

## SECURITIES LAW

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and supplemented in accordance with Resolution No. 51/2001/QH10 dated 25 December, 2001 of the Xth National Assembly at its 10<sup>th</sup> session.*

*This Law provides regulations on securities and the securities market.*

### CHAPTER I

#### GENERAL PROVISIONS

##### **Article 1. Scope of regulation**

This Law stipulates the regulations on public securities offering, listing, dealing, trading, investing, securities services and securities market.

##### **Article 2. Subjects of application**

1. Domestic and foreign organisations and individuals investing and participating in the securities market of Vietnam.
2. Other organisations and individuals relating to securities activities and securities market.

##### **Article 3. Application of Securities Law, relevant laws and international treaties**

3. Activities of public securities offering, listing, transacting, dealing, trading, investing and services in securities and the securities market shall have to comply with the provisions of this Law and other provisions of relevant laws.
4. Where it is otherwise stipulated in international treaties to which the Socialist Republic of Vietnam is a member as compared with this Law, the provisions of such international treaties shall be applied. The Government shall specify the implementation of international treaties in compliance with the integration roadmap and international commitments.

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#### **Article 4. Principles of securities activities and the securities market**

1. To respect the right of organisations and individuals to freely buy, sell and provide services regarding securities.
2. To be public, equal and transparent.
3. To protect the lawful rights and interests of investors.
4. To bear risk by themselves.
5. To comply with the law.

#### **Article 5. Policies to develop securities market**

1. The State shall have policies to encourage and create favourable conditions for organisations and individuals of all economic sectors and population of all strata to participate in investment and operations in the securities market in order to mobilise the long term and mid-term capital sources for development and investment.
2. The State shall have policies to regulate and supervise to ensure that the securities market operates in an equal, public, transparent, safe and efficient manner.
3. The State shall have investment policies to modernize the infrastructure for the operation of securities market, develop human resources for the securities sector, propagandise and disseminate knowledge in securities and the securities market.

#### **Article 6. Definition of terms**

In this Law, the following terms shall be understood as follows:

1. **Securities** means evidence certifying the holder's legal rights and benefits over the relevant part of assets or capital of the issuer. Securities shall be in the form of share certificates, book-entries or electronic data and shall include:
  - (a) shares, bonds, fund certificates;
  - (b) rights to purchase shares, warrants, call options, put options, future contracts, groups of securities or securities indexes.
2. **Share** means securities certifying the lawful rights and interests of the owner over a part of equity of the issuer.
3. **Bonds** means securities certifying the lawful rights and interests of the owner over a part of loan capital of the issuer.
4. **Fund certificates** means securities certifying the ownership of the investor over part of the contributed capital of the relevant public fund.
5. **Right to purchase shares** means securities issued by the joint stock companies together with an additional share issuance in order to secure that the

existing shareholders will have the right to buy new shares according to the determined conditions.

6. **Warrants** means securities issued together with the issuance of preference shares or bonds, permitting the securities holder to buy a certain amount of common shares at the pre-determined price during a certain period of time.

7. **Call option and put option** means the right specified in the contract permitting the buyers to elect to exercise the right to buy or sell a pre-determined amount of securities during a certain period of time at a pre-determined price.

8. **Future contracts** means the commitment to buy or sell certain types of securities, a certain group of securities or securities index in a certain quantity and at a certain price on a pre-determined date in the future.

9. **Principal shareholder** means the shareholder who directly or indirectly owns 5% or more of the voting shares of the issuer.

10. **Investors** means domestic or foreign institutions and individuals participating in investment in the securities market.

11. **Professional securities investors** mean commercial banks, financial companies, financial leasing companies, insurance organisations and securities trading organisations.

12. **Public offering** means an offering of securities according to one of the following methods:

- (a) Via mass media, including Internet;
- (b) Offering of securities to 100 investors or more, excluding professional investors;
- (c) Offering to an unspecified number of investors.

13. **Issuer** means the organisation that carries out the public offering of securities.

14. **Underwriter** means the securities company allowed to carry out the securities underwriting and commercial banks permitted to carry out bond issuance underwriting under conditions provided for by the Ministry of Finance.

15. **Approved auditing company** means an independent auditing company under the list of auditing companies approved by the State Securities Commission in compliance with the conditions set out by the Ministry of Finance.

16. **Prospectus** means the document or electronic data publishing *accurate, truthful and objective* information relating to the public offering or listing of securities of the issuer.

17. **Listing** is to make eligible securities to be transacted at the Stock Exchange or Securities Trading Centres.

18. **Securities trading market** means the place or mean of communications to collect securities buying, selling orders and undertake the securities transactions.
19. **Securities dealing** means the carrying out of such operations of securities brokerage, securities proprietary dealing, underwriting, securities investment advisory, securities depository, securities investment fund management and securities portfolio management.
20. **Securities brokerage** means the operation of a securities company acting as an intermediary to carry out securities buying or selling orders on behalf of the customers.
21. **Securities proprietary dealing** means the securities company's engagement in buying and selling securities for its own account.
22. **Underwriting** means the commitment made by an underwriter to the issuer to complete procedures prior to a securities offering, to buy a part or all the securities of the issuer for resale or to buy the remaining undistributed portion of securities from the issuer; or to assist the issuer in distribution of securities to the public.
23. **Securities investment advisory** means the services provided by the securities companies to investors regarding securities analysis results, or announcement of analysis reports and recommendations relating to securities.
24. **Securities depository** means the receipt of securities deposited by customers, safe keeping of customers' securities, delivery of securities to customers and giving assistance to customers to exercise the rights regarding their ownership of securities.
25. **Securities registration** means the record of ownership and other rights of securities owners.
26. **Securities portfolio management** means the management conducted by these securities fund management company as entrusted by each investor via buying, selling, holding securities.
27. **Securities investment fund** means a fund established from capital contributions by investors with the objective of making profits by investing in securities or other investment assets including real estates whereby the investors do not have day-to-day control over the investment decision making of the fund.
28. **Public fund** means a securities investment fund that makes public offerings of its fund certificates.
29. **Member fund** means a securities investment fund having no more than 30 capital contributing members who must be legal persons.
30. **Opened investment fund** means a public fund of which its fund certificates offered to the public must be redeemed at the investor's request.
31. **Closed investment fund** means a public fund of which its fund certificates offered to the public may not be redeemed at the investor's request.

32. **Internal information** means the information regarding to public companies or public funds that are not yet disclosed and if disclosed, such disclosure would have great influence on their securities prices.

33. **Persons who know internal information** are:

- (a) Members of the Board of Management or the Control Board, the (General) Director, and the Deputy (General) Director of a public company or members of the Representative Board of a public fund;
- (b) Principal shareholders of public companies, public funds;
- (c) Those who audit financial statements of a public company or public fund;
- (d) Other persons who access the internal information in the public company or public fund;
- (dd) Securities companies, securities investment fund management companies and the securities practitioners;
- (e) Organisations and individuals having business relationship with or providing services to a public company or public fund and individuals working in such organisations;
- (g) Organisations and individuals that directly or indirectly have internal information from those stipulated in points a, b, c, d, dd and e of this clause.

34. **Related persons** means individuals or organisations that have relations with each others in the following cases:

- (a) Father, foster-father, mother, foster-mother, spouse, children, adopted children, siblings of an individual.
- (b) An organisation in which an individual is an employee or a (General) Director or holds more than 10% of voting shares issued;
- (c) A member of the Board of Management or the Controllers' Board, the (General) Director, and the Deputy (General) Director and other management titles of such organisation;
- (d) A person who directly or indirectly controls or is controlled by, or is under a common control with another person;
- (dd) A holding company or a subsidiary;
- (e) A contractual relation in which one person is a representative of the other person.

## **Article 7. State management over securities and the securities market**

1. The Government shall uniformly carry out the State management over securities and the securities market.
2. The Ministry of Finance shall be responsible to the Government for its performance of State management over securities and the securities market and shall have the following duties and powers:
  - (a) To submit to the Government and the Prime Minister for promulgation of strategies, plannings and policies of development for the securities market;
  - (b) To submit to the competent level to promulgate or promulgate within its competence legislations on securities and the securities market;
  - (c) To direct the State Securities Commission to carry out the strategies, plannings policies of securities market development and policies and regimes for management and supervision of activities of securities and the securities market.
3. The Ministries, Ministerial - level agencies shall, within their duties and powers, be responsible for the cooperation with the Ministry of Finance in performing the State management over securities and the securities market.
4. People's Committees at all levels shall, within their duties and powers, perform the State management over securities and the securities market in their localities.

#### **Article 8. The State Securities Commission**

1. The State Securities Commission is an agency under the Ministry of Finance, having the following rights and duties:
  - (a) To grant, extend and revoke licenses, certificates relating to the activities regarding securities and the securities market; to approve changes relating to activities regarding securities and the securities market;
  - (b) To manage and supervise the operations of Stock Exchanges, Securities Trading Centres, Securities Depository Centres and auxiliary organisations; to temporarily suspend the trading and depository activities of the Stock Exchange, the Securities Trading Centre and the Securities Depository Centre in case where there is a signal of violation of the investor's legitimate rights and interests;
  - (c) To inspect, supervise and deal with administrative violations and settle claims and denunciations in activities of securities and the securities market;
  - (d) To make statistics over and forecast the activities of securities and the securities market; to modernize the information technology in the field of securities and the securities market;
  - (dd) To organise and cooperate with relevant agencies to carry out training and refreshment training for the team of officers and staff working in the securities

field; to disseminate knowledge on securities and the securities market to the public.

- (e) To guide the professional process on securities and the securities market and related forms;
  - (g) To carry out the international cooperation in the field of securities and the securities market.
2. To organise the regulating and managerial apparatus of the State Securities Commission as stipulated by the Government.

#### **Article 9. Prohibited acts**

1. Directly or indirectly engaging in any act of cheating, deception, or making any untrue statement or omission of necessary information that would cause material misleading and influence the activities of public securities offering, listing, dealing, trading, investment, services in securities and the securities market.
2. Making disclosure of untruthful information in order to incite or entice other persons to buy, sell securities or making disclosure of insufficient or untimely information that seriously affects the securities price in the market.
3. Using internal information to buy or sell securities for his own account or for other persons; disclosing or supplying internal information or advising other persons to buy or sell securities based on the internal information.
4. Conspiring with each other to buy or sell securities to create false supply of and demand for securities; trade securities by colluding with or inciting others persons to continuously buy or sell securities in order to manipulate the securities prices; combining with or using other transactions to manipulate the securities prices.

### **CHAPTER II**

#### **OFFERING OF SECURITIES TO THE PUBLIC**

##### **Article 10. Face value of securities**

1. Securities offered to the public in the territory of the Socialist Republic of Vietnam shall be dominated in Vietnamese Dong.
2. The par value of shares, fund certificates for the initial public offering shall be VND 10,000. The par value of bonds to be offered to the public shall be VND 100,000 and multiples of VND 100,000.

## **Article 11. Forms of offering of securities to the public**

1. Forms of offering of securities to the public include initial securities offering to the public, offering of additional shares or the right to buy shares to the public and other forms.
2. The Government shall provide specific provisions on the forms of offering securities to the public.

## **Article 12. Conditions for offering securities to the public**

1. Conditions for offering securities to the public:
  - (a) The enterprise must have its paid-up charter capital at the time of registering for public offering of at least VND10 billion in book value;
  - (b) Being profit-making in the year preceding the year of such registration for offering; and having no accumulated losses up to the year of registration for offering;
  - (c) Having a plan for offering and use of capital received from the offering approved by the General Shareholders Meeting.
2. Conditions for offering bonds to the public:
  - (a) The enterprise must have its paid-up charter capital at the time of registering for public offering of at least 10 billion VND in book value;
  - (b) Being profit-making in the year preceding the year of such registration for offering; having no accumulated losses up to the year of registration for offering or overdue debts over than 1 year.
  - (c) Having a plan for offering and use and refund of capital received from the offering approved by the Board of Management, the Board of Members or the enterprise's owner.
  - (d) Having commitments to fulfil obligations of the issuer towards investors, regarding the conditions for issuance and payment, ensuring the investors' legitimate rights and interests and other conditions.
3. Conditions for offering fund certificates to the public:
  - (a) Total value of fund certificates registered for offering is of at least VND50 billion;
  - (b) having a plan for offering and use of capital received from the offering of fund certificates in compliance with the provisions of this Law.
4. The Government shall stipulate the conditions for offering securities to the public applicable to State owned enterprises, foreign invested enterprises which are transformed into joint stock companies; and newly established enterprises in the fields



of infrastructure or high technology; offering of securities overseas and other specific cases.

### **Article 13. Registration of offering securities to the public**

1. The issuer carrying out the offering of securities to the public shall have to register with the State Securities Commission.
2. The following cases shall not be subject to registration for offering securities to the public:
  - (a) Offering of bonds of the Vietnamese government;
  - (b) Offering of international financial institutions' bonds accepted by the Vietnamese Government;
  - (c) Offering of shares to the public by State owned enterprises which are transformed into joint stock companies;
  - (d) The sale of securities upon a court judgement or decision or the sale of securities by the managers or the persons entitled to assets in case of bankruptcy or insolvency.

### **Article 14. Dossier of public securities offering registration**

1. The dossier for registration of public securities offerings shall include:
  - (a) The registration for offering of shares to the public;
  - (b) The prospectus;
  - (c) The Charter of the issuer;
  - (d) Decisions of the General Shareholder's Meeting approving the plan for offering and use of capital received from the offering of shares to the public;
  - (dd) Underwriting commitment (if any).
2. The dossier for registration of offering of bonds to the public shall include:
  - (a) The registration of offering of bonds to the public;
  - (b) The prospectus;
  - (c) The Charter of the fund;
  - (d) Decisions of the Board of Management or the Board of Members or the enterprise's owner approving of the plan for offering and use and repayment of capital received from the public bond offering;

(dd) The commitment to fulfil the issuer's obligations to investors, regarding the conditions for issuance, payment and ensuring the investors' legitimate rights and interests and other conditions.

(e) Underwriting commitment (if any).

3. The dossier of registration for offering of fund certificates to the public shall include:

(a) The registration of offering of fund certificates to the public;

(b) The prospectus;

(c) The draft Charter of the fund;

(d) The supervisory contract between the supervising bank and the securities investment fund management company;

(dd) Underwriting commitment (if any).

4. The dossier of registration for offering shares and bonds to the public must contain a decision of the Board of Management or the Board of Members or the company's owner approving the dossier. For the offering of securities to the public by credit institutions, the dossier must include an approval from the State Bank of Vietnam.

5. Where a part or the whole dossier of registration for offering securities to the public is acknowledged by the related organisations or individuals, the issuer must submit the acknowledgement of such organisations or individuals to the State Securities Commission.

6. The information in the dossier must be accurate, honest, not misleading and contain adequate important information which may affect the decision making of investors.

