

THE NATIONAL ASSEMBLY -----	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness -----
Law No. : ____/____/QH11	

**Draft 9**

**THE NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM  
LEGISLATURE XI, \_\_ SESSION**

(From \_\_\_\_\_ to \_\_\_\_\_)

**COMMERCIAL LAW**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and supplemented by Resolution 51/2001/QH10 dated 25 December 2001 of Legislature X, National Assembly at its 10<sup>th</sup> session.

This Law provides for commercial activities .

**CHAPTER I  
GENERAL PROVISIONS**

**Section 1  
Governing scope and applicability**

**Article 1. Governing scope and applicability**

This Law governs the following:

1. Commercial acts conducted within the territory of the Socialist Republic of Vietnam.
2. Commercial acts carried out outside the territory of the Socialist Republic of Vietnam if the parties agree to apply this Law or a foreign law, or an international treaty which Vietnam has signed or acceded to requires this Law to be applied.
3. Non-profitable acts conducted by one party in its transactions with traders in the territory of the Socialist Republic of Vietnam if the party conducting such non-profitable acts selects to apply this Law.

**Article 2. Applicability**

1. This Commercial Law applies to traders conducting commercial activities in the territory of the Socialist Republic of Vietnam.
2. This Law also applies to the subjects referred to in Articles 1.2 and 1.3 of this Law.

**Article 3. Applying the Commercial Law and other relevant laws**

1. In case of a difference between the provisions of the Commercial Law and a specialized law on the same matter in commercial activities, that specialized law shall apply.

2. In case of a difference between the provisions of the Commercial Law and the Civil Code, the Commercial Law shall apply.

3. Where a specific matter of commercial activities is not covered by both a specialized law and the Commercial Law, the provisions of the Civil Code shall apply.

**Article 4. Applying international treaties, foreign laws and international commercial practice**

1. Where an international treaty to which Vietnam is a member contains provisions inconsistent with this Law, that international treaty prevails.

2. The parties to a commercial transaction involving foreign elements may agree to apply a foreign law, international commercial practice if that law or practice is not contrary to the main principles of the Vietnamese law or if required so by an international treaty to which the Socialist Republic of Vietnam is a member.

**Article 5. Traders**

1. Traders mean organizations legally established for the purpose of conducting commercial acts or individuals with full legal capacity and conduct commercial activities as their jobs on an independent and regular basis.

2. Vietnamese traders mean traders established and operating under Vietnamese law.

3. Foreign traders are traders established and operating in accordance with foreign laws.

4. Traders under this Law shall not include street vendors, and service providers who provide small-scale services based upon their own labor and not being required by law to register.

**Article 6. The right to carry out commercial activities of traders**

1. A trader is allowed to conduct commercial activities in any sector and region and in any form that is not prohibited by law.

2. The State protects the legitimate right of traders to conduct commercial activities.

3. The State has the exclusive right, for a definite term, to conduct commercial activities in respect to certain types of goods and services or in certain regions to protect the national interests. The Government specifies the list of goods, services, and regions of the State's exclusive right.

**Article 7. Obligation to register business by traders**

1. Traders are obliged to register their businesses in accordance with the law.

2. A trader who has not yet registered his/her businesses is still held responsible for all the acts that he/she conducts in accordance with this Law and other relevant legal normative documents.

**Article 8. Interpretation of terms**

In this Law, the following terms have the following meanings:

1. “Commercial activity” means an activity for profitable purposes including: sale and purchase of goods, provision of services, commercial promotion, investment and other activities also aimed at profitable purposes.

2. “Goods” comprise:

(a) all types of moveable assets including those moveable assets formed in the future except for money;

(b) things attached to land;

(c) property rights

3. Practice in commercial activities means rules of conduct that are clear, established and repeated over time between the parties, being recognized by the parties and the parties rely on such custom to establish their respective rights and obligations.

4. Custom means practice that is recognized widely in a locality or in a business field that is clear so that the parties can ascertain their respective rights and interest, being recognized and applied by the parties.

5. “Data messages” means information created, sent, received and stored in an electronic, optical or similar form such as electronic data exchange (EDI), e-mails.

6. Representative office in Vietnam of a foreign trader is a dependent unit of the foreign trader, established under Vietnamese law to promote commercial activities.

7. Branch of a foreign trader in Vietnam is a dependent unit of the foreign trader, established and carry out commercial activities in accordance with Vietnamese law or international treaty which Vietnam has signed or acceded to.

8. Sale and purchase of goods means commercial activities in which the seller is obliged to deliver goods, transfer ownership in the goods to the buyer and receive payment; the buyer is obliged to pay the seller and receive delivery of the goods in accordance with the parties' agreement.

9. Provision of service means is a commercial activity, under which a party (hereinafter called the service provider) is obliged to provide service to another party and receive payment; the party receiving the service (called the client) is obliged to pay the service provider and use the service as agreed.

10. Commercial promotion is searching and promoting opportunity for sale and purchase of goods and provision of services, including sale promotion, commercial advertisement, exhibition of goods and services and trade fairs and exhibitions.

11. Commercial intermediary activities mean activities in order to carry out commercial transactions for one or more traders and including representation for traders, commercial brokerage, mandate for the sale/purchase of goods and commercial representation.

12. Breach of contract is where a party fails to carry out, fails to fully carry out or wrongly carries out its obligation agreed by the parties or stipulated by this Law when the time to perform such obligation arises.

13. Substantial breach is a breach of contract by a party causing such damage to the other party that its purpose in entering the contract is not achieved.

14. Goods origin is a country or territory where the goods are produced [not translatable (i.e. unintelligible in Vietnamese)].

#### **Article 9. State management authorities of commerce**

1. The Government shall uniformly manage the state administration on commerce.

2. The Ministry of Trade assists the Government in performing state administration of sales and purchases of goods and other specific commercial activities provided for in this Law.

3. Ministries, ministerial-level bodies and Government bodies, within the scope of their powers and responsibilities, shall be responsible for State administration of commerce in their assigned areas.

4. People's committees at all levels perform State administration of commerce within their local areas as decentralized by the Government.

### **Section 2 Main principles of commercial activities**

#### **Article 10. Principle of equality before the law among traders in commercial activities**

Traders from all economic sectors are equal before the law during their commercial activities.

#### **Article 11. Principle of freedom and the right of voluntary agreement of traders during their commercial activities**

1. The State respects and assures the freedom of traders to enter into agreements for the purpose of establishing their rights and obligations during commercial activities provided that they must not be contrary to the provisions of law and the social habits and customs.

2. Traders are totally voluntary during their commercial activities, neither trader is allowed to impose its will on, prohibit, coerce, threaten or prevent, the other trader.

#### **Article 12. The principle of applying pre-established practices in commercial activities**

Except where otherwise agreed, the parties shall be regarded as automatically applying pre-established practices in commercial activities between them which have been known or cannot be unknown to them.

#### **Article 13. The principle of applying customs in commerce**

Where it is not provided for by law and not agreed by the parties or where there is not any pre-established practice between the parties, commercial customs may be applied provided that such application must not be contrary to the principles of this Law and the Civil Code.

**Article 14. The principle of protecting legitimate interests of consumers**

1. A trader conducting commercial activities is obliged to provide consumers with sufficient and accurate information about the goods and services that he sells and supplies and is responsible for the accuracy of such information.

2. A trader conducting commercial activities must be held responsible for the validity of the goods sold and services supplied by it.

**Article 15. The principle of acknowledging legal validity of data messages in commercial activities**

1. In commercial activities, a data message, which satisfies all technical conditions and standards as provided for by law, shall be acknowledged as legally valid as a document.

2. The Government shall make detailed provisions for the technical conditions and standards applicable to data messages referred to in clause 1 of this Article.

**Article 16. Applying principles of the Civil Code in commercial activities**

Any commercial activities conducted in accordance with this Law must comply with the basic principles set out in the Civil Code.

**Section 3**

**Foreign traders conducting commercial activities in Vietnam**

**Article 17. Forms of commercial activities of foreign traders in Vietnam**

Foreign traders may set up his representative office or branch in Vietnam; may establish a joint venture company, a 100% foreign invested company, enter into business co-operation contracts with Vietnamese parties and other forms as provided for by Vietnamese law and international treaties to which Vietnam is a member.

**Article 18. Representative offices of foreign traders**

Foreign traders are responsible before the Vietnamese law for the operations of their representative offices in Vietnam.

**Article 19. Rights of representative offices**

The representative office of a foreign trader in Vietnam has the following rights:

1. Operate for its proper purposes, within the scope and for the period stated in its licence.

2. Lease accommodation and premises; and lease and procure equipment and facilities necessary for its operations.

3. Recruit Vietnamese and expatriate employees to work for the representative office in accordance with the Vietnamese law.

4. Open foreign currency and foreign currency-based Vietnamese dong accounts at a bank licensed to operate in Vietnam and only be allowed to use those accounts for the purpose of the operations of the representative office.

5. Import all the supplies necessary for its operations and pay all taxes, fees, charges and other financial obligations as provided for by Vietnamese law.

6. Have a seal bearing the name of the representative office in accordance with the Vietnamese law.

#### **Article 20. Obligations of representative offices**

The representative office of a foreign trader in Vietnam has the following obligations:

1. Not to directly conduct profitable activities in Vietnam.

2. Only to conduct commercial promotion activities within the scope permitted by this Law.

3. Not to enter into commercial contracts except where a valid letter of authorisation from the foreign trader has been obtained or other cases as stipulated in Clauses 2, 3, 4 and 5 of Article 19 of this Law.

4. To pay taxes, fees, charges and other financial obligations in accordance with the Vietnamese law.

5. To provide reports on the performance of the representative office in accordance with the Vietnamese law.

6. To comply with other duties stipulated by Vietnamese law.

#### **Article 21. Duty of branches of foreign traders in Vietnam**

Foreign traders are responsible before the Vietnamese law for the operations of their branches in Vietnam.

#### **Article 22. Rights of branches**

The branch of a foreign trader in Vietnam has the following rights:

1. Lease accommodation and premises; and lease and procure equipment and facilities necessary for its operations.

2. Recruit Vietnamese and expatriate employees to work for the branch in accordance with the Vietnamese law.

3. Enter into contracts in Vietnam in accordance with the provisions of its licence and in accordance with this Law.

4. Open foreign currency and Vietnamese dong accounts at a bank licensed to operate in Vietnam.

5. Import all the supplies necessary for its operations and pay all taxes, fees, charges and other financial obligations as provided for by Vietnamese law.

6. Remit profits overseas in accordance with the Vietnamese law.

7. Have a seal bearing the name of the branch in accordance with the Vietnamese law.

8. Conduct other commercial activities in accordance with its license.

#### **Article 23. Obligations of branches**

The branch of a foreign trader in Vietnam has the following obligations:

1. To comply with the Vietnamese law.

2. To carry out the accounting system in accordance with the Vietnamese law; where it is necessary to apply another popular accounting system, an approval from the Ministry of Finance of the Socialist Republic of Vietnam must be obtained.

3. To provide reports on the performance of the branch in accordance with the Vietnamese law.

#### **Article 24. Joint venture companies, 100% foreign invested companies, parties to business co-operation contracts and other forms [of companies]**

Joint venture companies, 100% foreign invested companies, parties to business co-operation contracts and other forms [of companies] shall be established and operate in accordance with the Vietnamese law or pursuant to International treaties to which Vietnam is a member.

#### **Article 25. Power to grant licences to foreign traders to conduct commercial activities in Vietnam**

1. The Government shall manage, in a uniform manner, the issue of licences to foreign traders to conduct commercial activities in Vietnam.

2. The Ministry of Planning and Investment shall assist the Government in managing the issue of licences to foreign traders making investments in Vietnam in accordance with the Law on Foreign Investment in Vietnam.

3. The Ministry of Trade shall assist the Government to manage the issue of licences to set up representative offices of foreign traders in Vietnam or to set up branches, joint venture enterprises or 100% foreign invested enterprises in Vietnam if those traders are specialized in conducting sales and purchasers of goods or other directly related activities in accordance with the Vietnamese laws and pursuant to international treaties to which Vietnam is a member.

4. Where a specialized law contains specific provisions concerning the power of ministries, ministerial-level bodies and Government bodies to assist the Government in managing the issue of licences to foreign traders conducting commercial activities in Vietnam, the provisions of that specialized law shall apply.

#### **Article 26. Terminating the operations of foreign traders in Vietnam**

The operation of a foreign trader in Vietnam shall be terminated in the following cases:

1. Expiry of the term of its licence;
2. In accordance with the conditions stated in the contract, charter of the trader or the parties' agreement;
3. In accordance with a decision of a competent State authority on the ground that serious violations of the law and its licence have been committed;
4. Being declared bankrupt;
5. when the foreign trader terminates its operations under the foreign law, with regard to the forms of representative offices branches and business co-operation contract.
6. In other cases as provided for by relevant laws.

### **CHAPTER II PURCHASE AND SALE OF GOODS**

#### **Section 1 General provisions for purchases and sales of goods**

##### **Article 27. Form of contract for purchases and sales of goods**

1. A contract for the sale and purchase of goods is implemented in words, in writing or specific conduct..
2. For types of contracts for purchase and sale of goods that are required by the law to be made in writing, such provisions must be complied with.

##### **Article 28. Goods banned from circulation, goods subject to business restrictions and goods subject to conditional business**

1. On the basis of the socio-economic conditions from time to time and the international undertakings to which Vietnam is a member, the Government shall provide for lists of goods banned from circulation, goods subject to business restrictions, and goods subject to conditional business and their specific business conditions.
2. For restricted goods and conditional goods, they shall only be sold and purchased if the parties involved and the goods themselves satisfy the conditions provided for by law.

##### **Article 29. Application of emergency measures with respect to goods circulated in the domestic market**

1. Goods permitted to be legally circulated in the domestic market may be banned from circulation, suspended from circulation; or may be subject to conditional circulation or licenses for circulation in the following cases:

a. When such goods are the source or vehicles of transmission of epidemics of various types.

b. In an event of emergency stipulated by laws.

2. The Government shall provide for concrete conditions, order, procedures and power to announce the application of these measures to domestically circulated goods.

### **Article 30. International sales and purchases of goods**

1. International sales and purchases of goods shall be conducted in the form of exports, imports, temporary import for re-export, temporary export for re-import and goods in transshipment.

2. International sales and purchases of goods shall be conducted on the basis of a written contract or other forms with equal validity.

### **Article 31. Export and import of goods**

1. Export is an act of taking goods out of the territory of the Socialist Republic of Vietnam or bringing goods into a special zone locating in the territory of Vietnam which is considered an exclusive customs area as stipulated by law.

2. Import is an act of bringing goods into the territory of the Socialist Republic of Vietnam from a foreign country or from a special zone locating in the territory of Vietnam which is considered exclusive customs areas as stipulated by law.

3. On the basis of socio-economic conditions from time to time and the international undertakings to which Vietnam is a member, the Government shall provide for lists of goods banned from import and export, goods to be imported or exported under a license of the authorized State agency and licensing conditions.

### **Article 32. Temporary import of goods for re-export and temporary export of goods for re-import**

1. Temporary import of goods for re-export is an act of bringing goods into Vietnam from a foreign country or from a special zone locating in the territory of Vietnam which is considered an exclusive customs area as stipulated by law subject to completion of all importation procedures to import goods into Vietnam; and then exporting such goods out of Vietnam.

2. Temporary export of goods for re-import is an act of taking goods overseas or into a special zone in the territory of Vietnam which is considered an exclusive customs area as stipulated by law subject to completion of all procedures for exportation of such goods out of Vietnam; and then importing such goods back into Vietnam.

3. The Government shall specify the activities of temporary import of goods for re-export and temporary export of goods for re-import.

### **Article 33. Transmission of goods through borders**

1. Transmission of goods through borders is an act of buying goods from one country or a territory in order to sell to another country or another territory outside Vietnam

without conducting import procedures to import goods into Vietnam and export procedures to export goods out of Vietnam.

2. Transmission of goods through borders is conducted by the following forms:

a) Goods are transmitted directly from an export country to an import country without going through Vietnamese borders;

b) Goods are transmitted from export country to import country through Vietnamese borders without completing procedures to import them into Vietnam and export them out of Vietnam;

c) Goods are transmitted from export country to import country through Vietnamese borders and brought into bonded warehouses or areas for goods in transit at Vietnamese ports without completing procedures to import them into Vietnam and export them out of Vietnam.

3. The Government shall make detailed provisions for this type of commercial activities.

#### **Article 34. Application of emergency measures to activities of sales and purchases of international goods**

Where necessary, in order to protect national security or for other national benefits or in order to take a measure of economic embargo, a retaliatory measure or other safeguard measures in accordance with the Vietnamese laws and international treaties to which Vietnam is a member, the Prime Minister of the Government shall decide the application of injunctive relief on activities of sales and purchases of international goods including provisional prohibition of importation or exportation of, or to take other provisional measures against, one or several categories of goods or in respect of one or several specific markets for a certain period of time.

#### **Article 35. Label for goods domestically circulated, imported and exported**

1. Label is in written form, printing form, picture, image, sign which are directly carved or embossed, closely stuck on the goods or on their packing, or on other materials attached to the goods or on their packing.

2. All goods that are domestically circulated, imported and exported goods must have label, except for the cases stipulated by law.

3. Label contents and specific provisions on labeling shall be provided for by the Government.

#### **Article 36. Origins of goods**

1. Imports and exports must have a certificate of origin in the following cases:

a) for the purpose of enjoying tax incentives or other incentives;

b) in accordance with the Vietnamese laws and international treaties to which Vietnam is a member.

2. The Government shall issue detailed provisions on rules of origin for imports and exports.

## **Section 2**

### **Rights and obligations of the parties to contracts for purchase and sale of goods**

#### **Article 37. Delivery of goods and accompanying documents**

1. A seller is obliged to deliver goods and their relevant documents in accordance with the contractual agreements.

2. In cases where there are no specific agreements, a seller is obliged to deliver goods and their relevant documents in accordance with this Law.

