

# LAW 54

## ON

### SECURITIES

Dated 26 November 2019

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[Ha Noi, 26 November 2019]

# **LAW ON SECURITIES**

Pursuant to the Constitution of the Socialist Republic of Vietnam,

The National Assembly promulgates the *Law on Securities*.

## **CHAPTER I**

### **General Provisions**

#### **Article 1** *Governing scope*

This Law regulates securities and securities market activities; rights and obligations of organizations and individuals in the securities sector; organization of the securities market; and State management of securities and securities market.

#### **Article 2** *Applicable entities*

1. Vietnamese organizations and individuals and foreign organizations and individuals participating in investment in securities and activities on the Vietnamese securities market.
2. State administrative agencies for securities and the securities market.
3. Other agencies, organizations and individuals related to securities activities and securities market activities.

#### **Article 3** *Application of Law on Securities and relevant laws*

Securities and securities market activities, rights and obligations of organizations and individuals in the securities sector, the organization of the securities market, and the State management of securities and securities market must comply with the provisions of this Law and other relevant laws.

#### **Article 4** *Interpretation of terms*

In this Law, the following terms are construed as follows:

1. *Securities* means assets, comprising the following types:
  - (a) Shares, bonds and fund certificates;



- (b) Securities rights, guaranteed securities rights [*covered warrants*]<sup>1</sup>, share purchase rights and depository receipts;
  - (c) Derivative securities;
  - (d) Other types of securities stipulated by the Government.
2. *Share* means a type of securities certifying the lawful rights and interests of an owner of a part of the shareholding in the issuing organization.
  3. *Bond* means a type of securities certifying the lawful rights and interests of an owner of a part of the debt of the issuing organization.
  4. *Fund certificate* means a type of securities certifying the ownership of an investor of a capital contribution portion in a securities investment fund.
  5. *Securities right* means a type of securities issued with bonds or preference shares which entitles the securities right owner to purchase a fixed volume of ordinary shares at a pre-determined price during a specified period.
  6. *Guaranteed securities right* means a type of securities with security assets issued by a securities company, which entitles the owner to purchase (securities purchase rights) or to sell (securities sell rights) underlying securities to the organization issuing such guaranteed securities right at a pre-determined price at or prior to a specified time, or to receive the monetary difference between the implementing [exercise] price and the price of underlying securities at the implementing time.
  7. *Share purchase right* means a type of securities issued by a shareholding company, aimed at granting existing shareholders the right to purchase new shares in accordance with stipulated conditions.
  8. *Depository receipt* means a type of securities issued on the basis of securities of an organization lawfully established and operating in Vietnam.
  9. *Derivative securities* means a financial instrument in the form of a contract, comprising option contracts, future contracts and forward contracts, which certifies the rights and obligations of the parties with respect to the payment of money and/or transfer of a specified quantity of underlying assets at a specified price during a certain period or on a certain date in the future.
  10. *Underlying asset of derivative securities* (hereinafter referred to as *underlying asset*) means the securities, securities index or any other asset stipulated by the Government which is used as the basis for determining the value of the derivative securities.
  11. *Option contract* means a type of derivative securities which certifies the rights of the purchaser and the obligations of the seller in order to carry out either of the following transactions:
    - (a) Purchase or sale of a specified quantity of underlying assets at an implementing [exercise] price which has been determined at the time prior to or on a certain date in the future;

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<sup>1</sup> Allensfootnote: Square brackets contain translator's comments only.

- (b) Payment of the difference between the value of the underlying assets determined at the time of execution of the contract and the value of the underlying assets at the time prior to or on a certain date in the future.
12. *Future contract* means a type of listed derivative securities certifying an undertaking between the parties to carry out either of the following transactions:
- (a) Purchase or sale of a specified quantity of underlying assets at a specified price on a certain date in the future;
  - (b) Payment of the difference between the value of the underlying assets determined at the time of execution of the contract and the value of the underlying assets on a certain date in the future.
13. *Forward contract* means a type of derivative securities being traded pursuant to a [private] agreement and confirming an undertaking between the parties to buy or sell a specified quantity of underlying assets at a specified price on a certain date in the future.
14. *Securities and securities market activities* comprise activities being offers of securities, listing and trading securities, conducting business and investing in securities, providing securities services, disclosing information, managing public companies and other activities stipulated in this Law.
15. *Investment in securities* means an investor purchasing, selling and/or holding securities on the securities market.
16. *Investor* means an organization or individual who participates in investment on the securities market.
17. *Strategic investor* means an investor who is selected by the general meeting of shareholders in accordance with the criteria on financial capability and technological qualifications, and is committed to cooperate with the company for a period of no less than three (3) years.
18. *Major shareholder* means a shareholder owning five (5) per cent or more of the voting shares of an issuing organization.
19. *Public offer of securities* means an offer for sale of securities via one of the following methods:
- (a) An offer for sale via the mass media;
  - (b) An offer for sale to one hundred (100) or more investors excluding institutional securities investors;
  - (c) An offer for sale to undefined investors.
20. *Private placement of securities* means an offer for sale of securities not falling into the case stipulated in clause 19(a) of this article and made via either of the following methods:
- (a) An offer for sale to less than one hundred (100) investors excluding institutional securities investors;
  - (b) An offer for sale to institutional securities investors only.
21. *Issuing organization* means an organization making an offer or issue of securities.



22. *Approved auditing organization* means an independent auditing organization on the list of auditing organizations approved by the State Securities Commission [SSC] to provide audits in accordance with this Law and the law on independent auditing.
23. *Prospectus* means a document or electronic data publicizing accurate, truthful and objective information about an offer or listing of securities by an issuing organization.
24. *Listing securities* means making available securities which satisfy the listing conditions for trading on the listed securities trading system.
25. *Registration for trading* means placing securities for trading on the unlisted securities trading system.
26. *Securities trading system* comprises the listed securities trading system and the unlisted securities trading system organized and operated by the Stock Exchange of Vietnam and its subsidiary companies (hereinafter referred to as the *Stock Exchange of Vietnam and subsidiary*) [the SEVS].
27. *Securities trading market* means a location or form of exchanging information in order to collate buying and selling orders and to trade securities.
28. *Securities business* means the conduct of professional activities of securities brokerage, securities self-trading, underwriting issues of securities, securities investment consultancy, securities investment fund management, securities investment portfolio management and provision of securities services in accordance with article 86 of this Law.
29. *Securities brokerage* means acting as intermediary in the purchase or sale of securities on behalf of a client.
30. *Self-trading* means a securities company purchases or sells securities for itself.
31. *Underwriting* means undertaking to an issuing organization to accept to purchase some or all of the securities of the issuing organization for re-sale, or to purchase the amount of the remaining undistributed securities or use best endeavours to distribute the securities of the issuing organization required to be issued.
32. *Securities investment consultancy* means providing to clients analytic results [and/or] analytic reports and making recommendations regarding the purchasing, selling and holding of securities.
33. *Securities registration* means recording information about an issuing organization, securities of the issuing organization and securities owners.
34. *Securities depository* means the receipt of securities for deposit, preservation and transfer of securities on behalf of clients, and assistance to clients to exercise their rights relating to deposited securities.
35. *Portfolio management* means managing the purchasing, selling and holding of securities and other assets of investors pursuant to authorization from each investor.
36. *Securities investment fund management* means managing the purchasing, selling and holding of securities and other assets of a securities investment fund.

37. *Securities investment fund* means a fund established from capital contributions of investors in order to receive a profit from investment in securities or in other assets/property including real estate, whereby the investors do not have day to day control over the investment decision-making of the fund.
38. *Public fund* means a securities investment fund which makes a public offer of fund certificates.
39. *Open investment fund* means a public fund whose fund certificates as offered to the public must be redeemed at the request of investors.
40. *Closed investment fund* means a public fund whose fund certificates as offered to the public shall not be redeemed at the request of investors.
41. *Members fund* mean a securities investment fund with two (2) to ninety nine (99) capital contributing members who must be institutional securities investors.
42. *Exchange traded fund* means an open investment fund which is formed from the acceptance and exchange of underlying securities portfolios for fund certificates. Exchange traded fund certificates are listed and traded on the listed securities trading system.
43. *Real estate investment fund* means a securities investment fund which invests primarily in real estate and securities of an issuing organization being a real estate business organization whose revenue from the ownership and business of real estate is not less than sixty five (65) per cent of its total revenue calculated on the most recent annual financial statements.
44. *Inside information* means information about a public company, listing organization, registered trading organization, public fund or public securities investment company which has not yet been disclosed and which, if disclosed, could have a major impact on the price of the securities of such entity.
45. *Insider* means a person who holds an important position in the executive and managerial apparatus of an enterprise, public company or public securities investment company, comprising:
- (a) Insiders of an enterprise comprise the chairman of the board of management or of the members' council or the company chairman, members of the board of management or of the members' council, the legal representative, the general director (director), the deputy general director (deputy director), the financial director, the chief accountant and equivalent managerial positions elected by the general meeting of shareholders or appointed by the board of management or the members' council or the company chairman; the head of the board of controllers and members of the board of controllers (inspectors), members of the internal auditing board; the secretary of the company, persons in charge of management of the company, and persons authorized to disclose information;
  - (b) Insiders of a public fund or public securities investment company comprise members of the committee of representatives of the public fund or members of the board of management of the public securities investment company, the person operating the public fund, the person operating the public securities investment company, and insiders of the securities investment fund management company.
46. *Affiliated person* means an individual or organization with interactive relations in the following circumstances:

- (a) An enterprise and its insiders; a public fund or public securities investment company and its insiders;
  - (b) An enterprise and any organization or individual owing more than ten (10) per cent of the number of voting shares or capital contribution of such enterprise;
  - (c) An organization or individual who in a relationship with another organization or individual directly or indirectly controls or is jointly controlled by such other organization or individual, or is subject to the same control with such other organization or individual;
  - (d) An individual and his/her biological parents, adoptive parents, parents-in-law, spouse, offspring, adopted children, daughter-in-law, son-in-law, siblings, brother-in-law or sister-in-law;
  - (dd) A securities investment fund management company and securities investment funds or securities investment companies managed by such securities investment fund management company;
  - (e) A contractual relationship in which one organization or individual is the representative of the other;
  - (g) Any other organization or individual being an affiliated person as stipulated in the *Law on Enterprises*.
47. *Securities business practitioner* means a person who is issued by the SSC with a securities business practising certificate and who works at a securities company, securities investment fund management company, branch of a foreign securities company in Vietnam, branch of a foreign fund management company in Vietnam (hereinafter referred to as a *branch of a foreign securities company or fund management company in Vietnam*) or securities investment company.
48. *Listing organization or registered trading organization* means an organization whose issued securities are listed or registered for trading on the securities trading system.

#### **Article 5** *Principles on securities and securities market activities*

1. Respect for the ownership and other rights regarding assets in securities and securities market activities; and the right of organizations and individuals to freely conduct trading, investment and business of securities and to provide securities services.
2. Fairness, publicity and transparency.
3. Protection of the lawful rights and interests of investors.
4. Self-responsibility for risks.

#### **Article 6** *Policy on development of the securities market*

1. It is the policy of the State to encourage and facilitate domestic and foreign organizations and individuals to participate in investment and activities on the securities market, aimed at raising medium term and long term capital for investment in development.

2. It is the policy of the State to conduct administration and supervision to ensure that the securities market operates fairly, publicly, transparently, safely and effectively.
3. It is the policy of the State to invest in modernization of infrastructure and information technology for the operation of the securities market, to develop manpower resources for the securities sector, and to provide and disseminate information about securities and the securities market.

**Article 7** *Measures for ensuring security and safety of the securities market*

1. The measures for ensuring security and safety of the securities market comprise:
  - (a) Supervising security and safety of the securities market;
  - (b) Responding to and remedying incidents, events and changes which affect the safety, stability and integrity of the securities market;
  - (c) Temporarily ceasing or suspending trading of one or more securities listed or registered for trading on the securities trading system;
  - (d) Temporarily ceasing or suspending part or all of, or resuming trading operations of the SEVS;
  - (dd) Temporarily ceasing or suspending part or all of, or resuming securities registration, depository, clearance and payment activities of Vietnam Securities Depository and Clearing Corporation [VSDCC];
  - (e) Prohibiting holding positions at securities companies, securities investment fund management companies, branches of foreign securities companies and fund management companies in Vietnam, and securities investment companies for a definite or indefinite period; prohibiting carrying out securities and securities market activities for a definite or indefinite period as a result of [the offender] carrying out strictly prohibited conduct in securities and securities market activities;
  - (g) Blockading securities accounts, or requesting that authorized persons blockade monetary accounts in relation to breaches of the law on securities and the securities market.
2. The Government shall provide detailed regulations on application of the measures for ensuring security and safety of the securities market stipulated in clause 1 of this article.

**Article 8** *State administration of securities and the securities market*

1. The Government exercises uniform State administration of securities and the securities market.
2. The Ministry of Finance [MOF] is responsible before the Government to exercise State administration of securities and the securities market, and has the following duties and powers:
  - (a) To submit to the Government and to the Prime Minister for promulgation, strategies, plans, projects and policies for the development of the securities market;
  - (b) To submit to the competent authority for promulgation or to promulgate in accordance with its own authority, legal instruments on securities and the securities market;

- (c) To direct the SSC in implementation of the strategies, plans, projects and policies for development of the securities market and legal instruments on securities and securities market.
- 3. Ministries and ministerial equivalent agencies, within the scope of their respective duties and powers, are responsible to co-ordinate with the MOF to exercise State administration of securities and the securities market.
- 4. People's committees at all levels, within the scope of their respective duties and powers, are responsible to exercise State administration of securities and the securities market within their localities.

**Article 9** *State Securities Commission [SSC]*

- 1. The SSC is an agency under the MOF, advises and assists the Minister of Finance in exercising State administration of securities and the securities market, organizes implementation of the law on securities and securities market as delegated and authorized by the Minister of Finance, and has the following duties and powers:
  - (a) To submit to the Minister of Finance for promulgation or to submit to the competent authority for promulgation, legal instruments on securities and the securities market, and strategies, plans, projects and policies for the development of the securities market;
  - (b) To organize and develop the securities market; to directly manage and supervise securities and securities market activities; and to manage securities and securities market services in accordance with law;
  - (c) To issue, re-issue, extend, amend and withdraw licences, securities business practising certificates and certificates relating to securities and securities market activities; and to approve changes, suspension and cancellations relating to securities and securities market activities;
  - (d) To administer, check, inspect and supervise the securities professional activities of the SEVS and VSDCC; to approve rules and regulations of the SEVS and VSDCC; to request the SEVS and VSDCC amend rules and regulations relating to professional activities; to suspend and cancel decisions relating to the professional activities of the SEVS and VSDCC, and to instruct the SEVS and VSDCC to perform the duties relating to professional activities in necessary cases in order to protect the lawful rights and interests of investors;
  - (dd) To provide approval on placing new types of securities for trading, to change and apply new trading methods, to approve the securities trading system and to put new securities trading systems into operation;
  - (e) To administer and supervise activities of organizations and individuals relating to securities and the securities market;
  - (g) To conduct checks and inspections, to resolve complaints and denunciations, and to deal with administrative breaches in the securities and securities market sector;
  - (h) To provide reports to the MOF for reporting to the Prime Minister and the Government on the operational situation of the securities market. If there is any major change affecting the security and safety of the securities market, the SSC is responsible to promptly make a report to the

MOF, and at the same time, make a report to the Government and the Prime Minister on the market situation and the solutions for stabilizing the market and ensuring financial security and prudence;

- (i) To implement within its authority or to make a submission to the competent authority for implementation of the measures for ensuring security and safety of the securities market;
  - (k) To keep statistics on, and to make forecasts about securities and securities market activities; to modernize information technology in the securities and securities market sector;
  - (l) To organize, and to co-ordinate with the relevant agencies and organizations to provide, professional training for a team of senior officials and staff in the securities sector and securities business practitioners; to disseminate and popularize to the public information about securities and the securities market;
  - (m) To promulgate documents providing professional guidelines and other documents within the scope of management of the SSC;
  - (n) To supervise securities socio-occupational organizations during implementation of their objectives, guidelines and charters on operation;
  - (o) To implement the reporting regime on securities and the securities market in accordance with law;
  - (p) To conduct international co-operation and to act as a focal unit to implement international commitments in the securities and securities market sector of which the Socialist Republic of Vietnam is a member;
  - (q) To perform other duties and powers stipulated in this Law and other relevant laws.
2. The Prime Minister shall provide regulations on the specific functions, duties and powers, and the organizational structure of the SSC.
3. Senior officials and staff of the SSC performing their duties and powers must be honest, must keep information confidential, and must comply with the law on securities and securities market and other relevant laws.

**Article 10** *Securities socio-occupational organizations [associations]*

- 1. Securities socio-occupational organizations are established and operate in accordance with the law on associations, are responsible to comply with the law on securities and securities market, and are subject to supervision by the SSC.
- 2. Securities socio-occupational organizations promulgate the code of professional ethics upon approval of the SSC; and co-ordinate with the administrative agency for securities and the securities market in disseminating and popularizing the law on securities and securities market to their members.

**Article 11** *Institutional securities investors*

- 1. *Institutional securities investor* means an investor who has financial capability or professional expertise in securities, comprising:

- (a) Commercial banks, foreign bank branches, finance companies, insurance business organizations, securities companies, securities investment fund management companies, securities investment companies, securities investment funds, international financial institutions, off-budget State financial funds, and State financial institutions permitted to purchase securities in accordance with relevant law;
- (b) Companies whose paid-up charter capital reaches more than one hundred (100) billion dong or listing organizations or registered trading organizations;
- (c) Persons having securities business practising certificates;
- (d) Any individual holding a portfolio of securities listed or registered for trading with a value of at least two (2) billion dong as certified by securities companies at the time when the individual is identified to have legal status as an institutional securities investor;
- (dd) Any individual having taxable income of at least one (1) billion dong in the most recent year as at the time when the individual is identified to have legal status an institutional securities investor in accordance with the tax declaration file submitted to the tax office or source documents for tax credit provided by the organization or individual paying such income.

2. The Government shall provide detailed regulations on this article.

**Article 12** *Strictly prohibited practices in securities and securities market activities*

- 1. Directly or indirectly acting fraudulently or cheating, falsifying documents, creating false information, disclosing false information, concealing information, or omitting essential information which causes a serious misunderstanding and adversely affects activities being offers of securities, listing and trading securities, conducting business and investing in securities, and providing securities services.
- 2. Using inside information to purchase or sell securities for oneself or for a third party; disclosing or supplying inside information or advising another person to purchase or sell securities on the basis of inside information.
- 3. Using one or more trading accounts of one's own accounts or those of a third party, or colluding in the purchase and sale of securities aimed at creating false supply and demand; trading securities in the form of colluding with or persuading others to purchase and sell in order to manipulate the price of securities; combining the afore-mentioned methods or using other trading methods, or combining [the afore-mentioned methods with] the spread of untruthful rumours and/or the provision of false information to the public in order to manipulate the price of securities.
- 4. Conducting securities business activities or providing securities services when the SSC has not yet issued a licence, certificate or approval.
- 5. Using accounts or assets of clients without authorization by them or contrary to the law, or abusing trust to appropriate assets of clients.
- 6. Lending accounts to others for securities trading purposes, or owning securities in the name of any other person, which gives rise to a manipulation of the securities price.
- 7. Organizing a securities trading market contrary to this Law.



## CHAPTER II

### Offers of Securities

#### Section 1

#### Public Offers of Securities

##### **Article 13** *Par value of securities*

1. The par value of securities offered for sale in the territory of the Socialist Republic of Vietnam must be denominated in Vietnamese Dong.
2. Par value of shares and fund certificates in a public offer is ten (10) thousand dong. The par value of bonds in a public offer is one hundred (100) thousand dong and multiples of one hundred (100) thousand dong.
3. If the price of securities of an issuing organization on the securities trading system is lower than the par value, the issuing organization is permitted to make an offer for sale of securities with the price lower than the par value.

##### **Article 14** *Forms of public offers of securities*

1. The forms of public offers of securities comprise initial public offers [*IPO*] of securities, additional public offers of shares or share purchase rights, and other forms.
2. The Government shall provide detailed regulations on the forms of public offers of securities.