7. The Ministry of Finance shall provide specific regulations on the dossier of registration for offering securities to the public applicable to State owned enterprises, foreign invested enterprises which are transformed into joint stock companies; and newly established enterprises in the fields of infrastructure or high technology; offering of securities overseas and other specific cases.

#### **Article 15. The prospectus**

1. Regarding the offering of shares or bonds to the public, the prospectus shall include the following information:

(a) Brief information on the issuer, including its model of organisational apparatus, business activities, property, financial situation, the Board of Management or the Board of Members, or the company's owner, the (General) Director, the Deputy (General) Director and shareholder structure (if any);

- (b) Information on the offering and securities to be offered, including conditions for offering, risk factors, the proposed plan of profits and dividends of the most recent year following the issuance of securities, the plan of issue and use of capital received from the offering;
- (c) The financial statements of the issuer for the latest 2 years as stipulated in Article 16 of this Law;
- (d) Other information as stipulated in the Prospectus Form.

2. For the offering of fund certificates to the public, the prospectus must have the following contents:

- (a) Types and scale of the securities investment fund;
- (b) Investment objectives, investment strategies, methods and process of investment, investment limitations, risk factors of the securities investment fund;
- (c) Summary of the basic contents of the draft charter of the securities investment fund;
- (d) Plan for issuance of fund certificates and information guiding the investments in the securities investment fund;
- (dd) Brief information on the securities investment fund management company, the supervising bank and regulations on transactions with related persons of the securities investment fund management company and the supervising bank;
- (e) Other necessary information as stipulated in the Prospectus Form.

3. Signature in the Prospectus

- (a) For the offering of shares or bonds to the public, the Prospectus must have the signature of the Chairman of the Board of Management or the Chairman of the Board of Members or the President of the company, the (General) Director or the Financial Manager or the Chief Accountant of the issuer and the legal representative of the underwriter and the lead underwriter (if any). In case of signing on behalf of the above persons, the power of attorney must be available;
- (b) For the offering of fund certificates to the public, the Prospectus must have the signature of the Chairman of the Board of Management or the Chairman of the Board of Members or the President of the company, the (General) Director of the securities investment fund management company and the legal representative of the underwriter (if any). In case of signing on behalf of the above persons, the power of attorney must be available.

4. The Ministry of Finance shall provide the form of the Prospectus.

## **Article 16. Financial statements**

1. A financial statement includes the balance sheet, the report on production and business results, cash flow report and presentation of the financial statement;
2. In case where the issuer is a holding company, it shall have to submit a consolidated financial statement in accordance with the law on accounting.
3. Annual financial statements must be audited by the approved auditing company.
4. In case where the dossier is submitted before the 1<sup>st</sup> March annually, the financial statements of the preceding year in the initial dossier may be unaudited, but the audited financial statements of the last 2 consecutive years must be presented.
5. Where the period from the end of the most recent financial statement to the time of submission of the valid dossier of registration for public offering of securities to the State Securities Commission is more than 90 days, the issuer must make additional financial statements up to the most recent month or quarter.

## **Article 17. Responsibilities of organisations or individuals in relation to the dossier of registration for offering of securities to the public**

1. The issuer shall be responsible for the accuracy, honesty and adequacy of dossier of public securities offering.
2. The issuing consultancy companies, the underwriters, the approved auditing companies and the signatories of the auditor's report and any organisations or individuals certifying the dossier must be responsible within their scope relating to the dossier of public securities offering.

## **Article 18. Amendments, supplements of the dossier of registration for public securities offering**

1. During the time of examination of the public securities offering registration dossier, the issuer shall be obliged to amend or supplement the registration dossier if it discovers that the registration dossier contains inaccurate information on an important issue, or omits any important content that must be included in the dossier as stipulated, or where it's deemed necessary to provide explanation for any matter that may cause any misleading.
2. During the time of examination of the public securities offering registration dossier, the State Securities Commission shall have the right to request the issuer to amend and supplement the public securities offering registration dossier in order to ensure the disclose of full and accurate information and to protect the legitimate rights and interest of investors.
3. After the State Securities Commission has issued the Certificate for Public Securities Offering, if any important information relating to dossier of registration for public offering of securities arises, the issuer shall be obliged to publish such

information in accordance with clause 3 Article 20 of this Law and make relevant amendments of and supplements to the dossier.

4. The supplemented or amended documents must be signed by the signatories of the public securities offering registration dossier submitted to the State Securities Commission or by the persons having the same titles with such persons.

5. The time of examination of the registration dossier for cases stipulated in clauses 1 and 2 of this Article shall be computed from the date the State Securities Commission receives the amended or supplemented documents.

#### **Article 19. Information prior to the public securities offering**

During the time the State Securities Commission reviews the public securities offering registration dossier, the issuer, the underwriter(s) and other relevant organisations and individuals may only use, in a honest and accurate manner, the information described in the Prospectus submitted to the State Securities Commission to explore the market, provided that they shall clearly specify that the information on the date of issue and the securities selling price is the proposed information. The exploration of markets must not be conducted through the mass media.

#### **Article 20. Effectiveness of the public securities offering registration**

1. Within 30 days as from the date of receiving the valid dossier, the State Securities Commission shall examine and grant the Certificate for Public Securities Offering. In case of refusal, the State Securities Commission must respond in writing and clarify the reasons thereof.

2. The Certificate for Public Securities Offering granted by the State Securities Commission shall be a document certifying that the public securities offering registration dossier fully satisfies the conditions and procedures provided by the law.

3. Within 7 days as from the date the Certificate for Public Securities Offering comes into effect, the issuer shall have to publish the Announcement of Offering in 3 consecutives issues of one electronic newspaper or written newspaper.

4. Securities shall only be offered to the public after the announcement has been made as stipulated in clause 3 of this Article.

#### **Article 21. Distribution of securities**

1. The distribution of securities shall only be conducted after the issuer ensures that securities buyers can access the prospectus in the public securities offering registration dossier announced at places mentioned in the Announcement of Offering.

2. The issuer, the underwriter or issuing agency must distribute securities in a fair and public manner and ensure that the time limit for registration of buying securities applicable to investors is at least 20 days; such time limit shall be stipulated in the Announcement of Offering.

In case that the amount of securities registered to buy exceeds the amount of securities permitted to be issued, the issuer or the underwriter shall have to distribute out the securities permitted to be issued to the investors in proportion with their purchase registration rate.

3. The money paid for securities shall be transferred into a blocked bank account until the issue is completed and reported to the State Securities Commission.

4. The issuer shall complete the distribution of securities within 90 days from the effective date of the Certificate for Public Securities Offering. In case where the issuer cannot complete the distribution of securities to the public within such time limit, the State Securities Commission shall consider for its extension which must not exceed 30 days.

In case of registration of securities offering in a number of tranches, the period between the one tranche and the next tranche must not exceed 12 months.

5. The issuer or the underwriter shall report the offering result to the State Securities Commission within 10 days from the date of completing the offering, together with the certification of the bank where the blocked account is opened for the money received in the tranche.

6. The issuer, the underwriter or issuing agency shall transfer the securities or the certificate of securities ownership to the buyers within 30 days from the date of completing the offering.

## **Article 22. Suspension of the public securities offering**

1. The State Securities Commission shall have the right to suspend the public securities offering for a maximum period of 60 days in the following cases:

(a) When the public securities offering registration dossier is discovered to have inaccurate information or omission of any important contents that may affect the investment decision and cause damages to investors;

(b) The distribution of securities is not conducted in compliance with Article 21 of this Law.

2. Within 07 days from date of the public securities offering suspension, the issuer must announce the suspension of the public securities offering in a manner stipulated in clause 3, Article 20 of this Law and must revoke the securities which have been issued at the investors' request and at the same time refund the money to investors within 15 days upon receipt of the request.

3. When the causes leading to the suspension of the securities offering have been overcome, the State Securities Commission shall issue a written notice on cancellation of the suspension and the securities shall continue to be offered.

4. Within 7 days upon receipt of the notice on cancellation of the suspension, the issuer must announce the cancellation of the suspension in a manner stipulated in clause 3, Article 20 of this Law.

### **Article 23. Cancellation of the public securities offering**

1. Upon expiry of the time limit for suspension stipulated in clause 1, Article 22 of this Law, if the causes leading to the suspension of the public securities offering have not yet been overcome, the State Securities Commission shall cancel the offering and prohibit the sale of such securities.

2. Within 07 days from the date of cancellation of the public securities offering, the issuer must announce the cancellation of the public securities offering in a manner stipulated in clause 3, Article 20 of this Law and revoke the securities which have been issued and, at the same time, refund the money to the investors within 15 days from the date of the offering cancellation. If failing to do so within this time limit, the issuer shall have to pay damages to the investors in accordance with the terms committed with the investor.

### **Article 24. Obligations of the issuer**

1. The issuer that has completed its public securities offering shall become a public company and shall perform the obligations of a public company as stipulated in clause 2, Article 27 of this Law. The public offering registration dossier shall be considered as the dossier of the public company and the issuer shall not have to submit the dossier of the public company to the State Securities Commission as stipulated in clause 1 of Article 26 of this Law.

2. The issuer completing the public securities offering must comply with the obligations on announcement of information as stipulated in Article 102 of this Law.

## **CHAPTER III**

### **PUBLIC COMPANIES**

#### **Article 25. Public Companies**

1. A public company is a joint stock company under one of three types as follows:

- (a) A company which has offered shares to the public;
- (b) A company which has securities listed in the Stock Exchange or the Securities Trading Centre;
- (c) A company the shares of which are owned by at least 100 investors, excluding professional securities investors, and which has the paid-up charter capital of 10 billion VND or more.

2. A joint stock company as stipulated in point c, clause 1 of this Article shall have to submit the dossier of a public company as stipulated in clause 1, Article 26 of

this Law to the State Securities Commission within 90 days from the date of becoming a public company.

#### **Article 26. Dossier of a Public Company**

1. The dossier of a public company shall include:
  - (a) The company's Charter;
  - (b) A copy of Business Registration Certificate of the Company;
  - (c) Brief information on the business organisation model, the managerial apparatus and shareholder structure;
  - (d) The financial statement of the most recent year.
3. Within 7 days from the date of receiving the valid dossier, the State Securities Commission shall announce the name, business contents and other information relating to the public company on the media of the State Securities Commissions.

#### **Article 27. Rights and obligations of public companies**

1. A public company shall have the rights as stipulated by the Enterprise Law and other provisions of the relevant laws and regulations.
2. A public company shall have the following obligations:
  - (a) To publish information as prescribed in Article 101 of this Law;
  - (b) To comply with the principles of corporate governance as stipulated in Article 28 of this Law;
  - (c) To centrally register and deposit their securities in the Securities Depository Centre in accordance with Articles 52 and 53 of this Law.
  - (d) Other obligations as provided in the Law on Enterprises and other provisions of the relevant laws and regulations.

#### **Article 28. Corporate governance principles**

1. A public company shall have to comply with the provisions of the Enterprise Law on corporate governance.
2. The Ministry of Finance shall prescribe specific provisions on corporate governance principles applicable to public companies having shares listed in the Stock Exchange or the Securities Trading Centre.

#### **Article 29. Report on the principal shareholders' ownership**

1. Organisations or individuals which become principal shareholders of the public company shall, within 7 days from the date of becoming a principal



shareholder, report to the public company, the State Securities Commission and the Stock Exchange or the Securities Trading Centre where the shares of such a public company are listed.

2. The report on the principal shareholders' ownership shall contain the following information:

- (a) The name, address, business lines for principal shareholders being organisations; full name, age, nationality, residence place, occupation for principal shareholders being individuals;
- (b) The quantity and percentage of shares owned by such organisations and individual or together with other organisations and individuals on the total number of shares currently in circulation;

3. When there is any important change in the information stated in the report stipulated in clause 2 of this Article or there is any change of the quantity of owned shares exceeding 1% of the total amount of shares of the same class currently in circulation, no later than 7 days as of the occurrence of such change, the principal shareholders shall have to submit the amending and supplementing report to the public company, the State Securities Commission, Stock Exchange and Securities Trading Centre where the shares are listed.

4. Provisions provided for in clauses 1, 2 and 3 of this Article shall also apply to the group of related persons who own 5% or more of the voting shares of the issuer.

### **Article 30. The public company's acquisition of its own shares**

1. A public company which does not have its shares listed in the Stock Exchange or the Securities Trading Centre shall have to comply with the provisions prescribed in Articles 90, 91 and 92 of the Enterprise Law when acquiring back its own shares.

2. A public company having its shares listed in the Stock Exchange or the Securities Trading Centre shall, when acquiring back its own shares, have to publish information regarding the acquisition at least 7 days prior to such acquisition. Such information shall include the following contents:

- (a) Purpose of the acquisition;
- (b) The amount of shares to be acquired;
- (c) The fund for acquisition;
- (d) Time of acquisition.

The public company's acquisition of its own shares and re-sale of the acquired shares shall be in accordance with the regulations of the Ministry of Finance.

### **Article 31. Recovery of profits from unfair transactions**

1. The public company shall be entitled to recover all profits received by members of the Board of Management, the (General) Director, Deputy (General) Director, financial manager, accountant, and other management officers in the managerial apparatus of the public company from buying and selling activities or from buying and selling securities of the company within six months from the date of buying or selling.

2. The public company or its shareholders shall have the right to initiate a lawsuit at the Court to recover profits from unfair transactions stipulated in clause 1 of this Article.

### **Article 32. Public bids**

1. Cases subject to public bids:

(a) Offer to buy voting shares resulting in the ownership of 25% or more of a public company's outstanding shares;

(b) Offer to buy shares of persons who are obliged to sell their own shares.

2. Any organisations or individuals conducting public bids of a public company's shares shall submit a registration for public bids to the State Securities Commission. Within 07 days upon receipt of the registration for public bids, the State Securities Commission shall have to reply in writing; in case of refusal, the State Securities Commission shall have to clarify the reasons thereof.

3. The public bids shall only be conducted upon receipt of the approval from the State Securities Commission and after the public bid announcement has been made in a mass media by the bidding individual or organisation prior to the proposed time of implementation.

4. The registration for public bids shall have the following information:

(a) Name, address of organisations or individuals conducting the public bids;

(b) Type of shares for public bids;

(c) Number of shares for public bids which are presently owned by such organisations or individuals;

(d) Number of share planned for public bids;

(dd) Time of public bids;

(e) Price of public bids;

(g) Conditions for public bids.

5. During the period of public bids, organisations or individuals conducting the public bids are not allowed to carry out the following acts:

- (a) To directly or indirectly buy or commit to buy shares of the public bids outside the offer to purchase;
- (b) To sell or commit to sell the shares that they are offering to purchase;
- (c) To treat unequally among owners of the same type of shares being bid;
- (d) To provide certain shareholders with private information or provide shareholders with different information or at different time. This provision also applies to underwriters having shares subject to public bids.

6. The time for conducting a public bid must not be shorter than 30 days nor longer than 60 days from the date of its announcement. The public bid shall include any supplements thereto or variations against the original registration. The public bid which is supplemental or varied from the original registration must be conducted upon the terms no less favourable than the prior bids.