#### **Article 38. Place of delivery**

Where there is no agreement in relation to the place of delivery of the goods, the place of delivery shall be as follows:

1. In cases where the goods are things annexed to land, the seller must deliver goods at its location;

2. In the cases where the goods are movable property, if at the time of entering into the contract the parties know the location of the store, the place the goods are loaded or the place where the goods are made/manufactured, the seller shall deliver the goods at such place;

3. In other cases, the seller must deliver goods at its business location; or in the absence of such business location, at its residence as determined at the time of entering into a contract for purchase and sale of goods.

#### **Article 39. Delivery of goods where transporters are involved**

1. If there is an agreement as to the transportation of the goods, the seller shall deliver the goods to the first transporter.

2. Where goods, under a contract, are handed over to the transporter without specific codes, transportation documents or other relevant documents, the seller must notify the buyer in respect of the hand-over of such goods to the transporter and must identify the name and manner to acknowledge the goods to be transported.

3. If the seller is not obliged to effect an insurance over the goods to be transported and subject to a request of the buyer, the seller must provide the buyer with all relevant and necessary information about the goods and the transportation of the goods to enable the buyer to insure those goods.

#### **Article 40. Time limit of delivery of goods**

1. The seller must deliver goods at the time already fixed or specified in the contract;

2. If the contract only provides for a time limit for delivery of goods, instead of a specific point of time, the seller can deliver goods at any time during that time limit and such delivery must be informed to the buyer in advance;

3. If the contract does not provide for the time of delivery, the seller must deliver goods within a reasonable period of time after the contract is entered into.

**Article 41. Early delivery of goods as compared with the time limit set out in the contract**

If the seller delivers goods earlier than the time limit set out in the contract, the buyer is entitled to receive or not receive such goods, unless the parties agree otherwise.

**Article 42. Inappropriate goods to contracts**

1. The seller must deliver goods in accordance with the provisions of the contract as to their quantity, quality, mode of packaging and maintenance specifications and other relevant provisions on such goods.

2. Where such specific provisions are not available in the contract, goods shall be regarded as being inappropriate in the following cases:

a. Such goods do not accord with the ordinary use purposes of goods of the same category; or

b. Such goods do not accord with any specific objective that has been informed by the buyer to the seller or to which the seller cannot be unknown at the time they enter into the contract;

c. The quality of such goods is not the same as the quality of the goods specimen previously provided by the seller to the buyer; or

d. Such goods are not maintained or packed in the ordinary manner applicable to other goods of the same category, or in the absence of such ordinary manner, such goods are not maintained or packed in an appropriate manner.

**Article 43. Liability for inappropriate goods to contracts**

Unless otherwise agreed:

1. The seller shall not be liable for any defect of the goods if that defect has been known or cannot be unknown to the buyer at the time it enters into the contract.

2. Within the time limit for complaints as set out in this Law, the seller shall be liable for any defects of the goods which already exist at the time of passing the risks to the buyer despite the fact that such defects are discovered after the passing of risks.

3. The seller shall be liable for any defect occurring after the passing of risks as a result of the seller breaching its undertaken obligations.

4. The buyer may refuse to receive goods, which are inappropriate to the contractual terms and conditions in one of the cases as stipulated in Clause 2 of Article 42 of this Law.

**Article 44. Remedial measures in case of insufficient delivery of goods or delivery of inappropriate goods to contracts**

1. Unless otherwise agreed, if a contract only provides for a time limit for delivery of goods, instead of a specific point of time, and the seller delivers goods early but

insufficiently or inappropriately, the seller shall still be able to deliver the insufficient portion of goods or to provide proper goods under the contractual terms and conditions for substitution or to rectify the defect of the goods within the residue of the time limit.

2. When the seller exercises his remedial right as referred to in clause 1 of this Article and causes disadvantages or incurs unreasonable expenses to the buyer, the buyer shall have the right to request the seller to deal with such disadvantage or bear the incurred expenses.

#### **Article 45. Delivery of goods-related documents**

1. If the contract provides for the delivery of documents, the seller is obliged to deliver all the goods-related documents to the buyer at the time, location and in the manner provided for in the contract.

2. If the contract does not provide for the time and place for delivery of goods-related documents to the buyer, the seller must deliver those documents to the buyer at a reasonable point of time and location to enable the buyer to receive goods.

3. If the seller has early delivered goods-related documents to the buyer, the seller shall still be able to rectify the errors in those documents within the residue of the time limit.

4. When the seller exercises his remedial right as referred to in clause 3 of this Article and causes disadvantages or incurs unreasonable expenses to the buyer, the buyer shall have the right to request the seller to deal with such disadvantage or bear the incurred expenses.

#### **Article 46. Delivery of goods in excess**

1. If the seller delivers goods in excess, the buyer may accept or reject the amount of goods in excess.

2. If the buyer accepts to receive the amount of goods in excess, it must pay for that amount of goods at the price stated in the contract unless otherwise agreed by the parties.

#### **Article 47. Pre-delivery examination of goods**

1. If it is agreed by the parties that the buyer or his representative shall examine the goods before the delivery, the seller must ensure that the buyer or his representative shall be facilitated in such examination.

2. Except where otherwise agreed, the buyer under clause 1 of this Article must examine the goods within a shortest period of time as practically possible. If the contract involves the transportation of goods, such examination may be postponed until the time when goods are transported to the proposed destination.

3. If the buyer or his representative fails to examine goods before the delivery as already agreed, the seller is entitled to deliver the goods under the contractual terms and conditions.

4. The seller shall still be liable for goods during the examination of goods by the buyer or his representative.

#### **Article 48. Obligation to assure the ownership right to the goods sold**

The seller must ensure that:

1. The ownership rights by the buyer with respect to the goods sold is not involved in any dispute with any third person.

2. Goods are legal.

3. The delivery of goods is valid.

#### **Article 49. Obligation to assure intellectual property rights to the goods sold**

1. The seller is not allowed to sell goods that infringe upon intellectual property rights. The seller shall be held liable for any IPR-related dispute relating to the goods sold.

2. If the seller supplies goods to the buyer in accordance with the specifications designated by the buyer, then the buyer must be held liable for any complaint against the seller in relation to IPR infringements arising from the seller having complied with the specifications so designated by the buyer.

#### **Article 50. Notice requirements**

1. The seller shall lose its right to refer to the provisions in Clause 2 of Article 49 of this Law if the seller fails to promptly notify the buyer of any third party's complaint made against the delivered goods after the seller has known the right and or cannot be unknown about such complaint, except in cases where the buyer has known or cannot be unknown about that complaint of a third party.

2. The buyer shall lose its right to refer to Articles 48 and 49 of this Law if the buyer fails to promptly notify the seller of any third party's complaint made against the delivered goods after the buyer has known the right and or cannot be unknown about such complaint, except in cases where the seller has known or cannot be unknown about that complaint of a third party.

#### **Article 51. Obligations of the seller when goods are subject to security measures**

Where the goods to be delivered are subject to security measures, the seller must notify the buyer of such security measures and must be approved by the security beneficiary regarding the sale of such goods.

#### **Article 52. Obligation to provide warranty for goods**

1. Where goods are under warranty, the seller must be liable for such goods during the warranty period.

2. The seller must perform its warranty obligations within the shortest time as practically possible.

3. The seller must bear all the warranty-related expenses unless otherwise agreed by the parties.

#### **Article 53. Payment**

1. The buyer is obliged to pay for goods and take delivery of goods as agreed upon.

2. The buyer must comply with the payment method and make payment in accordance with the order and procedures as agreed upon and other legal normative documents concerning payment.

3. The buyer must make payment for goods in cases of a loss or damage to the goods which occurs after the ownership right has been passed from the seller to the buyer, unless the loss or damage is caused due to the fault of the seller.

#### **Article 54. Suspension of payment for goods**

1. Where the buyer acquires evidence that the seller has been deceptive the buyer is entitled to request the Court to issue the order to suspend the payment.

2. Where the buyer acquires evidence that the goods are the subjects of a dispute between the seller and a third party; the buyer is entitled to suspend the payment until the above matters have been settled.

3. Where the buyer acquires evidence that the seller delivers the goods inappropriate to the contractual terms and conditions; the buyer is entitled to suspend the payment until the seller has rectified the relevant defects or damage.

4. In case of suspension of payment under clause 2 or 3 of this Article and the evidence produced by the buyer is not accurate which consequently results in a loss to the seller, the buyer must pay damages to the seller and be subject to other remedies as provided for by this Law.

#### **Article 55. Determination of Prices**

1. Where there are no agreements on prices or the method of price determination and in the absence of any other indications as to the price, the price shall be determined on the basis of the price of such goods under normal trading conditions as generally charged at the time of entering into the contract.

2. The normal trading conditions referred to in clause 1 above are construed as similar conditions in relation to the geographical market, mode of payment and other conditions having affect on the price.

#### **Article 56. Determining prices in accordance with the weight**

Unless otherwise agreed, if the price is determined in accordance with the weight of the goods, the weight is to be construed as the net weight.

#### **Article 57. Place of Payment**

Where there is no particular place as agreed upon in the contract, the buyer must pay it to the seller at one of the following places:

1. At the seller's place of business applicable at the time of entering into the contract; or, in the absence of such place of business, at the seller's address of residence.

2. At the place where the hand over of goods or documents takes place if the payment is to be made concurrently with the hand-over of goods or documents.

#### **Article 58. Time limit of Payment**

Unless otherwise agreed:

1. The buyer must make payment to the seller at the time the seller hands over the goods or the goods-related documents.

2. The buyer is not obliged to make payment until it has been given an opportunity to examine the goods as agreed by the parties under Article 47 of this Law.

#### **Article 59. Taking Delivery of goods**

The buyer is obliged to take delivery of the goods as agreed in the contract and to do all the acts which could reasonably be expected of him in order to enable the seller to take the delivery.

#### **Article 60. Passing of risks where there is a specific place of delivery**

Unless otherwise agreed, if the seller is bound to hand the goods over to the buyer at a particular place, the risk of damage or loss shall be passed to the buyer when the goods have been handed over to the buyer or the buyer's nominee at that place, even in cases where the seller is authorized to retain the documents controlling the establishment of the ownership rights to the goods.

#### **Article 61. Passing of risks where there is no specific place of delivery**

Unless otherwise agreed, if the contract for sale and purchase involves carriage of the goods and the seller is not bound to hand over the goods at a particular place, the risk of damage or loss shall be passed to the buyer when they are delivered to the first carrier.

#### **Article 62. Passing of risks where the goods are handed over to a bailee for delivery but not a carrier**

Unless otherwise agreed, where the goods are kept by a bailee for delivery but not a carrier, the risks of damage or loss shall be passed to the buyer in one of the following cases:

1. Upon receipt by the buyer of the documents evidencing the ownership right to the goods;
2. Upon the acknowledgment by the bailee of the buyer's right to possession of the goods.

#### **Article 63. Passing of risks where goods are sold during their transportation**

In cases where the subject of the contract is goods in transit, unless otherwise agreed, the risk of damage or loss shall be passed to the buyer from the time the contract is entered into.

#### **Article 64. Passing of risks in other cases**

Unless otherwise agreed:

1. In cases not stipulated in Articles 60, 61, 62 and 63 of this Law Risks, risks of damage or loss shall be passed to the buyer at the time the buyer takes possession of the

goods and the buyer commits a breach of the contract as a result of its refusal to take delivery.

2. Risks of damage or loss shall not be passed to the buyer if the goods are not identified by way of their codes, bills of transportation, notices to the buyer or not identified by any other manner.

#### **Article 65. Time of passing ownership rights to goods**

Unless otherwise provided for by law or agreed by the parties, the ownership right to goods shall be passed from the seller to the buyer from the point of time when the buyer receives the legal ownership documents relating to the goods.

### **Section 3**

#### **Purchases and Sales of goods through the Goods Exchange**

#### **Article 66. Purchases and Sales of Goods through Goods Exchange**

1. Sales and purchases of goods through the Goods Exchange is a commercial act by which the seller and the purchaser agree to sell and purchase a defined quantity of goods through the Goods Exchange in accordance with the Rules of the Exchange and at a specific price determined at the time of entering into a contract; and where the goods shall be delivered on a determined date in the future .

2. The Government shall provide detailed provisions on the sale of goods through Goods Exchanges.

#### **Article 67. Contract for the sale of goods through Goods Exchange**

1. Contracts for sales and purchases of goods through the Goods Exchange comprise forward contracts and option contracts.

2. “Forward contract” means an agreement for sale and purchase of goods whereby the seller undertakes to deliver, and the buyer undertakes to take such delivery of, goods at a specific point of time in the future as stated in the contract.

3. “Call option or put option contract” means an agreement whereby the buyer has the right to buy or sell a specific type of goods at a pre-fixed price level (“executed price”) and must pay a definite amount of money to buy this right (“option money”). The option buyer may opt to carry out or not carry out such sale or purchase of goods if he/she deems that the price of such goods is unfavourable for him/her.

#### **Article 68. The Goods Exchange**

1. The Goods Exchange means a trader who carries out the following functions:

a) Providing the necessary technical facilities for the transactions of selling and buying goods;

b) Managing trading operations;

c) Listing specific price levels at the Goods Exchange at each specific time.

2. The Government shall make detailed provisions for conditions for the establishment of the Exchange for Future Goods; for the duties and powers of the Goods Exchange and approval of the charter of the Goods Exchange.

**Article 69. Goods transacted at the Goods Exchange**

Goods transacted at the Goods Exchange must be permitted by the Minister of Trade.

Article 70. Brokers in Goods Exchange

1. Traders brokering in Goods Exchange shall carry out business in the Goods Exchange only if satisfying the requirements imposed by law. The Government shall stipulate the specific conditions for traders brokering goods in Goods Exchange.

2. Goods brokers in Goods Exchange shall carry out brokerage in Goods Exchange and must not be a party in a contract for sale of goods through the Goods Exchange.

3. Goods brokers in Goods Exchange shall deposit money with the Goods Exchange to ensure the performance of their obligations incurring through brokerage activities. The amount of deposit shall be fixed by the Goods Exchange.

4. Goods brokers in Goods Exchange shall not engage in the following activities:

a) Enticing customers by promising to reimburse part or full amount of loss or to guarantee profits;

b) Offer or broker for goods without a contract with the customer;

c) Use false price or other fraudulent conduct in the course of brokering;

d) Refuse to carry out or fail to carry out within a reasonable time the brokering for contracts in accordance with agreement with customers;

dd) Other acts prohibited by law.

Article 71. Restriction on staff of Goods Exchange

Staff members of Goods Exchange shall not broker or sell/purchase goods in the Goods Exchange.

**Article 72. Prohibited acts relating to purchases and sales of goods through the Goods Exchange**

1. Engaging in fraudulent or deceiving acts in relation to forward or option contracts with respect to:

a) The volume of forward or option contracts that trader has transacted or may transact or the volume of contracts in the whole market;

b) the actual price of that good in forward or option contracts.

2. Giving false information about transactions, the market or the price of goods transacted through the Goods Exchange;

3. To apply illegal measures to cause disorder to the goods market at the Goods Exchange;

4. To deceive other traders during the transactions at the Goods Exchange.

5. Other acts prohibited by law.

#### **Article 73. Implementation of management measures in emergency cases**

1. Emergency cases mean those circumstances where an event happens disordering the goods market and making the transactions at the Goods Exchange unable to properly reflect the demand and supply of goods.

2. In emergency cases, the Minister of Trade shall be entitled to take one or several measures as follows:

a) Cease temporarily the transactions at the Goods Exchange;

b) Restrict the transactions to the extent of one price rate or a specific quantity of goods;

c) Change the schedule of transactions;

d) Change the business rules of the Goods Exchange;

e) Other necessary measures as provided for by the Government.

#### **Article 74. Right to conduct sales and purchases of goods via the Goods Exchange overseas**

Vietnamese traders are allowed to conduct sales and purchases of goods via the Goods Exchange overseas in accordance with the regulations of the Government.

### **CHAPTER III PROVISION OF SERVICES**

#### **Section 1. General provisions for provision of services**

#### **Article 75. Form of contracts for the provision of services**

1. A contract for the provision of services shall be implemented in words, writing or specific conduct.

2. For those types of contract for provision of services which the law requires to be in writing, such contract shall be in writing.

#### **Article 76. Rights of traders to provide services and to use services**

1. A trader has the following rights to provide services:

a. To provide services to residents in Vietnam for use in the territory of Vietnam.

b. To provide services to non-residents in Vietnam for use in the territory of Vietnam.

c. To provide services from Vietnam or in a foreign territory to service users outside the territory of Vietnam.

2. A trader has the following rights to use services:

a. To use services provided in the territory of Vietnam by residents in Vietnam.

b. To use services provided in the territory of Vietnam by non-residents in Vietnam.

c. To use services provided by non-residents in Vietnam from outside Vietnam or in a foreign territory.

3. The Government shall make detailed provisions for the criteria of residents and non-residents for the purpose of implementing tax policies and import-export control policies to various types of services.

**Article 77. Services banned from business, services subject to business restrictions and conditional business**

1. On the basis of the socio-economic conditions from time to time and pursuant to international treaties to which Vietnam is a member, the Government shall provide for specific lists of services banned from business, services subject to business restrictions and services subject to conditional business and their relevant conditions.

2. Services subject to conditional business comprise those which, during business, must meet certain business conditions as required by this Law or the specialized law. The provision of these services shall only be allowed if the services themselves and parties who provide services and use services meet all the conditions required by laws.

**Article 78. Imposition of emergency measures on the provision or use of services**

In case of necessity, in order to protect national security and other national interests in accordance with the law of Vietnam or international treaties to which Vietnam is a party, the Prime Minister shall decide to impose emergency measures on the provision or use of services including temporarily banning provision or use of a particular service or services or other emergency measures in one or more particular markets during a particular period of time.

**Section 2**

**Rights and obligations of the parties to contracts for provision of services**

**Article 79. Obligations of service providers**

Unless otherwise agreed, a service provider has the following obligations:

1. Supply services and carry out other related works sufficiently and in accordance with the agreements of the parties in the contract and this Law.

