

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 36-2005-QH11

COMMERCIAL LAW

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

This Law provides for commercial activities.

CHAPTER 1

General Provisions

SECTION 1

Governing Scope and Applicable Entities

Article 1 *Governing scope*

1. Commercial activities conducted within the territory of the Socialist Republic of Vietnam.
2. Commercial activities conducted outside the territory of the Socialist Republic of Vietnam in cases where the parties agree to select application of this Law or of foreign law or an international treaty of which the Socialist Republic of Vietnam is a member and which stipulates application of this Law.
3. Activities not for profit-making purposes of one party to a transaction with a business entity in the territory of the Socialist Republic of Vietnam in cases where application of this Law is selected by the party conducting such activities not for profit-making purposes.

Article 2 *Applicable entities*

1. Business entities conducting commercial activities as stipulated in article 1 of this Law.
2. Other organizations and individuals conducting acts relating to commerce.

3. Based on the principles of this Law, the Government shall provide specific regulations on the applicability of this Law to individuals who conduct commercial activities independently and regularly but who are not required to have business registration.

Article 3 *Interpretation of terms*

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

1. *Commercial activity* means activity for profit-making purposes, comprising purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes.
2. *Goods* comprises:
 - (a) All types of moveable assets, including moveable assets to be formed in the future;
 - (b) Objects attached to land.
3. *Custom in commercial activities* means rules of conduct with clear contents which have been established between parties and repeated many times over a long period, and which are taken for granted and recognized by the parties as fixing their rights and obligations in their commercial activities.
4. *Commercial practice* means a custom which is widely recognized in commercial activities in any one area, region or commercial sector and which has clear contents which are recognized by the parties as fixing their rights and obligations in commercial activities.
5. *Data message* means information created, sent, received and saved by electronic means.
6. *Representative office of a foreign business entity in Vietnam* means a subsidiary unit of a foreign business entity which is established in accordance with the law of Vietnam in order to survey markets and to undertake a number of commercial enhancement activities permitted by the law of Vietnam.
7. *Branch of a foreign business entity in Vietnam* means a subsidiary unit of a foreign business entity which is established and conducts commercial activities in Vietnam in accordance with the law of Vietnam or an international treaty of which the Socialist Republic of Vietnam is a member.
8. *Purchase and sale of goods* means a commercial activity whereby the seller is obliged to deliver goods, to transfer ownership in the goods to the

purchaser and to receive payment; and whereby the purchaser is obliged to pay the seller and to receive delivery of and ownership in the goods in accordance with an agreement.

9. *Provision of services* means a commercial activity whereby one party (hereinafter referred to as the *service provider*) is obliged to provide services to another party and receives payment; and whereby the party using the services (hereinafter referred to as the *client*) is obliged to pay the service provider and to use the services in accordance with an agreement.
10. *Commercial enhancement* means activities of promoting and seeking opportunities for the purchase and sale of goods and for the provision of services, comprising promotional activities, commercial advertising, displays and introductions of goods and services, and trade fairs and exhibitions.
11. *Commercial intermediary activities* mean activities conducted by business entities in order to carry out commercial transactions for one or more specified traders, and comprises representation of business entities, commercial brokerage, purchase and sale of goods by authorized dealers, and commercial agency.
12. *Breach of contract* means one party fails to perform, or does not perform fully, an obligation in accordance with an agreement of the parties or in accordance with this Law.
13. *Fundamental breach* means breach of contract by one party causing loss to the other party to the extent that such other party is not able to achieve its objective of entering into the contract.
14. *Origin of goods* means the country or territory where goods were entirely manufactured or, in the case of goods for which a number of countries or territories participated in the manufacturing process, where the final, fundamental processing stage was implemented.
15. *Forms with validity equivalent to that of written document* comprises telegraphs, telexes, facsimiles, data messages and other forms in accordance with law.

Article 4 *Applicability of Commercial Law and other relevant laws*

1. Commercial activities must comply with the *Commercial Law* and other relevant laws.
2. In the case of specialized commercial activities provided for in other laws, the provisions of such other laws shall apply.

3. The provisions of the *Civil Code* shall apply to a commercial activity which is not governed by the provisions in the *Commercial Law* or by provisions in other laws.

Article 5 *Applicability of international treaties, foreign law and international commercial practice*

1. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions for the application of foreign law, international commercial practice or other provisions which are inconsistent with the provisions of this Law, the provisions of such international treaty shall apply.
2. Parties to a commercial transaction with a foreign element may agree to apply foreign law or international commercial practice if such foreign law or international commercial practice is not contrary to the fundamental principles of the law of Vietnam.

Article 6 *Business entities*

1. Business entities shall comprise economic organizations which have been lawfully established and individuals who conduct commercial activities independently and regularly and who have business registration.
2. Business entities have the right to conduct commercial activities in professions and trades, in areas¹, in forms and in accordance with methods which the law does not prohibit.
3. The State shall protect the right of business entities to conduct lawful commercial activities.
4. The State shall exercise a State monopoly for a limited duration over commercial activities with respect to a number of goods and services or in a number of areas in order to ensure the national interest. The Government shall provide the specific list of goods, services and areas over which the State has a monopoly.

Article 7 *Obligation of business entities to conduct business registration*

Business entities have the obligation to conduct business registration in accordance with law. Any business entity which has not yet conducted business registration shall, nevertheless, be liable for all of its commercial activities in accordance with this Law and other relevant laws.

1 *Phillips Fox Note: In the sense of 'geographical areas'. An alternative translation is "locations".*

Article 8 *State administrative body for commercial activities*

1. The Government shall exercise uniform State administration of commercial activities.
2. The Ministry of Trade shall be responsible before the Government for exercising State administration of activities of purchase and sale of goods and of specific commercial activities regulated in this Law.
3. Ministries and ministerial equivalent bodies shall, within the scope of their respective duties and powers, be responsible for exercising State administration of commercial activities in the sectors assigned to them.
4. People's committees at all levels shall exercise State administration of commercial activities within their respective localities as delegated by the Government.

Article 9 *Commercial associations*

1. Commercial associations shall be established in order to protect the lawful rights and interests of business entities, to encourage business entities to participate in the development of commerce, and to disseminate and popularize the law on commerce.
2. Commercial associations shall be organized and operate in accordance with law.

SECTION 2

Fundamental Principles in Commercial Activities**Article 10** *Principle of equality before law amongst business entities conducting commercial activities*

Business entities from all economic sectors shall be equal before the law during commercial activities.

Article 11 *Principle of free and voluntary agreement in commercial activities*

1. Parties have the right freely to reach agreements which are not inconsistent with law, fine customs and social ethics in order to fix their rights and obligations in commercial activities. The State shall respect and protect these rights.
2. Parties shall act completely voluntarily in commercial activities, and no party shall be permitted to take action whereby it imposes its will on, coerces, threatens or hinders any other party.

Article 12 *Principle of applicability of custom [pre-]established by parties in commercial activities*

Unless otherwise agreed, parties shall be deemed to apply automatically the custom which is [pre-]established between them in their commercial activities, which is not contrary to law, and of which the parties knew or should have known.

Article 13 *Principle of applicability of practice in commercial activities*

Where the law does not contain any provision, the parties do not have any agreement and there is no [pre-]established custom between the parties, commercial practice shall be applied provided that it must not be contrary to the principles stipulated in this Law and in the Civil Code.

Article 14 *Principle of protection of legitimate interests of consumers*

1. Any business entity conducting commercial activities has the obligation to provide consumers with complete and accurate information about the goods and services in which such business entity conducts business, and shall be liable for the accuracy of such information.
2. Any business entity conducting commercial activities shall be liable for the quality and lawfulness of the goods and services in which such business entity conducts business.

Article 15 *Principle of recognition of legal validity of data messages in commercial activities*

Data messages which satisfy the conditions and technical standards stipulated by law shall be recognized as having legal validity in commercial activities equivalent to that of a written document.

SECTION 3

Foreign Business Entities Conducting Commercial Activities in Vietnam

Article 16 *Foreign business entities conducting commercial activities in Vietnam*

1. A foreign business entity means a business entity which was established and which has business registration in accordance with foreign law or which is recognized by foreign law.

2 *Phillips Fox Note: Throughout this translation, words not appearing in the Vietnamese text have been inserted in italics in square parentheses to aid comprehension.*

2. Foreign business entities shall be permitted to establish representative offices and branches in Vietnam; and to establish in Vietnam enterprises with foreign owned capital in the forms stipulated by the law of Vietnam.
3. Representative offices and branches of foreign business entities in Vietnam have the rights and obligations stipulated by the law of Vietnam. Foreign business entities shall be liable before the law of Vietnam for all operations of their representative offices and branches in Vietnam.
4. Enterprises with foreign owned capital which foreign business entities establish in Vietnam in accordance with the law of Vietnam or an international treaty of which the Socialist Republic of Vietnam is a member shall be deemed to be Vietnamese business entities.

Article 17 *Rights of representative offices*

1. To operate strictly in accordance with the purposes, scope and duration stated in the licence for establishment of the representative office.
2. To rent offices and to lease or purchase the equipment and facilities necessary for the operation of the representative office.
3. To recruit Vietnamese and foreign employees to work for the representative office in accordance with the law of Vietnam.
4. To open accounts in foreign currency and in Vietnamese dong sourced from foreign currency at banks which are licensed to operate in Vietnam, and to use such accounts solely for the operation of the representative office.
5. To have a seal bearing the name of the representative office in accordance with the law of Vietnam.
6. Other rights in accordance with law.

Article 18 *Obligations of representative offices*

1. Not to conduct directly profit-making activities in Vietnam.
2. To conduct commercial enhancement activities only within the scope permitted by this Law.
3. Not to enter into commercial contracts [*in the name and/or on behalf*] of the foreign business entity or to amend or supplement such contracts already signed, except where the head of the representative office has a valid power of attorney from the foreign business entity or except in the cases stipulated in clauses 2, 3 and 4 of article 17 of this Law.

4. To pay taxes, fees and charges and to fulfil other financial obligations in accordance with the law of Vietnam.
5. To report on the operation of the representative office in accordance with the law of Vietnam.
6. Other obligations in accordance with law.

Article 19 *Rights of branches*

1. To rent offices and to lease or purchase the equipment and facilities necessary for the operation of the branch.
2. To recruit Vietnamese and foreign employees to work for the branch in accordance with the law of Vietnam.
3. To enter into contracts in Vietnam in accordance with the activities stated in the licence for establishment of the branch and in accordance with this Law.
4. To open Vietnamese dong and foreign currency accounts at banks which are licensed to operate in Vietnam.
5. To remit profits abroad in accordance with the law of Vietnam.
6. To have a seal bearing the name of the branch in accordance with the law of Vietnam.
7. To conduct activities being the purchase and sale of goods and other commercial activities consistent with its licence for establishment in accordance with the law of Vietnam and any international treaty of which the Socialist Republic of Vietnam is a member.
8. Other rights in accordance with law.