7. Any organisations or individuals holding shares who has deposited shares according to a public bid offer, shall have the right to withdraw such shares at any time during the time of offering to purchase.

8. Where the quantity of shares for public bid offers is smaller than the quantity of shares in circulation of a company or the number of shares are deposited for sale is bigger than the number of shares offered to purchase, then shares shall be purchased on a pro rata basis.

9. After conducting the public bid offer, those holding at least 80% shares in circulation of a public company shall be obliged to purchase shares of the same type held by the remaining shareholders at the published public bid price within 30 days if they require.

10. The public company having shares subject to a public bid offer shall have to announce its opinion about its approval or refusal of the bid offer. In case of refusal, the company must reply in writing and clarify the reasons thereof. The company's written response must have signatures of at least two thirds of members of the Board of Management.

11. Within 10 days from the date of closing the public bid offer, the organisations or individuals conducting the offer to purchase must report to the State Securities Commission in writing on the bid offer results.

## **CHAPTER IV**

### **SECURITIES TRADING MARKETS**

#### **Article 33. Organisation of the securities trading markets**

1. The Stock Exchange organises the securities trading market for securities of issuers eligible to be listed in the Stock Exchange.

2. The Securities Trading Centre organises securities trading markets for securities of issuers ineligible to be listed in the Stock Exchange.
3. Except for Stock Exchanges and Securities Trading Centres, no organisations or individuals are permitted to organise securities trading markets.

#### **Article 34. Organisation and operation of the Stock Exchange and the Securities Trading Centre**

1. The Stock Exchange or the Securities Trading Centre is a legal entity established and operating under the form of a limited liability company or a joint stock company in accordance with this Law.
2. The Prime Minister shall decide on the establishment, dissolution, transformation of the organisational structure and form of ownership of the Stock Exchange or the Securities Trading Centre at the request of the Minister of Finance.
3. The Stock Exchange or the Securities Trading Centre shall have functions to organise and supervise transactions of securities listed at the Stock Exchange or the Securities Trading Centre.
4. The operation of the Stock Exchange or the Securities Trading Centre must comply with the provisions of this Law and the Charter thereof.
5. The Stock Exchange or the Securities Trading Centre shall be under the management and supervision of the State Securities Commission.

#### **Article 35. Managerial and administrative apparatus of the Stock Exchange or the Securities Trading Centre**

1. The Stock Exchange or the Securities Trading Centre shall have the Board of Management, the Director or Deputy Director and the Controllers' Board.
2. The Chairman of the Board of Management, the Director of the Stock Exchange or the Securities Trading Centre shall be approved by the Minister of Finance at the request of the Board of Management, after commented by the Chairman of the State Securities Commission.
3. The rights and duties of the Board of Management, the Director, Deputy Director and the Controllers' Board shall be stipulated in the Charter of the Stock Exchange or the Securities Trading Centre.

#### **Article 36. Charter of the Stock Exchange or the Securities Trading Centre**

1. The Charter of the Stock Exchange or the Securities Trading Centre shall be approved by the Ministry of Finance at the request of the Board of Management of the Stock Exchange or the Securities Trading Centre after having been given the opinions of the Chairman of the State Securities Commission.
2. The Charter of the Stock Exchange or the Securities Trading Centre shall have the following main contents:

- (a) Name and address;
- (b) Operational objectives;
- (c) Charter capital; method of raising capital, reducing capital or assignment of the charter capital;
- (d) Name, address and basic information of founding shareholders or capital contributing members or the Owner;
- (dd) The capital contribution or the number of shares and the contributed capital value of founding shareholders or capital contributing members;
- (e) Legal representatives;
- (g) Management and organisational structure;
- (h) Rights and obligations of capital contributing members or shareholders;
- (i) Rights and duties of the Board of Management, the Director, Deputy Director and the Controllers' Board;
- (k) Form of making decisions of the Stock Exchange and the Securities Trading Centre;
- (l) Method of amending and supplementing the Charter;
- (m) The applicable accounting and auditing regime;
- (n) The establishment of funds, fund using mechanisms; principles of using profits, settlement of losses and other financial regimes;
- (o) Principles of resolution of internal disputes.

**Article 37. Rights of the Stock Exchange and the Securities Trading Centre**

1. To promulgate the regulations on securities listing, securities trading, information disclosure and trading members upon approval of the State Securities Commission;
2. To organise, manage and regulate the securities trading activities at the Stock Exchange or the Securities Trading Centre.
3. To temporarily discontinue, suspend or cancel securities transactions in accordance with the Regulation on securities trading of the Stock Exchange or the Securities Trading Centre in case of necessity to protect investors.
4. To approve, cancel the listing of securities and supervise the maintenance of listing conditions by organisations listed on the Stock Exchange or the Securities Trading Centre;

5. To approve, cancel the membership of trading members; supervise securities trading activities of trading members at the Stock Exchange or the Securities Trading Centre.
6. To supervise the information disclosure of listed organisations, trading members at the Stock Exchange or the Securities Trading Centre;
7. To provide market information and information relating to the listed securities;
8. To act as a conciliator upon request of trading members when any disputes arise relating to securities trading activities;
9. To collect fees in accordance with the regulations of the Ministry of Finance.

### **Article 38. Obligations of the Stock Exchange or the Securities Trading Centre**

1. To ensure that securities trading activities in the market are conducted in a public, equal, in order and efficient manner;
2. To comply with the reporting, auditing and statistic regimes and financial obligations in accordance with the laws;
3. To publish information as stipulated in Article 107 of this Law.
4. To provide information and coordinate with competent state agencies in the investigation, and prevention and fight against violations of the laws on securities and the securities market.
5. To coordinate in carrying out the dissemination and propaganda of knowledge on securities and the securities market to investors.
6. To pay damages to trading members in case where the Stock Exchange or the Securities Trading Centre causes damages to trading members, except for force majeure cases.

### **Article 39. Trading members**

1. Trading members at the Stock Exchange or the Securities Trading Centre are securities companies approved by the Stock Exchange or the Securities Trading Centre to be its trading members.
2. Conditions and procedures to become trading members at the Stock Exchange or the Securities Trading Centre are provided for in the Regulation on trading members of the Stock Exchange or the Securities Trading Centre.
3. Trading members shall have the following rights:
  - (a) To use the trading system and services provided by the Stock Exchange or the Securities Trading Centre;

- (b) To receive information on the securities trading market from the Stock Exchange or the Securities Trading Centre;
  - (c) To request the Stock Exchange or the Securities Trading Centre to act as the conciliator when there are any disputes relating to the securities trading activities of trading members;
  - (d) To propose and recommend on the issues relating to the operation of the Stock Exchange or the Securities Trading Centre;
  - (dd) Other rights as stipulated in the Regulation on trading members of the Stock Exchange or the Securities Trading Centre.
4. Trading members shall have the following obligations:
- (a) To comply with obligations provided for in Article 71 of this Law;
  - (b) To be under the supervision of the Stock Exchange or the Securities Trading Centre;
  - (c) To pay member fees, transaction fees and other service fees as stipulated by the Ministry of Finance;
  - (d) To publish information as stipulated in Article 104 of this Law and the regulations on information disclosure of the Stock Exchange or the Securities Trading Centre;
  - (dd) To support other trading members at the request of the Stock Exchange or the Securities Trading Centre if necessary;
  - (e) Other obligations as provided for in the Regulation on trading members of the Stock Exchange or the Securities Trading Centre.

#### **Article 40. Securities listing**

1. The issuer shall, when listing their securities in the Stock Exchange or the Securities Trading Centre, have to meet conditions on capital, business operation and financial capability, the number of shareholders or number of securities holders.
2. The issuer submitting the dossier for listing shall be responsible for the accuracy, honesty and adequacy of the listing dossier. The listing consultancy organisation, the approved auditing organisation, the signatory of the auditor's report and any organisation or individual who certifies the listing dossier shall be responsible within the scope relating to the listing dossier.
3. The Government shall stipulate the conditions, dossier, procedures for listing securities at the Stock Exchange or the Securities Trading Centre and the listing of securities at the foreign Stock Exchange.

#### **Article 41. Securities trading activities**

1. Securities trading activities which are conducted at the Stock Exchange:
  - (a) The Stock Exchange shall organise listed securities transactions according to the concentrated order-matching method and other transaction methods stipulated in the Regulation on securities trading of the Stock Exchange.
  - (b) Securities listed in the Stock Exchange shall not be traded outside the Stock Exchange except for cases stipulated in the Regulation on securities trading of the Stock Exchange.
2. Securities trading activities which are conducted at the Securities Trading Centre:
  - (a) The Stock Exchange shall organise listed securities transactions according to the agreed method and other transaction methods stipulated in the Regulation on securities trading of the Securities Trading Centre.
  - (b) Securities listed in the Securities Trading Centre shall be traded at the securities companies being trading members of the Securities Trading Centre in accordance with the Regulation on securities trading of the Securities Trading Centre.
3. The Stock Exchange and the Securities Trading Centre shall only be permitted to trade new types of securities, change and apply new trading methods and put new trading systems into operation after having obtained approval from the State Securities Commission.

## **CHAPTER V**

### **SECURITIES REGISTRATION, DEPOSITORY, CLEARING AND SETTLEMENT**

#### **Article 42. Organisation and operation of the Securities Depository Centre**

1. The Securities Depository Centre is a legal entity established and operating according to the form of a limited liability company or a joint stock company in accordance with this Law.
2. The Prime Minister shall decide on the establishment, dissolution, conversion of the organisational structure and ownership form of the Securities Depository Centre at the request of the Minister of Finance.
3. The Securities Depository Centre shall have functions to organise and supervise the activities of securities registration, depository, clearing and settlement.
4. The operation of the Securities Depository Centre must be in compliance with this Law and the Charter of the Securities Depository Centre.
5. The Securities Depository Centre shall be under the management and supervision of the State Securities Commission.



### **Article 43. The managerial and operational apparatus of the Securities Depository Centre**

1. The Securities Depository Centre shall have the Board of Management, a Director or Deputy Director and a Controllers' Board.
2. The Chairman of the Board of Management, the Director of the Securities Depository Centre shall be approved by the Minister of Finance at the request of the Board of Management after having been commented by the Chairman of the State Securities Commission.
3. The rights and obligations of the Board of Management, the Director or Deputy Director and the Controllers' Board shall be provided for in the charter of the Securities Depository Centre.

### **Article 44. Charter of the Securities Depository Centre**

1. The Charter of the Securities Depository Centre shall be approved by the Ministry of Finance at the request of the Board of Management after having been commented by the Chairman of the State Securities Commission.
2. The Charter of the Securities Depository Centre shall have the following main contents:
  - (a) Name; address of the head-office, branches;
  - (b) Objectives for operation;
  - (c) Charter capital; method of increasing and reducing capital or assignment of the charter capital;
  - (d) Names, addresses and basic information of the founding members or capital contributing members or owners;
  - (dd) Capital contributions or number of shares and values of contributed capital of founding members or capital contributing members;
  - (e) Legal representative;
  - (g) Management and organisational structure;
  - (g) Rights and obligations of capital contributing members or shareholders;
  - (i) Rights and duties of the Board of Management, the Director, Deputy Director and the Controllers' Board;
  - (k) Procedures for making decisions of the Securities Depository Centre;
  - (l) Procedures for amending and supplementing the Charter;
  - (m) Accounting and auditing regimes applied;

- (n) Establishment of funds, fund using mechanisms; principles of using profits, dealing with losses and other financial regimes;
- (o) Principles of resolution of internal disputes.

#### **Article 45. Rights of the Securities Depository Centre**

1. To issue the Regulation on securities registration, depository, settlement and clearing after approved by the State Securities Commission;
2. To approve or cancel the depository membership; and to supervise the compliance of the provisions by depository members in accordance with the Regulation of the Securities Depository Centre;
3. To provide with registration, depository, clearing and settlement services and other services relating to securities depository upon the customers' request;
4. To collect fees in accordance with regulations of the Ministry of Finance.

#### **Article 46. Obligations of the Securities Depository Centre**

1. To ensure that there are sufficient physical and technical facilities for registration, depository, clearing and settlement operations;
2. To work out processes for operations and risk management for each professional activity;
3. To separately manage the customers' assets.
4. To pay damages to customers in case of failure to perform obligations resulting in damage to the customers' legitimate interest, except for in force majeure cases;
5. To operate for the interest of securities depositors or owners.
6. To have methods to protect database and keep original records on securities registration, depository, clearing and settlement in accordance with the laws on accounting and statistics;
7. To establish a Professional Risk Prevention Fund to pay customers' losses due to technical errors or neglect of officers during the course of operation. The Professional Risk Prevention Fund shall be established from professional revenues in compliance with the regulations of the Ministry of Finance.
8. To provide with information relating to the customers' securities ownership at the request of public companies and issuers;
9. To comply with the accounting, auditing and statistic regimes, fulfil financial obligations in accordance with the law; to apply reporting regimes on securities depository as stipulated by the Ministry of Finance.

10. To be responsible for securities depository and settlement at the head-office and branches registered for depository activities.

#### **Article 47. Depository members**

1. Depository members shall be securities companies and commercial banks operating in Vietnam which have been obtained the Certificate for registration of securities depository activities from the State Securities Commission and accepted by the Securities Depository Centre to become depository members.

2. Depository members shall have the following rights:

- (a) To provide securities depository and settlement services for customers;
- (b) To collect fees in accordance with provisions of the Ministry of Finance;
- (c) Other rights as stipulated by law and the Regulation of the Securities Depository Centre.

3. Depository members shall have the following obligations:

- (a) To comply with obligations as stipulated in Article 46 hereof;
- (b) To contribute to the payment supporting fund in accordance with the Regulation of the Securities Depository Centre;
- (c) Other obligations as stipulated by law and the Regulation of the Securities Depository Centre.

#### **Article 48. Conditions for registration of securities depository activities:**

1. Conditions for registration of securities depository activities applicable to commercial banks shall include:

- (a) Having an establishment license and operating in Vietnam;
- (b) Having overdue debts not exceeding 5% of the total debts and making profits in the most recent year.
- (c) Having location, facilities and equipment in service of the registration, depository, and settlement of securities transactions;

2. Conditions for registration of securities depository activities applicable to securities companies shall include:

- (a) Having an establishment license and conducting securities brokerage or private trading activities;
- (b) Having location, facilities and equipment in service of the registration, depository, and settlement of securities transactions;

#### **Article 49. Applications for registration of securities depository activities**

1. An application for registration of securities depository activities.
2. A copy of the establishment and operation License.
3. Presentation of material and technical facilities to ensure the performance of securities depository;
4. The audited financial statement in the most recent year, except for cases where the securities companies are newly established.

#### **Article 50. Time limit for issuance of the certificate for registration of securities depository activities**

1. The time limit for issuing the certificate for registration of securities depository activities shall be fifteen days upon receipt of the legitimate dossier by the State Securities Commission. In case of refusal, the State Securities Commission must reply in writing and clearly explain the reasons thereof.
2. Within 12 months from the date of issuance of the certificate for registration of securities depository activities, the securities companies, commercial banks shall have to complete procedures for registration of depository members at the Securities Depository Centre and carry out its operation.