2. Maintain and hand over to the customer the documents and instruments delivered to perform the service after the completion of the work.

3. Notify immediately to the customer in cases of insufficient information and documents and inadequate instruments to complete the provision of the service.

4. Keep confidential of the information known to him during the process of service provision if so agreed by the parties or provided for by law.

#### **Article 80. Obligations of service providers on the basis of performance results**

Unless otherwise agreed, if, due to the nature of the service in question, the service provider is required to produce a certain result, he must carry out such provision of services with an appropriate result in accordance with the terms and conditions stated in the contract. Where the contract does not specify the result criteria to be reached, the service provider shall carry out the provision of the service with an appropriate result in compliance with the ordinary standards applicable to that type of services.

#### **Article 81. Obligations of service providers on the basis of the best efforts**

Unless otherwise agreed, where, due to the nature of the service in question, the service provider is required to use the best efforts to achieve a desired result, the service provider shall perform the provision of service with the best effort and skills.

#### **Article 82. Cooperation among service providers**

Where it is apparent from the terms of the contract or the circumstances that a service is to be performed in coordination or cooperation with other service providers, then each of the service providers has the following obligations:

1. To communicate and exchange information within each other on the schedule and needs of itself and shall perform services at an adequate time and in an appropriate manner so as not to interfere with the operations of the other service providers, and
2. To carry out any necessary cooperation with the other service providers.

#### **Article 83. Time limit for completion of service**

1. A service provider must complete the provision of his services within the time limit already agreed in the contract.
2. If the contract does not provide for a time limit for such completion, the service provider shall complete the service within a reasonable period of time taking into account all the facts and circumstances known to the service provider at the time of entering into the contract including any specific needs of customers regarding that time limit.
3. When the provision of a services can only be completed after the customer or another service provider has met certain conditions, that service provider is not obliged to complete the provision of his services until those conditions have been met.

#### **Article 84. Customer's requests for changes during the provision of services**

1. During the provision of services, the service provider must comply with all the requests for changes during the provision of services that may be reasonably made by the customer.

2. Unless otherwise agreed upon, the customer must bear reasonable expenses for the performance of his/her requests for changes.

**Article 85. Continuing provision of services after the expiration of the time limit for provision of services**

If the provision of services is not yet completed during the time limit for such provision and if the customer has no objection, the service provider must continue providing the agreed services and compensate for damages, if any.

**Article 86. Obligations of customers**

Unless otherwise agreed, a customer shall have the following obligations:

1. Provide in a timely manner all plans, indications and other details to allow a smooth provision of services without any delay or interruption;

2. Cooperate in all other matters reasonably necessary for an appropriate provision of services;

3. Where a service is supplied by a provider in coordination or cooperation with other service providers, the customer shall be obliged to coordinate operations of all service providers so as not to impede the work of any individual service provider.

**Article 87. Service fees**

1. Where there is no agreement on a service fee, a method of determination of the service fee and in the absence of any indication to the service fee, the service fee shall be determined on the basis of the fee of similar services under normal trading conditions at the time of entering into the contract.

2. The normal trading conditions referred to in clause 1 above are construed as similar conditions in relation to the method of service provision, geographical market, mode of payment and other conditions having affect on the service fee.

3. Where this Law or specialized laws contains specific provisions in relation to the service fee of a particular commercial activity which are different from clause 1 of this Article, those provisions shall prevail.

**Article 88. Time limit of Payment**

1. A customer shall make all payments for the provision of services within the time limit as agreed upon.

2. In the absence of a contractual provision and there is not any habit between the parties concerning progress payments for services, the customer can make payment when the provision of services is completed.

3. Where this Law or specialized laws contains any provisions on payment applicable to a particular commercial activity which are different from clause 2 of this Article, such provisions shall prevail.

**CHAPTER IV  
COMMERCIAL PROMOTIONS**

## **Section 1 Sales Promotion**

### **Article 89. Sales promotions**

1. Sales promotion is a commercial promotion act conducted by a trader to promote the sale and purchase of goods or the provision of services by offering certain benefits to customers.

2. Traders conducting sales promotion are the traders who belong to one of the following cases:

a) traders directly conducting sales promotion activities for the goods or services that they trade in;

b) traders engaged in the business of providing sales promotion services who carries out sales promotions for goods and services of other traders as per agreed with them.

### **Article 90. Engagement in the business of providing sales promotion service**

Engagement in the business of providing sales promotion services is a commercial act by which a trader carries out sales promotion for goods and services of another trader on a contractual basis.

### **Article 91. Contract for provision of sales promotion services**

A contract for provision of sales promotion services shall be made in writing or other forms with equal validity.

### **Article 92. Rights to sales promotion of traders**

1. Vietnamese traders, branches of Vietnamese traders, and branches of foreign traders in Vietnam shall have the right to directly conduct sales promotion or to hire a trader engaged in the business of providing sales promotion services to do so.

2. Representative offices of traders shall not have the right to directly carry out sales promotion or to hire a trader carry out sales promotion in Vietnam for the benefit of the trader for which they are representing.

### **Article 93. Forms of sales promotion**

1. Giving free samples of goods or providing free samples of services to customers for trial use.

2. Giving goods as gifts or providing free services to customers.

3. Selling goods or providing services at lower prices than the sales prices during the period of sales promotion already registered or announced.

4. Selling goods or providing services together with coupons that allow customers to obtain one or several physical benefits.

5. Selling goods or providing services together with contest forms for customers, so that the prize winners shall be selected according to the rules and prizes already announced.

6. Selling goods or providing services together with an opportunity for customer to take part in a quiz program where that opportunity depends on the purchase of goods or use of services and the winning prizes depend on the luck of customers according to the rules and prizes already announced.

7. Organizing programs for frequent customers in which gifts are given to customers on the basis of the volumes or value of goods purchased or services used and by way of customers' cards, certification coupons or other forms.

8. Organizing cultural, artistic or entertainment programs or other events for the purpose of sales promotion in which customers can take part free of charge.

9. Other forms of sales promotion if approved by the State management body in charge of commerce.

#### **Article 94. Promoted goods and services**

1. Promoted goods and services mean those whose sale and provision is promoted by a trader by using various forms of sales promotion.

2. A trader is not allowed to carry out sales promotions for goods and services banned from business or subject to restrictions.

#### **Article 95. Goods and services used for sales promotion; discount rates applicable for the sales promotion purpose**

1. Goods and services used for sales promotion mean those used by a trader as gifts or prizes or for provision to customers.

2. Goods and services used by a trader for sales promotion may be his own goods and services or may be goods and services of other traders.

3. Goods and services used for sales promotion must be goods and services permitted for lawful business, not including restricted goods or services.

4. The Government shall specify the maximum limit of the value of goods and services used for sales promotion; and the maximum discount rate applicable to promoted goods and services which traders can apply during sales promotion periods.

#### **Article 96. Rights of traders carrying out sales promotion**

1. To select the form, time and location for sales promotion;

2. To define specific benefits which customers shall be entitled to in accordance with Article 213.4 of this Law;

3. To hire a trader engaged in the business of providing sales promotion services to conduct sales promotion.

4. To organize the implementation of the forms of sales promotion as prescribed in Article 211 of this Law.

### **Article 97. Obligations of traders carrying out sales promotion**

1. To fulfill the orders and procedures in accordance with law in order to carry out forms of sales promotion.

2. To publish all information on sales promotion activities to customers in accordance with Article 216 of this Law.

3. To properly carry out the sales promotion program already announced and to fulfill his/her commitments to customers.

4. With regard to the forms of sales promotion as prescribed in Article 93.6 of this Law, the trader must contribute 50% of the value of the prizes already announced to the State budget in cases where there are no prizewinners.

The Minister of Trade shall provide for the forms of sales promotion being part of prize programs which must comply with this provision.

5. To comply with the agreements in the contract for provision of sales promotion services if the trader who conducts sales promotion is the one that is engaged in the business of providing sales promotion services.

### **Article 98. Information that must be published**

1. With regard to all forms of sales promotion as prescribed in Article 93 of this Law, traders conducting sales promotion shall publish the following information:

- a) Name of the sales promotion activity;
- b) Sales price or charge of the promoted goods or services and related costs for delivery of promoted goods or services to customers;
- c) Name, address and telephone number of the trader carrying out that sales promotion;
- d) Duration of the sales promotion, including its commencement day and the completion day, and location of the sales promotion activity;
- dd) Where customers shall only obtain benefits from the sales promotion activity subject to their completion of certain conditions, customers must be notified of such conditional sales promotion activity and of specific conditions upon their purchase of goods or services or must be notified of the location or manner by which customer can be informed of such conditions.

2. In addition to the information as prescribed in Clause 1 of this Article, traders shall also publish the following information in relation to their sales promotion activities:

- a) The sale prices of the goods or the charge of the services used as gifts to customers, in respect of the form of sales promotion referred to in Article 93.2 of this Law;
- b) Prices in absolute value or percentage are lower than normal prices of the goods, services before the period of sales promotion in respect of the form of sales promotion referred to in Article 211.3 of this Law;

c) Value of the coupons and the goods, services that can be exchanged by those coupons, in respect of the form of sales promotion referred to in Article 93.4 of this Law;

d) Types of prizes and value of each prize; the deadline for registration; restrictions as to the territory or ages, if any; proof of the purchase of goods, services; requirements for the approval of the guardian or the employer, if necessary; related costs in order to be involved in the sales promotion activity, not including the cost for purchasing goods, services, in respect of the forms of sales promotion referred to from Articles 93.5 to 93.8 of this Law;

dd) With regard to other forms of sales promotion, the items of information that need to be published shall be in accordance with the regulations of the State management body in charge of commerce.

#### **Article 99. Forms of publication**

1. With regard to the sales promotion of goods, the publication of information referred to in Article 98 of this Law shall be made in one of the following forms:

- a. At the location where goods are sold and where goods are displayed;
- b. On the goods label or packing;
- c. In any other forms which must accompany the goods when they are sold.

2. With regard to sales promotion of services, the publication of information referred to in Article 216 of this Law shall be made in one of the following forms:

- a. At the place of their provision;
- b. In any other forms which must accompany the services when they are provided.

#### **Article 100. Keeping confidential the information about sales promotion programs and their details**

With regard to a sales promotion program which must be carried out with an approval of the authorized State body, that authorized State body must strictly keep confidential all the information provided to it by traders about the sales promotion program and sales promotion details until that program is approved by the authorized State body.

#### **Article 101. Prohibited acts during sales promotion**

1. Promotion of goods and services that are prohibited from business; goods and services that are restricted from business; goods which have not yet been permitted for circulation; and services which have not yet been permitted for provision;

2. Using, for sales promotion purposes, goods and services which are prohibited from business; goods and services restricted from business; goods which have not yet been permitted for circulation; and services which have not yet been permitted for provision.

3. Promotions of, or usage for promotions purposes, of alcohol, beer targeted at children of less than eighteen years of age;

4. Promotions of, or usage for promotions purposes, of cigarettes in any form;
5. Untruthful or misleading promotions of goods and services so as to deceive customers;
6. Promotions for the purpose of selling low quality products, causing harms to the environment, people's health or influencing the landscapes and other public interests;
7. Promotions at schools, hospitals and offices of State agencies, political organizations, socio-political organizations and units of the people's armed forces;
8. Promises to grant gifts or prizes which are not performed or improperly performed;
9. Promotions aimed at unfair competition in accordance with the law.
10. Carrying out of sales promotions where the value of goods and services used for sales promotion exceed the maximum limit or the maximum discount rate of promoted goods and services referred to in Article 95.4 of this Law.

**Article 102. Registration for carrying out sales promotions with, and notification of sales promotion results to, the State administration body in charge of commerce**

1. Before carrying out a sales promotion activity, relevant trader must register it with the State administration body in charge of commerce and must report the sales promotion results to that body after that sales promotion activity is completed.
2. The Government shall make detailed provisions for the registration of sales promotion activities with and notification of their results to the State administration authority in charge of commerce.

**Section 2  
Commercial Advertising**

**Article 103. Commercial advertising**

Commercial advertising is a commercial promotion act conducted by traders aimed at introducing their production and business activities, and their goods and services to customers.

**Article 104. Right to conduct commercial advertising activities**

1. Vietnamese traders, branches of Vietnamese traders, and branches of foreign traders permitted to conduct commercial activities in Vietnam shall be entitled to advertise their business activities, and their goods and services or to hire traders engaged in the business of providing advertising services to do so for them.
2. Representative offices of traders shall not be permitted to directly conduct commercial advertising activities. In cases of being authorized by traders, representative offices shall be entitled to sign contracts with traders engaged in the business of providing advertising services to advertise for the traders for whom they are representing.

3. Foreign traders who wish to advertise their business activities, and their goods and services in Vietnam shall have to hire Vietnamese traders engaged in the business of providing advertising services to do so.

**Article 105. Engagement in the business of providing commercial advertising services**

Engagement in the business of providing commercial advertising services is a commercial act conducted by traders aimed at carrying out commercial advertising for other traders.

**Article 106. Commercial advertising products**

Commercial advertising products comprise information in forms of visual images, actions, sounds, voice, letters, symbols, colors and lights containing commercial advertising details.

**Article 107. Means of commercial advertising**

1. Means of commercial advertising are the vehicles used for the purpose of introducing commercial advertising products.

2. Means of commercial advertising comprise:

- a. Mass media;
- b. Means of communications;
- c. Publications of all kinds;
- d. All kinds of boards, signs, banners, panels, posters, immovable objects or means of transportation and other movable objects;
- d. Other means of commercial advertising.

**Article 108. Use of commercial advertising means**

1. The use of the commercial advertising means prescribed in Article 107 of this Law must comply with the regulations of the authorized State management bodies.

2. The use of the commercial advertising means must satisfy the following conditions:

- a. Being in compliance with the provisions of law concerning press, publishing, management of the computerized information systems, and programs related to cultural activities, sports, fairs and exhibitions;
- b. Being in compliance with the regulations on the advertisement venue; causing no adverse impacts on the landscape, environment, traffic order and safety, and social security;
- c. Being in accordance with the degree, time duration and timing prescribed for each particular item of mass media.

### **Article 109. Protection of intellectual property rights to commercial advertising products**

Traders shall be entitled to register for protection of their intellectual property rights in relation to the commercial advertising products in accordance with the law .

### **Article 110. Prohibited commercial advertisements**

1. Advertisements revealing State secrets, causing harm to the national independence, sovereignty, defense, security and social safety;

2. Advertisements using an advertising product or means of advertising contrary to the fine historic, cultural and moral traditions and customs of Vietnam and contrary to the law;

3. Advertisements of goods and services which are banned or restricted from business or banned from advertisement by the State;

4. Advertisements of goods and products which have not yet been permitted for circulation or services which have not yet been permitted for provision in Vietnam at the time of advertising;

5. Making use of commercial advertisements to cause damage to the interest of the State, organizations and individuals;

6. Advertisements by comparing one's own production activities, business activities, goods and services with production activities, business activities, goods and services of the same category of other traders;

7. False advertisements of goods and services as to any of the following contents: quality, price, utility, design, type, packaging, service mode and warranty period.

8. Advertisements of one's production activities by using an advertising product infringing upon the intellectual property rights;

9. Advertisements for the purpose of unfair competition as prescribed by the law.

### **Article 111. Commercial advertising service contracts**

A contract for the provision of commercial advertising services must be made in writing or in another form of equal validity.

### **Article 112. Rights of commercial advertising service hirers**

Except where otherwise agreed, a commercial advertising service hirer shall have the following rights:

1. To select the commercial advertisement publisher, the form, content, means, scope and duration of commercial advertising;

2. To inspect and supervise the performance of the commercial advertising service contract.

### **Article 113. Obligations of commercial advertising service hirers**

Except as otherwise agreed, the commercial service hirer shall have the following obligations:

1. To provide the advertising service provider with true and accurate information relating to production activities, goods, services and to be responsible for that information;
2. To pay the commercial advertising service charges.

#### **Article 114. Rights of commercial advertising service providers**

Except where otherwise agreed, a commercial advertising service provider shall have the following rights:

1. To request commercial advertising service hirers to provide true and accurate information relating to the advertisement and on time accordance with the contract;
2. To receive the commercial advertising service charges.

#### **Article 115. Obligations of commercial advertising service providers**

The advertising service provider shall have the following rights:

1. To comply with the service hirer's choice of advertisement publisher, the form, content, means, scope and duration of commercial advertising;
2. To organize for the truthful and accurate advertisement about the production, goods or services of the service hirer using information provided by the service hirer;
3. To perform the obligations as agreed upon in commercial advertising service contracts;

#### **Article 116: Advertisement publishers**

An advertisement publisher is the person who directly publishes advertising products.

#### **Article 117: Rights and obligations of advertisement publishers**

The advertisement publisher shall have the following obligations:

1. To comply with the provisions of Article 108 of this Law concerning the use of means of advertising;
2. To carry out the advertisement publishing contracts signed with commercial advertising hirers.
3. To perform other obligations as prescribed by the law.

### **Section 3**

#### **Display (for introduction) of goods and/or services**

#### **Article 118. Display of goods and/or services**

Display of goods and/or services is a commercial promotion act by which traders use goods and/or services and their related documents to introduce those own goods and/or services to customers.

**Article 119. Right to display goods and services**

1. Vietnamese traders, branches of Vietnamese traders, and branches of foreign traders in Vietnam shall be entitled to display goods and/or services, to select appropriate forms of display; to directly organize displays of their own goods and/or services by themselves or to hire traders engaged in the business of providing goods/service display services to do so.

2. Representative offices of traders shall not be entitled to directly display goods and/or services of the traders that they represent except for the display at the very head office of those representative offices. In cases of being authorized by traders, representative offices shall be entitled to sign contracts with traders engaged in the business of providing goods/service display services to do so for the traders that they represent.

3. Foreign traders not yet permitted to do business in Vietnam wishing to display their goods and/or services in Vietnam has to employ Vietnamese traders engaged in the business of providing goods/service display services to do so.