##### **Article 15** *Conditions for a public offer of securities*

1. The conditions for an initial public offer of shares by a shareholding company are as follows:
  - (a) The minimum amount of paid-up charter capital at the time of registration of the offer must be thirty (30) billion dong calculated at the value recorded in the accounting books;
  - (b) Business operations for two (2) consecutive years immediately preceding the year of registration of the offer must have been profitable, and there must not be accumulated losses calculated up to the year of registration of the offer;
  - (c) There must be an issue plan and a plan for utilization of the proceeds earned from the share offer tranche, passed by the general meeting of shareholders;
  - (d) A minimum of fifteen (15) per cent of the number of voting shares of the issuing organization must be sold to at least one hundred (100) investors not being major shareholders; if the charter capital of the issuing organization is one thousand (1,000) billion dong or more, then the minimum ratio shall be ten (10) per cent of the number of voting shares of the issuing organization;
  - (dd) Prior to the time of the IPO of shares by the issuing organization, major shareholders must undertake to jointly hold at least twenty (20) per cent of the charter capital of the issuing organization for at least one (1) year from the date of completion of the offer tranche;

- (e) The issuing organization is not an entity which is subject to criminal prosecution or was convicted of any one of the crimes of violation of economic management order for which the police record has not yet been expunged;
  - (g) There must be a securities company which provides consultancy on the application file to register the public offer of shares, except for the case where the issuing organization is a securities company;
  - (h) There must be a commitment to, and it is required to, conduct listing or registration of trading of shares on the securities trading system upon completion of the offer tranche;
  - (i) The issuing organization must open an escrow account to receive payments for purchase of shares in the offer tranche.
2. The conditions for an additional public offer of shares by a public company are as follows:
- (a) [The public company must] comply with the provisions in sub-clauses (a), (c), (e), (g), (h) and (i) of clause 1 above;
  - (b) Business operations in the year immediately preceding the year of registration of the offer must have been profitable, and there must not be accumulated losses calculated up to the year of registration of the offer;
  - (c) The value of additionally issued shares according to the par value must not be higher than the total value of currently circulating shares calculated at par value, except where there is an issue guarantee [underwriting] with a commitment to accept to purchase all of the shares of the issuing organization for re-sale, to purchase the amount of the remaining undistributed shares of the issuing organization, to issue [shares] to increase capital from the equity, or to issue [shares] for exchange, consolidation or merger of enterprises;
  - (d) In the case of a public offer tranche for the purpose of raising capital to implement a project of the issuing organization, shares sold to investors must account for at least seventy (70) per cent of the number of shares proposed to be offered for sale. The issuing organization must formulate a plan to cover the deficit of capital proposed to be raised from the offer tranche in order to implement the project.
3. The conditions for a public offer of bonds are as follows:
- (a) The enterprise must have, at the time of registration of the offer, a minimum amount of paid-up charter capital of thirty (30) billion dong calculated at the value recorded in the accounting books;
  - (b) Business operations in the year immediately preceding the year of registration of the offer must have been profitable, and there must not be accumulated losses calculated up to the year of registration of the offer; there must not be any debts payable which are overdue for more than one (1) year;
  - (c) There must be an issue plan and a plan for utilization of and repayment of the proceeds earned from the offer tranche, passed by the general meeting of shareholders or the board of management or the members' council or the company owner;

- (d) There must be an undertaking from the issuing organization to discharge obligations to investors regarding conditions of the issue and conditions for payment, ensuring the lawful rights and interests of investors and ensuring other conditions;
  - (dd) There must be a securities company which provides consultancy on the application file to register the public offer of bonds, except for the case where the issuing organization is a securities company;
  - (e) [The enterprise] must comply with the provisions in clause 1(e) of this article;
  - (g) [The enterprise] must provide the results of credit rating applicable to bond issuers in accordance with Government regulations on cases where credit rating must be conducted and on the applicable time;
  - (h) The issuing organization must open an escrow account to receive payments for purchase of bonds in the offer tranche;
  - (i) The issuing organization must commit to conduct and must conduct listing of bonds on the securities trading system upon completion of the offer tranche.
4. The conditions for a public offer of convertible bonds accord with clauses 2 and 3(d) of this article.
  5. The conditions for an initial public offer of fund certificates are as follows:
    - (a) The total value of the fund certificates registered to offer must be a minimum of fifty (50) billion dong;
    - (b) There must be an issue plan and a plan for investment of proceeds earned from the offer tranche consistent with the provisions of this Law;
    - (c) [The offer] must be supervised by a custodian bank in accordance with this Law;
    - (d) Fund certificates offered to the public must be listed on the securities trading system upon completion of the offer tranche, except for an offer for sale of certificates in open investment funds.
  6. The Government shall provide regulations on conditions and application files for public offers of securities for the purpose of converting State owned enterprises, single member limited liability companies [LLCs] in which one hundred (100) per cent of charter capital is held by a State owned enterprise or converting public professional entities into shareholding companies; on public offers of shares with a price under par value; on public offers of securities by shareholders in public companies; on public offers of securities by credit institutions under special control; on offers of securities overseas, and on other cases of offer or issue.

**Article 16** *Registration of a public offer of securities*

1. An issuing organization or any shareholder of a public company must register with the SSC before making a public offer of securities, except in the case stipulated in clause 2 of this article.
2. The following public offers of securities are not required to be registered:

- (a) An offer of debt instruments of the Government, Government guaranteed bonds issued by a policy bank, or local authority bonds;
- (b) An offer of bonds of an international financial institution approved by the Government of Vietnam;
- (c) A public offer of shares for the purpose of converting a State owned enterprise, a single member LLC in which one hundred (100) per cent of charter capital is held by a State owned enterprise or converting a public professional entity in to a shareholding company;
- (d) The sale of securities pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator, or the sale of securities by the manager or receiver of assets in a case of bankruptcy or insolvency.

**Article 17** *Conditions for underwriting public issues of securities*

1. An underwriter of a public issue of securities is a securities company or an organization which satisfies the following conditions:
  - (a) The underwriter must be issued by the SSC with a licence to carry out activities of underwriting issues of securities in accordance with this Law;
  - (b) The underwriter must satisfy the financial prudential criteria in accordance with law;
  - (c) The underwriter must not be an affiliated person of the issuing organization.
2. An underwriter of a public issue of securities by the method of accepting to purchase some or all of the securities of the issuing organization may only underwrite the issue of securities the total value of which does not exceed the equity and not exceed fifteen (15) times the difference between the value of short-term assets and [the value of] short-term debts calculated according to the financial statements for the most recent quarter.

**Article 18** *Application file for registration of a public offer of securities*

1. An application file for registration of an initial public offer of shares by a shareholding company comprises:
  - (a) Request for registration of the IPO of shares;
  - (b) Prospectus;
  - (c) Charter of the issuing organization;
  - (d) Resolution<sup>2</sup> of the general meeting of shareholders approving the issue plan, the plan for utilization of the proceeds earned from the offer tranche, and the letter of undertaking to conduct listing or registration of trading of shares on the securities trading system;
  - (dd) Letter of undertaking to comply with the provisions in sub-clauses (d) and (e) of article 15.1 of this Law;

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<sup>2</sup> Allensfootnote: The same Vietnamese word "quyet dinh" has been translated as resolution in some contexts and as decision in other contexts.

- (e) Letter of undertaking from major shareholders prior to the time of the IPO of shares by the issuing organization to jointly hold at least twenty (20) per cent of the charter capital of the issuing organization for at least one (1) year from the date of completion of the offer tranche;
  - (g) Consultancy contract with the securities company on [formulation of] the application file for registration of the public offer of shares;
  - (h) Letter of confirmation from the bank or foreign bank branch on the opening of the escrow account to receive payments for purchase of shares in the offer tranche;
  - (i) Undertaking (if any) to underwrite the issue.
2. An application file for registration of an additional public offer of shares by a public company comprises:
- (a) Request for registration of the additional public offer of shares;
  - (b) Documents stipulated in sub-clauses (b), (c), (d), (g), (h) and (i) of clause 1 of this article and the letter of undertaking to comply with article 15.1(e) of this Law;
  - (c) Decision of the competent agency approving the project, and the plan for covering the deficit of capital proposed to be raised from the offer tranche to implement the project in the case stipulated in article 15.2(d) of this Law;
  - (d) Report on use of the proceeds earned from the most recent offer tranche which has been audited for two (2) years as at the time of lodgement of the file, except where the audited financial statements contain detailed explanatory notes regarding such use.
3. An application file for registration of a public offer of bonds comprises:
- (a) Request for registration of the public offer of bonds;
  - (b) Documents stipulated in sub-clauses (b) and (c) of clause 1 of this article and the letter of undertaking to comply with article 15.1(e) of this Law;
  - (c) Decision of the general meeting of shareholders, the board of management, the member's council or the company owner approving the issue plan and the plan for utilization of and repayment of the proceeds earned from the public offer tranche of bonds, and the letter of undertaking to conduct listing of bonds on the securities trading system;
  - (d) Undertaking from the issuing organization to discharge obligations to investors regarding conditions of the issue and conditions for payment, ensuring the lawful rights and interests of investors and ensuring other conditions;
  - (dd) Report on the result of credit rating as prescribed in article 15.3(g) of this Law;
  - (e) Consultancy contract with the securities company on [formulation of] the application file for registration of the public offer of bonds;
  - (g) Letter of confirmation from the bank or foreign bank branch on the opening of the escrow account to receive payments for purchase of bonds in the offer tranche;

- (h) Undertaking (if any) to underwrite the issue.
4. An application file for registration of a public offer of convertible bonds comprises:
- (a) Request for registration of the public offer of convertible bonds;
  - (b) Documents stipulated in sub-clauses (b), (c), (g) and (h) of clause 1 and clause 2(d) of this article and the letter of undertaking to comply with article 15.1(e) of this Law;
  - (c) Decision of the general meeting of shareholders approving the issue plan and the plan for utilization of the proceeds earned from the offer tranche, and the letter of undertaking to conduct listing or registration of trading of securities on the securities trading system;
  - (d) Undertaking from the issuing organization to discharge obligations to investors regarding conditions of the issue and conditions for payment, ensuring the lawful rights and interests of investors and ensuring other conditions;
  - (dd) Other documents relating to the conversion to shares;
  - (e) Undertaking (if any) to underwrite the issue.
5. An application file for registration of a public offer of fund certificates comprises:
- (a) Request for registration of the public offer of fund certificates;
  - (b) Prospectus;
  - (c) Draft charter of the securities investment fund;
  - (d) In-principle contract for supervision between a custodian bank and the securities investment fund management company; in-principle contract for distribution; and in-principle contracts signed with relevant service providers (if any);
  - (dd) Undertaking (if any) to underwrite the issue.
6. An application file for registration of a public offer of shares or bonds must include a decision of the board of management, the member's council or the company owner approving the application file. In the case of a public offer of shares by a credit institution, the application file must include a letter of approval from the State Bank of Vietnam on the change of the charter capital. In the case of a public offer of securities by an insurance business organization resulting in a change of its charter capital, the application file must include a letter of approval from the MOF on such change.
7. If a part of or an entire application file for registration of a public offer of securities has been certified by an affiliated organization or individual, then the issuing organization must forward such written certification to the SSC.
8. The information in an application file for registration of a public offer of securities must be accurate and truthful, not cause misunderstanding, and must include all important items which will influence a decision by investors.
9. When the issuing organization submits an application file for registration of a public offer of securities to the SSC, it must also submit an application file for registration of listing or registration of trading of

securities in accordance with article 48.4 of this Law, except for the case of offer of certificates in open investment funds.

## **Article 19** *Prospectus*

1. The prospectus for a public offer of shares or bonds includes the following particulars:
  - (a) Summarized information about the issuing organization including the scale of its managerial organization, its business operations, assets and financial status, the board of management or member's council or company owner, the general director (director), the deputy general director (deputy director), the chief accountant and the shareholding structure (if any);
  - (b) Information about the offer tranche and the securities the subject of the offer, including conditions of the offer, risk elements, proposed plan on profit and dividends for the next year after the issue of the securities, the issue plan and the plan for utilization of the proceeds earned from the offer tranche;
  - (c) Financial statements as stipulated in article 20 of this Law of the issuing organization for the last two (2) years;
  - (d) Other information as stipulated in the standard form prospectus.
2. The prospectus for a public offer of fund certificates includes the following particulars:
  - (a) Type and scale of the securities investment fund;
  - (b) Investment objectives, investment strategy, methods and rules for investment, restrictions on investment, and risk elements of the securities investment fund;
  - (c) Summary of main contents of the draft charter of the securities investment fund;
  - (d) Plan for issue of the fund certificates and information guiding participation in investing in the securities investment fund;
  - (dd) Summarized information about the securities investment fund management company and custodian bank, and rules on trading with affiliated persons of the securities investment fund management company and custodian bank;
  - (e) Other information as stipulated in the standard form prospectus.
3. The signing of a prospectus accords with the following provisions:
  - (a) The prospectus for a public offer of shares or bonds must be signed by the following persons: the chairman of the board of management or of the member's council, the company chairman, the general director (director), the financial director or the chief accountant of the issuing organization; the legal representative of the organization providing consultancy on the application file for registration of a public offer of securities, the underwriter or leading underwriter (if any). There must be a power of attorney if the prospectus is signed on behalf of another person;
  - (b) The prospectus for a public offer of fund certificates must be signed by the following persons: the chairman of the board of management or of the member's council, the company chairman,



the general director (director) of the securities investment fund management company; the legal representative of the underwriter (if any). There must be a power of attorney if the prospectus is signed on behalf of another person.

4. The Minister of Finance shall promulgate the standard form prospectus.

#### **Article 20** *Financial statements*

1. Financial statements are prepared in accordance with the law on accounting.
2. An issuing organization which is a parent company must lodge consolidated financial statements in accordance with the law on accounting.
3. Annual financial statements must be audited by an auditing organization approved to audit public utility entities in the securities sector. The auditor's opinion on the financial statements is [must be] total acceptance; where the auditor's opinion is a reservation, such reservation shall not affect the conditions of the offer; the issuing organization must have a reasonable written explanation and must obtain a confirmation from the auditor regarding the effect of such reservation.
4. If an application file is lodged within sixty (60) days from the last date of the annual accounting period, the annual financial statements of the previous year in an initial application file may be unaudited, but there must also be audited financial statements for the previous two (2) consecutive years.
5. Where a complete and valid application file for registration of a public offer of securities is lodged with the SSC in excess of ninety (90) days after the last date of the accounting period of the most recent financial statements submitted with the application file, the issuing organization must prepare additional financial statements up until the most recent month or quarter.

#### **Article 21** *Approved auditing organizations and practising auditors*

1. The SSC considers, approves and publishes a list of auditing organizations and a list of practising auditors approved to conduct audits for public utility entities in the securities sector.
2. Public utility entities in the securities sector comprise public companies, listing organizations, registered trading organizations, organizations making public offers of securities, securities companies, securities investment fund management companies, securities investment companies and securities investment funds.
3. An auditing organization approved to conduct audits for public utility entities in the securities sector must comply with the provisions of the law on independent auditing and has the following obligations:
  - (a) To make a report to the SSC within ten (10) days from the date on which there is a change to its name, head office address, areas of practice or list of practising auditors, or any change resulting in ineligibility to be approved to conduct audits;
  - (b) To provide explanations or information and data relating to the audit of public utility entities in the securities sector at the request of the SSC;

- (c) If after publishing an audit report for a public utility entity in the securities sector it is discovered that the audited entity committed a serious breach by not complying with law and regulations in relation to the audited financial statements, the approved auditing organization must send a written notice to the SSC;
- (d) To keep information confidential in accordance with law.

4. The Government shall provide detailed regulations on this article.

**Article 22** *Amendments of and additions to an application file for registration of a public offer of securities*

1. During the time when an application file for registration of a public offer of securities is being considered, the issuing organization is obliged to amend or add to the file if it discovers any inaccurate information or that there has been a lack of important information required by the regulations, or if it considers it necessary to explain any matter which may cause misunderstanding.
2. The SSC, during the time it considers an application file for registration of the public offer of securities, has the right to require the issuing organization to amend or add to the application file in order to ensure that disclosed information is accurate, truthful and complete and protects the lawful rights and interests of investors.
3. If after the SCC has issued a certificate of registration of the public offer of securities, important information arises relating to the application file for registration of the public offer, then within seven (7) working days the issuing organization must announce the information which has arisen by the methods stipulated in article 25.3 of this Law and the issuing organization must also amend and supplement the application file.
4. Any letter amending or adding to a file and sent to the SSC must be signed by the persons who signed the application file for the public offer or by people who hold the same position as such original signatories.
5. The time-limit for consideration of an application file in the cases stipulated in clauses 1 and 2 of this article is calculated from the date on which the SSC receives the complete and valid letter amending or adding to the application file.

**Article 23** *Responsibilities of organizations and individuals involved in an application file for registration of a public offer of securities*

1. The issuing organization must be liable before the law for the accuracy, truthfulness and completeness of the application file for registration of a public offer of securities.
2. The institution advising on the issue, the institution underwriting the issue, the approved auditing organization, the signatory to the audit report and any other organization or individual certifying the application file must be liable before the law within the scope related to the application file for registration of the public offer of securities.

#### **Article 24** *Information prior to making a public offer of securities*

Pending consideration of an application file for registration of a public offer of securities by the SSC, the issuing organization, the underwriters and other affiliated organizations and individuals may only use truthfully and accurately the information given in the prospectus which has been submitted to the SSC for the purpose of market research, and must specify that information about an issue date and about sale prices of securities is forecast information only.

#### **Article 25** *Issuance of certificate of registration of a public offer of securities*

1. Within thirty (30) days from the date of receipt of a complete and valid application file for registration of a public offer of securities, the SSC issues a certificate of registration of a public offer of securities; in a case of refusal, the SSC must provide a written reply specifying its reasons for the refusal.
2. A certificate of registration of a public offer of securities from the SSC is deemed to be written confirmation that the application file for registration of the offer satisfies all the conditions and procedures stipulated by law.
3. Within seven (7) working days from the date of effectiveness of a certificate of registration of a public offer of securities, the issuing organization must make an issue announcement in one (1) electronic newspaper or in three (3) consecutive editions of a printed newspaper.
4. Securities may only be offered to the public after the announcement stipulated in clause 3 of this article has been made.

#### **Article 26** *Securities distribution*

1. Securities may only be distributed after the issuing organization has ensured that securities purchasers have accessed the prospectus in the application file for registration of the public offer of securities announced at locations set out in the issue announcement.
2. The issuing organization, underwriters or agency organizations must distribute securities in a fair and public manner and must ensure that the time-limit within which investors may register to purchase securities is a minimum twenty (20) days, except where securities offered for sale are guaranteed securities rights; this time-limit must be set out in the issue announcement.

If the volume of securities registered to be purchased exceeds the permitted volume for the issue, the issuing organization or underwriter must distribute all of the number of securities permitted for the issue to investors in the proportion in which each investor registered to purchase.

3. Purchase monies for securities must be paid into an escrow account opened at a bank or foreign bank branch and retained until completion of the offer tranche and until a report has been made to the SSC.
4. The issuing organization must complete distribution of the securities within ninety (90) days from the date of effectiveness of the certificate of registration of the public offer of securities. If the issuing organization is unable to complete the public distribution of securities within this time-limit, then the SSC may consider an extension of the time-limit for the securities distribution but shall not grant an extension beyond thirty (30) days. If a number of tranches of public offers of securities are registered, the maximum time between any two tranches shall not exceed twelve (12) months.

5. The issuing organization or underwriter must, within ten (10) days from the end of an offer tranche, report the results of the offer tranche to the SSC enclosing a letter of confirmation from the bank or foreign bank branch where the escrow account was opened of the amount of the proceeds received from the offer tranche.
6. The issuing organization, underwriters or agency organizations must deliver the securities or certificates of ownership of the securities to purchasers within thirty (30) days from the date of the end of an offer tranche.

**Article 27** *Suspension of public offer of securities*

1. The SSC has the right to suspend a public offer of securities for a maximum sixty (60) days in the following circumstances:
  - (a) The application file for registration of the public offer of securities contains false information or omits important items which may affect an investment decision and cause loss to investors;
  - (b) The distribution of the securities was not conducted correctly as required by article 26 of this Law.
2. Within seven (7) working days from the date on which an offer tranche is suspended, the issuing organization must announce the suspension of the public offer of securities by the method stipulated in article 25.3 of this Law and must recall issued securities if investors so request, and at the same time must refund investors their money within fifteen (15) days from the date of receipt of a request.
3. If the defects which led to the suspension are remedied, the SSC may issue written notice of rescission of the suspension and the securities offer shall be permitted to be continued.
4. The issuing organization must announce the rescission of suspension by the method stipulated in article 25.3 of this Law within seven (7) working days from the date it receives notice of rescission of suspension.

**Article 28** *Rescission of public offer of securities*

1. The SSC makes a decision rescinding a public offer tranche of securities in the following cases:
  - (a) The defects which resulted in the suspension of the offer tranche have not been remedied upon expiry of the suspension period stipulated in article 27.1 of this Law;
  - (b) The IPO tranche of shares failed to satisfy the condition regarding the minimum percentage of the number of voting shares of the issuing organization sold to at least one hundred (100) investors not being major shareholders of the issuing organization as prescribed in sub-clause (d) of article 15.1 of this Law;
  - (c) The additional offer tranche of shares fails to satisfy the condition regarding raising sufficient capital to implement the project of the issuing organization as prescribed in sub-clause (d) of article 15.2 of this Law.
2. In addition to the cases stipulated in clause 1 above, a public offer tranche of securities may be rescinded pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator or competent agency in accordance with law.

3. Within seven (7) working days from the date an offer tranche is rescinded, the issuing organization must announce the rescission of the public offer of securities by the method stipulated in article 25.3 of this Law, must recall all issued securities, and must refund investors their money within fifteen (15) days from the date of rescission of the offer tranche. Upon expiry of this latter time-limit, the issuing organization must compensate investors for their losses in accordance with the undertakings which the issuing organization made to investors.

