

**LAW 70 ON SECURITIES**  
**dated 29 June 2006**  
**as amended by LAW 62 dated 24 November 2010**

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# LAW ON SECURITIES (Amended)<sup>1</sup>

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates securities and the securities market.

## CHAPTER I

### General Provisions

#### **Article 1<sup>2</sup>** *Governing scope*

This Law regulates activities being offers of securities, listing and trading securities, conducting business and investing in securities, securities services and the 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. Other organizations and individuals related to securities activities and securities market activities.

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

- 1.<sup>3</sup> The provisions of this Law and other relevant laws shall apply to activities being offers of securities, listing and trading securities, conducting business and investing in securities, and securities services and securities market services.
2. If an international treaty of which the Socialist Republic of Vietnam is a member contains provisions which are different from those in this Law, then the provisions of such international treaty shall apply. The Government shall provide specific regulations on the implementation of international treaties consistent with the schedule for integration and international undertakings.

#### **Article 4** *Principles on securities and securities market activities*

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<sup>1</sup> Allens Arthur Robinson footnote: As amended by Law 62-2010-QH12 dated 24 November 2010 to take effect 1 July 2011. All amended articles are footnoted for easy reference.

<sup>2</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>3</sup> Allens Arthur Robinson footnote: As amended by Law 62.

1. Respect for the right of organizations and individuals to freely purchase, sell and conduct business in 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.
5. Compliance with law.

**Article 5** *Policy on development of the securities market*

1. It is the policy of the State to encourage and facilitate organizations and individuals from all economic sectors and all social strata to participate in investment and securities market activities, 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 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 6** *Interpretation of terms*

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

1. *Securities* means evidence from an issuing organization certifying the lawful rights and interests of an owner with respect to an asset or capital portion. Securities may take the form of certificates, book entries or electronic data, and shall comprise the following types:
  - (a) Shares, bonds and investment fund certificates;
  - (b) Share purchase rights, securities rights, purchase options, sale options, future contracts, groups of securities and securities indices;
  - (c)<sup>4</sup> Investment capital contribution contracts;
  - (d)<sup>5</sup> Other types of securities prescribed by the Ministry of Finance.
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 capital debt of the issuing organization.
4. *Investment fund certificate* means a type of securities certifying the lawful ownership of an investor of a capital contribution portion in a public fund.

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<sup>4</sup> Allens Arthur Robinson footnote: As added by Law 62.

<sup>5</sup> Allens Arthur Robinson footnote: As added by Law 62.

- 5.<sup>6</sup> *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.
6. *Securities right* means a type of securities issued with bonds or preference shares which entitles the securities owner to purchase a fixed volume of ordinary shares at a pre-determined price during a specified period.
7. *Purchase option or sale option* means a right stipulated in a contract which entitles a purchaser to choose the right to purchase or to sell a pre-determined volume of securities at a pre-determined price during a specified period.
8. *Future contract* means an undertaking to purchase or sell a specified type of securities, group of securities or securities index at a pre-determined volume and pre-determined price and on a pre-determined date in the future.
- 8a.<sup>7</sup> *Investment capital contribution contract* means a contract for capital contribution by money or assets between investors with an issuing organization for profit-making purposes and permitting conversion [of such capital] into other securities.
9. *Major shareholder* means a shareholder owning directly or indirectly five per cent or more of the voting shares of an issuing organization.
10. *Investor* means a Vietnamese organization or individual or a foreign organization or individual who participates in investment in the securities market.
11. *Institutional securities investor* means a commercial bank, financial institution, finance leasing company, insurance business organization or securities business organization.
12. *Public offer of securities* means an offer for sale of securities via one of the following methods:
  - (a) Via the mass media, including the internet;
  - (b) An offer for sale of securities to one hundred (100) or more investors excluding institutional securities investors;
  - (c) An offer for sale to a number of undefined investors.
- 12a.<sup>8</sup> *Private placement of securities* means an arrangement for offering securities to less than one hundred (100) investors not including institutional investors, without using the mass media or the internet.
- 13.<sup>9</sup> *Issuing organization* means any organization conducting a securities offer.
14. *Underwriter* means a securities company authorized to underwrite an issue of securities, and a commercial bank to which the State Securities Commission provides written approval to underwrite an issue of bonds on conditions regulated by the Ministry of Finance.

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<sup>6</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>7</sup> Allens Arthur Robinson footnote: As added by Law 62.

<sup>8</sup> Allens Arthur Robinson footnote: As added by Law 62.

<sup>9</sup> Allens Arthur Robinson footnote: As amended by Law 62.



15. *Approved auditing organization* means an independent auditing organization on the list of auditing organizations approved by the State Securities Commission to provide audits on conditions regulated by the Ministry of Finance.
16. *Prospectus* means a document or electronic data publicizing accurate, truthful and objective information about an offer or listing of securities by an issuing organization.
17. *Listing securities* means making available securities which satisfy the conditions for trading on the Stock Exchange or Securities Trading Centres.
18. *Securities trading market* means a location or form for exchanging information in order to collate and match buying and selling orders and to trade securities.
19. *Securities business* means the conduct of professional activities of securities brokerage, securities self-trading, underwriting issues of securities, securities investment consultancy, securities depository, securities investment fund management and securities investment portfolio management.
- 20.<sup>10</sup> *Securities brokerage* means acting as intermediary in the purchase or sale of securities on behalf of a client.
21. *Self-trading* means a securities company purchases and sells securities for itself.
- 22.<sup>11</sup> *Underwriting* means undertaking to an issuing organization to complete procedures prior to the offer for sale of securities, receiving some or all of the securities of the issuing organization for re-sale, or purchasing the amount of the remaining undistributed securities of the issuing organization or assisting the issuing organization to distribute securities to the public.
- 23.<sup>12</sup> *Securities investment consultancy* means providing results of analyses, announcing analytic reports and making recommendations regarding securities to investors.
24. *Securities depository* means the receipt of securities for deposit, preservation, transfer and delivery on behalf of clients, and assistance to clients to exercise their rights relating to ownership of such securities.
25. *Securities registration* means recording ownership of securities and other rights of owners of securities.
- 26.<sup>13</sup> *Portfolio management* means management, pursuant to authorization [or entrustment] from each investor, of the purchase, sale and holding of securities and other assets.
27. *Securities investment fund* means a fund established from capital contributions of investors in order to make a profit from investment in securities or other property including real estate, whereby the investors to not have day to day control over the investment decision-making of the fund.
- 27a<sup>14</sup> *Real estate investment fund* means a securities investment fund which invests primarily in real estate.

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<sup>10</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>11</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>12</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>13</sup> Allens Arthur Robinson footnote: As amended by Law 62.

28. *Public fund* mean a securities investment fund which makes a public offer of certificates in the fund.
29. *Members fund* mean a securities investment fund with no more than thirty (30) capital contributing members all of which must be legal entities.
30. *Open investment fund* means a public fund whose fund certificates as offered to the public must be redeemed at the request of investors.
31. *Closed investment fund* means a public fund whose fund certificates have been offered to the public but investors do not have the right to require the fund to redeem their fund certificates.
32. *Inside information* means information about a public company or public fund which has not yet been disclosed and which, if disclosed, could have a major impact on the price of the securities of such public company or public fund.
33. *People with inside information* means:
- (a) Members of the board of management and board of controllers, the director or general director and the deputy director or deputy general director of a public company; members of the committee of representatives of a public fund;
  - (b) Major shareholders of a public company or of a public fund;
  - (c) Auditors of the financial statements of a public company or of a public fund;
  - (d) Other persons with access to inside information of a public company or public fund;
  - (dd) Securities companies, securities investment fund management companies and securities practitioners of such companies;
  - (e) Organizations and individuals with a business co-operation relationship with, or who provide services to a public company or a public fund, and people working in such organizations;
  - (g) People who directly or indirectly obtain inside information from the subjects stipulated in sub-clauses (a) to (dd) inclusive of this clause.
34. *Affiliated person* means an individual or organization with interactive relations in the following circumstances:
- (a) Parents, adopted parents, spouses, children, adopted children and siblings of any such individual;
  - (b) Organizations in which there are individuals who are staff, the director or general director, or the owner of more than fifteen (15) per cent of the voting shares in circulation;
  - (c) Members of the board of management or board of controllers, the director or general director and the deputy director or deputy general director and other managerial personnel of such organization;

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<sup>14</sup> Allens Arthur Robinson footnote: As added by Law 62.

- (d) People who in a relationship with another person directly or indirectly control or are jointly controlled by such other person, or who jointly with another person are subject to the same control;
- (dd) A parent company and its subsidiaries;
- (e) A contractual relationship in which one person is the representative of the other.

**Article 7** *State administration of securities and the securities market*

1. The Government shall exercise uniform State administration of securities and the securities market.
2. The Ministry of Finance shall be responsible before the Government to exercise State administration of securities and the securities market, and shall have the following duties and powers:
  - (a) To submit to the Government and to the Prime Minister of the Government for promulgation, strategies, a master plan, and policies for the development of the securities market;
  - (b) To submit to the competent body for promulgation or to promulgate in accordance with its own authority, legal instruments on securities and the securities market;
  - (c) To direct the State Securities Commission in implementation of the strategies, master plan and policies for development of the securities market and the policies and regime for administration and supervision of securities and securities market activities.
3. Ministries and ministerial equivalent bodies shall, within the scope of their respective duties and powers, co-ordinate with the Ministry of Finance to exercise State administration of securities and the securities market.
4. People's committees at all levels shall, within the scope of their respective duties and powers, exercise State administration of securities and the securities market within their localities.

**Article 8** *State Securities Commission*

1. The State Securities Commission is a body under the Ministry of Finance with the following duties and powers:
  - (a) To issue, extend and withdraw licences and certificates relating to securities activities and the securities market; to approve changes relating to securities activities and the securities market;
  - (b) To administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions; and to temporarily suspend the trading and depository operations of the Stock Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors;
  - (c) To conduct checks and inspections, to deal with administrative breaches and to resolve complaints and denunciations during securities activities and securities market activities;
  - (d) To keep statistics on, and to make forecasts about securities activities and securities market activities; to modernize information technology in the securities and securities market sector;

- (dd) To organize, and to co-ordinate with the relevant bodies and organizations to provide, professional training for a team of senior officials and staff in the securities sector; to disseminate to the public information about securities and the securities market;
  - (e) To provide guidelines on professional procedures for securities and the securities market and to provide guidelines on relevant sample forms;
  - (g) To conduct international co-operation in the securities and securities market sector.
2. The Government shall provide regulations on the organization of the State Securities Commission and on its managerial and executive apparatus.

**Article 9** *Prohibited practices*

1. Directly or indirectly acting fraudulently or cheating, creating false information or omitting essential information which causes a serious misunderstanding and adversely affects activities being public offers of securities, listing and trading securities, conducting business and investing in securities, securities services and the securities market.
2. Disclosing false information with the aim of persuading or provoking the purchase and sale of securities, or disclosing incomplete or out-of-date information about events which have a major effect on the price of securities on the market.
3. 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.
4. Colluding in the purchase and sale of securities aimed at creating a false supply and demand; trading securities in the form of colluding with or persuading others to continuously purchase and sell in order to manipulate the price of securities; combining the aforementioned methods or using other trading methods in order to manipulate the price of securities.
- 5.<sup>15</sup> Conducting professional securities business activities without a licence from or consent from the State Securities Commission.

CHAPTER II

**Offers of Securities<sup>16</sup>**

**Article 10** *Par value of securities*

1. Securities offered to the public in the territory of the Socialist Republic of Vietnam must be denominated in Vietnamese dong.
2. Par value of shares and investment fund certificates in an initial public offer shall be ten thousand (10,000) Vietnamese dong. The minimum par value of a public offer of bonds shall be one hundred thousand (100,000) Vietnamese dong and multiples of one hundred thousand (100,000) Vietnamese dong.

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<sup>15</sup> Allens Arthur Robinson footnote: As added by Law 62.

<sup>16</sup> Allens Arthur Robinson footnote: Heading as amended by Law 62.

**Article 10a**<sup>17</sup> *Private placement of securities*

1. Private placements of securities by issuing organizations which are not public companies shall be conducted in accordance with the Law on Enterprises and other relevant laws.
2. A private placement of securities by a public company must satisfy the following conditions:
  - (a) There is a decision from the general meeting of shareholders or board of management passing a plan on the offer and utilization of proceeds from the offer tranche, which plan specifies the eligible investors and number of eligible investors;
  - (b) The lock-up period [or restriction] on transfer of the privately placed shares or convertible bonds is a minimum one year from the date of completion of the offer tranche, except in cases of a private placement pursuant to a plan selecting employees of the company, of a transfer of securities which were the subject of an offer by an individual to an institutional securities investor, of a transfer of securities as between institutional securities investors, or [a transfer] pursuant to a decision of a court or pursuant to an inheritance in accordance with law;
  - (c) There must be a minimum interval of six (6) months between tranches of private placements of shares or convertible bonds.
3. The Government shall provide detailed regulations on the application file and procedures for a private share placement.

**Article 11** *Forms of public offers of securities*

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

**Article 12** *Conditions for a public offer of securities*

1. The conditions for a public offer of shares shall be:
  - (a) The enterprise must have, at the time of registration of the offer, a minimum amount of paid-up charter capital of ten (10) billion Vietnamese 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;
  - (c) There must be an issue plan and a plan for utilization of the proceeds earned from the offer tranche, passed by the general meeting of shareholders;
  - (d)<sup>18</sup> A public company registering a public offer of securities must provide an undertaking, passed by the general meeting of shareholders, to place the shares for trading on an organized [securities] trading market within one year from the date of completion of the offer tranche.

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<sup>17</sup> Allens Arthur Robinson footnote: As added by Law 62.

<sup>18</sup> Allens Arthur Robinson footnote: As added by Law 62.

2. The conditions for a public offer of bonds shall be:
  - (a) The enterprise must have, at the time of registration of the offer, a minimum amount of paid-up charter capital of ten (10) billion Vietnamese 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 more than one hundred overdue debts payable;
  - (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 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.
3. The conditions for a public offer of investment fund certificates shall be:
  - (a) The total value of the investment fund certificates registered to offer must be a minimum of fifty (50) billion Vietnamese dong;
  - (b) There must be an issue plan and a plan for investment of the capital funds earned from the offer tranche consistent with the provisions of this Law.
4. The Government shall provide regulations on the conditions for a public offer of securities by State owned enterprises, enterprises with foreign owned capital which convert to become shareholding companies, and newly established enterprises in the sectors of infrastructure or high-tech; on public offers of securities overseas, and on other specific cases.