**Article 120. Engagement in the business of providing goods/service displaying services**

Engagement in the business of providing goods/service displaying services is a commercial activity by which a trader provides other traders with goods/service displaying services.

**Article 121. Forms of display of goods and/or services**

1. Opening showrooms displaying goods and/or services;
2. Introducing and displaying goods and/or services at trade centers or in entertainment, sports, cultural or artistic activities;
3. Organizing seminars and conferences involving display of goods and/or services.

**Article 122. Conditions for displayed goods and/or services**

1. Displayed goods and/or services must be those which are legally traded in the market.
2. Displayed goods and/or services must meet the provisions of law concerning goods quality and goods labeling.

**Article 123. Conditions for goods imported into Vietnam for display**

Goods imported into Vietnam for display shall, in addition to the satisfaction of the conditions set out in Article 238 of this Law, also meet the following conditions:

1. Being goods that are permitted for import into Vietnam;

2. If goods are temporarily imported for display, they must be re-exported after the end of that display but not exceeding six (6) months as from the date of their temporary import. In case of exceeding the above time limit, extension procedures must be completed at the customs authority where import procedures were previously completed.

3. If goods temporarily imported into Vietnam for display are sold in Vietnam, all the provisions of Vietnamese laws applicable to imports must be complied with.

#### **Article 124. Cases where displays of goods and/or services are prohibited**

1. Organize displays of goods and/or services or use of means of goods and/or services display, that causes adverse effects to defense and social security and order, scenery, environment and human health;

2. Display of goods and/or or use of forms and means of goods and/or display, that contravene the fine historic cultural and moral traditions and customs of Vietnam;

3. Display of goods and/or services disclosing national secrets;

4. Display of goods of other traders to compare with one's own goods, except where the displayed goods for comparing is counterfeit goods or goods infringing upon intellectual property rights as prescribed by law;

5. Display of goods samples which are inconsistent with goods being traded in with respect to quality, price, utility, design, packaging, warranty period, and other quality standards in order to deceive customers.

#### **Article 125. Contracts for provision of goods and/or services display services**

A contract for provision of goods/service display services must be made in writing or in other form with similar validity.

#### **Article 126. Rights of the goods and/or service display service hirers**

Except where otherwise agreed, a goods and/or service display service hirer shall have the following rights:

1. To request the goods and/or service display service provider to fulfill the agreements in the contract;

2. To inspect and supervise the performance of the goods and/or service display service contract;

#### **Article 127. Obligations of the goods and/or service display service hirers**

Except where otherwise agreed, a goods and/or service display service hirer shall have the following obligations:

1. To supply all goods and/or services to be displayed or facilities to the service provider as agreed upon in the contract;

2. To provide information about goods/services to be displayed;

3. To pay service charges and other related costs.

#### **Article 128. Rights of the goods and/or service display service providers**

Except where otherwise agreed, a goods and/or service display service provider shall have the following rights :

1. To request the service hirers to supply goods and/or services to be displayed according to the time limit agreed upon in the contract;

2. To request the service hirers to supply information about displayed goods and/or services and other necessary facilities as agreed upon;

3. To receive service charges and other fees;

#### **Article 129. Obligations of the goods and/or service display service providers**

Except where otherwise agreed, a goods and/or service display service provider shall have the following obligations:

1. To display goods and/or services as agreed upon in the contract;

2. To maintain the displayed goods, documents and facilities provided during the performance of the contract; to return all displayed goods, documents and facilities to the service hirer upon completion of the goods and/or services display and, if any damage is caused to the services hirers, to pay compensation.

3. To introduce goods and/or services according to the contents as agreed upon with service hirer.

### **Section 4 Trade fairs and exhibitions**

#### **Article 130. Organization of and participation in trade fairs and exhibitions**

1. To organize trade fairs and exhibitions is a sales promotion activity carried out in a centralized manner at a particular location and for a certain period of time, through displays of goods and/or services and their related documents for purposes of marketing them, or entering into contracts for sale and purchase of goods or contracts for provision of services.

2. To participate in trade fairs and exhibitions means a goods and/or services display act at the trade fairs and exhibitions.

3. In cases where an organizer of or a participant in a trade fair or exhibition hires another party to organize or participate in the trade fair and exhibition [on its behalf], both parties have to enter into a contract for organization of, or participation in, trade fairs and exhibitions in writing.

#### **Article 131. Engagement in the business of providing trade fairs and exhibitions services**

Engagement in the business of providing trade fair/exhibition services means a commercial activity by which a trader organizes a trade fair/exhibition and provides other related services thereto for other traders.

### **Article 132. Rights to organize or participate in trade fairs and exhibitions**

1. Vietnamese traders, branches of Vietnamese traders, branches of foreign traders in Vietnam shall be entitled to directly organize or participate in trade fairs and exhibitions in respect of goods and/or services they trade in or hire traders engaged in the business of providing trade fair/exhibition services to do so.

2. Representative offices of traders shall not be entitled to directly organize or participate in trade fairs and exhibitions. In cases of being authorized by traders, representative offices shall be entitled to sign contracts with traders engaged in the business of providing trade fair/exhibition services to do so for the traders that they are representing.

3. Foreign traders shall be entitled to directly participate in, or hire Vietnamese traders engaged in the business of providing trade fair/exhibition services to, on their behalf, participate in, trade fairs and exhibitions in Vietnam. In case of wishing to organize a trade fair/exhibition in Vietnam, a foreign trader must hire a Vietnamese trader engaged in the business of providing trade fair/exhibition services to do so.

### **Article 133. Organization of trade fairs and exhibitions in Vietnam**

1. Trade fairs and exhibitions in Vietnam must be registered with and approved in writing by the State management body in charge of commerce at the levels of provinces or cities under central authority where they are to be organized.

2. The Government shall specify the order, procedures, registration details and shall certify the organization of trade fairs and exhibitions in Vietnam as prescribed in Clause 1 of this Article.

### **Article 134. Organization of and participation in overseas trade fairs and exhibitions**

1. Traders not engaged in the business of providing trade fair/exhibition services must, when they directly organize or participate in overseas trade fairs and exhibitions in respect of the goods and/or services that trade in, comply with the provisions of law concerning export of goods.

2. Traders engaged in the business of providing trade fair/exhibition services must, when they arrange for other traders to participate in overseas trade fairs and exhibitions, register with the Ministry of Trade.

3. Traders who have not registered their engagement in the business of providing trade fair/exhibition services shall not be allowed to arrange for other traders to participate in overseas trade fairs and exhibitions.

4. The Government shall specify the order, procedures and registration details in relation to the organization and participation in overseas trade fairs and exhibitions as prescribed in Clauses 1 and 2 of this Article.

### **Article 135. Goods and/or services displayed at trade fairs and exhibitions in Vietnam**

1. Goods and/or services which are not allowed for display at trade fairs and exhibitions include:

a) Goods and/or services banned or restricted from business; or not yet permitted for circulation in accordance with the law;

b) Goods and/or services provided by overseas traders and banned from import in accordance with the law;

c) Counterfeit goods and goods infringing upon intellectual property rights, except where counterfeits are displayed for comparing with the genuine ones.

2. Imported goods and/or services subject to specialized control must, in addition to complying with provisions of this Law concerning trade fairs and exhibitions, also meet the regulations on specialized control in respect of those goods and/or services.

3. Temporarily imported goods for participating in trade fairs and exhibitions in Vietnam must be re-exported within thirty (30) days from the date of completion of the trade fairs and exhibitions.

4. The temporarily import for re-export goods for display at trade fairs and exhibitions in Vietnam shall comply with the customs legislation and other relevant legislation.

**Article 136. Goods and/or services displayed at overseas trade fairs and exhibitions**

1. Any goods and/or services shall be permitted for display at overseas trade fairs and exhibitions, except for those banned from export in accordance with the law.

2. Goods and/or services banned from exported shall only be permitted for display at overseas trade fairs and exhibitions when a written approval from the Prime Minister has been obtained.

3. The time limit for temporarily exporting goods to attend overseas trade fairs and exhibitions shall be one (1) year from the date on which the goods are temporarily exported. If the time limit expires but the goods are not yet re-imported, such goods shall be subject to taxation and other financial obligations in accordance with the Vietnamese law.

4. The temporary export for re-import of goods for display at overseas trade fairs and exhibitions shall comply with the customs legislation and other relevant legislation.

**Article 137. Sale, free offer of goods and services at trade fairs and exhibitions in Vietnam**

1. It is permitted to sell, give and supply at trade fairs and exhibitions those goods and services displayed at trade fairs and exhibitions in Vietnam, provided that registration procedures must be completed with the customs authority at the import border gate, except in the cases prescribed in Clause 2 of this Article.

2. If goods are imported under a permit of the competent State body, they shall only be sold or given after a written approval is obtained from that competent State body.

3. If goods referred to in Article 249.2 of this Law are sold or given at trade fairs and exhibitions, they must comply with the regulations on specialized import control applicable to those goods and/or services.

4. Goods and/or services being sold or freely offered at trade fairs and exhibitions in Vietnam shall be subject to taxation and other financial duties as prescribed by law.

**Article 138. Sale, free offer of Vietnamese goods and services displayed at overseas trade fairs and exhibitions**

1. Vietnamese goods and services displayed at overseas trade fairs and exhibitions are permitted to be sold or freely offered at trade fairs and exhibitions, except in the cases referred to in Clause 2 and 3 of this Article.

2. Goods which are banned from export but have been temporarily exported for display at overseas trade fairs and exhibitions shall only be sold or freely offered after an approval from the Prime Minister has been obtained.

3. If goods are exported under a permit of the competent State body, they shall only be sold or given after a written approval is obtained from that competent State body.

4. Vietnamese goods and/or services being sold and freely offered at overseas trade fairs and exhibitions shall be subject to taxation and other financial duties as prescribed by law.

**Article 139. Rights and obligations of organizations and individuals participating in trade fairs and exhibitions in Vietnam.**

1. To exercise their rights and perform their obligations in accordance with their agreements with trade fair/exhibition organizer-trader;

2. To sell, provide and/or freely offer goods and/or services at the trade fairs or exhibitions as prescribed by this law;

3. To be entitled to temporarily import goods and documents about goods/services for display at trade fairs and exhibitions and to re-export them;

4. To comply with all applicable regulations on the organization of trade fairs and exhibitions in Vietnam.

**Article 140. Rights and obligations of traders organizing and participating in overseas trade fairs and exhibitions**

1. To be entitled to temporarily export goods and documents about goods and/or services for display at trade fairs or exhibitions;

2. To comply with all applicable regulations on the organization of and participation in overseas trade fairs and exhibitions;

3. To be entitled to sell and/or freely offer goods at trade fairs and exhibitions and to be subject to taxation and other financial duties as prescribed by the Vietnamese law.

**Article 141. Rights and obligations of traders engaged in the business of providing trade fair/exhibition services**

1. Before the opening date of a trade fair/exhibition, to post up the topic and the time of the trade fair/exhibition at the place where it is to be organized;

2. To request the service hirers to supply goods for participation in the trade fairs or exhibitions according to the time agreed upon in the contract;

3. To request the service hirers to provide information about the goods to be displayed at the trade fairs or exhibitions and other necessary facilities as agreed upon;

4. To receive service charges and other fees;

5. To carry out the organization of the trade fair/exhibition as agreed upon in the contract.

## **CHAPTER V INTERMEDIARY ACTIVITIES IN COMMERCE**

### **Section 1 Representation of traders**

#### **Article 142. Representation of trader**

1. Representation for a trader is a commercial activity by which a trader (referred to as **representative**) accepting the authorization from another trader (referred to as **the nominator**) to carry out commercial activities in the name and under the instructions of that trader for remuneration.

2. Where a trader nominates his personnel to act as his representative, the provisions of the Civil Code shall be applied.

#### **Article 143. Contracts for representation for traders**

Contracts for representation for traders must be made in writing or other forms with equal validity.

#### **Article 144. Scope of representation**

Parties may agree that the representative may conduct part or all commercial activities falling within the scope of activities of the nominator.

#### **Article 145. Term of representation for traders**

1. The term of representation is agreed by the parties.

2. Where such agreement is not available, the term shall be terminated after a notice has been served by the nominator on the representative in respect of the termination of the contract.

3. Unless otherwise agreed by the parties, if the termination notice is unilaterally given by the nominator under clause 2 of this Article, the representative may require the nominator to pay an amount of remuneration for the signing by the nominator of contracts with clients as a result of negotiations by the representative and to pay other sums to which the representative would be entitled.

4. If the representation term is terminated under Clause 2 of this Article at the request of the representative, the representative shall lose his right to the remuneration for

those transactions that it would otherwise have been entitled to claim unless otherwise agreed by the parties.

#### **Article 146. Obligations of representatives**

Unless otherwise agreed, the representative shall have the following obligations:

1. Carrying out commercial activities in the name and for the interest of the nominator;
2. Notifying the nominator of the opportunities and results of implementation of the authorized commercial activities;
3. Complying with instructions of the nominator except where such instructions breach the law;
4. Restraining from carrying out commercial activities under his own name or the name of a third person within the scope of representation;
5. Restraining from disclosing or supplying to other people confidential information related to the commercial activities of the nominator during the term of representation and within two years after the termination of contracts for representation;
6. Maintaining the assets and documents assigned to carry out the representative acts;

#### **Article 147. Obligations of nominators**

Unless otherwise agreed, the nominators shall have the following obligations:

1. Immediately notifying the representatives of the signing of contracts negotiated by the representatives; the performance of contracts entered into by the representatives; and the acceptance or rejection of contracts which have been ultra vires entered into by representatives;
2. Supplying assets, documents and information required for the representatives to carry out the representative acts;
3. Paying remuneration to the representatives as agreed in contracts for representation;
4. Promptly notifying the representatives of the possibility of not entering into or not performing the contracts falling within scope of representation;

#### **Article 148. Right to remunerations**

1. Representatives shall be entitled to remunerations for the contracts entered into within the scope of representation. The right to remunerations arises from the time agreed by parties in the contracts for representation.
2. Where the parties do not agree upon the remuneration rate, the remuneration rate shall be determined in accordance with Article 83 of this Law.

#### **Article 149. Payment of incurred expenses**

Unless otherwise agreed by the parties, representatives shall be entitled to claim the payment of reasonable expenses incurred in relation to the performance of the representative acts.

#### **Article 150. The right to withhold**

Representatives shall have the right to withhold the assigned assets and documents as security for the payment of remuneration and expenses which become due, unless otherwise agreed .

### **Section 2 Commercial brokerage**

#### **Article 151. Commercial brokerage**

Commercial brokerage is commercial activity by which a trader acts as an intermediary (hereinafter called the “**broker**”) between parties selling and purchasing goods or providing commercial services (hereinafter called “**principals**”) during the course of negotiations and signing contracts for sale and purchase of goods or provision of commercial services and shall be entitled to a commission under a brokerage contract.

#### **Article 152. Obligations of brokers**

Except where otherwise agreed by the parties, a commercial broker shall have the following obligations:

1. To maintain samples of goods and documents assigned for the performance of brokerage activities and return them to the principal after the completion of brokerage activities;
2. Not to disclose or supply information to the detriment of the interests of the principal;
3. To be responsible for the legal status, but not the solvency, of the principal;
4. Not to participate in the performance of contracts between the principals, except where so authorized by principals.

#### **Article 153. Obligations of principals**

Except where otherwise agreed by the parties, a principal shall have the following obligations:

1. To provide information, documents, necessary facilities relating to goods and services;
2. To pay brokerage remuneration to the broker as agreed.

#### **Article 154. Payment of brokerage remuneration**

1. Unless otherwise agreed by the parties, the principal must pay brokerage remuneration to the broker at the time when the principal has entered into the contract.

2. Unless otherwise agreed by the parties, the brokerage remuneration rates shall be determined in accordance with the provisions as stipulated in Article 83 of this Law.

**Article 155. Payment of expenses incurred in relation to brokerage activities**

Except where otherwise agreed by the parties, the principal must pay the brokers all the reasonable expenses incurred in relation to the brokerage, even where the brokerage activities fail to bring about results for the principals.

**Section 3**  
**Mandate in the sales and purchases of goods**

**Article 156. Mandate in the sales and purchases of goods**

Mandate is a commercial activity whereby the mandatory carries out the sale and purchase of goods under his/her name subject to the terms agreed upon with the mandator and is entitled to receive mandate commission.

**Article 157. Mandatory**

Mandatory is a trader who does business in goods which are appropriate with the mandated goods and carries out the sale and purchase of goods under the terms agreed upon with the mandator.

**Article 158. Mandator**

Mandator is a trader or non-trader who confides the sale and purchase of goods subject to his/her own specific requirements to the mandatory and is obliged to pay mandate commission.

**Article 159. Mandated goods**

All goods which are legally circulated may become the subject matter of a mandated sale and purchase.

**Article 160. Mandate contracts**

A mandate contract for sale and purchase of goods must be made in writing or other forms with equal validity.

**Article 161. Sub-Mandate to Third Parties**

A mandatory may not sub-mandate a third party to perform the signed mandate contract for sale and purchase, except where a written consent from the principal has been obtained.

**Article 162. Multiple<sup>1</sup> Principals**

A mandatory may conduct a mandate in the sale and purchase of goods on behalf of more than one principal.

**Article 163. Rights of mandators**

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<sup>1</sup> The literal translation is "Being mandated by more than one party".  
*MOT/Draft 9 dated February, 2005*

Except where otherwise agreed by the parties, a mandator shall have the following rights :

1. To request the mandatory to provide full information relating to the performance of the mandate contract.

2. Not to be liable if the mandatory breaches the law, except in circumstances mentioned in Article 164.4 of this Law.

#### **Article 164. Obligations of the mandator**

Except where otherwise agreed by the parties, a mandator shall have the following obligations:

1. To provide necessary information, documents and facilities for the performance of the mandate contract;

2. To pay a mandate commission;

3. To hand over the money and goods as agreed upon.

4. To be jointly liable when the mandatory violates the law for any reason caused by the mandator or when the parties intentionally act contrary to the law.

