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# COMMERCIAL AGENCY AND DISTRIBUTION CONTRACTS IN VIETNAM: LEGAL CLASSIFICATION, TERMINATION AND FAIR ALLOCATION OF BUSINESS RISKS

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**ABSTRACT**

***Commercial agency and distribution are frequently used to expand markets without establishing a fully owned retail network. Although they serve similar commercial purposes, Vietnamese law treats them differently. This article uses doctrinal analysis of the Commercial Law 2005, the Civil Code 2015 and general contract principles to examine the classification of intermediary relationships, agency remuneration, ownership, exclusivity, termination and compensation. It argues that the principal practical difficulty is not an absence of rules but the mismatch between legal labels and economic substance: contracts described as distribution may reproduce agency functions, while agreements labelled agency may shift inventory risk to the intermediary. The study differentiates mandatory rules from negotiable default terms, examines the protection afforded by Article 177 on termination, and proposes clearer classification criteria, notice standards, inventory arrangements, compensation methodology and dispute-prevention clauses. The article concludes that sound commercial regulation must preserve flexibility while protecting legitimate reliance created by long-term investments in distribution networks.***

***Keyword: Commercial agency; Distribution contracts; Vietnamese Commercial Law; Exclusivity; Termination compensation; Contractual risk.***

## 1. INTRODUCTION

Market access increasingly depends on contractual networks rather than vertically integrated branches. A manufacturer may appoint a local trader to display products, develop customers and complete sales, or may sell goods to an independent reseller who bears inventory and resale risk. Both arrangements provide geographical reach and specialist market knowledge, yet the legal distribution of title, pricing authority, payment and termination risk differs considerably. Contract terms that obscure these differences may create substantial uncertainty when relations deteriorate.

Vietnamese Commercial Law recognizes commercial agency as a specific commercial intermediary activity, whereas ordinary distribution arrangements are often structured through sale contracts and continuing cooperation obligations. Classification matters because certain statutory rules on remuneration, the ownership of goods and compensation on termination attach to the agency relationship. A drafting label cannot reliably resolve all disputes if the parties' actual obligations point in another direction.

This article applies a doctrinal and functional method. It reads Articles 166–177 of the Commercial Law alongside the Civil Code rules on contractual interpretation and breach, and evaluates recurring hypothetical arrangements without presenting unverified statistics or case outcomes. The research question is how Vietnamese law can distinguish agency from distribution while allocating the costs of building and dissolving commercial networks fairly.

## 2. LEGAL NATURE AND CONTRACTUAL CLASSIFICATION

Under Article 166 of the Commercial Law, a commercial agent acts in its own name in buying or selling goods or supplying services for a principal and receives remuneration. Article 168 calls for a written agreement or a legally equivalent form. The principal's retention of ownership of goods or money transferred for agency under Article 170 is an important structural marker. It distinguishes an agent

handling a principal's goods from a distributor that ordinarily purchases inventory for onward sale.

An exclusive territory does not by itself determine the legal nature of the arrangement. Both a distributor and an agent may receive exclusive rights, marketing support or sales targets. More persuasive indicators include when title passes, who bears unsold-inventory risk, how revenue is booked, who sets the resale margin and whether the intermediary receives commission or profit from an independent resale. The question should be answered by reading the agreement and the performance record together.

An additional challenge occurs in mixed contracts combining agency, consignment, after-sales services and ordinary purchases. Treating the entire relationship as a single undifferentiated legal category may cause an inappropriate application of an agency-specific rule to transactions that are in substance purchases for resale. Parties should identify which orders constitute agency transactions, which constitute outright sales and which services have separate fees and termination treatment.

## 3. REMUNERATION, EXCLUSIVITY AND ONGOING PERFORMANCE

Article 171 contemplates agency remuneration by commission or price margin, subject to the parties' agreement and statutory default principles. The remuneration clause should therefore do more than identify a percentage: it should state the calculation base, taxes, treatment of returns and discounts, reporting frequency, audit rights and when the agent's entitlement accrues. Otherwise, disputes over gross versus net sales can become a disguised conflict about business risk.