#### **Article 51. Suspension and withdrawal of the certificate for registration of securities depository activities**

1. Securities depository activities conducted by depository members shall be suspended for up to 90 days at maximum in the following cases:
  - (a) Frequently violating obligations of depository members as stipulated by the Securities Depository Centre;
  - (b) Having mistakes resulting in material losses for customers.
2. Depository members' certificate for registration of securities depository activities shall be withdrawn in the following cases:
  - (a) Failing to rectify its violations as stipulated in clause 1 of this Article upon the expiry of the suspension period;
  - (b) Failing to conduct securities depository activities within 12 months from the date of receiving the certificate for registration of securities depository activities;
  - (c) Its establishment and operation License has been revoked;
  - (d) Undergoing division, separation, merger, consolidation, conversion, dissolution and bankruptcy;

(dd) Voluntarily terminating the securities depository activities upon receipt of the approval from the State Securities Commission.

3. Upon withdrawal of the certificate for registration of securities depository activities, depository members shall have to complete procedures for finalization of securities depository accounts in compliance with the Regulation of the Securities Depository Centre.

#### **Article 52. Registration of Securities**

1. Securities of public companies must be centrally registered at the Securities Depository Centre.

2. Securities of other issuers that authorize the Securities Depository Centre to act as an assignment agent shall be registered at the Securities Depository Centre.

3. Public companies and issuers specified in clauses 1 and 2 of this Article shall register types of securities and information on securities owners with the Securities Depository Centre.

#### **Article 53. Securities depository**

1. The securities of public companies must be centrally deposited at the Securities Depository Centre before transactions are conducted.

2. Securities shall be centrally deposited at the Securities Depository Centre under the form of general depository. The securities holders are co-owners of general securities in proportion to the number of securities deposited.

3. The Securities Depository Centre shall be entitled to carry out separate depository with respect to registered securities and other assets upon request of the owners.

#### **Article 54. Transfer of securities ownership**

1. The transfer of securities ownership with respect to categories of securities registered at the Securities Depository Centre shall be undertaken via the Securities Depository Centre;

2. The validity of the transfer of securities ownership at the Securities Depository Centre shall be as follows:

(a) Where securities have been centrally deposited at the Securities Depository Centre, the transfer of securities ownership shall take effect on the date of book-entry in the securities depository account at the Securities Depository Centre.

(b) Where the securities have not been centrally deposited at the Securities Depository Centre, the transfer of securities ownership shall take effect on the date of recording on the securities registration book managed by the Securities Depository Centre.

## **Article 55. Clearing and Settlement of securities transactions**

1. The clearing and settlement of securities transactions shall be conducted in accordance with the Regulation of the Securities Depository Centre.
2. The settlement of securities shall be conducted via the Securities Depository Centre, the payment of securities transaction amounts shall be conducted via the settlement banks and must be in compliance with the principle of securities transfer together with the payment of money;

## **Article 56. Protection of the customers' property**

1. Any securities, whether in the material or non-material form, and other assets of customers held by a Securities Depository Centre or relevant depository members shall remain the owner's property and shall not be considered as assets of the Securities Depository Centre or depository members.
2. The Securities Depository Centre or depository members are not allowed to use customers' securities deposited at the Securities Depository Centre or at the depository members' to pay any debts of the Securities Depository Centre or of depository members.

## **Article 57. Confidentiality**

1. The Securities Depository Centre and depository members shall be responsible for keeping secret the information regarding the customers' securities ownership, and refusing any investigation, attachment, lien, transfer of customer's assets without the customers' consent.
2. The stipulations in clause 1 of this Article shall not be applicable to the following cases:
  - (a) Auditors conducting the audit of financial statements of the Securities Depository Centre or financial statements of depository members;
  - (b) Customers of the Securities Depository Centre or depository members want to have information relating to their securities ownership;
  - (c) Provision of information at the request of competent state authorities.

## **Article 58. Payment supporting fund**

1. The payment supporting fund shall be formed from the contributions by depository members in order to make payments for depository member where they are temporarily unable to pay for securities transactions.
2. The payment supporting fund shall be managed by the Securities Depository Centre separately from the assets of the Securities Depository Centre.
3. The rate of contribution to the payment supporting fund and mode of supporting the payment and the method of management and use of the payment

supporting fund shall be in accordance with the Regulation of the Securities Depository Centre.

## **CHAPTER VI**

### **SECURITIES COMPANIES AND SECURITIES INVESTMENT FUND MANAGEMENT COMPANIES**

#### **Article 59. Establishment and operation of securities investment companies and securities investment fund management companies**

1. Securities companies and securities investment fund management companies (hereinafter “fund management companies”) shall be organised in the form of limited liability or shareholding company in accordance with the Law on Enterprises.
2. The State Securities Commission shall have the authority to grant the Establishment and Operation License to securities companies and fund management companies. This license also serves as a Business Registration Certificate.

#### **Article 60. Business operations of securities companies**

1. The securities company shall be entitled to carry out one, several or all of the following business operations:
  - (a) Securities brokerage;
  - (b) Securities proprietary dealing;
  - (c) Underwriting for issuance of securities; and
  - (d) Securities investment consultancy.
2. The securities company is allowed to carry out the underwriting operation if it also carries out the securities proprietary dealing operation.
3. In addition to the business operations set out in Clause 1 of this Article, the securities company shall be entitled to provide financial consultancy services and other financial services.

#### **Article 61. Business operations of fund management companies**

1. The fund management company shall be entitled to carry out the following business operations:
  - (a) Management of securities management funds; and
  - (b) Investment portfolio management.
2. The authorisation to carry out the business operations set out in Clause 1 of this Article shall be jointly granted in one Establishment and Operation License of the fund management company.

3. In addition to the business operations set out in Clause 1 of this Article, the fund management company shall be entitled to mobilise capital for and manage foreign investments funds, which aim to invest in Vietnam.

**Article 62. Conditions for issuance of the Establishment and Operation License of securities companies and fund management companies**

1. Conditions for issuance of the Establishment and Operation License of the securities company shall be as follows:

- (a) The applicant must have office and facilities available for securities dealing activities; the requirement of facilities however shall not apply to underwriting and securities investment consultancy operations;
- (b) The applicant must have adequate legal capital in accordance with the Government regulations;
- (c) The (General) Director and staff in charge of securities dealing operations as set out in Clause 1 of Article 60 and Clause 1 of Article 61 of this Law must have obtained the Securities Practitioner Certificate.

2. Individual founding shareholders or founding members must have full capacity for civil acts, must not be subject to any imprisonment or court injunction preventing them from practice; corporate body founding shareholders or founding members must be duly existing and have adequate financial capacity to make capital contributions. Founding shareholders or founding members must use their own sources of capital to make capital contributions to the securities company or fund management company.

**Article 63. Dossier of application for Establishment and Operation License of the securities company or fund management company**

- 1. Application letter for Establishment and Operation License of the securities company or fund management company;
- 2. Statement of adequate physical and technical facilities for performance of securities dealing operations;
- 3. Bank statement on the amount of legal capital deposited at a blocked bank account;
- 4. List of the proposed (General) Director and staff in charge of securities dealing operations, accompanied by copies of Securities Practitioner Certificates;
- 5. List of founding shareholders or founding members, accompanied by copies of Identity Cards or Passports for those who are individual and copies of Business Registration Certificates for those who are legal persons;
- 6. Copies of the latest annual financial statement as certified by the independent auditing organisation of those founding shareholders or founding members who are



legal persons and whose capital contribution account for ten or more per cent of the paid-up charter capital of the applicant;

7. Draft Charter of the proposed company; and
8. Proposed business plan for the first three years corresponding to the proposed business operations for licensing, accompanied by the proposed processes of operations, internal audit and risk management.

#### **Article 64. Charter of securities company and Charter of fund management company**

1. The Charter of the securities company or the fund management company must include the following principal contents:

- (a) Those contents as set out in Article 22 of the Law on Enterprises;
- (b) Rights and obligations of the securities company or fund management company which are not in contrary to the provisions of this Law; and
- (c) Prohibitions or restraints applicable to the securities company or fund management company and its (General) Director, and securities practitioners of the securities company or fund management company.

2. The model Charter of securities company and the model Charter of fund management company shall be provided by the Ministry of Finance.

#### **Article 65. Time limit of issuance of the Establishment and Operation License**

1. Within thirty days from the receipt of a valid application dossier, the State Securities Commission shall issue the Establishment and Operation License to the securities company or the fund management company. In case of refusal, the Ministry of Finance must give a written response to the applicant stating the reasons thereof.

2. Where any matters with respect to the dossier of application for Establishment and Operation License of the securities company or fund management company require clarifications, the State Securities Commission shall be entitled to request explanation by a representative among the founding shareholders or founding members or the person proposed to be appointed or recruited as the (General) Director of the applicant, either in person or in writing.

#### **Article 66. Publication of the Establishment and Operation License**

1. Within seven days from the issuance of the Establishment and Operation License, the securities company or fund management company must publish its Establishment and Operation License in the communication media of the State Securities Commission and an electronic or printed newspaper in three consecutive issues.

2. The publication of the Establishment and Operation License as set out in Clause 1 of this Article shall include the following principal contents:

- (a) Name of the securities company or fund management company;
- (b) Address of head office of the company, its branches and representative offices (if any);
- (c) number of the Establishment and Operation License, date of issuance and operational activities permitted to carry out;
- (d) Charter capital; and
- (dd) Legal representative of the company.

#### **Article 67. Supplement to the Establishment and Operation License**

1. A licensed securities company seeking to supplement its securities dealing operations must apply for supplementary Establishment and Operation License.

2. The dossier of application for supplementary Establishment and Operation License shall include the following documents:

- (a) Application for supplementary Establishment and Operation License;
- (b) Documents as set out in Clauses 2, 3 and 8 Article 63 of this Law;
- (c) Amended and supplemented Charter as approved by the General Meeting of Shareholders or the Board of Members or the Owner of the company; and
- (d) Decision of the General Meeting of Shareholders and the Board of Management or the decision of the Board of Members or the Owner of the company to supplement the securities dealing operations.

3. Within twenty days from the receipt of a valid application dossier, the State Securities Commission shall issue the supplementary Establishment and Operation License. In case of refusal, the Ministry of Finance must give a written response to the applicant clearly stating the reasons thereof.

4. The securities company, which has obtained the supplementary Establishment and Operation License, must publish the supplementary license within the time limit and in the manner set out in Clause 1 of Article 66 of this Law.

#### **Article 68. Changes subject to the approval of the State Securities Commission**

1. Securities companies and fund management companies must obtain prior written approval of the State Securities Commission when undertaking the following changes:

- (a) Opening and closing of branches, representative offices and transaction offices;
- (b) Changing the company name and location of the head office, branches, representative offices and transaction offices of the company;

- (c) Transactions resulting in the change in the ownership of the number of shares or capital contribution representing ten or more per cent of the paid up charter capital of the securities company or fund management company, except in case the shares of the securities company or fund management company are listed in the Stock Exchange or Securities Trading Centre; and
  - (d) Temporary suspension of operation, except in a force majeure event;
2. The application dossier and procedures for obtaining approval of such changes shall be in accordance with by the Ministry of Finance regulations.
  3. The time limit to provide the approval of such changes shall be fifteen days from the receipt by the State Securities Commission of a valid application dossier. Where the application is disapproved, the Ministry of Finance must give a written response to the applicant stating the grounds for such disapproval.

**Article 69. Division, split, merger, consolidation and transformation of securities companies and fund management companies**

1. The division, split, merger, consolidation and transformation of securities companies and fund management companies shall be subject to the approval by the State Securities Commission. The time limit for granting the approval of the division, split, merger, consolidation and transformation shall be thirty days from the date of receipt by the State Securities Commission of valid application dossier. In case of refusal, the State Securities Commission must provide its written response clearly stating the reasons thereof.
2. The dossier of application for approval of the division, split, merger, consolidation and transformation of securities companies and fund management companies and the procedures thereof shall be in accordance with the Ministry of Finance regulations.
3. Securities companies and fund management companies shall undertake the division, split, merger, consolidation or transformation in accordance with the Law on Enterprises.
4. The new company established by the division, split, merger, consolidation or transformation of a securities company or fund management company must proceed with the formalities of application for re-issuance of the Establishment and Operation License in accordance with Article 63 of this Law.

**Article 70. Suspension and revocation of the Establishment and Operation License of the securities company or fund management company**

1. The operation of a securities company or fund management company shall be suspended in the following circumstances:
  - (a) The dossier of application for issuance of or supplement to the Establishment and Operation License includes any incorrect information;

- (b) The securities company or fund management company fails, after the expiry of the warning period as set out in Article 74 of this Law, to rectify the warning status and suffers from a accumulative loss equivalent to fifty per cent of its charter capital or fails to meet the operating capital requirement to conduct the securities dealing operations;
- (c) The company's operation does not conform to its objectives or the contents as set out in its Establishment and Operation License;
- (d) The company fails to maintain the conditions for issuance of the Establishment and Operation License as set out in Article 62 of this Law.

2. The Establishment and Operation License of a securities company or fund management company shall be revoked in the following circumstances:

- (a) The company fails to carry out the securities dealing activities within twelve months from the date of issuance of the Establishment and Operation License;
- (b) The company fails to rectify the status as set out in paragraph (b) Clause 1 of this Article within six months from the date on which its operation is suspended;
- (c) The company fails to rectify the breaches set out in paragraphs (a), (c) and (d) Clause 1 of this Article within sixty days from the date on which its operation is suspended; and
- (d) The company is dissolved or goes bankrupt.

3. In case of revocation of the Establishment and Operation License as set out in paragraph (b) Clause 2 of this Article, the State Securities Commission may appoint another securities company to complete all the transactions and contracts of the company subject to revocation of the Establishment and Operation License; in such case the authorisation relation shall be automatically established between the two companies.

4. Upon the revocation of the Establishment and Operation License, the securities company or fund management company must immediately cease all activities specified in such license and make relevant announcement in a printed or electronic newspaper in three consecutive issues. The State Securities Commission shall be responsible to announce the revocation of the licence of the securities company or the fund management company on its communication media.