#### **Article 165. Rights of mandatories**

Except where otherwise agreed by the parties, a mandatory shall have the following rights :

1. To request the mandator to provide necessary information and documents for the performance of the mandate contract;

2. To receive a mandate commission;

3. Not to bear responsibility for goods which have been handed over to the mandator in conformity with the mandate contract as agreed upon;

#### **Article 166. Obligations of mandatories**

Except where otherwise agreed by the parties, a mandatory shall have the following obligations :

1. To sell and purchase goods as agreed upon.

2. To notify the mandator of matters relating to the performance of the mandate contract

3. To follow the instructions by the mandator as agreed upon;

4. To take care of assets and documents assigned to him/her/it for the performance of the mandate contract;

5. To keep the confidentiality of information relating to the performance of the mandate contract;

6. To hand over the money and goods as agreed upon.

#### **Section 4 Commercial agency**

##### **Article 167. Commercial agency**

Commercial agency is a commercial activity whereby the principal and the agent agree upon the agent, on behalf of its own name, selling or buying goods or supplying services for the principal to customers in return for remuneration.

##### **Article 168. Principals and agents**

1. Principals are the traders who deliver goods to agents for sale or provide money to agents for purchase of goods; or are the traders who authorize the provision of service to the service providing agent.

2. Agents are the traders who receive goods to act as the sales agent or who receives money to act as the purchase agent or who accepts the authorization to provide services.

##### **Article 169. Agency contracts**

An agency contract must be made in writing or other forms with equal validity.

##### **Article 170. Forms of agency**

1. Commission agent is a form of agency whereby an agent sells, purchases goods at the sale or purchase prices or provides services at the service charge to customers which prices or charge is fixed by the principal in return for commission.

Unless otherwise agreed by the parties, the rate of commission shall be calculated in a percentage of the sale or purchase prices or the service charge as agreed upon by the parties.

2. Off-take agent is a form of agency whereby the agent sells or purchases a complete quantity of goods or provides a full service.

The level of remuneration which the agent is entitled to shall be the difference between the actual sale/purchase prices or service charge and the prices/charge set by the principal.

3. Exclusive agent is a form of agency whereby in a definite geographical area only one sole agent has been authorized by the principal to sell, purchase one or more items of goods or to provide one or more types of services.

4. General sales, purchase or service provision agent is a form of agency whereby an agent organizes a network of subagents to sell or purchase goods, or provide services on behalf of the principal.

The general agent shall represent its network of subagents. Subagents shall operate under the management and in the name of the general agent.

5. Other forms of agency as the parties may agree upon.

**Article 171. Ownership right in commercial agency**

The principal is the owner of goods or money delivered to its agent(s).

**Article 172. Agency remuneration**

1. Unless otherwise agreed upon by the parties, agency remuneration shall be paid by principals to agents in the form of a commission or price difference.

2. Where the parties do not agree upon the remuneration rate, the rate of remuneration shall be calculated as follows:

- a) The real rate of remuneration which was previously established by the parties;
- b) Where paragraph (a) cannot apply, the rate shall be the average rate of remuneration applied to the same kind of goods and services that the principal stipulated to other agents;
- c) Where paragraphs (a) and (b) cannot apply, the rate shall be the common rate applied to the same kind of goods and services in the market.

**Article 173. Rights of principals**

Except where otherwise agreed by the parties, a principal shall have the following rights:

- 1. To fix the sale or purchase price(s) of goods or service charge(s) to customers for commission agents;
- 2. To fix the agency price for off-take agents;
- 3. To request the agent to take a security measures as provided for by law;
- 4. To request the agent to make payment or deliver goods in accordance with the agency contract;
- 5. To inspect and supervise the performance of the agency contract by the agent;

**Article 174. Obligations of principals**

Except where otherwise agreed by the parties, a principal shall have the following obligations:

- 1. To provide guidelines and information to, and facilitate, the agent to perform the agency contract;
- 2. To bear responsibility to the sales and purchases agent and the services agent for the quality of goods and services respectively if the agent is not at fault;
- 3. To pay remuneration to the agent;

4. To return the security assets (if any) to the agent upon termination of the agency contract;

5. To be jointly responsible for any breach of law by the agent for any reason caused by the principal or for intentional breach of law by the parties.

#### **Article 175. Rights of agents**

1. Except where otherwise agreed by the parties, an agent shall have the following rights:

(a) To enter into agency contracts with one or more principals, except in the cases provided in clause 2 of this Article;

(b) To request the principal to deliver money or goods in accordance with the agency contract; to take back from the principal the security assets, if any, upon termination of the agency contract;

(c) To request the principal to provide guidelines, information and other relevant conditions for the performance of the agency contract;

(d) To decide the sales price of goods or the service charge which are to be imposed by off-take agents on their customers.

(e) To enjoy remuneration and other lawful rights and interests brought about by the agency activities.

#### **Article 176. Obligations of agents**

Except where otherwise agreed by the parties, an agent shall have the following obligations:

1. To sell, purchase goods or provide services to customers at the price or charge stipulated by the principal to commission agents;

2. To comply strictly with the undertakings given to the principal in the agency contract with respect to the delivery or receipt of goods or money;

3. To make security measures in accordance with the law;

4. To pay to the principal any proceeds of the sale of goods, in the case of a sale agent; to deliver the purchased goods to the principal, in the case of a purchase agent; or to pay service charges to the principal, in the case of a service providing agent;

5. To preserve goods after receipt thereof, for a sale agent, or prior to delivery thereof, for a purchase agent;

6. To be subject to inspection and supervision by the principal and to report to the principal on its agency activities;

#### **Article 177. Payments in agency activities**

Unless otherwise agreed by the parties, payments for goods, service charges and payments of agency remunerations shall be made by separate installments after an agent has

completed the sale or purchase of a certain quantity of goods or the provision of a specific volume of services.

#### **Article 178. Term of agency**

1. Unless otherwise agreed by the parties, the term of agency shall terminate after a reasonable period of time but no earlier than 60 days from the date when either party to the agency contract serves a termination notice on the other party.

2. Except where otherwise agreed by the parties, if the principal serves a termination notice on an agent under clause 1 of this Article, the agent is entitled to request the principal to make a compensation amount for the period of time during which the agent has acted for the principal.

The value of that compensation amount shall be an average one-month's agency remuneration for each year that agent has acted for the principal. If the term of agency is less than one (1) year, this compensation amount shall be an average one-month's agency remuneration during the agency term.

3. If an agency contract is terminated at the request of an agent, the agent shall lose its right to claim the compensation amount for the term of his/her agency .

### **CHAPTER VI SOME OTHER COMMERCIAL ACTIVITIES**

#### **Section 1 Processing in commerce**

##### **Article 179. Processing in commerce**

Commercial processing is a commercial activity whereby a processor carries out one or several stages of the production process at the request of the customer<sup>2</sup> by using part or the whole of materials and raw materials supplied by the customer in order to receive processing remunerations.

##### **Article 180. Processing contracts**

A processing contract must be made in writing or other forms with equal validity.

##### **Article 181. Goods for processing**

1. All types of goods may be processed, except for those goods banned from business.

2. In case of processing goods for foreign traders for the purpose of circulation overseas, the following goods may be processed subject to an approval from the authorized State body:

(a) Goods which fall within the list of being banned from business.

(b) Goods which fall within the list of being banned from importation and exportation.

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<sup>2</sup> Translator's note: literal translation of the Vietnamese text "the party that orders the processing".  
MOT/Draft 9 dated February, 2005

#### **Article 182. Rights and obligations of customers**

1. To hand over part or the whole of materials or raw materials in accordance with the contract;

2. To take back the whole processed products; leased or borrowed machinery and equipments; raw materials, auxiliary materials, supplies and waste after liquidating the processing contract, except where otherwise agreed.

3. To sell, destroy, give on the spot processed products; leased or borrowed machinery and equipments; raw materials, auxiliary materials, supplies and waste according to the agreements and in accordance with laws.

4. To assign the representative in order to examine, control the processing activities, to assign the experts to guide technology and to examine the quality of processed products under the agreement in the contract, except where otherwise agreed by the parties.

5. To be responsible for the validity of the intellectual property rights to the processed goods, materials and raw materials, machines, equipments for processing activities handed over to the processor.

#### **Article 183. Rights and obligations of processors**

1. To supply a part or whole materials, raw materials and supplies for processing under the agreement in the contract.

2. To be entitled to services fees for processing activities paid by the customer.

3. In case of processing for foreign individuals or organizations, to be entitled to export on the spot processed products; leased or borrowed machinery and equipment, materials, raw materials, redundant supplies and waste under the authorization of the customer.

4. In case of processing for foreign individuals or organizations, to be entitled to exemption from payment of import duties on the machinery, equipment, materials, raw materials and supplies that are imported temporarily to perform the processing contract.

5. To be liable for the legality of the processing activities when the goods being processed are in the list of goods banned from commerce, banned from import or banned from export.

#### **Article 184. Processing remuneration**

1. Processors may receive processing remuneration paid by way of cash or processed products, or machinery and equipment used to perform the processing.

2. In case of processing for foreign individuals or organizations, if the processors receive processing remuneration paid by way of the processed products, or machinery and equipment used to perform the processing, the provisions on importation with respect to such products, or machinery and equipment must be complied with.

#### **Article 185. Technology transfer in goods processing with foreign organizations and individuals.**

Technology transfer in goods processing with foreign organizations and individuals shall be carried out in accordance with the agreements stated in the processing contract and in accordance with the provisions on technology transfer of Vietnamese law.

## **Section 2 Auction of goods**

### **Article 186. Auction of goods**

1. Auction of goods is a commerce activity, in which the seller himself or hire an auctioneer to conduct public sale of goods to select the buyer who offers the highest prices.

2. Auction of goods is performed in one of the following two methods:

(a) upward bidding method means the auction method by which the person who offers the highest price shall have the right to buy such goods;

(b) downward bidding method means the auction method by which the person who first accepts the reserve price or the reduced price rate as compared with the reserve price shall have the right to buy such goods;

### **Article 187. The auctioneer, the seller of goods**

1. The auctioneer is the trader whose business registration is in auction activities or is the seller of goods in case the seller conducts the auction by himself.

2. The seller of goods is the owner of goods or the person mandated by the goods owner to sell the goods or the person entitled to sell goods of other person(s) in accordance with the provisions of law;

### **Article 188. Auction participants, the auction administrator**

1. Auction participants can be individuals or organizations who register to participate in auctions of goods;

2. The auction administrator is an auctioneer or a person appointed by the auctioneer to handle the auction;

### **Article 189. Auction principles**

The auction of goods in commerce shall be conducted using the principles of publicity, honesty and protection of legitimate rights and interests of all auction participants.

### **Article 190. Rights of the auctioneer**

Except where otherwise agreed by the parties, the auctioneer shall have the following rights:

1. To request the seller of the goods to provide fully and accurately the necessary information relating to the auctioned goods in a timely manner; to facilitate for the auctioneer or the auction participants in examination of auctioned goods and the hand-over of the auctioned goods to the buyer of goods if the auctioneer is not the seller of goods;

2. To determine the reserve price if the auctioneer is the seller of goods or is authorized to do so by the seller of goods;

3. To conduct the auction of goods;

4. To request the buyer to make payment;

5. To collect the auction fees paid by the seller in accordance with Article 212 of this Law.

#### **Article 191. Obligations of the auctioneer**

1. To organize the auction in accordance with the principles and procedures provided for by law and in accordance with the auction manner as agreed upon with the seller of goods.

2. To publicly announce and display complete and accurate necessary information relating to the auctioned goods;

3. To preserve the auctioned goods when it is entrusted to him/by the seller;

4. To display the goods, goods samples or introductory documents of the goods for auction participants to consider;

5. To make a document on the auction of goods and send to the seller, buyer and other related parties in accordance with the provisions of Article 204 of this Law;

6. To deliver the auctioned goods to the buyer in accordance with the contract for provision of auction services;

7. Unless otherwise agreed with the seller, to complete procedures to transfer the ownership rights over the auctioned goods of which the ownership needs to be registered as prescribed by law;

8. To pay the proceeds of sale of goods to the seller including any differences as a result of a buyer withdrawing his/her offered price in accordance with Article 205 of this Law or return the unsold goods to the seller according to agreement. In the absence of such agreement, to pay the money to the seller of the goods no later than three days after receiving money from the buyer of the goods or return the goods immediately within a reasonable time after the auction;

#### **Article 192. Rights of the goods seller who is not the auctioneer**

Except where otherwise agreed by the parties, the seller shall have the following rights :

1. To receive the money through the auction and the difference stipulated in Article 205 of this Law or receive the goods back in case of unsuccessful auction;

2. To monitor the administration of auction of goods.

#### **Article 193. Obligations of the goods seller who is not the auctioneer**

Except where otherwise agreed by the parties, the seller shall have the following obligations:

1. To deliver the goods to the auctioneer, to facilitate the auctioneer and the participant in inspecting the goods and supply timely, accurate and full information concerning the auction of goods.

2. To pay the service fee for the auction in accordance with Article 212 of this Law.

#### **Article 194. Contract for supplying service of auction of goods**

1. A contract on supplying services of auction of goods must be made in writing or other types with equal validity.

2. In cases of auctioning pledged or mortgaged goods, the contract on supplying service of auction of goods shall be approved by the pledgee or mortgagee and the seller shall notify the auction participants of the pledged or mortgaged goods.

3. If the auction is agreed upon in the pledge or mortgage contract but the pledgor or mortgagor is absent without legitimate reasons or refuse to sign the contract for supplying auction services, the contract shall be signed between the pledgee or the mortgagee and the auctioneer.

#### **Article 195. Determination of the reserve price**

1. The seller of the goods must determine the reserve price. If the auctioneer is authorized to determine the reserve price, he/she must inform the seller of such price before making a public announcement thereon.

2. In case of auctioning of pledged or mortgaged goods, the pledgee or mortgagee must agree with the pledgor or mortgagor upon the reserve price.

3. If the pledgor or the mortgagor is absent without legitimate reasons or refuses to enter into a contract for supplying auction services, the reserve price shall be determined by the pledgee or mortgagee.

#### **Article 196. Notifying people having rights and obligations related to the goods being the subject of a mortgage or pledge**

In case of auctioning goods which are the subject of a pledge or mortgage, the auctioneer, simultaneously with making an announcement on the mass media, must notify the people having related rights and obligations within no more than seven (7) days before the auction takes place, of the details set out in Article 138 of this Law.

#### **Article 197. Time limit for auction notices and posting the auction notices**

1. Seven days, at the latest, before an auction of goods takes place, the auctioneer must post the auction notice at the place of auction, place of displaying the goods and at his/her head office, with the details set out in Article 138 of this Law.

2. If the auctioneer is also the seller of goods, the time limit for posting the auction notice shall be decided by himself/herself.

#### **Article 198. Details of auction notices and posting the auction notice**

1. The time and place of auction;
2. The name and address of the auctioneer;
3. The name and address of the seller of the goods;
4. The list of goods, their quantity and quality;
5. The reserve price;
6. The necessary information relating to the goods;
7. The place and time of displaying the goods;
8. The place and time of consulting the goods dossier.

#### **Article 199. Persons not allowed to participate in auction**

The following persons are not allowed to participate in an auction of goods:

1. A person who has no civil act capacity or has insufficient civil act capacity or has lost his/her civil act capacity or is restricted in his/her civil act capacity in accordance with the provision of the Civil Code or a person who at the time of the auction, is not conscious of or cannot control his/her act;
2. Persons working in auction organizations; their parents, spouses, and children ;
3. A person who has directly surveyed the auctioned goods; his/her parents, spouse, and children ;
4. Other persons not entitled to buy auctioned goods as prescribed by law;

#### **Article 200. Registering to participate in an auction**

1. The auctioneer may request a person wishing to participate in an auction to register for the participation before the auction takes place.
2. The auctioneer may request a person wishing to participate in an auction to make a deposit not exceeding 2% of the reserve price of the auctioned goods.
3. Where a person participating in the auction purchases the auctioned goods, the deposit shall be deducted against the buying price; if a person participating in the auction cannot purchase the auctioned goods, the deposit shall be immediately returned to the person that made it after the auction.
4. Where a person registers to participate in the auction has already made a deposit but later failed to participate in the auction, the deposit shall be retained by the auctioneer.

#### **Article 201. Displaying the auctioned goods**

Goods, their samples or relevant introduction materials must be displayed at the announced place with all necessary information on auctioned goods.

#### **Article 202. Conducting auction**

At the auction, the auction administrator shall perform the following:

1. To make a roll call of the bidders who have already registered to participate in the auction.

2. To present each item of the auctioned goods, repeat the reserve prices, answer questions of the bidders and ask them to offer bids.

3. As for the upward bidding method, the auction administrator must clearly and accurately repeat in words every thirty (30) seconds the latest bid which is at least three times higher than the one offered by the previous bidder. The auction administrator shall announce the name of the winning bidder only if after repeating three times the price offered by that person no one offers a higher bid.

4. As for the downward bidding method, the auction administrator must clearly and accurately repeat in words at least three times with an interval of at least thirty (30) seconds every reduced price rate as compared with the reserve price. The auction administrator shall announce immediately the name of the person who first accepts the reserve price rate or any reduced price rate and who has the right to buy the auctioned goods.

5. In cases where many persons concurrently offer the same final price as for the upward bidding method, or the first bid as for the downward bidding method, the auction administrator shall organize a lot drawing among the persons and announce the name of the person who has drawn the right lot, as the winning bidder.

6. The auction administrator shall have to prepare an auction document at the auction even when it is not successful. The auction document must specify the auction results and be signed by the auction administrator, the buyer and two witnesses among the auction participants. With regard to the auctioned goods which the law requires to be notarized, the auction document must be notarized.

#### **Article 203. Unsuccessful Auction**

1. [An auction shall be regarded as unsuccessful] if the highest bid offered is lower than the reserve price or no one offers a bid as for the upward bidding method.

