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COMMERCIAL FRANCHISING IN VIETNAM: PRE-CONTRACT DISCLOSURE, BRAND CONTROL AND BALANCED FRANCHISE RELATIONSHIPS

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ABSTRACT

Franchising enables a business format to expand through legally independent operators while retaining a recognizable brand and operational system. In Vietnam, the Commercial Law 2005 and Decree No. 35/2006/ND-CP, as amended, provide core rules on franchising, information supply and registration. This doctrinal article examines the pre-contract relationship, allocation of intellectual-property and operational rights, quality-control obligations, network monitoring, transfer and termination. It finds that formal disclosure is necessary but insufficient when projected profitability, fees, mandatory sourcing and post-termination obligations are not presented in a commercially intelligible manner. The article proposes more usable pre-contract information, balanced training and inspection mechanisms, documented treatment of franchise investments and transparent renewal and exit clauses. It concludes that a credible franchise regime must protect brand consistency while recognizing the franchisee's separate business risks and need for informed investment decisions.

Keyword: Commercial franchising; Franchise disclosure; Intellectual property; Brand standards; Franchisee protection; Vietnam.

1. INTRODUCTION

Franchising combines a central business model with local entrepreneurial investment. The franchisor contributes brand identity, business methods, training and supervision; the franchisee contributes capital, premises, staffing and daily management. The arrangement can accelerate commercial growth, yet it also generates recurring tension between central control and operational independence.

Vietnamese Commercial Law 2005 regulates commercial franchising in Articles 284–291. Decree No. 35/2006/ND-CP supplies implementing provisions and has been adjusted by later instruments, including Decree No. 120/2011/ND-CP and Decree No. 08/2018/ND-CP. These rules frame an evolving market in which operators must evaluate not just the legal status of the brand but the economic durability of the business format.

This article uses doctrinal and contractual analysis to explore information asymmetry, intellectual-property licensing, operational control, fees, renewal and exit. It does not make claims about unverified franchise success rates. Its central argument is that the franchise model operates best when the contract makes commercial dependency visible before the franchisee commits substantial investment.

2. LEGAL CHARACTERISTICS AND REGULATORY STRUCTURE

Article 284 characterizes franchising through a relationship in which the franchisor permits and requires the franchisee to conduct trade under a business format associated with commercial identifiers and with the franchisor's supervision and assistance. This is neither a straightforward trademark license nor an ordinary sale of goods. It is a continuing contractual system combining intellectual property, operational standards and mutual performance duties.

Decree No. 35/2006/ND-CP sets out rules concerning the offer of franchises and the supply of information. Amendments have changed aspects of business conditions and registration, so an analysis must use the amended framework rather than reproduce the original decree as though every early requirement remained unchanged. Cross-border and domestic arrangements can be subject to different

administrative treatment, making a current registration check important before market entry.

Contractual independence is a defining feature but not an absolute description of economic bargaining power. A franchisee may own its enterprise while depending on the franchisor for sourcing, software access, pricing recommendations and brand recognition. The legal challenge is to recognize this dependency without treating franchisees as employees or erasing the franchisor's legitimate need for network standards.

3. PRE-CONTRACT DISCLOSURE AND INVESTMENT DECISIONS

Article 8 of Decree No. 35/2006/ND-CP provides for supply of the proposed franchise agreement and a franchise introduction document before contract signing, subject to the decree's terms. Disclosure should serve the substantive purpose of enabling an informed assessment of business risk. A thick document can comply formally while obscuring franchise fees, required renovations, supply margins, territorial competition and ongoing technology expenses.

A practical disclosure package should distinguish initial investment from recurring and contingent expenditure. It should clearly identify entry fees, royalties, advertising contributions, purchase obligations, training costs, site approval procedures and the treatment of refundable deposits. Financial projections, if supplied, should explain the underlying assumptions rather than suggest guaranteed profitability. The franchisee should be able to compare total cash requirements against plausible operating conditions.

A meaningful pre-contract process should also disclose material aspects of network stability: reliance on a limited supplier, restrictions on transferring an outlet, conditions for renewal and the consequences of losing brand rights. These matters have a direct effect on exit value. Transparent disclosure can reduce opportunistic entry into unviable outlets and lower the risk of disputes once sunk investment makes withdrawal costly.

4. BRAND CONTROL, SUPPORT AND INTELLECTUAL PROPERTY

Brand consistency requires enforceable quality standards. The franchisor may need to control product preparation, signage, customer service, data-system compatibility and training. These obligations can preserve consumer trust in the network and protect trademarks, but standards should be sufficiently clear for franchisees to predict compliance costs. Unannounced changes that require major reconstruction can shift commercial risk without corresponding bargaining opportunity.

Intellectual-property terms should define the scope, duration and permitted use of trademarks, trade names, manuals and know-how. The franchisee should understand what materials must be returned or destroyed after termination and what legitimate business knowledge it may continue to use. Confidentiality clauses should protect genuine trade secrets without functioning as indefinite barriers to ordinary economic activity.

Monitoring should be accompanied by a duty to communicate findings and feasible corrective steps. A transparent inspection protocol would identify objective standards, the seriousness of deviations, deadlines for cure and consequences of non-compliance. Franchisors also need to honor promises of initial and continuing training. A network that imposes extensive controls but provides little promised support can undermine the very value for which the franchisee paid.

5. TRANSFER, RENEWAL AND TERMINATION

Franchise relationships are particularly vulnerable at exit because a franchisee's premises, furniture and workforce may be tailored to the brand. Transfer restrictions may protect network quality, but an absolute or opaque refusal can destroy the resale value of a functioning outlet. A balanced process should establish objective transferee qualifications, reasonable response times and a transparent procedure for the franchisor's consent.

Renewal clauses should specify eligibility, applicable fees and whether major refurbishment will be required. The franchisee's decision to invest late in a term depends on whether renewal expectations are credible. Termination provisions should distinguish serious brand-damaging conduct from remediable operating failures. Cure periods and stepwise escalation may protect customers while preventing disproportionate termination over minor breaches.

After termination, the parties should reconcile stock, equipment, deposits, continuing customer obligations and intellectual-property use. Non-compete restrictions and non-solicitation duties require careful assessment under applicable law and the scope of legitimate commercial protection. A clear exit plan can reduce disruption to the network without depriving the franchisee of legitimate business assets.

6. REFORM DIRECTIONS AND CONCLUSION

An effective reform agenda should prioritize disclosure usability, not simply volume. Standardized disclosure headings, examples of total-cost presentation and plain-language explanations of renewal and termination could improve informed consent. Model franchise contracts and guidance on changes to operating standards would support smaller franchisees while preserving negotiable commercial terms.

The distinction between brand protection and disproportionate control should remain central. Franchise law must permit consistent systems but discourage undisclosed fee escalation, arbitrary transfer refusal and unclear post-termination restrictions. Better coordination of commercial, competition and intellectual-property law would make this balance more predictable.

Commercial franchising can support domestic business expansion and foreign investment when risk is allocated openly. Vietnamese law provides a foundation through the Commercial Law and implementing decrees, but the quality of a franchise relationship depends on transparent information, realistic support obligations and fair exit conditions. A proportionate approach can protect network reputation while respecting the franchisee as an independent business investor.

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