



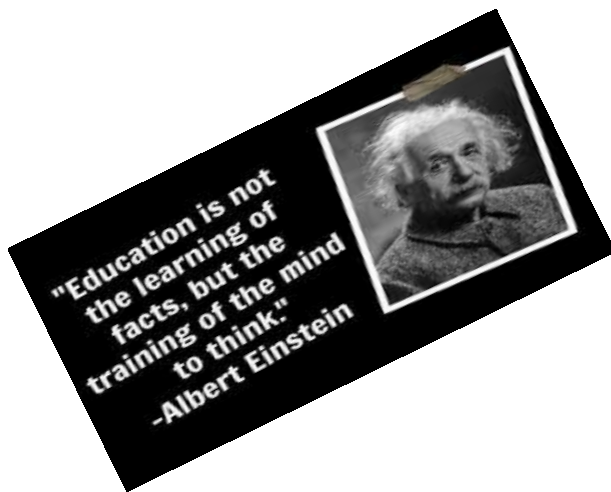
FOREIGN TRADE UNIVERSITY - HCMC CAMPUS

PROFESSIONAL OPERATION FACULTY

DEPARTMENT OF LAW

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# BANKING & FINANCE LAW



**PART I: HANDOUTS**

**HCMC, 2021**



# **BANKING AND FINANCE LAW**

**Tran Thanh Tam (LLM, PhD Candidate)**

# CONTACT INFORMATION

**TRẦN THANH TÂM**



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**0918. 014. 246**

# **COURSE OBJECTIVES**

- 1. Have an overview of legal environment for finance and banking in Vietnam.**
- 2. Grasp finance law from macro approaches including state budget law and state bank law.**
- 3. Have basic knowledge of credit institutions in Vietnam, especially banking system.**
- 4. Be capable of self-studying in assigned topics and doing presentations on such topics thoroughly.**

# **RECAP**

- **Chapter 1: Overview of Law on Finance & Banking**
- **Chapter 2: Law on banking in Vietnam**
- **Chapter 3: Law on state budget**
- **Chapter 4: Violation settlement**

# **READING MATERIALS**

**Law on finance and banking:  
Handouts and Tutorials**

# **READING MATERIALS**

- **LEGAL DOCUMENTS:**

1. **LAW ON STATE BUDGET 2015**

2. **LAW ON PERSONAL INCOME TAX 2007, REVISED AND AMENDED IN 2012**

3. **LAW ON CORPORATE INCOME TAX 2008, REVISED AND AMENDED IN 2013**

4. **LAW ON EXCISE TAX 2008, REVISED AND AMENDED IN 2014 AND 2016**

5. **LAW ON VALUE - ADDED TAX 2008, REVISED AND AMENDED IN 2013 AND 2016**

6. **LAW ON IMPORT TAX AND EXPORT TAX 2016**

7. **LAW ON THE STATE BANK OF VIETNAM 2010**

8. **LAW ON CREDIT INSTITUTION 2010, REVISED AND AMENDED IN 2017**

9. **OTHER SUB-LAWS**

# **TEACHING METHOD**

- **BASED ON THE LECTURES (HANDOUTS) GIVEN TO STUDENTS**
- **SOCRATIC DIALOGUE**



# STUDYING METHOD



- **LEGAL THINKING**
- **DISCUSSION**
- **GROUP PRESENTATION**
- **SELF - STUDY**

# LAW ON COMMERCE 2005

## **Article 317. Forms of resolution of disputes**

1. Negotiations between the parties.
2. Mediation between the parties by a body, organization or individual selected by the parties to act as the conciliation mediator.
3. Resolution by the Arbitration or the Court.

*Procedures for resolution of commercial disputes by arbitration or a court shall comply with procedures applicable to arbitrations or courts provided for by law.*

# TENTATIVE SCHEDULE

DAY	CONTENT	DAY	CONTENT
1 <sup>ST</sup> DAY - 18/1	CHAPTER 1	9 <sup>TH</sup> DAY - 26/2	CHAPTER 3
2 <sup>ND</sup> DAY - 20/1	CHAPTER 2	10 <sup>TH</sup> DAY – 01/3	CHAPTER 3
3 <sup>RD</sup> DAY – 22/1	CHAPTER 2	11 <sup>TH</sup> DAY – 3/3	CHAPTER 3
4 <sup>TH</sup> DAY – 25/1	CHAPTER 2	12 <sup>TH</sup> DAY – 5/3	CHAPTER 3
5 <sup>TH</sup> DAY – 27/1	CHAPTER 2	13 <sup>TH</sup> DAY - 8/3	CHAPTER 3
6 <sup>TH</sup> DAY – 29/1	CHAPTER 2	14 <sup>TH</sup> DAY – 10/3	CHAPTER 4 + REVIEW
7 <sup>TH</sup> DAY – 22/2	CHAPTER 3	15 <sup>TH</sup> DAY – 12/3	GUEST SPEAKER
8 <sup>TH</sup> DAY – 24/2	CHAPTER 3		

# GRADING BREAKDOWN

	MARK (%)	FORM OF ASSESSMENT
ATTENDANCE	10%	ATTENDANCE CHECK
MID – TERM TEST	30%	WRITING TEST + GROUP PRESENTATION
FINAL EXAM	60%	WRITING TEST ( TRUE/FALSE STATEMENT + SHORT ANSWERS + CASES
BONUS POINTS		

# **PRESENTATION**

- 1. Fundamentals of Law on Corporate Income Tax (CIT)**
- 2. Fundamentals of Law on Personal Income Tax (PIT)**
- 3. Fundamentals of Law on Value Added Tax (VAT)**
- 4. Fundamentals of Law on Excise Tax**
- 5. Fundamentals of Law on Export and Import Tax**



# CHAPTER 1

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## INTRODUCTION TO LAW ON FINANCE AND BANKING



# **MAIN CONTENT**

## **I. FUNDAMENTALS**

- 1. DEFINITION**
- 2. GOVERNING SCOPE**
- 3. METHODOLOGIES**
- 4. SOURCES OF LAW**

## **II. LEGAL RELATIONS OF BANKING - FINANCE**

# I. FUNDAMENTALS

## 1. DEFINITION

Law on finance and banking is the **legally enforceable rules made by authorities** to govern the relations arising in **banking and financial activities**



# WHAT IS FINANCE?

- “The management of money”
- The process of establishment, management and usage of monetary funds
- Public finance and private finance

# FINANCIAL SYSTEM

- State budget
- Credits
- Corporate finance
- Insurance
- Residential finance

**PUBLIC FINANCE**

**LIST IN THE GROUP**

**PRIVATE FINANCE**

# WHAT IS BANKING?

## - **Origin:**

Banco/merchant's bench in the marketplaces of medieval Italy

**In Mesopotamia,  
money  
borrowed at  
interest from the  
temple**

**In Jerusalem,  
money - changer  
located in the  
temple precinct**

**In Jerusalem,  
sanctuaries and  
temples: Store  
houses/ place of  
custody for  
bullion &  
valuables**

# WHAT IS BANKING?

*“Banking activity shall be the **permanent trading, supply** of one or more of following operations:*

- a) Deposit taking;
- b) Credit extension;
- c) Supply of account payment service.”

**(Art. 4.12 – Law on credit institution 2010, revised and amended in 2017)**

## 2. GOVERNING SCOPE

### FINANCE

- Relations arising in the process of establishment, management and usage of monetary funds by the State
- Relations arising in the process of establishment, management and usage of monetary funds by parties (Individuals and organisations)

### BANKING

- Relations arising in State management of banking business
- Relations arising in banking business and management

### 3. METHODOLOGIES

- **ORDER – OBEY** based method
- **CONSENT** based method
- **MIXTURE** method

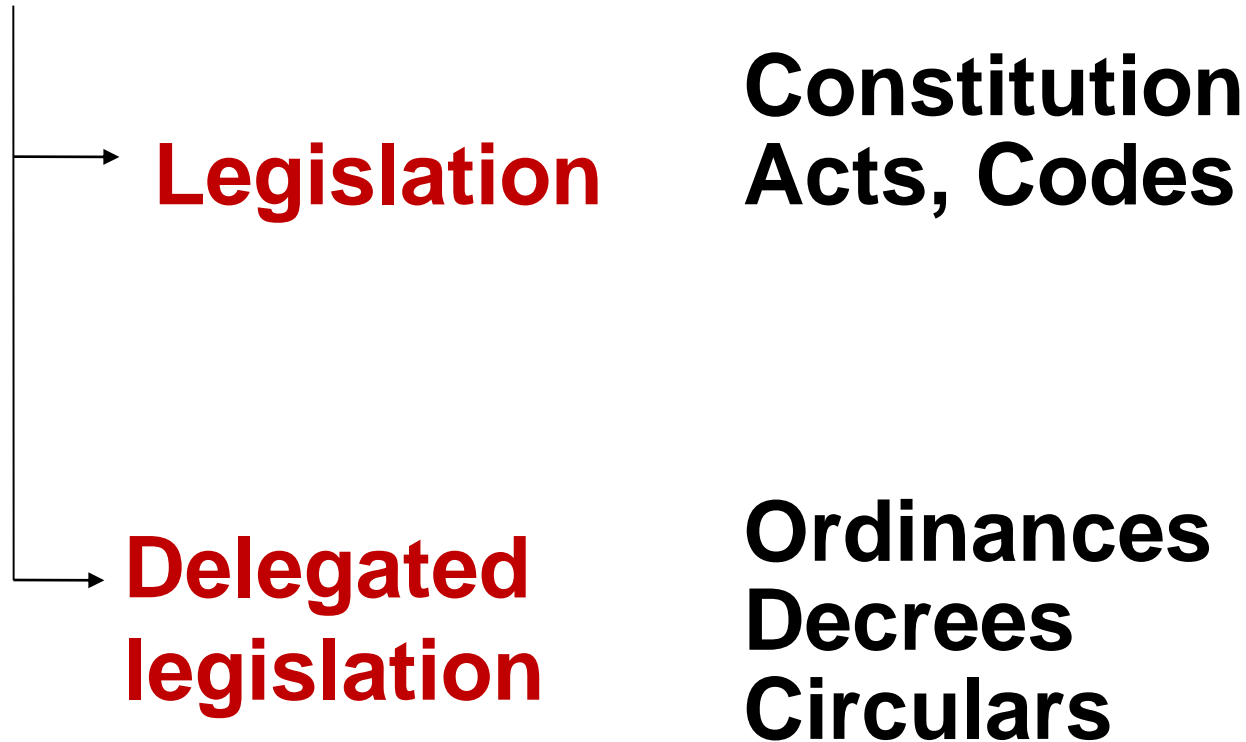
## **II. FUNDAMENTALS**

### **4. SOURCES OF LAW**

#### **4.1. SOURCES OF LAW IN VIETNAM & THEIR HIERARCHY**

#### **4.2. SOURCES OF FINANCE & BANKING LAW IN VIETNAM**

## 4.1. SOURCES OF LAW IN VIETNAM & THEIR HIERARCHY





## **4.2. SOURCES OF FBL IN VIETNAM**

**Banking: 05 Acts – 01 Ordinances – Hundreds of pieces of delegated legislation (i.e. decrees & circulars) (as of Jan 2021).**

- Law on credit institutions 2010 (amended 2017)**
- Law on State Bank of Vietnam 2010**
- Law on deposit insurance 2012 (amended 2013)**
- Law on negotiable instruments 2005**
- Law on prevention of money laundering 2012**
- Ordinance on foreign exchange 2006 (amended 2013)**

## **4.2. SOURCES OF FBL IN VIETNAM**

### **Public Budget:**

- Law on State budget 2015**
- Decree No.163/2016/NĐ-CP**
- Circular 342/2016/TT-BTC**
- Circular 81/2020/TT-BTC**

# **III. LEGAL RELATIONS OF BANKING AND FINANCE**

- Definition:**

**Legal relations of banking and finance are social relations arising from banking and finance activities**

# III. LEGAL RELATIONS OF BANKING AND FINANCE

- **Elements:**
  - + **Parties:** State, organizations, individuals
  - + **Object:** Interests that the parties aim at
  - + **Content:** Rights and obligations



# CHAPTER 2

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## LAW ON BANKING IN VIETNAM



**PART 1:**  
**LAW ON CREDIT INSTITUTIONS**

# **I. LAW ON CREDIT INSTITUTIONS**

- 1. Definition, Features and types of credit institutions**
- 2. Organization, governance and administration of credit institutions**
- 3. Establishment, granting licenses, special control, dissolution, bankruptcy of credit institutions**
- 4. Operation of credit institutions**

## II. LAW ON CREDIT INSTITUTIONS

### 1. Definition, Features and types of credit institutions

#### 1.1. Definition:

“Credit institution means an enterprise  
conducting one, some or all banking  
operations...”

( Article 4.1 – Law on credit institutions)



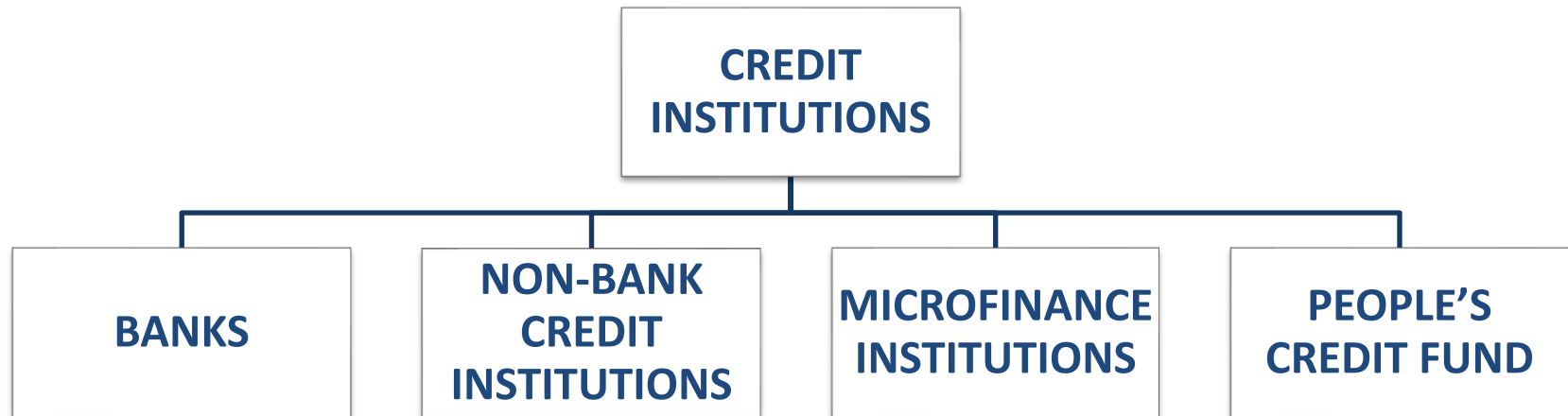
# **1. Definition, Features and types of credit institutions**