Article 20 *Obligations of branches*

1. To adopt the accounting system stipulated by the law of Vietnam; where it is necessary to adopt a different commonly used accounting system, the approval of the Ministry of Finance of the Socialist Republic of Vietnam must be obtained.
2. To report on the operation of the branch in accordance with the law of Vietnam.
3. Other obligations in accordance with law.

Article 21 *Rights and obligations of enterprises with foreign owned capital*

The rights and obligations of enterprises with foreign owned capital shall be determined in accordance with the law of Vietnam or international treaties of which the Socialist Republic of Vietnam is a member.

Article 22 *Authority to grant permission to foreign business entities to conduct commercial activities in Vietnam*

1. The Government shall exercise uniform administration of the granting of permission to foreign business entities to conduct commercial activities in Vietnam.
2. The Ministry of Planning and Investment shall be responsible before the Government for exercising administration of the issuance of licences to foreign business entities making investments in Vietnam in accordance with the law of Vietnam.
3. The Ministry of Trade shall be responsible before the Government for exercising administration of the issuance of licences for the establishment of representative offices of foreign business entities in Vietnam; for the establishment of branches, joint venture enterprises and enterprises with one hundred (100) per cent foreign owned capital in Vietnam where such business entities specialize in conducting the purchase and sale of goods or activities directly related to the purchase and sale of goods in accordance with the law of Vietnam and consistent with international treaties of which the Socialist Republic of Vietnam is a member.
4. If a specialized law contains specific provisions on the authority of a ministry or ministerial equivalent body to be responsible before the Government for exercising administration of the issuance of licences to foreign business entities conducting commercial activities in Vietnam, the provisions of such specialized law shall apply.

Article 23 *Termination of operations in Vietnam of foreign business entities*

1. A foreign business entity shall terminate its operation in Vietnam in the following circumstances:
 - (a) Upon expiry of the duration of operation as stipulated in the licence;
 - (b) Where the business entity so requests and the competent State administrative body agrees;

- (c) In accordance with a decision of the competent State administrative body on the ground that there has been a breach of law and³ a breach of the provisions in the licence;
 - (d) Where the business entity is declared bankrupt;
 - (dd) Where the foreign business entity terminates its operation in accordance with foreign law in the case of the forms of representative office and branch, or [*terminates*] its participation in a business co-operation contract with a Vietnamese party;
 - (e) In other circumstances in accordance with law.
2. Prior to terminating its operations in Vietnam, a foreign business entity has the obligation to pay its debts and fulfil its other obligations to the State and to the organizations and individuals concerned in Vietnam.

CHAPTER 2

Purchase and Sale of Goods

SECTION 1

General Provisions Applicable to Activities being Purchase and Sale of Goods

Article 24 *Form of contract for purchase and sale of goods*

1. A contract for purchase and sale of goods shall be expressed orally or in writing or shall be determined by specific conduct.
2. Where a law stipulates that certain types of contracts for purchase and sale of goods must be made in writing, such contracts must comply with such law.

Article 25 *Goods in which business is prohibited, goods in which business is restricted, and goods in which business is subject to conditions*

1. Based on socio-economic conditions from time to time and international treaties of which the Socialist Republic of Vietnam is a member, the Government shall provide specifically the lists of goods in which business is prohibited, of goods in which business is restricted, and of goods in which business is subject to conditions and the conditions which must be satisfied in order to conduct business in such goods.

3 *Phillips Fox Note: This is the literal translation.*

2. In the case of goods in which business is restricted and goods in which business is subject to conditions, such goods shall be permitted to be purchased and sold only after such goods and the purchaser and the seller have satisfied fully the conditions in accordance with law.

Article 26 *Application of emergency measures to goods circulating in domestic market*

1. Goods which are currently lawfully circulating in the domestic market are subject to application of one or all of the following emergency measures, namely, mandatory withdrawal, prohibition on circulation, termination from circulation, conditional circulation, or circulation only with a licence, in the following cases:
 - (a) Where such goods are the source or means of transmission of any type of epidemic;
 - (b) When an emergency situation arises.
2. The specific conditions, order, procedures and authority to announce application of emergency measures to goods circulating in the domestic market shall be implemented in accordance with law.

Article 27 *International purchases and sales of goods*

1. International purchases and sales of goods shall be implemented in the forms of export, import, temporary import and re-export, temporary export and re-import, and bordergate transfer.
2. International purchases and sales of goods must be implemented on the basis of a written contract or other forms with equivalent legal validity.

Article 28 *Export and import of goods*

1. Export of goods means the act of taking goods out of the territory of Vietnam or bringing goods into a special zone located within the territory of Vietnam which is deemed pursuant to law to be an exclusive customs area.
2. Import of goods means the act of bringing goods into the territory of Vietnam from a foreign country or from a special zone located within the territory of Vietnam which is deemed pursuant to law to be an exclusive customs area.
3. Based on socio-economic conditions from time to time and international treaties of which the Socialist Republic of Vietnam is a member, the Government shall provide specifically the lists of goods prohibited from

import and export and of goods for which import and export is subject to issuance of a permit by the competent State body and the procedures for issuance of permits.

Article 29 *Temporary import and re-export [and] temporary export and re-import of goods*

1. Temporary import and re-export of goods means the act of bringing goods into Vietnam from a foreign country or from a special zone located within the territory of Vietnam which is deemed pursuant to law to be an exclusive customs area, and involving completion of procedures for import into Vietnam and completion of procedures for export of the same goods out of Vietnam.
2. Temporary export and re-import of goods means the act of taking goods overseas or into a special zone located within the territory of Vietnam which is deemed pursuant to law to be an exclusive customs area, and involving completion of procedures for export of such goods out of Vietnam and completion of procedures for re-importation of the same goods back into Vietnam.
3. The Government shall provide detailed regulations on temporary import and re-export [and] temporary export and re-import of goods.

Article 30 *Bordergate transfer of goods*

1. Bordergate transfer of goods means the act of purchasing goods from one country or territory in order to sell the goods to another country or territory outside the territory of Vietnam without conducting procedures for import into Vietnam and for export out of Vietnam.
2. Bordergate transfer of goods shall be conducted in the following forms:
 - (a) Transportation of goods directly from the exporting country to the importing country without passing through the bordergates of Vietnam;
 - (b) Transportation of goods from the exporting country to the importing country via the bordergates of Vietnam but without conducting procedures for import into Vietnam and for export out of Vietnam;
 - (c) Transportation of goods from the exporting country to the importing country via the bordergates of Vietnam and bringing the goods into bonded warehouses or into goods transit areas of ports of Vietnam but without conducting procedures for import into Vietnam and for export out of Vietnam.

3. The Government shall provide detailed regulations on activities of bordergate transfer of goods.

Article 31 *Application of emergency measures to activities of international purchases and sales of goods*

In necessary cases, in order to protect national security and other national interests, and in conformity with the law of Vietnam and international treaties of which the Socialist Republic of Vietnam is a member, the Prime Minister of the Government shall make decisions on application of emergency measures to activities of international purchases and sales of goods.

Article 32 *Labelling of goods circulating domestically and of import and export goods*

1. Label means the written form, printed form, drawing or photo of letters, a picture or an image which is directly glued, printed, attached, cast, embossed or engraved on the goods or on the commercial packaging of the goods, or on other material attached to the goods or attached to the commercial packaging of the goods.
2. Except in a number of cases where the law otherwise stipulates, all goods circulating domestically and all import and export goods must have a label.
3. The required contents of labels and the labelling of goods shall be implemented in accordance with regulations of the Government.

Article 33 *Certificates of origin of goods and rules on origin of goods*

1. Import and export goods must have a certificate of origin in the following cases:
 - (a) Goods entitled to tax preferences or other preferences;
 - (b) As required by the law of Vietnam or an international treaty of which the Socialist Republic of Vietnam is a member.
2. The Government shall provide detailed regulations on the rules on origin of import and export goods.

SECTION 2

**Rights and Obligations of Parties to Contracts for
Purchase and Sale of Goods****Article 34** *Delivery of goods and vouchers relating to goods*

1. A seller must deliver goods and vouchers [*relating to the goods*] in accordance with the contractual agreements on quantity, quality, method of packaging and preservation and in accordance with other clauses in the contract.
2. Where there is no specific agreement, the seller must deliver the goods and related vouchers in accordance with this Law.

Article 35 *Place of delivery*

1. A seller must deliver goods to the place of delivery as agreed.
2. Where there is no agreement on the place of delivery of the goods, the place of delivery shall be determined as follows:
 - (a) Where the goods are objects attached to land, the seller must deliver the goods at the location where the goods are situated;
 - (b) Where the contract contains a clause on transportation of the goods, the seller must deliver the goods to the initial carrier;
 - (c) Where the contract does not contain a clause on transportation of the goods and if, at the time of entering into the contract, the parties knew the location where the goods were stored, the location where the goods were loaded or the location where the goods were manufactured or produced, the seller must deliver the goods at such location;
 - (d) In other cases, the seller must deliver the goods at its business location or, if the seller does not have a business location, at the residence of the seller as determined at the time of entering into the contract for purchase and sale of goods.

Article 36 *Responsibility when delivery of goods involves carrier*

1. Where goods are handed over to a carrier but [*the goods*] are not clearly identifiable by codes or signs on them, by transportation vouchers or by other means, the seller must notify the purchaser that the goods have been handed over to a carrier and must identify clearly the name of the goods to be transported and the means of recognizing them.

2. Where the seller is obliged to arrange transportation of the goods, the seller must sign the contracts necessary to ensure that the goods reach their destination by means of transportation appropriate in the specific context and in accordance with the normal conditions applicable to such means.
3. Where the seller is not obliged to purchase insurance covering the goods during the period of transportation and if the purchaser so requests, the seller must provide the purchaser with all relevant and necessary information about the goods and the transportation of the goods to facilitate the purchaser to arrange insurance for the goods.

Article 37 *Time-limit for delivery of goods*

1. The seller must deliver goods at the time of delivery of goods agreed in the contract.
2. Where there is only an agreement on the time-limit for delivery of the goods without fixing a specific point of time for delivery, the seller has the right to deliver the goods at any time within such time-limit but must provide advance notice to the purchaser [*of such time*].
3. Where there is no agreement on the time-limit for delivery of the goods, the seller must deliver the goods within a reasonable period of time after the contract is entered into.

Article 38 *Delivery of goods prior to agreed time-limit*

If the seller delivers the goods prior to the agreed time-limit, the purchaser has the right either to accept or not to accept the goods, unless the parties otherwise agree.

Article 39 *Goods not conforming with contract*

1. Where the contract does not contain any specific clause, goods shall be deemed not to conform with a contract if the goods belong to one of the following cases:
 - (a) The goods are unfit for the ordinary use purpose of goods in the same category;
 - (b) The goods are unfit for any specific purpose of which the purchaser informed the seller or of which the seller should have known at the time of entering into the contract;
 - (c) The goods are not of the same quality as sample goods previously provided by the seller to the purchaser;

- (d) The goods were not preserved or packed in the usual manner applicable to other goods in the same category, or not in an appropriate way for goods preservation if there is no usual manner for preserving such goods.
2. A purchaser has the right to refuse acceptance of goods which do not conform with the contract as stipulated in clause 1 of this article.

