannot be applied. This principle only works when fulfilling the contract is "completely impossible" (impossible). Factors newly raised by KPD include a global economic slowdown. trade war, crime rates in the country do not prevent KPD from opening their store or selling goods; it only makes "making a profit" or "conducting business" more difficult. Force majeure can only be invoked when fulfilling the obligation is " impossible " entirely, not just " difficult/reduced profit " ( Civil and Commercial Code, Section 8).

It falls under the category of "business risk." The Supreme Court has established a precedent (e.g., Supreme Court Case No. 2531/2549) that an economic recession, market changes, or higher costs are a risk that businesses must anticipate and bear themselves. Relocating production bases, cost of living, international conflicts are classic examples of business risks that large corporations under long-term concession agreements must consider in their feasibility studies and sensitivity analyses even before submitting bids.

The principle of good faith and fairness dictates that the exercise of rights/performance of duties must be in good faith (Civil and Commercial Code, Section 5). However, in general practice, civil courts limit interference with the commercial balance determined by the contracting parties, unless there is a clear contractual clause sharing risk.

In civil law, these new claims do not constitute force majeure and are classified as purely business risk, which under civil law is the sole responsibility of the entrepreneur. Such actions undermine the strength of their defense; therefore, under civil law, KPD remains obligated to pay the contractual compensation.

Analysis within the framework of administrative law

Although this is an administrative contract, which is subject to the flexibility of administrative law, it still has limitations. For the theory of unforeseen circumstances to be applicable, the burden of proof lies with KPD, which must prove to the court that hardship/ unforeseen circumstances are valid when a severe external event, "difficult to foresee, " disrupts the financial balance of the contract but is not impossible. The objective is to negotiate contract adjustments in good faith to maintain the public service.

The impact is so severe that it disrupts the balance of power. KPD must provide clear financial data demonstrating that these factors have had an "extremely" severe impact, on a level comparable to that experienced during a pandemic. This is far more difficult to prove because economic recessions generally "reduce" profits but do not immediately "destroy" businesses like a nationwide lockdown.

Interpreting the public interest, state intervention to assist private entities outside the "normal economic cycle" is dangerous and could be criticized as favoritism (corporate welfare) , which is fundamentally different from providing assistance in response to a national disaster .

In this regard, stating that the heart of the argument in administrative law is "Hardship Theory, " which has crucial conditions: the event must be "unpredictable" and "completely disrupt the financial equilibrium of the contract."

"unforeseeability" The unprecedented COVID- 19 pandemic, which had such a severe impact as to lead to global border closures, clearly meets this criterion.

New factors such as domestic problems both economic and political situations, these factors are not entirely unpredictable. Economic recessions are a normal occurrence. Crime and the cost of living are internal factors that are constantly changing. Prudent entrepreneurs must incorporate these risks into scenario planning to assess their ability to cope. Therefore, claiming these things were unforeseen is difficult to accept.

The condition of "disrupting the financial equilibrium"

COVID- 19 completely disrupted the balance because it resulted in zero income.

These new factors "erode" profitability and growth potential, but do not "destroy" the fundamentals of the contract in the same way a pandemic does. They are unfavorable market conditions, which is different from a complete market disappearance.

Weighing the "public interest"

The original excuse was that AOT's assistance for KPD in maintaining the airport ecosystem should be given the greatest weight when dealing with unprecedented external disasters (COVID-19). However, when the rationale shifts to addressing a general economic recession, the balance shifts back to the responsibility of AOT ( Airports of Thailand Public Company Limited). In order to "preserve government revenue" more effectively, assisting KPD in such a situation could be seen as granting a preferential treatment to a particular private entity in dealing with market conditions that other private entities also face.

KPD 's new claim is significantly less justified in requesting state intervention to amend the contract under the theory of unforeseen circumstances, as most factors are predictable as business risks.

Strategic impact and summary

Sending these letters citing new reasons may have been a strategic mistake by KPD because

1. Weakening the argument: This diverts attention from the "exceptional and unprecedented" impact of COVID- 19— KPD 's best defense —to "general economic problems" that sound like typical business complaints.

2. The advantage of AOT can be more easily argued that "the Airports of Thailand Public Company Limited (AOT) have assisted KPD in the exceptional

circumstances ( COVID- 19), but regarding the current economic problems, it is your responsibility as an entrepreneur to manage them.

In summary, additional claims regarding negative factors both domestically and globally are not substantial enough, either civilly or administratively, to create any obligation for Airports of Thailand Public Company Limited (AOT). These factors all fall within the scope of business risk that the concessionaire must bear themselves.

Summary and strategic perspective.

KPD 's claims regarding negative domestic and global situations represent a weak legal and strategic defense. Therefore, combining strong defenses (the exceptional and direct impact of COVID- 19) with weak defenses (general economic problems) risks undermining KPD 's overall credibility and opens opportunities for AOT It can be more easily negotiated off by arguing that KPD is using normal business management issues as an excuse. KPD 's strategy will be to use data to prove that changes in passenger spending behavior (SPP) are a "permanent and characteristic" residual effect stemming solely from the "unpredictable" COVID- 19 crisis, without considering other business risk factors.