**Article 29** *Obligations of issuing organizations*

1. An issuing organization which has made a successful public offer of shares and become a public company in accordance with article 32.1(b) of this Law is not required to lodge the public company registration file stipulated in article 33.1 of this Law with the SSC.
2. An issuing organization which has made a public offer of securities must, within thirty (30) days from the date of completion of the offer tranche, complete the application file for registration of listing or registration of trading of securities.
3. An issuing organization which completes a public offer of bonds must comply with the obligation to disclose information stipulated in this Law.

Section 2

**Private Placements of Securities**

**Article 30** *Private placements of securities by issuing organizations not being public companies*

Private placements of securities by issuing organizations not being public companies accord with the *Law on Enterprises* and other relevant laws.

**Article 31** *Private placements of securities by public companies, securities companies and securities investment fund management companies*

1. The conditions for a private placement of shares, convertible bonds or bonds with securities rights attached by a public company are as follows:
  - (a) There must be a decision of the general meeting of shareholders approving the issue plan and plan for use of proceeds from the placement tranche, specifying the criteria [applicable to] and number of investors;
  - (b) Entities participating in the placement tranche must only comprise strategic investors and/or institutional securities investors;
  - (c) Strategic investors must be restricted from assigning shares, convertible bonds or bonds with securities rights attached in the private placement tranche for at least three (3) years, and institutional securities investors must be restricted from doing so for at least one (1) year, from the date of completion of the placement tranche, except for the case of assignment among institutional securities investors or implementation pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator or [except for the case of] inheritance in accordance with law;

- (d) The time between placement tranches of shares, convertible bonds or bonds with securities rights attached must be at least six (6) months from the date of completion of the latest placement tranche;
  - (dd) The private placement of shares, the conversion of bonds into shares or the exercise of securities rights must comply with the ratio of ownership by foreign investors in accordance with law.
2. The conditions for a private placement of bonds by a public company not falling into the case stipulated in clause 1 of this article are as follows:
- (a) There must be a decision of the general meeting of shareholders or the board of management approving the issue plan and plan for use of proceeds from the placement tranche, specifying the criteria [applicable to] and number of investors;
  - (b) Entities participating in the private placement tranche must only comprise institutional securities investors;
  - (c) The assignment of bonds in the private placement tranche must only be implemented among institutional securities investors, except for the case of implementation pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator or [except for the case of] inheritance in accordance with law;
  - (d) Principal and interest on bonds placed or due debts in three (3) consecutive years immediately preceding the bond placement tranche (if any) were paid in full, except for the placement of bonds to creditors being selected financial institutions;
  - (dd) Financial statements for the year immediately preceding the year of issue were audited by an approved auditing organization;
  - (e) [The public company] must satisfy financial prudential ratios and other ratios ensuring operational safety as prescribed by law (if any).
3. Any securities company or securities investment fund management company which is not a public company, and which makes a private placement of shares, convertible bonds or bonds with securities rights attached must comply with clause 1 of this article.
4. The conditions for a private placement of bonds by a securities company or securities investment fund management company not being a public company and not falling into the case stipulated in clause 3 of this article are as follows:
- (a) There must be a decision of the general meeting of shareholders or the board of management or the members' council or the company owner approving the issue plan and plan for use of proceeds from the placement tranche, specifying the criteria [applicable to] and number of investors;
  - (b) The provisions in sub-clauses (b), (c), (dd) and (e) of clause 2 of this article must be satisfied.
5. Securities companies and securities investment fund management companies which are not public companies, and which make a placement of shares to existing shareholders according to their existing ownership ratio must satisfy the conditions stipulated in sub-clauses (a) and (d) of clause 1 of this article.

6. The Government shall provide detailed regulations on private placements of securities by public companies, securities companies and securities investment fund management companies stipulated in this article and other private placements and issues of securities by public companies.

## CHAPTER III

### Public Companies

#### Section 1

#### General Provisions on Public Companies

##### **Article 32** *Public companies*

1. A public company means a shareholding company which belongs to either of the following cases:
  - (a) A company which has a minimum amount of paid-up charter capital of thirty (30) billion dong and in which at least ten (10) per cent of the number of voting shares is held by at least one hundred (100) investors not being major shareholders;
  - (b) A company which has made a successful initial public offer of shares through registration with the SSC as prescribed in article 16.1 of this Law.
2. The shareholding companies defined in clause 1(a) of this article must lodge the public company registration file stipulated in article 33.1 of this Law with the SSC within ninety (90) days from the date such shareholding company completes the capital contribution and its shareholding structure complies with clause 1(a) of this article.
3. Within fifteen (15) days from the date of receipt of a complete and valid public company registration file from the shareholding company stipulated in clause 1(a) of this article or receipt of a report on results of completion of the offer tranche from the shareholding company stipulated in clause 1(b) of this article, the SSC is responsible to certify the completion of registration as a public company, and at the same time announce the name, business contents and other relevant information about the public company on the information disclosure means of the SSC.

##### **Article 33** *Public company registration file*

1. A public company registration file comprises:
  - (a) Request for registration as a public company;
  - (b) Charter of the company;
  - (c) Enterprise registration certificate;
  - (d) Disclosure of information about the public company comprising summarized information about the scale of its managerial organization, business operations, managerial apparatus, shareholding structure, assets and financial status and other information;



- (dd) Most recent annual financial statements of the shareholding company as audited by an independent auditing organization. If the company increases its charter capital after expiry of the most recent annual accounting period, the company must also provide the audited financial statements for the most recent period;
  - (e) List of shareholders.
2. The Minister of Finance shall promulgate the standard form for the disclosure of information about public companies and provide regulations on public company registration files upon division, separation, consolidation and merger of enterprises.

**Article 34** *Rights and obligations of public companies*

1. After the SSC certifies the completion of registration as a public company, the public company has the following rights and obligations:
- (a) To disclose information as stipulated in this Law;
  - (b) To comply with the provisions on corporate management stipulated in this Law;
  - (c) To conduct concentrated share registration at VSDCC as stipulated in article 61 of this Law;
  - (d) The public company stipulated in article 32.1(a) of this Law must conduct registration of trading of shares on the unlisted securities trading system within thirty (30) days from the date on which the SSC certifies completion of registration as a public company. After two (2) years from the first trading day on the unlisted securities trading system, the public company has the right to lodge an application file for registration of listing when it satisfies the conditions for listing of securities;
  - (dd) The public company stipulated in article 32.1(b) of this Law must place shares for listing or registration of trading on the securities trading system within thirty (30) days from the date of completion of the public offer tranche.
2. In addition to the rights and obligations stipulated in clause 1 of this article, public companies have the rights and obligations stipulated in the *Law on Enterprises* and other relevant laws.

**Article 35** *Public offers to acquire*

1. The following transactions must be made by a public offer to acquire and registered with the SSC:
- (a) Any organization, individual or affiliated person stipulated in sub-clauses (a), (b), (c), (d), (e) and (g) of article 4.46 of this Law intends to purchase voting shares or currently circulating closed investment fund certificates, leading to direct or indirect ownership of twenty five (25) per cent or more of the number of voting rights of any one public company or currently circulating closed investment fund certificates of any one closed investment fund;
  - (b) Any organization, individual or affiliated person stipulated in sub-clauses (a), (b), (c), (d), (e) and (g) of article 4.46 of this Law who holds twenty five (25) per cent or more of the number of voting shares of any one public company or currently circulating closed investment certificates of any one closed investment fund intends to make further purchases leading to direct or indirect ownership of or in excess of thirty five (35) per cent, forty five (45) per cent, fifty five (55) per cent, sixty five (65) per cent or seventy five (75) per cent of the number of voting

shares of the public company or currently circulating closed investment fund certificates of the closed investment fund;

- (c) Except for the case of an offer to acquire which was made with respect to all of the voting shares of any one public company or currently circulating closed investment fund certificates of any one closed investment fund, after making a public offer to acquire, an organization, individual or affiliated person stipulated in sub-clauses (a), (b), (c), (d), (e) and (g) of article 4.46 of this Law who holds eighty (80) per cent or more of the number of voting shares of any one public company or currently circulating closed investment fund certificates of any one closed investment fund must purchase additional shares or closed investment fund certificates held by the other shareholders or investors within thirty (30) days in accordance with the same conditions on acquiring prices and payment methods as applicable to the public offer to acquire.

2. The entities stipulated in clause 1 of this article are not required to make a public offer to acquire in any one of the following cases:

- (a) Purchase of newly issued shares [or] closed investment fund certificates leading to ownership of any percentage stipulated in clause 1 above, pursuant to a plan on issuance passed by the general meeting of shareholders of the public company or passed by the committee of representatives of the closed investment fund;
- (b) Receipt of transfer of voting shares [or] currently circulating closed investment fund certificates leading to ownership of any percentage stipulated in clause 1 above and approved by the general meeting of shareholders of the public company or by the committee of representatives of the closed investment fund. In such case, the general meeting of shareholders or the committee of representatives of the closed investment fund must specify the transferor and the transferee;
- (c) Transfer of shares as between companies operating as a group of companies, comprising economic groups, corporations and parent - subsidiary companies and not leading to cross ownership as stipulated in the *Law on Enterprises*;
- (d) Any organization or individual owns shares in a public auction of securities for sale or in an offer tranche upon assignment of State capital or capital of a State owned enterprise invested in another enterprise;
- (dd) Any organization or individual owns shares from activities of division, separation, consolidation or merger of enterprises;
- (e) Donation of or bequeathing shares [or] closed investment fund certificates;
- (g) Assignment of shares [or] closed investment fund certificates pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator.

3. The Government shall provide detailed regulations on public offers to acquire shares by public companies and closed investment fund certificates.

#### **Article 36** *Redemption by public company of its own shares*

1. A public company which redeems its shares must satisfy the following conditions:

- (a) There is a decision of the general meeting of shareholders approving the redemption for the purpose of decreasing charter capital and the redemption plan, specifying the volume, time of implementation and principles for determining the price for redemption;
  - (b) [The company] has sufficient capital from the following sources to redeem shares: surplus share capital, a development and investment fund, undistributed after-tax profit, and/or other funds which are owner's capital [equity] permitted to be used to supplement charter capital in accordance with law;
  - (c) There is a securities company appointed to conduct the transaction, except where a securities company being a member of the Stock Exchange of Vietnam [*the SE*] redeems its own shares;
  - (d) [The company] satisfies the conditions stipulated by law if the public company operates in an industry or trade in which business investment is conditional;
  - (dd) [The company] does not fall into the cases stipulated in clause 3 of this article.
2. The redemption of shares is exempt from the conditions stipulated in sub-clauses (a), (b), (c) and (d) of clause 1 of this article in the following circumstances:
- (a) Redemption of shares upon request of a shareholder set out in the *Law on Enterprises*;
  - (b) Redemption of shares of employees in accordance with the regulations on issue of shares to employees of the company, or redemption of odd shares in accordance with the plan for issue of shares for payment of dividends or issue of shares originating from owner's capital;
  - (c) A securities company redeems its own shares to remedy an error in a transaction or redeems odd lots of shares.
3. A public company is not permitted to redeem its own shares in the following circumstances:
- (a) It currently has any overdue debt shown in the audited financial statements for the most recent year; where the proposed timing of redemption of shares is more than six (6) months from the end of a financial year, overdue debts shall be determined on the basis of the most recent audited or checked semi-annual financial statements; except for the case stipulated in clause 2(c) of this article;
  - (b) It is in the process of offering or issuing shares to raise additional capital, except for the case stipulated in clause 2(c) of this article;
  - (c) Its shares are the subject of a public offer to acquire, except for the case stipulated in clause 2 of this article;
  - (d) The company redeemed its own shares within six (6) months from the date of the report on results of redemption or in a case of completion of an offer tranche and issue of shares to increase capital occurring no earlier than six (6) months from the date of completion of an offer tranche and issue, except for the case stipulated in clause 2 of this article.
4. A company is not permitted to redeem shares from the following entities, unless the redemption is conducted according to [such entities'] ownership ratio in the company, or the redemption of shares is pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator, or the redemption is conducted through a transaction carried out by the method of order matching:

- (a) Insiders and their affiliated persons as stipulated in this Law;
  - (b) Owners of shares subject to restrictions on transfer in accordance with law and the company charter;
  - (c) Major shareholders stipulated in this Law.
5. A public company which redeems its own shares in accordance with clauses 1 and 2(a) of this article must, within ten (10) days from the date of completion of payment for redemption of the shares, carry out the procedures for decreasing charter capital in proportion to the total value calculated according to the par value of shares redeemed by the company.
6. If a company redeems shares of employees in accordance with the regulations on issue of shares to employees of the company, the company must comply with the following provisions:
- (a) The total volume of shares of employees redeemed by the company to decrease the charter capital must be reported to the annual general meeting of shareholders;
  - (b) The company must, within ten (10) days from the date of reporting to the annual general meeting of shareholders as stipulated in sub-clause (a) above, carry out the procedures for decreasing charter capital in proportion to the total value calculated according to the par value of shares redeemed by the company.
7. A securities company or public company which redeems its own shares may sell such shares immediately after redemption in the following cases:
- (a) The securities company redeems its own shares to remedy an error in a transaction or redeems odd lots of shares;
  - (b) The public company redeems odd shares in accordance with the share issue plan for payment of dividends or issue plan of shares from equity;
  - (c) The public company redeems odd lots of shares as requested by its shareholders.
8. The Minister of Finance shall provide detailed regulations on redemption of shares by public companies.

**Article 37** *Report on redemption of shares, disclosure of information and implementation of redemption of shares*

1. Before a public company stipulated in article 36.1 of this Law redeems its own shares, it must send documents and reports to the SSC, comprising:
- (a) Report on redemption of shares;
  - (b) Decision of the general meeting of shareholders approving the redemption of shares and/or the redemption plan;
  - (c) Letter of confirmation of the appointment to conduct the transaction from the securities company, except where a securities company being a member of the SE redeems its own shares;

- (d) Decision of the board of management approving the plan for share redemption;
  - (dd) Most recent audited financial statements;
  - (e) Document proving that the company has sufficient capital to redeem shares;
  - (g) Document proving that the company satisfies the conditions for redemption of its own shares in accordance with law if the public company operates in an industry or trade in which business investment is conditional.
2. A report on redemption of shares contains the following particulars:
    - (a) Objective of the redemption;
    - (b) Total number of shares registered to be redeemed;
    - (c) Source of capital for redemption;
    - (d) Transaction method;
    - (dd) Proposed time of implementation;
    - (e) Principles for determining the price (price range).
  3. Within seven (7) working days from the date of receipt of complete and valid documents and reports on redemption of shares as prescribed in clause 1 of this article, the SSC sends a letter notifying the public company that it has received complete documents and reports on redemption of shares; where any document is incomplete or invalid, the SSC shall send a letter to the public company clearly stating the items required to be amended or supplemented. The period for such amendment or supplement is not included in the period stipulated in this clause. In the case of refusal, the SSC must provide a written reply, specifying the reason(s) therefor.
  4. Within seven (7) working days from the date of notification by the SSC, the public company must make a disclosure of information about the contents stipulated in clause 2 of this article on its website and on the information disclosure means of the SSC and/or the SE. The public company may redeem shares after seven (7) working days from the date of disclosure of information.
  5. Within ten (10) days from the date of completion of redemption of shares, the public company must send a report on the trading [transaction] results to the SSC and make a public disclosure of information. If the public company fails to redeem all the number of shares proposed to be traded, the public company must make a report and announce the reason(s) for such failure.
  6. The public company must complete the redemption of shares within the period stated in the disclosure of information but no later than thirty (30) days from the date of commencement of the transactions.
  7. Within six (6) months from the date of completion of the redemption, the public company is not permitted to make any offer of shares to increase charter capital, except for the case of conversion of bonds into shares in accordance with commitments when making an offer of convertible bonds.

### **Article 38** *Rescission of status as a public company*

1. A public company is responsible to send to the SSC a written notice accompanied by the list of shareholders provided by VSDCC within fifteen (15) days from the date on which its paid-up charter capital is less than thirty (30) billion dong as calculated on the basis of the most recent audited financial statements or its shareholding structure does not satisfy the conditions stipulated in article 32.1(a) of this Law pursuant to the confirmation of VSDCC.
2. If after one (1) year from the date on which a public company no longer satisfies the provisions in article 32.1(a) of this Law the company still fails to satisfy the conditions for being a public company, the SSC shall consider and rescind status as a public company.
3. The company must fully comply with the regulations relating to public companies until the SSC provides a notice of rescission of status as a public company.
4. Within seven (7) working days from the date of receipt of the notice from the SSC of such rescission, the company is responsible to announce such rescission on its website and on the information disclosure means of the SSC and/or the SE, and carry out the procedures for de-listing or de-registration of trading of shares in accordance with law.
5. The Minister of Finance shall provide regulations on rescission of status as a public company in the case of failure to satisfy the conditions for being a public company due to reorganization, dissolution or bankruptcy of enterprises.

### **Article 39** *Application file for rescission of status as a public company*

A public company which falls into the case prescribed in article 38.2 of this Law must submit an application file for rescission of its status to the SSC. Such file comprises:

1. Enterprise registration certificate;
2. Written notice stating that the public company no longer satisfies the provisions in article 32.1(a) of this Law;
3. List of shareholders provided by VSDCC;
4. Financial statements for the most recent year as audited by an approved auditing organization. If the company increased its charter capital after the end of the most recent annual accounting period, the company must also provide the audited financial statements for the most recent period.

## Section 2

### **Corporate Management Applicable to Public Companies**

#### **Article 40** *Principles on corporate management applicable to public companies*

The corporate management applicable to public companies must comply with the provisions of this Law, of the *Law on Enterprises* and other relevant laws, and with the following principles:

1. [Having] a reasonable and effective managerial structure;

2. Ensuring effectiveness of the operation of the board of management and board of controllers; and increasing the responsibility of the board of management with respect to the company and shareholders;
3. Ensuring rights of shareholders, and equal treatment of all shareholders;
4. Ensuring the role of investors, the securities market and intermediary organizations in supporting activities of corporate management;
5. Respecting and ensuring legitimate rights and interests of parties with interests related to corporate management;
6. Making timely, complete, accurate and transparent disclosure of information about operations of the company; and ensuring that shareholders have fair access to information.

**Article 41** *Contents of corporate management applicable to public companies*

1. Shareholders of a public company have the following rights and obligations:
  - (a) To be treated equally;
  - (b) To have full access to information which the company announces periodically and on an ad hoc basis in accordance with law;
  - (c) To protect their legitimate rights and interests; to request suspension or cancellation of resolutions or decisions of the general meeting of shareholders or the board of management in accordance with the provisions of the *Law on Enterprises*;
  - (d) Major shareholders must not exploit their advantages adversely impacting on the rights and interests of the company and/or of other shareholders as prescribed by law and in the company charter; and are obliged to disclose information in accordance with law;
  - (dd) Other rights and obligations stipulated by law and in the company charter.
2. Meetings of the general meeting of shareholders are convened and held in accordance with the following provisions:
  - (a) The board of management, the board of controllers and the convenor of a meeting of the general meeting of shareholders must fully comply with the sequence and procedures for convening such meeting in accordance with the *Law on Enterprises*, the company charter and internal rules on corporate management; and must arrange a reasonable venue and time in order for shareholders to attend the meeting;
  - (b) A public company must include in its internal rules on corporate management a provision on application of modern information technology so that shareholders are able to attend and express their opinions at a meeting of the general meeting of shareholders via an online meeting, or electronic voting or via other electronic methods as stipulated in the *Law on Enterprises* and in the company charter;



- (c) A public company must invite the representative of the approved auditing organization which audited the annual financial statements of the company to the annual general meeting of shareholders if the audit report on the annual financial statements of the company contains an important reservation;
  - (d) Complying with other laws and the company charter.
3. The composition, structure, responsibilities and obligations of the board of management must comply with the following provisions:
- (a) The structure of the board of management of a public company must ensure the balance between executive and non-executive members of the board of management, and [ensure] the number of independent members of the board of management in order to ensure the independence of the board;
  - (b) The board of management must be responsible before shareholders for the operation of the company; must ensure that the operation of the company complies with law, the company charter and the internal rules of the company; must formulate the internal rules on corporate management and submit same to the general meeting of shareholders for approval; and must appoint a company manager; and has other responsibilities and obligations in accordance with law and the company charter;
  - (c) The board of management must hold a meeting at least once each quarter in accordance with the sequence and procedures stipulated in the company charter and the internal rules on corporate management. The holding of the meeting of the board of management and the agenda and relevant documents for the meeting must be notified in advance to members of the board of management within the time-limit prescribed by law and in the company charter.
4. The nomination or standing for election of members of the board of management must comply with the provisions of the *Law on Enterprises*, relevant laws and the following provisions:
- (a) Where the candidates for the board of management are identified, the public company must disclose information relating to such candidates at least ten (10) days prior to the opening day of the general meeting of shareholders on its website in order for shareholders to access such information about the candidates prior to voting;
  - (b) If the number of candidates for the board of management after standing for election and after nominations is insufficient as required by the *Law on Enterprises*, the incumbent board of management may introduce additional candidates or arrange nominations in accordance with the company charter and the internal rules on corporate management.
5. Members of the board of management have the following rights and responsibilities:
- (a) To be provided with information about and documents on the financial status and business activities of the company and of entities within the company;
  - (b) To perform their duties in an honest and diligent manner in the best interests of shareholders and of the company;
  - (c) To attend all meetings of the board of management and provide opinions on matters addressed for discussion;

- (d) To provide reports promptly and completely to the board of management on the items of remuneration they receive from subsidiary companies, affiliated companies and other organizations;
  - (dd) To make reports and disclose information when conducting trading of shares of the company in accordance with law;
  - (e) To have other rights and responsibilities stipulated by law and the company charter.
6. A public company must comply with the following provisions on prevention of conflicts of interest and disclosure of transparent information:
- (a) Members of the board of management, members of the board of controllers (inspectors), the general director (director) and other managers of the public company are responsible to publicly announce related interests, and are not permitted to use information obtained by virtue of their position for personal interest or for the interest [or benefit] of any other individual or organization;
  - (b) The public company is responsible to apply necessary measures to prevent members of the board of management, members of the board of controllers (inspectors), the general director (director), other managers of the company, shareholders and affiliated persons from interfering in the company's activities and causing loss to the company's interests; to comply with the rules on trading with shareholders, enterprise managers and their affiliated persons; and to ensure legitimate rights and interests of persons who have benefits related to the company;
  - (c) The public company is obliged to make a report on, [and/or] disclose complete, accurate and up-to-date information on a periodical and ad-hoc basis about the status of production and business activities, the financial status and the status of corporate management to shareholders and to the public, and other information which may affect securities prices and affect decisions of shareholders and investors;
  - (d) Information to be disclosed and methods of disclosing information [must] comply with the provisions of this Law and the company charter and the rules of the company on disclosure of information.
7. The Government shall provide detailed regulations on this article.