Article 40 *Liability for goods not conforming with contract*

Unless the parties otherwise agree, liability for goods which do not conform with the contract shall be regulated as follows:

1. The seller shall not be liable for any defect in the goods if at the time of entering into the contract the purchaser knew or should have known of such defect.
2. Except in the case stipulated in clause 1 of this article, during the limitation period for lodging a complaint as stipulated in this Law, the seller shall be liable for any defect in the goods which existed prior to the time risk passed to the purchaser, including where such defect is discovered after the time risk passed.
3. The seller shall be liable for any defect in the goods arising after the time risk passed if such defect results from a breach of contract by the seller.

Article 41 *Remedy for delivery of insufficient goods and for delivery of goods not conforming with contract*

1. Unless the parties otherwise agree, where the contract stipulates only the time-limit for delivery of the goods without fixing a specific point of time for delivery and the seller delivers goods prior to expiry of such time-limit but delivers insufficient goods or delivers goods which do not conform with the contract, the seller shall be permitted to deliver the outstanding quantity of goods or to replace the [*non-conforming*] goods with goods which do conform with the contract or to remedy the non-conformity of the goods within the remainder of such time-limit.
2. Where the seller exercises its remedy as stipulated in clause 1 of this article but thereby creates a disadvantage for the purchaser or causes the purchaser to incur unreasonable expenses, the purchaser has the right to require the seller to remedy such disadvantage or to pay such expenses.

Article 42 *Delivery of vouchers relating to goods*

1. If there is an agreement on delivery of vouchers, the seller has the obligation to deliver the vouchers relating to the goods to the purchaser within the time-limit, at the location and in the manner agreed.
2. If the contract does not contain any clauses on the time-limit and location for delivery of vouchers relating to the goods to the purchaser, the seller has the obligation to deliver such vouchers to the purchaser at a reasonable time and location in order to enable the purchaser to accept the goods.
3. Where the seller delivers vouchers relating to the goods prior to expiry of the agreed time-limit, the seller shall be permitted to rectify any errors in such vouchers within the remainder of such time-limit.
4. Where the seller exercises its remedy as stipulated in clause 3 of this article but thereby creates a disadvantage for the purchaser or causes the purchaser to incur unreasonable expenses, the purchaser has the right to require the seller to remedy such disadvantage or to pay such expenses.

Article 43 *Delivery of goods in excess*

1. If the seller delivers goods in excess, the purchaser has the right to refuse or to accept the amount of goods in excess.
2. If the purchaser accepts the amount of goods in excess, the purchaser must pay for such goods at the price agreed in the contract, unless the parties otherwise agree.

Article 44 *Examination of goods prior to delivery*

1. If it is agreed by the parties that the purchaser or its representative shall conduct an examination of the goods prior to delivery, the seller must ensure the conditions which will facilitate the purchaser or its representative to conduct such examination.
2. Unless the parties otherwise agree, in the case stipulated in clause 1 of this article, the purchaser or its representative must examine the goods within the shortest period of time which is practically possible in the context. If the contract contains a clause on transportation of the goods, the examination may be postponed until the time when the goods are transported to their destination.
3. If the purchaser or its representative fails to conduct an examination of the goods prior to delivery as agreed in the contract, the seller has the right to deliver the goods pursuant to the contract.

4. The seller shall not be liable for any defect in the goods of which the purchaser or its representative knew or should have known and failed to notify to the seller within a reasonable time after conducting the examination of the goods.
5. Where the purchaser or its representative has examined the goods, the seller shall remain liable for any defect in the goods which could not have been discovered during examination by normal means and of which the seller knew or should have known and failed to notify to the purchaser.

Article 45 *Obligation to guarantee ownership of goods*

A seller must ensure that:

1. Ownership by the purchaser of the goods sold is not subject to any dispute with a third party.
2. The goods are lawful.
3. The transfer of the goods is lawful.

Article 46 *Obligation to guarantee intellectual property rights in goods*

1. A seller shall not be permitted to sell goods which infringe intellectual property rights. A seller shall be liable in the case where there is a dispute involving intellectual property rights with respect to the goods sold.
2. If the purchaser requires the seller to comply with technical drawings, designs, formulae or other detailed data supplied by the purchaser, the purchaser shall be liable for any complaint about infringement of intellectual property rights arising as a result of compliance by the seller with such requirements of the purchaser.

Article 47 *Requirement to provide notice*

1. The seller shall lose the right to rely on⁴ the provision in clause 2 of article 46 of this Law if the seller fails to notify immediately the purchaser of any complaint by a third party made about the delivered goods after the seller knew or should have known of such complaint, except in cases where the purchaser knew or should have known of such complaint.
2. The purchaser shall lose the right to rely on the provisions in article 45 and in clause 1 of article 46 of this Law if the purchaser fails to notify immediately the seller of any complaint by a third party made about the delivered goods after the purchaser knew or should have known of such

4 *Phillips Fox Note: The literal translation is "refer to".*

complaint, except in cases where the seller knew or should have known of such complaint.

Article 48 *Obligation of seller in cases where goods are used as security for performance of civil obligation*⁵

Where goods being sold are used as security for the performance of a civil obligation, the seller must notify the purchaser about such security and the sale of the goods must be agreed by the beneficiary of the security.

Article 49 *Obligation to provide warranty for goods*

1. Where goods which are purchased and sold are under warranty, the seller shall be liable for the goods in accordance with the contents and for the period agreed [*in the warranty*].
2. The seller must fulfil the warranty obligations within the shortest period of time which is practically possible.
3. The seller must bear all expenses relating to the warranty, unless the parties otherwise agree.

Article 50 *Payment*

1. The purchaser has the obligation to pay the purchase price of the goods and to accept delivery of the goods as agreed.
2. The purchaser must comply with the method of payment and must make payment in accordance with the order and procedures as agreed and in accordance with law.
3. In the case where the goods are lost or damaged after the time when risk has passed from the seller to the purchaser, the purchaser must, nevertheless, pay the purchase price of the goods, unless the loss or damage was caused by the fault of the seller.

Article 51 *Suspension of payment of purchase price of goods*

Unless otherwise agreed, suspension of payment of the purchase price of goods shall be regulated as follows:

1. Where the purchaser has proof of fraud on the part of the seller, the purchaser has the right to suspend payment.

5 *Phillips Fox Note: The literal translation is "where the goods are the object of a security measure for performance of a civil obligation".*

2. Where the purchaser has proof that the goods are currently subject to a dispute, the purchaser has the right to suspend temporarily payment until the dispute has been resolved.
3. Where the purchaser has proof that the seller has delivered goods which do not conform with the contract, the purchaser has the right to suspend temporarily payment until the seller remedies the non-conformity.
4. In the case of temporary suspension of payment as stipulated in clauses 2 or 3 of this article, where the proof produced by the purchaser is inaccurate and loss is caused to the seller, the purchaser must pay damages for such loss and must submit to application of other remedies stipulated in this Law.

Article 52 *Determination of price*

Where there is no agreement on the price of goods, no agreement on the method for determining the price of goods and no other guidelines at all on price, the price of goods shall be determined in accordance with the price of that type of goods under similar conditions for method for delivery of goods, time of purchase and sale of the goods, geographical market, method of payment and other conditions which affect price.

Article 53 *Determination of price in accordance with weight*

If price is determined in accordance with the weight of goods, the weight shall be net weight, unless otherwise agreed.

Article 54 *Place of payment*

Where there is no agreement on a specific place of payment, the purchaser must make payment to the seller at one of the following places:

1. At the business location of the seller as determined at the time of entering into the contract or, if the seller does not have a business location, at the residence of the seller.
2. If payment is to be made concurrently with the delivery of goods or vouchers, at the place where the goods or vouchers are delivered.

Article 55 *Time-limit for payment*

Unless otherwise agreed, the time-limit for payment shall be regulated as follows:

1. The purchaser must make payment to the seller at the time when the seller delivers the goods or the vouchers relating to the goods.

2. The purchaser shall not be obliged to make payment until it has been able to complete the examination of the goods in the case where there is an agreement as stipulated in article 44 of this Law.

Article 56 *Acceptance of goods*

The purchaser shall be obliged to accept the goods in accordance with the agreement and to take reasonable action to assist the seller to deliver the goods.

Article 57 *Passing of risk in cases where place of delivery is specified*

Unless otherwise agreed, if the seller is obliged to deliver the goods to the purchaser at a certain location, the risk of loss or damage to the goods shall pass to the purchaser when the goods have been delivered to the purchaser or when the person nominated by the purchaser has accepted the goods at such location, including cases where the seller is authorized to retain the vouchers which confirm ownership of the goods.

Article 58 *Passing of risk in cases where no place of delivery is specified*

Unless otherwise agreed, if the contract contains a clause on transportation of the goods and the seller is not obliged to deliver the goods at a certain location, the risk of loss or damage to the goods shall pass to the purchaser when the goods have been handed over to the initial carrier.

Article 59 *Passing of risk in cases where goods are handed over to bailee for delivery not being carrier*

Unless otherwise agreed, where the goods are currently in the possession of a bailee for delivery which is not a carrier, the risk of loss or damage to the goods shall pass to the purchaser in one of the following cases:

1. Upon acceptance by the purchaser of the vouchers evidencing ownership of the goods.
2. Upon acknowledgment by the bailee for delivery that the purchaser has the right of possession of the goods.

Article 60 *Passing of risk in case of purchase and sale of goods being transported*

Unless otherwise agreed, where the subject of a contract is goods which are currently being transported, the risk of loss or damage to the goods shall pass to the purchaser as from the time of entering into the contract.

Article 61 *Passing of risk in other cases*

Unless otherwise agreed, passing of risk in other cases shall be regulated as follows:

1. In cases not covered by the provisions in articles 57, 58, 59 and 60 of this Law, the risk of loss or damage to the goods shall pass to the purchaser as from the time when the purchaser has the right of control⁶ of the goods and the purchaser is in breach of contract for failure to accept the goods.
2. The risk of loss or damage to goods shall not pass to the purchaser if the goods are not clearly identifiable by codes or signs on them or by transportation vouchers, if the goods have not been notified to the purchaser, or if the goods are not able to be verified by any other means.

Article 62 *Time of passing of ownership of goods*

Unless otherwise stipulated by law or otherwise agreed by the parties, ownership of goods shall pass from the seller to the purchaser as from the time when the goods are handed over.

SECTION 3

Purchase and Sale of Goods⁷ via Commodity Exchange**Article 63** *Purchase and sale of goods via Commodity Exchange*

1. Purchase and sale of goods via the Commodity Exchange means a commercial activity by which the parties agree to implement a purchase and sale of a certain quantity of a certain type of goods via the Commodity Exchange in accordance with the standards of the Commodity Exchange and at a price agreed at the time of entering into the contract, and the time of delivery of goods is determined to be at a future point in time.
2. The Government shall provide detailed regulations on activities being purchase and sale of goods via the Commodity Exchange.

Article 64 *Contracts for purchase and sale of goods via Commodity Exchange*

1. Contracts for purchase and sale of goods via the Commodity Exchange shall comprise future contracts and option contracts.