**Article 13** *Registration of a public offer of securities*

1. An issuing organization conducting a public offer of securities must register with the State Securities Commission.
2. The following public offers of securities shall not be required to be registered:
  - (a) An offer of bonds of the Government of Vietnam;
  - (b) An offer of an international financial institution's bonds approved by the Government of Vietnam;
  - (c) A public offer of bonds by a State owned enterprise converting to a shareholding company;
  - (d) The sale of securities pursuant to a verdict or decision of a court, or the sale of securities by the manager or receiver of assets in a case of bankruptcy or insolvency.

**Article 14** *Application file for registration of a public offer of securities*

1. An application file for registration of a public offer of shares shall comprise:
  - (a) Request for registration of the public offer of shares;
  - (b) Prospectus;
  - (c) Charter of the issuing organization;
  - (d)<sup>19</sup> Resolution<sup>20</sup> of the general meeting of shareholders approving the issue plan and the plan for utilization of the proceeds, and undertaking to place the securities for trading on an organized securities trading market;
  - (dd) Undertaking to underwrite the issue (if any).
  
2. An application file for registration of a public offer of bonds shall comprise:
  - (a) Request for registration of the public offer of bonds;
  - (b) Prospectus;
  - (c) Charter of the issuing organization;
  - (d) Decision of 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 bond offer tranche;
  - (dd) 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.
  - (e) Undertaking to underwrite the issue (if any).
  
3. An application file for registration of a public offer of investment fund certificates shall comprise:
  - (a) Request for registration of the public offer of investment fund certificates;
  - (b) Prospectus;
  - (c) Proposed charter of the securities investment fund;
  - (d) Contract for supervision between a custodian bank and the securities investment fund management company;
  - (dd) Undertaking to underwrite the issue (if any).

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<sup>19</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>20</sup> Allens Arthur Robinson Note: The same Vietnamese word "quyet dinh" has been translated as resolution in some contexts and as decision in other contexts.

4. 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 securities by a credit institution, the application file must include a letter of approval from the State Bank of Vietnam.
5. 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 State Securities Commission.
6. The information in an application file must be accurate and truthful, not cause misunderstanding, and must include all important items which will influence a decision by investors.
7. The Ministry of Finance shall provide specific regulations on the application file for registration of a public offer of securities by a State owned enterprise, an enterprise with foreign owned capital which converts to become a shareholding company, and a newly established enterprise in the sectors of infrastructure or high-tech; on public offers of securities overseas and on other specific cases.

#### **Article 15** *Prospectus*

1. The prospectus for a public offer of shares or bonds shall include 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 director or general director, the deputy director or deputy general director 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 16 of this Law of the issuing organization for the last two years;
  - (d) Other information as stipulated in the sample form for a prospectus.
2. The prospectus for a public offer of investment fund certificates shall include 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 by investment 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 being people related to the securities investment fund management company and custodian bank;
  - (e) Other information as stipulated in the sample form for a prospectus.



3. Signing of a prospectus:
  - (a) The prospectus for a public offer of shares or bonds must be signed by the chairman of the board of management or of the member's council or the company chairman, the director or general director, the financial director or the accountant of the issuing organization and the legal representative of 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 chairman of the board of management or of the member's council or the company chairman, the director or general director of the securities investment fund management company and 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 Ministry of Finance shall promulgate the sample form for a prospectus.

**Article 16** *Financial statements*

1. Financial statements shall comprise the accounting balance sheet, a report on results of production and business activities, a cash flow report and an explanation of the financial statements.
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 approved auditing organization.
4. In a case where an application file is lodged prior to 1 March in any one year, 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 consecutive years.
5. Where a valid application file for registration of a public offer of securities is lodged with the State Securities Commission 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 17** *Responsibilities of organizations and individuals related to an application file for registration of a public offer of securities*

1. The issuing organization shall be liable 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 shall be liable within the scope related to the application file for registration of the public offer of securities.

**Article 18** *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 shall be obliged to amend or add to the file if it discovers any inaccurate information or that there has been an omission of important information required by the regulations, or if it considers it necessary to explain any matter which may cause misunderstanding.

2. The State Securities Commission, during the time it considers an application file, shall have the right to require an issuing organization to amend or add to the application file for registration of the public offer of securities 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 State Securities Commission has issued a certificate of acceptance [of registration] of the public offer of securities, important information arises relating to the application file for registration of the public offer, then within a time-limit of seven (7) days the issuing organization must announce the information which has arisen by the methods stipulated in clause 3 of article 20 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 State Securities Commission 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 shall be calculated from the date on which the State Securities Commission receives the letter amending or adding to the application file.

**Article 19** *Information prior to making a public offer of securities*

Pending consideration of an application file for registration of a public offer of securities, 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 State Securities Commission 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. Market research shall not be conducted by way of the mass media.

**Article 20** *Effectiveness of registration of a public offer of securities*

1. Within a time-limit of thirty (30) days from the date of receipt of a valid application file, the State Securities Commission shall consider and issue a certificate of acceptance [of registration] of the public offer of securities. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
2. A certificate of acceptance [of registration] of a public offer of securities from the State Securities Commission shall be 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 a time-limit of seven (7) days from the date of effectiveness of a certificate of acceptance [of registration] of a public offer of securities, the issuing organization shall be obliged to make an issue announcement in three consecutive editions of a written or electronic newspaper.
4. Securities may only be offered to the public after the announcement stipulated in clause 3 of this article has been made.

**Article 21** *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 issue 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 shall be a minimum of twenty (20) days; this time-limit must be set out in the issue announcement.

In a case where 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 the investors in the proportion in which each investor registered to purchase.

3. Purchase monies for securities must be paid into an escrow bank account and retained until completion of the offer tranche and until a report has been made to the State Securities Commission.
4. The issuing organization must complete distribution of the securities within a time-limit of ninety (90) days from the date of effectiveness of the certificate of acceptance [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 State Securities Commission may consider an extension of the time-limit for the securities distribution but shall not grant an extension beyond thirty (30) days.

In a case where 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 shall, within a time-limit of ten (10) days from the end of an offer tranche, report the results of the offer tranche to the State Securities Commission enclosing a letter of confirmation from the bank 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 a time-limit of thirty (30) days from the date of the end of an offer tranche.

## **Article 22** *Suspension of public offer of securities*

1. The State Securities Commission shall have the right to suspend a public offer of securities for a maximum of fifty (50) days in the following circumstances:
  - (a) On discovery that 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 21 of this Law.
2. Within a time-limit of seven (7) 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 clause 3 of article 20 of this Law and must recall issued securities if investors so request, and at the same time must refund investors their money within a time-limit of fifteen (15) days from the date of receipt of a request.
3. If the defects which led to the suspension are remedied, the State Securities Commission may issue written notice of rescission of the suspension and the securities offer shall be permitted to be continued.

4. The issuing organization shall announce the rescission of suspension by the method stipulated in clause 3 of article 20 of this Law within a time-limit of seven (7) days from the date it receives notice of rescission of suspension from the State Securities Commission.

**Article 23** *Rescission of public offer of securities*

1. If at the expiry of the suspension period stipulated in clause 1 of article 22 of this Law the defects which resulted in the suspension of the offer tranche have not been remedied, the State Securities Commission shall rescind the offer tranche and prohibit sale of such securities.
2. Within a time-limit of seven (7) 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 clause 3 of article 20 of this Law, must recall all issued securities, and must refund investors within a time-limit of 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 24** *Obligations of issuing organizations*

- 1.<sup>21</sup> When an issuing organization has completed a public offer of shares, it shall become a public company and must discharge the obligations of a public company stipulated in clause 2 of article 27 of this Law. The application file for registration of the public offer of securities shall be deemed to be the public company file and the issuing organization must lodge the public company file stipulated in clause 1 of article 26 of this Law with the State Securities Commission.

An issuing organization being a public company must fulfil its provide an undertaking to place the offered securities for trading on an organized securities trading market as stipulated in article 12.1(d) of this Law.

2. An issuing organization which completes a public offer of bonds must comply with the obligation to disclose information stipulated in article 102 of this Law.

## CHAPTER III

### Public Companies

**Article 25** *Public companies*

1. A public company means a shareholding company which belongs to one of the following three categories:
  - (a) A company which has made a public offer of shares;
  - (b) A company which has shares listed on the Stock Exchange or a Securities Trading Centre;
  - (c) A company which has shares owned by at least one hundred (100) investors excluding professional securities investors, and which has paid-up charter capital of ten (10) billion Vietnamese dong or more.

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<sup>21</sup> Allens Arthur Robinson footnote: As amended by Law 62.

2. The shareholding companies defined in clause 1(c) of this article must lodge the public company file stipulated in clause 1 of article 26 of this Law with the State Securities Commission within a time-limit of ninety (90) days from the date such shareholding company becomes a public company.

**Article 26** *Public company file*

1. A public company file shall contain the following documents:
  - (a) Charter of the company;
  - (b) Copy business registration certificate of the company;
  - (c) Summarized information about the business operational scale, managerial organization and shareholding structure;
  - (d) Financial statements for the most recent year.
2. Within a time-limit of seven (7) days from the date of receipt of a valid file, the State Securities Commission shall be responsible to announce the name, business contents and other relevant information about the public company on the information network of the State Securities Commission.

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

1. Public companies shall have the rights stipulated in the *Law on Enterprises* and in other provisions of relevant laws.
2. Public companies shall have the following obligations:
  - (a) To disclose information as stipulated in article 101 of this Law;
  - (b) To comply with the principles on corporate management stipulated in article 28 of this Law;
  - (c) To conduct registration and concentrated securities depository at a Securities Depository Centre as stipulated in articles 52 and 53 of this Law;
  - (d) Other obligations as stipulated in the *Law on Enterprises* and in other provisions of relevant laws.

**Article 28<sup>22</sup>** *Principles on corporate management*

1. Management of public companies must comply with the provisions of this Law, of the *Law on Enterprises* and other relevant laws.
2. Principles on management of public companies shall comprise:
  - (a) Ensuring a reasonable managerial structure; and ensuring effectiveness of the operation of board of management and board of controllers;
  - (b) Ensuring the interests of shareholders and affiliated [or related] persons;

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<sup>22</sup> Allens Arthur Robinson footnote: As amended by Law 62.

- (c) Ensuring equal treatment of all shareholders;
  - (d) Publicity and transparency of all activities of the company.
3. The Ministry of Finance shall provide specific regulations on this article.

**Article 29** *Reports on ownership by major shareholders*

1. Any organization or individual which becomes a major shareholder of a public company must report to the public company, the State Securities Commission and the Stock Exchange or Securities Trading Centre where the shares of such public company are listed within a time-limit of seven (7) days from the date of becoming a major shareholder.
2. A report on ownership by a major shareholder shall contain the following particulars:
  - (a) In the case of a major shareholder being an organization, the name, address and business line of the major shareholder; in the case of a major shareholder being an individual, the full name, age, nationality, permanent residence and profession of the major shareholder;
  - (b) The number of shares and the percentage of shares which such organization or individual owns, or owns jointly with other organizations and individuals, compared to the total number of currently circulating shares.
3. If there is an important change in the information in the report stipulated in clause 2 of this article, or if there is a change in the number of shares owned in excess of one per cent of the number of shares of the same type currently in circulation, then within a time-limit of seven (7) days from the date of such change the major shareholder must lodge an additional report with the public company, the State Securities Commission and the Stock Exchange or Securities Trading Centre where the shares are listed.
4. The provisions in clauses 1, 2 and 3 of this article shall also apply to any group of affiliated persons owning from five (5) per cent or more of the voting shares in an issuing organization.

**Article 30** *Redemption by public company of its own shares*

1. When a public company which does not have its shares listed on the Stock Exchange or a Securities Trading Centre redeems its shares, it must comply with the provisions in articles 90, 91 and 92 of the *Law on Enterprises*.
2. When a public company whose shares are listed on the Stock Exchange or a Securities Trading Centre redeems its shares, it must make a public announcement of the redemption no later than seven (7) days prior to conducting the redemption. The announcement shall include the following particulars:
  - (a) Objective of the redemption;
  - (b) Number of shares to be redeemed;
  - (c) Source of funds for the redemption;
  - (d) Duration of implementation of the redemption.

Any public company which redeems its shares and then resells them must implement the resale in accordance with the regulations of the Ministry of Finance.

**Article 31** *Recovery of profit earned from unfair trading*

1. A public company shall have the right to recover all items of profit earned by members of the board of management, the director or general director, deputy director or deputy general director, persons responsible for finance and accounting and other managers in the managerial apparatus of the public company from the conduct of purchase and sale, or sale and purchase, of securities in the company within a period of six (6) months from the date of the purchase or sale.
2. A public company or shareholders in the company shall have the right to institute court proceedings to recover profit earned from unfair trading as stipulated in clause 1 of this article.

**Article 32<sup>23</sup>** *Public offers to acquire*

1. The following transactions must be made by a public offer to acquire:
  - (a) An offer to purchase voting shares [or] closed investment fund certificates leading to ownership of twenty five (25) per cent or more of the number of currently circulating shares or closed investment fund certificates in any one public company or closed fund respectively;
  - (b) Any organization, individual and affiliated person holding twenty five (25) per cent or more of the voting shares or fund certificates in any one public company or closed fund respectively [wishing] to purchase a further ten per cent or more of the currently circulating voting shares in the public company or currently circulating fund certificates in the closed fund respectively;
  - (c) Any organization, individual and affiliated person holding twenty five (25) per cent or more of the voting shares or fund certificates in any one public company or closed fund respectively [wishing] to purchase a further five up to below ten per cent of the voting shares in the public company or [a further five up to below ten per cent of certificates in the] closed fund within less than one year from the date of completion of the previous public offer tranche.
2. The following transactions need not be made by a public offer to acquire:
  - (a) Purchase of newly shares [or] fund certificates leading to ownership of twenty five (25) per cent or more of the voting shares or fund certificates in any one public company or closed fund respectively, 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 fund;
  - (b) Receipt of voting shares [or] fund certificates leading to ownership of twenty five (25) per cent or more of the voting shares or fund certificates in any one public company or closed fund respectively, and approved by the general meeting of shareholders of the public company or by the committee of representatives of the closed fund;
  - (c) Transfer of shares as between companies within an enterprise organized on the parent - subsidiary company model;
  - (d) Donation of or bequeathing shares;

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<sup>23</sup> Allens Arthur Robinson footnote: As amended by Law 62.