2. [An auction shall be regarded as unsuccessful] if no one offers a bid for the price announced by the auction administrator as for the downward bidding method.

#### **Article 204. Auction documents**

1. An auction document is a valid document certifying the auction.. An auction document shall include the following:

a/ The name and address of the auctioneer.

b/ The name and address of the auction administrator.

c/ The name and address of the goods seller.

d/ The name and address of the goods buyer.

e/ The time and place of auction.

f/ The auctioned goods.

g/ The price at which the goods were sold.

h/ The names and addresses of two witnesses.

2. The auction document shall be sent to the buyer and the seller.

3. In case of a unsuccessful auction, the auction document must specify that the auction was unsuccessful and contain those details referred to in Clause 1 of this Article, except points d, and g .

#### **Article 205. Withdrawing the offered bid**

1. In cases of auctions by the upward bidding method, if the highest bid offerer promptly withdraws his/her bid, the auction shall be immediately held anew, starting from the previously offered highest bid. In cases of auctions by the downward bidding method, if the person who first accepts the price immediately withdraws the accepted bid, the auction shall be immediately held anew, starting from such offered bid.

2. The person who withdraws the offered bid or withdraws his/her acceptance of the price shall not be allowed to further participate in the auction.

3. Where the auctioned goods are sold at a price lower than the withdrawn bid which is previously offered or accepted by the withdrawer respectively with regard to the upward bidding method or downward bidding method, the bid withdrawer shall have to pay the price difference to the auctioneer; if the goods are sold at a higher price, the bid withdrawer shall not be entitled to such a difference.

4. If the auction fails, the bid withdrawer shall have to bear all costs of the auction and not be eligible for the refund of his/her deposit.

#### **Article 206. Refusing to purchase**

1. Except where otherwise agreed, after the auction is declared to be complete the buyer shall be held liable. If the buyer refuses to buy the goods, his/her refusal must be accepted by the seller of the goods, but he/she shall have to bear all costs related to the auction.

2. In cases where the eligible buyer has deposited an amount of money but refuses to buy the goods, he/she shall not be entitled to the refund of that deposit. Such deposit shall belong to the goods seller.

#### **Article 207. Registering the ownership right**

1. The auction document serves as basis for the transfer of the ownership right over the auctioned goods, which has to be registered in accordance with the provisions of law.

2. On the basis of the auction document and other valid papers, the competent State agency shall register the goods ownership right for the buyer in accordance with the provisions of law.

3. The auctioneer and the seller shall have to complete procedures to transfer the goods ownership rights to the buyer. All costs of such transfer shall be deducted against the proceeds of the goods, except as otherwise agreed.

**Article 208. Time limit for the payment of money to purchase the goods**

The time limit for the payment of the money to purchase the goods shall be agreed upon by the auctioneer and the buyer. In the absence of such agreement, the payment shall be made at the time provided for in Article 58 of this Law.

**Article 209. Place of payment of the money to purchase the goods**

The place of payment of the money to purchase the goods shall be agreed upon by the auctioneer and the buyer of the goods. In the absence of such agreement, the payment shall be made at the head office of the auctioneer.

**Article 210. Time limit for delivery of the auctioned goods**

Except where otherwise agreed by the auctioneer and the buyer:

1. With regard to goods over which the ownership right must not be registered, the auctioneer must deliver the goods immediately to the buyer after the auction document is made.

2. With regard to goods over which the ownership right has been registered, the auctioneer must immediately complete procedures to transfer the ownership rights and hand over the goods to the buyer right after the procedures for ownership right transfer are completed.

**Article 211. Place of delivery of the auctioned goods**

1. If goods are things attached to land, they shall be handed over at the place where they are located.

2. If goods are moveable, they shall be handed over at the place of the auction, unless otherwise agreed upon by the auctioneer and the goods buyer.

**Article 212. Fee of auction service**

In cases where there is no agreement on the fee of auction services, the fee shall be determined as follows:

1. In case of successful auctions, the fee of auction service is determined in accordance with Article 87 of this Law.

2. In case of unsuccessful auctions, the seller must pay a fee equal to 50% of the rate provided for in Clause 1 of this Article.

**Article 213. Costs related to auction of goods**

Unless otherwise agreed between the auctioneer and the goods seller, those costs related to an auction of goods shall be determined as follows:

1. The goods seller shall bear the cost of transportation of the goods to the place already agreed upon, the cost of preservation of the goods in case the seller shall not deliver the auctioned goods to the auctioneer.

2. The auctioneer shall bear the cost of preservation of the delivered goods, the cost of public announcement, the cost of organizing the auction and other related costs .

#### **Article 214. Passing or risks over the auctioned goods**

The seller of goods shall bear all risks over the auctioned goods until they are handed over to the buyer. The buyer of goods shall bear all risks over the auctioned goods from the time he/she receives such goods.

#### **Article 215. Responsibilities of the auctioneer for the auctioned goods**

Within the time limit stipulated in Article 320 of this Law, the buyer shall be entitled to return the goods to the auctioneer and request compensation for any damage if the quality of the auctioned goods is not true to that already announced.

### **Section 3 Tender for goods or services**

#### **Article 216. Tender for goods and services**

1. Tender for goods or services is a commercial act whereby a trader (referred as tenderer) purchases goods or services by way of calling for a tender in order to select, among the traders participating in the tender (referred as bidders), a contractor who satisfies the requirements set forth by the tenderer and is selected to enter into and implement a contract (referred as the successful bidder).

2. The rules on tendering in this Law shall not be applied to tendering for public work and Government purchase in accordance with the relevant law.

#### **Article 217. Forms of tender**

1. Tender for goods/services includes public tender and limited tender.

Public tender is a form of tender in which the number of bidders is not limited by the tenderer.

Limited tender is a form of tender in which only a number of the most eligible bidders are invited by the tenderer to participate.

2. The form of tender shall be decided by the tenderer.

#### **Article 218. Methods of tender**

1. Methods of tender consist of tender with one sealed file and tender with two sealed files. The tenderer shall have the right to select the method of tender and must notify in advance to the bidders.

2. In the one-file method, the bidder shall submit its proposals on technical and financial matters in one single sealed file of documents in accordance with the requirements in tender documents and the opening of tender files shall be carried out once.

3. In the two-file method, the bidder shall submit its proposals on technical and financial matters in two separate sealed files of documents to be submitted simultaneously and the opening of tender files shall be carried out twice. The file on technical proposals shall be opened first.

#### **Article 219. Prequalification of bidders**

The tenderer may pre-qualify the bidders in order to select the bidders that are capable of satisfying the conditions set out by the tenderer.

#### **Article 220. Tender invitation documents**

1. Tender invitation documents shall comprise:

- (a) A tender invitation letter;
- (b) Requirements in relation to goods and services being the subject of the tender;
- (c) Methods of evaluation, comparison, classification and selection of bidders;
- (d) Other instructions relating to tendering.

2. The charges of documents provided to bidders shall be stipulated by the tenderer.

#### **Article 221. Tender invitation letter**

1. A tender invitation letter shall comprise the following main contents:

- a. Name and address of the tenderer;
- b. Brief description of the tender details;
- c. Time limit, location and procedures for receipt of tender invitation documents;
- d. Time limit, location and procedures for submission of tender documents;
- dd. Instructions for reading tender invitation documents.

2. The tenderer shall notify on the media if the tender is a public tender and shall notify to each eligible bidders if the tender is a limited tender.

#### **Article 222. Instructions to bidders**

The tenderer shall be responsible for providing instructions to bidders concerning the tendering conditions, procedures applied during the tendering process and for answering questions asked by bidders.

#### **Article 223. Management of tender documents**

The tenderer shall be responsible for managing tender documents.

#### **Article 224. Bid bonds**

1. A bid bond shall be made in form of a deposit, escrow deposit or a tender guarantee.

2. The tenderer may require that bidders make a deposit, escrow deposit or provide a tender guarantee when submitting their tender documents. The percentage of a deposit, escrow deposit or a tender guarantee shall be set out by the tenderer but not exceeding 3% of the total estimated value of goods and services put out for tender.

3. The tenderer shall stipulate the method and conditions of making the deposit, escrow deposit or providing tender guarantee. With regard to deposits and escrow deposits, they shall be returned to unsuccessful bidders within seven (7) days from the date of the publication of the tender results.

4. A bidder who fails to withdraw his tender documents after the expiry date of the tender submission time limit (or called the “tender closure”), who fails to sign a contract or refuses to implement the contract after being selected as the successful tenderer, shall not be entitled to a refund of his deposit or escrow deposit.

5. The guarantor of a bidder is obliged to provide such bidder with tender guarantee to the extent of the value of being equal to the deposit or escrow deposit.

#### **Article 225. Confidentiality of tendering information**

1. The tenderer shall keep confidential the tender documents.

2. Organizations and individuals involved in the organization of a tender and in the evaluation and selection of bidders are obliged to keep confidential all the relevant information.

#### **Article 226. Tender opening**

1. Tender opening is the opening of tender documents at the fixed time, if there is no time that has been fixed in advance, the time for opening tender shall be immediately after close of tender.

2. All tender documents submitted on time must be opened publicly by the tenderer. Bidders shall have the right to attend the tender opening.

3. Tender documents that were not submitted on time shall be rejected and returned to bidders unopened.

#### **Article 227. Consideration of tender documents upon tender opening**

The consideration of tender documents upon tender opening shall include:

1. Consideration of the validity of tender documents;

2. The tenderer may request bidders to clarify unclear contents of their tender documents. Any such request and clarification of tender documents must be in writing.

#### **Article 228. Minutes of tender opening**

1. Upon tender opening, the tenderer and bidders in attendance must sign the minutes of tender opening.

2. The minutes of tender opening must contain the following details:

- (a) Name of the tendered goods/services;
- (b) Date, time and location of the tender opening;
- (c) Names and addresses of the bidders;
- (d) The tender prices of all bidders;
- (dd) Written amendments or additions and other relevant details, if any.

#### **Article 229. Evaluation and comparison of tender documents**

1. Tender documents shall be evaluated and compared with respect to each criterion before an overall evaluation.

The criteria for evaluation shall be provided for by the tenderer.

2. The criteria stipulated in clause 1 of this article shall be evaluated in accordance with a score system or otherwise as determined prior to the tender opening.

#### **Article 230. Amendments of tender documents**

1. Bidders are not allowed to amend their tender documents after the tender opening.

2. During the process of evaluation and comparison of tender documents, the tenderers may request bidders to clarify issues related to their tender documents. All requests for clarification from the tenderer and replies from bidders must be made in writing.

3. Where the tenderer amends the contents of the tender invitation documents, he must send such amendments in writing to all bidders at least ten (10) days prior to the final deadline for tender submission so that the bidders have enough time to further adjust their tender documents.

#### **Article 231. Classification and selection of bidders**

1. On the basis of the evaluation of tender documents, the tenderer shall classify and select bidders in accordance with the selected method.

2. Where several bidders obtain equal scores and have equal criteria to succeed in the tender, the tenderer shall be entitled to select the [successful] bidder.

#### **Article 232. Notification of tender result and entry into contract**

1. Immediately after the tender outcome is known, the tenderer shall notify the bidder.

2. The contract shall conform to:

- a) The approved tender result;
- b) The requirements contained in the tender invitation document;
- c) The contents of the tender documents submitted.

### **Article 233. Performance bond**

1. The parties may agree that the successful bidder should make a deposit or escrow deposit or provide a guarantee to secure the performance of the contract. The value of the deposit or escrow deposit shall be stipulated by the tenderer but not exceeding 10% of the contract value.

2. The performance bond shall be effective up to the completion of contractual obligations by the successful bidder.

3. Except where otherwise agreed, the successful bidder shall, upon the liquidation of the contract, receive back the deposit or escrow deposit already made to secure the performance of the contract. The successful bidder shall not be entitled to receive back the deposit or escrow deposit made to secure the performance of the contract, if he refuses to implement that contract after having entered into it.

4. The successful tenderer shall have his bid bond refunded upon payment of the performance bond.

### **Article 234. Reorganization of tendering**

A tender shall be reorganized in the following cases:

1. The regulations on tendering are breached;
2. All bidders fail to satisfy the tendering requirements.

## **Section 4 Logistic services**

### **Article 235. Logistic services**

Logistic services is a commercial act whereby a trader organizes the implementation of one or more services including take-over of goods, transportation, warehouse, storage, completion of customs formalities, other paper procedures, customers' consultancy, packing, labelling, delivery and other services relating to goods in accordance with an agreement entered into between the trader and a customer in order to enjoy remuneration.

### **Article 236. Conditions for logistic service business**

1. A trader engaged in the business of providing logistic services must be an enterprise satisfying all the conditions required for logistics service business as provided for by law.

2. The Government shall provide for in detail logistic service business conditions.

### **Article 237. Rights and obligations of traders engaged in the business of providing logistic services**

1. Except where otherwise agreed, a trader engaged in the business of providing logistic services shall have the following rights and obligations:

- (a) To be entitled to a service remuneration and other reasonable income.

(b) To depart from the instructions of the customer during the performance of the contract for a legitimate reason and for the interests of the customer, provided that a prompt notice thereof must be served on the customer.

(c) To notify the customer immediately for further instructions of the cases where any event occurs and results in a failure to perform part or the whole of the instructions of the customer.

(d) To perform his/her/its obligations within a reasonable period of time if there is no agreement between the parties on the specific time limit for the performance of his/her/its obligations to the customer.

2. During the transportations of goods, a trader engaged in the business of supplying logistic services must comply with law and all applicable customs in the transportation sector.

#### **Article 238. Rights and obligations of customers**

Except where otherwise agreed by the parties, a customer shall have the following rights and obligations:

1. To guide, examine and supervise the performance of the contract;
2. To provide sufficient instructions to the trader engaged in the business of providing logistic services;
3. To provide sufficient, details and accurate information on the goods to the trader engaged in the business of providing sale and purchase supporting services;
4. To pack and mark the goods in accordance with the contract for sale and purchase of goods, except where the trader engaged in the business of providing logistic services undertakes to do such job;
5. To compensate for damage caused to, and pay any costs incurred by, the trader engaged in the business of providing logistic services if he/she/it has strictly complied with the instructions of the customer or if the customer is at fault;
6. To pay the trader engaged in the business of providing logistic services all amounts due.

#### **Article 239. Liability exemptions for traders engaged in the business of providing logistic services**

1. Except for those cases of liability exemptions referred to in Article 296 of this Law, a trader engaged in the business of providing logistic services shall not be liable for the loss to the goods occurred in the following cases:

- a) Where the customer or his/her/its authorized person is at fault;
- b) Where it has strictly complied with the instructions of the customer or the person authorized by the customer;
- c) Where the goods are defective;

d) Where the loss occurs as the result of cases of liability exemptions in accordance with the law and customs on transportations, as the case may be.

dd) Where the trader engaged in the business of providing sale and purchase supporting services does not receive any notice of complaint within fourteen days from the date of delivery of goods by him/her to the recipient.

e) Where, after being complained against, the trader engaged in the business of providing logistic services does not receive any written notice of any lawsuit being instituted at a court or arbitration within nine months from the date of delivery of goods.

2. A trader engaged in the business of providing sale and purchase supporting services shall not be liable for the loss of profits which the customer would have earned; for any delay in supply, or supply to a wrong address, of logistic services but not at his fault.

#### **Article 240. Limitations to liability**

1. Except where otherwise agreed by the parties, the liability of a trader engaged in the business of providing logistic services shall not exceed the limitation of liability in respect of loss to the goods.

2. The Government shall stipulate the detailed limitations on liability of traders engaged in logistic business in conformity to law and international customary practice.

3 Traders engaged in logistic business shall not be exempted of liability if the person whose rights are affected proves that the loss, damage or late delivery of the goods is caused by the trader's deliberate action or inaction with the intention to cause such loss, damage or late delivery or the trader's action or inaction is known to be risky with the obvious consequence of loss, damage, or lateness.

#### **Article 241. The right to withhold and dispose of goods.**

1. A trader engaged in the business of providing logistic services shall be entitled to withhold a certain quantity of goods and their related documents in order to claim payment of a due debt from the customer and shall notify the customer thereof in writing immediately.

2. If the customer fails to pay the debt after forty five (45) days from the date of the notice of the withholding of goods and their related documents, the trader engaged in the business of providing logistic services shall be entitled to dispose of those goods or documents in accordance with the provisions of law. Where there are indications of deterioration of goods, the right of the trader engaged in the business of providing logistic services to dispose of the goods arises immediately upon any debt by the customer becoming due.

3. Before disposing of goods, the trader engaged in the business of providing logistic services must immediately notify the customer of such disposition.

4. All costs relating to the withholding and disposal of such goods shall be borne by the customer.

5. A trader engaged in the business of providing logistic services shall be entitled to use the proceeds from the disposal of goods to pay for the debt owed to it by the customer and to pay for related expenses. If the proceeds of the disposal of the goods exceed the value of the due debts, the balance must be returned to the customer. From that point of time, the trader engaged in the business of providing logistic services shall no longer be responsible for the goods or documents already disposed of.

**Article 242. Obligations of the trader engaged in the business of providing logistic services during withholding goods**

Where the right to dispose of goods under Article 180 of this Law is not yet exercised, the party engaged in the business of providing logistic services which withholds goods shall have the following obligations:

1. To maintain, preserve goods
2. Not to be entitled to use goods without permission of the owner of goods.
3. To give back goods where the conditions for withholding and disposing of goods referred to in Article 180 of this Law no longer exist.
4. To pay damages to the party whose goods are being withheld if the goods are lost or damaged.

**Section 5**  
**Transiting goods through the territory of Vietnam;**  
**and goods transiting services**

**Article 243. Transit of goods**

Transit of goods means the transportation through the territory of Vietnam of goods owned by a foreign organization or individual including entrepot, portage, storage, batch separation or replacement of the mode of transport conducted during the period of transit.