#### **Article 71. Obligations of securities companies**

[The securities company shall be obliged:]

1. To set up the systems of internal control, risk management and monitoring and prevention of conflicts of interest within the company or in transactions with relevant persons;

2. To manage on a separate basis the securities of each investor, to separate the monies and securities of investors and those of the securities company;
3. To enter into written contracts with clients for services rendered to those clients; to provide clients with full and true information;
4. To give priority to orders of the client against those of the company;
5. To gather and search for information about the client's financial status and investment objectives and ability to take risks; to assure the recommendations or advice provided to a client are those suitable to such client;
6. To comply with the requirement of adequacy of utilisable capital in accordance with the regulations of the Ministry of Finance;
7. To procure professional liability insurance for the securities dealing operations performed by the company or establish a fund for protection of investors for the purpose of indemnifying investors against the damages due to technical incidents or negligence of the company's staff;
8. To fully keep the documents and accounts which reflect in details and accurately the transactions of clients and the company;
9. To carry out short sale or let its clients carry out short sale of securities or make lending of securities to its clients for selling in accordance with the Ministry of Finance regulations;
10. To comply with the Ministry of Finance regulations on securities dealing operations;
11. To comply with the procedures of accounting, auditing, statistics and to fulfil its financial obligations in accordance with the laws;
12. To make the publication of information in accordance with Article 104 of this Law and comply with the reporting requirements as provided in the Ministry of Finance regulations.

#### **Article 72. Obligations of fund management companies**

[The fund management company shall be obliged:]

1. To comply with the obligations as set out in Clauses 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 Article 71 of this Law.
2. To carry out the activities of securities investment fund management and securities portfolio management in accordance with this Law, the Charter of the securities investment fund and the agreement with the entrusting client and the agreement with supervising bank.

3. To determine the net asset value of the securities investment fund in accordance with Article 88 of this Law, the Charter of the securities investment fund and the agreement with the entrusting client.

### **Article 73. Restrictions applicable to securities companies and fund management companies**

[Securities companies and fund management companies shall be restricted from:]

1. Providing any opinion or making any assurance to clients as to the income or profits [to be] gained on their investments or making any assurance to clients as to their investments to be free of loss, except for investments in securities on a stable income basis;
2. Disclosing any information of the client, except as agreed by the client or at the request of the competent State administrative agency;
3. Taking any actions which may mislead clients and investors of the price of securities;
4. Providing loans to clients for purchasing securities, unless otherwise provided by the Ministry of Finance;
5. Founding shareholders or founding members of a securities company or fund management company are restricted from assigning their shares or capital contribution within three years from the date of issuance of the Establishment and Operation License, except in case of assignment to other founding shareholder(s) or founding member(s) of the company.

### **Article 74. Provisions on warning status**

A warning shall be given to securities companies and fund management companies in the event their utilisable capital reduces to an amount less than hundred and twenty per cent of the level set out in Clause 6 of Article 71 of this Law. The securities company or fund management company subject to such warning must rectify the warning status within thirty days from the date of warning.

### **Article 75. Dissolution and bankruptcy of securities companies and fund management companies**

1. The dissolution of securities companies and fund management companies shall be subject to the provisions of the Law on Enterprises. The self-dissolution by a securities company or fund management company prior to expiry of the operation term of the company shall be subject to the approval by the State Securities Commission.
2. The bankruptcy of securities companies and fund management companies shall be subject to the laws and regulations on bankruptcy applicable to enterprises of financial and banking sector.

**Article 76. Issuance of the Establishment and Operation License with respect to foreign owned securities companies and fund management companies in Vietnam**

1. Foreign owned securities companies and fund management companies in Vietnam shall be organised in the form of joint venture company, shareholding company or 100% foreign owned company and subject to the Establishment and Operation License to be issued by the State Securities Commission.
2. The conditions for establishment and operation of foreign owned securities companies and fund management companies shall be in accordance with Article 62 of this Law.
3. The dossier of application for Establishment and Operation License of foreign owned securities companies and fund management companies and the procedures thereof shall be stipulated by the Government.

**Article 77. Issuance of the Establishment and Operation License of the branch of foreign securities companies and foreign fund management companies in Vietnam**

1. Conditions for issuance of the Establishment and Operation License of the branch of foreign securities companies and foreign fund management companies shall include:
  - (a) being securities trading organisations which are duly operating in a foreign country;
  - (b) satisfying the conditions set out in Clause 1 of Article 62 of this Law.
2. The dossier of application for Establishment and Operation License of the branch of foreign securities companies and foreign fund management companies in Vietnam shall be stipulated by the Government.

**Article 78. Representative offices of foreign securities companies and foreign fund management companies in Vietnam**

1. Foreign securities companies and foreign fund management companies shall be entitled to establish the representative office in Vietnam having registered for operation with the State Securities Commission.
2. The dossier of registration for operation of the representative office of foreign securities companies and foreign fund management companies in Vietnam shall include:
  - (a) certificate of registration for operation of representative office;
  - (b) Copy of the Business License of the foreign securities company or foreign fund management company;

- (c) Copy of the Charter of the foreign securities company or foreign fund management company;  
and
  - (d) Resume of the proposed Chief Representative of the company in Vietnam and the list of staff of the representative office (if any).
3. Within seven days from the receipt of a valid dossier, the State Securities Commission shall grant the Certificate of Registration for Operation of Representative Office of the foreign securities company or foreign fund management company in Vietnam. In case of refusal, the State Securities Commission must provide its written response clearly stating reasons thereof.
4. The scope of operation of the representative office of foreign securities companies and foreign fund management companies in Vietnam shall include one, some or all of the following activities:
- (a) Functioning as liaison and market research office;
  - (b) Promoting the development of cooperation project in the field of securities and the securities market in Vietnam;
  - (c) Promoting and supervising the performance of contracts and agreements entered between the foreign securities company or foreign fund management company with Vietnamese economic entities; and
  - (d) Promoting and supervising the implementation of projects in Vietnam sponsored by the foreign securities company or foreign fund management company.
5. Representative offices are not allowed to carry out the securities dealing activities.
6. Representative offices shall be subject to the administration and supervision of the State Securities Commission.

#### **Article 79. Securities Practitioner Certificate**

1. The Securities Practitioner Certificate shall be issued to individuals who meet the following requirements:
- (a) Having full capacity for civil acts and not subject to any imprisonment or court injunction preventing them from practice;
  - (b) Holding a university degree and having specialised expertise in the field of securities and the securities market;
  - (c) Having passed an examination organised by the State Securities Commission. A foreigner, who owns a professional certificate of securities and the securities market or who has duly practiced in the field of securities and securities law may obtain the [Vietnamese] Securities Practitioner Certificate by passing an examination of the laws on securities of Vietnam.



2. The dossier of application for Securities Practitioner Certificate shall include:
  - (a) Application for Securities Practitioner Certificate;
  - (b) Resume of the applicant certified by the local government of the place of the applicant's residence;
  - (c) Copy of professional degrees or certificates of the applicant.
3. In case of foreigner applicant as provided in paragraph (c) Clause 1 of this Article, the dossier of application for Securities Practitioner Certificate shall include:
  - (a) Application for Securities Practitioner Certificate;
  - (b) Resume of the applicant certified by the competent authority of the relevant country and copy of his/her passport;
  - (c) Copy of the applicant's professional certificate or document evidencing the applicant has engaged in securities practice outside Vietnam.
4. Within seven days of receiving a valid dossier, the State Securities Commission shall issue the Securities Practitioner Certificate. In case of refusal, the State Securities Commission shall response in writing clearly stating the reasons thereof.
5. A Securities Practitioner Certificate shall be effective only if the holder thereof is employed by a securities company or fund management company and such employment is notified by the employer company to the State Securities Commission.
6. Securities companies and fund management companies shall be responsible to notify the State Securities Commission of the termination of the employment of any Securities Practitioner Certificate holder employed by them within two days after such termination.

#### **Article 80. Revocation of Securities Practitioner Certificate**

1. A securities practitioner shall be subject to revocation of the Securities Practitioner Certificate in the following circumstances:
  - (a) He or she no longer meets the requirements for issuance of Securities Practitioner Certificate as set out in paragraph (a) Clause 1 of Article 79 of this Law;
  - (b) He or she is in breach of the provisions of Article 9 and Clauses 1 and 3 of Article 81 of this Law; and
  - (c) He or she has not conducted any securities practice for three consecutive years.

2. A securities practitioner whose the Securities Practitioner Certificate is revoked in the circumstance (b) of Clause 1 of this Article shall not be entitled to re-issuance of another Securities Practitioner Certificate.

### **Article 81. Responsibilities of securities practitioners**

1. The securities practitioner is not allowed:
  - (a) To work concurrently for another organisation which has an ownership relation with the securities company or fund management company where he or she is working;
  - (b) To work concurrently for another securities company or fund management company; and
  - (c) To work concurrently as the Director of an organisation which offers its securities to the public or a listed organisation.
2. While employed by a securities company, the securities practitioner may open the securities trading account for himself or herself only with that securities company.
3. The securities practitioner are not allowed to use monies or securities in the client's account without the client's authorisation .
4. The securities practitioner is required to attend training courses of new legislations and regulations, new trading system and new types of securities organised by the State Securities Commission, Stock Exchanges and Securities Trading Centres.

## **CHAPTER VII**

### **SECURITIES INVESTMENT FUNDS, SECURITIES INVESTMENT COMPANIES AND SUPERVISING BANKS**

#### **SECTION 1**

#### **GENERAL PROVISIONS ON SECURITIES INVESTMENT FUNDS**

### **Article 82. Forms of securities investment funds**

1. Securities investment funds include public funds and member funds.
2. Public funds include open-ended funds and close-ended funds.

### **Article 83. Establishment of securities investment funds**

1. The establishment and public offering of fund certificates of a public fund shall be performed by a fund management company in accordance with Article 90 of this Law and be registered with the State Securities Commission.

2. The establishment of a member fund shall be performed by the fund management company in accordance with Article 95 of this Law and reported to the State Securities Commission.

#### **Article 84. Rights and obligations of investors participating in securities management funds**

1. Investors shall have the following rights:
  - (a) To receive profits from the investment activities of the securities investment fund in proportion to their capital contribution.
  - (b) To receive the legitimate distribution of benefits and assets from liquidation of assets of the securities investment fund;
  - (c) To request the fund management company or the supervising bank repurchase open-ended fund certificates;
  - (d) To initiate a lawsuit against the fund management company, supervising bank or other relevant organisations in breach of legal rights and interests of investors;
  - (dd) To exercise their rights through the General Meeting of Investors;
  - (e) To assign fund certificates in accordance with the Charter of the securities investment fund; and
  - (g) Other rights as set out the Charter of the securities investment fund.
2. Investors shall have the following obligations:
  - (a) To observe the resolutions of the General Meeting of Investors;
  - (b) To pay in full the monies for purchasing fund certificates; and
  - (c) Other obligations as set out in the Charter of the securities investment fund.

#### **Article 85. General Meeting of Investors of securities investment funds**

1. The General Meeting of Investors of a securities management fund shall include all investor of the fund and shall be the highest decision making body of the fund.
2. The General Meeting of Investors of the securities investment fund shall have following powers and duties:
  - (a) To vote for, dismiss or remove the Chairman and any members of the Representative Board of the securities investment fund;
  - (b) To determine the remuneration and budget for operation of the Representative Board of the securities investment fund;

- (c) To change the fee payable to the fund management company and the supervising bank;
- (d) To review and deal with breaches by the fund management company, the supervising bank and the Representative Board of the fund causing losses to the securities investment fund;
- (dd) To make decisions on amending and supplementing the Charter of the securities investment fund and the supervision contract, and to make decision on the listing of close-ended fund certificates;
- (e) To make decision on substantial changes in the investment policies, profits distribution plans, investment objectives of the securities investment fund and on dissolution of the securities investment fund;
- (g) To make decision on changing the fund management company or the supervising bank;
- (h) To require the fund management company and supervising bank present transaction records or correspondences at the General Meeting of Investors;
- (i) To approve annual reports on financial status, assets and annual operation of the securities investment fund;
- (k) To approve the selection of an approved auditing organisation to conduct the audit of the annual financial statement of the securities investment fund; and
- (l) Other powers and duties as set out in the Charter of the securities investment fund.

3. The General Meeting of Investors of the securities investment fund shall be called on an annual basis or extraordinarily to discuss and make decisions on matters within the power of the General Meeting of Investors. The convocation and procedures of the General Meeting of Investors and the procedures for approval of the General Meeting of Investors decisions shall be in accordance with the Ministry of Finance regulations and the Charter of the securities investment fund.

#### **Article 86. Charter of the securities investment fund**

1. Charter of the securities investment fund shall be drafted by the fund management company and approved by the General Meeting of Investors.

2. Charter of the securities investment fund shall include following principal contents:

- (a) Name of the securities investment fund, fund management company and supervising bank;
- (b) Date of establishment of the securities investment fund;

- (c) Operational objectives; fields of investment; and term of operation of the securities investment fund;
  - (d) Capital and provisions on increase in capital of the securities investment fund;
  - (dd) Rights and obligations of the fund management company and the supervising bank; circumstances of changing the fund management company and the supervising bank; provisions on authorisation to the fund management company to enter into supervisory contract with the supervising bank;
  - (e) Provisions on the Representative Board and the General Meeting of Investors;
  - (g) Restrictions with respect to investments made by the securities investment fund;
  - (h) Provisions on registration of ownership of fund certificates and maintaining the register of investors of the fund;
  - (i) Provisions on selection of supervising bank, selection and substitution of approved auditing organisation;
  - (k) Provisions on assignment, issue and repurchase of open-ended fund certificates; provisions on the listing of close-ended fund certificates;
  - (l) Types of incomes and expenses of a securities investment fund; Rates of fee and bonus payable to the fund management company and the supervising bank; circumstances and method of distribution of incomes to investors;
  - (m) Method of determination of the net asset value of the securities investment fund and the net asset value of each fund certificate;
  - (n) Provisions on dealing with conflicts of interest;
  - (o) Reporting requirements;
  - (p) Provisions on dissolution of the securities investment fund;
  - (q) Commitments of the supervising bank and the fund management company with respect to performance of their respective obligations to the securities investment fund and the investors and compliance with the Charter of the securities investment fund; and
  - (r) Procedures for amending and supplementing the Charter of the securities investment fund.
3. The model Charter of securities investment fund shall be provided by the Ministry of Finance.

### **Article 87. Dissolution of securities investment funds**

1. A securities investment fund shall be dissolved in following circumstances:

- (a) Expiry of its operation term as set out in the Charter of the securities investment fund;
  - (b) A decision of the General Meeting of Investors to dissolve the securities investment fund prior to the expiry of the operation term of the company as set out in the Charter of the securities management fund.
2. At least three months before the date of dissolution, the Representative Board shall convoke the General Meeting of Investors to approve the plan for dissolution of the securities investment fund;
  3. The fund management company and supervising bank shall be responsible to complete the procedures of liquidation of the fund's assets and distribution thereof to investors in accordance with the plan approved by the General Meeting of Investors;
  4. The proceeds from the liquidation of the securities investment fund's assets and other assets remaining upon dissolution shall be disposed in following priority:
    - a) Settlement of financial obligations to the State;
    - b) Settlement of amounts payable to the fund management company and the supervising bank and other amounts payable and costs of dissolution of the securities investment company;
    - c) The remaining shall be paid to investors in proportion to their capital contributions in the fund.
  5. Within five days from the completion of dissolution of the securities investment fund, the fund management company and the supervising bank must report the dissolution results to the State Securities Commission.