- (dd) Assignment of capital pursuant to a decision of a court;
  - (e) Other cases as decided by the Ministry of Finance.
3. The Government shall provide specific regulations on public offers to acquire public company shares and closed investment fund certificates.

## CHAPTER IV

### Securities Trading Market

#### **Article 33** *Organization of securities trading markets*

- 1.<sup>24</sup> The Stock Exchange shall organize a securities trading market for those securities which satisfy the conditions for listing on the Stock Exchange; organization of a securities market for other types of securities shall be implemented in accordance with Government regulations.
2. Securities Trading Centres shall organize securities trading markets for those securities of issuing organizations which do not satisfy the conditions for listing on the Stock Exchange.
3. Apart from the Stock Exchange and Securities Trading Centres, no organization or individual shall be permitted to organize a securities trading market.
- 4.<sup>25</sup> The Stock Exchange may link with Stock Exchanges of other countries pursuant to decisions of the Prime Minister of the Government.

#### **Article 34** *Organization and operation of the Stock Exchange and Securities Trading Centres*

1. The Stock Exchange and Securities Trading Centres shall be legal entities established and operating on the model of a limited liability company or shareholding company in accordance with the provisions of this Law.
2. The Prime Minister of the Government shall, on the proposal of the Minister of Finance, issue a decision on the establishment, dissolution and conversion of the organizational structure and ownership form of the Stock Exchange and of Securities Trading Centres.
3. The Stock Exchange and Securities Trading Centres shall have the function of organizing and supervising trading activities of securities listed on the Stock Exchange and at Securities Trading Centres.
4. The activities of the Stock Exchange and Securities Trading Centres must comply with the provisions of this Law and with the respective charter of the Stock Exchange or of a Securities Trading Centre.
5. The Stock Exchange and Securities Trading Centres shall be subject to administration and supervision by the State Securities Commission.

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<sup>24</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>25</sup> Allens Arthur Robinson footnote: As added by Law 62.



**Article 35** *Managerial and executive apparatus of the Stock Exchange and Securities Trading Centres*

1. The Stock Exchange and Securities Trading Centres shall have a board of management, a director, deputy director, and a board of controllers.
2. The chairman of the board of management and director of the Stock Exchange and of a Securities Trading Centre shall be ratified by the Minister of Finance on the proposal of the board of management after obtaining the opinion of the chairman of the State Securities Commission.
3. The rights and duties of the board of management, of the director, deputy director and board of controllers shall be stipulated in the respective charter of the Stock Exchange or of a Securities Trading Centre.

**Article 36** *Charters of the Stock Exchange and of Securities Trading Centres*

1. The charter of the Stock Exchange and of a Securities Trading Centre shall be ratified by the Ministry of Finance on the proposal of the board of management of the Stock Exchange or of the Securities Trading Centre after obtaining the opinion of the chairman of the State Securities Commission.
2. The charter of the Stock Exchange or of a Securities Trading Centre shall contain the following main particulars:
  - (a) Name and address;
  - (b) Operational objectives;
  - (c) Charter capital; method for increasing and reducing capital and for assigning charter capital;
  - (d) Names and addresses and basic information about the capital contributing members, founding shareholders or owner;
  - (dd) Capital contribution portions of capital contributing members; or number and value of shares of founding shareholders;
  - (e) Legal representative;
  - (g) Structure of managerial organization;
  - (h) Rights and obligations of capital contributing members or of shareholders;
  - (i) Rights and duties of the board of management, director, deputy director and board of controllers;
  - (k) Method for passing decisions of the Stock Exchange or of the Securities Trading Centre;
  - (l) Method for amending or supplementing the charter;
  - (m) Applicable accounting and auditing regimes;
  - (n) Establishment of funds and rules on use of funds; principles on use of profits, on dealing with losses and other financial regimes;
  - (o) Principles for resolution of internal disputes.

**Article 37** *Rights of the Stock Exchange and of Securities Trading Centres*

1. To promulgate rules on listing securities, on trading securities, on disclosure of information and on trading members after obtaining approval from the State Securities Commission.
2. To organize and operate securities trading activities on the Stock Exchange and at Securities Trading Centres.
3. In necessary cases in order to protect investors, to temporarily suspend, suspend or rescind trading of securities in accordance with the rules on trading securities of the Stock Exchange or Securities Trading Centre.
4. To approve or to rescind securities listing and to supervise maintenance of conditions for securities listing on the Stock Exchange or Securities Trading Centre by listing organizations.
5. To approve or to rescind the membership of trading members; to supervise securities trading activities by trading members on the Stock Exchange or Securities Trading Centre.
6. To supervise activities of disclosure of information by listing organizations and by trading members on the Stock Exchange or Securities Trading Centre.
7. To supply market information and other information relating to listed securities.
8. To act as a conciliator on the request of trading members when a dispute arises relating to securities trading activities.
9. To collect fees and charges in accordance with regulations of the Ministry of Finance.

**Article 38** *Obligations of the Stock Exchange and of Securities Trading Centres*

1. To ensure that securities trading activities are conducted on the market publicly, fairly, in an orderly manner and effectively.
2. To implement the accounting, auditing, statistics and financial obligations regimes in accordance with law.
3. To disclose information in accordance with the provisions of article 107 of this Law.
4. To supply information to and to co-ordinate with competent State bodies in the work of preventing breaches of the law on securities and the securities market.
5. To co-ordinate in the work of providing and disseminating information and knowledge to investors about securities and the securities market.
6. To pay compensation to trading members when the Stock Exchange or Securities Trading Centre causes loss to a trading member, except for cases of force majeure.

**Article 39** *Trading members*

1. *Trading member* of the Stock Exchange or of a Securities Trading Centres means a securities company for which such Stock Exchange or Securities Trading Centre has approved trading membership.

2. The conditions and procedures for becoming a trading member of the Stock Exchange or of a Securities Trading Centre shall be regulated in the rules on trading members of the Stock Exchange or of such Securities Trading Centre.
3. Trading members shall have the following rights:
  - (a) To use the trading system and services provided by the Stock Exchange or Securities Trading Centre;
  - (b) To receive information about the securities trading market from the Stock Exchange or Securities Trading Centre;
  - (c) To propose that the Stock Exchange or Securities Trading Centre 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 operation of the Stock Exchange or Securities Trading Centre;
  - (dd) Other rights stipulated in the rules on trading members of the Stock Exchange or Securities Trading Centre.
4. Trading members shall have the following obligations:
  - (a) To discharge the obligations stipulated in article 71 of this Law;
  - (b) To be subject to supervision by the Stock Exchange or Securities Trading Centre;
  - (c) To pay membership fees, trading fees and other service fees pursuant to regulations of the Ministry of Finance;
  - (d) To disclose information in accordance with article 104 of this Law and the rules on disclosure of information of the Stock Exchange or Securities Trading Centre;
  - (dd) To provide assistance to other trading members at the request of the Stock Exchange or Securities Trading Centre in necessary cases;
  - (e) Other obligations stipulated in the rules on trading members of the Stock Exchange or Securities Trading Centre.

**Article 40** *Listing securities*

1. An issuing organization wishing to list securities on the Stock Exchange or a Securities Trading Centre must satisfy the conditions on capital, business operation and financial capability, number of shareholders or number of securities owners.
2. Any issuing organization which lodges an application file for listing shall be liable for the accuracy, truthfulness and completeness of such file. Any organization advising on the listing, the approved auditing organization, the signatory to the audit report and any other organization or individual certifying an application file for listing shall be responsible within the scope relating to such application file for listing.

- 3.<sup>26</sup> The Government shall provide regulations on the conditions, application file and procedures for Vietnamese issuing organizations and foreign issuing organizations to list securities on the Stock Exchange and Securities Trading Centres of Viet Nam; and shall provide regulations on the conditions, application file and procedures for Vietnamese issuing organizations to list securities on foreign Stock Exchanges.

**Article 41** *Trading securities*

1. Trading securities on the Stock Exchange:
  - (a) The Stock Exchange shall organize trading of securities by the method of matching orders and by other trading methods stipulated in the rules on trading securities of the Stock Exchange;
  - (b) Securities which are listed on the Stock Exchange shall not be permitted to be traded outside the Stock Exchange, except where otherwise stipulated in the rules on trading securities of the Stock Exchange.
2. Trading securities at Securities Trading Centres:
  - (a) A Securities Trading Centre shall organize the trading of listed securities by the method of reaching agreement and other trading methods stipulated in the rules on trading securities of the Securities Trading Centre.
  - (b) Securities listed at a Securities Trading Centre shall be permitted to be traded at a securities company which is a trading member of the Securities Trading Centre in accordance with the rules on trading securities of the Securities Trading Centre.
3. The State Securities Commission must provide approval before the Stock Exchange or a Securities Trading Centre shall be permitted to organize trading of new types of securities, to change to or apply new trading methods, or to operate new trading systems.

CHAPTER V

**Securities Registration, Depository, Clearance and Payment**

**Article 42** *Organization and operation of Securities Depository Centres*

1. Securities Depository Centres shall be legal entities established and operating on the model of a limited liability company or shareholding company in accordance with the provisions of this Law.
2. The Prime Minister of the Government shall, on the proposal of the Minister of Finance, issue a decision on the establishment, dissolution and conversion of the organizational structure and ownership form of Securities Depository Centres.
3. A Securities Depository Centre shall have the function of organizing and supervising activities of securities registration, depository, clearance and payment.
4. The activities of a Securities Depository Centre must comply with the provisions of this Law and with the charter of the Securities Depository Centre.

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<sup>26</sup> Allens Arthur Robinson footnote: As amended by Law 62.

5. Securities Depository Centres shall be subject to administration and supervision by the State Securities Commission.

**Article 43** *Managerial and executive apparatus of Securities Depository Centres*

1. Securities Depository Centres shall have a board of management, a director, deputy director, and a board of controllers.
2. The chairman of the board of management and director of a Securities Depository Centre shall be ratified by the Minister of Finance on the proposal of the board of management after obtaining the opinion of the chairman of the State Securities Commission.
3. The rights and duties of the board of management, of the director, deputy director and board of controllers shall be stipulated in the charter of the Securities Depository Centre.

**Article 44** *Charter of Securities Depository Centres*

1. The charter of a Securities Depository Centre shall be ratified by the Ministry of Finance on the proposal of the board of management after obtaining the opinion of the chairman of the State Securities Commission.
2. The charter of a Securities Depository Centre shall contain the following main particulars:
  - (a) Name and address of main head office and of any branch;
  - (b) Operational objectives;
  - (c) Charter capital; method for increasing and reducing capital and for assigning charter capital;
  - (d) Names and addresses and basic information about the capital contributing members, founding shareholders or owner;
  - (dd) Capital contribution portions of capital contributing members; or value and number of shares of founding shareholders;
  - (e) Legal representative;
  - (g) Structure of managerial organization;
  - (h) Rights and obligations of capital contributing members or of shareholders;
  - (i) Rights and duties of the board of management, director, deputy director and board of controllers;
  - (k) Method for passing decisions of the Securities Depository Centre;
  - (l) Method for amending or supplementing the charter;
  - (m) Applicable accounting and auditing regimes;
  - (n) Establishment of funds and rules on use of funds; principles on use of profits, on dealing with losses and other financial regimes;

- (o) Principles for resolution of internal disputes.

**Article 45** *Rights of Securities Depository Centres*

1. To promulgate rules on securities registration, depository, clearance and payment after obtaining approval from the State Securities Commission.
2. To approve or to rescind the membership of depository members; to supervise compliance by depository members with the rules of the Securities Depository Centre.
3. To supply services of securities registration, depository, clearance and payment and other services related to securities depository at the request of clients.
4. To collect fees and charges in accordance with regulations of the Ministry of Finance.

**Article 46** *Obligations of Securities Depository Centres*

1. To ensure that a Centre has material and technical facilities servicing the operation of securities registration, depository, clearance and payment.
2. To formulate operational rules and rules on risk management for each professional business operation.
3. To manage separately assets of clients.
4. To pay compensation to clients for failure to discharge obligations causing loss to the lawful interests of clients, except in cases of force majeure.
5. To operate in the interests of persons depositing securities and securities owners.
6. 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.
7. To establish a professional risk fund to cover losses to clients as the result of technical breakdowns or mistakes of staff during operations. The professional risk fund shall be established from professional revenue in accordance with regulations of the Ministry of Finance.
8. To supply information about ownership of securities by clients to public companies and issuing organizations.
9. To implement the accounting, auditing, statistics and financial obligations regimes in accordance with law; to implement the regime on reporting securities depository operations in accordance with regulations of the Ministry of Finance.
10. To bear liability for depository and payment activities at the main head office and any branch which has registered its depository operation.

**Article 47** *Depository members*

1. *Depository member* means a securities company or a commercial bank operating in Vietnam for which the State Securities Commission has issued a certificate of acceptance of registration of a securities depository operation and to which a Securities Depository Centre has granted approval for

such entity to become a depository member.

2. Depository members shall have the following rights:
  - (a) To supply depository services to clients and to make payment for securities transactions on behalf of clients;
  - (b) To collect fees and charges in accordance with regulations of the Ministry of Finance;
  - (c) Other rights in accordance with law and the rules of the Securities Depository Centre.
3. Depository members shall have the following obligations:
  - (a) To discharge the obligations stipulated in article 46 of this Law;
  - (b) To make contributions to the Settlement Assistance Fund in accordance with the rules of the Securities Depository Centre;
  - (c) Other obligations in accordance with law and the rules of the Securities Depository Centre.

**Article 48** *Conditions for registration of a securities depository operation*

1. The following conditions for registration of a securities depository operation shall apply to a commercial bank:
  - (a) The bank must have a licence for establishment and operation in Vietnam;
  - (b) The overdue debts of the bank must not exceed five (5) per cent of its loan balance, and the bank must have been profitable in the most recent year;
  - (c) The bank must have a location, equipment and facilities servicing activities being registration and depository of, and payment for securities transactions.
2. The following conditions for registration of a securities depository operation shall apply to securities companies:
  - (a) The company must have a licence for establishment and operation in securities brokerage or securities self-trading;
  - (b) The company must have a location, equipment and facilities servicing activities being registration and depository of, and payment for securities transactions.