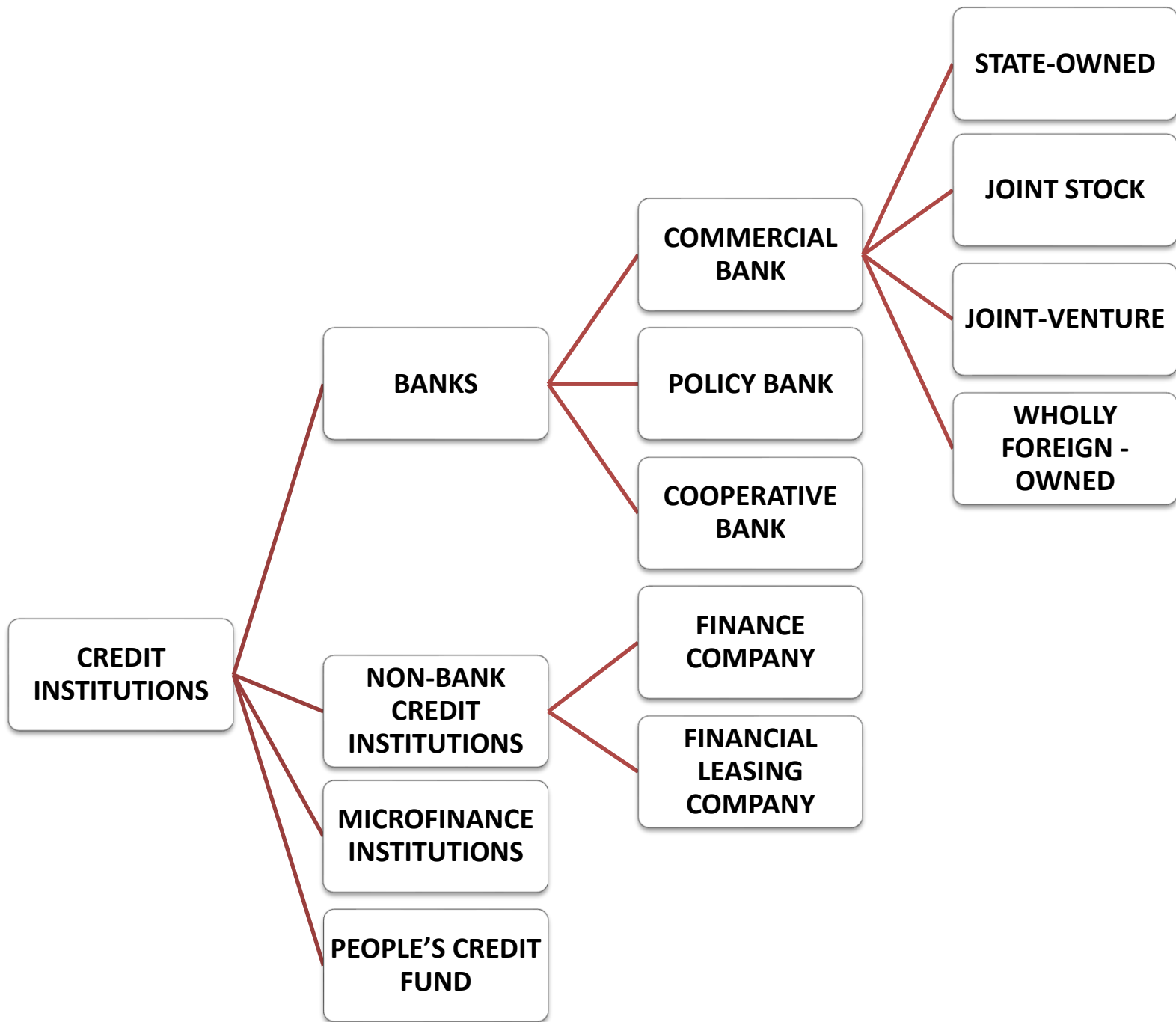
## **1.2. Features:**

- Economic organization with the purpose of conducting business**
- Having its own name, assets, stable office**
- Conducting banking operations is considered as regular main business activity.**
- Under the control of The state bank of Vietnam**

# 1. Definition, Features and types of credit institutions

## 1.3. Types:





## 1.3. TYPES OF CREDIT INSTITUTIONS

### 1.3.1. BANKS

“Bank means a type of credit institution which may **conduct all banking operations** under this Law.

Based on their characteristics and operation objectives, banks include **commercial banks, policy banks and cooperative banks.**”

## 1.3.1. BANKS

### a) COMMERCIAL BANKS

**“Commercial bank means a type of bank which may conduct all banking operations and other business activities under this Law for profit.”**

**(Article 4.3 – Law on credit institutions)**

## **COMMERCIAL BANK**

### **STATE-OWNED**

**Agribank; Global Petro Bank; Ocean Bank;  
Construction Bank**

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### **JOINT STOCK**

**31 Banks (up to 30/6/2020)**

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### **JOINT-VENTURE**

**Indovina; VN- Russia Joint venture bank**

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### **WHOLLY FOREIGN –OWNED**

**HSBC; Standard Charter; Hong Leong; ANZ;  
Sinhan; Public Bank; CIMB; Woori; UOB.**

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## **B. POLICY BANKS**

“The Government shall establish policy banks operating not for profit to implement the State’s socio-economic policies.”

**+ Vietnam Bank for Social Policies**

**+ Vietnam Development Bank**

## C. COOPERATIVE BANKS

- **Definition:**

“Cooperative bank means a bank of all people’s credit funds established by people’s credit funds and some legal entities by contributing capital under this Law for the main purposes of systematic link, financial support and capital balancing within the system of people’s credit funds.” (Article 4.7)



## 1.3.2. NON-BANK CREDIT INSTITUTIONS

### - Definition:

Non-bank credit institution means a type of credit institution which may **conduct one or some banking operations** under this Law, **except taking deposits of individuals and providing services of payment via client accounts.**

Non-bank credit institutions **include finance companies, financial leasing companies and other non-bank credit institutions.**

# FINANCE COMPANY

- **Definition:**

“ The finance company constitutes a type of non-bank credit institution, with function of using equity capital, mobilized capital and other capital sources to provide loans, make investment; provide services on financial or monetary consultancy and provide some other services under the provisions of law, but not to provide payment services, not to receive under-one year- deposits.”

**(Decree 79/2002/ND-CP on the organization and operation of Finance Company)**

# **FINANCE COMPANY**

- Operations of Finance company:**
- + Article 108→116, Law on credit institutions**
- + Decree No. 81/2008/NĐ-CP; NĐ 79/2002/NĐ-CP**

# FINANCIAL LEASING COMPANY

**Financial lease** means **the medium-term and long-term credit activities** through the lease of machinery, equipment and transport means and other movables on the basis of lease contracts between the lessors and the lessees. The lessors undertake to purchase machinery, equipment, transport means and other movables at the requests of the lessees and hold the ownership over the leased assets. The lessees use the leased assets and pay rents therefor during the whole leasing term as agreed upon by the two parties.

# FINANCIAL LEASING COMPANY

## - **Definition:**

“Financial leasing company means a type of finance company whose principal operation is financial leasing under this Law.”

## - **Operations:**

- + Law on credit institutions 2010: Art 112-116
- + Decree No. 95/2008/NĐ-CP
- + Decree No. 16/2001/NĐ-CP

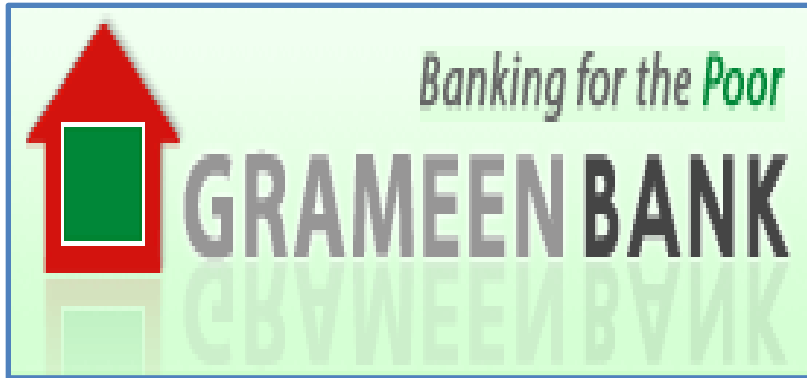
# 1.3.3. MICROFINANCE INSTITUTION

- **Definition: Article 4.5**

**Microfinance institution** means a type of credit institution which mainly **conducts some banking operations** to **meet the needs of low-income individuals and households and super small-sized enterprises.**

- **Operation: Article 119 → 122**

# 1.3.3. MICROFINANCE INSTITUTION



**Muhammad  
Yunus**



## 1.3.4. PEOPLE'S CREDIT FUND

### - Definition:

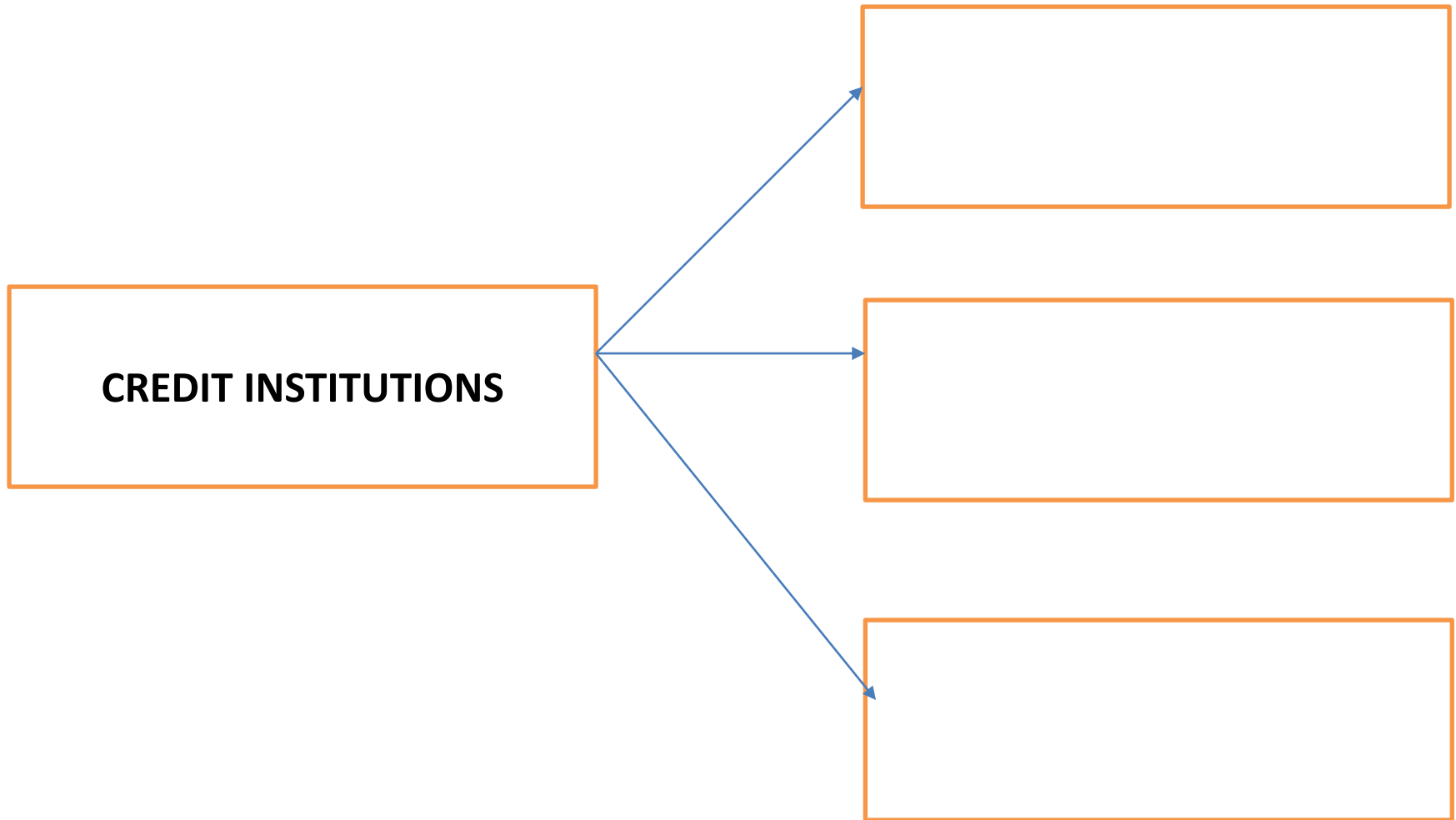
People's credit fund means a credit institution **established voluntarily** by legal entities, individuals and households as a cooperative to conduct some banking operations under this Law and the Law on Cooperatives for the **main purpose of mutual assistance in production and business development and life.**

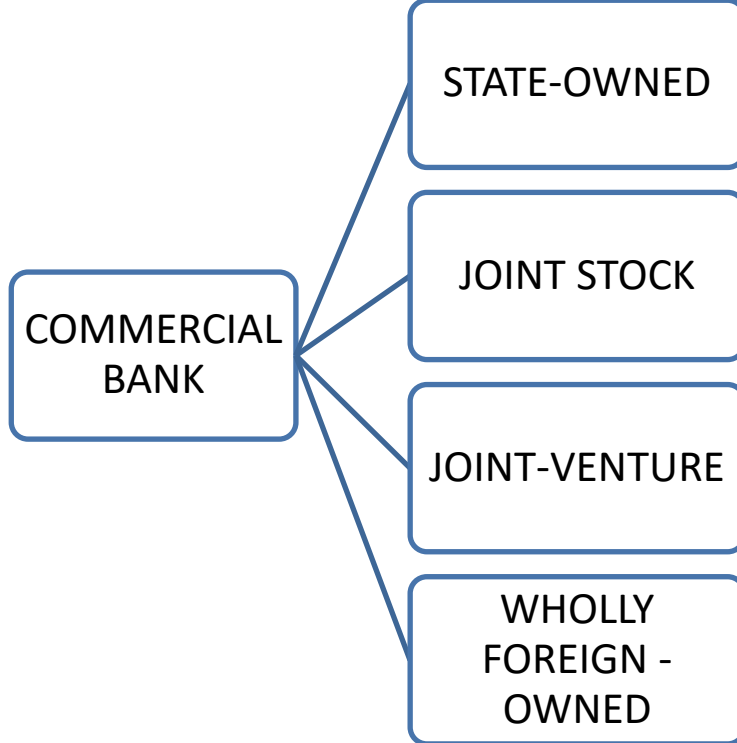


## **II. LAW ON CREDIT INSTITUTIONS**

- 1. Definition, Features and types of credit institutions**
- 2. Organization, governance and administration of credit institutions**
- 3. Establishment, granting licenses, special control, dissolution, bankruptcy of credit institutions**
- 4. Operation of credit institutions**

# ORGANISATIONAL FORMS OF CREDIT INSTITUTIONS





COOPERATIVE BANK

DOMESTIC NON-BANK CREDIT INSTITUTIONS

MICROFINANCE INSTITUTIONS

PEOPLE'S CREDIT FUND

**1-MEMBER LLC**

**JSC**

**LLC**

**COOPERATIVE**

# **JOINT-STOCK CREDIT INSTITUTION**

## **1. CHARACTERISTICS**

**A. MEMBER**

**B. MEMBER LIABILITY**

**C. ABILITY TO ISSUE SHARES**

**D. RESTRICTION ON TRANSFER OF SHARES**

## **2. TYPES OF SHARES**

## **3. MANAGEMENT STRUCTURE**

# **JOINT-STOCK CREDIT INSTITUTION**

## **1. CHARACTERISTICS**

### **A. MEMBER**

**- INDIVIDUAL, ORGANISATION**

**- MIN:       , MAX:                   (EXCEPTIONS: ART 55.6).**

### **B. MEMBER LIABILITY:**

### **C. ABILITY TO ISSUE SHARES:**

### **D. RESTRICTION ON TRANSFER OF SHARES: ART 56**

## **2. TYPES OF SHARES (Art 52)**

**2 TYPES:**

**ORDINARY SHARES: MANDATORY**

**PREFERENCE SHARES: OPTIONAL**

**- Each share of the same type must entitle its holder to the same rights, obligations and interests.**

## **2.TYPES OF SHARES**

### **A. ORDINARY SHARES**

- OWNER: INDIVIDUAL/ ORGANISATION**
- VOTING: 1 ORDINARY SHARE = 1 VOTE**
- CANNOT BE CONVERTED INTO PREFERENCE SHARES**

## **2.TYPES OF SHARES**

### **B. PREFERENCE SHARES**

- + Voting preference shares;**
- + Dividend preference shares;**



## **2. TYPES OF SHARES**

### **VOTING PREFERENCE SHARES**

- PREFERENCE: MORE VOTES THAN A ORDINARY SHARE**

- 1 Voting Preference Share = n VOTE (n > 1, CHARTER)**

**(n: THE QUANTITY OF VOTES)**

# VOTING PREFERENCE SHARE

- 'A voting preference shareholder carries more votes than an ordinary one'?
- VOTE CALCULATION: 3 Elements
  - + TYPE OF SHARES ( VOTING PREFERENCE OR ORDINARY)
  - + THE QUANTITY OF SHARES
  - +  $n = ?$