**Article 244. Right to transit goods**

1. Any goods of foreign organizations and individuals are allowed to be in transit through the territory of Vietnam subject to completion of sufficient customs formalities at the import border gate and export border gate in accordance with the law, except for the following cases:

(a) Goods comprising of weapons of various types, ammunition and explosive materials shall not allowed for transit through the territory of Vietnam, unless it is permitted so by the Prime Minister.

(b) Goods banned from business, imports or exports shall only be allowed for transit through the territory of Vietnam subject to a permission of the Minister of Trade.

2. Goods in transit when being exported from, or a vehicle carrying goods in transit when leaving, the territory of Vietnam must be the goods or vehicle which have previously entered the territory of Vietnam.

3. A foreign organization or individual wishing to transit their goods through the territory of Vietnam must hire a Vietnamese trader engaged in the business of providing transiting services to do so.

4. If a foreign organization or individual carries out itself the transit of goods through the territory of Vietnam or hires a foreign trader to do so, it must comply with all international treaties to which Vietnam has signed or acceded and with Vietnamese laws concerning entry, exit, and transport and communications.

#### **Article 245. Routes for transit**

1. [The transportation of] goods-in-transit shall only be allowed at the international border gates and on specific routes already designated in the territory of Vietnam.

2. On the basis of international treaties to which Vietnam has signed or acceded , the Minister of Transport and Communication shall make specific provisions for those routes on which the transportation of goods in transit shall be allowed.

3. During the period of transit, any change of the route for transit must be approved by the Minister of Transport and Communication.

#### **Article 246. Transit by airways**

Transit of goods by airways shall be in accordance with international treaties on aviation to which Vietnam is a member.

#### **Article 247. Supervising goods in transit**

Goods in transit through the territory of Vietnam shall be put under the supervision of Vietnam's customs authorities during the whole period of their transit.

#### **Article 248. Periods of transit**

1. Goods shall only be permitted to be in transit through the territory of Vietnam for a maximum period of thirty (30) days as from the date of completion of customs formalities at the import border gate, except where those goods are stored in Vietnam or where there is any loss or defect occurring in relation to goods during the period of transit.

2. Where goods are under storage in Vietnam or when they are lost or defective during the period of transit which requires a longer period of storage in order to rectify such defects, the period of their transit may be extended according to the amount of time necessary for such rectification provided that an approval is obtained from the customs authority where transit formalities are completed; or from the Minister of Trade if goods are in transit under a permit of the Minister of Trade.

3. During storage or rectification referred to in clause 2 of this Article, goods and vehicles of transportation must still be put under supervision of Vietnam's customs authorities.

#### **Article 249. Consuming in the territory of Vietnam goods in transit**

1. Goods in transit shall only be permitted for consumption in the territory of Vietnam when there is a written approval from the Minister of Trade except for those cases referred to in clause 2 of this Article.

When goods in transit are being circulated in Vietnam, they must comply with the provisions of the Vietnamese law concerning importation of goods and must be liable for taxes, fees, charges and other relevant financial obligations as provided for by the Vietnamese law.

2. Goods in transit referred to in Articles 183.1(a) and 183.1(b) shall not be permitted for consumption in the territory of Vietnam.

**Article 250. Prohibited acts during transit**

1. To pay for transit remuneration by way of the goods in transit.
2. To illegally consume goods in transit or vehicles transporting goods in transit.

**Article 251. Goods transiting services**

Goods transiting services mean a commercial act whereby a trader carries out the transit of the goods under the ownership of a foreign organization or individual through the territory of Vietnam in order to enjoy remuneration.

**Article 252. Conditions for conducting the business in providing transiting services**

A trader engaged in the business of providing transiting services must be an enterprise with a business registration certificate for providing logistics services in accordance with Article 175 of this Law.

**Article 253. Contracts for providing transiting services**

A contract for providing transiting services must be made in writing or other form with the same validity.

**Article 254. Obligations of transiting service hirers**

Except where otherwise agreed, a transiting service hirer shall have the following obligations:

1. To deliver goods to the import border gate of Vietnam on time as agreed.
2. To provide the party supplying transiting services with information about the goods.
3. To provide sufficient document necessary for the party providing transiting services to complete procedures for import, transportation in the territory of Vietnam and export of goods.
4. To pay transit remuneration to the party providing transiting services.

**Article 255. Obligations of the transiting service provider**

Except where otherwise agreed, a transiting services provider shall have the following obligations:

1. To take over the goods at the import border gate at the agreed time.
2. To import procedures to import and export the goods in transit to and from the territory of Vietnam, respectively.
3. To be held liable for the goods during the transit in the territory of Vietnam.
4. To complete procedures as necessary to minimize loss and damages to the goods in transit during the time they are in transit in the territory of Vietnam
5. To pay various types of fees and charges and other financial obligations applicable to goods in transit in accordance with the Vietnamese law.
6. To coordinate with authorized State bodies of Vietnam in dealing with any matter arising in relation to the goods in transit.

## **Section 6 Survey Services**

### **Article 256. Survey services**

Survey services means a commercial act by which a trader carries out all necessary jobs to determine the actual status of goods, the results of the provision of services and other details at the request of a customer.

### **Article 257. Details of a survey**

A survey shall cover one or several aspects including the quantity, quality, specifications, packaging, value of goods, origin of goods, losses, safety, hygiene, quarantine, results of the provision of services, method of the provision of services and other aspects as may be required by the customer.

### **Article 258. Traders engaged in the business of providing survey services**

Only those traders satisfying all the conditions stipulated by law and having business registration certificates for provision of goods survey services issued by an authorized State body are permitted to provide survey services and issue survey certificates.

### **Article 259. Conditions for the business of providing survey services**

A trader engaged in the business of providing survey services must meet the following requirements:

1. To be a duly established enterprise.
2. To have surveyors with qualifications required by Article 261 of this Law;.
3. To be able to carry out survey procedures any methods applicable to the surveying of goods or services in accordance with law, international standards or international practice in the surveying field.

### **Article 260. Business scope of providing survey services**

Traders engaged in the business of providing survey services shall only be entitled to provide survey services in those areas of surveys for which they have met all the required conditions as referred to in clauses 2 and 3 of Article 198 of this Law.

#### **Article 261. Criteria of surveyors**

1. A surveyor must meet one of the following criteria:

a) Have university or college level degrees with a major appropriate with the requirements and area of survey.

b) Have at least 3 years' experience working in the area relating to goods or services surveyed.

c) Have appropriate professional certificates as so required by a specialized law.

2. The director of an enterprise engaged in the business of providing survey services shall, on the basis of the criteria referred to in clause 1 of this Article, recognize surveyors and be responsible before the law for his decisions.

#### **Article 262. Survey certificates**

1. A survey certificate means a document determining the actual status of goods and services in terms of the survey aspects required by the customer.

2. Survey certificates shall be signed by the competent representative of the enterprise engaged in the business of providing survey services and by the surveyor with his/her full name stated; and shall be sealed with the professional stamp already registered with a competent body.

3. Survey certificates shall only be valid for those details already surveyed.

4. Survey certificates shall bind upon the enterprise engaged in the business of providing survey services as to the accuracy of the survey conclusions and statements set out therein.

#### **Article 263. The legal status of survey certificates with respect to the party requesting surveys**

The survey certificate shall be binding on the party requesting the survey if that party cannot prove that the survey results are not objective, untruthful or [the survey] was carried out with technical mistakes.

#### **Article 264. Legal status of survey certificates with respect to parties to contracts**

1. If the parties to a contract agree on the use of survey certificates issued by a particular trader engaging in the surveying business, such survey certificates shall be binding on all the parties if it cannot be proved that the survey results are not objective, dishonest or there has been a technical mistake.

2. If the parties to a contract do not agree on the use of survey certificates issued by a particular trader engaging in the surveying business, the survey certificate shall only be

binding on the party requesting the survey in accordance with Article 263 of this Law. The other party to the contract shall be able to request a re-survey.

3. If the certificate of the re-survey is not consistent with the original survey certificate:

a) If the trader issuing the original survey certificate accepts the survey certificate issued for the re-survey, the certificate of the re-survey shall be binding on all parties;

b) If the trader issuing the original survey certificate does not accept the survey certificate issued for the re-survey, the parties shall agree to choose another trader in the survey business to re-survey for the second time. The result of the second re-survey shall be binding on all the parties.

**Article 265. Obligations of traders engaged in the business of providing survey services**

1. To survey goods independently, objectively, promptly and accurately under the method and process registered;

2. To issue survey certificates;

3. To be entitled to survey fees as agreed with the customer;

4. To pay fines or damages in accordance with Article 268 of this Law.

**Article 266. Rights of customers**

Unless otherwise agreed, the customer shall have the following rights:

1. To request the trader engaged in the business of providing survey services to carry out the survey in accordance with the agreement;

2. To request re-survey where there is a legitimate reason to believe that the trader engaged in the business of providing survey services fails to properly perform the customer's instructions or carries out the survey in an untruthful and subjective manner.

5. To claim fines or damages in accordance with Article 268 of this Law.

**Article 267. Obligations of customers**

Unless otherwise agreed, the customer shall have the following obligations:

1. To promptly, sufficiently and accurately provide all documents to the trader engaged in the business of providing survey services upon request;

2. To pay survey fees as agreed.

**Article 268. Fines and damages for incorrect survey conclusions**

1. If a trader engaged in the business of providing survey services issues a survey certificate with inaccurate conclusions due to his/her unintentional fault, he/she/it must pay the customer a fine being tenfold of the payable survey fee .

2. If trader engaged in the business of providing survey services issues an survey certificate with inaccurate conclusions due to his/her intentional fault, the trader engaged in the business of providing survey services must pay damages to the customers.

3. The customer has the burden of proof in respect of the inaccurate survey conclusions or in respect of the survey not being carried out in an accurate and objective manner.

#### **Article 269. Authorized surveys**

Where a foreign trader engaged in the business of providing survey services is hired to conduct a survey but such foreign trader has not been permitted to operate in Vietnam, such foreign trader may authorize a trader engaged in the business of providing survey services which has been permitted to operate in Vietnam to carry out the survey but must remain responsible for the final survey conclusions.

#### **Article 270. Surveys at the request of State agencies**

1. A trader engaged in the business of providing survey services which satisfies all the conditions and standards for surveys shall be responsible for conducting a survey at the request of a State agency.

2. The State agency that requests such survey to be conducted must pay the survey assessment fee to the trader engaged in the business of providing survey services in accordance with the agreement between the two parties on the basis the market price.

### **Section 7 Leasing goods**

#### **Article 271. Leases of goods**

Lease of goods means a commercial act by which one party transfers the right to possess and use goods (hereinafter called lessor) to the other (hereinafter called lessee) for a certain period of time to enjoy rentals.

#### **Article 272. Rights and obligations of lessors**

Unless where otherwise agreed, a lessor shall have the following rights and obligations:

1. To deliver the leased goods to the lessee as agreed in the lease contract;
2. To ensure that the right to possess and use the leased goods is free from disputes with a third party during the term of the term of the lease.
3. To ensure that the leased goods shall be suitable for the using purposes as agreed by the parties.
4. To maintain and repair the leased goods within a reasonable time. Where the maintenance and repair of the leased goods is detrimental to the use of such goods by the lessee, the lessor shall be liable to reduce the rental or prolong the term of the lease corresponding to the maintenance and repair period;

5. To receive the rental as agreed or in accordance with the law;
6. To take back the leased goods upon the expiration of the lease.

**Article 273. Rights and obligations of lessees**

Unless where otherwise agreed, a lessee shall have the following rights and obligations:

1. To possess and use the leased goods as agreed in the lease contract and in accordance with the law. Where there is no specific agreement on the manner of using the leased goods, such leased goods shall be used in a manner appropriate to the nature of the goods;

2. To keep and maintain the leased goods during the term of the lease and return the leased goods to the lessor upon the expiration of the lease;

3. To request the lessor to maintain and repair the goods leased. If the lessor fails to perform such obligation within a reasonable time, the lessee may conduct the maintenance and repair of lease goods by itself and the lessor shall bear all the reasonable costs for such maintenance, repair;

4. To pay the rental as agreed or in accordance with the law;

5. Not to sell or sub-lease the leased goods.

**Article 274. Repair, alteration of the original status of leased goods**

1. The lessee shall not be entitled to repair or alter the original status of the leased goods if not approved by the lessor.

2. Where the lessee conducts the repair or alters the original status of the leased goods without the lessor's approval, the lessor shall be entitled to request the lessee to reinstate the original status of the leased goods or claim damages.

**Article 275. Responsibilities for risks during the term of the lease**

1. Except where otherwise agreed, the lessor shall bear risks in respect of the leased goods during the term of the lease if the lessee is not at fault in causing such risks.

2. In any cases referred to in clause 1 of this Article, the lessor shall be responsible for repairing the leased goods within a reasonable time so as to ensure the using purposes for the lessee.

**Article 276. Transfer of risks in relation to the leased goods**

If there an agreement between the parties on the transfer of risk to the lessee but the time of transfer is not determined, that point of time of transfer shall be determined as follows:

1. If the lease contract involves the transportation of goods:

a) if the contract does not require that the leased goods are delivered at a particular destination, the risk shall be passed to the lessee when the leased goods are delivered to the first carrier;

b) if the contract does require that the leased goods are delivered at a particular destination, the risk shall be passed to the lessee when the lessee or his nominee takes over the goods at that destination.

2. If the leased goods are taken over by a bailee for delivery who is not a carrier, the risk shall be passed to the lessee on acknowledgment by the bailee of the lessee's right to possess the leased goods.

3. In other cases not referred to in clause 1 or 2 of this Article, the risk shall be passed to the lessee on the lessee's receipt of the leased goods.

#### **Article 277. Leased goods not conforming to the contract**

Where there is no specific agreement, goods shall be deemed as not conforming to the contract in one of the following cases:

1. Not suitable for common using purpose of other goods of the same kind;

2. Not suitable for any specific purposes which the lessee has informed the lessor or the lessor ought to know at the time of entering into the contract;

c) Not qualified as the sample or model that the lessor gave the lessee.

#### **Article 278. Rejection to receive goods**

1. The lessor shall give the lessee a reasonable time after the receipt of goods for inspecting the goods.

2. The lessee may reject to receive the goods in the following cases:

(a) The lessee is not given a reasonable period of time by the lessor for inspecting the goods.

(b) After the inspection, the lessee discovers that the goods do not conform to the contract.

#### **Article 279. Rectification, replacement of the leased goods not conforming to the contract**

1. Where the lessee rejects to receive the leased goods because of their non-conformity with the contract, if the time limit for the delivery of goods has not yet expired, the lessor may promptly notify the lessee of the lessor's rectification or replacement of goods and then perform such rectification or replacement of goods within the residue of the time limit.

2. When the lessor performs the rectification referred to in Clause 1 of this Article and causes adverse effects or unreasonable expenses to the lessee, the lessee shall be entitled to require the lessor to address the adverse effects or compensate for such unreasonably incurred expenses.

### **Article 280. Acceptance of the leased goods**

1. The lessee shall be deemed as having accepted the leased goods after he/she has been given a reasonable opportunity to check the leased goods and carried out one of the following acts:

- a. Not to reject the leased goods;
- b. Recognize the conformity of the leased goods;
- c. Accept to receive the goods despite of their non-conformity.

2. If the lessee discovers the non-conformity to the contract of the leased goods after having accepted the goods and such non-conformity would have been identified through a reasonable check before the acceptance, the lessee shall not be entitled to allege such non-conformity as a reason for returning the goods.

### **Article 281. Withdrawal of acceptance**

1. A lessee may withdraw its acceptance of the whole or part of the leased goods if the non-conformity of those leased goods may result in the lessee being unable to reach the objective of the signing of the contract and within one of the following cases:

a) if the lessor does not carry out a reasonable rectification in accordance with Article 279 of this Law; or

b) if the lessee does not discover the non-conformity of the goods due to the lessor's assurances.

2. Any withdrawal of acceptance must be carried out within a reasonable time but not exceeding 3 months as from the date the lessee accepts the goods.

### **Article 282. Responsibilities for defects of the leased goods**

Except in cases where otherwise agreed upon:

1. During the term of the lease, the lessor shall be responsible for any defects of the leased goods already existing at the time of the delivery of the goods to the lessee, except in the cases referred to in clauses 2 and 3 of this Article.

2. The lessor shall not be responsible for any defects of the leased goods already existing at the time of entering into the contract which the lessee has already known or ought to know.

3. The lessor shall not be responsible for any defects of the leased goods which are discovered after the lessee has accepted the goods and which would have been identified by the lessee through a reasonable check before accepting the goods.

4. The lessor shall be responsible for any defects of the leased goods arising after the time of passing of the risk due to a lessor's breach of his/her committed obligations.

### **Article 283. Sub-lease**

1. The lessee shall only be entitled to sub-lease the goods subject to the lessor's consent. The lessee shall still be responsible for the sub-leased goods, except where otherwise agreed with the lessor.

2. Where the lessee sub-leases the leased goods without the lessor's approval, the lessor shall be entitled to cancel the lease contract. The sub-lessee shall be responsible for immediately returning the goods to the lessor.

#### **Article 284. Benefits arising during the term of the lease**

Except where otherwise agreed, every benefit arising from the leased goods during the term of the lease shall belong to the lessee.

#### **Article 285. Changes in ownership right during the term of the lease**

Any changes in ownership right with respect to the leased goods shall not affect the validity of the lease contract.

### **Section 8 Franchise of commercial rights**

#### **Article 286. Franchise of commercial rights**

Franchise of commercial rights means a commercial activity by which the franchisor agrees and require the franchisee to sell goods or provide services in accordance with the following terms:

1. The sale of goods or provision of services shall be in the system designated by the franchisor and relating to the use the franchisor's trademark, trade name, business slogan, trade logo, and/or advertisements .

2. The franchisor shall be entitled to to supervise and assist the franchisee in the operation of the business.

#### **franchisorfranchiseefranchisorfranchiseeArticle 287. Contract for franchise of commercial rights**

A contract for franchise of commercial rights must be made in writing or other legal form with similar validity .