6 *Phillips Fox Note: An alternative translation is "right to determine what to do with the goods".*

7 *Phillips Fox Note: Here, the Vietnamese text uses the phrase defined in article 3.8 and translated as "purchase and sale of goods". Here, an alternative translation is "trading of commodities".*

2. Future contract means an agreement whereby the seller undertakes to deliver and the purchaser undertakes to accept goods at a future point of time according to the contract.
3. Call option or put option contract means an agreement whereby the option purchaser has the right to purchase or to be sold a certain [*type of*] goods at a pre-determined price (referred to as the *contracted price*) and must pay a certain amount of money for the purchase of this right (referred to as the *option price*). The option purchaser has the right to opt to carry out or not to carry out such purchase and sale of such goods.

Article 65 *Rights and obligations of parties to future contracts*

1. If the seller implements delivery of the goods in accordance with the contract, the purchaser shall be obliged to accept the goods and to make payment.
2. If the parties have an agreement that the purchaser may make a cash settlement in lieu of accepting the goods⁸, the purchaser must pay the seller a sum being the difference between the price agreed in the contract and the market price announced by the Commodity Exchange at the time when the contract is performed.
3. If the parties have an agreement that the seller may make a cash settlement in lieu of delivering the goods, the seller must pay the purchaser a sum being the difference between the market price announced by the Commodity Exchange at the time when the contract is performed and the price agreed in the contract.

Article 66 *Rights and obligations of parties to option contracts*

1. The purchaser of a call option or put option must pay the option price in order to become the party holding the call option or put option. The sum payable for the purchase of the option shall be the sum as agreed between the parties.
2. The party holding a call option has the right to purchase but does not have the obligation to purchase the goods stipulated in the contract. If the party holding the call option opts to perform the contract, the seller shall be obliged to sell the goods to the party holding the call option. If the seller does not have the goods to deliver, the seller must pay the party holding the call option a sum being the difference between the price agreed in the contract and the market price announced by the Commodity Exchange at the time when the contract is performed.

8 *Phillips Fox Note: The literal translation is "make a payment in cash and not accept the goods".*

3. The party holding a put option has the right to sell but does not have the obligation to sell the goods stipulated in the contract. If the party holding the put option opts to perform the contract, the purchaser shall be obliged to purchase the goods from the party holding the put option. If the purchaser fails to purchase the goods, the purchaser must pay the party holding the put option a sum being the difference between the price agreed in the contract and the market price announced by the Commodity Exchange at the time when the contract is performed.
4. If the party holding a put option or call option opts not to perform the contract within the duration of effectiveness of the contract, the contract shall expire automatically.

Article 67 *Commodity Exchange*

1. The Commodity Exchange shall have the following functions:
 - (a) To provide the necessary physical-technical facilities for the conduct of transactions being the purchase and sale of goods;
 - (b) To operate transaction activities;
 - (c) To list specific price rates formed on the trading market from time to time.
2. The Government shall provide detailed regulations on the conditions for the establishment of the Commodity Exchange, on the powers and responsibilities of the Commodity Exchange, and on approval of the operational charter of the Commodity Exchange.

Article 68 *Goods to be traded⁹ at Commodity Exchange*

The Minister of Trade shall provide the list of goods [*permitted*] to be traded at the Commodity Exchange.

Article 69 *Brokers in purchase and sale of goods via Commodity Exchange¹⁰*

1. Brokers in the purchase and sale of goods via the Commodity Exchange shall be permitted to operate in the Commodity Exchange only when they have satisfied all conditions stipulated by law. The Government shall provide detailed regulations on the conditions for activities of brokers in the purchase and sale of goods via the Commodity Exchange.

9 *Phillips Fox Note: In this Chapter, the translation "trade" has been adopted where the corresponding Vietnamese term has the meaning of "carry out a transaction".*

10 *Phillips Fox Note: The literal translation is "Business entities being brokers in purchase and sale of goods via Commodity Exchange".*

2. Brokers in the purchase and sale of goods via the Commodity Exchange shall be permitted only to conduct brokerage activities in the purchase and sale of goods via the Commodity Exchange and shall not be permitted to be parties to contracts for purchase and sale of goods via the Commodity Exchange.¹¹
3. Brokers in sale and purchase of goods via the Commodity Exchange shall be obliged to pay a deposit to the Commodity Exchange to guarantee the performance of their obligations arising in the process of brokerage in purchase and sale of goods. The amount of the deposit shall be regulated by the Commodity Exchange.

Article 70 *Practices prohibited by brokers in purchase and sale of goods via Commodity Exchange*

1. Enticing clients to enter into contracts by promising to compensate for all or part of the loss arising or by guaranteeing profits for customers.
2. Offering goods or conducting brokerage without contracts with customers.
3. Using false prices or other fraudulent methods in brokerage for customers.
4. Refusing to broker or delaying unreasonably the brokerage of contracts in accordance with the contents agreed with customers.
5. Other prohibited practices as stipulated in article 71.2 of this law.

Article 71 *Practices prohibited during purchase and sale of goods via Commodity Exchange*

1. Personnel of the Commodity Exchange shall not be permitted to conduct brokerage of or to purchase or sell goods via the Commodity Exchange.
2. Parties involved in the activities of purchase and sale of goods via the Commodity Exchange shall be prohibited from engaging in the following practices:
 - (a) Fraudulent or deceptive conduct regarding the quantity of goods in future contracts and option contracts being traded or which may be traded, and fraudulent or deceptive conduct regarding the actual price of types of goods in future contracts and option contracts;

11 *Phillips Fox Note: In English, this proposition would usually be expressed as "A broker shall only be permitted to trade for the account of others and shall not be permitted to trade for its own account".*

- (b) Provision of misleading information on transactions, the market or the prices of goods sold or purchased via the Commodity Exchange;
- (c) Application of unlawful measures to disrupt the goods market at the Commodity Exchange;
- (d) Other prohibited practices as stipulated by law.

Article 72 *Implementation of administrative measures in emergency circumstances*

1. Emergency circumstances occur when the goods market is disrupted, thereby making it impossible for transactions via the Commodity Exchange to reflect accurately the supply and demand relationship.
2. The Minister of Trade has the right to implement the following measures in emergency circumstances:
 - (a) To suspend temporarily trading on the Commodity Exchange;
 - (b) To restrict trading to transactions within a price frame or a certain quantity of goods;
 - (c) To change transaction schedules;
 - (d) To change the operational charter of the Commodity Exchange;
 - (dd) Other necessary measures as stipulated by the Government.

Article 73 *Right to conduct purchase and sale of goods via overseas commodity exchanges*

Vietnamese business entities have the right to conduct purchase and sale of goods via overseas commodity exchanges in accordance with regulations of the Government.

CHAPTER 3

Provision of Services

SECTION 1

General Provisions Applicable to Provision of Services

Article 74 *Form of service contracts*

1. A service contract shall be expressed orally or in writing or shall be determined by specific conduct.
2. Where a law stipulates that certain types of service contracts must be made in writing, such contracts must comply with such law.

Article 75 *Rights of business entities to provide services and to use services*

1. Unless the law or an international treaty of which the Socialist Republic of Vietnam is a member otherwise stipulates, business entities have the right to provide the following services:
 - (a) To provide services to residents of Vietnam for use within the territory of Vietnam;
 - (b) To provide services to non-residents of Vietnam for use within the territory of Vietnam;
 - (c) To provide services to residents of Vietnam for use in overseas territories;
 - (d) To provide services to non residents of Vietnam for use in overseas territories.
2. Unless the law or an international treaty of which the Socialist Republic of Vietnam is a member otherwise stipulates, business entities have the right to use the following services:
 - (a) To use services of residents of Vietnam provided within the territory of Vietnam;
 - (b) To use services of non-residents of Vietnam provided within the territory of Vietnam;
 - (c) To use services of residents of Vietnam provided in overseas territories;

- (d) To use services of non-residents of Vietnam provided in overseas territories.
3. The Government shall provide specific regulations on the criteria for determination of a resident and a non-resident for the purpose of implementing tax policies and for administration of import and export with respect to various types of services.

Article 76 *Services in which business is prohibited, services in which business is restricted, and services in which business is subject to conditions*

1. Based on socio-economic conditions from time to time and international treaties of which the Socialist Republic of Vietnam is a member, the Government shall provide specifically the lists of services in which business is prohibited, of services in which business is restricted, and of services in which business is subject to conditions, and the conditions which must be satisfied in order to conduct business in such services.
2. In the case of services in which business is restricted and services in which business is subject to conditions, such services shall be permitted to be provided only after such services and the parties participating in provision of such services have satisfied fully the conditions in accordance with law.

Article 77 *Application of emergency measures to activities of provision and use of services*

In necessary cases, in order to protect national security and other national interests, and in conformity with the law of Vietnam and international treaties of which the Socialist Republic of Vietnam is a member, the Prime Minister of the Government shall make decisions on application of emergency measures to activities of provision and use of services, including temporary prohibition of provision and use of services applicable to one or a number of types of service or other emergency measures applicable to one or a number of specified markets for a specified period.

SECTION 2

Rights and Obligations of Parties to Service Contracts

Article 78 *Obligations of service providers*

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

1. To provide services and to implement other related acts fully in accordance with the agreement [*of the parties*] and in accordance with this Law.
2. To preserve materials and facilities delivered in order to perform the services and to return same to the client after completion of the services.

3. To notify immediately to the client any instance of insufficient information and materials or inadequate facilities which fail to ensure completion of provision of the services.
4. To keep confidential any information made known to the service provider during the process of provision of the services if so agreed or required by law.

Article 79 *Obligation of service providers on basis of performance results*

Unless otherwise agreed, if the nature of the particular service being provided requires the service provider to produce a certain result, when providing the service, the service provider must obtain an appropriate result in accordance with the conditions and objectives stipulated in the contract. Where the contract does not contain specific clauses on the standard of the result to be obtained, when providing the service, the service provider must obtain an appropriate result in accordance with the ordinary standards applicable to that type of service.

Article 80 *Obligation of service providers on basis of best endeavours and capacity*

Unless otherwise agreed, if the nature of the particular service being provided requires the service provider to use its best endeavours to produce the desired result, the service provider must fulfil the obligation to provide such service using its best endeavours and capacity.

Article 81 *Co-operation among service providers*

Where, pursuant to an agreement or in a specific circumstance, a service is to be provided jointly by a number of service providers or by one service provider in co-operation with other service providers, each of the service providers has the following obligations:

1. To exchange information with other service providers regarding the progress of the work and its requirements in relation to the provision of the service; and to provide the service at an appropriate time and in an appropriate manner in order not to interfere with the operations of other service providers.
2. To carry out any activities which are necessary to achieve co-operation with other service providers.

Article 82 *Time-limit for completion of services*

1. A service provider must complete the provision of its services within the time-limit agreed in the contract.

2. If the contract does not contain any clause on a time-limit for completion, the service provider must complete the service within a reasonable period of time taking into account all conditions and the context known to the service provider at the time of entering into the contract, including any specific requirements which a client has regarding the time-limit for completion of the service.
3. When the provision of a service can only be completed after the client or another service provider has satisfied certain conditions, a service provider shall not be obliged to complete the provision of its service until such conditions have been satisfied.