# **VOTING PREFERENCE SHARE**

**1. OWNER: FOUNDING SHAREHOLDERS + ORGANISATIONS AUTHORIZED BY THE GOVERNMENT (ART 116.1)**

**+ FOUNDING SHAREHOLDER: VALID FOR 3 YEARS + CONVERTED INTO ORDINARY ONES**

**+ ORGANISATIONS AUTHORISED: UNLIMITED**

**→ why?**

**2. RESTRICTIONS: NON-TRANSFERABLE**

# **DIVIDEND PREFERENCE SHARE**

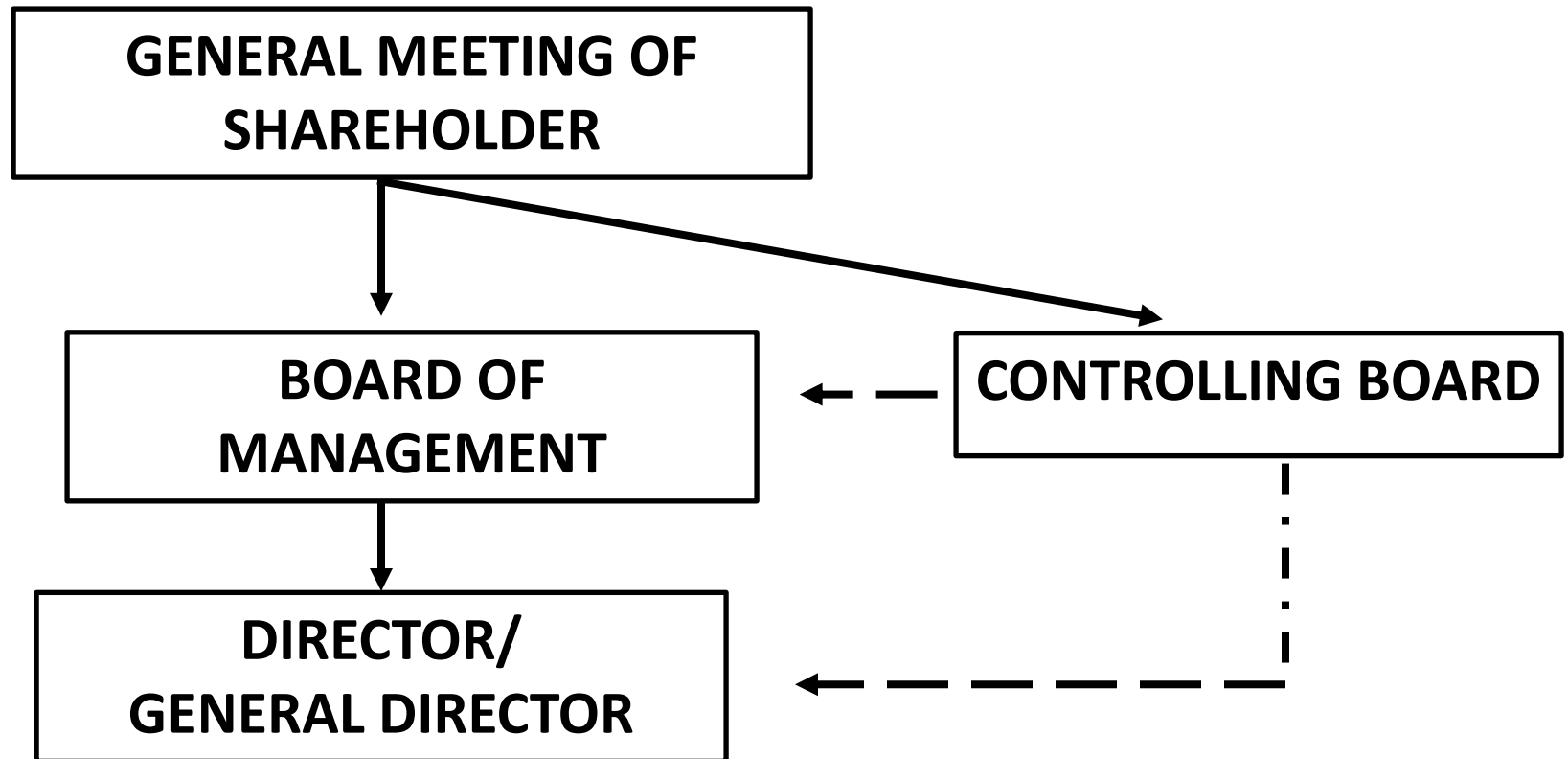
## **-PREFERENCE:**

**PAID AT A RATE HIGHER THAN THAT PAID FOR AN ORDINARY STOCK OR AT AN ANNUAL FIXED RATE.**

## **-RESTRICTION:**

**- HAVE NO RIGHTS TO VOTE, ATTEND THE GMS, NOMINATE CANDIDATE TO THE BOARD OF MANAGEMENT, CONTROLLING BOARD.**

### 3. MANAGEMENT STRUCTURE (Art 32)



# **GENERAL MEETING OF SHAREHOLDER (ART 59)**

- POSITION: HIGHEST DECISION-MAKING BODY**
- COMPRISE ALL SHAREHOLDERS HAVING THE  
RIGHT TO VOTE**
- RIGHTS AND OBLIGATIONS: ART 59.2**

# **BOARD OF MANAGEMENT**

**1. POSITION: THE BODY MANAGING THE COMPANY  
- FULL COMPETENCE TO MAKE DECISIONS IN THE  
NAME OF THE BANK...**

**2. QUANTITY:**

$$5 \leq n \leq 11$$

**3. TERM OF OFFICE:**

**+ MEMBERS OF B.M: UP TO 5 YEARS WITHOUT TERM  
LIMIT**

**4. RIGHTS AND OBLIGATIONS: ART 63**

**5. CRITERIA FOR BEING A B.M MEMBER: ART 50**



## **BOARD OF MANAGEMENT**

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### **6. ADOPTING RESOLUTIONS OF THE B.M**

- 1 MEMBER OF THE B.M = 1 VOTE**

- PRINCIPLE OF VOTING**

- + Majority Rule**

- + In the event of a Tie vote: The vote of the chairperson is decisive**





# **DIRECTOR/GENERAL DIRECTOR**

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- RIGHTS AND OBLIGATIONS: ART 45**
- CRITERIA: ART 162.5**