#### **Article 288. Rights of franchisors**

Except otherwise agreed, a franchisor has the following rights :

1. To be entitled to a franchise sum.

2. To organize advertising of the goods and services sold or provided by the franchised trader.

3. To conduct periodical or extraordinary inspections of the site of sale of goods or provision of services of the franchised trader.

### **Article 289. Obligations of franchisors**

Except otherwise agreed, a franchisor has the following obligations:

1. To provide to the franchisee all the materials guiding the system in writing;
2. To train, and provide technical assistance to, the trader which takes the concession of the rights so that the party operates in accordance with the system.
3. To design and arrange the site of sale of goods or provision of services at the expense of the franchised trader.
4. To ensure the intellectual property rights of those subjects of IPR in the system.
5. To equally treat all the franchised traders in the same system.

### **Article 290. Rights of franchisees**

Except otherwise agreed, a franchisee has the following rights :

1. To request the franchisor to provide all necessary technical assistance related to the franchised rights.
2. To request the franchising trader to equally treat all the franchised traders in the same system.

### **Article 291. Obligations of franchisees**

Except otherwise agreed, a franchisee has the following obligations :

1. To pay the franchise sum and other sums in accordance with the contract;.
2. To make appropriate investments in the facilities and to arrange both financial and human resources sufficient to take over the rights and professional know-hows to be franchised by the franchisor;
3. To allow inspection and supervision and guidance by the franchisor. To comply with all the franchisor's requirements as to the design and arrangement of the site of sale of goods or provision of services.
4. To keep confidential the franchised professional know-how during and after the period the contract is in effect.
5. Stop the use of the franchisor's trademark, trade name, business slogan, trade logo, and other intellectual property rights or the system of the franchisor when the contract expires or is terminated.
6. To operate in accordance with the system of franchised rights.
7. Not to re-franchise without the consent of the franchisor.

### **Article 292. Re-franchise to a third party**

1. The franchisee shall have the right to re-franchise to a third party (to be called the re-franchisee) if consented to by the franchisor.

2. The re-franchisee shall have the rights and obligations provided in Articles 290 and 291 of this Law.

#### **Article 293. Registration of franchises**

1. Before franchising, the intended franchisor shall register with the Ministry of Trade.

2. The Government shall make detailed provisions for conditions to exercise the right to conduct business by franchise and for the order and procedures for registering franchises.

### **Chapter VII**

## **REMEDIES IN COMMERCE AND DISPUTE RESOLUTION IN COMMERCE**

### **Section 1**

#### **Remedies in commerce**

#### **Article 294. Types of remedies in commerce**

1. Upon a breach of a contract by a party as referred to in Article 277 of this Law, on the basis of the seriousness of the breach and specific provisions of this Law, the aggrieved party is entitled to impose [one of] the following remedies :

- a. Coercion of proper implementation of contracts;
- b. Fine penalties;
- c. Damages;
- d. Temporary cessation of implementation of contracts;
- dd. Suspension of implementation of contracts;
- e. Cancellation of contracts.

2. The parties may agree to apply other types of remedies other than those referred to in clause 1 of this Article provided that such remedies are not contrary to the fundamental principles of the Vietnamese laws.

#### **Article 295. Imposing remedies in commerce upon insubstantial breaches**

Unless otherwise agreed, the aggrieved party is not entitled to impose temporary cessation of implementation of a contract, suspension of implementation of a contract or cancellation of a contract upon an insubstantial breach.

#### **Article 296. Immunities from liability for acts of breach**

1. A party that breaches the contract is entitled to immunity from liability in the following cases:

- a. Upon a case of liability immunity as agreed by the parties in their contract;
- b. Upon an event of force majeure;
- c. Upon a breach by one party being completely due to the other party's mistake;
- d. Upon a breach by one party due to the necessity to implement the decisions of an authorized State management agency that it was impossible for the parties to know at the time of entering into the contract.

2. An event of force majeure means an objective event which accidentally happens after a contract has been entered into and which cannot be foreseen, expected, or repairable by the parties although all the most possible measures have been taken.

3. The party that breaches the contract shall bear the burden of proof in respect of their cases of liability immunity.

#### **Article 297. Notification and certification of cases of liability immunity**

1. The breaching party must promptly notify the other party in writing in respect of cases of liability immunity and possible consequences thereof.

2. When a case of liability immunity no longer exists, the breaching party must promptly notify it to the other party, and must pay compensation for damages if it fails to notify or not promptly notifies the other party.

3. Any cases of liability immunity referred to in Articles 296.1(b) and 296.1(d) of this Law must be certified by the authorized agency or organization.

#### **Article 298. Extending the time limit for implementing contracts, or refusing to implement contracts upon events of force majeure**

1. Upon an event of force majeure, the parties may agree to extend the time limit for performing their respective contractual obligations. If the parties do not agree or cannot agree upon such extension, the time limit for performing contractual obligations shall be extended for another period of time being equal to the length of such event of force majeure plus a reasonable amount of time necessary for recovering consequences of such event, but not exceeding the following periods of time:

(a) five (5) months in respect of goods or services for which the agreed time limit for their respective delivery or provision does not exceed 12 months as from the date the contract is entered into;

(b) eight (8) months in respect of goods or services for which the agreed time limit for their respective delivery or provision may exceed 12 months as from the date the contract is entered into.

2. Beyond the above time limit, the parties may refuse to implement such contract and neither party is entitled to ask the other party for compensation.

3. Where a party refuses to implement a contract, it must, within no more than ten (10) days as from the expiry date of the time limits referred to in clause 1 of this Article, serve a prior notice thereof on the other party before that other party begins to perform its contractual obligations.

4. The extension of the time limit for performing contractual obligations referred to in clause 1 of this Article does not apply to contracts for sale and purchase of goods or contracts for provision of services with fixed delivery time limit.

#### **Article 299. Coercing proper implementation of contracts**

1. Coercion of proper implementation of a contract means the aggrieved party requests the breaching party to properly implement the contract or takes other measures to cause the contract implemented and the breaching party must bear any costs incurred.

2. If the breaching party delivers goods insufficiently or provides services contrary to the contractual terms and conditions, it must rectify by delivering goods in full or providing services in accordance with the contractual terms and conditions. If the breaching party delivers goods or provides services of bad quality, it must endeavor to rectify the defect of the goods or error of the services or to deliver other goods in substitution or provide proper services in accordance with the contractual terms and conditions. The breaching party cannot use money or goods/services of another category for substitution unless so agreed by the aggrieved party.

3. If the breaching party fails to implement clause 2 of this Article, the aggrieved party may buy goods or services of the correct type as stipulated in the contract from another seller or provider for substitution and the difference and relevant costs if any shall be borne by the breaching party.

4. If the aggrieved party rectifies the defect of the goods or error of the services by itself, the breaching party must pay for the actual and reasonable costs.

#### **Article 300. Extending the time limit for performance of obligations**

In the case of coercion of proper implementation of a contract, the aggrieved party may extend the time limit for a reasonable period for the breaching party to perform its obligations.

#### **Article 301. Relationship between coercion of proper implementation of contracts and other types of remedies**

1. Unless otherwise agreed, during the period of coercion of proper implementation of a contract, the aggrieved party cannot apply other types of remedies except for damages and fine penalties.

2. If the breaching party fails to comply with the remedy of coercion of proper implementation of a contract within the time limit fixed by the aggrieved party, the aggrieved party may apply other remedies to protect its legitimate rights.

#### **Article 302. Fine penalty for breaches**

A fine penalty means the aggrieved party requiring the breaching party to pay a certain sum of money for its breach of a contract, if so agreed in the contract, except for cases of liability immunity referred to in Article 296 of this Law.

#### **Article 303. Penalty rates**

The rate of penalty for a single breach of the contractual obligations or the aggregate of all rates of several breaches of the contractual obligations shall be agreed upon by the parties in their contract but not exceeding eight per cent (8%) of the value of the portion of the contract that has been breached.

#### **Article 304. Damages**

1. Damages mean the breaching party making compensation for the loss caused to the aggrieved party by a breach of the contract.

2. The value of damages comprises the value of the actual and direct loss suffered by the aggrieved party due to the breach of the breaching party and the gains that the aggrieved party would have earned in the absence of such breach.

#### **Article 305. Bases giving rise to the liability for damages**

Except for cases of liability immunity stipulated in Article 296 of this Law, the liability for damages shall arise on the following bases:

1. There exists an act of breaching the contract;
2. There occurs an actual loss;
3. The act of breaching the contract is the direct cause of the loss;

#### **Article 306. Burden of proof of losses**

The party claiming damages shall bear the burden of proof of the loss and the loss amount directly attributed to the act of breach.

#### **Article 307. Obligations to mitigate losses**

The party claiming damages must take appropriate measures to mitigate the losses caused by a breach of the contract including the loss of gains that would have been benefited. If the party claiming damages fails to do so, the breaching party may require to reduce the value of damages to the extent of the loss that would have been mitigated.

#### **Article 308. Right to claim interest on late payments**

If the breaching party delays in making payment for goods or payment of the service charges and any other reasonable fees, the aggrieved party may ask for an interest on such delayed payment at the average interest rate applicable to overdue debts in the market at the time of such payment for the delayed period, except where otherwise agreed by the parties or otherwise provided for by the specialized law.

#### **Article 309. Relationship between penalties and damages**

1. If the parties do not agree upon penalties, the aggrieved party shall only be entitled to claim damages.

2. If the parties do agree upon fine penalties, the aggrieved party shall be entitled to apply both remedies of penalties and damages for the same act of breach.

#### **Article 310. Temporary cessation of implementation of contracts**

Temporary cessation of implementation of a contract means a party temporarily ceases the performance of its contractual obligations in one of the following cases, except for cases of liability immunity stipulated in Article 296 of this Law:

1. Upon occurrence of an act of breach which serves as a condition for temporary cessation of implementation of the contract as agreed upon by the parties;
2. Upon a substantial breach of the contractual obligations by a party.

**Article 311. Legal consequences of the temporary cessation of implementation of contracts**

1. A contract which is temporarily ceased is still in its full force and effect.
2. The aggrieved party is entitled to claim damages in accordance with this Law.

**Article 312. Suspension of implementation of contracts**

Suspension of implementation of a contract means a party terminates the performance of its contractual obligations in one of the following cases, except for cases of liability immunity stipulated in Article 296 of this Law:

1. Upon occurrence of an act of breach which serves as a condition for suspension of implementation of the contract as agreed upon by the parties;
2. Upon a substantial breach of the contractual obligations by a party.

**Article 313. Legal consequences of the suspension of implementation of contracts**

1. When a contract is suspended, it is regarded as being terminated from the date of receipt by one party of the suspension notice. The parties shall no longer be required to perform their contractual obligations. A party that has performed its contractual obligations may ask the other party for payment or for performing its counter-obligations.

2. The aggrieved party may claim damages in accordance with this Law.

**Article 314. Cancellation of contracts**

1. Cancellation of a contract includes the cancellation of part or the entire of a contract.

2. Cancellation of the entire contract means the complete annulment of the performance of the entire contractual obligations for the whole contract.

3. Cancellation of part of the contract means the annulment of the performance of contractual obligation with respect to a particular delivery of goods or provision of services in cases the contract provides for delivery of goods or provision of services on a portioned basis. Other deliveries of goods or provisions of services in the contract shall still be valid.

4. Except for cases of liability immunity stipulated in Article 280 of this Law, the remedy of cancellation of contracts shall be applied in the following cases:

a. Upon occurrence of an act of breach which serves as the condition for cancellation of the contract as agreed upon by the parties;

b. Upon a substantial breach of the contractual obligations by a party.

**Article 315. Cancellation of contracts in case of delivery of goods or provision of services on a portioned basis**

1. Where the parties to a contract agree upon a delivery of goods or provision of services on a portioned basis, if one party fails to perform any of its obligations in a single delivery of goods or provision of services that constitutes a substantial breach in that delivery of goods or provision of services, the other party shall only have the right to declare the cancellation of contract as it applies to that single delivery.

2. Where a party fails to perform its obligation in a single delivery of goods or provision of services which may serve as the basis for the other party to conclude that a substantial breach of the contract shall happen in any subsequent deliveries of goods or provisions of services, the aggrieved party shall have the right to declare the cancellation of the contract as it applies to consequent deliveries of goods or provisions of services in the future, provided that this right must be exercised by that [aggrieved] party within a reasonable length of time.

3. Where a party has declared the cancellation of a contract as it applies to a single delivery of goods or provision of services, that party shall still have the right to declare the cancellation of contract as it applies to a delivery of goods or provision of services that has been done or will be done in the future if the interrelation between several deliveries of goods results in the delivered goods or provided services being unable to be used for their proper purpose as originally intended by the parties at the time they enter into the contract.

**Article 316. Legal consequences of the cancellation of contracts**

1. Except for the cases as stipulated in Article 315 of this Law, after a contract is cancelled, it is regarded as being invalid from the time it is entered into, the parties are not required to continue performing their contractual obligations, except for the provisions of the contract on the post-cancellation rights and obligations and on dispute resolution procedures.

2. Either party is entitled to claim the gains generated from such party performing its contractual obligations. If both parties have to perform refund obligations, such obligations must be performed concurrently. If it is impossible to refund the benefits that one party has gained, it may refund in cash.

3. The aggrieved party is entitled to claim damages in accordance with this Law.

**Article 317. Notifying the temporary cessation of implementation of contracts, suspension of implementation of contracts or cancellation of contracts**

A party that temporarily ceases to implement a contract, suspends the implementation of a contract or cancels a contract must immediately notify the other party of such temporary cessation, suspension or cancellation. In case of a failure to do so which results in a loss to the other party, the party that temporarily ceases to implement the contract, suspends the implementation of the contract or cancels the contract must pay damages.

**Article 318. Right to claim damages when other remedies have been applied**

The right of a party to claim damages for a breach of the contract by the other party shall be preserved when other remedies have been applied.

## **Section 2 Resolution of disputes in commerce**

### **Article 319. Forms of dispute resolution**

Forms of resolution of disputes in commerce include:

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

Procedures for dispute resolution in commerce by Arbitration or by Courts shall be those applicable by Arbitration or Courts in accordance with the provisions of law.

### **Article 320. Time limits for complaints**

1. The time limit for complaints means a period of time during which the aggrieved party has the right to complain against the breaching party. If the aggrieved party does not lodge a complaint within the prescribed time limit, it shall lose its right to complain and the right to initiate legal action at the competent arbitration body or court.

2. The time limit for complaints shall be agreed upon by the parties. In the absence of such agreement, the time limit for complaints shall be set forth as follows:

(a) Three months from the date of delivery of goods with respect to a complaint relating to the quantity of goods;

(b) Six months from the date of delivery of goods with respect to complaints relating to quality of goods. If the goods are under a warranty, the time limit for complaints shall be three months from the expiry date of the warranty period;

(c) Nine months from the date on which the breaching party fulfils its contractual obligations; or in the case of a warranty, from the expiry date of the warranty period, with respect to complaints in other cases.

### **Article 321. Statute of limitations period for initiating legal actions**

1. A statute of limitations period applicable to all disputes in commerce shall be two (2) years from the point of time when the right to complain arises.

2. The time when the right to complain arises is when the breach is discovered which is within the time limit for complaint provided in Article 320 of this Law.

## **Chapter VIII DEALING WITH BREACHES OF COMMERCIAL LEGISLATION**

### **Article 322. Acts of breach of commercial legislation**

1. Acts of breach of commercial legislation comprise:

(a) Breaches of provisions concerning business registration; business licenses of traders; and establishment and operation of representative offices and branches of Vietnamese and foreign traders;

(b) Breaches of provisions concerning goods and services domestically traded in and goods/services exported, imported, temporarily imported for re-export, temporarily exported for re-import, transshipped or in transit;

(c) Breaches of provisions concerning invoices, documents and books of account;

(d) Breaches of provisions on prices of goods and services;

(dd) Breaches of provisions on labeling domestically circulated goods and exports and imports;

(e) Smuggling, conducting business in goods illegally imported, counterfeit goods or raw material for producing counterfeit goods, conducting business illegally;

(g) Breaches of provisions on quality of domestically circulated goods and services and imports and exports;

(h) Deceiving and defrauding customers in the process of sales of goods or provision of services;

(i) Breaches of provisions on consumer protection;

(k) Breaches of provisions on intellectual property rights with respect to domestically circulated goods and services; and imports and exports;

(l) Breaches of the provisions concerning origin of goods;

(m) Other acts of breach during commercial activities in accordance with the law.

2. The Government shall make detailed provisions for acts of breach of commercial legislation referred to in clause 1 of this Article.

### **Article 323. Forms of dealing with breaches of commercial legislation**

1. Depending on the nature, seriousness and consequences of the breach, organizations, individuals shall be dealt with in one of the following manners:

(a) Administrative penalty in accordance with the legislation on dealing with administrative offences;

(b) Where the act of breach comprises sufficient factors to constitute a crime, prosecution for criminal liability in accordance with law.

2. Where the act of breach causes harm to the interests of the State or of bodies, organizations or individuals, compensation must be paid in accordance with law.

### **Article 324. Dealing with administrative offences during commercial activities**

The Government shall provide for detailed provisions concerning the power to deal with administrative offences during commercial activities.

**Article 325. Dealing with breaches of State employees and officials during their administration of commercial activities**

State employees and officials who fail to fulfill their responsibilities, abuse their powers, cause trouble, hinder lawful commercial activities or commit other breaches shall be, depending on the nature and seriousness of the breach, disciplined or subject to prosecution for criminal liability. Where damage is caused, they must pay compensation in accordance with law.

**Chapter VII  
IMPLEMENTING PROVISIONS**

**Article 326. Effectiveness**

This Law shall be effective as of ... 2005 and replaces the Commercial Law dated 10 May 1997.

**Article 327. Implementing guidelines**

The Government shall make detailed provisions for implementing this Law.

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*This Law was adopted by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its [ ] session on [ ], 2005.*

**THE CHAIRMAN OF THE NATIONAL ASSEMBLY**

**NGUYEN VAN AN**