**Article 49** *Application file for registration of securities depository operation*

1. Application for registration of a securities depository operation.
2. Copy of licence for establishment and operation.
3. Explanatory statement of material and technical facilities guaranteeing the operation of securities depository.
4. Audited financial statements for the most recent year, except in a case where a securities company is newly established.

**Article 50** *Time-limit for issuance of certificate of registration of a securities depository operation*

1. The time-limit for issuance of a certificate of registration of a securities depository operation shall be fifteen (15) days from the date the State Securities Commission receives a valid application file. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
2. A securities company or a commercial bank must conduct procedures to register membership of a Securities Depository Centre and must commence its operation within a time-limit of twelve (12) months from the date of grant of the certificate of acceptance of registration of its securities depository operation.

**Article 51** *Suspension or revocation of certificate of acceptance of registration of a securities depository operation*

1. The securities depository operation of a depository member shall be suspended for a maximum of ninety (90) days in the following circumstances:
  - (a) The depository member regularly breaches the obligations of a depository member as regulated by the Securities Depository Centre;
  - (b) The depository member allows deficiencies to arise which cause serious loss to clients.
2. The certificate of acceptance of registration of the securities depository operation of a depository member shall be revoked in the following circumstances:
  - (a) If at the expiry of a period of suspension the depository member has failed to remedy a breach stipulated in clause 1 of this article;
  - (b) The depository member fails to conduct securities depository activities within a period of twelve (12) months from the date of grant of its certificate of acceptance of registration of the securities depository operation;
  - (c) Withdrawal of licence for establishment and operation;
  - (d) On division, demerger, merger, consolidation, conversion, dissolution or bankruptcy;
  - (dd) On voluntary termination of the securities depository operation after obtaining approval from the State Securities Commission.
3. On revocation of a certificate of acceptance of registration of a securities depository operation, the securities member must conduct procedures for accounting finalization of its securities depository account in accordance with the rules of the Securities Trading Centre.

**Article 52** *Securities registration*

1. The securities of a public company must be centrally registered at a Securities Depository Centre.
2. The securities of any other issuing organization which authorizes the Securities Depository Centre to act as transferring agent must be registered at the Securities Depository Centre.
3. The public companies and the issuing organizations stipulated in clauses 1 and 2 of this article shall



conduct registration of the types of securities and of information about the securities owners with the Securities Depository Centre.

**Article 53** *Securities depository*

1. The securities of a public company must be centrally deposited at a Securities Depository Centre before such securities are traded.
2. Securities shall be deposited at a Securities Depository Centre in the form of general depository. A securities owner being a joint owner shall conduct general depository in accordance with a percentage of the deposited securities.
3. A Securities Depository Centre shall receive separately the deposit of named securities and other assets at the request of their owners.

**Article 54** *Transfer of ownership of securities*

1. The transfer of ownership of all types of securities which have been registered at a Securities Depository Centre shall be implemented via the Securities Depository Centre.
2. The time of effectiveness of a transfer of ownership of securities at a Securities Depository Centre shall be regulated as follows:
  - (a) In the case of securities which have been deposited in the form of general depository at a Securities Trading Centre, transfer of ownership of the securities shall be effective on the day on which a book entry is made in the securities depository account at the Securities Depository Centre;
  - (b) In the case of securities which have not been deposited in the form of general depository at a Securities Depository Centre, transfer of ownership of the securities shall be effective on the date on which an entry is made in the register of registered securities administered by the Securities Depository Centre.

**Article 55** *Securities clearance and payment*

1. Securities clearance and payment shall be implemented in accordance with the rules of the Securities Depository Centre.
2. Payment for securities shall be implemented via a Securities Depository Centre, and payment of money for a securities transaction shall be implemented via a payment bank and shall comply with the principle of simultaneous delivery of securities with payment therefor.

**Article 56** *Protection of assets of clients*

1. Securities, whether in a material or non-material form, and other assets of clients which are administered by a Securities Depository Centre or a depository member are the assets of the owner and shall not be deemed to be assets of the Securities Depository Centre or of a depository member.
2. A Securities Depository Centre or depository member shall not use securities which clients have forwarded to the Securities Depository Centre or depository member in order to make payment of debts of such Securities Depository Centre or such depository member.

**Article 57** *Confidentiality*

1. A Securities Depository Centre and depository members shall be responsible to maintain confidentiality of information relating to ownership of securities by clients; and unless a client agrees, the Securities Depository Centre and depository members must refuse to permit an inspection or 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.
2. The provisions in clause 1 of this article shall not apply in the following circumstances:
  - (a) When an auditor undertakes an audit of the financial statements of the Securities Depository Centre or of a depository member;
  - (b) When a client of the Securities Depository Centre or a depository member seeks information about ownership of the securities of such client or member;
  - (c) When information is supplied at the request of a competent State body.

**Article 58** *Settlement Assistance Fund*

1. A Settlement Assistance Fund shall be 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 shall be managed by the Securities Depository Centre and must be managed separately from the assets of the Securities Depository Centre.
3. The level of contributions made to the Settlement Assistance Fund, the method of assisting with payment, and the method of managing and using the Fund shall be implemented in accordance with the rules of the Securities Depository Centre.

CHAPTER VI

**Securities Companies and Securities Investment Fund Management Companies**

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

1. Securities companies, and securities investment fund management companies (hereinafter referred to as *fund management companies*), shall be organized in the form of limited liability companies or shareholding companies in accordance with the provisions of the *Law on Enterprises*.
2. The State Securities Commission shall issue licences for establishment and operation of securities companies and fund management companies. Such licences shall act concurrently as business registration certificates.

**Article 60** *Professional business activities of securities companies*

1. A securities company shall be 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. When a securities company conducts self-trading, it shall only be permitted to conduct the [other] professional business activity of underwriting issues of securities.
- 3.<sup>27</sup> In addition to conducting the professional securities business activities stipulated in clause 1 of this article, a securities company shall be permitted to accept authorization [or entrustment] to manage securities trading accounts from individual investors, and to provide financial consultancy services and other financial services in accordance with regulations of the Ministry of Finance.

**Article 61** *Professional business activities of fund management companies*

- 1.<sup>28</sup> A fund management company shall be 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 both the professional business activities stipulated in clause 1 of this article shall be granted in the one licence for establishment and operation of the fund management company.
3. In addition to the professional business activities stipulated in clause 1 of this article, fund management companies shall be permitted to raise capital and to manage foreign investment funds which have the objective of investment in Vietnam.

**Article 62** *Conditions for issuance of licences for establishment and operation of securities companies and fund management companies*

1. The following conditions shall apply to the issuance of licences for establishment and operation of securities companies and fund management companies:
- (a) Having office headquarters and having material and technical facilities and equipment for securities business; underwriters and securities investment consultants shall not be required to satisfy the condition on facilities and equipment;
  - (b) Having the level of legal capital stipulated in regulations of the Government;
  - (c) Having a director or general director and professional staff for the business activities stipulated in articles 60.1 and 61.1 of this Law who have securities business practising certificates.

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<sup>27</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>28</sup> Allens Arthur Robinson footnote: As amended by Law 62.

2. Founding shareholders or founding members who are individuals must have full legal capacity, and must not be currently subject to a criminal penalty or ban by a court from professional business practice. Founding shareholders or founding members who are legal entities must have sufficient financial capacity to contribute capital. Founding shareholders or founding members must use their own capital funds to contribute capital to the establishment of the securities company or fund management company.

**Article 63** *Application file for issuance of a licence for establishment and operation of a securities company or fund management company*

1. Application for grant of a licence for establishment and operation of a securities company or fund management company.
2. Explanatory statement of material and technical facilities servicing the professional business operations.
3. Confirmation from a bank of the amount of legal capital deposited in an escrow account opened at the bank.
4. List of the persons proposed to be appointed as director or general director and professional staff conducting business operations, enclosing copies of securities business practising certificates.
5. List of founding shareholders or founding members enclosing copies of people's identity cards or passports in the case of individuals and business registration certificates in the case of legal entities.
6. Copy financial statements for the most recent year certified by an approved auditing organization of the founding shareholders or founding members being legal entities which have contributed from ten (10) per cent or more of the paid-up charter capital of the organization applying for grant of the licence.
7. Draft charter of the company.
8. Proposed business operation plan for the first three years consistent with the professional business activities for which a licence is requested, enclosing professional business rules, rules on internal control and rules on risk management.

**Article 64** *Charters of securities companies and fund management companies*

1. The charter of a securities company or fund management company shall contain the following main particulars:
  - (a) The items stipulated in article 22 of the *Law on Enterprises*;
  - (b) The rights and obligations of the securities company or fund management company which must not be inconsistent with the provisions of this Law;
  - (c) Provisions on prohibitions and restrictions applicable to the securities company or fund management company, and to the director or general director and to securities business practitioners of the such company.
2. The Ministry of Finance shall regulate the sample form for the charter of a securities company and fund management company.

**Article 65** *Time-limit for issuance of a licence for establishment and operation*

1. Within a time-limit of thirty (30) days from the date of receipt of a valid application file, the State Securities Commission shall issue a licence for establishment and operation of the securities company or fund management company. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
2. If any matter relating to an application file for issuance of a licence for establishment and operation of a securities company or fund management company needs to be clarified, the State Securities Commission shall have the right to request an explanation in person<sup>29</sup> or in writing from a representative of the founding shareholders or founding members or from the person proposed to be appointed or employed as director or general director of the applicant organization.

**Article 66** *Announcement of a licence for establishment and operation*

1. Within a time-limit of seven (7) days from the date of grant of a licence for establishment and operation, a securities company or fund management company must make announcements of such licence on the information network of the State Securities Commission and in three consecutive editions of one written newspaper or one electronic newspaper.
2. The announcement of the licence stipulated in clause 1 of this article must contain the following main particulars:
  - (a) Name of the securities company or fund management company;
  - (b) Address of main head office of the company and of any branch or representative office;
  - (c) Number of the licence for establishment and operation, date of issuance, and the professional business activities which are permitted;
  - (d) Charter capital;
  - (dd) Name of legal representative of the company.

**Article 67** *Additions to a licence for establishment and operation*

1. If a securities company which has been granted a licence for establishment and operation wishes to add to its professional securities business activities, it must apply for issuance of a supplemented licence for establishment and operation.
2. An application file for issuance of a supplemented licence for establishment and operation shall contain the following documents:
  - (a) Application for supplemented licence for establishment and operation;
  - (b) The documents stipulated in clauses 2, 3 and 8 of article 63 of this Law;
  - (c) Amended charter passed by the general meeting of shareholders or the members' council or the company owner;

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29 Allens Arthur Robinson Note: The literal translation is "directly".

- (d) Decision on additional professional securities business activities, passed by the general meeting of shareholders and board of management or by the members' council or the company owner.
3. Within a time-limit of twenty (20) days from the date of receipt of a valid application file, the State Securities Commission shall issue a supplemented licence for establishment and operation. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
  4. A securities company must make announcements of the grant of a supplemented licence for establishment and operation within the time-limit and by the methods stipulated in clause 1 of article 66 of this Law.

**Article 68** *Changes which must be approved by the State Securities Commission*

1. The State Securities Commission must provide written approval before a securities company or fund management company implements any of the following changes:
  - (a) Establishment or closure of branches, representative offices or transaction offices;
  - (b) Change of name of the company; change of address of main head office of the company, or of any branch, representative office or transaction office;
  - (c) Trading which changes the shareholding ownership or capital contribution ownership from ten (10) per cent or more of the paid-up charter capital in the securities company or fund management company, except in a case where shares in such company have been listed on the Stock Exchange or at a Securities Trading Centre;
  - (d) Temporary suspension of operation, except where such suspension is the result of an event of force majeure.
2. An application file and the procedures for approval of changes shall be implemented in accordance with regulations of the Ministry of Finance.
3. The State Securities Commission shall provide approval to a change within a time-limit of fifteen (15) days from the date of receipt of a valid application file. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.

**Article 69** *Division, demerger, merger, consolidation or conversion of a securities company or fund management company*

1. The State Securities Commission must provide approval before a securities company or fund management company may divide, demerge, merge, consolidate or convert. The State Securities Commission shall provide approval within a time-limit of thirty (30) days from the date of receipt of a valid application file, and in a case of refusal shall provide a written notice specifying the reasons for the refusal.
2. An application file and the procedures for requesting approval to division, demerger, merger, consolidation or conversion shall be implemented in accordance with regulations of the Ministry of Finance.
3. A securities company or fund management company shall implement division, demerger, merger, consolidation or conversion in accordance with the *Law on Enterprises*.

4. A company which is newly formed from a division, demerger, merger, consolidation or conversion must conduct procedures for issuance of a licence for establishment and operation in accordance with article 63 of this Law.

**Article 70** *Suspension and revocation of licences for establishment and operation of securities companies and fund management companies*

1. The operation of a securities company or fund management company shall be suspended in the following circumstances:
  - (a) The application for issuance of, or for supplementing the licence for establishment and operation contained false information;
  - (b) After the expiry of the period of a warning stipulated in article 74 of this Law, the securities company or fund management company has failed to remedy the situation giving rise to the warning and has total losses equal to fifty (50) per cent of charter capital or the company no longer satisfies the conditions on operational capital for securities business;
  - (c) The operation is for an incorrect objective or does not comply with the items stipulated in the licence for establishment and operation;
  - (d) Failure to maintain the conditions for the issuance of a licence for establishment and operation stipulated in article 62 of this Law.
2. The licence for establishment and operation of a securities company or fund management company shall be revoked in the following circumstances:
  - (a) Failure to conduct securities business activities for a period of twelve (12) months as from the date of issuance of the licence for establishment and operation;
  - (b) Failure to remedy the situation stipulated in clause 1(b) of this article within a period of six (6) months from the date of suspension of operation;
  - (c) Failure to rectify a breach stipulated in sub-clauses (a), (c) and (d) of clause 1 of this article within a period of six (6) months from the date of suspension of operation;
  - (d) Dissolution or bankruptcy.
3. In a case of revocation of the licence for establishment and operation as stipulated in clause 2(b) of this article, the State Securities Commission may appoint another securities company to substitute and complete transactions and contracts of the company whose licence was revoked; in such a case, an automatic authorization relationship shall be established as between the two companies.
4. When the licence for establishment and operation of a securities company or fund management company is revoked, such company must immediately terminate all activities stipulated in its licence and make an announcement in three consecutive editions of one written newspaper or one electronic newspaper. The State Securities Commission shall be responsible to announce the revocation of the licence for establishment and operation of the company on the information network of the State Securities Commission.