# **MULTI-MEMBER LIMITED LIABILITY CREDIT INSTITUTION**

## **1. CHARACTERISTICS**

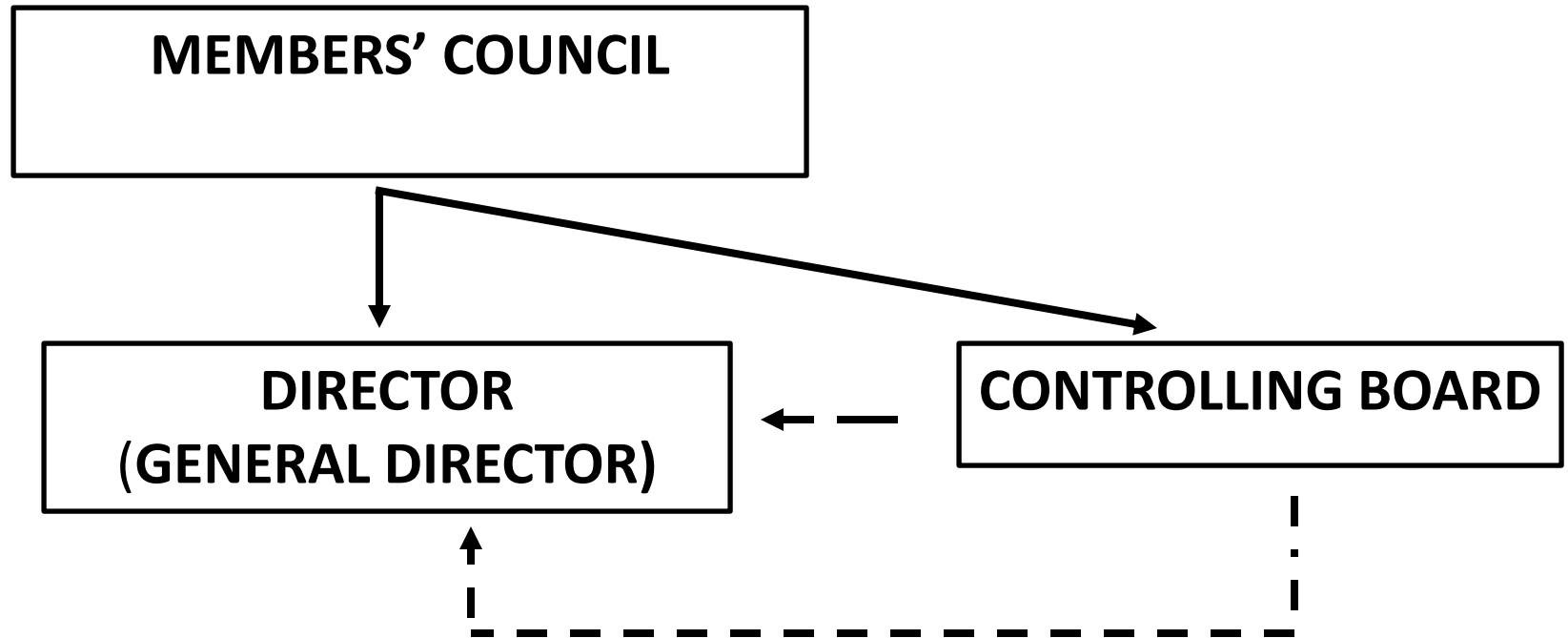
### **A. MEMBER**

- INDIVIDUAL, ORGANISATION?**
- MIN: MAX:**

### **B. MEMBER LIABILITY:**

### **C. RESTRICTION ON TRANSFER OF CAPITAL:**

# MANAGEMENT STRUCTURE: Art 32.2



# 4. Operation of credit institutions

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graph TD; A[4.1. CAPITAL MOBILIZATION] --- B[4.2. CREDIT EXTENSION]; B --- C[4.3. BANKING SERVICES];
```

**4.1. CAPITAL MOBILIZATION**

**4.2. CREDIT EXTENSION**

**4.3. BANKING SERVICES**

# 4.1. CAPITAL MOBILIZATION

- **Deposit taking (Art 13.4)**
  - Demand deposit
  - Time deposit
  - Savings deposit
  - Issuance of deposit certificate, promissory note, bills
- **Borrowings**
  - + From other credit institutions (Art 100; 108.1.c; 112.3; 119.2)
  - + From SBV
  - Refinancing (Art 11)
  - Special loan (Art 24.2)

# DEPOSIT TAKING

TYPES OF CREDIT INSTITUTIONS	DEPOSIT TAKING
BANKS	- NO LIMITATIONS
NON-BANK CREDIT INSTITUTIONS	- Not receiving deposit from individuals
MICRO-FINANCE INSTITUTION	- Only VND deposits
PEOPLE'S CREDIT FUND	- Only VND deposits - Not receiving deposits for payment purpose

# **DEPOSIT INSURANCE**

- **Legislation: Law on deposit insurance 2012**
- **Definition**
- **Objectives**
- **Insurer**
- **Insurance purchasing organization**
- **Insured depositors**
- **Types of Deposit**
- **Deposit insurance premium**

# DEPOSIT INSURANCE OPERATION

- **Definition:**

*Deposit Insurance* is a guarantee for repayment of deposits to the insured persons of deposit within the limit of premium payment when the deposit insurance participating organizations fall into the state of inability to repay deposits to the depositors or go bankrupt.



# DEPOSIT INSURANCE OPERATION

- **Objectives:**

- + protect the legitimate rights and interests of depositors
- + Contribute to maintain the stability of the system of credit organizations
  - + Ensure the safe and healthy development of the banking operation.

# DEPOSIT INSURANCE OPERATION

- **Deposit insurer:**

**Deposit Insurance of Vietnam (DIV)**


→ the State-run financial organizations which **operate for non-profit purposes**

# DEPOSIT INSURANCE OPERATION

- Who purchases deposit insurance?

+ Credit Institutions

+ Branch of foreign banks



that are entitled to  
receive deposits of  
individuals.

# DEPOSIT INSURANCE OPERATION

- Depositors that shall be insured: **Individuals**

## **Exceptions:**

- The amount deposited by an individual who owns more than 5% of the charter capital in the credit organization in the same organization
- The amount deposited by a member of the Board or Board of Directors or control Board or the General Director, Director, Deputy General Director, Deputy Director of the credit organization in the same organization
- The amount deposited by the General Director, Director, Deputy General Director, Deputy Director of the branch of a foreign bank in the same branch.

# INSURED DEPOSIT

Insured deposits shall be **deposits in Vietnam Dong**

→ **Why?**

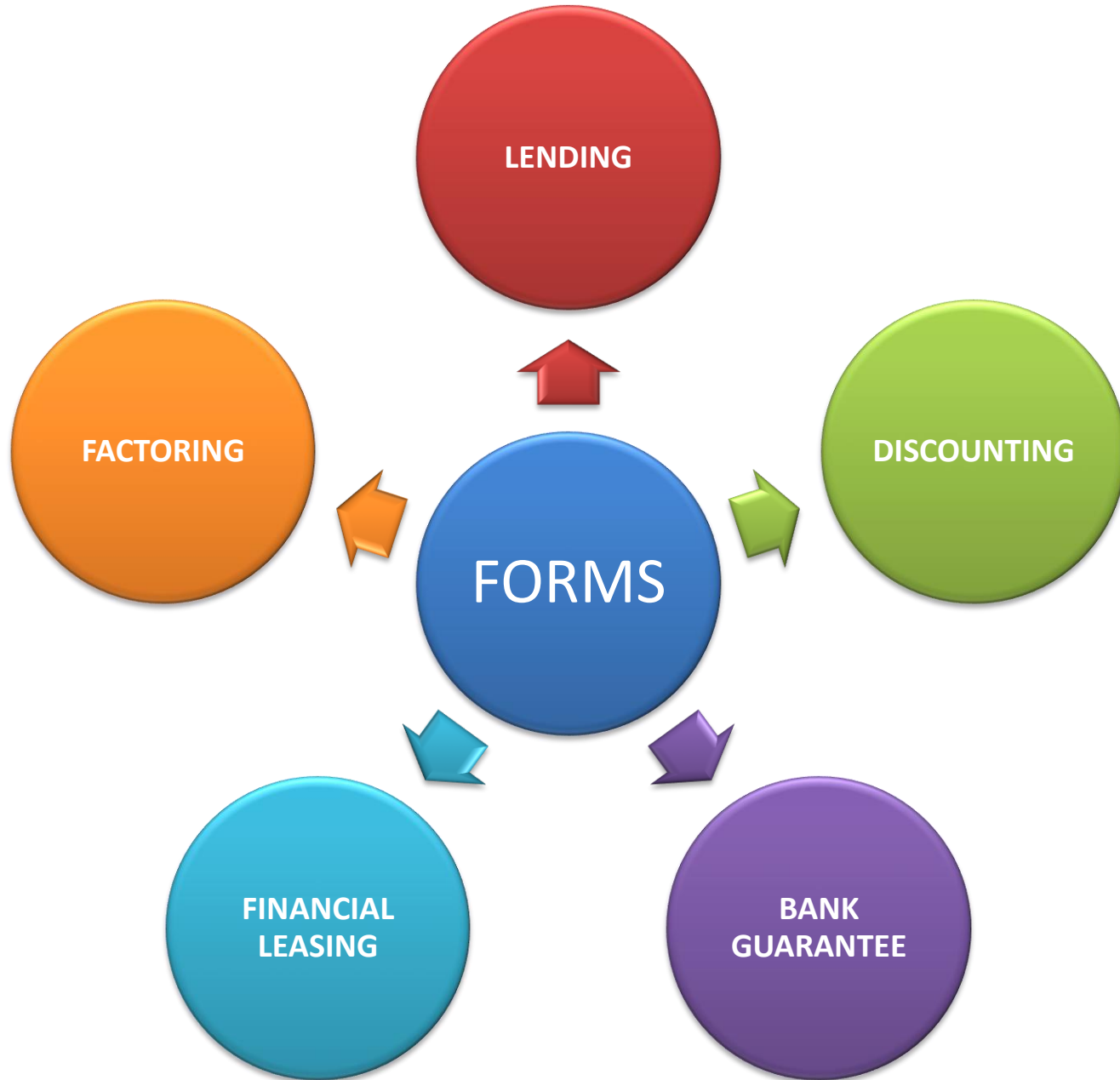
**Valuable papers: Promissory notes, bills...?**

# INSURANCE MONEY

The maximum insurance money amount to be paid to all deposits (including both principal and interest) of an individual at the deposit insured shall be decided by The Prime Minister based on the request of the State Bank of Vietnam.

**Decision No. 21/2017/QĐ-TTg: 75 mil VND**

## 4.2. CREDIT EXTENSION



## **4.2.1. LENDING**

- Principles of lending:**
  - + Using the borrowed funds for the purpose as agreed in the credit contract**
  - + Repayment of the principals and interests on due dates as agreed in the credit contract**
  - + Principle of risk diversification**



## 4.2.1. LENDING

**1**

Using the borrowed funds for the purpose as agreed in the credit contract

**2**

Repayment of the principals and interests on due dates as agreed in the credit contract

**3**

Principle of risk diversification

# Using the borrowings for the purpose as agreed in the credit contract

- **Legal basis: Art 4.2- Circular 39/2016/TT-NHNN**
- **Customer loan and business loan**
- **Sanction:**

The credit institution shall be accorded the right to **terminate a loan and collect debt prior to the payment due date** under terms and conditions of a loan agreement when it has established that the customer provided unauthentic information or violated terms and conditions of a loan agreement and/or loan guarantee contract. (Art 21 – Circular 39/2016/TT-NHNN)

# Repayment of the principals and interests on due dates as agreed in the credit contract

- Legal basis: Art 4.2- Circular 39/2016/TT-NHNN
- Sanction:
  - + Debt restructuring
    - Adjustment to a **repayment period**
    - Extension of a **loan term**
  - + Interest rate on delinquent debt

## **Loan term**

Loan term refers to a period of time starting on the day following the day when a credit institution begins to disburse the borrowed fund to a customer and ending on the day when that customer has to repay principal and interest amounts in full as agreed upon between the credit institution and customer.

## **Repayment period**

Repayment period refers to a set periods of time constituting the agreed loan term and, at the end of each of these time periods, a customer is obliged to repay loan principal and/or interest amounts in part or in whole to a credit institution.

## **Art 13.4 – Circular No. 39/2016/TT-NHNN**

If a customer fails to repay or fully repay the agreed amount of loan principal and/or interest at the payment due date, the customer shall be obliged to repay loan interest as prescribed hereunder:

- a) The amount of interest on principal is charged at the agreed interest rate in proportion to the period during which repayment of that principal due has not been made;
- b) If a customer fails to make due payment of interest as prescribed by Point a of this Clause, that customer must pay late payment interest charged at the interest rate agreed upon between the credit institution and customer which is not allowed to exceed 10%/year interest rate on the outstanding balance of late payment interest in proportion to the period of late payment;
- c) Where a debt has become delinquent, the customer owing a delinquent debt must pay interest on the outstanding amount of principal which is overdue in proportion to the period of late payment for which the interest rate charged is not allowed to exceed 150% of the interest rate charged on due repayment that is determined upon the date of such debt becoming delinquent.

# PRINCIPLE OF RISK DIVERSIFICATION

- **Cases which are prohibited from credit extension: Art 126**
- **Limit on credit institution: Art 127**
- **Limit on the credit extension: Art 128**
  - + **In excess of the limits → 2 cases:**
    - **Syndicated credit**
    - **Special case**

# LIMIT ON CREDIT EXTENSION

- Commercial bank, foreign bank branch, people's credit fund or microfinance institution:

- + 15% of **its own capital**

- + 25% of **its own capital** ( including affiliated persons)

- Non-bank credit institution:

- + 25% of **its own capital**

- + 50% of **its own capital** (including affiliated persons)

# **DISCUSSION**

**Determine if Mr A is permitted to borrow money from bank B:**

- 1. A's brother is the chairman of Management's Board of Bank B.**
- 2. A is the vice director of Bank B**
- 3. A's son is a member of the Board of Controllers of Bank B**
- 4. A is the shareholder holding 15% of the voting share capital of Bank B**



# DISCUSSION

In April 2013, XYZ wants to borrow from ABC commercial bank VND 400 billion to invest in export processing plant. The ABC's equity is VND 4000 billion. In order to secure the payment, XYZ has two following options:

Option 1: Ask Mr TYPN - deputy Director of ABC to guarantee.

Option 2: Ask Mr Bean – shareholder holding 15% of the voting share capital of ABC to mortgage his land use right.

Analyze two options to determine if they are legal.

# DISCUSSION

**A Co.,Ltd, represented by Mrs X – Director, plan to borrow VND 5 billion from Finance company B whose equity is VND 700 billion. The security property is an apartment of VND 10 billion, co-owned by Mrs X.**

- 1. Given that Mrs X's husband is a member of the Board of Controller of company B, determine if B is permitted to grant the loan to A.**
- 2. The security property is changed into the B's stock of VND 20 billion owned by company A. Determine if B is permitted to grant the loan to A.**
- 3. A plans to issue bonds to mobilize the capital of VND 5 billion. Is B entitled to purchase A's bonds?**

# **LIMIT ON CREDIT EXTENSION**

**Distinguish:**

- 1. Legal capital**
- 2. Own capital**
- 3. Charter capital**
- 4. Business capital**

**Own capital** comprises the actual value of a credit institution's **charter capital** or a foreign bank branch's allocated capital, **reserve funds** and **other certain liabilities** as stipulated by the State Bank of Vietnam

# **CREDIT CONTRACT**

## **1. Definition**

**A credit contract is an agreement between credit institutions and customers to establish rights and obligations, under which credit institutions lend an amount of money to the customers in the principle of principal and interest repayment to be fully made.**

# **CREDIT CONTRACT**

## **1. Features**

**+ Parties**

**+ Forms of contract**

**+ Objects**

# **PARTIES TO THE CREDIT CONTRACT**

**- LENDING CREDIT INSTITUTIONS:**

# **PARTIES TO THE CREDIT CONTRACT**

- **BORROWING CUSTOMERS:**
  - Legal entities established and operated within the territory of Vietnam and/or those established abroad and legally operated within the territory of Vietnam;
  - Vietnamese and/or foreign nationals.