### **Conclusion**

The legal dispute between King Power Duty Free Co., Ltd. (KPD) and Airports of Thailand Public Company Limited (AOT) regarding the obligation to pay a Minimum Annual Guarantee (MAG) has become a case study that has shaken the Thai business and legal world. This dispute is not merely a typical commercial conflict over rental fees, but a reflection of the clash between two legal paradigms: "Civil and Commercial Law," which upholds the sanctity of contracts, and "Public Law," which emphasizes financial balance and public interest.

As the world enters the post-COVID-19 era, macroeconomic realities have changed drastically. A key question is whether contracts drafted under the assumptions of the old world should still be rigidly enforced. When considering this dispute through the lens of Civil and Commercial Law, KPD's position is clearly disadvantageous, as civil law is designed to maintain contract stability (Pacta Sunt Servanda). Citing the principle of force majeure to request exemption from or reduction of the debt obligation is therefore inadvisable. There is a very narrow and strict enforcement framework.

During the lockdowns and border closures of 2020-2022, doing business was truly "impossible." Therefore, the Airports of Thailand Public Company Limited's (AOT) assistance measures during that time were consistent with legal principles. However, since April 2023, the situation has transformed into "economic hardship." The decline in Chinese tourists or decreased per capita spending is often viewed by courts as a "business risk" that professional entrepreneurs should have already assessed. Therefore, a civil litigation battle is highly likely to lead KPD to a dead end.

The direction of the dispute will change significantly when we look deeper into the essence of the legal relationship and accept that this contract is not a simple lease agreement but a "concession agreement," an administrative contract under the framework of public law. KPD's claims will immediately gain legitimacy and weight through two main theories:

1. Hardship Theory (Théorie de l'imprévision): This principle is more suitable in the current context than the principle of force majeure. It states that if an "unpredictable" external event occurs that completely disrupts the "financial equilibrium of the contract," the state has a duty to intervene. The COVID-19 crisis and its subsequent structural impacts have destroyed the financial models used to calculate the MAG ratio in the past. Therefore, Airports of Thailand Public Company Limited (AOT), as a state agency, has an obligation to enter negotiations to restore the contract's balance.

2. The Principle of State Action (Fait du Prince): This is KPD's most powerful argument in public law. When the state, as the sovereign power, impacts a contracting party, it must take responsibility. Past government policies, whether the exemption of import duties on wine, which undermined the duty-free price advantage, or the order to cease operations of duty-free shops for imports, were all exercises of state power that directly cut KPD's revenue streams. These events made KPD a "direct victim of the exercise of state power," for which AOT must compensate and provide redress for fairness.

Enforcing overly rigid contracts without considering changing contexts may violate the principle of proportionality and negatively impact the airport ecosystem. If a major concessionaire faces a severe financial crisis, it will inevitably have a ripple effect on service standards, the country's image, and long-term public interests. Therefore, the most legally sound and mutually beneficial solution is not a risky legal battle in the Administrative Court, but rather for Airports of Thailand Public Company Limited (AOT) to acknowledge the reality according to public law principles and open negotiations to "restructure the contract" to make it more flexible.

Shifting the perspective of the relationship from merely "creditor-debtor" to "business partners" who must overcome the crisis together is the smartest strategy. This will help maintain a balance between government revenue collection, the survival of the private sector, and the sustainable development of Thailand's aviation ecosystem.

**Data Availability Declaration:** The datasets generated and analyzed during the current study can be accessed upon reasonable request from the

corresponding author. Some data may be subject to restrictions due to privacy or ethical concerns and are not publicly available.

### **Key Points:**

- **Severe Macroeconomic Impact:** The COVID-19 pandemic, coupled with a delayed recovery in international flight volumes and a significant decline in Chinese tourists, has severely impacted the revenue and liquidity of duty-free operators (KPD).
- **Compounding Policy and Economic Factors:** Beyond the pandemic, operators face additional hurdles such as changing fiscal policies (e.g., wine import duty exemptions), global economic slowdowns, and the reduction of duty-free operating areas, making the original Minimum Annual Guarantee (MAG) unrealistic.
- **Clash of Legal Frameworks:** The dispute highlights a fundamental divergence between civil law (which strictly adheres to *Pacta Sunt Servanda* or the sanctity of the contract, treating this as a business risk) and public/administrative law (which prioritizes financial equilibrium and the public interest in state concessions).
- **Proposed Resolution:** Viewing the concession as an administrative contract gives legal weight to the operator's hardship claims. The most viable solution is for the state (AOT) to renegotiate and restructure the contract to reflect current economic realities, ensuring fairness for the operator while securing long-term benefits for the state.

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