**Article 71** *Obligations of securities companies*

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 separately manage the securities of each investor, and to manage the money and securities of investors separately from the money and securities of the securities company.
3. To sign a written contract with a client when providing services to that client; to provide complete and truthful information to clients.
4. To give priority to implementing orders of clients prior to orders of the company.
5. 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 for such clients.
6. To comply with the provisions on ensuring liquid capital in accordance with regulations of the Ministry of Finance.
7. To purchase professional indemnity insurance to cover the business activities of the company or to establish a fund for protection of investors in order to pay compensation to investors as the result of technical breakdowns within the company or mistakes by company staff.
8. To retain complete source documents and accounts reflecting in detail and accurately all transactions of clients and of the company.
9. To conduct the sale of, or to permit the client to sell securities, which are un-owned and to lend a clients securities to sell in accordance with regulations of the Ministry of Finance.
10. To comply with the regulations of the Ministry of Finance on securities business activities.
11. To implement the regimes on accounting, auditing, statistics and financial obligations in accordance with law.
12. To disclose information in accordance with article 104 of this Law and to implement the reporting regime in accordance with regulations of the Ministry of Finance.

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

1. To comply with the provisions in clause 1, clauses 3 to 7 inclusive, and clauses 9 to 12 inclusive of article 71 of this Law.
2. To manage securities investment funds and securities investment portfolios in accordance with this Law, with the charter of the fund management company, 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 88 of this Law, in accordance with the charter of the fund management company and with contracts signed with clients entrusting investment.



**Article 73** *Provision on restrictions applicable to securities companies and fund management companies*

1. Not to provide statements or guarantees to clients about the level of income or profits 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 administrative body.
3. Not to take any acts which will result in misunderstanding by clients and investors about securities.
4. Not to lend money to clients to purchase securities, except where regulations of the Ministry of Finance provide otherwise.
5. Founding shareholders and founding members of a securities company or fund management company shall not be permitted to assign their shares or capital contribution portions within a period of three years from the date of issuance of the licence for establishment and operation, except in a case of assignment to another founding shareholder or founding member within the company.

**Article 74**<sup>30</sup> *Provision on financial safety and warnings*

Securities companies and fund management companies must ensure financial prudential criteria in accordance with regulations of the Ministry of Finance; and if they fail to satisfy the financial prudential criteria, they shall be subject to a warning or to imposition of other measures to ensure safety.

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

1. The dissolution of securities companies and fund management companies shall be implemented in accordance with the *Law on Enterprises*. The State Securities Commission must provide approval for a securities company or fund management company to be dissolved prior to expiry of its operational duration.
2. The bankruptcy of securities companies and fund management companies shall be implemented in accordance with the *Law on Bankruptcy* applicable to enterprises operating in the financial and banking sectors.

**Article 76** *Issuance of licences for establishment and operation of securities companies and fund management companies with foreign owned capital in Vietnam*

1. Securities companies and fund management companies with foreign owned capital in Vietnam shall be permitted to be established in the forms of joint venture, contribution of shareholding capital, and one hundred (100) per cent foreign owned company for which the State Securities Commission issues a licence for establishment and operation.
2. The conditions for issuance of licences for establishment and operation of securities companies and fund management companies with foreign owned capital in Vietnam shall be implemented in accordance with article 62 of this Law.
3. The application file and procedures for issuance of licences for establishment and operation of securities companies and fund management companies with foreign owned capital in Vietnam shall

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<sup>30</sup> Allens Arthur Robinson footnote: As amended by Law 62.

be implemented in accordance with regulations of the Government.

**Article 77** *Issuance of licences for establishment and operation of branches of foreign securities companies and fund management companies in Vietnam*

1. The following conditions shall apply to the issuance of a licence for establishment and operation of a branch of a foreign securities company or of a foreign fund management company in Vietnam:
  - (a) It is a securities economic organization currently legally operating in the foreign country;
  - (b) The conditions stipulated in clause 1 of article 62 of this Law.
2. The application files and procedures for issuance of licences for establishment and operation of branches of foreign securities companies and of fund management companies in Vietnam shall be implemented in accordance with regulations of the Government.

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

1. Foreign securities companies and foreign fund management companies shall be permitted to establish a representative office in Vietnam after they have registered its operation with the State Securities Commission.
2. An application file for registration of the operation of a representative office of a foreign securities company or foreign fund management company in Vietnam shall contain the following documents:
  - (a) Application for registration of the operation of a representative office;
  - (b) Copy of the operational licence of the foreign securities company or foreign fund management company;
  - (c) Copy of the charter of the foreign securities company or foreign fund management company;
  - (d) Curriculum vita of the person proposed to be appointed as head of the representative office in Vietnam and a list of the staff (if any) proposed to work in the representative office.
3. Within a time-limit of seven (7) days from the date of receipt of a valid application file, the State Securities Commission shall issue a certificate of registration of the operation of the representative office of the foreign securities company or foreign fund management company in Vietnam. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
4. The operational scope of a representative office may comprise one, a number, or all of the following items:
  - (a) Implementation of the function of a contact office and the conduct of market research;
  - (b) Promotion and formulation of co-operative projects in the securities and the securities market sector in Vietnam;
  - (c) Advancement and supervision of the performance of contracts already agreed and signed between a foreign securities company or foreign fund management company on the one hand and economic organizations of Vietnam on the other;

- (d) Advancement and supervision of the performance of projects which the foreign securities company or foreign fund management company finances in Vietnam.
- 5. A representative office shall not be permitted to conduct securities business activities.
- 6. A representative office shall be subject to administration and supervision by the State Securities Commission.

**Article 79** *Securities business practising certificates*

- 1. 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 penalty or ban by a court from professional practice;
  - (b) Having a university degree and professional expertise in securities and the securities market;
  - (c) Obtaining the required mark after sitting an examination held by the State Securities Commission; a foreign individual with a certificate of expertise in securities and the securities market, or an individual who has legally conducted securities business overseas shall only be required to sit an examination on the law on securities of Vietnam.
- 2. An application file for the issuance of a securities business practising certificate shall comprise:
  - (a) Request for issuance of a securities business practising certificate;
  - (b) Summarized curriculum vita certified by the local authority in the place where the individual permanently resides;
  - (c) Copy degree and professional certificates.
- 3. In the case of the foreign individuals referred to in clause 1(c) of this article, the application file for issuance of a securities business practising certificate shall comprise:
  - (a) Request for issuance of a securities business practising certificate;
  - (b) Summarized curriculum vita certified by the competent body of the country of nationality of such individual, enclosing a copy passport;
  - (c) Copy of professional certificates or data proving that the individual has engaged in securities business practice in the foreign country.
- 4. Within a time-limit of seven (7) days from the date of receipt of a valid application file, the State Securities Commission shall issue a securities business practising certificate. In a case of refusal, the State Securities Commission shall provide a written notice specifying its reasons for the refusal.
- 5. A securities business practising certificate shall only be valid while the person issued with the certificate works at a securities company or fund management company and such company notifies the State Securities Commission.
- 6. A securities company or a fund management company shall be responsible to notify the State

Securities Commission within two days of the date a person issued with a securities business practising certificate no longer works for such company.

**Article 80** *Withdrawal of securities business practising certificates*

1. The practising certificate of an individual engaged in securities business shall be revoked in the following cases:
  - (a) The individual no longer satisfies the conditions required for grant of a securities business practising certificate as stipulated in clause 1(a) of article 79 of this Law;
  - (b) The individual breaches the provisions of articles 9, 81(1) or 81(3) of this Law;
  - (c) The individual fails to engage in securities business for a period of three (3) consecutive years.
2. Any individual engaged in securities business whose practising certificate is revoked in the case stipulated in clause 1(b) of this article shall not be eligible for re-issuance of a securities business practising certificate.

**Article 81** *Responsibilities of individuals being securities practitioners*

1. A securities practitioner shall not be permitted:
  - (a) To work concurrently for another organization with an ownership relationship with the securities company or fund management company where such individual is currently working;
  - (b) To work concurrently for another securities company or fund management company;
  - (c) To act concurrently as director or general director of an organization making a public offer of securities or for a listed organization.
2. A securities business practitioner when working for a securities company shall be permitted to open a securities trading account for himself or herself at such company.
3. A securities business practitioner shall not be permitted to use money or securities in client accounts without authority from such clients.
4. Securities practitioners must attend training courses held by the State Securities Commission, the Stock Exchange and Securities Trading Centres on the law, trading systems and new types of securities.

CHAPTER VII

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

Section 1

**General Provisions on Securities Investment Funds**

**Article 82** *Types of securities investment funds*

1. Securities investment funds shall comprise public funds and members funds.

2. Public funds shall comprise open investment funds and closed investment funds.

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

1. The establishment of a public fund and the public offer of investment fund certificates in a public fund by a fund management company must comply with the provisions in article 90 of this Law and must be registered with the State Securities Commission.
2. The establishment of a members fund by a fund management company must comply with the provisions in article 95 of this Law and must be reported to the State Securities Commission.

**Article 84** *Rights and obligations of investors participating in securities investment funds*

1. Investors shall 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 fund management company or custodian bank to redeem certificates in an open investment fund;
  - (d) To institute proceedings against the 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) To exercise other rights stipulated in the charter of the securities investment fund.
2. Investors shall have the following obligations:
  - (a) To comply with resolutions of the general meeting of investors;
  - (b) To make full payment for the purchase of fund certificates;
  - (c) Other obligations stipulated in the charter of the securities investment fund.

**Article 85** *General meeting of investors of securities investment fund*

1. The general meeting of investors of a securities investment fund shall comprise all investors and shall be the highest decision-making authority of the securities investment fund.
2. The general meeting of investors shall have the following rights and duties:
  - (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 change the level of fees paid to the fund management company and custodian bank;
  - (d) To consider and deal with any breaches which cause loss to the securities investment fund by the fund management company, the custodian bank or the committee of representatives of the fund;
  - (dd) To make decisions on amendments of or additions to the charter of the securities investment fund and the supervision contract; to make decisions on listing of closed investment fund certificates;
  - (e) To make decisions on basic changes in investment policy, on the plan for distribution of profits, the investment objectives of the securities investment fund and on dissolution of the securities investment fund;
  - (g) To make a decision on a change of fund management company or custodian bank;
  - (h) To require the fund management company or the custodian bank to submit accounting books or transaction source documents to the general meeting of investors;
  - (i) To pass reports on annual financial status, assets and operation of the securities investment fund;
  - (k) To pass a decision on selection of an approved auditing organization to audit the annual financial statements of the securities investment fund;
  - (l) Other rights and duties stipulated in the charter of the securities investment fund.
3. The general meeting of investors of a securities investment fund shall be convened annually or an extraordinary meeting shall be convened to consider and make decisions on all matters within the authority of the general meeting of investors. The convening and procedures for conducting the general meeting of investors and for passing resolutions of the general meeting of investors shall be implemented in accordance with regulations of the Ministry of Finance and the charter of the securities investment fund.

**Article 86** *Charter of securities investment fund*

1. The charter of a securities investment fund shall be drafted by the fund management company and shall be passed by the general meeting of investors.
2. The charter of a securities investment fund shall contain the following main particulars:
  - (a) Name of the securities investment fund, of the 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 increasing the capital of the securities investment fund;

- (dd) Rights and obligations of the fund management company and of the custodian bank; circumstances in which the fund management company and custodian bank may be changed; provisions on delegation of authority to the 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 registered investors in the 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 rewards payable to the 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 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 Ministry of Finance shall regulate the sample form for the charter of a securities investment fund.

**Article 87** *Dissolution of securities investment fund*

1. A securities investment fund shall be 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.

2. At least three (3) months prior to conducting dissolution, the committee of representatives of the fund shall convene a general meeting of investors to pass a plan on dissolution of the securities investment fund.
3. The fund management company and the custodian bank shall be 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.
4. Proceeds received from the liquidation of assets of a securities investment fund and residual assets on dissolution shall be paid in the following priority order:
  - (a) Discharge of financial obligations to the State;
  - (b) Payment of debts payable to the fund management company and custodian bank, payment of other debts payable and expenses of the dissolution of the securities investment fund;
  - (c) Remaining proceeds shall be used to pay investors according to their capital contribution ratio.
5. Within a time-limit of five (5) days from the date of completion of dissolution of a securities investment fund, the fund management company and the custodian bank must report to the State Securities Commission on the results of dissolution.

**Article 88** *Determination of net asset value of a securities investment fund*

1. A determination of net asset value of any one securities investment fund shall be conducted by the fund management company and shall be certified by the custodian bank.
2. A determination of net asset value of a securities investment fund must comply with the following principles:
  - (a) The value of securities listed on the Stock Exchange or Securities Trading Centres shall be the closing price or the average price on the trading day prior to the day of valuation;
  - (b) In the case of assets other than 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 clear and appropriate in order to be applied uniformly and 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 fund management company, custodian bank and depository bank;
  - (c) Monetary assets comprising dividends and profits shall be 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 105 of this Law.

**Article 89** *Reports on securities investment funds*

1. A securities investment fund must provide periodic and extraordinary reports to the State Securities Commission on its list of investments, investment activities and financial status of the fund.



2. The Ministry of Finance shall provide detailed regulations on the reporting regime applicable to securities investment funds.

## Section 2

### Public Funds and Members Funds

#### **Article 90** *Raising capital to establish a public fund*

1. Raising capital of a public fund shall be implemented by the fund management company within a time-limit of ninety (90) days from the date of effectiveness of the certificate of acceptance [of registration] of the public offer of fund certificates. A public fund shall be permitted to be established if it has a minimum of one hundred (100) investors excluding institutional securities investors who purchase fund certificates, and if the total value of fund certificates sold is at least fifty (50) billion Vietnamese 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 fund management company shall provide a report, certified by the custodian bank, on the results of the capital raising tranche to the State Securities Commission within a time-limit of 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 fund management company must refund to investors all items of capital contribution within a time-limit of fifteen (15) days from the date of completion of the capital raising tranche. The fund management company shall bear all expenses of and financial obligations arising from the capital raising tranche.