## CHAPTER IV

### Securities Trading Market

#### **Article 42** *Organization of securities trading markets*

1. The SEVS is permitted to organize a securities trading market for securities which satisfy the conditions for listing; for securities of State owned enterprises or single member LLCs in which one hundred (100) per cent charter capital is held by a State owned enterprise and which converts to a shareholding company; for securities of other enterprises which do not yet satisfy the conditions for listing; for securities of creative start-up enterprises; for derivative securities and for other types of securities in accordance with Government regulations.

2. Apart from the SEVS, no organization or individual is permitted to organize and operate a securities trading market.

**Article 43** *Establishment and operation of the SEVS*

1. The Stock Exchange of Vietnam [*the SE*] is an enterprise established and operating in accordance with the provisions of this Law and the *Law on Enterprises*, and in which the State holds more than fifty (50) per cent of the charter capital or the total number of voting shares.
2. On the proposal of the Minister of Finance, the Prime Minister issues a decision on the establishment, dissolution, operational model, ownership form, functions, rights and obligations of the SE and on the establishment of its subsidiary.
3. The SEVS is subject to direct administration and supervision by the SSC.

**Article 44** *Organizational and managerial structure of the SE*

1. The Prime Minister makes a decision on the organizational and managerial structure of the SE in accordance with the provisions of this Law and the *Law on Enterprises* and other relevant laws.
2. The chairman of the members' council or the chairman of the board of management and general director (director) of the SE are approved or appointed and removed by the Minister of Finance on the proposal of the members' council or the board of management of the SE and [in accordance with] the opinion of the chairman of the SSC.
3. The rights and duties of the members' council or the board of management, of the general director (director), or of the board of controllers (inspectors) are implemented in accordance with law and the charter of the SE.

**Article 45** *Charter of the SE*

1. The charter of the SE is approved or promulgated, amended or supplemented by the Minister of Finance on the proposal of the members' council or the board of management of the SE and [in accordance with the opinion of the chairman of the SSC.
2. The charter of the SE contains the following main particulars:
  - (a) Names and addresses of the head office, subsidiary companies and branches;
  - (b) Operational objectives and scope and services to be provided;
  - (c) Charter capital; method for increasing and reducing charter capital or for assigning capital;
  - (d) Names and addresses and basic information about the founding shareholders or capital contributing members or owner;
  - (dd) Capital contribution portions or number of shares and value of capital contribution of founding shareholders or capital contributing members or owner;
  - (e) Legal representative;
  - (g) Organizational and managerial structure;

- (h) Rights and obligations of the SE;
- (i) Rights and obligations of capital contributing members or of owner or of shareholders;
- (k) Rights and obligations of the members' council or the board of management, general director (director) and board of controllers (inspectors);
- (l) Method for passing decisions of the SE;
- (m) Method for amending or supplementing the charter;
- (n) Applicable accounting and auditing regimes;
- (o) Establishment of funds and mechanisms to use funds; principles on use of profit, on dealing with losses and other financial regimes;
- (p) Principles for resolution of internal disputes.

**Article 46** *Rights and obligations of the SE*

1. The SE has the following rights:

- (a) To promulgate rules on listing securities, on trading securities, on disclosure of information and on members of the SE and other professional rules relating to the organization and operation of the securities trading market after obtaining approval from the SSC;
- (b) To organize and operate the securities trading market;
- (c) To warn of, control and limit securities transactions in accordance with law and the rules of the SE;
- (d) To temporarily cease or suspend trading of one or more securities if there are abnormal fluctuations in the price and volume of securities being traded or the listing organization or the registered trading organization does not take any measure to remedy the causes for which the securities were subject to a warning, control or restriction of trading or in necessary cases in order to protect the legitimate rights and interests of investors and ensure the stability and safety of the securities market;
- (dd) To approve, change, de-list or de-register trading of securities and to supervise maintenance of conditions for securities listing by listing organizations;
- (e) To approve or to rescind the membership of members of the SE;
- (g) To provide auction and tendering services; services regarding market information and information relating to securities listed or registered for trading; services of development of technological infrastructure for the securities market and other relevant services in accordance with the charter of the SE;
- (h) To act as a conciliator on the request of members of the SE when a dispute arises relating to securities trading activities;

- (i) To inspect and deal with breaches committed by members of the SE and by listing organizations or registered trading organization in accordance with the rules of the SE;
  - (k) To request State administrative agencies provide information relating to members of the SE, listing organizations or registered trading organizations for the purpose of disclosing information in accordance with law;
  - (l) Other rights stipulated by law and in the charter of the SE.
2. The SE has the following obligations:
- (a) To ensure that securities trading activities are conducted on the securities market publicly, fairly, in an orderly manner, safely and effectively.
  - (b) To implement the accounting, auditing, statistics, financial obligations, reporting and information disclosure regimes in accordance with law.
  - (c) To supervise securities trading activities and compliance with obligations by members of the SE; and activities of disclosing information by listing organizations, registered trading organizations and investors being entities required to disclose information as prescribed in article 118 of this Law;
  - (d) To promulgate criteria for supervision of trading, and criteria for reporting supervision of trading as applicable to members of the SE after obtaining approval from the SSC;
  - (dd) To make reports and recommendations to the SSC on measures for responding to and remedying incidents, events and fluctuations which affect the safety, stability and integrity of the securities trading market; and breaches of investors, members of the SE, listing organizations or registered trading organizations;
  - (e) To co-ordinate in the work of providing and disseminating information and knowledge to investors about securities and the securities market;
  - (g) To provide information and coordinate with VSDCC in securities professional activities and competent agencies in investigating and preventing breaches of the law on securities and securities market;
  - (h) Other obligations stipulated by law and in the charter of the SE.
3. Officials, staff and employees of the SE must, when performing their duties and powers, comply with the law on securities and securities market, the rules on professional ethics, the rules on confidentiality of information and other relevant laws.
4. The Prime Minister decides the organization and allocation of implementation of the rights and obligations of the SEVS in accordance with this Law on the proposal of the Minister of Finance.

#### **Article 47** *Members of the SE*

1. Members of the SE comprise:
- (a) Trading members being securities companies approved by the SE to become trading members;

- (b) Special trading members being commercial banks, foreign bank branches and other organizations approved by the SE to become special trading members.
2. Members of the SE have the following rights:
- (a) To use the securities trading system and services provided by the SEVS;
  - (b) To receive information about the securities trading market from the SEVS;
  - (c) To propose that the SE act as a conciliator when there is a dispute about securities trading activities involving a trading member;
  - (d) To make proposals and recommendations on issues relating to the securities trading activities of the SEVS;
  - (dd) Other rights stipulated by law and in the rules of the SE.
3. Members of the SE have the following obligations:
- (a) To be subject to supervision by the SEVS with respect to securities trading activities and information disclosure activities stipulated in the rules of the SE;
  - (b) To disclose information in accordance with law and the rules of the SE;
  - (c) To provide assistance to other trading members at the request of the SEVS in necessary cases;
  - (d) Other obligations stipulated by law and in the rules of the SE.
4. The Government shall provide regulations on the conditions, application file, sequence and procedures for becoming a member of the SE.

**Article 48** *Listing and registering trading of securities*

1. Securities offered to the public, shares of public companies, closed investment fund certificates, exchange traded fund certificates, guaranteed securities rights, future contracts and option contracts approved by the SSC must be listed or registered for trading on the securities trading system.
2. Debt instruments of the Government, Government-guaranteed bonds and local authority bonds are listed on the securities trading system on the proposal of issuing organizations or organizations authorized to issue in accordance with law.
3. Any issuing organization which lodges an application file for listing or registration of trading is legally liable for the accuracy, truthfulness and completeness of such file. The organization advising on the listing or registration of trading, the auditing organization, the signatory to the audit report and any other organization or individual certifying the application file for listing or registration of trading are legally responsible within the scope relating to such application file for listing or registration of trading.
4. The Government shall provide regulations on other types of securities required to be listed or registered for trading; the listing board classification and conditions for listing securities; the application file and procedures for listing and registration of trading of securities; on change, de-

listing or de-registration of securities transactions of Vietnamese and foreign issuing organizations; and on listing of securities of Vietnamese issuing organizations overseas.

**Article 49** *Temporary cessation, suspension and resumption of operation of the SEVS*

1. The SSC temporarily ceases or suspends part or all of trading activities of the SE in the following circumstances:
  - (a) When a war or natural disaster, or a significant fluctuation of the economy, an incident in the trading system or any other force majeure event occurs and affects the normal trading activities of the securities trading market;
  - (b) When the securities trading market has an abnormal change or in necessary cases in order to protect legitimate rights and interests of investors and ensure the stability, safety and integrity of the securities market.
2. When the causes of temporary cessation or suspension of part or all of trading activities of the SEVS are remedied, the SSC shall resume part or all of such trading activities.

**Article 50** *Trading securities*

1. The trading of securities listed or registered for trading is organized by the method of concentrated matching of orders, by the method of reaching agreement and by other trading methods stipulated in the rules of the SE on trading securities.
2. Securities which are listed or registered for trading are not permitted to be traded outside the securities trading system organized by the SEVS, except for transactions which are not in the nature of purchase and sale or other transactions which cannot be conducted via the securities trading system.
3. The organization of trading of new types of securities, the change to or application of new trading methods, or the operation of new trading systems must be approved by the SSC.
4. The Minister of Finance shall provide detailed regulations on trading of securities and supervision of trading of securities and on transactions which are not in the nature of sale and purchase, and on securities transactions which cannot be conducted via the securities trading system.
5. The connection of securities transactions with foreign stock exchanges is decided by the Prime Minister on the proposal of the Minister of Finance.

**Article 51** *Participation of foreign investors and economic organizations with foreign owned capital in the securities market of Vietnam*

1. Foreign investors and economic organizations with foreign owned capital participating in investment and activities in the securities market of Vietnam must comply with the regulations on the foreign ownership ratio, and the conditions, sequence and procedures for investment in accordance with the law on securities and securities market.
2. The Government shall provide detailed regulations on the foreign ownership ratio, on the conditions, sequence and procedures for investment, and on the participation of foreign investors and economic organizations with foreign owned capital in the securities market of Vietnam.



## CHAPTER V

### Securities Registration, Depository, Clearance and Payment

#### **Article 52** *Establishment and operation of Vietnam Securities Depository and Clearing Corporation [VSDCC]*

1. VSDCC is an enterprise established and operating in accordance with the provisions of this Law and the *Law on Enterprises*, and in which the State holds more than fifty (50) per cent of the charter capital or the total number of voting shares.
2. On the proposal of the Minister of Finance, the Prime Minister issues a decision on the establishment, dissolution, operational model, ownership form, functions, rights and obligations of VSDCC.
3. VSDCC is subject to administration and supervision by the SSC.

#### **Article 53** *Organizational and managerial structure of VSDCC*

1. The Prime Minister makes a decision on the organizational and managerial structure of VSDCC in accordance with this Law, the *Law on Enterprises* and other relevant laws.
2. The chairman of the members' council or the chairman of the board of management and general director (director) of VSDCC are approved or appointed or removed by the Minister of Finance on the proposal of the members' council or the board of management of VSDCC and [in accordance with] the opinion of the chairman of the SSC.
3. The rights and duties of the members' council or the board of management, of the general director (director), and of the board of controllers (inspectors) are implemented in accordance with law and the charter of VSDCC.

#### **Article 54** *Charter of VSDCC*

1. The charter of VSDCC is approved or promulgated, amended or supplemented by the Minister of Finance on the proposal of the members' council or the board of management of VSDCC and [in accordance with] the opinion of the chairman of the SSC.
2. The charter of VSDCC contains the following main particulars:
  - (a) Names and addresses of the head office and of branches;
  - (b) Operational objectives and scope, and services to be provided;
  - (c) Charter capital; method for increasing and reducing charter capital and for assigning capital;
  - (d) Names and addresses and basic information about the founding shareholders, capital contributing members or owner;
  - (dd) Capital contribution portions or number of shares and value of capital contribution of founding shareholders, capital contributing members or owner;

- (e) Legal representative;
- (g) Organizational and managerial structure;
- (h) Rights and obligations of VSDCC;
- (i) Rights and obligations of capital contributing members, of the owner or of shareholders;
- (k) Rights and obligations of the members' council or the board of management, general director (director) and board of controllers (inspectors);
- (l) Method for passing decisions of VSDCC;
- (m) Method for amending or supplementing the charter;
- (n) Applicable accounting and auditing regimes;
- (o) Establishment of funds and mechanism to use funds; principles on use of profit, on dealing with losses and other financial regimes;
- (p) Principles for resolution of internal disputes.

**Article 55** *Rights and obligations of VSDCC*

1. VSDCC has the following rights:

- (a) To promulgate rules on securities registration, depository, clearance and payment, and other professional rules after obtaining approval from the SSC;
- (b) To supply services of securities registration, depository, clearance and payment, and services of registration of security measures with respect to securities registered centrally at VSDCC upon request of clients; to supply other services stipulated in the charter of VSDCC;
- (c) To issue domestic securities code numbers and international securities identification code numbers to types of securities registered centrally at VSDCC;
- (d) To approve, change or cancel the registration of securities at VSDCC;
- (dd) To approve or to rescind the membership of members of VSDCC; and suspend securities depository activities of depository members;
- (e) To use settlement assistance funds if any member of VSDCC becomes temporarily insolvent in accordance with law;
- (g) Other rights stipulated by law and in the charter of VSDCC.

2. VSDCC has the following obligations:

- (a). To ensure that VSDCC has material and technical facilities servicing the operation of securities registration, depository, clearance and payment;

- (b) To implement the accounting, auditing, statistics and financial obligations regimes; and to provide reports and make disclosure of information in accordance with law;
  - (c) To supervise activities of registration, depository, clearance of and payment for securities transactions; to supervise the ownership ratio of foreign investors in accordance with the law on securities and securities market; and to supervise compliance with obligations by members of VSDCC;
  - (d) To formulate operational rules and rules on risk management for each professional business operation;
  - (dd) To take measures to protect databases and to archive original source documents regarding securities registration, depository, clearance and payment transactions in accordance with the law on accounting and statistics;
  - (e) To supply information about ownership of securities by securities owners in public companies and issuing organizations upon request of such public companies and issuing organizations and competent agencies in accordance with law;
  - (g) To be responsible to maintain confidentiality of information relating to ownership by clients; to refuse freezing of assets of a client, to grant a lien over such assets, to set aside a number of such assets, or to hand over the assets of the client, or to extract or copy information about ownership of securities by the client without consent of the client, unless requested by competent agencies or requested to provide information by auditors conducting audit of financial statements of VSDCC or financial reports of depository members in accordance with law.
  - (h) To co-ordinate in the work of providing and disseminating information and knowledge to investors about securities and the securities market;
  - (i) To supply information and co-ordinate with the SE in securities professional activities and competent State agencies in investigating and preventing breaches of the law on securities and the securities market;
  - (k) To manage separately assets of clients, and [manage separately] assets of clients from assets of VSDCC; to manage separately assets of the payment assistance fund, the clearance fund and the professional risk reserve fund in accordance with law;
  - (l) To pay compensation to clients for failure to discharge obligations causing loss to the lawful rights and interests of clients, except in cases of force majeure;
  - (m) To operate in the interests of persons depositing securities and securities owners;
  - (n) Other obligations stipulated by law and in the charter of VSDCC.
3. Officials, staff and employees of VSDCC, when performing their duties and powers, must comply with the law on securities and securities market, the rules on professional ethics, the rules on confidentiality of information and other relevant laws.

#### **Article 56** *Members of VSDCC*

1. Members of VSDCC comprise:

- (a) Depository members which are securities companies, commercial banks and foreign bank branches for which the SSC has issued a certificate of registration of a securities depository operation and to which VSDCC has granted approval to become a depository member;
  - (b) Clearing members which are securities companies, commercial banks and foreign bank branches for which the SSC has issued a certificate of satisfaction of conditions for provision of services of clearance of and payment for securities transactions and to which VSDCC has granted approval to become a clearing member.
2. Depository members have the following rights:
- (a) To supply depository services to clients and to make payment for securities transactions on behalf of clients;
  - (b) Other rights in accordance with law and the rules of VSDCC.
3. Depository members have the following obligations:
- (a) To discharge the obligations stipulated in sub-clauses (b), (d), (dd), (g), (h), (i), (l) and (m) article 55.2 of this Law;
  - (b) To ensure material and technical facilities serving the securities depository and payment activities;
  - (c) To make contributions to the settlement assistance fund in accordance with law;
  - (d) To manage separately assets of clients, and separately assets of clients from assets of depository members; and to record correctly and promptly assets, property rights and interests relating to clients' assets received for deposit;
  - (dd) To maintain the conditions for registration of a securities depository operation;
  - (e) To discharge reporting obligations and other obligations in accordance with law and the rules of VSDCC.
4. Clearing members have the following rights:
- (a) To carry out clearance of and make payment for transactions of derivative securities and other securities. Clearing members being commercial banks and foreign bank branches are only permitted to carry out clearance of and payment for derivative securities transactions for such commercial banks and foreign bank branches;
  - (b) To request investors to contribute trading escrow deposits fully and promptly; to use escrow deposited assets of investors to discharge escrow deposit obligations owing to VSDCC;
  - (c) To close a position or compulsorily liquidate any open position of an investor; to use escrow deposited assets of an investor to discharge payment obligations with respect to any open position of the investor if the investor becomes insolvent;
  - (d) Other rights in accordance with law and the rules of VSDCC.

5. Clearing members have the following obligations:
  - (a) To fully and promptly pay an escrow deposit to VSDCC; to make contributions into the clearance fund and establish a professional risk reserve in accordance with law;
  - (b) To establish and maintain an internal control system, and a risk management system for each professional activity; to manage separately assets and transaction positions of investors;
  - (c) Other obligations in accordance with law and the rules of VSDCC.
6. The Government shall provide detailed regulations on provision of services of clearance of and payment for securities transactions by VSDCC and its members; and on the conditions, application file, sequence and procedures for becoming a member of VSDCC.

**Article 57** *Conditions for registration of a securities depository operation*

1. A commercial bank or foreign bank branch is permitted to register a securities depository operation upon satisfaction of the following conditions:
  - (a) It has a licence for establishment and operation in Vietnam in which the securities depository operation is stated;
  - (b) It must satisfy the minimum capital adequacy ratio in accordance with the law on banking, and its business activities must have been profitable in the most recent year;
  - (c) It must have a location and facilities servicing the activities of securities depository and securities transaction payment.
2. A securities company is permitted to register a securities depository operation after it is licensed to implement the securities brokerage operation.

**Article 58** *Application file for registration of securities depository operation*

1. An application file for issuance of a certificate of registration of a securities depository operation to a commercial bank or foreign bank branch comprises:
  - (a) Application for registration of a securities depository operation;
  - (b) Licence for establishment and operation;
  - (c) Explanatory statement of material and technical facilities guaranteeing the implementation of activities of securities depository and securities transaction payment;
  - (d) Document proving satisfaction of the condition regarding the minimum capital adequacy ratio stipulated in the law on banking;
  - (dd) Audited financial statements for the most recent year.
2. An application file for issuance of a certificate of registration of a securities depository operation to a securities company comprises the documents stipulated in clauses 1(a) and 1(c) of this article.