# CONDITIONS FOR LOAN

1. If that customer is a legal person, it must have civil capacity in accordance with the civil law jurisdictions. If that customer is a natural person, (s)he must be aged exactly 18 years or older and have full capacity for civil conduct in accordance with the civil law jurisdictions, or must be aged between exactly 15 and nearly 18 years and must not have his/her incapacity or restricted capacity for civil conduct as provided by laws.
2. Demonstrate that customer's demands for a loan to be used for legally accepted purposes.
3. Establish that customer's plan for effective use of borrowed fund.
4. Prove the customer's sound financial capability to repay debt owed.
5. Where that customer obtains a loan from a credit institution on which the interest rate is prescribed by Clause 2 Article 13 hereof, it shall be rated transparent and healthy in its financial status by a credit institution.

# **LEGAL ISSUES ON SECURITY FOR LOAN**

## **SECURITY WITHOUT ASSETS**

- Pledge of trust
- Guaranty

## **SECURITY WITH ASSETS**

- Pledge
- Mortgage
- Pledge, mortgage of the third party's assets

Pledge of property means the delivery by one party (hereinafter referred to as the *pledgor*) of property under its ownership to another party (hereinafter referred to as the *pledgee*) as security for the performance of an obligation.

(Art 309 – Civil code)

- Mortgage of property means the use by one party (hereinafter referred to as the *mortgagor*) of property under its ownership as security for the performance of an obligation to the other party (hereinafter referred to as the *mortgagee*) without transferring such property to the mortgagee.

(Art 317 – Civil code)

Guarantee means an undertaking made by a third person (hereinafter referred to as the *guarantor*) to an obligee (hereinafter referred to as the *beneficiary*) to perform an obligation on behalf of an obligor (hereinafter referred to as the *principal*) if the obligation falls due and the principal fails to perform or performs incorrectly the obligation. (Art 335 – Civil code)

- **Pledge of trust guaranty by socio-political organizations**

A socio-political organization at the grassroots level may provide a fidelity guarantee in order that poor individuals and households are able to borrow sums from credit institutions for purposes of production, business or consumption in accordance with law.

# PLEDGING/MORTGAGE CONTRACT

- **Form:**
  - + Made in writing
  - + Be notarized or certified (some cases)
  - + Registered with security transaction (some cases)

# RELATION BETWEEN SECURITY CONTRACT AND CREDIT CONTRACT

- When a contract involving secured obligations is invalidated but the contracting parties have not yet performed it, the security transaction shall terminate. If the contract involving secured obligations has been partially or wholly performed, the security transaction shall not terminate, unless otherwise agreed upon.
- Unless otherwise agreed upon, invalid security transaction shall not terminate the contract involving the secured obligations.



## 4.2.2 DISCOUNTING

- Distinction between discounting valuable papers of SBV and credit institutions
- + Objectives
- + Discounted objects
- + Discounting party

## 4.2.3. BANK GUARANTEE

- Definition: Art 4.18
- Types
- Forms

## 4.2.4. FINANCIAL LEASING

- Definition
- Features
- Distinction between financial leasing and lending

## 4.2.5. FACTORING

- Definition: Art 4.17
- Features
- Conditions

# PART 2: LAW ON THE STATE BANK OF VIET NAM



## **II. LAW ON VIETNAM STATE BANK**

- 1. HISTORY**
- 2. DEFINITION**
- 3. FEATURES**
- 4. FUNCTION**
- 5. STRUCTURE OF ORGANIZATIONAL MANAGEMENT**
- 6. OPERATIONS OF THE STATE BANK**

# 1. HISTORY & DEVELOPMENT OF BANKING IN VIETNAM

**BEFORE 1945**

**FROM 1945 - 1987**

**FROM 1987**

**ONE – TIER  
BANKING SYSTEM**



**TWO – TIER  
BANKING SYSTEM**

# MODEL 1

National  
Assembly

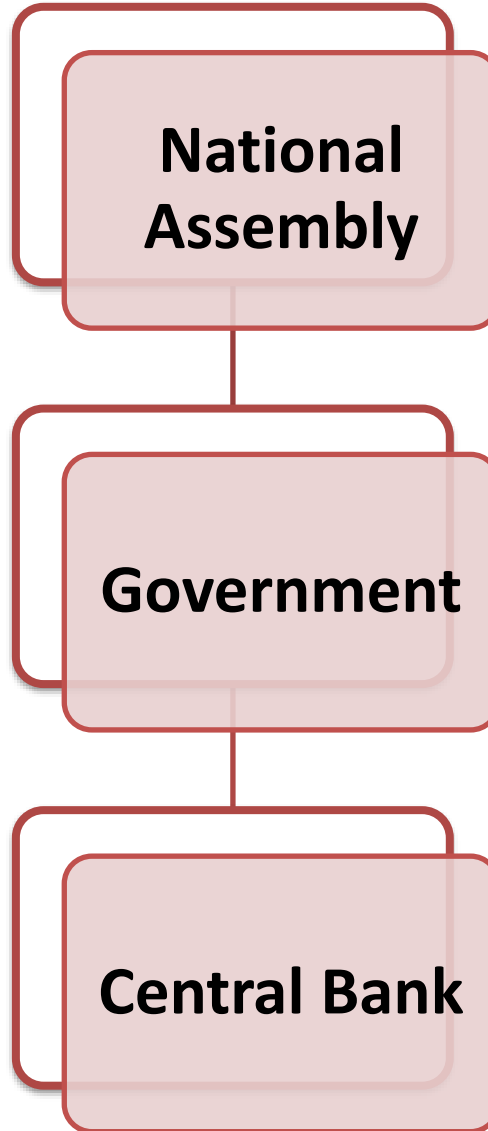
```
graph TD; NA[National Assembly] --- BC[Central Bank]; NA --- GO[Government]
```

Central  
Bank

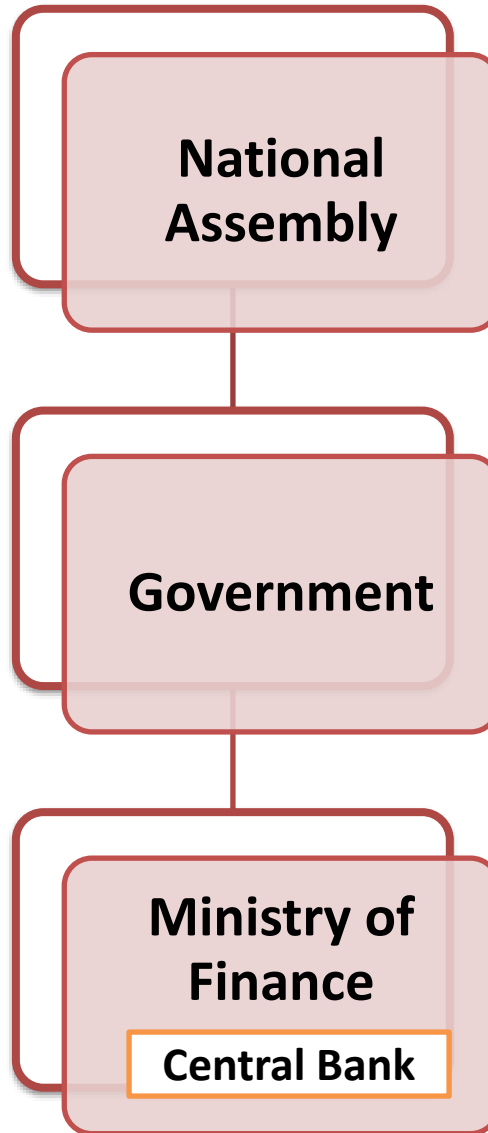
Government



# MODEL 2



# MODEL 3



## 2. DEFINITION

The State Bank of Vietnam is a ministerial-level agency of the Government and the central bank of the Socialist Republic of Vietnam.

(Article 2.1 – Law on the State bank of Vietnam)

## **3. KEY FEATURES**

**3.1. The State Bank is a legal entity**

**3.2. The purpose of the State bank:**

**Article 4.1 – Law on the State bank of Vietnam**

# OBJECTIVES OF CENTRAL BANKS

“In accordance with Article 105(1) of this Treaty, the primary objective of the ESCB shall be to **maintain price stability**. Without prejudice to the objective of price stability, it shall support **the general economic policies** in the Community with a view to contributing to the achievement of the objectives of the Community”

**(Art 2- Protocol on the statute of the ESCB and of the ECB)**

**"The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long-run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."**

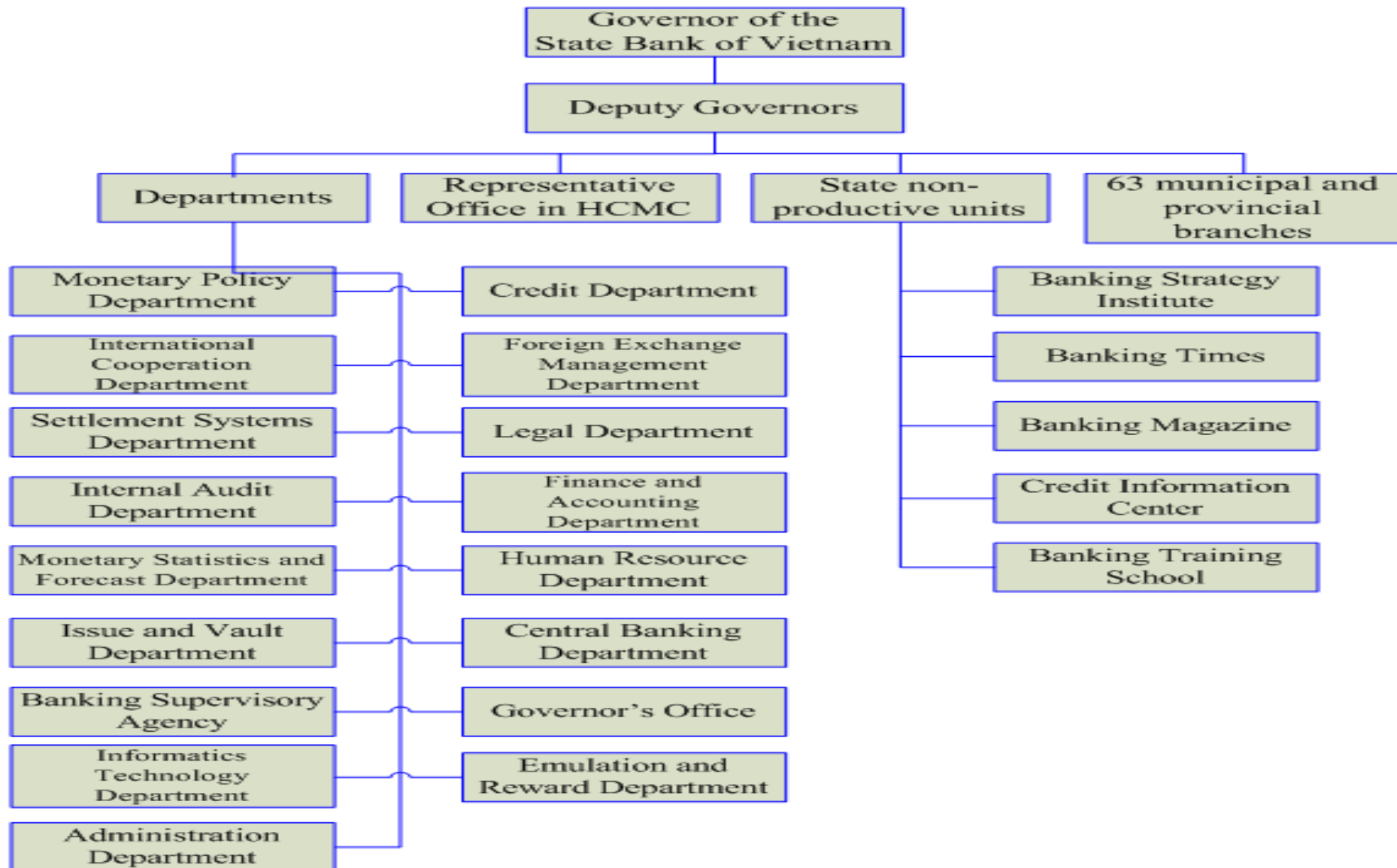
## 4. FUNCTIONS

The State Bank performs **the state management of monetary, banking and foreign exchange operations** and performs the **function of a central bank in issuing money, a bank of credit institutions and a provider of monetary services for the Government.**

**(Article 2.3 – Law on the state bank of Vietnam)**

# 5. Organization of SBV

## Organization Chart of the State Bank of Vietnam



# **6. OPERATIONS OF THE STATE BANK**

**6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY**

**6.2. ISSUANCE OF BANKNOTES AND COINS**

**6.3. LENDING, GUARANTEE AND PROVISION OF ADVANCES FOR THE STATE BUDGET**

**6.4. PAYMENT AND TREASURY OPERATIONS**

**6.5. MANAGEMENT OF FOREIGN EXCHANGE AND FOREIGN EXCHANGE OPERATIONS**

**6.6. INFORMATION AND REPORTING**



# 6. OPERATIONS OF THE STATE BANK

## 6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY

### - Definition:

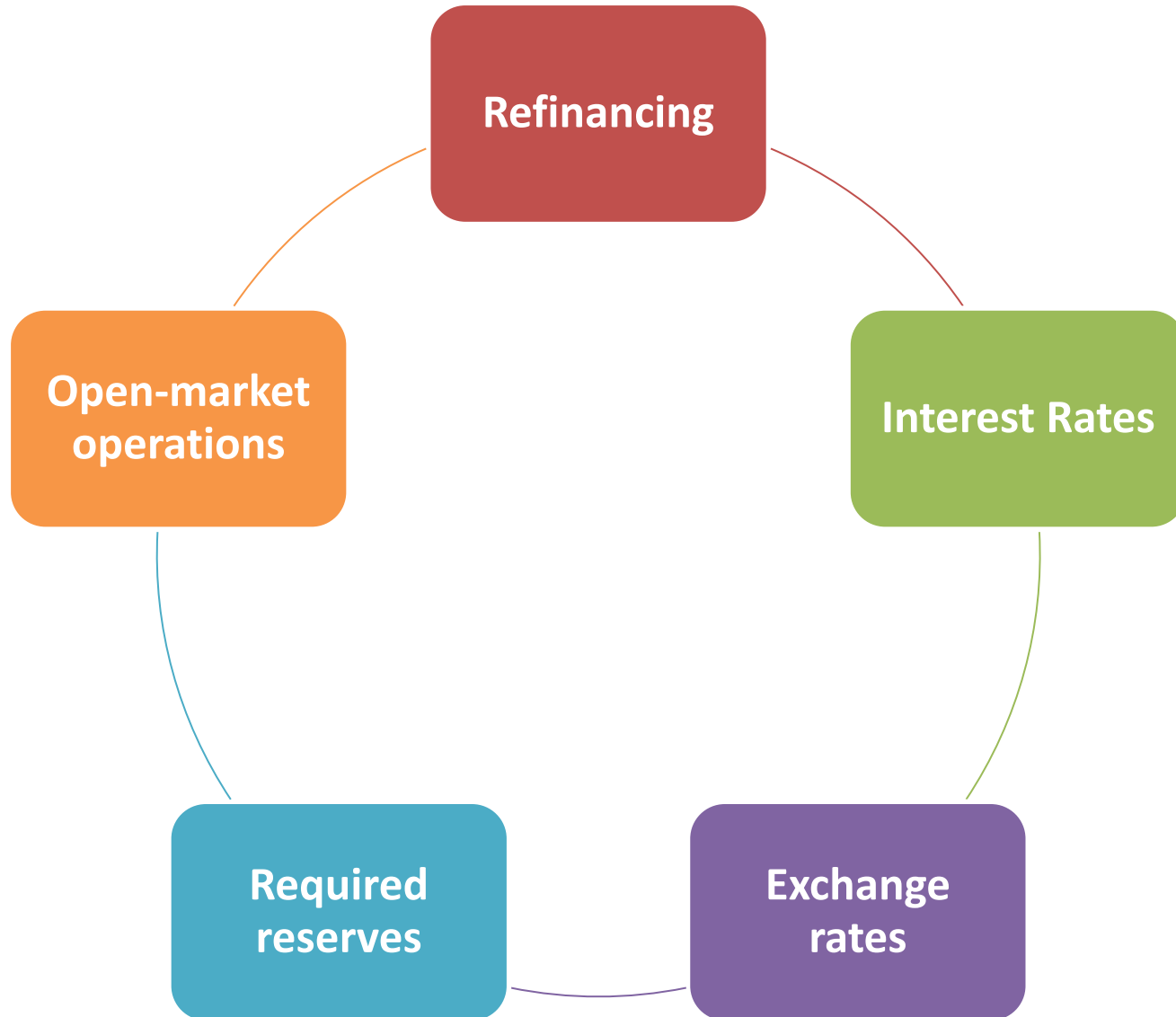
The national monetary policy consists of national-level decisions on monetary affairs made by **competent state agencies**, including decisions on **the objective of currency value stability which is denoted by the inflation rate** and decisions **on the use of tools and measures to obtain the set objective.**

# **6. OPERATIONS OF THE STATE BANK**

## **6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY**

- Tools for the implementation of the national monetary policy:**
  - + Competence**
  - + Classification**

# 6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY



# 6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY

## 6.1.1. REFINANCING

### - Definition:

Re-financing means a form of extending credits by the State Bank, aiming to provide **short-term capital and means of payment for credit institutions.**

(Article 11.1 – Vietnam State Bank Law 2010)

# 6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY

## 6.1.1. REFINANCING

### - Forms of refinancing:

+ Lending secured by the mortgage of valuable papers

→ (Circular No. 17/2011/TT-NHNN)

+ Discounting valuable papers

→ (Circular No. 01/2012/TT-NHNN)

+ Other forms

# **VALUABLE PAPERS**

- Certificate of land use rights?**
- Certificate of capital contribution?**
- Passbooks?**
- Lucky tickets?**

# VALUABLE PAPERS

“Valuable paper means a proof evidencing the **debt-payment obligation of the issuer** towards the owner in a **certain duration** under the **interest payment condition** and other conditions”

**( Article 6.8 – Law on the State Bank of VN)**

# **Decision No.11/QĐ-NHNN**

**1. Valuable papers to be used in transactions with the State Bank:**

**1.1. State Bank's bills.**

**1.2. Government's bonds, including:**

**a. Treasury bills;**

**b. Treasury bonds;**

**c. Central work bonds;**

**d. Government's bonds for construction of Motherland.**

**đ. Government's bonds issued by Vietnam Development Bank (formerly called Fund for Development Assistance) under the designation by the Prime Minister.**

**1.3. Bonds guaranteed by the Government, including:**

**a. Bonds issued by Vietnam Development Bank, of which the payment of 100% of the principal, interest amount is guaranteed by the Government at the maturity;**

**b. Bonds issued by Bank for Social Policy issued, of which the payment of 100% of the principal, interest amount is guaranteed by the Government at the maturity.**

**1.4. Local Government's Bonds issued by Hanoi People's Committee and Hochiminh People's Committee.**



# Lending loans secured by the mortgage of valuable papers

- **Definition:**

Mortgage of valuable paper means the State Bank **keeps the original valuable paper**, or requires a credit institution to transfer the valuable paper to the State Bank's account opened at the Securities Exchange Center **to secure the debt repayment obligation for one or more mortgage loans of that credit institution at the State Bank**

## **Criteria of valuable paper to be mortgaged:**

- a. To be entitled to transfer;
- b. To be subject to legal ownership of credit institutions requesting for loan
- c. Its remaining period is at least equal to the borrowing period;
- d. It is not the valuable paper issued by the credit institution which applies for loan

# DISCOUNTING VALUABLE PAPERS

- **Definition:**

Discount of valuable papers means an operation whereby the State Bank **purchases** valuable papers which are still in their payment terms.

# DISCOUNTING VALUABLE PAPERS

## Discount forms

1. **Discount for the whole remaining term of valuable papers:** The State Bank definitely purchases valuable papers from banks at the discount prices.
2. **Time discount:** The State Bank makes the discount and concurrently request the banks to commit to repurchase the whole volume of such valuable papers after a given period of time. The maximum discount duration is 91 days.

# DISCOUNTING VALUABLE PAPERS

## Criteria of valuable paper to be discounted:

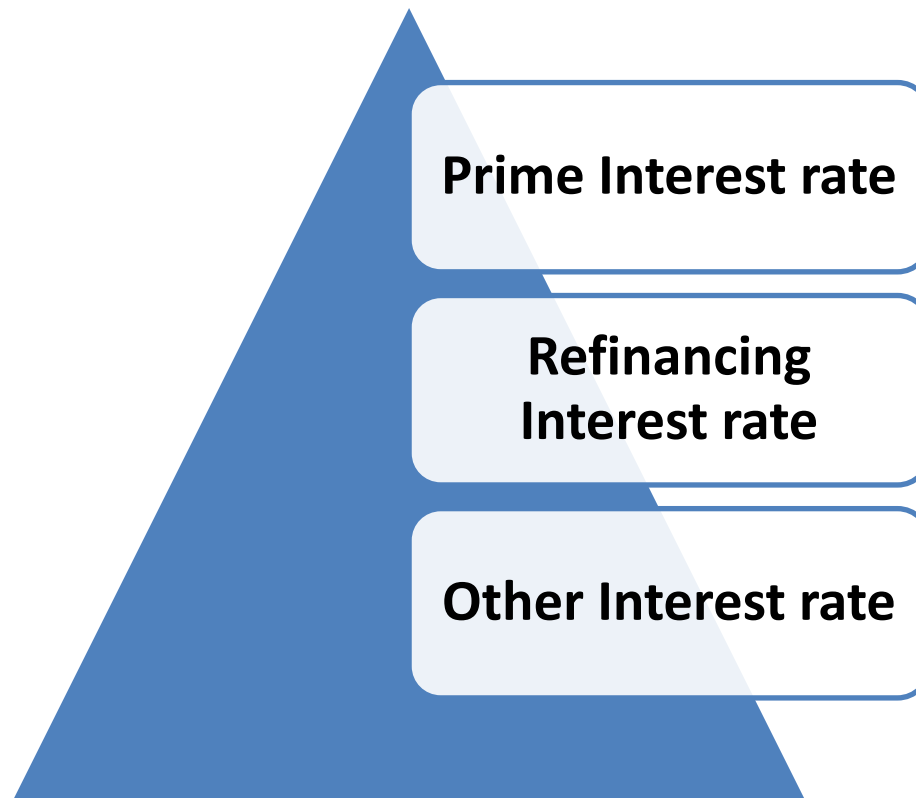
- a. To be issued in VND
- b. To be entitled to transfer;
- b. To be subject to legal ownership of credit institutions requesting for loan