#### **Article 91** *Committee of representatives of public fund*

1. The committee of representatives of a public fund shall represent the interests of investors, and shall be elected by the general meeting of investors. The rights and obligations of the committee of representatives of a public fund shall be stipulated in the charter of the securities investment fund.
2. The committee of representatives shall pass decisions by way of voting at meetings, collecting written opinions or other forms stipulated in the charter of the securities investment fund. Each member of the committee of representatives of a public fund shall have one vote.
3. A committee of representatives of a public fund shall have from three to eleven (11) members, of whom two-thirds must be independent members and not affiliated persons in the fund management company or custodian bank.
4. The following matters shall be regulated in the charter of a securities investment fund: terms of office and standards applicable to the committee of representatives and to the chairman of the committee; number of members of the committee; the election, removal or discharge of the chairman of the committee and members of the committee, and appointment of additional members to the committee; the conditions and procedures for convening meetings and for passing decisions by the committee of representatives.

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

1. A fund management company shall not be permitted to use the capital and assets of a securities investment fund to conduct the following activities:

- (a) To invest in fund certificates of the same fund or in certificates of another investment fund;
  - (b) To invest in securities of any one issuing organization beyond fifteen (15) per cent of the total value of the currently circulating securities of such organization;
  - (c) To invest in excess of twenty (20) per cent of the total asset value of the fund in currently circulating securities of one issuing organization;
  - (d)<sup>31</sup> To invest more than ten (10) per cent of the total asset value of a closed fund in real estate, unless it is a real estate investment fund; to invest the capital of an open 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;
  - (e) To make a loan or to provide a guarantee for a loan.
2. A fund management company shall not be permitted to borrow a loan in order to finance the activities of a public fund, except for a short term loan to pay necessary expenses of the public fund. The total value of short term loans borrowed by a public fund shall 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 shall be thirty (30) days.
  3. Except for the case stipulated in clause 1(e) of this article, the investment structure of a public fund may deviate from the regulations but not by more than fifteen (15) per cent of the total restrictions on investment stipulated in clause 1 of this article. Any deviation must be the result of an increase or decrease in the market value of investment assets and of lawful payments made by the public fund.
  4. The fund management company shall be obliged to report to the State Securities Commission and to disclose information on the above mentioned deviations. Within a time-limit of three months from the date any deviation arises, the fund management company must amend the list of investments in order to ensure compliance with the restrictions on investment stipulated in clause 1 of this article.

**Article 93** *Open investment funds*

1. A resolution of the general meeting of investors shall not be required for a fund management company or a custodian bank on behalf of an open investment fund to redeem certificates in the open investment fund from investors and to resell them, or for issuance of additional fund certificates within the scope of maximum capital contribution.
2. The specific frequency and duration of redemption of certificates in an open investment fund shall be regulated in the charter of such fund.
3. A fund management company shall not be required to represent an open investment fund in redeeming the open fund certificates if one of the following events occur:
  - (a) The fund management company is unable to conduct the redemption of open fund certificates as requested because of an event of force majeure;

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<sup>31</sup> Allens Arthur Robinson footnote: As amended by Law 62.

- (b) The fund management company is unable to conduct a net asset valuation of the open investment fund on the date of valuation of redeemed fund certificates because the Stock Exchange or the Securities Trading Centre has issued a decision to suspend trading of securities on the list of investments of such fund;
  - (c) Other events stipulated in the charter of the fund.
4. A fund management company must report to the State Securities Commission within twenty four (24) hours of the occurrence of one of the events stipulated in clause 3 of this article, and must continue to redeem the open fund certificates after such event terminates.
  5. The Ministry of Finance shall provide specific regulations on the issuance and redemption of open fund certificates.

**Article 94** *Closed investment funds*

1. An increase in the capital of a closed investment fund shall be subject to approval from the State Securities Commission and must satisfy the following conditions:
  - (a) The charter of the fund provides for an increase in the capital of the fund;
  - (b) The fund made a profit in the year immediately preceding the year of the application to increase capital;
  - (c) The fund management company was not subject to an administrative penalty with respect to securities activities and the securities market within a two 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.
3. The Ministry of Finance shall provide regulations on the application file and procedures for an increase in the capital of a closed investment fund.

**Article 95** *Establishment of members funds*

1. A members fund shall be established by capital contributions from members on the basis of a capital contribution contract and the charter of the fund.
2. The following conditions must be satisfied in order to establish a members fund:
  - (a) Having a minimum capital contribution of fifty (50) billion Vietnamese dong;
  - (b) Having a maximum of thirty (30) capital contributing members all of which must be legal entities;
  - (c) The fund must be managed by a fund management company;
  - (d) The assets of a members fund must be deposited at a depository bank which is independent from the fund management company.

## Section 3

### Securities Investment Companies

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

1. Securities investment companies shall be organized in the form of shareholding companies in accordance with the *Law on Enterprises* in order to invest in securities.
2. The State Securities Commission shall issue licences for the establishment and operation of securities investment companies. Such licences shall act concurrently as business registration certificates.

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

1. The following conditions shall apply to the grant of a licence for establishment and operation of a securities investment company;
  - (a) Having a minimum legal capital of fifty (50) billion Vietnamese dong;
  - (b) The director or general director and managerial staff have securities business practising certificates in a case where the company self-manages its investment capital.
2. Securities investment companies must comply with the following provisions:
  - (a) The restrictions on investment stipulated in article 92 of this Law;
  - (b) The items relating to valuation of assets and the reporting regime stipulated in articles 88 and 89 of this Law;
  - (c) The obligations of public companies stipulated in clause 2 of article 27 of this Law;
  - (d) The entire money and assets of a securities investment company must be deposited at a custodian bank.
3. The Government shall provide specific regulations on the establishment, organization and operation of securities investment companies.

## Section 4

### Custodian Banks

#### **Article 98** *Custodian banks*

1. A custodian bank means a commercial bank with a certificate of registration of securities depository activities with the function of providing depository services and supervising the management of public funds and securities investment companies.
2. Custodian banks shall have the following obligations:
  - (a) To discharge the obligations stipulated in clause 3 of article 47 of this Law;

- (b) To implement depository of assets of public funds and securities investment companies; to manage the assets of public funds and securities investment companies separately from other assets of the custodian bank;
- (c) To supervise a fund management company in order to ensure that it manages public funds in compliance with the charter of the fund management company; and to supervise a securities investment company in order to ensure that the director or general director of the securities investment company manages assets of the company in compliance with the provisions of this Law and the charter of the securities investment fund;
- (d) To implement revenue and expenses, payment and remittance of money and transfer of securities relating to the operation of a public fund and securities investment company pursuant to legal requests of the fund management company or of the director or general director of the securities investment company;
- (dd) To certify reports prepared by the 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 fund management companies and securities investment companies in accordance with the provisions of this Law;
- (g) To report to the State Securities Commission if it discovers that a 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 fund management company or of the securities investment fund company;
- (h) To periodically conduct inspections jointly with a fund management company or securities investment company of the accounting books, financial statements, and the trading operation of the public fund or securities investment company;
- (i) Other obligations stipulated in the charter of the securities investment fund or in the charter of the securities investment company.

**Article 99** *Restrictions applicable to custodian banks*

1. A custodian bank, members of the board of management, direct operators and staff of the custodian bank discharging the duties of supervision of the operation of a public fund and preserving fund assets of the custodian bank shall 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 directly discharging the duties of supervision and preservation of assets of a public fund or securities investment company shall not be 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 100** *Entities required to disclose information and means of disclosure of information*

- 1.<sup>32</sup> Issuing organizations, public companies, securities companies, fund management companies, securities investment companies, the Stock Exchange, Securities Trading Centres, the Securities Depository Centre and affiliated [related] persons shall be obliged to disclose information completely, accurately and promptly.
2. When the entities stipulated in clause 1 of this article disclose information, they shall at the same time report it to the State Securities Commission.
- 3.<sup>33</sup> The disclosure of information must be made by the legal representative or by the authorized person and by affiliated [related] persons.
4. Information shall be disclosed by way of the mass media, by publications of organizations and companies, and on the information network of the Stock Exchange or Securities Trading Centre.
5. The Ministry of Finance shall provide specific regulations on the contents and means of disclosure of information by each entity stipulated in clause 1 of this article.

#### **Article 101**<sup>34</sup> *Disclosure of information by public companies*

1. A public company must periodically disclose information about any one or a number of the following matters:
  - (a) Its annual financial statements audited by, and its six monthly financial statements verified by an independent auditing organization or an approved auditing organization; and its quarterly financial statements;
  - (b) Resolutions passed by the annual general meeting of shareholders.
2. A public company must make an extraordinary disclosure of information on occurrence of one of the following events:
  - (a) An account of the company at a bank is frozen, or an account is permitted to be released after having been frozen;
  - (b) Temporary suspension of business; revocation of its business registration certificate, licence for establishment and operation, or operating licence;
  - (c) A decision is passed by the general meeting of shareholders in accordance with the *Law on Enterprises*;
  - (d) When there is a decision of the board of management on redemption of shares of the company or on the resale of redeemed shares; or a decision on the date for implementing

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<sup>32</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>33</sup> Allens Arthur Robinson footnote: As amended by Law 62.

<sup>34</sup> Allens Arthur Robinson footnote: As amended by Law 62.

share purchase rights by owners of bonds carrying with them share purchase rights, or on the date for conversion of convertible bonds into shares, and all decisions relating to offers stipulated in article 108.2 of the *Law on Enterprises*; on medium term developmental strategies and plans, or on the annual business plan of the company; on establishment of subsidiary or associated companies; on opening or closure of branches or representative offices; on change of name or head office address of the company; on capital contribution valued at fifteen (15) per cent or more of the total assets of the company in another organization; or on capital contribution valued at fifty (50) per cent or more of the total capital contribution of the company receiving such contribution;

- (dd) A decision to change the applicable accounting method; a reservation or refusal to provide an opinion by the auditors on the financial statements [of the public company], or when there is a change of auditors;
  - (e) When there is a change in membership of the board of management or board of controllers, general director or deputy general director, director or deputy director, or chief accountant; when there is a decision to bring legal proceedings against a member of the board of management, general director or deputy general director, director or deputy director, or chief accountant of the company; or where there is a verdict or decision of a court relating to the operation of the company; or where there is a conclusion by the tax office that the company is in breach of the law on taxation;
  - (g) On purchase or sale of assets valued at ten (10) per cent or more of the total value of the assets of the company as calculated in the most recently audited accounting balance sheet;
  - (h) There is a decision to borrow or to issue bonds with a value of thirty (30) per cent or more of the company's equity as at the time of the most recent report [financial statements];
  - (i) The company receives a notice from a court accepting jurisdiction over a petition to commence enterprise bankruptcy proceedings;
  - (k) There is a loss of assets with a value of ten (10) per cent or more of equity;
  - (l) On occurrence of an event which has a large impact on production and business activities or the managerial status of the listing organization<sup>35</sup>;
  - (m) On occurrence of one of the events seriously affecting the lawful interests of investors, the value of securities increases or reduces consecutively within a specified period and [seriously affecting] the sustainable development of the securities market at the request of the State Securities Commission.
3. The Ministry of Finance shall provide specific guidelines on the items of information which must be disclosed and the time-limit for disclosure of information as applicable to each type of public company.

**Article 102** *Disclosure of information by issuing organizations making public offers of bonds*

1. When an issuing organization makes a public offer of bonds it must make the periodic disclosure of information stipulated in clause 1 of article 101 of this Law.

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<sup>35</sup> Allens Arthur Robinson footnote: The literal translation here is "listing organization", not "public company".

2. An issuing organization making a public offer of bonds must make an extraordinary disclosure of information within seventy two (72) hours of the occurrence of one of the events stipulated in sub clauses (a), (b) and (c) of clause 2 and in clause 3 of article 101 of this Law.

**Article 103<sup>36</sup> [Repealed]**

**Article 104** *Disclosure of information by securities companies and fund management companies*

1. A securities company or a fund management company shall make a periodic disclosure of information about annual financial statements of public funds within ten (10) days from the date it has audited financial statements.
2. A securities company or a fund management company must report to the Stock Exchange or a Securities Trading Centre within twenty four (24) hours of the occurrence of one of the following events, so that the latter organizations may disclose information in accordance with clause 2 of article 107 of this Law:
  - (a) When there is a decision to bring legal proceedings against a member of the board of management or members council, the director or general director, the deputy director or deputy general director, or the chief accountant of the company;
  - (b) The general meeting of shareholders or the members council approves a contract to merge with another company;
  - (c) Ten (10) per cent or more of the value of the assets of the company is lost;
  - (d) The company changes membership of the board of management or members council, or changes the director or general director, or deputy director or deputy general director; the company appoints or dismisses a securities investment fund operator;
  - (dd) There are important changes in the business operations of the company.
- 3.<sup>37</sup> A securities company must disclose information at its main head office and branches about any changes relating to the address of the main head office of branches; and information about matters relating to trading methods, placing orders, [escrow] deposits, time-limits for payment, trading fees, services which the company provides and the list of securities business practitioners of the company.
4. Securities companies and fund management companies must disclose information at the request of the State Securities Commission when there is information about the company which seriously affects the lawful interests of investors.

**Article 105** *Disclosure of information about public funds*

1. A public company shall make a periodic disclosure of information about annual financial statements of public funds within ten (10) days from the date such financial statements are audited.
2. A fund management company shall make a periodic disclosure of information about a public fund in the following circumstances:

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<sup>36</sup> Allens Arthur Robinson footnote: Article 103 headed "Disclosure of information by listing organizations" was repealed by Law 62.

<sup>37</sup> Allens Arthur Robinson footnote: As amended by Law 62.



- (a) Changes in the net asset value of a public fund on a weekly, monthly, quarterly and annual basis;
  - (b) Assets of a public fund on a weekly, monthly, quarterly and annual basis;
  - (c) Status and results of investment activities of a public fund on a monthly, quarterly and annual basis.
3. A fund management company must report to the Stock Exchange or a Securities Trading Centre within twenty four (24) hours of the occurrence of one of the following events concerning a public fund, so that such organizations may disclose information in accordance with clause 2 of article 107 of this Law:
- (a) There is a resolution of the general meeting of investors;
  - (b) There is a decision to make an offer of certificates in a public fund;
  - (c) There is a decision to change the invested capital of a public fund;
  - (d) Revocation of a certificate of acceptance [of registration of] a public offer of certificates in a public fund;
  - (dd) An offer tranche of certificates in a public fund is suspended or rescinded.
4. A fund management company must disclose information concerning a public fund at the request of the State Securities Commission on the occurrence of one of the following events;
- (a) There is a rumour which affects an offer of or the price of certificates in a public fund;
  - (b) There is an abnormal change in the price and volume of transactions of certificates in a public fund.

**Article 106** *Disclosure of information by securities investment companies*

1. A securities investment company which makes a public offer of shares must disclose information as stipulated in article 101 and clause 2 of article 105 of this Law.