**Article 59** *Time-limit for issuance of certificate of registration of a securities depository operation*

1. Within fifteen (15) days from the date of receipt of a complete and valid application file, the SSC issues a certificate of registration of a securities depository operation. In a case of refusal, the SSC shall provide a written notice specifying its reasons for the refusal.
2. A securities company, a commercial bank or a foreign bank branch must conduct procedures to register depository membership of VSDCC and must commence the securities depository operation within twelve (12) months from the date of grant of the certificate of registration of its securities depository operation.

**Article 60** *Suspension of securities depository operation or revocation of certificate of registration of a securities depository operation*

1. VSDCC suspends the securities depository operation of a depository member for a maximum of ninety (90) days in the following circumstances:
  - (a) The depository member regularly breached the obligations of a depository member as regulated by this Law and the rules of VSDCC;
  - (b) The depository member allowed deficiencies/defects to arise which caused serious loss to clients.
2. The SSC revokes the certificate of registration of the securities depository operation of a securities company, commercial bank or foreign bank branch in the following circumstances:
  - (a) At the expiry of a period of suspension the depository member has failed to remedy a breach or deficiency stipulated in clause 1 of this article;
  - (b) The depository member failed to conduct securities depository activities within twelve (12) months from the date of grant of its certificate of registration of the securities depository operation;
  - (c) Withdrawal of licence for establishment and operation;
  - (d) Termination of existence or conversion of the form of enterprise in accordance with the *Law on Enterprises*;
  - (dd) Voluntary termination of the securities depository operation after obtaining approval from the SSC;
  - (e) Failure to satisfy the conditions for registration of a securities depository operation stipulated in article 57 of this Law.
3. On revocation of a certificate of registration of a securities depository operation, the depository member must conduct procedures for accounting finalization of its securities depository account in accordance with the rules of VSDCC.

**Article 61** *Securities registration*

1. Securities of public companies and securities of other organizations listed or registered for trading on the securities trading system must be registered centrally at VSDCC.

2. Securities of any other issuing organization which authorizes VSDCC to act as transferring agent must be registered at VSDCC.
3. The public companies and the issuing organizations stipulated in clauses 1 and 2 of this article conduct registration of information about such public companies and issuing organizations, about their securities and about the securities owners with VSDCC.
4. VSDCC must prepare and keep a register of securities owners with respect to the securities which have been registered centrally at VSDCC.
5. VSDCC prepares a list of securities owners and calculates and allocates rights to securities owners according to the ratios notified by the public company or issuing organization. Only persons named in the register of securities owners prepared on the last date of registration as notified by the public company or issuing organization are entitled to receive the rights arising in connection with the securities owned by them.

**Article 62** *Securities depository*

1. Securities of public companies and securities of other organizations listed or registered for trading on the securities trading system must be deposited centrally at VSDCC before such securities are traded, except in other cases as stipulated by the Minister of Finance.
2. VSDCC manages securities separately for each depository member.
3. VSDCC conducts registration of security measures with respect to securities registered centrally at VSDCC in accordance with Government regulations.
4. The Minister of Finance shall provide detailed regulations on securities depository operations and on transfer of securities deposited to issue depository receipts and list securities on the foreign securities market.

**Article 63** *Clearance of and payment for securities transactions*

1. The clearance and determination of obligations to pay money and securities are conducted via VSDCC.
2. Payment for securities is made on the depository account system of VSDCC, and payment of money for a securities transaction is implemented via a payment bank and complies with the principle of simultaneous delivery of securities with payment therefor.
3. The Minister of Finance shall provide regulations on measures to deal with members of VSDCC who are temporarily insolvent in making payment for securities transactions.

**Article 64** *Creation and transfer of ownership of and other rights to securities*

1. The creation and transfer of ownership of and other rights to securities registered centrally at VSDCC comply with the law on securities and securities market.
2. In the case of securities which have been deposited at VSDCC, the transfer of ownership of the securities shall take effect on the date on which a book entry is made in the securities depository account at VSDCC.



3. In the case of securities stipulated in article 61.1 of this Law but which have not been deposited at VSDCC, the transfer shall take effect on the date on which an entry is made in the register of securities owners administered by VSDCC.

**Article 65** *Protection of assets of clients*

1. Securities and other assets of clients which are administered by VSDCC or its members, and monies for payment of securities transactions of depository members deposited at payment banks are the assets of owners and not the assets of VSDCC or its members or payment banks.
2. VSDCC or its members or payment banks are not permitted to use the securities and other assets prescribed in clause 1 above to make payment of debts of VSDCC or of its members or of payment banks.

**Article 66** *Settlement Assistance Fund*

1. A Settlement Assistance Fund is established from contributions by depository members in order to make payment in lieu of a depository member which is temporarily unable to make payment for a securities transaction.
2. The Settlement Assistance Fund is managed by VSDCC and must be managed separately from the assets of VSDCC.
3. The form of contribution, the level of contribution, and the method of managing and using the Fund shall be stipulated by the Minister of Finance.

**Article 67** *Clearance Fund*

1. A Clearance Fund is established from contributions by clearing members for the purpose of paying compensation for any loss and damage and completing a securities transaction in the name of a clearing member if such clearing member or the investor becomes insolvent.
2. The Clearance Fund is managed by VSDCC and must be managed separately from the assets of VSDCC.
3. The form of contribution, the level of contribution and the method of managing and using the Fund shall be stipulated by the Minister of Finance.

**Article 68** *Temporary cessation, suspension and resumption of securities registration, depository, clearance and payment activities of VSDCC*

1. The SSC temporarily ceases or suspends part or all of securities registration, depository, clearance and payment activities of VSDCC in the following circumstances:
  - (a) When a war, a natural disaster, a significant fluctuation of the economy, an incident in the securities registration, depository, clearance and payment system or any other force majeure event occurs and affects securities registration, depository, clearance and payment activities of VSDCC;
  - (b) In necessary cases to protect the lawful rights and interests of investors and to ensure the stability and safety of the securities registration, depository, clearance and payment system.

2. When the causes of temporary cessation or suspension of part or all of securities registration, depository, clearance and payment activities of VSDCC are remedied, the SSC shall resume part or all of the securities registration, depository, clearance and payment activities.

#### **Article 69** *Payment banks*

1. *Payment bank* means the State Bank of Vietnam or any commercial bank which provides services of monetary payment for securities transactions on the securities trading system.
2. A commercial bank which satisfies the following conditions may be selected by the SSC to act as a payment bank:
  - (a) It has a licence for establishment and operation in Vietnam in accordance with law;
  - (b) Its charter capital is above ten thousand (10,000) billion dong;
  - (c) Its business activities were profitable in the two most recent years;
  - (d) It satisfies the minimum capital adequacy ratios stipulated by the law on banking;
  - (dd) It has a system of material and technical facilities ensuring payment for transactions and which is connected to the system of VSDCC;
  - (e) It has a payment and clearance system which is connected to the payment and clearance system of the State Bank of Vietnam;
  - (g) It has a system of material and technical facilities for storing data and information about payments for transactions for at least ten (10) years and providing [such data and information] to the SSC or VSDCC within forty eight (48) hours from the time of request.
3. A payment bank has the following rights and obligations:
  - (a) To arrange payment for securities transactions on the securities trading system separately from other payment activities of the bank and in accordance with the law on securities and securities market;
  - (b) To comply with the reporting regime and other obligations stipulated by law;
  - (c) The commercial bank selected to act as the payment bank must maintain the conditions stipulated in clause 2 of this article.
4. The Government shall provide regulations on the application file, sequence and procedures for registration as a payment bank.

## CHAPTER VI

### Securities Companies and Securities Investment Fund Management Companies

#### Section 1

##### Licences for Establishment and for Securities Business Activities

**Article 70** *Authority to issue, re-issue, amend and revoke licences for establishment and for securities business activities*

The SSC has the authority to issue, re-issue, amend and revoke licences for establishment and for securities business activities [*Licences*] of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam.

**Article 71** *Enterprise registration and business registration*

1. Upon issuance of a Licence, the securities company or securities investment fund management company must carry out enterprise registration in accordance with the *Law on Enterprises*, and the branch of a foreign securities company or fund management company in Vietnam must carry out business registration at a business registration agency.
2. Securities companies and securities investment fund management companies are organized in the form of a limited liability company [*LLC*] or a shareholding company in accordance with the provisions of the *Law on Enterprises*.
3. The Government shall provide detailed regulations on this article.

**Article 72** *Professional business activities of securities companies*

1. A securities company is permitted to conduct one, a number, or all of the following professional business activities:
  - (a) Securities brokerage;
  - (b) Securities self-trading;
  - (c) Underwriting issues of securities;
  - (d) Securities investment consultancy.
2. A securities company is only licensed to conduct the professional business activity of securities self-trading when it is licensed to conduct the securities brokerage operation.
3. A securities company is only licensed to conduct the professional business activity of underwriting issues of securities when it is licensed to conduct the professional business activity of securities self-trading.

**Article 73** *Professional business activities of securities investment fund management companies*

1. A securities investment fund management company is permitted to conduct the following professional business activities:

- (a) Securities investment fund management;
  - (b) Securities investment portfolio management;
  - (c) Securities investment consultancy.
2. Permission for the professional business activities stipulated in clause 1 of this article is granted in the one Licence of the securities investment fund management company.

**Article 74** *Conditions for issuance of a Licence to a securities company*

1. The conditions regarding capital comprise: the contribution of charter capital to the securities company must be made in Vietnamese dong; and the minimum charter capital for each professional business activity of the securities company in Vietnam accords with Government regulations.
2. The conditions regarding shareholders or capital contributing members comprise:
  - (a) Shareholders or capital contributing members being individuals must not fall into the category of entities not entitled to establish and manage enterprises in Vietnam in accordance with the *Law on Enterprises*;
  - (b) Shareholders or capital contributing members being organizations must have legal entity status and be currently operating lawfully; the organization's business activities were profitable in two (2) years preceding the year of request for issuance of the Licence; and its most recent annual financial statements must be audited and contain entire agreement [without any reservation];
  - (c) Shareholders or capital contributing members owning 10% or more of the charter capital in any one securities company together with their affiliated persons (if any) must not own more than 5% of the charter capital in any other securities company;
  - (d) Shareholders or capital contributing members being foreign investors must satisfy the conditions stipulated in article 77 of this Law.
3. The conditions regarding the structure of shareholders or capital contributing members comprise:
  - (a) There must be a minimum of two (2) founding shareholders [or] capital contributing members which are organizations. If the securities company is organized in the form of a single member LLC, the company owner must be an insurer or a commercial bank or a foreign organization which satisfies the provisions in article 77.2 of this Law;
  - (b) The total capital contribution ratio of organizations must be at least sixty five (65) per cent of the charter capital, in which organizations being insurers or commercial banks must own at least thirty (30) per cent of the charter capital.
4. The conditions regarding material facilities comprise:
  - (a) There must be working headquarters to ensure [the implementation of] the securities business activities;

- (b) There must be adequate material and technical facilities, office equipment and a technology system in accordance with the professional rules on securities business activities.

5. The conditions regarding personnel comprise:

There must be a general director (director), at least three (3) staff having securities business practising certificates appropriate for each securities business activity for which a licence is requested, and at least one (1) compliance controller. The general director (director) must satisfy the following criteria:

- (a) Not be currently subject to prosecution for criminal liability or serving a prison sentence or be banned from securities practice in accordance with law;
- (b) Have at least two (2) years' working experience in a professional section of any organization in the financial, securities, banking or insurance sector or in the financial, accounting or investment section of another enterprise;
- (c) Have a financial analysis practising certificate or fund management practising certificate;
- (d) Not have been penalized for any administrative breach in the securities and securities market sector in the six (6) month period prior to lodging the application file.

Where there is a deputy general director (deputy director) who oversees professional activities, he/she must satisfy the criteria stipulated in sub-clauses (a), (b) and (d) above and must have a securities business practising certificate appropriate for the professional activities of which he/she is in charge.

6. The draft charter must comply with article 80.1 of this Law.

**Article 75** *Conditions for issuance of a Licence to a securities investment fund management company*

1. The conditions regarding capital comprise: the contribution of charter capital to the securities investment fund management company must be made in Vietnamese dong; the minimum charter capital must be at the level required in order to be issued with a Licence of the securities investment fund management company in Vietnam in accordance with Government regulations.
2. The conditions regarding shareholders or capital contributing members comprising:
  - (a) Shareholders or capital contributing members must satisfy the conditions stipulated in clauses 2(a) and 2(b) of article 74 of this Law;
  - (b) Shareholders or capital contributing members being foreign investors must satisfy the conditions stipulated in article 77 of this Law;
  - (c) Shareholders or capital contributing members owning ten (10) per cent or more of charter capital of any one securities investment fund management company and their affiliated persons (if any) must not own five (5) per cent or more of charter capital of any other securities investment fund management company.
3. The conditions regarding the structure of shareholders or capital contributing members comprise:

- (a) There must be a minimum of two (2) founding shareholders [or] capital contributing members being organizations. If the securities investment fund management company is organized in the form of a single member LLC, the company owner must be a commercial bank or insurer or securities company or foreign organization which satisfies the provisions in article 77.2 of this Law;
  - (b) The total capital contribution ratio of organizations must be at least sixty five (65) per cent of the charter capital, in which the organizations being commercial banks or insurers or securities companies must own at least thirty (30) per cent of the charter capital.
4. The conditions regarding material facilities comprise:
- (a) There must be working headquarters to ensure [the implementation of] the securities business activities;
  - (b) There must be adequate material and technical facilities, office equipment, and a technology system in accordance with the professional rules on securities business activities.
5. The conditions regarding personnel comprise:
- There must be a general director (director) and at least five (5) staff having fund management practising certificates and at least one (1) compliance controller. The general director (director) must satisfy the following criteria:
- (a) Not be currently subject to prosecution for criminal liability or serving a prison sentence or be banned from securities practice in accordance with law;
  - (b) Have at least four (4) years' working experience in a professional section of any organization operating in the financial, securities, banking or insurance sector or in the financial, accounting or investment section of another enterprise;
  - (c) Have a fund management practising certificate or an equivalent certificate in accordance with Government regulations;
  - (d) Not have been penalized for any administrative breach in the securities and securities market sector in the six (6) month period prior to lodging the application file.
- Where there is a deputy general director (deputy director) who is in charge of professional activities, he/she must satisfy the criteria stipulated in sub-clauses (a), (b) and (d) above and must have a securities business practising certificate appropriate for the professional activities of which he/she is in charge.
6. The draft charter must comply with article 80.1 of this Law.

**Article 76** *Conditions for issuance of Licences to branches of foreign securities companies and fund management companies in Vietnam*

- 1. A foreign securities company which satisfies the following conditions is permitted to establish a branch in Vietnam:
  - (a) [The foreign securities company] must satisfy the provisions in article 77.2 of this Law and has not established or contributed capital to any securities company or securities investment fund

management company in Vietnam in which the foreign securities company owns more than forty nine (49) per cent of charter capital;

- (b) Capital provided to the branch in Vietnam must satisfy the provisions in article 74.1 of this Law;
- (c) [The foreign securities company] must ensure [satisfaction of] the conditions on material facilities and personnel stipulated in clauses 4 and 5 of article 74 of this Law with respect to the branch proposed to be established in Vietnam.

2. A foreign fund management company which satisfies the following conditions is permitted to establish a branch in Vietnam:

- (a) It is licensed to carry out public fund management activities by the regulator in the securities sector in the home country and is approved to establish a branch in Vietnam;
- (b) The licensing agency in the home country and the SSC have signed a bilateral or multilateral co-operative agreement on exchanging information and coordinating in management, inspection and supervision of securities and securities market activities; the remaining operational duration (if any) must be at least five (5) years;
- (c) It is not a shareholder or capital contributing member owning above 5% charter capital of a securities investment fund management company in Vietnam, or does not have such ownership ratio jointly with affiliated persons either directly or via investment authorization or entrustment;
- (d) Capital issued to the branch in Vietnam must satisfy the provisions in article 75.1 of this Law;
- (dd) It must ensure [satisfaction of] the conditions on material facilities and personnel stipulated in clauses 4 and 5 of article 75 of this Law with respect to the branch proposed to be established in Vietnam;
- (e) It must satisfy the provisions in clause 2(c) of article 77 of this Law.

3. Any foreign securities company or fund management company is only permitted to establish one (1) branch in Vietnam.

**Article 77** *Participation of foreign investors in securities companies and securities investment fund management companies*

1. A foreign investor is permitted to participate in contributing capital to establish or purchase shares or capital contribution portions of a securities company or securities investment fund management company in accordance with the following principles:

- (a) The foreign investor which is an organization satisfying the conditions prescribed in clause 2 of this article and its affiliated persons are permitted to own up to 100% charter capital of a securities company or securities investment fund management company. In the case of failure to satisfy the provisions in clause 2 of this article, the foreign investor being an organization and its affiliated persons are only permitted to own up to 49% charter capital of a securities company or securities investment fund management company;



- (b) The foreign investor being an individual and his/her affiliated persons are only permitted to own up to 49% charter capital of a securities company or securities investment fund management company;
  - (c) Articles 74.2(c) and 75.2(c) of this Law must be complied with.
2. A foreign organization which participates in contributing capital to establish, or purchases shares or capital contribution portions in order to own 100% charter capital of a securities company or securities investment fund management company must satisfy the following conditions:
- (a) It is licensed [to operate], and has operated for two (2) consecutive years preceding the year of participation in contributing capital for establishment or purchase of shares or capital contribution portions, in the banking, securities or insurance sector;
  - (b) The licensing agency in the home country and the SSC has signed a bilateral or multilateral co-operative agreement on exchanging information and coordinating in management, inspection and supervision of securities and securities market activities;
  - (c) Its business activities must be profitable in two (2) years preceding the year of participation in contributing capital for establishment or purchase of shares or capital contribution portions, and the financial statements in the most recent year must be audited with total acceptance.
3. Foreign securities companies and fund management companies are permitted to establish a branch and/or representative office in accordance with articles 76 and 78 of this Law.

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

1. A foreign securities company or fund management company which satisfies the following conditions is permitted to establish a representative office in Vietnam:
- (a) It is licensed [to operate] and is currently operating lawfully in the home country;
  - (b) The licensing agency in the home country and the SSC have signed a bilateral or multilateral co-operative agreement on exchanging information and coordinating in management, inspection and supervision of securities and securities market activities, or the foreign securities company or fund management company is currently managing funds which are currently invested in Vietnam; the remaining operational duration (if any) must be at least one (1) year.
2. The operational scope of the representative office of a foreign securities company or fund management company in Vietnam comprises one, a number of or all of the following contents:
- (a) Implementing the function of a contact office and conducting market research;
  - (b) Promoting formulation of co-operative projects in the securities and the securities market sector in Vietnam;
  - (c) Speeding up and supervising performance of contracts and agreements already signed between the foreign securities company or fund management company and economic organizations of Vietnam;

- (d) Speeding up and supervising performance of projects in Vietnam funded by the foreign securities company or fund management company.
- 3. Representative offices of foreign securities companies and fund management companies in Vietnam are not permitted to conduct securities business activities.
- 4. The SSC issues certificates of registration of operation to, and manages and supervises operations of representative offices of foreign securities companies and fund management companies in Vietnam.

**Article 79** *Application files and procedures for issuance, re-issuance, amendment and revocation of Licences and certificates of registration of operation*

- 1. The Government shall provide regulations on the application file and procedures for issuance, re-issuance, amendment and revocation of Licences of securities companies, securities investment fund management companies and branches of foreign securities companies and fund management companies in Vietnam, and certificates of registration of operation of representative offices of foreign securities companies and fund management companies in Vietnam.
- 2. Within thirty (30) days from the date of receipt of a complete and valid application file, the SSC issues or refuses to issue a Licence or certificate of registration of operation. In the case of refusal, the SSC must provide a written notice specifying its reasons for the refusal.

**Article 80** *Charters of securities companies and securities investment fund management companies*

- 1. Charters of securities companies and securities investment fund management companies must not be contrary to the provisions of this Law and the *Law on Enterprises*.
- 2. Securities companies and securities investment fund management companies must publish the full texts of their charters on their official websites.

**Article 81** *Contents of Licences*

- 1. The Licence of a securities company or securities investment fund management company contains the following particulars:
  - (a) Name of the company;
  - (b) Head office address;
  - (c) Professional business activities;
  - (d) Charter capital;
  - (dd) Legal representative.
- 2. The Licence of the branch of a foreign securities company or fund management company in Vietnam contains the following particulars:
  - (a) Name of the branch, address of the branch, and professional business activities of the branch;
  - (b) Name of the parent company;

- (c) Address of the headquarters of the parent company;
  - (d) Capital issued to the branch;
  - (dd) Branch director.
3. Any change to the Licence stipulated in clause 1 or 2 of this article must be approved by the SSC before such change is made.
  4. Within ten (10) days from the date on which the SSC approves the change stipulated in clause 3 of this article, the securities company, securities investment fund management company, or branch of the foreign securities company or fund management company in Vietnam registers and/or notifies the business registration agency of relevant changes in accordance with the law on enterprises.