- d. It is not the valuable paper issued by the credit institution which applies for loan
- e. The maximum remaining term of valuable papers is 91 days for discount for the whole remaining term of valuable papers:
- c. The remaining term of valuable papers must be longer than the State Bank's discount duration for time discount

# DISCUSSION

**Distinguish between mortgage of valuable papers and discounting valuable papers**

# **6.1. IMPLEMENTATION OF THE NATIONAL MONETARY POLICY**

## **6.1.2. INTEREST RATES: ARTICLE 12**



# PRIME INTEREST RATE

## - Law on The State Bank of VN 1997:

“Prime interest rate is the interest rate announced by the State Bank to serve as basis for credit institutions to determine their business interest rates”



# PRIME INTEREST RATE

## - Civil Code 2005:

### ***“Article 476.- Interest rate***

1. The lending interest rate shall be agreed upon by the parties, but must not exceed 150% of the prime interest rate announced by the State Bank for loans of the corresponding type.
2. In cases where the parties have agreed on the payment of interest for a loan but have not clearly determined an interest rate or have a dispute over an interest rate, the basic interest rate announced by the State Bank corresponding to the borrowing term at the time of repayment of the debt shall be applied.

# INTEREST RATE

“The credit institutions shall provide loan in Vietnamese dong **at the agreement interest rate to their borrowers** in order to meet capital demand of project, plan of production, business, service, development investment and for efficient life.”

***Art 1- Circular 12/2010/TT-NHNN***

# CIVIL CODE 2015

1. The rate of interest for a loan shall be as agreed by the parties.

Where the parties have agreed on the interest rate, such agreed rate must not exceed twenty (20) per cent per annum of the loan, unless otherwise provided by other relevant laws. Based on the actual circumstances and as proposed by the Government, the Standing Committee of the National Assembly shall make a decision on adjustment of the interest rate mentioned above and make a report to the National Assembly at the next meeting session.

Where the agreed interest rate exceeds the interest rate cap provided in this clause, the excess interest rate shall be ineffective.

2. Where parties agree that interest will be payable but fail to specify an interest rate and there is a dispute as to the interest rate, the interest rate shall equal fifty (50) per cent of the interest rate cap provided in clause 1 of this article as at the date on which repayment is made.

# **LAW ON THE STATE BANK OF VIETNAM 2010**

- 1. The State Bank shall announce the refinancing interest rate, prime interest rate and other interest rates to serve the regulation of the monetary policy and the fight against usury.**
- 2. In case abnormal developments are seen in the monetary market, the State Bank shall provide for a mechanism for regulating interest rates applicable to credit institutions in their relations with others and their clients and in other credit**

## 6.1.3. EXCHANGE RATE

- **Definition:**

Foreign exchange rate of Vietnam dong means the price of a unit of a foreign currency in Vietnam's currency.

## 6.1.3. EXCHANGE RATE

1. Exchange rates of Vietnam dong shall be **determined on the basis of the foreign currency supply and demand in the state-regulated market.**
2. The State Bank shall announce exchange rates and decide on the exchange rate regime and management mechanisms.

# IMPACT OF FOREIGN EXCHANGE

- A country's currency **appreciates** (rises in value relative to other currencies) → the country's goods abroad become more expensive and foreign goods in that country become cheaper (holding domestic prices constant in the two countries)
- A country's currency **depreciates** → its goods abroad become cheaper and foreign goods in that country become more expensive.

## 6.1.4. REQUIRED RESERVE

- **Definition:**

**Required Reserve** means a sum of money to be deposited by a credit institution at the State Bank to serve the implementation of the national monetary policy.



## 6.1.4. REQUIRED RESERVE

“The State Bank shall provide for the reserve requirement ratio applicable to each type of credit institution and each kind of deposit at credit institutions to serve the implementation of the national monetary policy.

The State Bank shall provide for the payment of interests on reserve requirement deposits and deposits in excess of reserve requirement applicable to each type of credit institution and each kind of deposit.”

Types of Credit Institutions	Deposit in VND		Deposit in foreign country	
	Demand & below 12 months	Up to 12 months	Demand & below 12 months	Up to 12 months
State-owned commercial banks , Urban joint-stock commercial banks including Foreign Banks’ Branches in Vietnam, Joint – Venture Banks, Finance Companies, Financial Leasing Companies	3%	1%	8%	6%
Vietnam Bank for Agriculture & Rural Development, Rural joint-stock commercial banks, cooperative banks, Central People’s Credit Fund	1%	1%	7%	5%

Types of Credit Institutions	Deposit in VND		Deposit in foreign country	
	Demand & below 12 months	Up to 12 months	Demand & below 12 months	Up to 12 months
Credit Institutions with deposit balance subject to reserve requirement below VND 500 million, local credit funds, Vietnam Bank for Social Policies	0%	0%	0%	0%

## **6.1.4. REQUIRED RESERVE**

**Impact of required reserves on credit institution**

## 6.1.5. OPEN-MARKET OPERATIONS

- **Governing Legislation:** Decision 01/2007/QD-NHNN on the issuance of the regulation on the open market operation

- **Definition:**

Open market operation shall be sale and purchase of valuable papers by the State Bank with credit institutions.

- + Open market purchases

- + Open market sales

## 6.1.5. OPEN-MARKET OPERATIONS

### Mode of auction:

- ***Auction by volume*** shall be the auction appraisal **on the basis of the volume offered by a credit institution**, volume of valuable papers which the State Bank wishes to buy or sell and the interest rate announced by the State Bank.
- ***Auction by interest rate*** shall be the auction appraisal **on the basis of interest rate**, volume offered by a credit institution and volume of valuable papers which the State Bank wishes to buy or sell.

## **6.2. ISSUANCE OF BANKNOTES AND COINS**

- **Article 16 → Article 23, Law on the State bank of Vietnam**
- **Competence to issue**
- **Issuance of money - Printing and minting of money**
- **Methods of issuing money**

## 6.2. ISSUANCE OF BANKNOTES AND COINS

- **Prohibited Acts: Article 23**

1. Making counterfeit money: transporting, storing and circulating counterfeit money;
2. Illegally destroying money;
3. Refusing to receive or circulate money issued by the State Bank which are qualified for circulation.
4. Other prohibited acts as prescribed by law.



## 6.3. LENDING, GUARANTEE AND PROVISION OF ADVANCES FOR THE STATE BUDGET

### 6.3.1. LENDING (Article 24)

- Granting loans secured by the **mortgage of valuable papers**
- Granting **special loans**:
  - The credit institution falls into insolvency, posing a threat to the stability of the system of credit institutions
  - The credit institution is likely to fall into insolvency due to another serious incident

## **6.3. LENDING, GUARANTEE AND PROVISION OF ADVANCES FOR THE STATE BUDGET**

### **6.3.1. LENDING**

#### **Article 24:**

**“The State Bank shall not grant loans to individuals and organizations other than credit institutions specified in Clauses 1 and 2 of this Article.”**

**→ Why?**

## **6.3. LENDING, GUARANTEE AND PROVISION OF ADVANCES FOR THE STATE BUDGET**

### **6.3.2. GUARANTEE**

#### **Article 25:**

The State Bank shall not provide guarantee for organizations and individuals to borrow loans, except cases of providing guarantee for credit institutions to borrow foreign loans **under the Prime Minister's decision.**

## **6.3. LENDING, GUARANTEE AND PROVISION OF ADVANCES FOR THE STATE BUDGET**

### **6.3.3. PROVISION OF ADVANCES FOR THE STATE BUDGET**

#### **Article 26:**

The State Bank shall provide advances for the central budget to deal with a temporary deficit in the state budget fund under the Prime Minister's decision. These advance amounts must be refunded within the budgetary year, except special cases which shall be decided by the National Assembly Standing Committee

## **6.4. PAYMENT AND TREASURY OPERATIONS**

**Article 27 → Article 30 – Law on the state bank of Vietnam**

## **6.5. MANAGEMENT OF FOREIGN EXCHANGE AND FOREIGN EXCHANGE OPERATIONS**

**Article 31 → Article 34 – Law on the state bank  
of Vietnam**

## **6.6. INFORMATION AND REPORTING**

**Article 35 → Article 41 – Law on the state bank of Vietnam**

# **DISCUSSION**

- 1. SBV provides guarantee for HD Bank to borrow a loan of VND 200 bil from VCB**
- 2. SBV provides guarantee for Vinacomin to borrow a loan of USD 50 mil from WB**
- 3. SBV grants Techcombank a loan of VND 50 bil secured by the mortgage of Techcombank's stocks.**
- 4. SBV acquires all Ocean Bank shares for zero Vietnam dong**
- 5. SBV contributes the capital to set up a national debt management company**





# CHAPTER 3: LAW ON STATE BUDGET

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## PART 1

# LAW ON STATE BUDGET

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## PART 2

# LAW ON TAXES

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# **PART 1: LAW ON STATE BUDGET**

**I. STATE BUDGET**

**II. STATE BUDGET LAW**

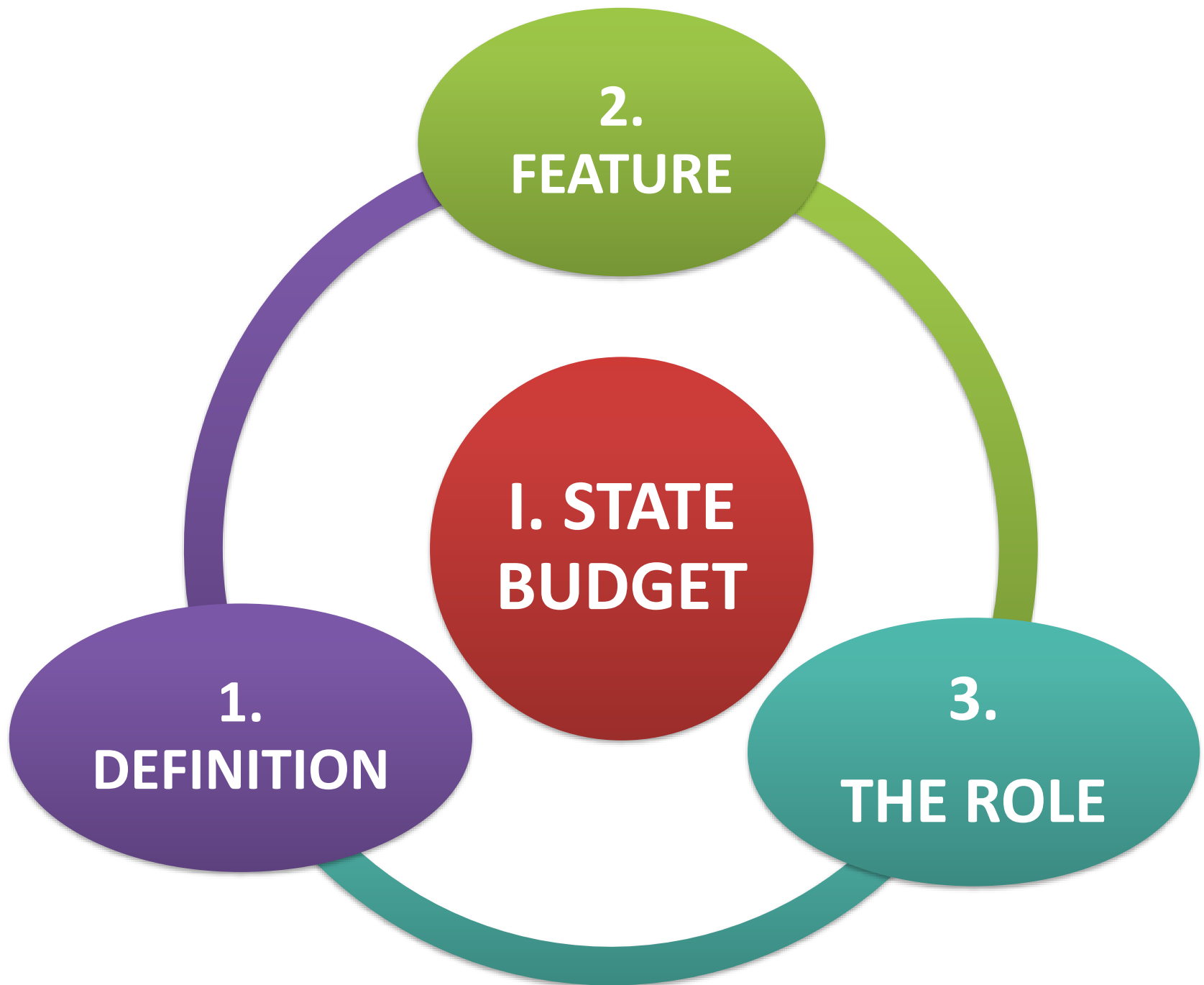
**III. STATE BUDGET SYSTEM**

**IV. STATE BUDGET MANAGEMENT DECENTRALIZATION**

**V. REVENUE SOURCES OF STATE BUDGET**

**VI. EXPENDITURE TASKS OF STATE BUDGET**

**VII. STATE BUDGET ESTIMATION, IMPLEMENTATION,  
SETTLEMENT**



# 1. DEFINITION OF STATE BUDGET

“State budget is to mobilize, use of monetary source in order to ensure state function”