Article 83 *Client requests for changes during process of provision of services*

1. During the provision of services, a service provider must comply with the reasonable requests of the client for changes during the process of the provision of the services.
2. Unless otherwise agreed, the client must bear the reasonable costs of performance of its requests for changes.

Article 84 *Continued provision of services after expiry of time-limit for completion of provision of services*

If the provision of a service is not completed prior to expiry of the time-limit for same and if the client has no objection, the service provider must continue the provision of the service in accordance with the agreed details and must pay damages for losses, if any.

Article 85 *Obligations of clients*

Unless otherwise agreed, a client has the following obligations:

1. To pay for the provision of the service as agreed in the contract.
2. To provide in a timely manner all plans, instructions and other details in order for the service to be provided without delay or interruption.
3. To co-operate in all other necessary matters in order to enable the service provider to provide the service in the appropriate manner.
4. Where a service is to be provided jointly by a number of service providers or by one service provider in co-operation with other service providers, the client shall be obliged to co-ordinate the operations of all service providers in order not to impede the work of any one service provider.

Article 86 *Service fees*¹²

Where there is no agreement on service fees, no agreement on a method for fixing service fees and no other instructions regarding service fees, the service fee shall be determined on the basis of the fees for that type of service under similar conditions for method for provision of the service, time of provision, geographical market, method of payment and other conditions which affect service fees.

Article 87 *Time-limit for payment [of service fees]*

Where there is no agreement and no custom between the parties relating to payment [*of service fees*], the time-limit for payment shall be the time when provision of the service is complete.

CHAPTER 4

Commercial Enhancement

SECTION 1

Promotions**Article 88** *Promotions*

1. Promotion means an act of commercial enhancement by a business entity aimed at enhancing the purchase and sale of goods and the provision of services by giving specified benefits to customers.
2. A business entity holding a promotion may be a business entity in one of the following categories:
 - (a) A business entity directly holding a promotion of the goods and services in which such business entity itself conducts business;
 - (b) A business entity engaging in the business of promotion services and holding a promotion of the goods and services of another business entity on the basis of an agreement with such latter business entity.

12 *Phillips Fox Note: The literal translation is "service price".*

Article 89 *Business of promotion services*

Business of promotion services means a commercial activity whereby a business entity holds a promotion of the goods and services of another business entity on the basis of a contract.

Article 90 *Contract for provision of promotion services*

A contract for provision of promotion services must be in writing or in another form with equivalent legal validity.

Article 91 *Rights of business entities to conduct promotions*

1. A Vietnamese business entity, a branch of a Vietnamese business entity and a branch of a foreign business entity in Vietnam has the right to hold its own promotions or to hire a business entity engaging in the business of promotion services to hold a promotion for it.
2. A representative office of a business entity shall not be permitted to hold a promotion or to hire another business entity to hold a promotion in Vietnam for the business entity which such representative office represents.

Article 92 *Forms of promotion*

1. Giving samples of goods and providing sample services to customers for trial use free of charge.
2. Giving goods as gifts or providing free services to customers.
3. Selling goods or providing services at prices lower than the prices previously charged for sale of the goods or provision of the services, applicable for a registered or announced period of promotion. Where the goods and services are in the category of goods and services for which the State manages prices, a promotion in this form shall be conducted in accordance with regulations of the Government.
4. Selling goods or providing services to customers together with coupons for the purchase of goods or use of services in order that customers will receive one or more specified benefits.
5. Selling goods or providing services together with contest forms for customers, from amongst which the winners will be selected in accordance with announced rules and [will win] announced prizes.
6. Selling goods or providing services together with participation in lucky programs where participation in the program is closely connected to the purchase of the goods or use of the services and winning a prize is based

on the luck of the participant in accordance with announced rules and prizes.

7. Holding programs for regular customers pursuant to which prizes will be given to customers on the basis of volume or value of goods or services purchased by customers and expressed in the form of customer cards or coupons recording the goods or services purchased or [*expressed in*] other forms.
8. Organizing customer participation in cultural, artistic and entertainment programs or other events for promotional purposes.
9. Other forms of promotion if approved by the State administrative body for commerce.

Article 93 *Promoted goods and services*

1. Promoted goods and services means goods and services which a business entity uses in any of the forms of promotion in order to enhance the sale of such goods and provision of such services.
2. Promoted goods and services must be goods and services which may be lawfully traded.

Article 94 *Goods and services used for promotions, price discount rate in promotions*

1. Goods and services used for promotions means goods and services which a business entity uses as gifts or prizes or to provide to customers free of charge.
2. Goods and services which a business entity uses for promotions may be goods and services in which such business entity conducts business or they may be other goods and services.
3. Goods and services used for promotions must be goods and services which may be lawfully traded.
4. The Government shall provide regulations on specific maximum limits on the value of goods and services used for promotions and on the maximum price discount rate of promoted goods and services which any business entity shall be permitted to implement during promotional activities.

Article 95 *Rights of business entities holding promotions*

1. To select the form, time or duration, and location of the promotion and the goods and services used for promotions.

2. To stipulate the specific benefits to which customers will be entitled in compliance with article 94.4 of this Law.
3. To hire a business entity engaging in the business of promotion services to hold a promotion for it.
4. To organize the conduct of any form of promotion stipulated in article 92 of this Law.

Article 96 *Obligations of business entities holding promotions*

1. To comply fully with the order and procedures stipulated by law in order to conduct any form of promotion.
2. To announce publicly to customers the details¹³ of promotional activities in accordance with article 97 of this Law.
3. To hold correctly the promotional program as announced and to honour the undertakings made to customers.
4. To pay fifty (50) per cent of the value of the announced prizes into the State Budget where there are no prize winners, applicable to a number of the forms of promotion stipulated in article 92.6 of this Law.

The Minister of Trade shall provide regulations on the specific forms of promotion which fall into the category of lucky programs and to which this provision shall apply.

5. To comply with the agreements in the contract for promotion services if the business entity holding the promotion is a business entity engaging in the business of promotion services.

Article 97 *Details to be announced publicly*

1. A business entity holding a promotion in any of the forms stipulated in article 92 of this Law must announce publicly the following details:
 - (a) Name of the promotional activity;
 - (b) Price of selling the promoted goods or providing the promoted services and related charges for delivering the promoted goods and services to the customer;

13 *Phillips Fox Note: The literal translation is "information contents", however, "details" is used throughout this translation.*

- (c) Name, address and telephone number of the business entity holding the promotion;
 - (d) Time or duration of the promotion, the commencement and ending dates, and the geographical area of the promotional activity;
 - (dd) If the benefits from participation in a promotion are subject to specified conditions, the announcement must specify that the promotional activity is subject to conditions and must also specify the particulars of such conditions.
2. In addition to the details stipulated in clause 1 of this article, a business entity holding a promotion must announce publicly the following details of a promotional activity:
- (a) The selling price of the goods and the charges for the services being given as a gift to customers, applicable to the form of promotion stipulated in article 92.2 of this Law;
 - (b) The full value or percentage reduction of the normal selling price of goods or service charge prior to the period of the promotion, applicable to the form of promotion stipulated in article 92.3 of this Law;
 - (c) The monetary value or the specific benefit to which a customer will be entitled from the coupon for purchase of goods or from the coupon for use of services; the location of sale of goods and provision of services, and the types of goods and services which a customer may receive from the coupon for purchase of goods or from the coupon for use of services, applicable to the form of promotion stipulated in article 92.4 of this Law;
 - (d) The types of prizes and the value of each type; the rules for participation in the promotional program and the method for selecting prize winners, applicable to each form of promotion stipulated in clauses 5 and 6 of article 92 of this Law;
 - (dd) The costs which customers themselves must pay or bear, applicable to each form of promotion stipulated in clauses 7 and 8 of article 92 of this Law.

Article 98 *Forms of announcement*

1. The announcement of a promotion of goods pursuant to article 97 of this Law must be made in one of the following forms:
- (a) At the location where the goods are sold and at the place where the goods are displayed for sale;

- (b) On the goods or on the goods packaging;
 - (c) In any other form, but the announcement must be attached to the goods when they are sold.
2. The announcement of a promotion of services pursuant to article 97 of this Law must be made in one of the following forms:
- (a) At the location where the services are provided;
 - (b) In any other form, but the announcement must be provided together with the services when such services are provided.

Article 99 *Confidentiality of information relating to promotional programs and details thereof*

With respect to promotional programs which are only permitted to be conducted with the approval of the competent State body, such State body must maintain strictly the confidentiality of the program and details thereof provided by a business entity until the time of approval of the promotional program by the competent State body.

Article 100 *Practices prohibited during promotional activities*

1. Promotions in respect of goods and services in which business is prohibited; in respect of goods and services in which business is restricted; and in respect of goods the circulation of which is not yet permitted and services the provision of which is not yet permitted.
2. Use of the following goods and services in order to conduct a promotion: goods and services in which business is prohibited, goods and services in which business is restricted, goods the circulation of which is not yet permitted and services the provision of which is not yet permitted.
3. Promotions of or use of wines and beer for promotions targeted at persons under eighteen (18) years of age.
4. Promotions of or use of tobacco or wines with an alcoholic content of thirty (30) degrees or more to conduct a promotion in any form.
5. Untruthful or misleading promotions about goods and services for the purpose of deceiving customers.
6. Promotions for the purpose of selling low quality goods or causing harm to the environment, the health of people, and other public interests.

7. Promotions taking place at schools; at hospitals; and at offices of State bodies, political organizations, socio-political organizations and the people's armed forces.
8. Promises to give gifts or prizes which are not in fact given or not given correctly.
9. Promotions aimed at engaging in unfair competition.
10. Promotions in which the value of goods and services used for the promotion exceeds the maximum limit, or in which the price discount of the promoted goods and services exceeds the maximum rate, provided for in article 94.4 of this Law.

Article 101 *Registration of promotional activities with and report of results of promotion to State administrative body for commerce*

1. Prior to holding promotional activities, a business entity must conduct registration with the State administrative body for commerce and, after completion of promotional activities, the business entity must report the results to the State administrative body for commerce.
2. The Government shall provide specific regulations on the registration of promotional activities and the reporting of results of promotional activities held by business entities to the State administrative body for commerce.

SECTION 2

Commercial Advertising

Article 102 *Commercial advertising*

Commercial advertising means activities of commercial enhancement conducted by a business entity aimed at introducing customers to the business activities in goods and services of such business entity.

Article 103 *Rights to conduct commercial advertising*

1. A Vietnamese business entity, a branch of a Vietnamese business entity and a branch of a foreign business entity in Vietnam which is permitted to conduct commercial activities in Vietnam has the right to advertise its business activities and its goods and services or to hire a business entity engaging in commercial advertising services to conduct commercial advertising for it.
2. A representative office of a business entity shall not be permitted to conduct directly commercial advertising. If a representative office is so authorized by [*its parent*] business entity, such representative office has

the right to sign a contract with a business entity engaging in commercial advertising services to conduct commercial advertising for the business entity which such representative office represents.