**Article 82** *Names of securities companies and securities investment fund management companies*

1. Names of securities companies and securities investment fund management companies must comply with the provisions of the *Law on Enterprises* and the provisions of clauses 2 and 3 of this article.
2. The name of a securities company comprises the components in the following order:
  - (a) Form of the enterprise;
  - (b) The term "securities";
  - (c) Proper name.
3. The name of a securities investment fund management company comprises the components in the following order:
  - (a) Form of the enterprise;
  - (b) The expression "fund management";
  - (c) Proper name.
4. An organization not being a securities company or securities investment fund management company is not permitted to use the expression "securities" or "fund management" in its name, and is not permitted to use other expressions or terms in its name if the use of such expressions or terms may cause clients of such organization to mistake it for a securities company or securities investment fund management company.

**Article 83** *Publication of operational information*

Securities companies, securities investment fund management companies, and branches or representative offices of foreign securities companies and fund management companies in Vietnam must, at least thirty (30) days before the proposed date of official operation, publish their operational information on the information disclosure means of the SSC and on one (1) electronic newspaper or in three (3) consecutive issues of a printed newspaper. Such information comprises:

1. Licence or certificate of registration of operation issued by the SSC;
2. Date of official operation.

**Article 84** *Date of official operation*

1. A securities company, securities investment fund management company, or branch or representative office of a foreign securities company or fund management company in Vietnam must commence its official operation within twelve (12) months from the date of issuance of its Licence.
2. A securities company, securities investment fund management company, or branch of a foreign securities company or fund management company in Vietnam must not conduct securities business activities prior to the date of official operation.
3. A securities company or securities investment fund management company which satisfies the following provisions is permitted to commence its official operation:
  - (a) It has carried out enterprise registration in accordance with article 71 of this Law;
  - (b) It has rules on operation, risk management and internal control;
  - (c) Its charter has been approved by the general meeting of shareholders, the members' council or the company owner.
4. The branch of a foreign securities company or fund management company in Vietnam is permitted to commence its official operation after it complies with the provisions in sub-clauses (a) and (b) of clause 3 above.
5. A securities company, securities investment fund management company, or branch of a foreign securities company or fund management company in Vietnam issued with a Licence must, at least fifteen (15) days prior to the date of official operation, notify the SSC of compliance with the provisions in clauses 3 and 4 of this article. The SSC shall suspend the official operation when the securities company, securities investment fund management company or branch of the foreign securities company or fund management company in Vietnam fails to comply with clauses 3 and 4 of this article.

Section 2

**Operation of Securities Companies and Securities Investment Fund Management Companies**

**Article 85** *Maintenance of conditions for issuance of licences for establishment and for securities business activities ["Licences"]*

1. The conditions for issuance of a Licence are maintained in accordance with the following provisions:
  - (a) Securities companies must maintain and comply with the conditions for issuance of a Licence as prescribed in clauses 1, 2(c), 2(d), 4 and 5 of article 74 of this Law;
  - (b) Branches of foreign securities companies in Vietnam must maintain and comply with the conditions for issuance of a Licence as prescribed in sub-clauses (b) and (c) of article 76.1 of this Law;

- (c) Securities investment fund management companies must maintain and comply with the conditions for issuance of a Licence as prescribed in clauses 1, 2(b), 2(c), 4 and 5 of article 75 of this Law;
  - (d) Branches of foreign fund management companies in Vietnam must maintain and comply with the conditions for issuance of a Licence as prescribed in sub-clauses (c), (d) and (dd) of article 76.2 of this Law.
2. The board of management, the members' council or the owner of a securities company, securities investment fund management company or branch of a foreign securities company or fund management company in Vietnam must, within thirty (30) days from the date of failure to satisfy the conditions stipulated in clause 1 of this article or [from the date on which] equity is lower than the minimum charter capital, approve a remedial plan and make a report to the SSC. The period for implementation of such remedial plan does not exceed six (6) months with respect to the conditions on equity, and does not exceed three (3) months with respect to other conditions, from the date of failure to satisfy the conditions.
  3. During implementation of the remedial plan, the securities company, securities investment fund management company or branch of the foreign securities company or fund management company in Vietnam must take measures to restrict the following activities:
    - (a) The securities company is not permitted to expand its business activities; not permitted to distribute profit; and not permitted to redeem shares except for redemption of shares of employees in accordance with the rules on issue of shares to employees or due to correction of a trading error;
    - (b) The securities investment fund management company is not permitted to supplement any securities business activity; not permitted to distribute profit; not permitted to raise capital for establishment of a fund or securities investment company, and not permitted to increase the charter capital of a closed investment fund, members fund or securities investment company currently managed by it; is not permitted to sign new investment management contracts or sign [any document] to extend their term or receive additional capital from existing entrusting clients; is not permitted to establish any branch or representative office or make offshore investment;
    - (c) The branch of the foreign securities company or fund management company in Vietnam is not permitted to remit its profit overseas.

**Article 86** *Operation of securities companies, securities investment fund management companies and branches and representative offices of foreign securities companies and fund management companies in Vietnam*

1. A securities company licensed to conduct a securities brokerage operation is permitted to provide the following services:
  - (a) Accept authorization [or entrustment] to manage securities trading accounts from individual investors; implement distribution of securities or act as a securities distribution agent; manage securities trading accounts; and provide services of management of lists of securities owners for other enterprises;
  - (b) Provide online securities trading services; provide or co-ordinate with credit institutions in providing services of lending to clients to purchase securities or providing securities lending

services; provide or co-ordinate with credit institutions in providing services of advancing proceeds from selling securities; conduct securities depository; conduct securities clearance and payment; and [provide] other services on the derivative securities market.

2. A securities company licensed to conduct the professional activity of securities self-trading is permitted to conduct trading of securities on a securities self-trading account and is permitted to conduct investment, contribute capital and issue financial products and offer them for sale.
3. A securities company licensed to conduct the professional activity of underwriting issues of securities is permitted to provide services of consultancy on application files for offer for sale of securities and procedures to be carried out before offer for sale of securities; to act as an agent depositing, paying and assigning securities; to provide consultancy on restructure, consolidation, merger, re-organization and purchase and sale of enterprises; to provide consultancy on management and strategies of enterprises; and to provide consultancy on offer for sale, listing and registration of trading of securities, and consultancy on equitization of enterprises.
4. A securities company licensed to carry out the professional activity of securities investment consultancy is permitted to sign contracts for provision of services to clients in accordance with article 4.32 of this Law.
5. In addition to the services stipulated in clauses 1 to 4 of this article, a securities company is only permitted to provide other financial services in compliance with law after it provides a written report to the SSC. The SSC has the right to temporarily cease or suspend the provision of other financial services by the securities company if such provision is contrary to law or causes risks to the securities market system.
6. Securities investment fund management companies are permitted to raise and manage foreign investment funds with the objective of investing in Vietnam, to manage voluntary additional superannuation funds in accordance with relevant law, and to provide online securities trading services.
7. Branches of foreign securities companies in Vietnam are only permitted to conduct the professional activity of securities investment consultancy. Branches of foreign fund management companies in Vietnam are only permitted to provide services of management of assets for capital raised overseas.
8. The Minister of Finance shall provide detailed regulations on the operation of securities companies, securities investment fund management companies, branches and representative offices of securities companies and securities investment fund management companies, and branches and representative offices of foreign securities companies and fund management companies in Vietnam; and on services to be provided by and on temporary cessation and suspension of the provision of other financial services by securities companies as prescribed in clauses 1 to 5 of this article.

**Article 87** *Operations required to be approved by the SSC*

1. A securities company or securities investment fund management company must obtain a written approval from the SSC before it implements the following activities:
  - (a) Temporarily ceases its operation, except for temporary cessation due to force majeure;
  - (b) Makes an offer for sale and conducts listing of its securities overseas;
  - (c) Makes an offshore indirect investment;

- (d) Establishes or closes any of its branches or representative offices in Vietnam and overseas; establishes a subsidiary company overseas; changes professional business activities of a branch; or establishes or closes a transaction office;
  - (dd) Changes name or address of a branch, representative office or transaction office;
  - (e) Provides the services stipulated in article 86.1(b) of this Law.
2. The branch of a foreign securities company or fund management company in Vietnam which temporarily ceases its operation as stipulated in clause 1(a) of this article must obtain a written approval from the SSC before implementation.
  3. The Government shall provide detailed regulations on the conditions, application file, sequence and procedures for approval of the activities stipulated in this article.

**Article 88** *Management of assets of clients*

1. Assets of clients received and managed by securities companies comprising deposits for securities trading, securities deposited or retained at securities companies, and related rights belong to the clients and are not property of the securities companies.
2. Assets of entrusting clients on depository accounts of securities investment fund management companies belong to the entrusting clients and are not property of the securities investment fund management companies.
3. If a securities company or securities investment fund management company is dissolved or bankrupt, assets of clients must be returned to them upon deduction of debt obligations payable by them to the securities company or securities investment fund management company.
4. The Minister of Finance shall provide detailed regulations on management of assets of clients at securities companies and securities investment fund management companies.

**Article 89** *Obligations of securities companies and branches of foreign securities companies in Vietnam*

1. To establish a system of internal control, risk management, and supervision and prevention of conflicts of interest within the company and in transactions with affiliated persons.
2. To ensure that staff working in professional departments have securities business practising certificates appropriate for the professional activities carried out.
3. To manage separately assets of each client, and separately assets of clients from assets of the securities company.
4. To sign a written contract with a client when providing services to that client; to provide complete and truthful information to clients.
5. To give priority to implementing orders of clients prior to orders of the securities company.
6. To collate and understand information about the financial status, investment objectives and ability to accept risks of clients; to ensure that investment recommendations and advice given by the company to clients is appropriate to the financial status, investment objectives and ability to accept risks of



each client, except where the client does not provide information or provides incomplete or incorrect information.

7. To update and retain complete profiles of clients and source documents, and reflect in detail and accurately all transactions of clients and of the securities company.
8. To implement the regimes on accounting, auditing, statistics and financial obligations in accordance with law.
9. To disclose information and provide reports promptly, completely and correctly in accordance with law.
10. To establish an information technology system and a back-up database in order to ensure safe and continuous operation.
11. To supervise securities transactions in accordance with regulations of the Minister of Finance.
12. To perform other obligations stipulated in this Law and other relevant laws.

**Article 90** *Obligations of securities investment fund management companies and branches of foreign fund management companies in Vietnam*

1. To discharge the obligations stipulated in clauses 1, 2, 4, 5, 6, 7, 8, 9, 10 and 12 of article 89 of this Law.
2. To manage securities investment funds and securities investment portfolios in accordance with this Law, with charters of securities investment funds, with contracts signed with clients entrusting investment, and with the contract signed with the custodian bank.
3. To conduct net asset valuations of securities investment funds in accordance with article 106 of this Law, in accordance with charters of securities investment funds and with contracts signed with clients entrusting investment.
4. When managing entrusted assets, a securities investment fund management company must deposit all entrusted assets, must provide a guarantee to each entrusting client on implementation of the principles of independence and separation, and manage entrusted assets separately from assets of the securities investment fund management company.

**Article 91** *Restrictions applicable to securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam*

1. Not to provide statements or guarantees to clients about the level of income or profit obtainable from investments of the clients, and not to guarantee that clients will not suffer losses, except in the case of investment in securities with a fixed revenue.
2. Not to disclose information about clients except with the client's approval or pursuant to a request from a competent [State] agency.
3. Not to take any acts which will result in misunderstanding by clients and investors about securities prices.

4. Founding shareholders and capital contributing members at the time of establishment of a securities company or securities investment fund management company are not permitted to assign their shares or capital contribution portions within a period of three (3) years from the date of issuance of the Licence, except in a case of assignment among founding shareholders or capital contributing members at the time of establishment of the company.
5. A securities company, securities investment fund management company or branch of a foreign securities company or fund management company in Vietnam must carry out business activities and provide securities services in its own name; and must not use the name of another organization or individual, nor allow another organization or individual to use its name to conduct trading of securities or provide securities services.
6. A securities company is not permitted to contribute capital for establishment or purchase shares or capital contribution portions in any other securities company in Vietnam, except for the following cases:
  - (a) Purchase to carry out consolidation or merger;
  - (b) Purchase to own or own jointly with its affiliated persons (if any) no more than five (5) per cent of the currently circulating voting shares of a securities company listed or registered for trading.
7. A securities investment fund management company is not permitted to contribute capital for establishment or purchase shares or capital contribution portions in any other securities investment fund management company in Vietnam, except for the following cases:
  - (a) Purchase to carry out consolidation or merger;
  - (b) Purchase to own or own jointly with its affiliated persons (if any) no more than five (5) per cent of the currently circulating voting shares of a securities investment fund management company listed or registered for trading.

## **Article 92** *Financial safety*

1. Securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam must ensure financial prudential criteria.
2. The Minister of Finance shall provide detailed regulations on financial prudential criteria and measures for dealing with securities companies, securities investment fund management companies and branches of foreign securities companies and fund management companies in Vietnam which fail to satisfy the financial prudential criteria.

The SSC gives [entities] failing to satisfy the financial prudential criteria a warning, or put them under control or special control and apply measures for dealing with them.

## Section 3

### **Re-organization, Suspension and Revocation of Licences for Establishment and Securities Business Activities ["Licences"]**

#### **Article 93** *Re-organization of securities companies and securities investment fund management companies*

1. The re-organization of a securities company or securities investment fund management company must be approved by the SSC before implementation. Within thirty (30) days from the date of receipt of a complete and valid file, the SSC approves such re-organization. In the case of refusal, the SSC must provide a written notice specifying its reasons for the refusal.
2. Upon receipt of the approval of the SSC as stipulated in clause 1 above, the securities company or securities investment fund management company carries out the re-organization in accordance with the *Law on Enterprises* and must ensure the following principles:
  - (a) The re-organization must not [adversely] affect the legitimate rights and interests of clients, and must ensure that trading is conducted continuously, smoothly and safely;
  - (b) The securities company or securities investment fund management company which is formed after re-organization inherits rights and obligations of the securities companies or securities investment fund management companies participating in the re-organization in accordance with law;
  - (c) The securities company or securities investment fund management company carrying out the re-organization must fully perform the obligation to disclose information to clients.
3. The Government shall provide regulations on the conditions, application file, sequence and procedures for approval of re-organization of securities companies and securities investment fund management companies.
4. Companies formed after re-organization must carry out the procedures for requesting issuance and amendment of a Licence in accordance with this Law.

#### **Article 94** *Suspension of operation of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam*

1. The SSC makes a decision suspending one, some or all of the business activities of a securities company, securities investment fund management company or branch of a foreign securities company or fund management company in Vietnam in the following circumstances:
  - (a) The application file for issuance or supplement of the licence contained untruthful information;
  - (b) [Such company or branch] failed to remedy the status stipulated in article 92 of this Law;
  - (c) [Such company or branch] failed to operate for correct purposes or in accordance with the contents stated in its Licence;

- (d) [Such company or branch] failed to satisfy the conditions stipulated in article 85.1 of this Law or the condition that the equity must not be lower than the minimum charter capital upon expiry of the remedial period stipulated in article 85.2 of this Law.
2. After six (6) months from the effective date of the decision on suspension, the SSC issues a decision removing the securities professional business activity(ies) which were suspended if the securities company fails to remedy the status of suspension stipulated in sub-clause (b) or (d) of clause 1 above.
  3. During the period of suspension of operation, the company or branch must take remedial measures or restrict the following activities:
    - (a) Not to sign any new contract or extend any contract relating to the suspended professional business activities; to conduct accounting finalization or transfer accounts at the request of clients (if any);
    - (b) To have a remedial plan and to report the status of implementation of the plan at the request of the SSC;
    - (c) If the professional activity of self-trading is suspended, the securities company is only permitted to sell and must not increase business investments, except where the purchase is compulsory to fix a trading error, conduct trading of odd lots, or exercise the rights relating to securities currently held by it in accordance with law.

**Article 95** *Revocation of licences of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam*

1. The licence of a securities company, securities investment fund management company, or branch of a foreign securities company or fund management company in Vietnam is revoked in the following circumstances:
  - (a) Failing to commence its official operation within twelve (12) months from the date of issuance of the licence; or it failed to resume operation upon expiry of a period of temporary cessation of operation approved by the SSC; or it failed to conduct the professional activity of fund management for two (2) consecutive years;
  - (b) Making a written request for removal of the licence;
  - (c) All of the professional securities business activities of the securities company are removed as stipulated in article 94.2 of this Law; the securities investment fund management company or branch of the foreign securities company or fund management company in Vietnam failed to remedy the status of suspension stipulated in sub-clauses (b) and (d) of article 94.1 of this Law within six (6) months from the date of suspension;
  - (d) Failing to remedy the breaches stipulated in sub-clauses (a) and (c) of article 94.1 of this Law within sixty (60) days from the date of suspension;
  - (dd) Being dissolved, becoming bankrupt, or being consolidated, divided or merged.
2. In the case of revocation of the licence as stipulated in clauses 1(c) and 1(d) of this article, the SSC has the right to appoint a replacement securities company or securities investment fund management

company to complete transactions and contracts of the company whose licence was revoked; in such case, an authorization relationship shall automatically be established as between the two companies.

3. When the licence is revoked, the company or branch must comply with the following provisions:
  - (a) Immediately terminate all activities stated in the licence and make an announcement on one (1) electronic newspaper or in three (3) consecutive volumes in a printed newspaper;
  - (b) Conduct accounting finalization of assets of clients received and managed by the securities company, and assets of clients entrusted on the depository account of the securities investment fund management company;
  - (c) Make a report to the SSC upon fulfilment of the obligation to conduct accounting finalization of assets of clients.
4. The SSC is responsible to publish the revocation of the licence, and send a notice to the business registration office for revocation of the enterprise registration certificate or business registration certificate.

**Article 96** *Dissolution and bankruptcy of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam*

1. The dissolution of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam is implemented in accordance with this Law and the *Law on Enterprises*.
2. The Government shall provide detailed regulations on accounting finalization of assets of clients stipulated in article 95.3 of this Law; on the application file, sequence and procedures for dissolution of securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam.
3. The bankruptcy of securities companies and securities investment fund management companies is implemented in accordance with the law on bankruptcy.

## Section 4

### Securities Practice

**Article 97** *Securities business practising certificates*

1. Securities business practising certificates comprise the following types:
  - (a) Securities brokerage practising certificates;
  - (b) Financial analysis practising certificates;
  - (c) Fund management practising certificates.
2. An individual who satisfies the following conditions may be issued with a securities business practising certificate:

- (a) Having full civil legal capacity; not currently subject to a criminal prosecution or ban from securities practice in accordance with law;
  - (b) Having a university degree or higher;
  - (c) Having professional expertise in securities;
  - (d) Obtaining the required mark after sitting an examination for issuance of a securities business practising certificate appropriate to the type of the securities business practising certificate requested to be issued; a foreign individual with a certificate of expertise in securities, or an individual who has legally practised in the securities sector overseas is required to pass an examination on the law on securities and securities market of Vietnam.
3. The securities business practising certificate of an individual is revoked in the following circumstances:
- (a) Such individual no longer satisfies the conditions for issuance of the securities business practising certificate stipulated in clause 2 of this article;
  - (b) Such individual committed a breach stipulated in article 12 or 98.2 of this Law;
  - (c) Such individual failed to engage in securities business practice for three (3) consecutive years.
4. A person whose securities business practising certificate was revoked in the case stipulated in clause 3(b) of this article is not re-issued with such certificate.
5. The Government shall provide detailed regulations on the conditions, application file, sequence and procedures for issuance, re-issuance and revocation of securities business practising certificates and on the management and supervision of securities business practitioners.

**Article 98** *Responsibilities of securities business practitioners*

1. A person who was issued with a securities business practising certificate is only permitted to engage in securities business practice in the capacity of the representative of a securities company, securities investment fund management company, branch of a foreign securities company or fund management company in Vietnam, or securities investment company.
2. A securities business practitioner is not permitted to carry out the following acts:
- (a) Working concurrently for two (2) or more securities companies, securities investment fund management companies, branches of foreign securities companies or fund management companies in Vietnam, or securities investment companies;
  - (b) Opening or managing a securities trading account at a securities company where such individual is not working except where the securities company where such individual is working does not have a securities brokerage operation;
  - (c) Taking any action beyond the scope of authorization by the securities company, securities investment fund management company, branch of the foreign securities company or fund management company in Vietnam, or securities investment company where such individual is working.

3. Securities business practitioners must participate in training courses on the law on securities and securities market, on trading systems and on new types of securities as organized by the SSC, the SEVS, and VSDCC.
4. Securities companies, securities investment fund management companies, branches of foreign securities companies and fund management companies in Vietnam, and securities investment companies are responsible for the professional activities of their securities business practitioners.

## CHAPTER VII

### **Securities Investment Funds, Securities Investment Companies and Custodian Banks**

#### Section 1

#### **General Provisions on Securities Investment Funds**

##### **Article 99** *Types of securities investment funds*

1. Securities investment funds comprise public funds and members funds.
2. Public funds comprise open investment funds and closed investment funds.