**Law on State budget mechanism and process – FEDERAL OF RUSSIA**

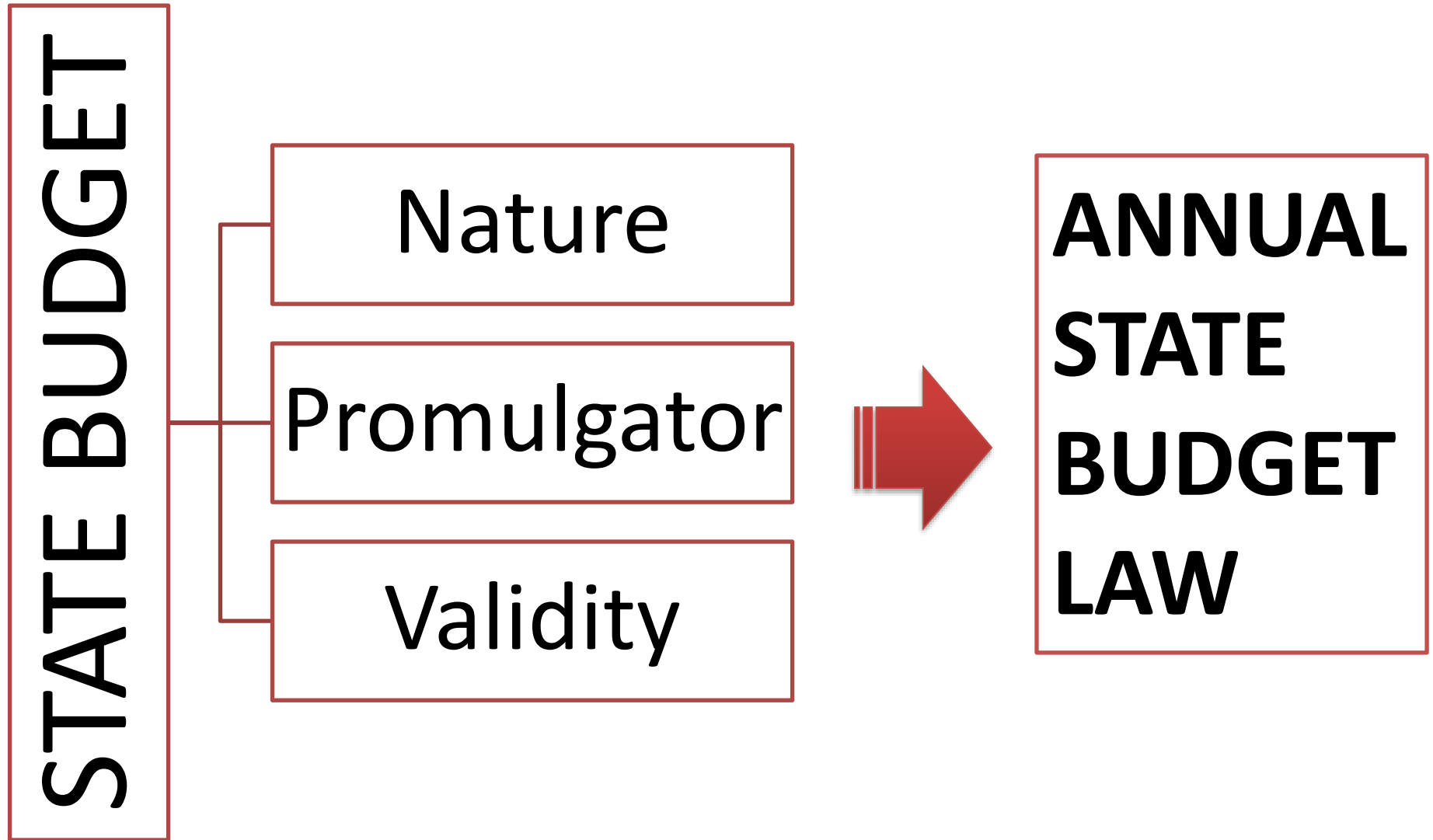
“State budget is the plan of collection, expenditure of the State”

**Law on State budget – POLAND**

*State budget* includes **all revenues and expenditures** of the State which are estimated and implemented **within a certain period of time** as decided by competent state agencies in order to ensure the performance of functions and tasks of the State.

**(Article 4.14 – Law on State Budget 2015)**

## 2. KEY FEATURES



# **3. THE ROLE OF STATE BUDGET**

**Maintain the operation of State apparatus**

**Regulate the economy**

**Ensure social equity**

# EXAMPLES

- **2003, Sweden State decided to distribute money to the people due to abundant surplus state budget**
- **July, 2005, China decided to increase the value of RMB after 10 years of no change**
- **US spends 400 bil USD for national defense per year, 10 times higher than Russian one**



## **II. LAW ON STATE BUDGET**

- 1. DEFINITION**
- 2. LEGAL RELATION OF STATE BUDGET**
- 3. STRUCTURE OF STATE BUDGET LAW**

## **II. STATE BUDGET LAW**

### **1. DEFINITION**

**A set of legal norms governing social relations arising in the process of establishment, management and usage of state budget fund**

#### **Note:**

- Not an independent law in the law system**
- Distinction between Annual State budget law and State budget law**

# **II. STATE BUDGET LAW**

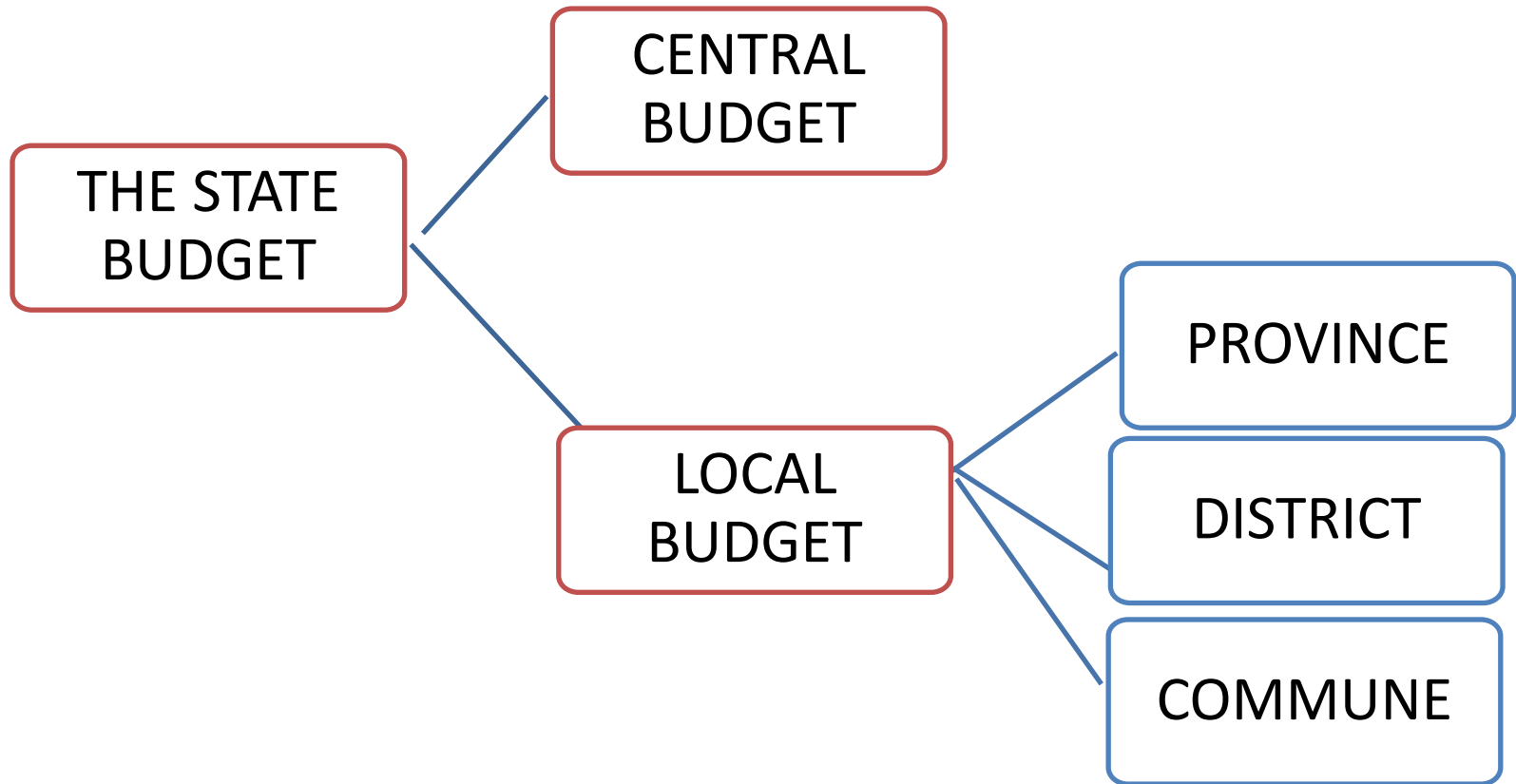
## **2. LEGAL RELATIONS OF STATE BUDGET**

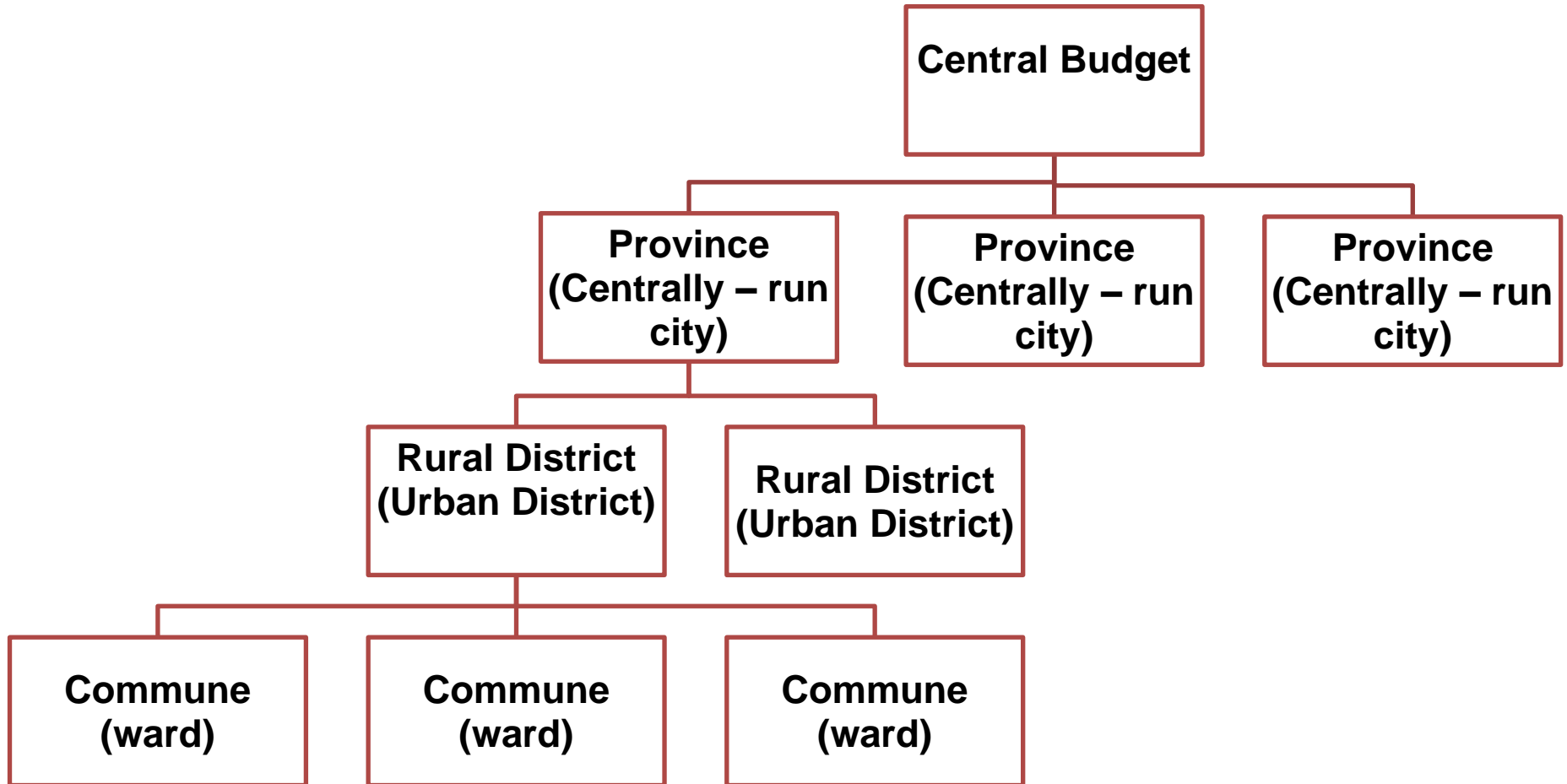
- Note: State budget Relations = Legal relations of State budget**
- + Parties: State, organization, individuals**
- + Contents: Rights and obligations of the parties**
- + Objects: Money and valuable papers**

# III. STATE BUDGET SYSTEM

+ State budget system – Structure of a state

+ Vietnam (Art 6 – Law on state budget 2015)





# **IV. State Budget management Decentralization**

## **1. Definition**

**State budget management decentralization is the apportionment of powers, obligations, responsibilities among the competent state agencies to manage and operate state budget.**

# **IV. State Budget management Decentralization**

## **2. Tasks and powers of the competent State agencies in managing State budget**

**2.1. National Assembly**

**2.2. Standing Committee of National Assembly**

**2.3. Government**

**2.4. Ministry of Finance**

**2.5. People's Councils of all levels**

**2.6. People's Committees of all levels**

**2.7. State Treasury**

**2.8. Collecting bodies (Tax, customs)**

## 2.1. National Assembly

- To make laws and amend laws in the finance-budget field
- To decide on the State budget estimates: The total State budget revenue; total State budget expenditure; State budget deficit and offsetting sources
- To decide on central budget allocations
- To decide on important national projects and works with investment from the State budget sources
- To decide on the adjustment of State budget estimates in case of necessity
- To ratify the State budget settlement



# STATE BUDGET DEFICIT

## - Definition:

*State budget deficit* includes **deficit of the central budget** and **deficit of provincial-level budgets**.

**Deficit of the central budget** is the positive difference between total expenditure of the central budget, exclusive of expenditure for principal payment, and total revenue of the central budget in a budget year.

**Deficit of provincial-level local budgets** is the aggregation of provincial-level budget deficits of all localities, with the provincial-level budget deficit of each locality being the positive difference between the total provincial-level budget expenditure, exclusive of expenditure for principal payment, and the total provincial-level budget revenue of such locality.

**(Art 4.1 Law on State Budget – Art 4 Decree 163/2016)**

# **METHODS OF OFFSETING CENTRAL BUDGET DEFICIT**

- **Foreign Borrowings**
  - **Domestic Borrowings**
- .

# **METHODS OF OFFSETING PROVINCIAL - LEVEL BUDGET DEFICIT**

- **Domestic Borrowings:**

# STATE BUDGET DEFICIT

- Principle of balancing the state budget: Art 7
- State budget deficit - temporary shortfall

## **2. Tasks and powers of the competent State agencies in managing State budget**

**2.2. National Assembly standing committee:  
→ Article 20 – State Budget Law 2015**

## **2. Tasks and powers of the competent State agencies in managing State budget**

### **2.3. The government:**

**→ Art 25 – State budget Law 2015**

## **2. Tasks and powers of the competent State agencies in managing State budget**

### **2.4. Ministry of finance: Article 26 –SBL 2015**

## **2.5. People's Councils of all levels (Article 30)**





## **2.5. People's Councils of all levels (Article 30)**

**- Remarks:**

**+ Article 30.9**

**+ Article 39.1**

## **2.6. People's Committees of all levels (Article 31)**



# **V. REVENUE SOURCES OF STATE BUDGET**

- 1. Definition**
- 2. Classification**

# V. REVENUE SOURCES OF STATE BUDGET

## 1. Definition

The State budget revenues include revenues from **taxes and fees**; **all charges collected for services provided by state agencies**; for those which have to pay their operating expenses at a pre-fixed level, such charges may be deducted; and **charges collected for services provided by public non-business units and state enterprises** which are required by law to be paid to the state budget; **grants provided by foreign governments and overseas organizations and individuals to the Vietnamese Government and local administrations**; **Other revenues** in accordance with law.

**(Article 5.1 – State budget Law 2015)**

# 2. CLASSIFICATION

**2.1. Based on  
the repetition of  
the revenues**

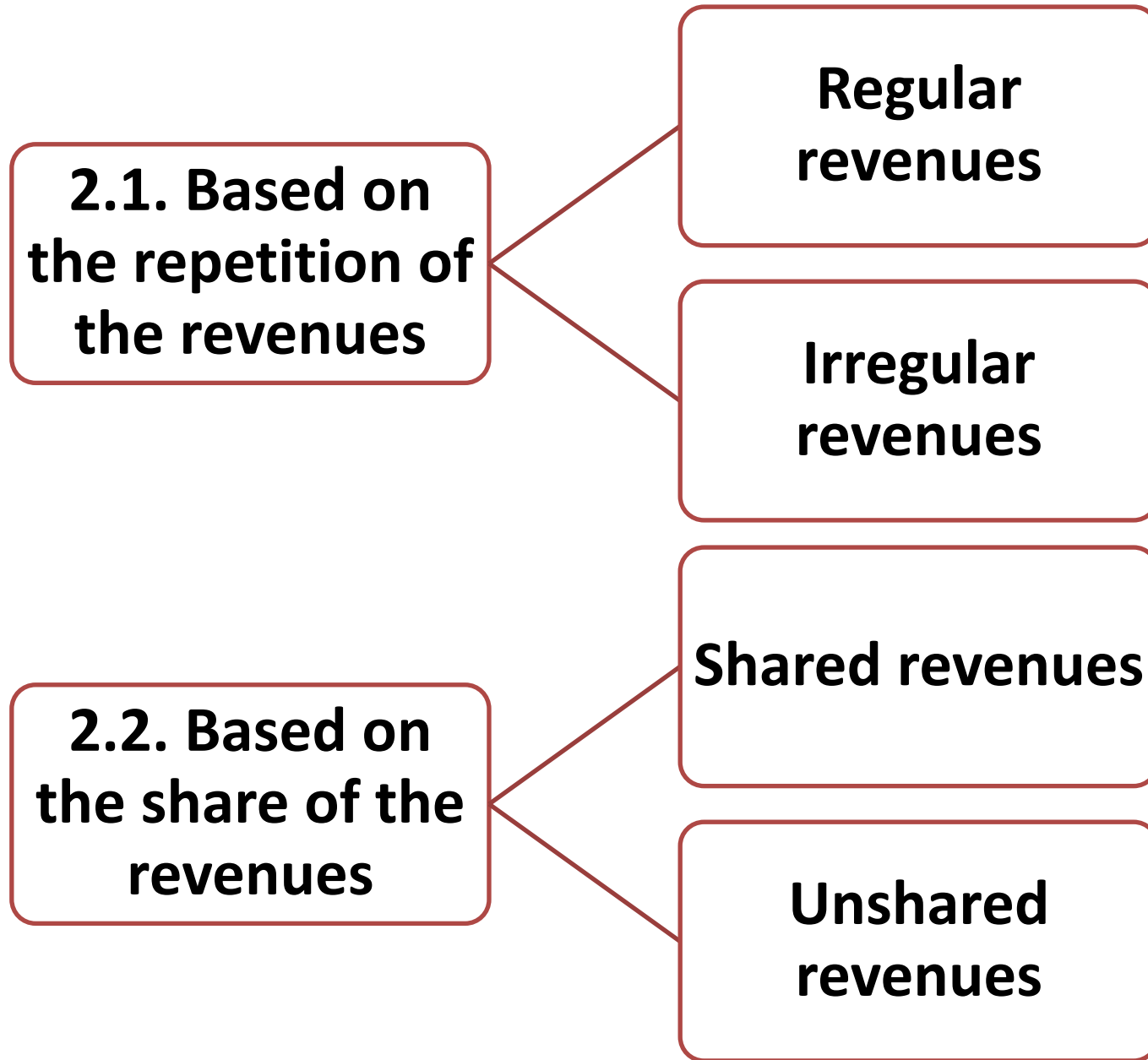
**Regular  
revenues**

**Irregular  
revenues**

**2.2. Based on  
the share of the  
revenues**

**Shared revenues**

**Unshared  
revenues**



## **2.1. Based on the repetition of the revenues**

- **Regular Revenues**

- **Irregular Revenues**

## **2.2. Based on the share of the revenues**

### **2.2.1. Unshared revenue sources:**

- + The revenues to be 100% collected by the central budget
- + The revenues to be 100% collected by the local budget

### **2.2.2. Shared Revenues sources between the central budget and the local budgets**

## 2.2.1. The revenues to be 100% collected by the central budget

- **Definition:** The revenues enjoyed 100% by the central budget are the revenues, whichever local area they arise in, must be submitted to the central budget
- Art 35.1 – SBL 2015; Art 13.1 – Decree No.163/2016



## 2.2.2. The revenues to be 100% collected by the local budget

- **Definition:** The revenues enjoyed 100% by the local budget are the revenues arising in any local areas must be enjoyed 100% by such local area.
- **Legal basis:** Art 37.1 – SBL ; Art 15.1 – Decree No. 163/2016

	Central Budget	Local Budget
Unshared revenue sources	<ol style="list-style-type: none"> <li>1. Export/import duty</li> <li>2. Value added tax on imported goods</li> <li>3. Excise tax on imported goods</li> <li>4. Corporate income tax</li> <li>5. Tax and other revenue from crude oil</li> <li>6. Proceeds collected from Government lending and capital contributions</li> <li>7. Non-refundable aids for Central Government</li> <li>8. Fees and charges</li> <li>9. Unused revenue of previous fiscal years</li> <li>10. Others</li> </ol>	<ol style="list-style-type: none"> <li>1. Housing and land tax</li> <li>2. Natural resources tax (except that on crude oil)</li> <li>3. License tax</li> <li>4. Land transfer tax</li> <li>5. Agricultural land use tax</li> <li>6. Land use fees</li> <li>7. Rental of land</li> <li>8. Proceeds from sale and lease of the State owned house and building</li> <li>9. Registration fees</li> <li>10. Proceeds from lottery activity</li> <li>11. Proceeds collected from Government lending and capital contributions</li> <li>12. Grants for local governments</li> <li>13. Fees and charges</li> <li>14. Proceeds from utilization of public lands</li> </ol>

		<p>15. Proceeds mobilized from businesses and individuals in accordance with regulations</p> <p>16. Unused revenue of previous fiscal years</p> <p>17. Supplemented from central budget</p> <p>18. Contributions from local people for construction of infrastructure in accordance with regulations</p> <p>19. Voluntary contributions</p>
<b>Shared revenue sources</b>	<p>1. Value added tax (except that on imported goods)</p> <p>2. Corporate income tax (except that of nationwide business activity<sup>1</sup>)</p> <p>3. Income tax on high income earners</p> <p>4. Profit remittent tax<sup>2</sup></p> <p>5. Excise tax on domestic goods and service</p> <p>6. Petroleum fees</p>	

# BUDGET REMAINDER

- **Definition:**

*Budget remainder* means the positive difference between total budget revenue and total budget expenditure of the budget of each level at the end of a budget year.

(Art 4.12 SBL 2015)

**- Handling of Budget remainder: Art 72 – SBL 2015**

# NOTE

- **Distinguish between financial reserve fund and State budget contingency**  
→ Article 10 and 11 – SBL 2015

# **VI. EXPENDITURE TASKS**

1. Definition
2. Classification

# VI. EXPENDITURE TASKS

## 1. Definition

State budget expenditures include:  
Development investment expenditure; National  
reserve expenditure; Current expenditure;  
Interest payment expenditure; Expenditure for  
aid provision; Other expenditures in accordance  
with law.

**(Article 5.2 – SBL 2015)**

# **VI. EXPENDITURE TASKS**

## **2. Classification**

Art 3 Decree No.163/2016/ND-CP



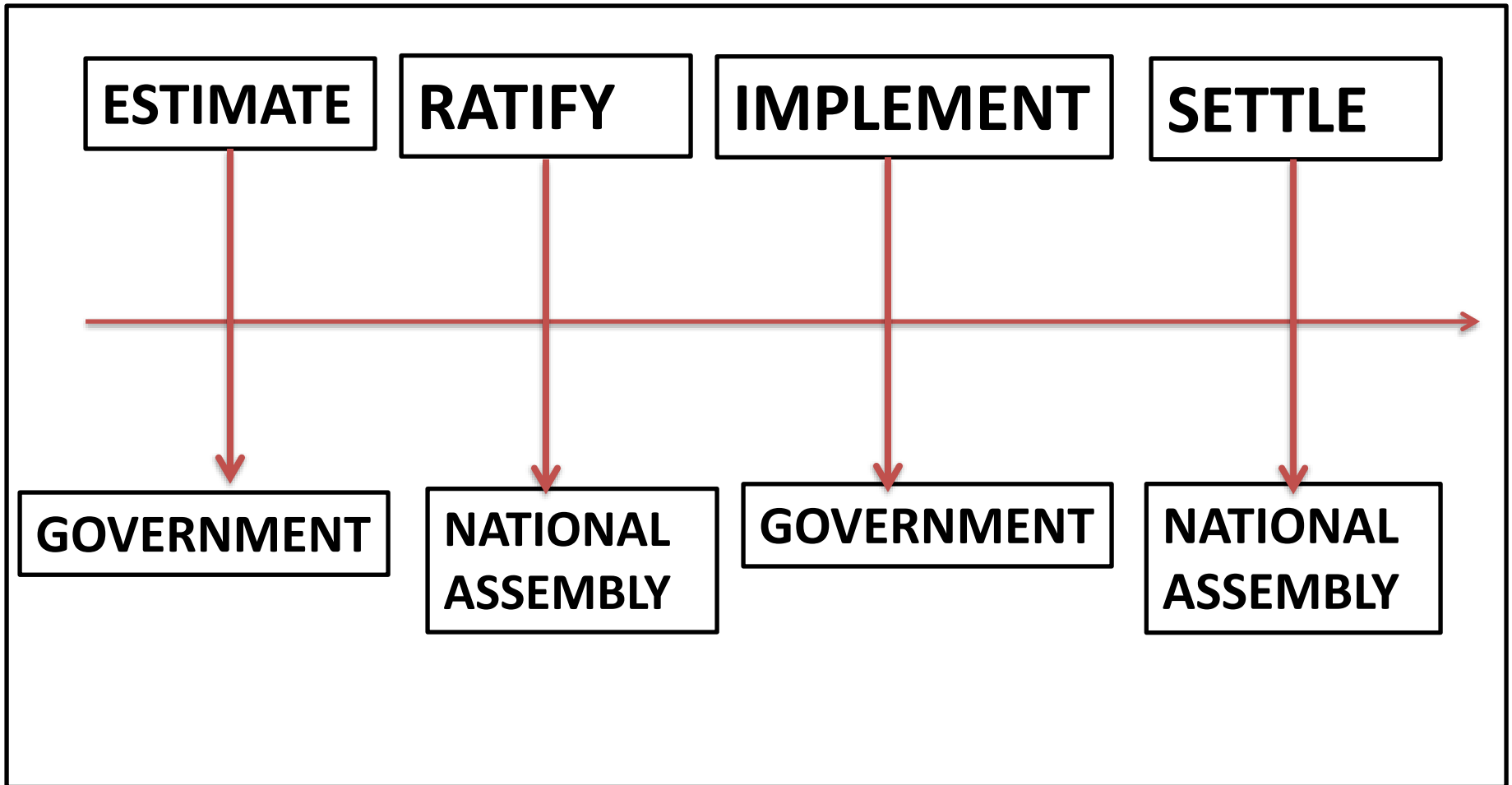
# **Expenditure on development investment**

- Regular expenditures**

# **VI. EXPENDITURE TASKS**

- **Expenditure tasks of the Central budget:**
  - Article 36 – SBL
- **Expenditure tasks of the local budgets:**
  - Article 38 – SBL

# VII. STATE BUDGET ESTIMATION, IMPLEMENTATION, SETTLEMENT



# VII. STATE BUDGET ESTIMATION, IMPLEMENTATION, SETTLEMENT