2.<sup>38</sup>

**Article 107** *Disclosure of information by the Stock Exchange and by Securities Trading Centres*

The Stock Exchange and Securities Trading Centres must disclose the following information:

- 1. Information about trading securities on the Stock Exchange or at the Securities Trading Centre.
- 2. Information about listing organizations on the Stock Exchange or at the Securities Trading Centre; information about securities companies, fund management companies, securities investment funds and securities investment companies.
- 3. Information about supervision of securities market activities.

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<sup>38</sup> Allens Arthur Robinson footnote: Article 106.2 was repealed by Law 62.

## CHAPTER IX

### Inspections and Dealing with Breaches

#### Section 1

#### Inspections

##### **Article 108** *Securities Inspectorate*

1. The Securities Inspectorate shall be the specialized branch inspectorate for securities and the securities market.
2. The Securities Inspectorate shall comprise the head of the inspectorate, the deputy head of the inspectorate and inspectors.
3. The Securities Inspectorate shall be subject to direction on professional methods from the inspectorate of the Ministry of Finance in accordance with the law on inspections and the provisions of this Law.

##### **Article 109** *Entities subject to inspections and the scope of inspections*

1. The following entities shall be subject to inspection:
  - (a) Organizations which make public offers of securities;
  - (b) Public companies;
  - (c) Organizations which list securities;
  - (d) The Stock Exchange and Securities Trading Centres;
  - (dd) Securities Depository Centres and depository members;
  - (e) Securities companies, fund management companies, securities investment companies, custodian banks; branches and representative offices of foreign securities companies and of foreign fund management companies in Vietnam;
  - (g) Securities business practitioners;
  - (h) Organizations and individuals participating in investment and activities on the securities market;
  - (i) Other organizations and individuals involved in securities activities and securities market activities.
2. The scope of inspection shall comprise:
  - (a) Activities being public offers of securities;
  - (b) Activities being securities listing;

- (c) Activities being securities trading;
- (d) Securities and securities market business activities, investment in securities, and services;
- (dd) Activities being disclosure of information;
- (e) Other activities related to securities and the securities market.

**Article 110** *Forms of inspections*

1. Inspections shall be held pursuant to programs and plans approved by the chairman of the State Securities Commission.
2. Extraordinary inspections shall be carried out on discovery that there are indications that any organization or individual participating in investment and in securities market activities is in breach of the law on securities and the securities market; and pursuant to a request to resolve a complaint or denunciation, or pursuant to a direction from the chairman of the State Securities Commission.

**Article 111** *Authority and bases for an inspection decision*

1. An inspection may only take place after there is an inspection decision made by a person authorized by clause 2 of this article.
2. The head of the Securities Inspectorate shall issue inspection decisions and establish inspection groups. The chairman of the State Securities Commission may also issue an inspection decision and establish an inspection group when he considers it necessary.

An inspection group shall comprise a head of the group and members being inspectors.

3. The issuance of an inspection decision must be based on one of the following grounds:
  - (a) An inspection program or plan approved by the chairman of the State Securities Commission;
  - (b) A request from the chairman of the State Securities Commission;
  - (c) Discovery of an indication of a breach of the law on securities and the securities market.

**Article 112** *Contents of an inspection decision*

1. An inspection decision must contain the following particulars:
  - (a) The legal grounds for the inspection;
  - (b) The entity subject to inspection, the contents and scope of the inspection and the inspecting duties;
  - (c) The duration of the conduct of the inspection;
  - (d) The head of the inspection group and the inspectors who are members of the group.
2. An inspection decision must be sent to the entity subject to the inspection within the time-limit of three days from the date of signing of the decision, except in the case of an extraordinary inspection.

3. An inspection decision must be announced within a time-limit of fifteen (15) days from the date of issuance of the decision. The announcement of an inspection decision must be made in writing.

**Article 113** *Duration of inspections*

1. The duration of any one inspection shall not exceed thirty (30) days from the date of announcement of the inspection decision until completion of the inspection at the place which is being inspected.
2. In necessary cases, the person who issued an inspection decision may extend the duration of the inspection once only, but such duration shall not exceed the time-limit stipulated in clause 1 of this article.

**Article 114** *Rights and obligations of entities subject to an inspection*

1. Entities subject to inspection shall have the following rights:
  - (a) To explain issues relating to the contents of the inspection;
  - (b) To reserve their opinions in minutes of the inspection;
  - (c) To refuse to supply information and data in the category of State secrets when the law so stipulates and the information and data is irrelevant to the contents of the inspection.
  - (d) To lodge a complaint with the person who issued the inspection decision about decisions and conduct of the head of the inspection group and members of such group throughout the process of the inspection when there are grounds for considering that such decisions or conduct were contrary to law; to lodge a complaint with the chairman of the State Securities Commission about an inspection conclusion or a decision dealing with an inspection when there are grounds for considering such conclusion or decision was contrary to law. Pending a resolution of the complaint, the complainant must continue to comply with the inspection conclusion and any decision dealing with an inspection.
  - (dd) To claim compensation for loss in accordance with law;
  - (e) An entity subject to inspection who is an individual shall have the right to lodge a denunciation about any conduct in breach by the head of the Inspectorate, the head of the inspection group and a member of the inspection group.
2. Entities subject to an inspection shall have the following obligations:
  - (a) To comply with inspection decisions;
  - (b) To promptly supply complete and accurate information, data and electronic data relating to the contents of an inspection pursuant to a request by the Inspectorate and to be liable for the completeness, accuracy and truthfulness of any information, data and electronic data supplied;
  - (c) To comply with requests, inspection conclusions and decisions dealing with an inspection by the Inspectorate and by competent State bodies;
  - (d) To sign minutes of an inspection.

**Article 115** *Duties and powers of the person issuing an inspection decision*

1. A person issuing an inspection decision shall have the following duties and powers:
  - (a) To provide directions to the inspection group and to check that the inspection group correctly follows the contents and time schedule stipulated in the inspection decision;
  - (b) To request that the entity subject to the inspection supplies information, data, electronic data, written reports and explanations on issues relating to the contents of the inspection; to request any organization or individual with information or data relating to the contents of the inspection to supply such information and data;
  - (c) To obtain evaluations on issues relating to the contents of the inspection;
  - (d) To request an authorized person to seal [and] temporarily detain data, source documents, securities and electronic data relating to a breach of the law on securities and the securities market when it is considered necessary to immediately stop a breach or to verify circumstances providing evidence for the conclusion of the inspection;
  - (dd) To request an authorized person to freeze cash accounts, securities accounts, mortgaged assets or pledged assets relating to conduct in breach of the law on securities and the securities market when it is deemed necessary to verify circumstances which will provide a basis for a decision on dealing with a breach, or if such freezing would immediately prevent an act of dispersing money, securities, mortgaged or pledged assets relating to conduct in breach of the law on securities and the securities market;
  - (e) To temporarily suspend, or to recommend that the authorized person issue a decision temporarily suspending, any works when it is considered that such works cause serious loss to the interests of the State or to the lawful rights and interests of organizations and individuals participating in the market;
  - (g) To issue a decision dealing with a breach in accordance with his or her authority, or to recommend that the authorized person issue such decision; to activate and inspect implementation of decisions dealing with breaches issued by the Inspectorate;
  - (h) To resolve complaints and denunciations relating to responsibilities of the head of the Inspectorate, the head of an inspection group and members of inspection groups;
  - (i) To reach conclusions on the contents of an inspection;
  - (k) To transfer the file on a breach to the investigative body within a time-limit of five (5) days from the date of discovery of indications of a criminal offence.
2. When the person issuing an inspection decision implements his or her duties and powers as stipulated in clause 1 of this article, such person shall be legally liable for all of his or her decisions.

**Article 116** *Duties and powers of the head and members of an inspection group*

1. The head of an inspection group shall have the following duties and powers:
  - (a) To organize and direct the members of the inspection group to correctly implement the items stipulated in an inspection decision in terms of the contents of the inspection, the entities subject to the inspection, and the scheduled times for the inspection;

- (b) To request that the entity subject to the inspection supplies information, data, electronic data, written reports and explanations on issues relating to the contents of the inspection;
- (c) If there are grounds for believing that unless data, source documents, securities and electronic data relating to conduct in breach of the law on securities and the securities market will be dispersed or destroyed if it is not promptly sealed [and] temporarily detained, the head of the inspection group shall have the right to issue a decision sealing and temporarily detaining such items. Within a time-limit of twenty four (24) hours from the date the head of an inspection group issues such a decision, the head of the inspection group must report to and obtain written approval from the head of the Securities Inspectorate. In a case where the head of the Securities Inspectorate does not provide approval, the head of the inspection group must immediately rescind his or her decision sealing [and] temporarily detaining the data, source documents, securities or electronic data and must then return such items.
- (d) To report to the person who issued the inspection decision on the results of the inspection. The head of the inspection group shall be liable for the accuracy, truthfulness and objectivity of such report;
- (dd) To formulate minutes of the inspection;
- (e) When the head of the inspection group implements his or her duties and powers as stipulated in clause 1 of this article, such person shall be legally liable for all of his or her decisions.

2. Members of an inspection group shall have the following duties and powers:

- (a) To implement their duties in accordance with the work allocated to them by the head of the inspection group;
- (b) To request the entity subject to the inspection to supply information, data, written reports and explanations on issues relating to the contents of the inspection; to request bodies, organizations and individuals with information and data relating to the contents of the inspection to supply such material;
- (c) To make recommendations on dealing with issues relating to the contents of the inspection;
- (d) To report to the head of the inspection group on the results of performance of the tasks assigned to them, and to be liable before the law and before the head of the inspection group for the accuracy, truthfulness and objectivity of the contents of such report.

**Article 117** *Conclusions of an inspection*

- 1. The person who issued the inspection decision must issue written conclusions of the inspection within a time-limit of fifteen (15) days from the date of receipt of the report on the results of the inspection. Conclusions of an inspection must contain the following particulars:
  - (a) An assessment of implementation by the inspection group of the policies, law and duties in terms of the contents of the inspection;
  - (b) Conclusion on the contents of the inspection;
  - (c) A clear determination of the nature and seriousness of any breach, of the reasons for the breach, and liability on the part of a body, organization or individual in breach (if any);

- (d) Methods for dealing with the breach in accordance with authority which have already been applied; recommendations on methods for dealing with a breach.
2. During the process of an inspection, the person who issued the inspection decision shall have the right to require the head of the inspection group and members of the group to report; and to require the entity subject to the inspection to provide explanations to additionally clarify any essential issues in order to be able to issue conclusions of the inspection.
3. The conclusions of an inspection shall be sent to the chairman of the State Securities Commission and to the entity subject to the inspection; in a case where the chairman of the State Securities Commission issued the inspection decision, the conclusions of the inspection shall be sent to the Minister of Finance.
4. Within a time-limit of fifteen (15) days from the date the chairman of the State Securities Commission receives conclusions of an inspection from the head of the Securities Inspectorate, such chairman shall be responsible to consider the conclusions, to deal with any organization or individual in breach of the law on securities and the securities market, and to apply measures in accordance with his authority or to recommend that the Ministry of Finance apply measures to remedy or perfect regimes, policies and the law.

## Section 2

### Dealing with Breaches

#### **Article 118** *Principles on 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 shall, depending on the nature and seriousness of the breach, be disciplined, be subject to an administrative penalty, or be criminally prosecuted; and any offender who causes loss and damage must pay compensation in accordance with law.
2. Any person who abuses his or her position and powers to hinder securities activities and securities market activities; who harasses or causes difficulties for organizations and individuals participating in the securities market; who fails to promptly resolve a request from an organization or individual in accordance with law; or who fails to carry out other public service duties as stipulated by law shall, depending on the nature and seriousness of the breach, be disciplined or be criminally prosecuted.
3. Dealing with administrative breaches shall be implemented in accordance with the provisions of this Law and the law on dealing with administrative breaches.

#### **Article 119** *Forms of administrative penalty*

1. Any organization or individual in breach of the provisions of this Law shall be subject to one of the following main penalties:
  - (a) A warning;
  - (b) A fine.
2. Depending on the nature and seriousness of the breach, the offender may also be subject to one or more additional penalties including suspension of operation; withdrawal of licence or certificate relating to securities and securities market activities, and withdrawal of a securities business

practising certificate; confiscation of the entire revenue received from the conduct in breach and of the securities used to conduct the breach.

3. In addition to the forms of penalty stipulated in clauses 1 and 2 of this article, the offender may also be subject to an order to compulsorily implement the law; to compulsorily rescind or rectify incorrect or false information; to compulsorily recall securities which have been issued, and to refund deposits or the purchase price of securities to investors.

**Article 120** *Authority to deal with administrative breaches*

1. The head of the Securities Inspectorate shall have the following rights:
  - (a) To impose warnings;
  - (b) To impose fines.
2. The chairman of the State Securities Commission shall have the following rights:
  - (a) To impose warnings;
  - (b) To impose fines;
  - (c) To apply the additional forms of penalty and measures for remedying consequences stipulated in clauses 2 and 3 of article 119 of this Law.
3. The Government shall provide specific regulations on the authority for imposing penalties and the level of such penalties applicable to each administrative breach in securities and securities market activities referred to in articles 121 to 130 inclusive of this Law.

**Article 121** *Dealing with breaches regarding public offers of securities*

1. Any of the following entities which fabricates an item in an application file for registration of a public offer of securities shall be subject to a warning [or] fine or shall be criminally prosecuted in accordance with law, namely an issuing organization; the director or general director, chief accountant or affiliated person of the issuing organization; the underwriter, organization advising on the issue, approved auditing organization, signatory to the audit report or any certifying organization or individual. The issuing organization shall have its certificate of acceptance [of registration] of the public offer of securities revoked, and the issuing organization must repay the monies raised plus interest on on-call deposits and must pay a fine of from one to five per cent of the total amount of monies which were raised contrary to law.
2. Any issuing organization; director or general director, deputy director or deputy general director, chief accountant or other affiliated person of the issuing organization; underwriter or organization advising on the issue who deliberately discloses erroneous information or who deliberately conceals the truth, or who uses information outside the prospectus for market research purposes, or who distributes securities contrary to the registered items of the offer in terms of the type of securities, the stipulated time for the issue and the minimum volume of securities; who announces the issue on the mass media incorrectly in terms of the stipulated contents and duration shall be subject to a warning [or] fine, the public offer of securities shall be suspended or rescinded, and such person may be subject to criminal prosecution in accordance with law. Any underwriter who provides a guarantee for a total value of securities exceeding the stipulated percentage shall be subject to a warning [or] fine, and shall have its underwriting operation suspended.