##### **Article 100** *Establishment and organization of operation of securities investment funds*

1. The establishment of a public fund and the public offer of fund certificates in a public fund is implemented by a securities investment fund management company in accordance with the provisions in article 108 of this Law and must be registered with the SSC.
2. The establishment of a members fund is implemented by a securities investment fund management company in accordance with the provisions in article 113 of this Law and must be reported to the SSC.
3. The Government shall provide specific regulations on the conditions, application file, sequence and procedures for offer for sale, establishment, reorganization and dissolution of securities investment funds stipulated in articles 99 and 114 of this Law.
4. The operation of the types of funds stipulated in articles 99 and 114 of this Law accords with regulations of the Minister of Finance and other relevant laws.

##### **Article 101** *Rights and obligations of investors participating in securities investment funds*

1. Investors have the following rights:
  - (a) To receive profits from the investment activities of the securities investment fund in proportion to the investor's capital contribution ratio;
  - (b) To receive benefits and assets which are legally distributed following liquidation of the assets of the securities investment fund;
  - (c) To require the securities investment fund management company to redeem certificates in an open investment fund;



- (d) To institute proceedings against the securities investment fund management company, custodian bank or affiliated organization if any such organization breaches the lawful rights and interests of the investor;
- (dd) To exercise rights via the general meeting of investors;
- (e) To assign fund certificates in accordance with the provisions in the charter of the securities investment fund;
- (g) Other rights stipulated by law and in the charter of the securities investment fund.

2. Investors have the following obligations:

- (a) To comply with resolutions of the general meeting of investors;
- (b) To make full payment for their purchase of fund certificates;
- (c) Other obligations stipulated by law and in the charter of the securities investment fund.

**Article 102** *General meeting of investors of securities investment fund*

1. The general meeting of investors of a securities investment fund comprises all investors and is the highest decision-making authority of the securities investment fund.
2. The general meeting of investors has the following rights and obligations:
  - (a) To elect, remove or discharge the chairman and members of the committee of representatives of the securities investment fund;
  - (b) To make decisions on remuneration and operational expenses for the committee of representatives of the securities investment fund;
  - (c) To make decisions on basic changes in investment policy, on the plan for distribution of profit, and on the investment objectives of the securities investment fund; to make a decision on a change of the securities investment fund management company or custodian bank; and to change the level of fees to be paid to the securities investment fund management company or custodian bank;
  - (d) To make decisions on amendments of or additions to the charter of the securities investment fund;
  - (dd) To split, demerge, consolidate, merge or dissolve the securities investment fund; to change the charter capital; to change the duration of operation of the securities investment fund;
  - (e) To require the securities investment fund management company or the custodian bank to present accounting books or transaction source documents at the general meeting of investors;
  - (g) To pass reports on annual financial status, assets and operation of the securities investment fund; to pass the selection of an approved auditing organization to audit the annual financial statements of the securities investment fund or an independent valuer (if any);

- (h) To deal with any breaches which cause loss to the securities investment fund by the securities investment fund management company, the custodian bank or the committee of representatives of the securities investment fund;
  - (i) Other rights and obligations stipulated by law and in the charter of the securities investment fund.
3. The general meeting of investors of a securities investment fund is convened annually or on an ad hoc basis.
4. The Minister of Finance shall provide regulations on convening of, and procedures for conducting and passing resolutions of general meetings of investors of securities investment funds.

**Article 103** *Charter of securities investment fund*

1. The charter of a securities investment fund is drafted by a securities investment fund management company and is passed by the general meeting of investors of the securities investment fund.
2. The charter of a securities investment fund contains the following main particulars:
- (a) Name of the securities investment fund, of the securities investment fund management company and of the custodian bank;
  - (b) Date of establishment of the securities investment fund;
  - (c) Operational objectives; investment sectors; duration of operation of the securities investment fund;
  - (d) Capital contribution and provisions on changing the charter capital of the securities investment fund;
  - (dd) Rights and obligations of the securities investment fund management company and of the custodian bank; circumstances in which the securities investment fund management company and custodian bank may be changed; provisions on delegation of authority to the securities investment fund management company to sign a supervision contract with the custodian bank;
  - (e) Provisions on the committee of representatives and the general meeting of investors of the securities investment fund;
  - (g) Restrictions on investment by the securities investment fund;
  - (h) Provisions on registration of ownership of fund certificates and maintenance of a register of investors in the securities investment fund;
  - (i) Provisions on selection of a custodian bank, and on selection and change of an approved auditing organization;
  - (k) Provisions on assignment, issuance and redemption of open investment fund certificates; provisions on listing of closed investment fund certificates;

- (l) All types of revenue and expenses of the securities investment fund, the level of fees and bonuses payable to the securities investment fund management company and custodian bank; circumstances in which income of the securities investment fund shall be distributed to investors and methods of distribution;
  - (m) Methods of determining net asset value of the securities investment fund and net asset value of each fund certificate;
  - (n) Provisions on resolution of conflicts of interest;
  - (o) Provisions on the reporting regime;
  - (p) Provisions on dissolution of the securities investment fund;
  - (q) Undertakings by the custodian bank and securities investment fund management company regarding discharge of obligations owed to the securities investment fund and investors, and regarding compliance by such organizations with the charter of the securities investment fund;
  - (r) Procedures for amending and supplementing the charter of the securities investment fund.
3. The Minister of Finance shall promulgate the standard form charter of securities investment funds.

**Article 104** *Dissolution of securities investment fund*

1. A securities investment fund is dissolved in the following circumstances:
- (a) Upon expiry of the operational duration stipulated in the charter of the securities investment fund;
  - (b) If the general meeting of investors issues a resolution on dissolution of the securities investment fund prior to expiry of the operational duration stipulated in the charter of the securities investment fund;
  - (c) The securities investment fund management company has its licence revoked or is dissolved or becomes bankrupt and the committee of representatives of the securities investment fund fails to arrange a replacement securities investment fund management company within two (2) months from the date on which one of the above events arises;
  - (d) The custodian bank has its certificate of registration of a securities depository operation revoked or is dissolved or becomes bankrupt or the supervision contract between the custodian bank and the securities investment fund management company is terminated and the securities investment fund management company fails to arrange a replacement custodian bank within two (2) months from the date on which one of the above events arises;
  - (dd) The net asset value of the securities investment fund decreases to less than ten (10) billion dong for six (6) consecutive months;
  - (e) Other cases stipulated in the charter of the securities investment fund.
2. Within three (3) months prior to conducting dissolution as prescribed in sub-clauses (a) and (b) of clause 1 above or within thirty (30) days from the date on which the securities investment fund is dissolved in accordance with sub-clauses (c), (d), (dd) and (e) of clause 1 above, the securities

investment fund management company or the custodian bank and the committee of representatives of the securities investment fund convenes a general meeting of investors of the securities investment fund to pass a plan on dissolution of the securities investment fund.

3. The securities investment fund management company and the custodian bank are responsible to complete liquidation of assets of the fund and to distribute assets of the fund to investors in accordance with the plan passed by the general meeting of investors of the securities investment fund.
4. Proceeds received from the liquidation of assets of a securities investment fund and residual assets upon deduction of dissolution expenses are paid in the following priority order:
  - (a) Discharge of financial obligations to the State;
  - (b) Payment of debts payable to the securities investment fund management company and custodian bank, payment of other debts payable;
  - (c) Remaining proceeds are used to pay investors according to their capital contribution ratio in the securities investment fund.
5. Within five (5) working days from the date of completion of dissolution of the securities investment fund, the securities investment fund management company and the custodian bank must report to the SSC on the results of dissolution.

#### **Article 105** *Consolidation and merger of securities investment funds*

A securities investment fund may be consolidated or merged with another fund of the same type in accordance with a decision of the general meeting of investors of the securities investment fund. The number of members of the members fund which is formed after consolidation or merger must not exceed ninety nine (99).

#### **Article 106** *Determination of net asset value of a securities investment fund*

1. A determination of net asset value of any one securities investment fund is conducted by the securities investment fund management company and is certified by the custodian bank; a certification of net asset value of any one members fund is conducted by a custodian bank or depository bank.
2. A determination of net asset value of a securities investment fund must comply with the following principles:
  - (a) The price of securities listed or registered for trading is the closing price or the average price on the most recent trading day prior to the day of valuation;
  - (b) In the case of assets being securities referred to in sub-clause (a) above but not having any transaction for more than fifteen (15) days as at the date of valuation or not being securities referred to in sub-clause (a) above, valuation shall be based on the rules and methods for valuation of assets stipulated in the charter of the securities investment fund. The rules and methods for valuation must be certified by the custodian bank and approved by the committee of representatives and general meeting of investors of the securities investment fund. Parties participating in valuation of assets must be independent from the securities investment fund management company and the custodian bank or depository bank;

- (c) Monetary assets comprising dividends, bond dividends and profit are calculated at the values recorded in the accounting books as at the date of valuation.
- 3. Net asset value of a securities investment fund must be periodically disclosed to the public in accordance with the provisions in article 124.1 of this Law.

**Article 107** *Reports on securities investment funds*

Securities investment fund management companies must provide periodic and extraordinary reports to the SSC on investment portfolios, investment activities and financial status of securities investment funds.

Section 2

**Public Funds and Members Funds**

**Article 108** *Raising capital to establish a public fund*

- 1. Raising capital of a public fund is implemented by a securities investment fund management company within ninety (90) days from the date of effectiveness of the certificate [of registration] of the public offer of fund certificates. A public fund is established upon satisfaction of the following conditions:
  - (a) It has a minimum of one hundred (100) investors excluding institutional securities investors who purchase fund certificates, except for exchange traded funds;
  - (b) The total value of fund certificates sold is at least fifty (50) billion dong.
- 2. All of the capital contributions made by investors must be placed in a discrete escrow account under the control of the custodian bank and must not be used until completion of the capital raising tranche. The securities investment fund management company provides a report, certified by the custodian bank, on the results of the capital raising tranche to the SSC within ten (10) days from the date of completion of the capital raising tranche.
- 3. If a capital raising tranche for a public fund fails to satisfy the conditions stipulated in clause 1 of this article, the securities investment fund management company must refund to investors all items of capital contribution within fifteen (15) days from the date of completion of the capital raising tranche. The securities investment fund management company shall bear all expenses of and other financial obligations arising from the capital raising tranche.

**Article 109** *Committee of representatives of public fund*

- 1. The committee of representatives of a public fund represents the interests of investors, and is elected by the general meeting of investors of the securities investment fund. The rights and obligations of the committee of representatives of a public fund are stipulated in the charter of the securities investment fund.
- 2. The committee of representatives of a public fund passes decisions by way of voting at meetings, collecting written opinions or by other forms stipulated in the charter of the securities investment fund. Each member of the committee of representatives of a public fund has one (1) vote.

3. A committee of representatives of a public fund has from three (3) to eleven (11) members, of whom two-thirds (2/3) must be independent members and not affiliated persons in the securities investment fund management company or custodian bank.
4. The following matters are regulated in the charter of a securities investment fund: terms of office, standards applicable to members and number of members; the appointment, removal or discharge of members of the committee and the chairman of the committee, and appointment of additional members to the committee; and the conditions and procedures for convening meetings and for passing decisions by the committee of representatives.

**Article 110** *Restrictions applicable to public funds*

1. A securities investment fund management company is not permitted to use the capital and assets of a public fund to conduct the following activities:
  - (a) To invest in fund certificates of the same public fund;
  - (b) To invest in securities of any one issuing organization beyond ten (10) per cent of the total value of the currently circulating securities of such organization, except for Government bonds;
  - (c) To invest in excess of twenty (20) per cent of the total asset value of the public fund in currently circulating securities of one issuing organization, except for Government bonds;
  - (d) To invest more than ten (10) per cent of the total asset value of a closed investment fund in real estate, except for a real estate investment fund; to invest the capital of an open investment fund in real estate;
  - (dd) To invest in excess of thirty (30) per cent of the total asset value of a public fund in one company within a group of companies with a mutual ownership relationship in the following circumstances: parent - subsidiary company; companies which own more than thirty five (35) per cent of their [each other's] shares or capital contribution portions; and a group of subsidiary companies having the same parent company;
  - (e) To make a loan or to provide a guarantee for a loan;
  - (g) Restrictions on investment in other securities investment funds and applicable to each specific type of fund are implemented in accordance with regulations of the Minister of Finance.
2. A securities investment fund management company is not permitted to borrow a loan in order to finance the activities of a public fund, except for a short-term loan in accordance with the law on banking to pay necessary expenses of the public fund or to make payment for fund certificate transactions with investors. The total value of short-term loans borrowed by a public fund does not exceed five (5) per cent of the net asset value of the public fund at any one point of time, and the maximum term of a loan is thirty (30) days.
3. The investment structure of a public fund may only exceed the restrictions on investment in the cases stipulated in sub-clauses (b), (c), (d), (dd) and (g) of clause 1 of this article, but it must only be due to the following reasons:
  - (a) Fluctuations in market price of the assets in the investment portfolio of the fund;
  - (b) Due to payments being made by the fund in accordance with law;

- (c) Due to consolidation or merger of issuing organizations;
  - (d) The fund is newly licensed for establishment or as a result of fund separation, consolidation or merger the operational duration does not yet exceed six (6) months as from the date of issuance of the certificate of registration of establishment of the fund;
  - (dd) The fund is currently being dissolved.
4. The securities investment fund management company is obliged to report to the SSC and to disclose information if the restrictions on investment stipulated in clause 1 of this article are exceeded. Within three (3) months from the date any excess arises, the securities investment fund management company must amend the investment portfolio in order to ensure compliance with the restrictions on investment stipulated in clause 1 of this article.

#### **Article 111** *Open investment funds*

1. A securities investment fund management company, on behalf of an open investment fund, redeems certificates in the open investment fund from investors and issues additional certificates in the open investment fund within the scope of maximum capital contribution of the fund and at the frequency and within the specific period stipulated in the charter of the securities investment fund.
2. A securities investment fund management company is not required to represent an open investment fund in redeeming certificates in the open investment fund if one of the following events occurs:
  - (a) Being unable to conduct the redemption of certificates in the open investment fund because of an event of force majeure;
  - (b) Being unable to conduct a net asset valuation of the open investment fund on the date of valuation for the purpose of redemption because a decision suspending trading of securities on the investment portfolio of such fund is made;
  - (c) Other events stipulated in the charter of the securities investment fund.
3. A securities investment fund management company must report to the SSC within twenty four (24) hours of the occurrence of one of the events stipulated in clause 2 of this article, and must continue to redeem certificates in the open investment fund after such event terminates.

#### **Article 112** *Closed investment funds*

1. An increase in the capital of a closed investment fund is subject to approval from the SSC and must satisfy the following conditions:
  - (a) The charter of the securities investment fund provides for an increase in the capital of the fund;
  - (b) The profit of the fund in the year immediately preceding the year of the application to increase capital must be a positive figure;
  - (c) The securities investment fund management company was not subject to an administrative penalty in the securities and securities market sector for a two (2) year period calculated up to the date of the application to increase capital;



- (d) There is a plan on issuance of additional certificates in the closed investment fund, passed by the general meeting of investors.
- 2. Certificates in a closed investment fund may only be issued to current investors in the fund via the issuance of assignable closed investment fund certificate purchase rights. Purchase rights which are not fully taken by current investors may be issued to external investors.
- 3. A change to the duration of operation of a closed investment fund is subject to approval from the SSC and must satisfy the following conditions:
  - (a) Such change has been approved by the general meeting of investors;
  - (b) Where the duration of operation is extended, the net asset value of the fund in the most recent valuation period prior to the date of submission of the application file for extension is not less than fifty (50) billion dong.

#### **Article 113** *Establishment of members funds*

- 1. A members fund is established by capital contributions from members on the basis of a capital contribution contract.
- 2. The following conditions must be satisfied in order to establish a members fund:
  - (a) Having a minimum capital contribution of fifty (50) billion dong;
  - (b) Having from two (2) to ninety nine (99) capital contributing members all of which must be institutional securities investors;
  - (c) The fund must be managed by a securities investment fund management company;
  - (d) The assets of the members fund must be deposited at a depository bank which is independent from the securities investment fund management company.

### Section 3

#### **Securities Investment Companies**

#### **Article 114** *Securities investment companies*

- 1. A securities investment company means a securities investment fund which is organized in the form of a shareholding company in order to invest in securities. There are two (2) forms of securities investment companies, namely private securities investment companies and public securities investment companies.
- 2. The SSC issues licences for establishment and operation to securities investment companies. After a securities investment company is issued by the SSC with such licence, it shall carry out enterprise registration in accordance with the *Law on Enterprises*.

#### **Article 115** *Establishment and operation of securities investment companies*

- 1. The following conditions apply to the grant of a licence for establishment and operation to a securities investment company:

- (a) Having a minimum capital of fifty (50) billion dong;
  - (b) The general director (director) and staff working in professional divisions have securities business practising certificates in a case where the company self-manages its investment capital.
2. Public securities investment companies must comply with the following provisions:
- (a) The restrictions on investment stipulated in article 110 of this Law;
  - (b) The items relating to valuation of assets and the reporting regime stipulated in articles 106 and 107 of this Law;
  - (c) The obligations of public companies stipulated in sub-clauses (a), (b) and (c) of clause 1 and clause 2 of article 34 of this Law;
  - (d) Assets of securities investment companies must be deposited at a custodian bank.

## Section 4

### Custodian Banks

#### **Article 116** *Custodian banks*

1. A custodian bank means a commercial bank with a certificate of registration of securities depository activities issued by the SSC and which provides depository services and supervises the management of public funds and securities investment companies.
2. Custodian banks supervise activities of securities investment fund management companies to the extent relating to public funds and securities investment companies to which custodian banks provide supervisory services. A custodian bank has the following obligations:
  - (a) To discharge the obligations stipulated in article 56.3 of this Law;
  - (b) To implement depository of assets of public funds and securities investment companies; and to manage the assets of public funds and securities investment companies separately from other assets of the custodian bank;
  - (c) To carry out supervision in order to ensure that the securities investment fund management company which manages public funds or the general director (director) of the securities investment company which manages assets of the securities investment company complies with the provisions of this Law and the charter of the securities investment fund or the charter of the securities investment company;
  - (d) To implement revenue and expenses, payment and transfer of assets relating to the operation of a public fund and securities investment company pursuant to legal requests of the securities investment fund management company or of the general director (director) of the securities investment company;
  - (dd) To certify reports prepared by the securities investment fund management company and securities investment company relevant to such public fund or securities investment company;

- (e) To supervise compliance with the reporting regime and disclosure of information by securities investment fund management companies and securities investment companies in accordance with the provisions of this Law;
- (g) To report to the SSC if it discovers that a securities investment fund management company, a securities investment company or an affiliated organization or individual is in breach of the law or of the charter of the securities investment fund or of the securities investment company;
- (h) To periodically conduct inspections jointly with a securities investment fund management company or securities investment company of the accounting books, financial statements and trading operation of the public fund or securities investment company;
- (i) Other obligations stipulated by law and in the charter of the securities investment fund or in the charter of the securities investment company.

**Article 117** *Restrictions applicable to custodian banks*

1. A custodian bank, members of the board of management, operators and staff of the custodian bank discharging the duties of supervision of the operation and preservation of assets of a public fund or securities investment company must not be affiliated persons or have an ownership, lending or borrowing relationship with the fund management company or securities investment company or vice versa.
2. A custodian bank, members of the board of management, operators and staff of the custodian bank discharging the duties of supervision of the operation and preservation of assets of a public fund or securities investment company are not permitted to be purchasers or sellers in transactions of the purchase and sale of assets of the public fund or securities investment company.

## CHAPTER VIII

### Disclosure of Information

**Article 118** *Entities required to disclose information*

1. Entities required to disclose information comprise:
  - (a) Public companies;
  - (b) Organizations issuing enterprise bonds to the public;
  - (c) Organizations listing enterprise bonds;
  - (d) Securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam;
  - (dd) The SEVS, and VSDCC;
  - (e) Major shareholders or a group of affiliated persons owning five (5) per cent or more of the number of voting shares of a public company; investors or a group of affiliated persons owning five (5) per cent or more of certificates of a closed investment fund;

- (g) Founding shareholders of public companies and public securities investment companies currently subject to restrictions on assignment;
  - (h) Insiders of public companies and insiders of public funds and public securities investment companies as stipulated in article 4.45 of this Law and affiliated persons of insiders;
  - (i) A group of affiliated foreign investors owning five (5) per cent or more of the number of voting shares of an issuing organization or five (5) per cent or more of the certificates of a closed investment fund;
  - (k) Other entities stipulated by the Minister of Finance.
2. The Minister of Finance shall provide detailed regulations on disclosure of information by each entity stipulated in clause 1 of this article.
  3. Public companies being credit institutions under special control make disclosure of information at the request of the State Bank of Vietnam in conformity with the objective of ensuring safety of the credit institution system.

**Article 119** *Principles for disclosing information*

1. A disclosure of information must be complete, accurate and prompt.
2. An entity disclosing information must be legally responsible for the contents of disclosed information. Where there is any change to the contents of the information already disclosed, the entity disclosing information must disclose promptly and completely the changed contents and the reason for such change in comparison with the information previously disclosed.
3. When an entity prescribed in article 118 of this Law makes a disclosure of information, it must concurrently make a report on the contents of disclosed information to the SSC and the organization in which securities are listed or registered for trading.
4. The disclosure of information by an organization must be made by the legal representative or the person authorized to do so. The disclosure of information by an individual is made by such individual or by authorizing another organization or individual.
5. Entities disclosing information are responsible to preserve and archive reported and disclosed information in accordance with law.