3. Foreign business entities wishing to advertise commercially their business activities in goods and services in Vietnam must hire a Vietnamese business entity engaging in commercial advertising services to do so.

Article 104 *Business of commercial advertising services*

Business of commercial advertising services means a commercial activity whereby one business entity conducts commercial advertising for other business entities.

Article 105 *Commercial advertising products*

Commercial advertising products comprise information in the form of images, actions, sounds, spoken or written languages, symbols, colours and lighting containing commercial advertising details.

Article 106 *Means of commercial advertising*

1. Means of commercial advertising means the media which are used to introduce commercial advertising products.
2. Means of commercial advertising shall comprise:
 - (a) Mass media;
 - (b) Means of communicating information;
 - (c) All kinds of publications;
 - (d) All kinds of boards, signs, banners, panels, posters, fixed objects, means of transportation or other mobile objects;
 - (dd) Other means of commercial advertising.

Article 107 *Use of means of commercial advertising*

1. The use of the means of commercial advertising stipulated in article 106 of this Law must comply with regulations issued by the competent State body.

2. The use of means of commercial advertising must ensure compliance with the following requirements:
 - (a) Compliance with the laws on media, publishing, information, programs of cultural and sporting activities, and trade fairs and exhibitions;
 - (b) Compliance with the regulations on locations for advertisements; and causing no adverse effect on the landscape and environment, traffic order and safety, and social security;
 - (c) Correctness in terms of levels, volume, time and duration stipulated by regulations applicable to each particular means of mass media.

Article 108 *Protection of intellectual property rights with respect to commercial advertising products*

Business entities have the right to register for protection of intellectual property rights with respect to commercial advertising products in accordance with law.

Article 109 *Prohibited commercial advertisements*

1. Advertisements which disclose State secrets; or which are detrimental to national independence, sovereignty or security; or detrimental to social security and order.
2. Advertisements which use advertising products or advertising means which are contrary to the historical, cultural and ethical traditions and fine customs of Vietnam and contrary to law.
3. Advertisements of goods and services in which the State prohibits business, restricts business or prohibits advertising.
4. Advertisements of tobacco or wines with an alcoholic content of thirty (30) degrees or more; of products and goods the circulation of which is not yet permitted, and of services the provision of which is not yet permitted, on the Vietnamese market at the time of advertising.
5. Abuse of advertising to harm the interests of the State or of other organizations and individuals.
6. Advertisements which use the method of direct comparison of the production and business operation of goods and services of the entity being advertised with the production and business operation of goods and services of the same type of another business entity.

7. False advertisements of goods and services with respect to any of the following matters: quantity, quality, price, usage, design, origin of goods, type, packaging, method of service, and warranty period.
8. Advertisements of the business operation of the entity being advertised by using an advertising product which breaches intellectual property rights; or using the image of another organization or individual in an advertisement without the prior approval of such organization or individual.
9. Advertisements aimed at engaging in unfair competition as stipulated by law.

Article 110 *Contract for commercial advertising services*

A contract for commercial advertising services must be in writing or in another form with equivalent legal validity.

Article 111 *Rights of parties hiring commercial advertising*

Unless otherwise agreed, a party hiring commercial advertising has the following rights:

1. To select the commercial advertisement publisher; and the method, content, means, scope and time or duration of the commercial advertisement.
2. To inspect and supervise the performance of the contract for commercial advertising services.

Article 112 *Obligations of parties hiring commercial advertising*

Unless otherwise agreed, a party hiring commercial advertising has the following obligations:

1. To provide to the commercial advertising service provider true and accurate information relating to business activities in commercial goods and services and to be responsible for that information;
2. To pay fees for the commercial advertising services and other reasonable charges.

Article 113 *Rights of commercial advertising service providers*

Unless otherwise agreed, a commercial advertising service provider has the following rights:

1. To request the party hiring commercial advertising to provide truthful and accurate advertising information strictly in accordance with the agreements stipulated in the contract.
2. To receive fees for commercial advertising services and other reasonable charges.

Article 114 *Obligations of commercial advertising service providers*

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

1. To comply with the selection of the party hiring the commercial advertisement regarding the commercial advertisement publisher; and the method, content, means, scope, and time or duration of the commercial advertisement.
2. To provide a true and accurate advertisement of the business activities in commercial goods and services according to the information supplied by the party hiring the commercial advertising services.
3. To fulfil other obligations as agreed in the contract for commercial advertising services.

Article 115 *Commercial advertisement publisher*

The commercial advertisement publisher means the person directly issuing the commercial advertising product.

Article 116 *Obligations of commercial advertisement publishers*

A commercial advertisement publisher has the following obligations:

1. To comply with the provisions on use of means of commercial advertising stipulated in article 107 of this Law;
2. To perform the contract for publishing of the advertisement as signed with the party hiring the publishing of the advertisement.
3. To fulfil other obligations in accordance with law.

SECTION 3

Display and Introduction of Goods and Services**Article 117** *Display and introduction of goods and services*

Display and introduction of goods and services means activities of commercial enhancement conducted by a business entity using goods and services and materials about goods and services in order to introduce such goods and services to customers.

Article 118 *Rights to display and introduce goods and services*

1. A Vietnamese business entity, a branch of a Vietnamese business entity and a branch of a foreign business entity in Vietnam has the right to display and introduce its goods and services; to select appropriate forms of displaying and introducing its goods and services; to organize itself its own display and introduction of its goods and services, or to hire a business entity engaging in commercial services of display and introduction of goods and services in order to display and introduce its goods and services.
2. A representative office of a business entity shall not be permitted to display and introduce directly the goods and services of the business entity which it represents, except for displays and introduction at the office of such representative office. If a representative office is so authorized by [*its parent*] business entity, such representative office has the right to sign a contract with a business entity engaging in commercial services of display and introduction of goods and services to display and introduce the goods and services of the business entity which such representative office represents.
3. Foreign business entities not yet permitted to conduct commercial activities in Vietnam but wishing to display and introduce their goods and services in Vietnam must hire a Vietnamese business entity engaging in commercial services of display and introduction of goods and services in order to display and introduce their goods and services.

Article 119 *Business of services of display and introduction of goods and services*

Business of services of display and introduction of goods and services means a commercial activity whereby one business entity provides the commercial services of display and introduction of goods and services for other business entities.

Article 120 *Forms of display and introduction of goods and services*

1. Opening showrooms displaying and introducing goods and services.
2. Displaying and introducing goods and services at commercial centres or during entertainment, sports, cultural or artistic activities.
3. Organizing seminars and conferences involving the display and introduction of goods and services.
4. Displaying and introducing goods and services on the internet and in other forms in accordance with law.

Article 121 *Conditions for displayed and introduced goods and services*

1. Displayed and introduced goods and services must be goods and services in which business is lawfully conducted in the market.
2. Displayed and introduced goods and services must comply with the laws on quality of goods and labelling of goods.

Article 122 *Conditions for goods imported into Vietnam for purposes of display and introduction*

Goods imported into Vietnam for purposes of display and introduction in Vietnam must, in addition to satisfying the conditions stipulated in article 121 of this Law, satisfy the following conditions:

1. Be goods which are permitted to be imported into Vietnam.
2. Where goods are temporarily imported for display and introduction, they must be re-exported after completion of the display and introduction and within a time-limit not exceeding six months from the date of the temporary importation; if that time-limit is exceeded, procedures for extension must be conducted at the customs office in the place where the goods were temporarily imported.
3. If goods which were temporarily imported for display and introduction are sold in Vietnam, they must comply with the law of Vietnam on imported goods.

Article 123 *Cases where display and introduction of goods and services is prohibited*

1. The organization of the display and introduction of goods and services or the use of media displaying and introducing the goods and services is detrimental to national security, social order and safety, or has an adverse effect on the landscape, the environment and the health of people.

2. The display and introduction of goods and services or the use of the forms and media for display and introduction is contrary to the historical, cultural and ethical traditions and fine customs of Vietnam.
3. The display and introduction of goods and services discloses State secrets.
4. The display and introduction is of goods of another business entity in order to contrast them to the goods of the displayer, except where the goods displayed are counterfeit goods or goods in breach of intellectual property rights in accordance with law.
6. The display and introduction is of sample goods which are inconsistent with goods currently traded with respect to quality, price, usage, design, type, packaging, warranty period, and other quality indicators aimed at deceiving customers.

Article 124 *Contract for services of display and introduction of goods and services*

A contract for services of display and introduction of goods and services must be in writing or in another form with equivalent legal validity.

Article 125 *Rights of parties hiring services of display and introduction of goods and services*

Unless otherwise agreed, a party hiring services of display and introduction of goods and services has the following rights:

1. To require the party providing the services of display and introduction of goods and services to perform the agreements in the contract.
2. To inspect and supervise the performance of the contract for services of display and introduction of goods and services.

Article 126 *Obligations of parties hiring services of display and introduction of goods and services*

Unless otherwise agreed, a party hiring services of display and introduction of goods and services has the following obligations:

1. To provide complete goods and services for display and introduction to the service provider or to provide media for the display and introduction in accordance with the agreements in the contract.
2. To supply information relating to the displayed and introduced goods and services and to be responsible for such information.

3. To pay fees for the services and other reasonable charges.

Article 127 *Rights of parties providing services of display and introduction of goods and services*

Unless otherwise agreed, a party providing the services of display and introduction of goods and services has the following rights:

1. To request the party hiring the services to provide goods and services for display and introduction in accordance with the time schedule agreed in the contract.
2. To request the party hiring the services to supply information relating to the goods and services to be displayed and introduced and other necessary facilities as agreed in the contract.
3. To receive fees for services and other reasonable charges.

Article 128 *Obligations of parties providing services of display and introduction of goods and services*

Unless otherwise agreed, a party providing the services of display and introduction of goods and services has the following obligations:

1. To carry out the display and introduction of goods and services as agreed in the contract.
2. To take care of the displayed and introduced goods and of the documents and facilities supplied during the term of performance of the contract; to return all displayed and introduced goods, documents and facilities to the party hiring the services after completion of the display and introduction of goods and services;
3. To carry out the display and introduction of goods and services in accordance with the items agreed with the party hiring the services of display and introduction of goods and services.

SECTION 4

Trade Fairs and Exhibitions

Article 129 *Trade fairs and exhibitions*

A trade fair or exhibition means an activity of commercial enhancement conducted for a certain period of time and concentrated at a certain location in order for business entities to display and introduce their goods and services for the purposes of marketing and seeking opportunities to sign contracts for purchase and sale of goods and to sign service contracts.

Article 130 *Conducting business of trade fair and exhibition services*

1. Business of trade fair and exhibition services means a commercial activity whereby one business entity provides the service of organization of or participation in trade fairs and exhibitions for other business entities in order to receive remuneration for the service of organization of trade fairs and exhibitions.
2. A contract for services of organization of or participation in a trade fair or exhibition must be in writing or in another form with equivalent legal validity.