**Article 88. Determination of the net asset value of securities investment funds**

1. The determination of the net asset value on a securities investment fund unit shall be performed by the fund management company and certified by the supervising bank.
2. The determination of the net asset value of the securities investment fund shall be subject to the following principles:
  - (a) In case of securities listed in the Stock Exchange or Securities Trading Centre, the price of securities shall be determined based on the closing or average price of the trading day immediately preceding the day of determination;
  - (b) In case of assets other than those securities mentioned in paragraph (a) of this Clause, the determination of the asset value shall be subject to the procedures and methods of determination of the asset value as set out in the Charter of the securities investment fund. Those procedures and methods of determination must be clear and reasonable in order to allow for a uniform application and subject to the certification by the supervising bank and the approval by the Representative Board and the General Meeting of Investors of the securities

investment fund. Persons engaged in the evaluation of asset value shall be independent from the fund management company and the supervising bank or depository bank.

(c) Monetary assets include dividends and interests based on the book value as of the time of determination.

3. The net asset value of the securities investment fund shall be made public on a periodical basis in accordance with Article 105 of this Law.

### **Article 89. Reports on public securities funds**

1. The fund management company must report to the State Securities Commission periodically or extraordinarily on the investment portfolio, investment activities and financial status of the securities investment fund.

2. Specific regulations on requirements of reporting on securities investment funds shall be provided by the Ministry of Finance.

## **SECTION 2**

### **PUBLIC FUNDS AND MEMBER FUNDS**

#### **Article 90. Mobilisation of capital to establish a public fund**

1. The mobilisation of capital for a public fund shall be conducted by the fund management company within ninety days from the effective date of the Certificate of Public Offering of Fund Certificates. A public fund shall be established if its fund certificates are bought by at least one hundred investors, exclusive of professional investors, and total value of fund certificates sold is at least fifty billion Vietnamese Dong.

2. All capital contributed by investors shall be blocked in a separate account under the supervision of the supervising bank, and shall not be used until the completion of the capital mobilisation. The fund management company must give a report to the State Securities Commission on the capital mobilisation results, which has been certified by the supervising bank, within ten days from the completion of the capital mobilisation.

3. In the event the mobilisation of capital for a public fund fails to meet the requirements set out in Clause 1 of this Article, the fund management company must refund to investors all their contributed monies within fifteen days from the end of the capital mobilisation. All expenses and financial obligations arising out from the capital mobilisation shall be on the account of the fund management company.

#### **Article 91. Representative Board of the public fund**

1. The Representative Board of the public fund shall represent the interests of the investors and be elected by the General Meeting of Investors. Its powers and duties are stipulated in the Charter of the securities investment fund.

2. Decisions of the Representative Board of the public fund shall be approved by voting in meetings, by written consents or otherwise in accordance with the Charter of the public fund. Each member of the Representative Board shall have one vote.

3. The Representative Board of a public fund shall comprise of from three to eleven members, at least two third of which are independent and not related persons of the fund management company or the supervising bank.

4. The term of office, criteria, number of members, appointment, dismissal and removal and additional members of the Representative Board or the Chairman the Representative Board of the fund, conditions and procedures of meetings and approving decisions of the Representative Board shall be set out in the Charter of the securities investment fund.

#### **Article 92. Restrictions applicable to public funds**

1. The fund management company is not allowed to use capital and assets of the securities investment fund to carry out the following activities:

- (a) Investing in fund certificates of such public fund or another investment fund;
- (b) Investing in securities of a single issuer in excess of fifteen per cent of the total value of securities currently in circulation of such issuer.
- (c) Investing more than twenty per cent of total asset value of a fund in securities currently in circulation of a single issuer;
- (d) Investing more than ten per cent of total asset value of a close-ended fund in real estates or investing the capital of an open-ended fund to real estates;
- (dd) Investing more than thirty per cent of total asset value of a public fund to companies in one group, which are connected by the ownership relation; and
- (e) Lending or providing guarantees for any loans.

2. The fund management company is not allowed to make borrowings to finance the operation of public funds, except for short-term borrowings to finance necessary expenditures of public funds. Total value of short-term borrowings of a public fund must at all time not exceed five per cent of its net asset value and the term thereof must not exceed thirty days.

3. Except as provided in paragraph (e) Clause 1 of this Article, the investment structure of the public fund may vary, provided that such variation shall not exceed fifteen per cent of the investment limitations as set out in Clause 1 of this Article. Such variations must result from the increase or decrease in market value of the assets used to make investments and legal payments of the public fund.

4. The fund management company shall report to the State Securities Commission and make public the variations mentioned above. Within three months from the occurrence of any variation the fund management company must adjust the



investment portfolio in order to ensure compliance with the investment limitations as set out in Clause 1 of this Article.

### **Article 93. Open-ended fund**

1. Activities by the fund management company or supervising bank to redeem open-ended fund certificates from investors and resell or issue additional open-ended fund certificates within the maximum capital of such open-ended fund on behalf of an open-ended fund shall not require a decision of the General Meeting of Investors.

2. Specific frequency and time of redemption of open-ended fund certificates shall be set out in the Charter of the fund.

3. The fund management company shall not be obliged to redeem open-ended fund certificates on behalf of the open-ended fund in the following circumstances:

(a) The fund management company fails to redeem such open-ended fund certificates as requested due to force majeure event;

(b) The fund management company fails to determine the net asset value of the open-ended fund on the date of evaluation of repurchasing price of open-ended fund certificates because of the decision of the Stock Exchange or Securities Trading Centre suspending the securities trading activities relating to the fund's investment portfolio; and

(c) Other circumstances as set out in the Charter of the fund.

4. The fund management company shall report the State Securities Commission within twenty-four hours from the occurrence of either of the events set out in Clause 3 of this Article and must resume the repurchase of open-ended fund certificates upon the end of such events.

5. Detailed regulations on issuance and redemption of open-ended fund certificates shall be provided by the Ministry of Finance.

### **Article 94. Close-ended funds**

1. The increase in capital of a close-ended fund shall be subject to the approval of the State Securities Commission and the following conditions:

(a) The Charter of the fund includes the provisions on capital increase;

(b) The profits of the fund in the year immediately preceding the year of application for capital increase are a positive figure;

(c) The fund management company has not been subject to any administrative penalty due to any breach of the laws and regulations on securities and the securities market during two years prior to the application for capital increase; and

- (d) The plan for issuance of additional close-ended fund certificates has been approved by the General Meeting of Investor.
- 2. Closed-end certificates shall be issued only to existing investors of the fund by way of issuing the right to purchase transferable close-ended fund certificates.
- 3. The dossier of application for capital increase by close-ended fund and the procedures thereof shall be provided by the Ministry of Finance.

#### **Article 95. Establishment of member funds**

- 1. A member fund shall be established by capital contributing members on the basis of a capital contribution agreement and the fund Charter.
- 2. The establishment of a member fund shall be subject to the following conditions:
  - (a) The capital of the fund must be at least fifty billion Vietnamese Dong;
  - (b) The fund shall not have more than thirty capital contributing members, all of which must have the legal person status;
  - (c) The fund must be managed by a fund management company;
  - (d) The assets of the member fund must be deposited at a depository bank independent from the fund management company.

### **SECTION 3**

#### **SECURITIES INVESTMENT COMPANIES**

##### **Article 96. Securities investment companies**

- 1. Securities investment companies shall be organised in the form of a shareholding company in accordance with the Law on Enterprises for making investment in securities.
- 2. The State Securities Commission shall have the authority to grant Establishment and Operation License to securities investment funds. This license shall also serve as the Business Registration Certificate.

##### **Article 97. Establishment and operation of securities investment companies**

- 1. The Establishment and Operation License shall be granted to a securities investment company if the following conditions are met:
  - (a) The minimum capital of the company is fifty billion Vietnamese Dong;
  - (b) The (General) Director and managerial staff of the company must have obtained the Securities Practitioner Certificate in case the securities investment company manages investment capital by itself.

2. The securities investment company must comply with the following provisions:

- (a) Restrictions with respect to investment as set out in Article 92 of this Law;
- (b) Provisions relating to evaluation of assets and reporting requirements as set out in Articles 88 and 89 of this Law;
- (c) Obligations of the public company as set out in Clause 2 Article 27 of this Law;
- (d) All monies and assets of the securities investment company must be deposited at a supervising bank.

3. Detailed regulations on establishment, organisation and operation of securities investment companies shall be provided by the Government.

## **SECTION 4**

### **SUPERVISING BANKS**

#### **Article 98. Supervising banks**

1. Supervising banks are commercial banks which have obtained Certificates of Registration of Securities Depository and which have the function to provide depository services and services of supervision of the management of public funds and securities investment companies.

2. The supervising bank shall have the following obligations:

- (a) To perform the obligations set out in Clause 3 Article 47 of this Law;
- (b) To perform the depository of assets of public funds and securities investment companies; to manage separately the assets of public funds and securities investment companies and other assets of the supervising bank;
- (c) To supervise in order to ensure the fund management company of public funds and (General) Director of the fund management company managing the company's assets comply with the provisions of this Law and the Charter of the fund management company or the Charter of the securities investment company;
- (d) To make and receive payments of and deliver monies and securities in connection with the operation of public funds and securities investment companies as legally requested by the fund management company or the (General) Directors of the securities investment company;
- (dd) To certify reports on public funds and securities investment companies prepared by fund management companies and securities investment companies;

- (e) To supervise the compliance with reporting and publication of information requirements by fund management companies and securities investment companies in accordance with this Law;
- (g) To report to the State Securities Commission upon uncovering any breach by fund management companies, securities investment companies and related organisations and individuals of the laws and the Charter of the fund management company and the Charter of the securities investment company;
- (h) To work with fund management companies and securities investment companies on a periodical basis on reconciliation of accounting books, financial statements and trading activities of public funds and securities investment companies; and
- (i) Other obligations as set out in the Charter of the fund management company and the Charter of the securities investment company.

#### **Article 99. Restrictions applicable to supervising banks**

1. The supervising bank and its Board Members, operating officers and staff directly in charge of overseeing the operation of a public fund and protecting the fund assets of the supervising bank must not be related persons or otherwise connected by either ownership, loan or borrowing relation with the fund management company or the securities investment company or vice versa.
2. The supervising bank and its Board Members, operating officers and staff directly in charge of supervision over and protection of the assets of a public fund or a securities investment company must not be the buying or selling partner in the sale of assets of the public fund or the securities investment fund.

### **CHAPTER VIII**

#### **PUBLICATION OF INFORMATION**

#### **Article 100. Subjects and means of publication of information**

1. Issuers, listed organisations, public companies, securities firms, fund management companies, securities investment companies, Securities Trading Centres and Stock Exchanges shall be obliged to make the publication of information on a full, accurate and timely basis in accordance with this Law.
2. The subjects stipulated in Clause 1 of this Article shall have to report to the State Securities Commission on the contents of the published information at the same time of publishing information.
3. The publication of information shall be conducted by the (General) Director or the person who is authorised to publish information.
4. The publication of information shall be conducted via the mass media or printed matters of the publishing organisation or company or the communication media of the Securities Trading Centre or Stock Exchange.

5. Details regulations on contents and means of publication of information applicable to each subject stipulated in Clause 1 of this Article shall be provided by the Ministry of Finance.

#### **Article 101. Publication of information of public companies**

1. Within ten days from the date of completion of an audited annual financial statement, the public company shall have to make periodical publication of information on its annual financial statement in accordance with Clauses 1 and 2 Article 16 of this Law.

2. The public company shall make extraordinary publication of information within twenty-four hours after the occurrence of either of the following events:

- (a) The company's bank account is blocked or reactivated after blockage;
- (b) Temporary suspension of the company's business operation;
- (c) The company's Certificate of Business Registration or Establishment and Operation License or Operation License is revoked;
- (d) A Board of Management decision has been approved in accordance with Article 104 of the Law on Enterprises;
- (dd) A Board of Management decision on redemption of the company's shares or reselling of shares purchased by the company, on the date of exercising the right to buy shares by owners of bonds issued in conjunction with the right to buy shares or the date of exercising the conversion of convertible bonds to shares and decisions relating to the offering of securities as provided in Clause 2 Article 108 of the Law on Enterprises; and
- (e) A prosecution decision against a member of the company's Board of Management, the (General) Director, the Deputy (General) Director or the Chief Accountant of the company; a court decision or judgment in connection with the company's business activities; or a tax authority's conclusion on the company violating the tax laws and regulations, is issued.

3. The public company shall make extraordinary publication of information within seventy two hours after the occurrence of either of the following events:

- (a) A decision to make borrowing or issue bonds equivalent to thirty or more percent of the company's actual capital is passed;
- (b) A Board of Management decision on medium-term development strategy and plan, annual business plan; a decision on alteration of the applicable accounting methodology of the company is issued; and
- (c) The company receives a court notice of its acceptance of the application for initiation of the bankruptcy adjudication proceedings.

4. The public company shall publish information upon request of the State Securities Commission when either of the followings events occurs:

- (a) The availability of information concerning the public company which may have material affects on the legal interests of investors; and
- (b) The availability of information concerning the public company which may have material affects on the securities price and which necessitate the verification of such information.

#### **Article 102. Publication of information of issuers offering securities to the public**

1. The issuer offering securities to the public shall be subject to the requirement of periodical publication of information as set out in Clause 1 Article 101 of this Law.

2. The issuer offering securities to the public shall make extraordinary publication of information within seventy two hours after the occurrence of either event as provided in paragraphs a, b and c Clause 2 and Clause 3 of Article 101 of this Law.

#### **Article 103. Publication of information by listed organisations**

1. The listed organisation shall be subject to the following obligations of publication of information, in addition to the obligations set out in Article 101 of this Law:

- (a) Publication of information within twenty four hours after suffering a loss of the company assets equivalent to ten or more per cent of its equity capital;
- (b) Publication of information on the quarterly financial statement within five days from the date of completion of such financial statement; and
- (c) Publication of information pursuant to the rules of the Stock Exchange or Securities Trading Centre.

2. The listed institution shall also report the Stock Exchange or Securities Trading Centre on contents of the published information while publishing such information.

#### **Article 104. Publication of information of securities companies and fund management companies**

1. Within ten days from the date of completion of an audited annual financial statement, the securities firm or fund management company shall make the periodical publication of information on its annual financial statement.

2. Within twenty four hours after occurrence of any of the following events, the securities company or fund management company shall have to report to the Stock Exchange or Securities Trading Centre so that such organisation shall make the publication of information in accordance with Clause 2 Article 107 of this Law:

- (a) A prosecution decision against a member of the Board of Management or Board of Members, the (General) Director, the Deputy (General) Director or the Chief Accountant of the Company;
- (b) The General Meeting of Shareholders or the Board of Members approves an agreement with respect to the merger of the company with another company;
- (c) The company suffers from a loss of ten or more per cent of the company asset value;
- (d) The substitution of a member of the Board of Management or Board of Members, the (General) Director or the Deputy (General) Director of the company; the appointment or dismissal by the company of the operator of the securities investment fund; and
- (dd) A major change in the business operation of the company.