Territorial exclusivity may induce the intermediary to invest in premises, staff and promotional activity, while also limiting the principal's routes to market. Commercial reasonableness requires measurable duties on both sides: product availability, marketing support, minimum volumes, information exchange and responses to underperformance. Exclusivity without transparent performance metrics may create dependency without predictable returns. Minimum purchase obligations similarly require adjustments for supply disruption and regulatory restrictions.

Agency contracts should allocate responsibility for warranties, defective products, consumer complaints, payment default and inventory deterioration. When goods remain the principal's property, clauses that allocate all physical-loss risk to the agent require special clarity and should be supported by insurance and custody standards. In a distribution relationship, the reseller's inventory ownership changes the default economic analysis, but the supplier may still assume recall or product-compliance obligations.

## 4. TERMINATION AND COMPENSATION FOR NETWORK INVESTMENT

Article 177 provides an important framework for agency termination where the parties have not agreed otherwise. In broad terms, its default approach requires advance written notice and contemplates compensation to the agent when termination is initiated by the principal. The statutory formula ties compensation to average monthly remuneration and duration of the relationship. The design recognizes that the agent may have created customer connections that continue to benefit the principal after the relationship ends.

Application of this rule requires attention to its contractual and statutory context. It should not be transplanted automatically into every distributor agreement. Equally, an agency relationship cannot be excluded from analysis merely because the contract is headed 'distribution'. Courts and contracting parties need a defensible method for identifying an agency relationship before considering its termination regime. The parties should also specify how averages are calculated when sales are seasonal or the term includes inactivity.

Termination affects more than commissions. Unresolved matters may include stock repurchase, return of promotional equipment, access to customer records, post-termination use of trademarks, outstanding warranties and transition services. A carefully prepared exit schedule can reduce the disruptive effect on customers while allowing the outgoing intermediary to recover legitimate receivables and investments. Where one party alleges serious breach, the contract should set out notice and cure procedures consistent with applicable law.

## 5. PRACTICAL GAPS AND REFORM DIRECTIONS

The first reform priority is more consistent classification guidance. A short set of indicators concerning title, inventory risk, remuneration, pricing and authority would reduce costly disputes without eliminating contractual freedom. Judicial decisions could articulate why particular contractual terms carry more weight than labels and distinguish genuinely mixed agreements from disguised agency.

Second, model clauses developed by chambers of commerce or industry associations could improve drafting quality. They should cover exclusivity, sales reporting, returns, data access, notice, cure periods, early termination and final reconciliation. Model contracts need not become mandatory; their value lies in presenting choices and consequences intelligibly to smaller traders without dedicated legal departments.

Third, compensation discussions should distinguish repayment of existing debt, contractual damages and any statutory agent-termination entitlement. Their economic and legal bases differ. Parties should record training expenditure, outlet investment and market-development contributions contemporaneously rather than reconstructing them after a breakdown. An agreed transition mechanism can preserve competition and customer continuity without imposing a perpetual commercial relationship.

## 6. CONCLUSION

Commercial agency and distribution are related but legally different channels of market organization. Vietnamese Commercial Law supplies a relatively specific agency framework, notably concerning the status of the agent, retention of ownership, remuneration and termination. Commercial distribution requires careful integration of sale, general contract and competition principles. The decisive objective is to align legal consequences with the actual allocation of economic risk rather than the label chosen at signature.

Reform should emphasize clear classification guidance and practical contracting techniques, not excessive mandatory standardization. Transparent payment provisions, appropriately calibrated exclusivity, verifiable notice and a negotiated exit pathway would strengthen confidence among manufacturers, intermediaries and customers. The resulting framework could accommodate new business models while maintaining fairness in long-term market relationships.

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