```
graph TD; A[1. State budget estimation] --> B[2. State budget implementation]; B --> C[3. State budget settlement];
```

**1. State budget estimation**

**2. State budget implementation**

**3. State budget settlement**

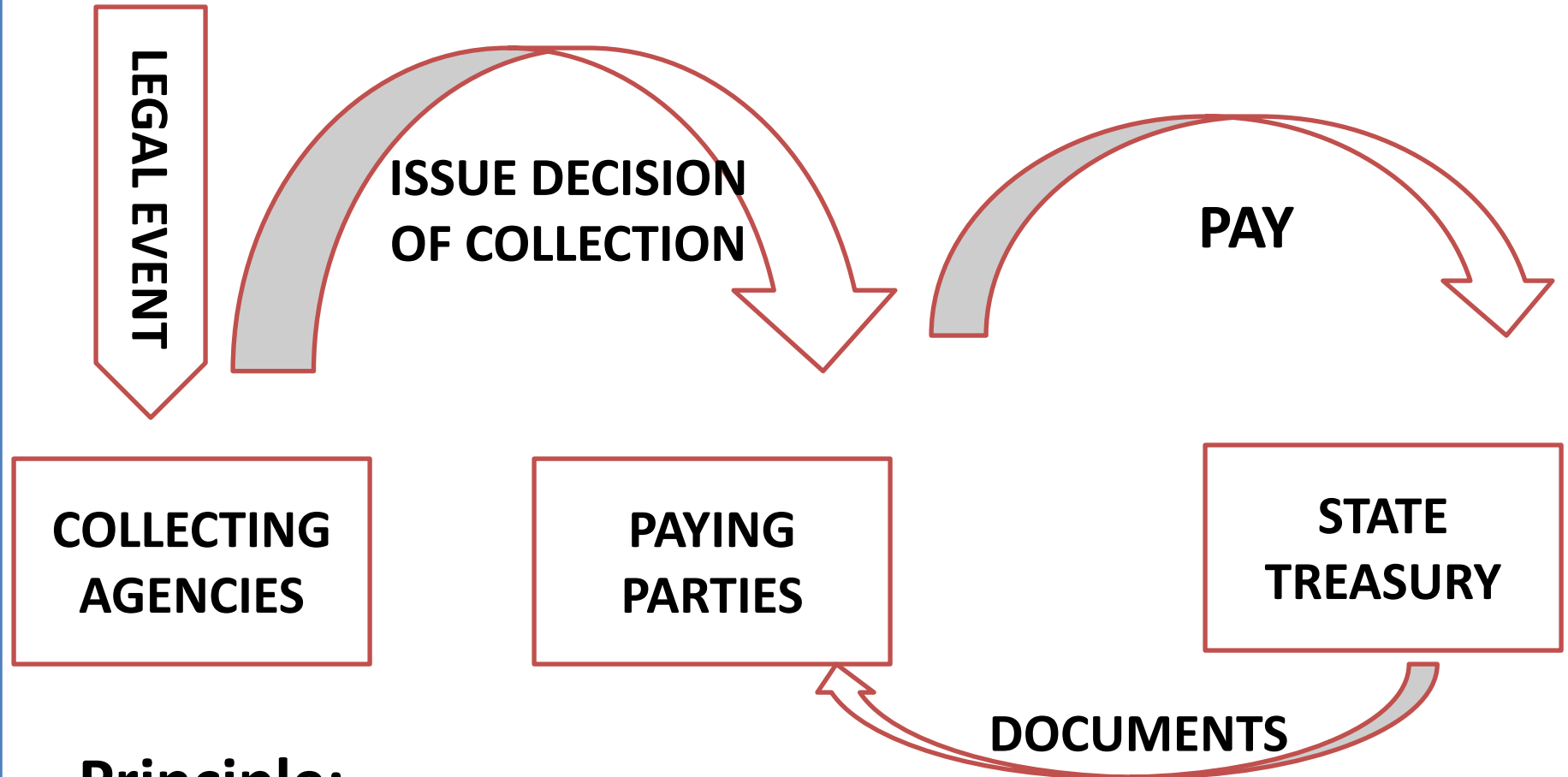
# **VII. STATE BUDGET ESTIMATION, IMPLEMENTATION, SETTLEMENT**

## **1. State budget estimation (Art 41 – 48)**

- Adjustment of budget estimates:**
  - + When?**
  - + Competence?**

## 2. State budget implementation (Art 49 – 62)

### 2.1. State budget revenue implementation



#### - Principle:

All revenues shall be paid directly to the State Treasury

## **2. STATE BUDGET IMPLEMENTATION**

### **2.2. State budget expenditure implementation**

# **VII. STATE BUDGET ESTIMATION, IMPLEMENTATION, SETTLEMENT**

## **3. State budget settlement (Art 63 - 73)**

**❖ Principles:**



## **PART 2: LAW ON TAX**

# **MAIN CONTENT**

## **I. OVERVIEW OF TAX**

- 1. Definition**
- 2. Key features**
- 3. Types**

## **II. LAW ON TAX**

- 1. Definition**
- 2. Tax law structure**

# **I. OVERVIEW OF TAX**

## **1. Definition**

**Tax is a compulsory revenue to meet the demand of spending of the State**

## 2. KEY FEATURE

1

**Compulsory revenue with statutory sanction**

---

2

**Not directly reimbursed**

---

3

**Wide governing scope**

---

# **I. OVERVIEW OF TAX**

## **Distinction between Taxes and Charges, fees**

- Legislation**
- The role in State budget system**
- Direct Reimbursement**
- Governing scope**

# **I. OVERVIEW OF TAX**

## **3. Classification:**

### **+ As to Subject matter:**

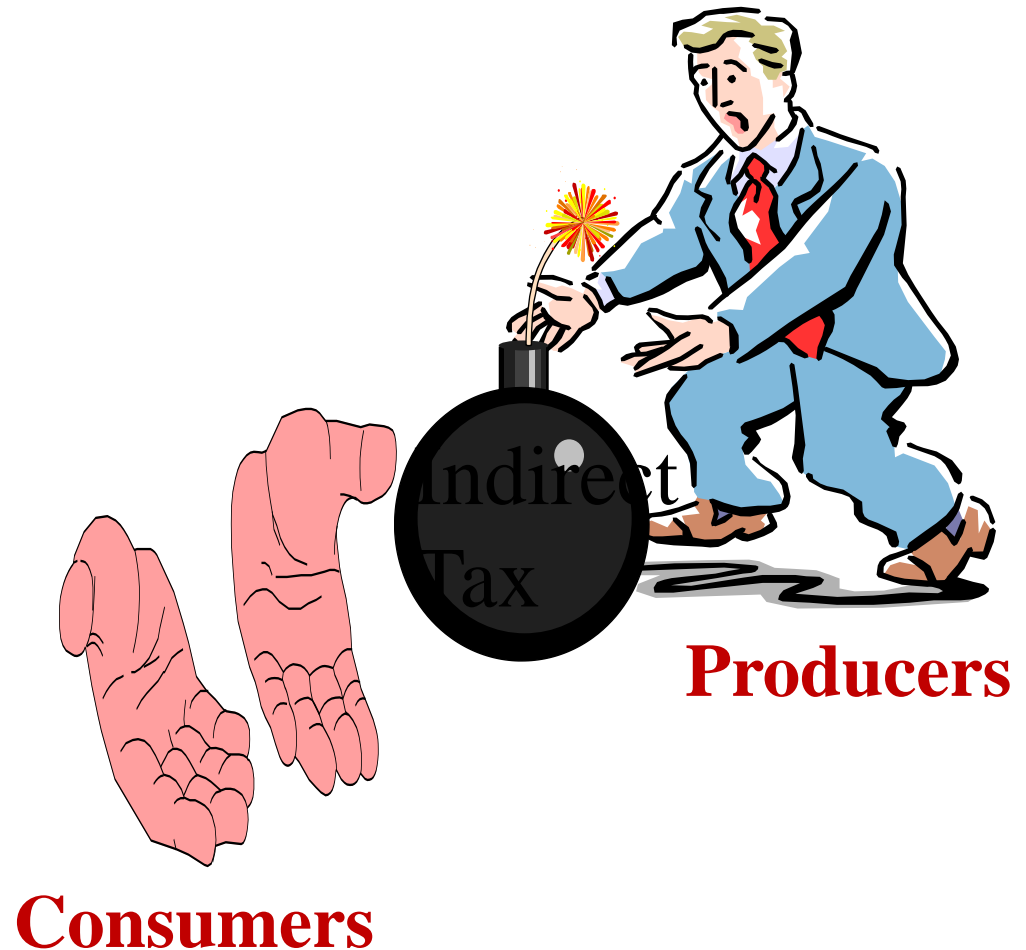
- Property Tax**
- Income Tax**
- Consumption Tax**

### **+ As to who bears the burden:**

- Direct Tax**
- Indirect Tax**

# Indirect Tax

- Tax on goods and services
- **Taxpayers  $\neq$  Tax bearers**
- Tax burden can be shifted to other people
- Examples



# Direct Tax

- Directly imposed on taxpayers
- Taxpayers = Tax bearers
- Tax **burden** cannot be shifted to other People
- Example





# **DISCUSSION**

- **Merits & demerits of indirect tax and direct tax**

## **II. LAW ON TAX**

### **1. Definition**

**Law on tax are legally enforceable rules made by authorities to govern relations arising from the process of tax collection and payment**

# **II. LAW ON TAX**

## **2. TAX LAW STRUCTURE**

**2.1. Name of the tax law**

**2.2. Scope (Taxable Objects; Taxpayers; Objects not taxed)**

**2.3. Grounds for tax calculation**

**2.4. Tax declaration and payment regime**

**2.5. Tax Refund**

**2.6. Tax exemption**

**2.7. Rewarding and punishment**

## **2.2. SCOPE**

### **a. Taxable Objects:**

**Law on Excise Tax → List – based method**

**Law on Export tax, Import tax → Define-based method**

**+ Goods, services**

**+ Income**

**+ Property**

## **2.2. SCOPE**

### **b. Taxpayers:**

**→ Organization & individuals shall pay the taxes**

**+ Law on export and import tax:**

**+ VAT Tax:**

**+ Excise Tax:**

# DISCUSSION

- Taxpayers vs Tax bearers
- Taxpayers and parties paying tax on behalf of taxpayers
- Legal status of taxpayers

## **c. OBJECTS NOT TAXED**

- Distinguish: Objects not taxed – Objects exempted from tax – Objects taxed with the rate of 0%

## **2.3. Grounds for tax calculation**

- Tax bases**
- + Indirect Tax:**
- + Direct Tax:**
- Tax rates**
- + Absolute Tax rate**
- + Proportional Tax rate**
- + Progressive tax rate**



## **2.4. Tax declaration and payment regime**

- Legal basis: Law on Tax administration**
- Tax Registration & Declaration:**
  - + Obligation**
  - + When?**