3. The securities company must publish at the location of the company's head office, branches and order receiving agents the information on alterations of the address of the head office, branches and order receiving agents and information regarding the means of trading, booking orders and making deposit for trading, time of payment, trading fee, services provided by the company and the list of securities practitioners of the company.

4. Securities companies and fund management companies must publish their information on the request of the State Securities Commission upon the availability of any information which may have material affects on the legal interests of investors.

#### **Article 105. Publication of information of public funds**

1. The fund management company shall make periodical publication of information on the annual asset report of the public fund within ten days after the asset report has been audited.

2. The fund management company shall make periodical publication of information of the public fund in the following circumstances:

- (a) The change in the net asset value of the public fund on a weekly, monthly, quarterly and annual basis;
- (b) The assets of the public fund on a monthly, quarterly and annual basis; and
- (c) The status of investments and results investment activities of the public fund on a monthly, quarterly and annual basis.

3. Within twenty four hours after the occurrence of any of the following events to a public fund, the fund management company shall make report to the Stock Exchange or Securities Trading Centre so that such organisation shall make the publication of information in accordance with Clause 2 Article 107 of this Law:

- (a) Approval of a decision of the General Meeting of Investors;

- (b) Approval of a decision on offering of public fund certificates;
- (c) Approval of a decision to change the investment capital of the public fund;
- (d) Revocation of the Certificate of Public Offering of Public Fund Certificates; and
- (dd) Suspension or annulment of an offering of public fund certificates.

4. The fund management company shall make publication of information of the public fund on the request of the State Securities Commission upon the occurrence of either following event:

- (a) The availability of any rumour which may affect the offering and price of public fund certificates; or
- (b) The availability of unusual changes in the trading price and trading volume of public fund certificates.

#### **Article 106. Publication of information of securities investment companies**

1. The securities investment company which offers its shares to the public shall make publication of information in accordance with Article 101 and Clause 2 Article 105 of this Law.

2. The securities investment company having its securities listed in the Stock Exchange or Securities Trading Centre shall make publication of information in accordance with Article 103 of this Law.

#### **Article 107. Publication of information of Securities Trading Centres and Stock Exchanges**

The Securities Trading Centre or Stock Exchange must publish the following information:

- 1. Information on securities transactions in the Stock Exchange or Securities Trading Centre;
- 2. Information on organisations listed in the Stock Exchange or Securities Trading Centre; information on securities companies, fund management companies and securities investment funds;
- 3. Information on supervision of the securities market operation.

### **CHAPTER IX**

#### **INSPECTION AND DEALING WITH BREACHES**

##### **SECTION 1**

##### **INSPECTION**



## **Article 108. Securities Inspectorate**

1. The Securities Inspectorate is an inspectorate specialised in securities and the securities market.
2. The Securities Inspectorate includes Chief Inspector, Deputy Chief Inspectors and Inspectors.
3. The Securities Inspectorate shall be subject to direction by the Ministry of Finance Inspectorate with respect to professional inspection operations in accordance with the laws and regulations on inspection and the provisions of this Law.

## **Article 109. Subjects and scope of inspection**

1. Subjects of inspection shall include:
  - (a) Organisations offering securities to the public;
  - (b) Public companies;
  - (c) Securities listing organisations;
  - (d) Stock Exchanges, Securities Trading Centres;
  - (dd) Securities Depository Centres and depository members;
  - (e) Securities companies, fund management companies, securities investment companies, supervising banks; branches and representative offices of foreign securities companies and foreign fund management companies in Vietnam;
  - (g) Securities practitioners;
  - (h) Organisations and individuals investing and operating in the securities market; and
  - (i) Other organisations and individuals involved in securities activities and securities market.
2. Scope of inspection shall include
  - (a) Activities of public offering of securities;
  - (b) Securities listing activities;
  - (c) Securities dealing activities;
  - (d) Activities of trading and investment in securities and services relating to securities and the securities market;
  - (dd) Activities of publication of information; and
  - (e) Other activities relating to securities and the securities market.

### **Article 110. Forms of inspection**

1. Inspections shall be conducted on the basis of the schedule and plan approved by the Chairman of the State Securities Commission.
2. Ad hoc inspections shall be conducted when there are signs of any breach of the laws and regulations on securities and the securities market by organisations and individuals investing and operating in the securities market; where necessary to settle complaints and denunciations or when requested by the Chairman of the State Securities Commission.

### **Article 111. Authority and grounds to make the inspection decision**

1. A securities inspection shall only be conducted when an inspection decision is issued by the competent person as set out in Clause 2 of this Article.
2. The Chief Securities Inspector shall issue decisions on inspection and establishment of inspection delegations. Where necessary, the Chairman of the State Securities Commission may issue decisions on inspection and establishment of inspection delegations.

An Inspection Delegation shall comprise of Lead Inspector and Member Inspectors.

3. An inspection decision shall be issued on at least one of the following grounds:
  - (a) An inspection schedule or plan as approved by the Chairman of the State Securities Commission;
  - (b) Upon request of the Chairman of the State Securities Commission; or
  - (c) Signs of a breach of the law on securities and the securities market are found out.

### **Article 112. Contents of inspection decisions**

1. The following contents must be included in an inspection decision:
  - (a) Legal basis for inspection;
  - (b) Subjects, contents, scope of inspection and inspection tasks;
  - (c) Time limit<sup>1</sup> of inspection;
  - (d) Lead Inspector and other members of Inspection Delegation.

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<sup>1</sup> **Translator's note: "thoi han" in Vietnamese. However, it seems to mean "duration". See also Article 113.**

2. The inspection decision must be served upon the subjects of inspection within three days from the signing date, except for ad hoc inspections.

3. The inspection decision must be announced within fifteen days from the date of decision. Such announcement must be made in writing.

#### **Article 113. Time limit of inspection**

1. The time limit for conducting an inspection shall be thirty days from the date of announcement of the inspection decision to the completion of the inspection at the place of inspection.

2. When necessary, the person who issued the original inspection decision may extend an inspection but only once. The extension shall not exceed the time limit of the original inspection as set out in Clause 1 of this Article.

#### **Article 114. Rights and obligations of entities subject to inspection**

1. The subject of an inspection shall be entitled:

(a) To give its explanation on issues relating to the subject matter of the inspection;

(b) To reserve one's opinion in the minutes of inspection;

(c) To refuse to provide information and documents of State secrets as provided by law and information and documents which are not in connection with the subject matter of the inspection;

(d) To file complaints to the person who issued the inspection decision on actions taken and decisions issued by the Lead Inspector and other members of the Inspection Delegation during the course of inspection if having grounds to believe such actions and decisions are illegal; to file complaints to the Chairman of the State Securities Commission on the inspection conclusion and the post-inspection decision if having grounds to believe such conclusion and decision are illegal. Pending the settlement of such complaint, the complainer must abide by the inspection conclusion and the post-inspection decision;

(dd) Claim for damages in accordance with the laws; and

(e) Individuals subject to inspection shall have the right to make their denunciation against any breach by the Chief Inspector, the Lead Inspector and other member of the Inspection Delegation.

2. The subject of an inspection shall be obliged:

(a) To comply with the inspection decision;

(b) To timely provide full and accurate information, documents and electronic data relating to the subject matter of the inspection as required for the

inspection and be responsible for the accuracy, truthfulness and completeness of the information, documents and electronic data so provided;

- (c) To observe the inspection requirements, the inspection conclusion and the post-inspection decision of the inspectorate and the competent State agency; and
- (d) to sign in the minutes of inspection.

#### **Article 115. Duties and powers of persons making inspection decisions**

1. The person who has made an inspection decision shall have the following rights and obligations:

- (a) To direct and supervise the Inspection Delegation to secure compliance with the contents and term of inspection stated in the inspection decision;
- (b) To request the person subject to the inspection to provide information, documents and electronic data, written reports and explanations on matters relating to the contents of inspection; to request organisations and individuals possessing information and documents relating to the contents of the inspection provide such information and documents;
- (c) To request assessment of issues relating to the contents of the inspection;
- (d) To request the competent person to seal off and temporarily seize the documents, materials, securities and electronic data relating to the breach of the law on securities and the securities market when it is deemed necessary to immediately prevent such breach or to verify the facts as evidence for the inspection conclusion;
- (dd) To request the competent person to block the currency and securities account and pledged/mortgaged assets relating to the breach of the law on securities and the securities market when it is deemed necessary to verify the facts as evidence for decisions dealing with such breach or to prevent any illegal disposition of those monies, securities and pledged/mortgaged assets relating to acts of breaching the law on securities and the securities market;
- (e) To suspend on a temporary basis or submit to the authorised person to suspend any acts if, in his or her opinion, such acts cause material damage to the State interests and legal rights and interests of organisations and individuals participating in the market;
- (g) To issue settlement decisions within his powers or to submit to the authorised person for settlement; to supervise and follow up the implementation of post-inspection decisions;
- (h) To deal with complaints and denunciations with respect to responsibilities of the Chief Inspector, Lead Inspectors and members of Inspection Delegations.
- (i) To make conclusion on the contents of the inspection; and

(k) To transfer records of the breach of the laws to the investigation authority within five days from the date when the signs of a criminal are uncovered.

2. When performing his duties and exercising his powers as set out in Clause 1 of this Article the person who makes inspection decisions shall be responsible before law for any of his decisions.

### **Article 116. Duties and powers of the Lead Inspector and members of the Inspection Delegation**

1. The Lead Inspector shall have the following duties and powers:

(a) To organise and direct members of the Inspection Delegation to comply with those requirements with respect to the contents and person subject to inspection and the term of inspection as stated in the inspection decision;

(b) To request the person subject to inspection to provide information, documents and electronic data, written reports and explanations on the issues relating to the contents of the inspection;

(c) Where there are grounds to believe that the failure to timely seal off and temporarily seize those materials, documents, securities and electronic data relating to breaches of the law on securities and the securities market may result in any disposition or destruction of such materials, documents, securities and electronic data, the Lead Inspector shall be entitled to determine to seal off and temporarily seize such materials, documents, securities and electronic data. Within twenty four hours after such decision is made, the Lead Inspector must report and obtain a written approval thereof from the Chief Securities Inspector or, if failing to obtain such approval, the Lead Inspector shall make a decision to annul the decision on sealing-off and temporary seizure and shall release the materials, documents, securities and electronic data so sealed off or temporarily seized;

(d) To report to the person who has made the inspection decision on the inspection results and be responsible for the accuracy, truthfulness and objectiveness of such report;

(dd) To prepare the minutes of inspection; and

(e) When performing his duties and exercising his powers as set out in Clause 1 of this Article, to be responsible before the law for any of his decisions.

2. Members of the Inspection Delegation shall have the following duties and powers:

(a) To perform such duties assigned by the Lead Inspector;

(b) To request the subjects of the inspection to provide information and documents, written reports and explanation on issues relating to the contents of the inspection; to request those authorities, organisations and individuals in

possession of any information and documents relating to the contents of the inspection to provide such information and data;

- (c) To propose the settlement of issues relating to the contents of the inspection; and
- (d) To report on the performance of their duties to the Lead Inspector and be responsible before the law and the Lead Inspector for the accuracy, truthfulness and objectiveness of what so reported.

#### **Article 117. Inspection conclusions**

1. Within fifteen days from the date of receiving the report on inspection results, the person who has made the inspection decision shall provide the inspection conclusion in writing. The inspection conclusion shall have following contents:

- (a) Assessment on the compliance with the policies and laws and performance of duties by the subject of inspection with respect to the contents of the inspection;
- (b) Conclusion on the contents of the inspection;
- (c) Clear determination of the nature and level of the breach, causes thereof and liabilities of agencies, organisations, individuals committed such breach (if any); and
- (d) Measures for settlement applied within one's competence; and proposed measures for settlement.

2. During the course of inspection the person who has made the inspection decision shall be entitled to request the Lead Inspector and members of the Inspection Delegation make their reports and to request further clarifications from the subject of the inspection on any issues as necessary to make the inspection conclusion.

3. The inspection conclusion shall be sent to the Chairman of the State Securities Commission and the subject of the inspection; in case the inspection decision is made by the Chairman of the State Securities Commission, to the Minister of Finance.

4. Within fifteen days from the date of inspection conclusion by the Chief Inspector of the Securities Inspectorate, the Chairman of the State Securities Commission shall review the inspection conclusion, deal with the organisation or individual breaching the laws and regulations on securities and the securities market, apply measures within his powers or propose to the Minister of Finance to apply remedies and to further perfect the regimes, policies and laws.

## **SECTION 2**

### **DEALING WITH BREACHES**

#### **Article 118. Principles of dealing with breaches**

1. Any organisations and individuals in breach of this Law and other provisions of the law relating to securities and the securities market shall be given disciplinary penalties, administrative sanctions or criminal prosecution, depending to the nature and seriousness of the breach; and shall also be liable to compensate for any damage caused by their breach in accordance with the laws.

2. Any person abusing his/her position and powers to hinder securities activities and the operation of securities market, causing difficulties to organisations and individuals participating in the securities market; failing to provide timely response to requirements of organisations and individuals as stipulated; or failing to perform other statutory public duties shall be given disciplinary penalties or put under criminal prosecution, depending on the nature and seriousness of the breach.

3. The application of administrative sanctions shall be subject to provisions of this Law and the law on dealing with administrative offences.

### **Article 119. Forms of administrative sanctions**

1. The organisation or individual who breaches the provisions of this Law shall be subject to either of the following principal penalties:

- (a) punitive warning; or
- (b) pecuniary penalty.

2. Depending on the nature and seriousness of the breach, the violating organisation or individual shall also be given one or more additional penalties, including: suspension of operation, revocation of licenses or certificates with respect to the field of securities and security market or the Securities Practitioner Certificate; confiscation of all incomes earned from such acts of breaching the laws and the securities used to commit such breach.

3. In addition to the penalties set out in these Clauses 1 and 2 of this Articles, the violating organisation or individual shall also be imposed with the following measures: compelled to resume compliance with the law, compelled to annul and correct falsified and untrue information, compelled to recall the securities issued and refund to investors their deposits or monies for purchasing securities.

### **Article 120. Authority to apply administrative sanctions**

1. The Chief Inspection of the Securities Inspectorate shall have the following authority:

- (a) To give punitive warnings;
- (b) To apply pecuniary penalties.

2. The Chairman of the State Securities Commission shall have to following authority:

- (a) To give punitive warnings;

- (b) To apply pecuniary penalties; and
- (c) To apply additional penalties and remedies provided in Clauses 2 and 3 Articles 119 of this Law.

3. The Government shall provide detailed regulations on authority and level of penalty applicable to each administrative breach with respect to securities activities and securities market as set out in Articles 121 to 130 inclusive of this Law.