Article 131 *Right to organize or participate in trade fair or exhibition*

1. A Vietnamese business entity, a branch of a Vietnamese business entity and a branch of a foreign business entity in Vietnam has the right to organize or participate in directly a trade fair or exhibition with respect to the goods and services in which such business entity conducts business, or to hire a business entity providing trade fair and exhibition services to do so.
2. A representative office of a business entity shall not be permitted to organize or participate in directly a trade fair or exhibition. If a representative office is so authorized by [*its parent*] business entity, such representative office has the right to sign a contract with a business entity providing trade fair and exhibition services in order to organize or participate in a trade fair or exhibition for the business entity which such representative office represents.
3. Foreign business entities have the right to participate directly in a trade fair or exhibition in Vietnam or to hire a Vietnamese business entity providing trade fair and exhibition services to represent such foreign business entity by participating in a trade fair or exhibition in Vietnam. Any foreign business entity wishing to organize a trade fair or exhibition in Vietnam must hire a Vietnamese business entity providing trade fair and exhibition services to perform [*the services of organizing a trade fair or exhibition*].

Article 132 *Organizing trade fairs and exhibitions in Vietnam*

1. All trade fairs and exhibitions organized in Vietnam must be registered with, and provided with written confirmation by, the State administrative body for commerce of the province or city under central authority in the place where the trade fair or exhibition is to be organized.
2. The Government shall provide specific regulations on the order and procedures for and details of registration and confirmation of registration

of trade fairs and exhibitions organized in Vietnam as stipulated in clause 1 of this article.

Article 133 *Organization of and participation in overseas trade fairs and exhibitions*

1. Any business entity which is not a business entity conducting the business of trade fair and exhibition services and which wishes to organize or participate in directly an overseas trade fair or exhibition with respect to the goods and services in which such business entity conducts business must comply with regulations on exporting goods.
2. A business entity conducting the business of trade fair and exhibition services must register with the Ministry of Trade when it arranges for another business entity to participate in a [*overseas*] trade fair or exhibition.
3. A business entity which does not have business registration for trade fair and exhibition services shall not be permitted to arrange for other business entities to participate in overseas trade fairs and exhibitions.
4. The Government shall provide specific regulations on the order and procedures for and details of registration of organization of and participation in overseas trade fairs and exhibitions pursuant to clauses 1 and 2 of this article.

Article 134 *Goods and services displayed and introduced at trade fairs and exhibitions in Vietnam*

1. The following goods and services shall not be permitted to participate in trade fairs and exhibitions:
 - (a) Goods and services in which business is prohibited, in which business is restricted, or the circulation of which is not yet permitted by law;
 - (b) Goods and services supplied by a business entity in a foreign country¹⁴ which are prohibited imports in accordance with law;
 - (c) Counterfeit goods or goods in breach of intellectual property rights, except where the goods are displayed or introduced in order to be contrasted with genuine goods.

14 *Phillips Fox Note: This is the literal translation, and differs from "foreign business entity" appearing elsewhere in this translation.*

2. In addition to compliance with the provisions on trade fairs and exhibitions in this Law, goods and services subject to specialized management must also comply with the regulations on specialized management applicable to such goods and services.
3. Where goods are temporarily imported for participation in a trade fair or exhibition in Vietnam, they must be re-exported within a time-limit of thirty (30) days from the date of closing of the trade fair or exhibition.
4. The temporary importation and re-exportation of goods for participation in a trade fair or exhibition in Vietnam must comply with the law on customs and other related laws.

Article 135 *Goods and services participating in overseas trade fairs and exhibitions*

1. All goods and services shall be eligible for participation in overseas trade fairs and exhibitions, except goods and services in the category of prohibited exports in accordance with law.
2. Goods and services in the category of prohibited exports may only participate in overseas trade fairs and exhibitions with written permission from the Prime Minister of the Government.
3. The duration for the temporary exportation of goods which participate in an overseas trade fair or exhibition shall be one year from the date of temporary exportation; if that duration is exceeded and the goods have not been re-imported, the goods shall be subject to duty and other financial obligations in accordance with the law of Vietnam.
4. The temporary exportation and re-importation of goods which participate in an overseas trade fair or exhibition must comply with the law on customs and other related laws.

Article 136 *Sale or gift of goods and provision of services at trade fairs and exhibitions in Vietnam*

1. Goods and services which are displayed and introduced at a trade fair or exhibition in Vietnam shall be permitted to be sold or made a gift of or provided at such trade fair or exhibition; imported goods must be registered with customs, except in the case stipulated in clause 2 of this article.
2. Goods in the category of imports which must have a permit from a competent State body shall only be permitted to be sold or made a gift of with the written approval of the competent State body.

3. The sale or gift of goods stipulated in article 134.2 of this Law at a trade fair or exhibition must comply with the regulations on specialized import management applicable to such goods.
4. Goods which are sold or made a gift of and services which are provided at a trade fair or exhibition in Vietnam shall be subject to taxes and other financial obligations in accordance with law.

Article 137 *Sale or gift of Vietnamese goods and provision of Vietnamese services participating in overseas trade fairs and exhibitions*

1. Vietnamese goods and services participating in an overseas trade fair or exhibition shall be permitted to be sold, made a gift of or provided at such trade fair or exhibition, except in the cases stipulated in clauses 2 and 3 of this article.
2. The sale or gift of goods in the category of prohibited exports but which have already been permitted for temporary export for participation in an overseas trade fair or exhibition shall only be conducted with prior permission from the Prime Minister of the Government.
3. Goods in the category of exports which must have a permit from a competent State body shall only be permitted to be sold or made a gift of with the written approval of the competent State body.
4. Vietnamese goods and services participating in an overseas trade fair or exhibition which are sold, made a gift of or provided overseas shall be subject to duty and other financial obligations in accordance with law.

Article 138 *Rights and obligations of organizations and individuals participating in trade fairs and exhibitions in Vietnam*

1. To exercise rights and fulfil obligations in accordance with the agreement with the business entity organizing the trade fair or exhibition.
2. To sell or make a gift of the goods and to provide the services displayed and introduced at the trade fair or exhibition in accordance with law.
3. To import temporarily and re-export goods and materials about goods and services in order to display them at a trade fair or exhibition.
4. To comply with regulations on organizing trade fairs and exhibitions in Vietnam.

Article 139 *Rights and obligations of business entities organizing or participating in overseas trade fairs and exhibitions*

1. To export temporarily and re-import goods and materials about goods and services in order to display and introduce them at the trade fair or exhibition.
2. To comply with regulations on organizing or participating in overseas trade fairs and exhibitions.
3. To sell or make a gift of goods displayed at the overseas trade fair or exhibition; to pay duty and to fulfil other financial obligations in accordance with the law of Vietnam.

Article 140 *Rights and obligations of business entities conducting business of trade fair and exhibition services*

1. To list the theme, time and duration of the trade fair or exhibition at the place where it will be held prior to the opening day of such trade fair or exhibition.
2. To request a party hiring trade fair and exhibition services to supply goods for participation in the trade fair or exhibition on schedule in accordance with the agreement in the contract.
3. To request a party hiring trade fair and exhibition services to supply information about the goods for participation in the trade fair or exhibition together with other essential facilities in accordance with the agreement.
4. To receive fees for services and other reasonable charges.
5. To organize the trade fair or exhibition strictly in accordance with the agreement in the contract.

CHAPTER 5

Intermediary Commercial Activities

SECTION 1

Representation of Business Entities

Article 141 *Representation of business entities*

1. Representation of business entity means the agreement of one business entity (referred to as the *representative*) to act as authorized by another business entity (referred to as the *represented entity*) to conduct commercial activities in the name and under the instructions of the [*represented*] entity and to be entitled to receive remuneration for acting as representative.
2. In the event that a business entity nominates its personnel to act as its representative, the provisions of the *Civil Code* shall apply.

Article 142 *Contracts for representation of business entities*

A contract for representation of business entity must be made in writing or in another form with equivalent legal validity.

Article 143 *Scope of representation*

Parties may agree for a representative to conduct a part or all of the commercial activities falling within the scope of activities of the represented entity.

Article 144 *Term of representation of business entities*

1. The term of representation shall be as agreed by the parties.
2. Where there is no agreement, the term of representation shall be terminated when the represented entity serves notice of termination of the contract for representation on the representative or when the representative serves notice of termination of the contract on the represented entity.
3. Unless otherwise agreed, if the represented entity unilaterally serves notice of termination of the contract for representation pursuant to clause 2 of this article, the representative has the right to require the represented entity to pay an amount of remuneration for the signing by the represented entity of contracts with customers which the representative has dealt with and to pay other sums of remuneration to which the representative would otherwise have been entitled.

4. If the term of representation is terminated pursuant to clause 2 of this article at the request of the representative, the representative shall lose its right to remuneration for transactions for which it would otherwise have been entitled to remuneration, unless the parties otherwise agree.

Article 145 *Obligations of representatives*

Unless otherwise agreed, a representative has the following obligations:

1. To conduct commercial activities in the name and in the interests of the represented entity;
2. To notify the represented entity of *[any]* opportunities and the results of implementation of authorized commercial activities;
3. To comply with the instructions of the represented entity, unless such instructions breach the law;
4. Not to conduct commercial activities in its own name or in the name of a third person within the scope of representation;
5. Not to disclose or supply to others confidential information relating to commercial activities of the represented entity during the term of representation and within two years of termination of the contract for representation;
6. To preserve the assets and materials assigned for the purpose of implementing the acts of representation.

Article 146 *Obligations of represented entities*

Unless otherwise agreed, a represented entity has the following obligations:

1. To notify the representative immediately of the signing of contracts negotiated by the representative, the performance of contracts entered into by the representative, and the acceptance or rejection of acts implemented by the representative beyond the scope of representation.
2. To supply the assets, materials and information necessary for the representative to implement the acts of representation.
3. To pay remuneration and other reasonable charges to the representative.
4. To notify promptly the representative of the inability *[of the represented entity]* to enter into or perform the contracts falling within the scope of representation.

Article 147 *Right to receive remuneration of representative*

1. Representatives shall be entitled to remuneration in respect of contracts entered into within the scope of representation. The right to remuneration shall arise from the time agreed by the parties in the contract for representation.
2. Where there is no agreement, the rate of remuneration for a representative shall be determined in accordance with article 86 of this Law.

Article 148 *Payment of expenses incurred*

Unless otherwise agreed, representatives have the right to claim the payment of reasonable expenses incurred in order to implement the representative acts.

Article 149 *Lien*

Unless otherwise agreed, representatives have the right to withhold assigned assets and materials as security for payment of remuneration and charges which are due.

SECTION 2

Commercial Brokerage**Article 150** *Commercial brokerage*

Commercial brokerage means a commercial activity whereby a business entity acts as an intermediary (referred to as the *broker*) between parties purchasing and selling goods and providing services (referred to as the *principals*) during the course of negotiations and signing contracts for purchase and sale of goods or provision of services, and is entitled to remuneration, pursuant to a brokerage contract.