3. A public offer of securities shall be suspended if the issuing organization which conducts the public offer does not yet have a certificate of acceptance [of registration of] the public offer; and the issuing organization shall have any illegally gained revenue confiscated and shall be fined a sum of from one to five times the amount of revenue illegally obtained.

**Article 122** *Dealing with breaches of the provisions on public companies*

1. Any company as defined in clause 1(c) of article 25 of this Law which fails to lodge a public company file with the State Securities Commission within a time-limit of ninety (90) days from the date of becoming a public company shall be subject to a warning or a fine and shall be subject to an order to compulsorily apply the provisions of the law on public companies.
2. Any public company which fails to comply with the provisions on corporate management shall be subject to a warning and shall be subject to an order to compulsorily apply the provisions of law on corporate management.

**Article 123** *Dealing with breaches of the provisions on listing securities*

1. Any listing organization; the director or general director, deputy director or deputy general director, chief accountant or affiliated person of the listing organization; the organization advising on the listing, the approved auditing organization, a signatory to the audit report or an organization or individual certifying an application for listing who fabricates any item in the application file for listing causing a serious misunderstanding shall be subject to a warning [or] fine, the listing shall be rescinded and the offender may be subject to criminal prosecution in accordance with law.
2. Any listing organization which fails to fully comply with the provisions on time-limits for, contents and methods of disclosure of information about a listing shall be subject to a warning [or] fine and shall be subject to an order to compulsorily apply the provisions of the law on listing.

**Article 124** *Dealing with breaches of the provisions on organization of the securities trading market*

1. Any organization or individual who organizes a securities trading market contrary to the provisions of this Law shall have its/his/her operation suspended, shall have the illegal revenue confiscated and shall be subject to a fine of from one to five times the amount of the illegal gain or may be subject to criminal prosecution in accordance with law. In a case where there is no illegal gain, the offender shall be fined.
2. The Stock Exchange and Securities Trading Centres; and members of the board of management, board of controllers, the director, deputy directors and staff of the Stock Exchange and of a Securities Trading Centre who breaches the provisions on listing, membership, trading, supervision and disclosure of information shall be subject to a warning [or] fine or may be subject to criminal prosecution in accordance with law.

**Article 125** *Dealing with breaches of the provisions on securities business activities and securities business practising certificates*

1. Any securities company, fund management company, securities investment company or branch of a foreign securities company or of a foreign fund management company in Vietnam which conducts securities business without having been issued with a licence, which lends or transfers its licence, which conducts business in a sector not permitted by the licence or for which the licence is no longer effective, which erases or amends its licence, or which makes changes relating to securities and the securities market without approval from the State Securities Commission shall be subject to a warning [or] fine, confiscation of illegally gained revenue, suspension of operation, revocation of its

licence for establishment and operation or revocation of its certificate of registration of operation of the representative office.

2. Any securities company which fails to correctly implement the provisions of this Law on management of client assets including money and securities; which fails to maintain the stipulated level of liquid capital; which invests or participates in capital contribution in excess of the stipulated levels; which acts contrary to the order of an investor; or which fails to implement the regime on confidentiality of information of clients shall be subject to a warning, a fine, suspension of operation or revocation of licence for establishment and operation.
3. Any securities company or securities practitioner of such company which takes advantage of position or powers to lend money and securities in a client account, or to pledge or use money or securities in a client account without authority from the client shall be subject to a warning, a fine and confiscation of illegally gained revenue or shall be subject to criminal prosecution in accordance with law.
4. Any fund management company or securities practitioner in such company who, during the process of management of a fund, fails to separately manage each fund, fails to comply with the charter of the securities investment fund and fails to protect the lawful rights and interests of investors, fails to conduct internal controls as required by law, or uses capital and assets of a securities investment fund to invest in or to purchase assets of another fund; or who breaches the provisions on making capital contribution, on retaining shareholding, on borrowing from or lending to a fund management company, or on a fund management company borrowing from or lending to other parties shall be subject to a warning [or] a fine and shall be subject to an order to compulsorily comply with the provisions on management of securities investment funds.
5. Any securities practitioner who currently works for or contributes capital to two or more securities companies; any securities practitioner in a fund management company who concurrently acts as director or general director of, or who is a shareholder holding more than five (5) per cent of the voting shares in an organization making a public offer of securities; any securities practitioner who lends his or her securities business practising certificate, or who erases or amends his or her securities business practising certificate shall be subject to a fine and the securities business practising certificate shall be revoked.

**Article 126** *Dealing with breaches of the provisions on securities trading*

1. Any person who clearly understands inside information or who has inside information and who purchases or sells securities or who discloses such information or who suggests that another person purchase or sell securities shall be subject to a fine [and] confiscation of illegally gained income or shall be subject to criminal prosecution in accordance with law.
2. Any organization or individual who is prohibited by law from participating, either directly or indirectly, in share trading but who holds shares or who purchases or sells shares by changing name or by borrowing the name of another person shall have the number of shares used to commit the breach and the illegally gained revenue confiscated; and in the case of a State official or staff member, the offender shall be disciplined in accordance with law.
3. Any organization or individual who breaches the provisions on prohibited conduct regarding manipulating the price of securities, creating an artificial price of securities or artificial trading shall be subject to a fine [and] confiscation of illegally gained revenue or shall be subject to criminal prosecution in accordance with law.
4. Any professional staff of the Stock Exchange, of a Securities Trading Centre or of a securities company who deliberately supplies false data, who falsifies or destroys data on transactions in order

to commit fraud, or who coerces clients to purchase or sell securities shall be subject to a fine [and] revocation of the securities business practising certificate or shall be subject to criminal prosecution in accordance with law.

5. Any organization or individual who creates and disseminates false information which seriously affects the securities markets [and/or] causes a securities trading market monopoly shall be subject to a fine or shall be criminally prosecuted in accordance with law.
6. Any organization or individual who conducts a public offer without forwarding a request for registration to the State Securities Commission; or who conducts the public offer incorrectly in terms of the regulations or who changes or amends such public offer in comparison to the registered public offer without providing the stipulated report; or who fails to apply the conditions of the public offer to all shareholders in a public company; or who refuses to acquire shares from any shareholder on the announced conditions; or who fails to comply with the scheduled time-limits for the public offer shall be subject to a fine and an order to compulsorily comply with the provisions of the law on public offers.

**Article 127** *Dealing with breaches of the provisions on securities registration, depository, clearance and payment, and on custodian banks*

1. Any organization which registers, deposits, clears and makes payment for securities or any staff member of such organization who breaches the provisions on the time-limit for verifying data or on delivery of securities; who amends or falsifies source documents during payment; who breaches the provisions of the regime for preservation of securities, or the provisions on registration, depository, clearance and payment for securities, or the regime on maintaining confidentiality of deposit accounts of clients; or who fails to promptly supply a complete list of securities holders to an issuing organization shall be subject to a warning [or] a fine or shall be subject to criminal prosecution in accordance with law.
2. Any custodian bank or staff member of a custodian bank who preserves assets of a securities investment fund contrary to the charter of such fund; who fails to distinguish assets of a securities investment fund from other assets; or who fails to distinguish assets of an investment fund from assets of another investment fund shall be subject to a fine, [and] the certificate of acceptance of registration of the securities depository operation shall be suspended or revoked.

**Article 128** *Dealing with breaches of the provisions on disclosure of information*

Any issuing organization, public company, listing organization, securities company, fund management company or securities investment company which fails to disclose information promptly, completely, or via the stipulated media; or who discloses false information or who discloses confidential information or data or who fails to make disclosure of information in accordance with the provisions of this Law shall be subject to a warning [or] a fine [and] shall be subject to an order to compulsorily comply with the provisions of the law on disclosure of information.

**Article 129** *Dealing with breaches of the provisions on reporting*

If the Stock Exchange, a Securities Trading Centre, a Securities Depository Centre, a public company, a securities company, a fund management company, a securities investment company or a custodian bank fails to make a complete report pursuant to regulations; fails to provide a report within the time-limit stipulated by law; makes a report on the incorrect sample form; stops its operation without reporting or having reported fails to obtain approval from the State Securities Commission; or fails to report or fails to report on time on the occurrence of an unexpected event which may seriously affect financial capability and securities business or securities services operations, shall be subject to a warning [or] fine [and] shall be

subject to an order to compulsorily comply with the provisions of the law on the reporting regime.

**Article 130** *Dealing with conduct which obstructs an inspection*

Any issuing organization, listing organization, securities company, fund management company, securities investment company, custodian bank, the Stock Exchange, Securities Trading Centre, Securities Depository Centre, depository member or any other organization or individual involved in a securities operation and securities market activities who delays, evades or fails to deal with a request made by an inspection group or by a member of such group; or who fails to promptly provide complete information, data and electronic data pursuant to the request made by such inspection group or inspector; or who obstructs an inspection or who threatens or intimidates a member of an inspection group during the performance of inspection duties shall be subject to a warning [or] a fine or shall be subject to criminal prosecution in accordance with law.

CHAPTER X

**Dispute Resolution, Complaints and Denunciations, Compensation for Loss and Damage**

**Article 131** *Dispute resolution*

1. Any dispute arising during a securities operation or securities market activities in Vietnam may be resolved by negotiation, conciliation or may be the subject of a request for reference to an arbitrator or a court to resolve in accordance with law.
2. Authority and procedures for resolution of disputes arising during securities operations and securities market activities by an arbitrator or by a court shall be implemented in accordance with law.

**Article 132** *Compensation for loss and damage*

1. Any organization or individual who suffers loss or damage as a result of conduct in breach of this Law and other relevant laws shall have the right, either by himself or jointly with other organizations and individuals who suffered loss and damage, to institute proceedings to claim that the offender pay compensation for the loss and damage.
2. A determination of the amount of loss and damage and procedures for payment of compensation for loss and damage shall be implemented in accordance with law.

**Article 133** *Complaints and denunciations, institution of legal proceedings*

1. Individuals shall have the right to lodge complaints, make denunciations and to institute legal proceedings; and organizations shall have the right to lodge complaints and to institute legal proceedings in accordance with law. The lodging of complaints, making of denunciations, institution of legal proceedings and resolution of such complaints, denunciations and legal proceedings during securities operations and securities market activities shall be implemented in accordance with this Law and other provisions of relevant laws.
2. During the duration of a complaint, denunciation or legal proceeding the [applicant] organization or individual must continue to implement an administrative decision of the State Securities Commission; when the competent State body for securities and the securities market issues a decision resolving a complaint or denunciation or when a court issues a decision or verdict which has legal effect, then such latter decision or verdict must be implemented.

3. The State Securities Commission shall be responsible to accept jurisdiction of complaints and denunciations from organizations and individuals when such matters are within its jurisdiction to resolve; in a case where the State Securities Commission receives a complaint or denunciation outside its jurisdiction, it shall be responsible to promptly transfer the matter to the authorized entity for resolution and shall provide written notice to the organization or person who made such complaint or denunciation.
4. The time-limit for resolution of a denunciation shall be sixty (60) days from the date of acceptance of jurisdiction, and in complex cases this time-limit may be extended but not to exceed ninety (90) days from the date of acceptance of jurisdiction.
5. The time-limit for resolution of an initial complaint shall be thirty (30) days, and for a complaint made the second time this time-limit shall be forty (40) days from the date of acceptance of jurisdiction; in complex cases this time-limit may be extended but not to exceed sixty (60) days from the date of acceptance of jurisdiction.
6. If a complaint has in fact not been resolved within a period of thirty (30) days from the expiry of the time-limit for resolution of the initial complaint as stipulated in clause 5 of this article or as from the date of receipt of a decision on resolution of the initial complaint from the chairman of the State Securities Commission with which the complainant does not agree, the complainant shall have the right to lodge the complaint a second time with the Minister of Finance or to institute administrative court proceedings in accordance with law.
7. If a complaint has in fact not been resolved within a time-limit of thirty (30) days from the date of expiry of the time-limit for resolution of the complaint a second time as stipulated in clause 5 of this article or as from the date of receipt of a decision resolving a complaint from the Minister of Finance with which the complainant disagrees, the complainant shall have the right to institute administrative court proceedings in accordance with law.

## CHAPTER XI

### Implementing Provisions

**Article 134** *Application of the Law on Securities to organizations operating in the securities and the securities market sector prior to the date of effectiveness of this Law*

1. Any organization which has already registered a public issue of securities, listing, or registered for trading; any securities investment fund which has already registered for establishment and operation [and] satisfies the requirements stipulated in this Law shall not be required to conduct procedures for re-registration.
2. Any securities company or fund management company which has already been established and operates in accordance with its licence for business operation or securities services [and] which satisfies the requirements stipulated in this law shall not be required to conduct procedures to apply for re-issuance of a licence for establishment and operation.
3. The representative office of a foreign securities company or foreign fund management company which was operating in accordance with a licence for establishment of a representative office not issued by the State Securities Commission prior to the date this Law takes effect must conduct procedures for re-registration with the State Securities Commission.

4. Any securities company currently providing the professional service of investment portfolio management must conduct procedures to exchange its licence for establishment and operation within the period of one year from the date this Law takes effect.
5. Any Securities Trading Centre which was established pursuant to Decision No. 127-1998-QD-TTg of the Prime Minister of the Government dated 11 July 1998 must conduct procedures for conversion to establishment as a Stock Exchange or Securities Trading Centre pursuant to the provisions of this Law within eighteen (18) months from the date this Law takes effect.
6. Any securities depository centre which was established pursuant to Decision No. 189-2005-QD-TTg of the Prime Minister of the Government dated 20 July 2005 must conduct procedures for conversion to establishment as a securities depository centre pursuant to the provisions of this Law within eighteen (18) months from the date this Law takes effect.

**Article 135** *Effectiveness*

This Law shall be of full force and effect as from 1 January 2007.

**Article 136**<sup>39</sup> *Detailed regulations and implementing guidelines*

The Government shall provide detailed regulations and guidelines for implementation of articles and clauses assigned to it in this Law; and shall provide guidelines for implementation of other items in this Law necessary to meet State management requirements.

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*This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 9th Session on 29 June 2006.*

The Chairman of the National Assembly  
NGUYEN PHU TRONG

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<sup>39</sup> Allens Arthur Robinson footnote: As amended by Law 62.