#### **Article 121. Dealing with breaches of public securities offering requirements**

1. Where any falsification is found in the dossier of registration for public offering of securities, the issuer, (General) Director, Chief Accountant and other related persons of the issuer, underwriter, issuance consulting organisation, approved auditing organisation, the signatory of auditor's report and the organisation or individual providing certification to such dossier shall be subject to punitive warning or pecuniary penalty or put under criminal prosecution in accordance with the law; in such case the issuer shall have its Certificate for Public Securities Offering revoked and must refund the monies so raised plus interest applicable to non-term deposits and pay a pecuniary penalty equivalent to 1% to 5% of the amount illegally raised.

2. The issuer, (General) Director, Deputy (General) Director(s), Chief Accountant and other related persons of the issuer, underwriter and issuance consulting organisation who commits either following breaches shall be subject to punitive warning, pecuniary penalty, suspension or cancellation of the public offering of securities or put under criminal prosecution in accordance with the law: wilfully announcing information which is falsified or smothering up facts; using information outside the prospectus for the purpose of market survey, distributing securities without compliance with the relevant registration for offering in terms of type of securities, time of issuance and minimum volume as required by the laws, making publication of information on issuance of securities in the mass media without compliance with the statutory requirements in terms of contents and time of publication. The underwriter, which underwrites an issuance of securities in a value exceeding the percentage permitted by the laws, shall be subject to punitive warning, pecuniary penalty or suspension of the underwriting operation.

3. The issuer undertaking a public offering of securities without having obtained the Certificate for Public Securities Offering shall be subject to suspension of such public offering, confiscation of illegal incomes earned and a pecuniary penalty of one to five folds of such incomes.

#### **Article 122. Dealing with breaches of requirements applicable to public companies**

1. Any company as set out in paragraph (c) Clause 1 Article 25 of this Law which fails to file the public company dossier with the State Securities Commission within 90 days from the day it becomes a public company shall be subject to punitive warning or pecuniary penalty and be ordered to resume the compliance with the provisions of the law on corporate governance.



2. Any public company, which fails to comply with corporate governance requirements, shall be subject to punitive warning and be ordered to resume the compliance with the provisions of the law on corporate governance.

### **Article 123. Dealing with breaches of provisions on securities listing**

1. In case of provision of falsified information in a dossier of application for listing of securities causing a material misleading, the listed organisation, (General) Director, Deputy (General) Director(s), Chief Accountant and other related persons of thereof, the listing consulting organisation, the approved auditing organisation, the signatory of the auditor's report and organisation or individual certifying such dossier shall be subject to punitive warning, pecuniary penalty, cancellation of listing or criminal prosecution in accordance with the laws.

2. The listed organisation, which fails to meet the requirements of time, contents and means of publication of information on the listing, shall be subject to punitive warning or pecuniary penalty and be compelled to resume the compliance with the statutory requirements with respect to the listing of securities.

### **Article 124. Dealing with breaches of provisions on organisation of securities trading markets**

1. Any organisation or individual who organises securities trading markets without compliance with this Law shall be subject to suspension of operation, confiscation of illegal incomes and an pecuniary penalty of one to five folds of such illegal incomes or criminal prosecution in accordance with the laws; in the absence of such illegal incomes, pecuniary penalty shall apply.

2. Any Securities Exchange or Securities Trading Centre or any member of Board of Management or the Board of Controller, Directors and Deputy Directors and staff thereof in breach of the provisions on listing, membership, trading, supervision and publication of information shall be subject to punitive warning, pecuniary penalty or criminal prosecution in accordance with the law.

### **Article 125. Dealing with breaches of provisions on securities trading activities and the Securities Practitioner Certificate**

1. Securities companies, fund management companies, securities investment companies, branches of foreign securities companies and foreign fund management companies in Vietnam shall be subject to punitive warning, pecuniary penalty, confiscation of illegal incomes, suspension of operation, revocation of the Establishment and Operation License or the Certificate of Registration for Operation of Representative Office if committing either of the following breaches: undertaking securities dealing operation without having obtained the operation licence or lending, renting, transferring the operation license, undertaking securities trading activities beyond the scope of activities as set out in the operation license or under expired operation license, erasing and modifying contents of the operation license, undertaking the changes with respect to securities and the securities market without having obtained the authorisation from the State Securities Commission.

2. Securities companies shall be subject to punitive warning, pecuniary penalty, suspension of operation or revocation of the Establishment and Operation License if committing either of the following breaches: failure to comply with provisions of this Law on management of clients' assets, monies and securities; failure to maintain the adequacy of utilisable capital as required by the laws; making investment or capital contribution beyond the statutory limits; acting against the investors' orders and failure to treat the clients' information confidential.

3. Securities companies and securities practitioners thereof shall be subject to punitive warning, pecuniary penalty, confiscation of illegal incomes or criminal prosecution in accordance with the laws if abusing of their position and functions to lend monies or securities in the clients' accounts or mortgaging or using monies or securities in the clients' accounts without the authorisation of the clients.

4. Fund management companies and securities practitioners thereof shall be subject to punitive warning or pecuniary penalty and be compelled to resume the compliance with the law on fund management if committing any of the following breaches during the process of fund management: failure to perform the management separately on a fund-specific basis; failure to comply with the Charter of the securities investment fund and failure to protect legal rights and interests of investors; failure to perform the internal control as required by the laws; use of the capital and assets of one securities investment fund to invest in or buy assets of another investment fund; and breaching of the provisions on making capital contribution or shareholding, lending or borrowing applicable to fund management companies and vice versa.

5. Securities practitioners shall be subject to pecuniary penalty or revocation of the Securities Practitioner Certificate in any of the following cases: securities practitioners who concurrently work or make capital contribution to two or more securities companies; securities practitioners of a fund management company who act concurrently as the (General) Director or who hold more than five per cent of voting shares of a public offering organisation; securities practitioners who lend or rent their Securities Practitioner Certificates; securities practitioners who erase or modify their Securities Practitioner Certificates.

#### **Article 126. Dealing with breaches of securities trading provisions**

1. Persons who know or possess of internal information, if buying or selling securities, disclosing such information or suggesting other person(s) to buy or sell securities, shall be subject to pecuniary penalty, confiscation of illegal incomes or criminal prosecution in accordance with the laws.

2. Organisations and individuals prohibited by the laws from engaging in share transactions who directly or indirectly hold, buy or sell shares by changing their names or under the name of others, shall be subject to confiscation of the shares used in such breaches, confiscation of illegal incomes and pecuniary penalty. State official committing such breaches shall be subject to disciplinary penalties applicable in accordance with the law.

3. Organisations and individuals violating regulations on prohibited acts to manipulate prices of securities, create forged securities prices or forged transactions

shall be subject to pecuniary penalty, confiscation of illegal incomes or criminal prosecution in accordance with the laws.

4. Operational staff of Stock Exchanges, Securities Trading Centres or securities companies who wilfully provides forged documents or forges, falsifies or destroys documents to defraud, or entices clients to buy or sell securities, shall be subject to pecuniary penalty, revocation of the Securities Practitioner Certificate or criminal prosecution in accordance with the law.

5. Organisations and individuals creating and diffusing false information that seriously affects the securities market and causes the manipulation of securities trading markets shall be subject to pecuniary penalty or criminal prosecution in accordance with the laws.

6. Organisations and individuals shall be subject to pecuniary penalty and be compelled to resume the compliance with the laws and regulations on public bidding of securities if committing either of the following breaches: making public bids without filing the registration for public bidding with the State Securities Commission; failure to make public bids as required by the laws or make changes or variation as compared with the registration for public bidding without reporting the same as required by the laws; failure to apply the public bid conditions to all shareholders of the public company; rejecting to buy shares from any shareholders upon announced conditions; or failure to comply with the time limit for a public bidding.

#### **Article 127. Dealing with breaches of provisions on registration, depository, clearing and settlement of securities and supervising banks**

1. Organisations undertaking the registration, depository, clearing and settlement of securities and their staff shall be subject to punitive warning, pecuniary penalty or criminal prosecution in accordance with the laws if committing either of the following breaches: failure to meet the requirement of time limit for authentication of data; delivery of securities; modifying or forging payment documents; failure to comply with the regime of securities protection; [failure to comply with] the regime for registration, depository, clearing and settlement of securities or [failure to comply with] the regime of confidentiality protection of depository accounts of the clients, and failure to provide the list of securities holders to issuers in a full and timely manner.

2. Supervising banks and their staff failing to comply with the Charter of the securities investment fund in keeping the assets of securities investment funds, failing to separate the assets of securities investment funds from other assets or failing to separate the assets of a securities investment fund from those of other securities investment funds shall be subject to pecuniary penalty or suspension or revocation of the Certificate of Registration for Depository Operation.

#### **Article 128. Dealing with breaches of provisions on publication of information**

Issuers, public companies, listed organisations, securities companies, fund management companies and securities investment companies shall be subject to

punitive warning, pecuniary penalty and be compelled to resume the compliance with the law on publication of information if committing any of the following breaches: failure to publish information in a full and timely manner and on such means as required by the laws, publication of untrue information or failure to protect confidential data and documents and failure to publication of information in accordance with this Law.

#### **Article 129. Dealing with breaches of provisions on reporting**

Stock Exchanges, Securities Trading Centres, Securities Depository Centres, public companies, securities firms, fund management companies, securities investment companies and supervising banks shall be subject to punitive warning or pecuniary penalty and be ordered to resume the compliance with the law on reporting if committing either of the following cases: failure to make reports in a full manner as required by the laws, failure to make reports in a timely manner as required by the laws; failure to make reports in forms provided by the laws; ceasing their operations without having given relevant report to or, if relevant report have been given to, without having obtained the approval from the State Securities Commission; failure to report or reporting but not in a timely manner upon occurrence of abnormal events that may cause serious impacts on the financial capacity, trading operation and securities services.

#### **Article 130. Dealing with the acts of hindering the inspection**

Issuers, listed organisations, securities companies, fund management companies, securities investment companies, supervising banks, Stock Exchanges, Securities Trading Centres, Securities Depository Centres, depository members and other organisations and individuals relating to securities activities and the securities market, which and who attempt to delay, avoid or act against the Inspection Delegation, fail to provide in a full and timely manner the information, documents and electronic data requested by the Inspection Delegation or its members, hinder the inspection activities or violently threaten the members of the Inspection Delegation during the performance of their inspection duties, shall be subject to punitive warning or pecuniary penalty or criminal prosecution in accordance with the laws

### **CHAPTER X**

#### **SETTLEMENT OF DISPUTES, COMPLAINTS, DENUNCIATIONS AND COMPENSATION**

##### **Article 131. Settlement of disputes**

1. Disputes arising out from the operations of securities and the securities market in Vietnam shall be solved by negotiation and reconciliation or by reference to the arbitration or the court for settlement in accordance with the laws.

2. The authority and procedures of settlement of disputes arising out from the operations of securities and the securities market by arbitration or before the court shall be in accordance with relevant laws and regulations.

### **Article 132. Compensation for damage**

1. Organisations and individuals suffering from losses or damage caused by any acts in breach of this Law and other relevant law shall be entitled to initiate legal proceedings, by themselves or jointly with other affected parties, to claim against organisations and individuals causing such damage for compensations.
2. The evaluation of losses or damage and the procedures of making compensation thereof shall be in accordance with relevant laws and regulations.

### **Article 133. Complaints, denunciations and initiation of legal proceedings**

1. Individuals shall have the right to make complaints or denunciations and initiate legal proceedings and organisations shall have the right to make complaints and initiate legal proceedings in accordance with the laws. The making of complaints or denunciations and initiation of legal proceedings with respect to securities and the securities market and the settlement thereof shall be in accordance with the provisions of this Law and other relevant laws and regulations.
2. Individuals and organisations having filed such complaints or denunciations or initiated such legal proceedings shall, pending the settlement thereof, be obliged to observe the administrative decision of the State Securities Commission; the decision of the competent State authority dealing with the complaint or denunciation or the effective court decision or judgement shall be implemented by the parties instead after being made.
3. The State Securities Commission shall be responsible to accept and deal with those complaints or denunciations made by organisations and individuals that fall into its authority or timely forward those falling outside its authority to other relevant agencies for settlement and notify of the same to the persons who have filed such complaints or denunciations.
4. The time limit for dealing with a denunciation shall be sixty days from the acceptance of the letter of denunciation and may be extended in complicated cases to not more than ninety days from the acceptance of the letter of denunciation.
5. The time limit for settlement shall be thirty days with respect to first time complaints, or forty-five days with respect to the second time complaints, from the acceptance of the letter of complaint. Such time limit may be extended in complicated cases provided that it will not exceed sixty days from the acceptance of the letter of complaint.
6. Within thirty days from the expiry of the time limit for dealing with a first time complaint as set out in Clause 5 of this Article, if such complaint is not solved, or within thirty days from the date of receipt of the decision dealing with the first time complaint by the Chairman of the State Securities Commission, if the complaining person disagrees with such decision of settlement, the complainant shall be entitled to make further complaint to the Minister of Finance or initiate administrative legal proceedings at the court in accordance with the law.

7. Within thirty days from the expiry of the time limit for dealing with a second time complaints as set out in Clause 5 of this Article if such complaint is not solved or from the date of receipt of the decision dealing with the complaint from the Minister of Finance, if the complainer disagrees with such decision, such person shall be entitled to initiate administrative legal proceedings at the court in accordance with the laws.

## **CHAPTER XI**

### **IMPLEMENTING PROVISIONS**

#### **Article 134. Application of the Securities Law in respect of organisations carrying out business in the field of securities and the securities market prior to the effective date of this Law**

1. Organisations having registered for public offering of securities, listing or transactions; and securities investment funds having registered for establishment and operation which meet the requirements set out in this Law are not required to proceed with the formalities of re-registration.
2. Securities companies and fund management companies established and operating under the securities operation and securities service license that meet the conditions set out in this Law are not required to proceed with the formalities of re-application for the Establishment and Operation License.
3. Representative offices of foreign securities companies and foreign fund management companies, which has been operating under the License for Establishment of a Representative Office that was not issued by the State Securities Commission prior to the effective date of this Law, are required to proceed with the formalities of re-registration with the State Securities Commission.
4. Securities company currently providing investment portfolio management services are required to proceed with the procedures for a new Establishment and Operation License within one year from the effective date of this Law.
5. Securities Trading Centres established pursuant to Decision 127/1998/QD-TTg dated 11 July 1998 of the Prime Minister are required to proceed with the formalities of transformation into Stock Exchanges and Securities Trading Centres under this Law within eighteen months from the effective date of this Law.
6. Securities Depository Centres established pursuant to Decision 189/2005/QD-TTg dated 20 July 2005 of the Prime Minister are required to proceed with the formalities of transformation into Securities Depository Centres under this Law within eighteen months from the effective date of this Law.

#### **Article 151. Effectiveness**

This law shall take effect from 1 January 2007.

#### **Article 152. Guidelines on implementation**

The Government shall provide detailed regulations and guidelines on the implementation of this Law.

*This Law is passed by Legislature XI of the National Assembly of Socialist Republic of Vietnam at its 9<sup>th</sup> session on 29 June 2006.*

CHAIRMAN OF THE NATIONAL ASSEMBLY

**Nguyen Phu Trong**