**Article 120** *Disclosure of information by public companies*

1. A public company must periodically disclose information about one or more of the following items:
  - (a) Annual financial statements audited by and/or semi-annual financial statements checked by an approved auditing organization, and/or quarterly financial statements;
  - (b) Annual report;
  - (c) Report on the status of corporate management;
  - (d) Resolutions of the annual general meeting of shareholders;

(dd) Other information stipulated by law.

2. A public company must make an extraordinary disclosure of information upon occurrence of one of the following events:

- (a) An account of the company at a bank or foreign bank branch is frozen as requested by a competent agency or when the payment service provider discovers that there is an indication of fraud or breach of law relating to the payment account; or an account is permitted to be released after having been frozen in the cases stipulated in this sub-clause;
- (b) Temporary suspension of business; change of registered enterprise items; revocation of its enterprise registration certificate; amendment, suspension or revocation of its licence for establishment and operation or operational licence;
- (c) A resolution is passed by the extraordinary general meeting of shareholders in accordance with law;
- (d) When there is a decision on redemption of shares of the company; or [a decision about] the date for implementing share purchase rights by owners of bonds which carry with them share purchase rights, or the date for conversion of convertible bonds into shares, and all decisions relating to offers and issues of shares;
- (dd) When there is a decision to reorganize or dissolve the enterprise; or there is a decision on medium-term developmental strategies and plans and an annual business plan of the company; or there is a decision to establish or dissolve a subsidiary company or affiliated company or to conduct trading causing a company to become or no longer to be a subsidiary company or affiliated company; or there is a decision to establish or close a branch or representative office;
- (e) When there is a decision to change the applicable accounting period or accounting policy; or when there are results of retroactive amendment of financial statements; when the auditing organization's opinion is not total acceptance of the financial statements, or on selection or change of the auditing company;
- (g) When there is a change or new appointment of an insider;
- (h) When there is a decision to purchase or sell assets or to conduct a transaction with a value of more than fifteen (15) per cent of the total assets of the company on the basis of the most recent audited annual financial statements or the most recent checked semi-annual financial statements;
- (i) When there is a decision imposing a penalty for breach of the law on taxation; or when there is a legally effective verdict or decision of a court relating to the operation of the company; or when there is a notice from a court about acceptance of jurisdiction over a petition to commence enterprise bankruptcy proceedings;
- (k) When there is a decision to bring legal proceedings against the company or its insider;
- (l) When listing on a foreign stock exchange is approved or rescinded;
- (m) Other events stipulated by the Minister of Finance.

3. A public company must make a disclosure of information at the request of the SSC or the SEVS upon occurrence of one of the following events:
  - (a) There is an event which seriously affects the lawful interests of investors;
  - (b) There is information relating to the company which seriously affects the price of securities and such information requires confirmation.

**Article 121** *Disclosure of information by organizations issuing enterprise bonds to the public*

1. An organization issuing bonds to the public must periodically disclose information about the following:
  - (a) Annual financial statements audited by an approved auditing organization;
  - (b) Annual report;
  - (c) Resolution of the annual general meeting of shareholders if the issuing organization is a shareholding company;
  - (d) Audited report on use of the proceeds from the offer tranche;
  - (dd) Other information stipulated by law.
2. An organization issuing bonds to the public must make an extraordinary disclosure of information upon occurrence of one of the events stipulated in article 120.2 of this Law.
3. Organizations issuing bonds to the public must make a disclosure of information as requested in accordance with article 120.3 of this Law.

**Article 122** *Disclosure of information by organizations listing enterprise bonds*

1. Organizations listing enterprise bonds which are public companies make a disclosure of information in accordance with article 120 of this Law.
2. An organization listing enterprise bonds which does not fall into the category of entities stipulated in clause 1 of this article make a disclosure of information as follows:
  - (a) Periodical disclosure of the annual financial statements audited by an approved auditing organization and the annual report;
  - (b) Extraordinary disclosure of information in accordance with article 120.2 of this Law;
  - (c) Disclosure of information as requested in accordance with article 120.3 of this Law.

**Article 123** *Disclosure of information by securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam*

1. A securities company, securities investment fund management company, or branch of a foreign securities company or fund management company in Vietnam makes a periodical disclosure of information about the following contents:

- (a) Annual financial statements audited by and/or semi-annual financial statements checked by an approved auditing organization, and/or quarterly financial statements;
  - (b) Report on the financial prudential ratio as at 30 June which has been checked by, and as at 31 December which has been audited by an approved auditing organization;
  - (c) Annual report;
  - (d) Report on the status of corporate management;
  - (dd) Resolution of the annual general meeting of shareholders if the securities company or securities investment fund management company is a shareholding company;
  - (e) Other information stipulated by law.
2. A securities company, securities investment fund management company, or branch of a foreign securities company or fund management company in Vietnam makes an extraordinary disclosure of information in accordance with article 120.2 of this Law and upon occurrence of one of the following events:
- (a) There is a decision of the SSC imposing an administrative penalty in the securities and securities market sector on the company or branch or on a securities business practitioner of the company or branch; or the general director (director) or deputy general director (deputy director) is deprived of the right to use his/her securities business practising certificate for a definite period or has his/her securities business practising certificate revoked;
  - (b) There is a decision of the SSC to give the company a warning or place the company under control or special control or to take the company out of the warning, control or special control category; or to suspend operation or temporarily cease operation, or to terminate the suspension of operation or the temporary cessation of operation;
  - (c) The SSC provides approval on establishment or closure of a branch, transaction office or representative office in Vietnam or overseas, or on offshore indirect investment.
3. A securities company must disclose information at its main head office, at its branches and at its transaction offices about matters relating to trading methods, placing orders, transaction deposits, time-limits for payment, trading fees, services which the company provides and the list of securities business practitioners of the company. If the securities company provides margin trading services, it must provide a notice of conditions for provision of margin trading services comprising the requirements on margin ratio, loan interest rate, loan term, method of making a call [to a margin trading client] to supplement [mortgaged assets] and list of securities for margin trading purposes.
4. Securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam must disclose information at the request of the SSC or the SEVS when there is information about the company or branch which seriously affects the lawful rights and interests of investors.

#### **Article 124** *Disclosure of information about public funds*

1. A securities investment fund management company makes a periodic disclosure of information about a public fund with the following contents:



- (a) Annual financial statements which have been audited by, or semi-annual financial statements which have been checked by an approved auditing organization, and/or quarterly financial statements;
  - (b) Report on change in the net asset value;
  - (c) Report on investment activities;
  - (d) Overall report on fund management activities.
2. A securities investment fund management company makes an extraordinary disclosure of information about a public fund on the occurrence of one of the following events:
- (a) A resolution of the general meeting of investors is passed;
  - (b) There is a decision to change the charter capital of a closed investment fund;
  - (c) The certificate [of registration of] a public offer of certificates in the public fund is revoked;
  - (d) An offer tranche of certificates in the public fund is suspended or rescinded; or the public fund makes an unsuccessful offer;
  - (dd) The charter or prospectus is amended;
  - (e) There is a change or new appointment of an insider of the public fund; there is a decision to bring legal proceedings against an insider of the public fund;
  - (g) There is a decision to consolidate, merge, divide, separate, dissolve, change the operational duration of, or liquidate assets of the public fund;
  - (h) Other events stipulated by the Minister of Finance.
3. A securities investment fund management company must disclose information concerning a public fund at the request of the SSC or the SEVS on the occurrence of either of the following events:
- (a) There is any relevant information which affects an offer of or the price of certificates in the public fund;
  - (b) There is an abnormal change in the price and/or volume of transactions of certificates in the public fund.

**Article 125** *Disclosure of information about public securities investment companies*

1. A securities investment fund management company makes a periodical disclosure of information about a public securities investment company with the following contents:
- (a) The contents stipulated in sub-clauses (a) to (c) of article 124.1 of this Law;
  - (b) Overall report on management of the public securities investment company;
  - (c) Resolutions of the annual general meeting of shareholders.

2. A securities investment fund management company makes an extraordinary disclosure of information about a public securities investment company on the occurrence of one of the following events:
  - (a) An offer tranche of shares of the public securities investment company is suspended or rescinded;
  - (b) The trading of shares of the public securities investment company is temporarily suspended;
  - (c) Other events stipulated in sub-clauses (a), (c), (e) and (m) of article 120.2 and sub-clauses (dd), (e) and (g) of article 124.2 of this Law.
3. Securities investment fund management companies make a disclosure of information about public securities investment companies at the request of the SSC or the SEVS in accordance with article 120.3 of this Law.

**Article 126** *Disclosure of information by the SEVS and by VSDCC*

1. The SEVS must disclose the following information:
  - (a) Information about the organization and operation of the SEVS;
  - (b) Information about organizations having securities listed or registered for trading; information about members of the SEVS;
  - (c) Information about trading securities;
  - (d) Other information stipulated by the Minister of Finance.
2. VSDCC must disclose the following information:
  - (a) Information about the organization and operation of VSDCC;
  - (b) Information relating to management and supervision of members of VSDCC;
  - (c) Information about securities registration and depository activities;
  - (d) Other information stipulated by the Minister of Finance.

**Article 127** *Disclosure of information by major shareholders and a group of affiliated persons owning five (5) per cent or more of voting shares in a public company; by investors and a group of affiliated persons owning five (5) per cent or more of certificates in a closed investment fund; and by a group of affiliated foreign investors owning five (5) per cent or more of voting shares in one issuing organization or five (5) per cent or more of certificates in a closed investment fund*

1. An organization, individual, group of affiliated persons or group of affiliated foreign investors must disclose information when such entity becomes or is no longer a major shareholder of a public company or public securities investment company.
2. An organization, individual, group of affiliated persons or group of affiliated foreign investors being a major shareholder must disclose information when there is a change in the number of owned shares

by more than one (1) per cent of the number of voting shares of a public company or public securities investment company.

3. The provisions in clauses 1 and 2 above do not apply in the following cases:
  - (a) A change in the voting share ownership ratio arises from the public company's redemption of its own shares or issue of additional shares;
  - (b) An exchange traded fund conducts an exchange transaction;
  - (c) Other cases stipulated by law.
4. An investor, group of affiliated persons or group of affiliated foreign investors must disclose information when such entity owns or no longer owns five (5) per cent or more of certificates of a closed investment fund.
5. An investor, group of affiliated persons or group of affiliated foreign investors holding five (5) per cent or more of certificates of a closed investment fund must disclose information when there is a change in the ratio of ownership by more than one (1) per cent of certificates of the closed investment fund.

**Article 128** *Disclosure of information by insiders and affiliated persons of insiders*

1. Any insider of a public company, public securities investment company or public fund and his/her affiliated persons must disclose information before and after trading or when there is a change to the ownership of shares, the right to purchase shares or convertible bonds, the right to purchase convertible bonds or fund certificates, or the right to purchase fund certificates or guaranteed securities rights on the basis of securities of such public company, public securities investment company or public fund.
2. The provisions in clause 1 above do not apply where an exchange traded fund conducts an exchange transaction or the value of securities to be traded does not yet reach the minimum value required to disclose information and in other cases as stipulated by law.

## CHAPTER IX

### **Inspections, Dealing with Breaches, Dispute Resolution and Compensation for Loss and Damage**

**Article 129** *Securities Inspectorate*

1. The Securities Inspectorate is the specialized branch inspectorate for securities and the securities market.
2. The Securities Inspectorate comprises the head of the inspectorate, the deputy heads of the inspectorate and inspectors.
3. The Securities Inspectorate is subject to direct instruction from the SSC and professional guidance from the inspectorate of the MOF and operates in accordance with the law on inspections and the provisions of this Law.
4. The Securities Inspectorate has the following duties and powers:

- (a) To check and inspect compliance with the law on securities and securities market;
- (b) To deal with administrative breaches within the scope of its authority or propose that the Chairman of the SSC make a decision imposing an administrative penalty in accordance with the law on dealing with administrative breaches;
- (c) To co-ordinate with relevant agencies and units in preventing, detecting, avoiding and dealing with breaches of the law on securities and securities market;
- (d) To perform other duties and powers in accordance with law.

**Article 130** *Duties and powers of the SSC in checking, inspecting and dealing with breaches of the law on securities and securities market*

1. During the process of checking, inspecting and dealing with breaches of the law on securities and securities market, in addition to the duties and powers stipulated in the law on inspection, the law on dealing with administrative breaches and other relevant laws, the SSC has the following duties and powers:
  - (a) To request that agencies, organizations and individuals possessing information, documents or data relevant to the checked and inspected items provide such information, documents or data or request that organizations and individuals explain or be present to work on checked or inspected items;
  - (b) To request that credit institutions and foreign bank branches provide information relevant to transactions on accounts of clients in a case where there is an indication of implementation of a strictly prohibited act as stipulated in article 12 of this Law. The sequence and procedures for requesting and providing information accord with the law on banking;
  - (c) To request that telecom enterprises provide names, addresses, incoming phone numbers, receiving phone numbers and duration of calls in order to verify and deal with the strictly prohibited practices stipulated in article 12 of this Law. The sequence and procedures for requesting and providing information accord with the law on telecom;
2. Any request made to an agency, organization or individual for provision of information, documents or data, or provision of explanations, or to be present in accordance with clause 1 above must be approved by the Chairman of the SSC and must be in writing, specifying the purpose, grounds, contents and scope of the request.
3. Information, documents and data provided by credit institutions, foreign bank branches and telecom enterprises in accordance with clause 1 of this article must be kept confidential in accordance with law and must only be used for the purpose of checking, inspecting and dealing with breaches of law committed by relevant organizations and individuals.
4. During the process of supervising, detecting and dealing with cross-border breaches in respect of securities relating to the securities market of Vietnam, the SSC co-ordinates in inspecting, investigating, verifying, collecting and sharing information with administrative agencies for securities market in [relevant] countries.

**Article 131** *Responsibilities of agencies, organizations and individuals to co-ordinate in inspecting, checking and dealing with breaches of the law on securities and securities market*

1. Agencies, organizations and individuals are responsible to provide information, documents, data and explanations and to be present at the request of the SSC in accordance with article 130.1 (a) of this Law.
2. Credit institutions, foreign bank branches and telecom enterprises are responsible to provide information at the request of the SSC in accordance with sub-clauses (b) and (c) of article 130.1 of this Law.
3. Business registration agencies are responsible to co-ordinate with, and send information about enterprise registration and business registration of public companies, securities companies, securities investment fund management companies, branches of foreign securities companies and fund management companies in Vietnam and relevant enterprises, and other information at the request of the SSC.
4. The tax office is responsible to co-ordinate in providing information about public companies regarding tax registration, closure of tax code, re-opening of tax code, cessation of operation, temporary suspension of business for a definite period, failure to operate at the registered address, results of dealing with breaches of the law on taxation, decisions on enforcement of tax liabilities, and other information at the request of the SSC.
5. Agencies, organizations and individuals must, within the scope of their duties and powers, completely and promptly provide the SSC with information, documents and data being kept or managed by them when requested by the SSC. Any agency, organization or individual has the right to refuse to provide information, documents or data when there are grounds for believing that the request for provision is contrary to article 130 of this Law or the information, documents or data requested do not relate to the entity subject to the check or inspection or to the entity having a sign of a breach of law. Where it is impossible to provide such material, the agency, organization or individual concerned must send a written notice to the SSC, specifying the reasons therefor.

**Article 132** *Dealing with breaches*

1. Any organization or individual who breaches the provisions of this Law and other provisions of laws relating to securities and the securities market, depending on the nature and seriousness of the breach, is subject to an administrative penalty, or criminally prosecuted; and any offender who causes loss and damage must pay compensation in accordance with law.
2. Penalties for administrative breaches are imposed in accordance with this Law and the law on dealing with administrative breaches.
3. A maximum fine for dealing with an administrative breach being a breach of clause 2 or 3 of article 12 of this Law is ten (10) times the proceeds illegally gained from the breach. If no illegal proceeds were gained from the breach or the fine calculated according to the illegal proceeds is lower than the maximum fine stipulated in clause 4 of this article, the maximum fine stipulated in clause 4 of this article shall apply. The Minister of Finance shall stipulate methods of calculating illegal proceeds earned from committing breaches of the law on securities and securities market.
4. A maximum fine for dealing with any other administrative breach in the securities sector is three (3) billion dong.

5. The maximum fine stipulated in clauses 3 and 4 of this article applies to organizations; any individual committing the same breach is subject to a maximum fine equal to half (1/2) of the maximum fine imposed on organizations.
6. The Chairman of the SSC, the Chief Inspector and heads of the securities specialized inspection teams have the authority to impose penalties for administrative breaches in the securities sector.
7. The Government shall stipulate the authority, fines and forms of penalties applicable to each administrative breach in the securities sector.

**Article 133** *Dispute resolution and compensation for loss and damage*

1. Where the lawful rights and interests of an organization or individual in securities and securities market activities are infringed or there is a dispute arising in securities and securities market activities in Vietnam, the protection of the lawful rights and interests or the resolution of the dispute shall be implemented via negotiation or amicable settlement or referred to an arbitrator or a court of Vietnam for resolution in accordance with law.
2. Any entity which infringes the lawful rights and interests of an organization or individual in securities and securities market activities and causes loss and damage must pay compensation and perform other civil responsibilities in accordance with agreements, the *Civil Code* and other relevant laws.
3. The authority and procedures for protecting lawful rights and interests of organizations and individuals or for resolving disputes arising in securities and securities market activities shall be implemented in accordance with law.

## CHAPTER X

### Implementing Provisions

**Article 134** *Effectiveness*

1. This Law shall take effect from 1 January 2021.
2. The Law on Securities 70/2006/QH11 and the Law on Amendments of the Law on Securities 62/2010/QH12 are no longer effective as from the date this Law takes effect.

**Article 135** *Transitional provision*

1. Within two (2) years from the effective date of this Law, securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam which were issued with a licence prior to the effective date of this Law must satisfy the conditions for issuance of the licence in accordance with the following provisions:
  - (a) Securities companies must satisfy the conditions for issuance of the licence stipulated in clauses 1, 2(c), 2(d), 4 and 5 of article 74 of this Law;
  - (b) Securities investment fund management companies must satisfy the conditions for issuance of the licence stipulated in clauses 1, 2(b), 2(c), 4 and 5 of article 75 of this Law;

- (c) Branches of foreign securities companies in Vietnam must satisfy the conditions for issuance of the licence stipulated in sub-clauses (b) and (c) of article 76.1 of this Law;
  - (d) Branches of foreign fund management companies in Vietnam must satisfy the conditions for issuance of the licence stipulated in sub-clauses (c), (d) and (dd) of article 76.2 of this Law.
2. Within two (2) years from the effective date of this Law, securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam which were issued with a licence prior to the effective date of this Law and satisfy the provisions in clause 1 above must carry out enterprise registration and business registration in accordance with article 71 of this Law, and need not carry out the procedures for issuance of a replacement licence for establishment and securities business activities, unless they so request.

After two (2) years from the effective date of this Law, securities companies, securities investment fund management companies, and branches of foreign securities companies and fund management companies in Vietnam which were issued with a licence prior to the effective date of this Law and fail to satisfy the provisions in clause 1 above, the SSC shall suspend their operation and/or revoke their licence in accordance with this Law.

3. Except for the cases stipulated in clauses 1 and 2 of this article, any other organization or individual who was issued by the SSC, the Stock Exchange or Vietnam Securities Depository Centre with a licence or an approval prior to the effective date of this Law is not required to carry out the procedures for re-issuance of such licence or approval in accordance with this Law.

Where an organization or individual submitted an application file for registration or for issuance of a licence or approval to the SSC, the Stock Exchange or Vietnam Securities Depository Centre prior to the effective date of this Law but has not yet been issued with a licence or has not yet been approved as at the effective date of this Law, such organization or individual must implement the provisions of this Law.

4. If a public company whose shares were listed or registered for trading prior to the effective date of this Law still satisfies the conditions stipulated in the *Law on Securities* 70/2006/QH11 as amended by Law 62/2010/QH12 [*"the Law on Securities as amended"*] and documents providing detailed regulations for implementation, the public company shall not be subject to a cancellation of the public company status, a de-listing or de-registration of trading, unless otherwise decided by the general meeting of shareholders.
5. If a public company whose shares were not yet listed or registered for trading prior to the effective date of this Law fails to comply with the provisions in article 32.1(a) of this Law, the public company status shall be cancelled.
6. Within two (2) years from the effective date of this Law, the SE and VSDCC must operate in accordance with the provisions of this Law.

Stock Exchanges and Vietnam Securities Depository Centre which were established and operated prior to the effective date of this Law shall continue their organization and operation in accordance with the *Law on Securities as amended* until the SE and VSDCC come into operation in accordance with the provisions of this Law.



*This Law was passed by Legislature XIV of the National Assembly of the Socialist Republic of Vietnam at its 8th Session on 26 November 2019.*

The Chairman of the National Assembly  
NGUYEN THI KIM NGAN