Article 151 *Obligations of commercial brokers*

Unless otherwise agreed, a commercial broker has the following obligations:

1. To preserve samples of goods and materials assigned for the purpose of brokerage activities and to return them to a principal after completion of brokerage activities;
2. Not to disclose or supply information detrimental to the interests of a principal;
3. To be responsible for the legal status, but not the capacity for payment, of the principals;

4. Not to participate in performance of a contract between principals, unless authorized by the principals¹⁵.

Article 152 *Obligations of principals*

Unless otherwise agreed, a principal has the following obligations:

1. To provide the necessary information, materials and facilities related to the goods and services.
2. To pay remuneration and other reasonable charges to the broker.

Article 153 *Right to remuneration of broker*

1. Unless otherwise agreed, the right to remuneration of a broker shall arise from the time when the principals enter into a contract with each other.
2. Where there is no agreement, the rate of remuneration of a broker shall be determined in accordance with article 86 of this Law.

Article 154 *Payment of expenses incurred in relation to brokerage activities*

Unless otherwise agreed, a principal must pay all reasonable expenses incurred in relation to the brokerage, even where the brokerage activities fail to achieve any result for the principal.

SECTION 3

Sale and Purchase of Goods by Authorized Dealers¹⁶

Article 155 *Sale and purchase of goods by authorized dealers*

Sale and purchase of goods by authorized dealer means a commercial activity whereby an authorized dealer carries out the sale and purchase of goods under its own name subject to terms agreed with the principal and is paid remuneration of a dealer.

Article 156 *Authorized dealers*

Authorized sale and purchase dealer means a business entity dealing in goods which are consistent with the goods the subject of authorization and carrying out the sale and purchase of goods on terms agreed with the principal.

15 *Phillips Fox Note: The Vietnamese text does not distinguish between singular and plural, however, we presume the plural is intended.*

16 *Phillips Fox Note: The literal translation is "party receiving the authorization".*

Article 157 *Principals*

Sale and purchase principal means either a business entity, or an entity other than a business entity, which authorizes an authorized dealer to conduct the sale and purchase of goods at the request of the principal and which must pay remuneration of the dealer.

Article 158 *Goods subject of authorization*

All goods which are lawfully in circulation may be the subject matter of an authorized sale and purchase.

Article 159 *Authorization contracts*

A contract for sale and purchase authorization must be in writing or in another form with equivalent legal validity.

Article 160 *Authorization of third parties*

An authorized dealer may not authorize a third party to perform the signed contract for sale and purchase authorization without the written consent of the principal.

Article 161 *Authorization from multiple principals*

An authorized dealer may conduct an authorized sale and purchase of goods on behalf of more than one principal.

Article 162 *Rights of principals*

Unless otherwise agreed, a principal has the following rights:

1. To require the authorized dealer to provide full information relating to the performance of the authorization contract.
2. Not to bear liability for breach of law by the authorized dealer, except in the circumstances stipulated in article 163.4 of this Law.

Article 163 *Obligations of principals*

Unless otherwise agreed, a principal has the following obligations:

1. To provide necessary information, materials and facilities for the performance of the authorization contract.
2. To pay remuneration of the dealer and other reasonable charges to the dealer.

3. To pay money and deliver goods strictly as agreed.
4. To be jointly liable when the authorized dealer breaches the law for any reason caused by the principal or when the parties intentionally act contrary to the law.

Article 164 *Rights of authorized dealers*

Unless otherwise agreed, an authorized dealer has the following rights:

1. To require the principal to provide necessary information and materials for the performance of the authorization contract.
2. To receive remuneration of the dealer and other reasonable expenses.
3. Not to bear liability for goods which have been delivered to the principal correctly as agreed.

Article 165 *Obligations of authorized dealers*

Unless otherwise agreed, an authorized dealer has the following obligations:

1. To conduct the sale and purchase of goods as agreed.
2. To notify the principal of matters relating to the performance of the authorization contract.
3. To follow the instructions of the principal which are consistent with the agreement.
4. To preserve assets and materials assigned for the purpose of performance of the authorization contract.
5. To maintain the confidentiality of information relating to the performance of the authorization contract.
6. To pay money and deliver goods correctly as agreed.
7. To be jointly liable for a breach of law by the principal if the breach was caused partly by the fault of the authorized dealer.

SECTION 4

Commercial Agency**Article 166** *Commercial agency*

Commercial agency means a commercial activity whereby the principal and the agent agree for the agent to conduct in its own name the sale or purchase of goods for the principal or to provide services of the principal to customers in order to receive remuneration.

Article 167 *Principals and agents*

1. Principal means a business entity which delivers goods to an agent for sale or provides money for the purchase of goods to an agent for purchase, or a business entity which vests authority to provide services in an agent for provision of services.
2. Agent means a business entity which receives goods for agency sale or which receives money for agency purchase or means a party which accepts authority to provide services.

Article 168 *Agency contracts*

An agency contract must be in writing or in another form with equivalent legal validity.

Article 169 *Forms of agency*

1. Off-take agency means a form of agency whereby the agent conducts the sale or purchase of a whole quantity of goods or provides a complete service for the principal.
2. Exclusive agency means a form of agency whereby, within a specified geographical area, a principal authorizes only one agent to sell or purchase one or a number of specified lines of goods or to provide one or a number of specified types of services.
3. General agency for sale and purchase of goods or provision of services means a form of agency whereby the agent organizes a network of sub-agents to conduct the sale or purchase of goods or to provide services for the principal.

The general agent shall represent the network of sub-agents. Sub-agents shall operate under the management and in the name of the general agent.

4. Other forms of agency as agreed by the parties.

Article 170 *Ownership rights in commercial agency*

The principal is the owner of goods and money delivered to the agent.

Article 171 *Remuneration of agent*

1. Unless otherwise agreed, the remuneration of an agent shall be paid to the agent in the form of a commission or price differential.
2. Where the principal fixes the selling or purchasing price of goods or the service charge to the customer, the agent shall be entitled to commission calculated as a percentage of such selling or purchasing price of goods or service charge.
3. Where the principal does not fix the selling or purchasing price of goods or the service charge to the customer but only fixes the price for selling to the agent, the agent shall be entitled to a price differential. The amount of the price differential shall be determined as the difference between [*on the one hand*] the selling or purchasing price of goods or the service charge to the customer and [*on the other hand*] the price which the principal fixes for the agent.
4. Where the parties do not have an agreement on the amount of remuneration of an agent, the amount of remuneration shall be calculated as follows:
 - (a) The actual amount of remuneration paid to the parties previously;
 - (b) Where clause (a) is inapplicable, the amount of the remuneration of an agent shall be the average amount of remuneration of an agent applicable to the same type of goods and services which the principal has paid to other agents;
 - (c) Where clauses (a) and (b) are inapplicable, the amount of the remuneration of an agent shall be the normal amount of remuneration of an agent applicable to the same type of goods and services on the market.

Article 172 *Rights of principals*

Unless otherwise agreed, a principal has the following rights:

1. To fix the selling or purchasing price of goods or the service charge to the customer.
2. To fix the price for selling to the agent.

3. To request the agent to implement security measures as provided for by law.
4. To request the agent to make payment or to deliver goods in accordance with the agency contract.
5. To inspect and supervise the performance of the agency contract by the agent.

Article 173 *Obligations of principals*

Unless otherwise agreed, a principal has the following obligations:

1. To provide guidelines and information for and facilitate the performance of the agency contract by the agent.
2. To be liable for the quality of goods of an agent selling and purchasing goods and for the quality of services of an agent providing services.
3. To pay remuneration and other reasonable expenses to the agent.
4. To return the assets of the agent used as security (if any) to the agent after termination of the agency contract.
5. To be jointly liable for a breach of law by the agent if the breach was caused partly by the fault of the principal.

Article 174 *Rights of agents*

Unless otherwise agreed, an agent has the following rights:

1. To enter into agency contracts with one or more principals, except in the cases stipulated in article 175.7 of this Law.
2. To require the principal to pay money or deliver goods in accordance with the agency contract; after termination of the agency contract, to receive from the principal the assets (if any) which were used as security.
3. To require the principal to provide guidelines and information for and to satisfy other conditions relating to the performance of the agency contract.
4. To make decisions on the selling price of goods and on the service charge to customers in the case of off-take agency.
5. To be paid remuneration and to enjoy other legitimate rights and benefits arising from the agency activities.

Article 175 *Obligations of agents*

Unless otherwise agreed, an agent has the following obligations:

1. To sell or purchase goods and to provide services to customers at the price of goods and level of charges for provision of services fixed by the principal.
2. To comply strictly with the agreements with respect to the delivery or receipt of goods or money with the principal.
3. To provide security for performance of civil obligations in accordance with law.
4. To pay to the principal the proceeds from the sale of goods, in the case of a sale agent; to deliver the purchased goods, in the case of a purchase agent; and to pay the charges for provision of services in the case of an agent providing services.
5. To preserve the goods after receipt thereof, in the case of a sale agent, or prior to delivery thereof, in the case of a purchase agent; to be jointly liable for the quality of goods, in the case of a sale or purchase agent, and to be jointly liable for the quality of services, in the case of an agent providing services, where the fault is caused by the agent.
6. To be subject to inspection and supervision by the principal and to report to the principal on the agency activities.
7. Where the law contains a specific provision to the effect that the agent may only sign an agency contract with one principal with respect to a specified type of commodity or service, the agent must comply with such law.

Article 176 *Payments in cases of agency*

Unless otherwise agreed, payments for goods and for provision of services and payments of remuneration of an agent shall be made on each occasion after the agent has completed the sale or purchase of a certain quantity of goods or completed the provision of a certain amount of services.

Article 177 *Term of agency*

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

2. Unless otherwise agreed, if the principal serves a notice of termination of contract pursuant to clause 1 of this article, the agent has the right to request the principal to pay damages for the period of time during which the agent acted as agent for the principal.

The amount of such damages shall be the average monthly remuneration of an agent for each year that the agent acted as agent for the principal. If the term of agency was less than one year, the amount of such damages shall be calculated as the average monthly remuneration of an agent during the term of the agency.

3. If an agency contract is terminated at the request of an agent, the agent does not have the right to claim damages from the principal for the term for which the agent acted as agent for the principal.

CHAPTER 6

A Number of Other Specific Commercial Activities

SECTION 1

Commercial Processing

Article 178 *Commercial processing*

Commercial processing means a commercial activity whereby the processor uses part or all of the raw materials and supplies provided by the supplier in order to carry out one or more stages of the production process at the request of the supplier in order to receive remuneration.

Article 179 *Processing contracts*

A processing contract must be made in writing or in another form with equivalent legal validity.

Article 180 *Goods for processing*

1. All types of goods shall be permitted to be processed, except for goods in which business is prohibited.
2. In the case of processing goods for foreign business entities for the purpose of sale overseas, the following goods shall be permitted to be processed if the competent State body provides approval, namely, goods on the list of goods in which business is prohibited and goods on the list of prohibited imports and prohibited exports.

Article 181 *Rights and obligations of suppliers*

1. To deliver part or all of the raw materials and supplies for processing strictly in accordance with the processing contract or to deliver money for the purchase of supplies at the agreed price, quality and quantity.
2. Unless otherwise agreed, to take back all processed products, leased or borrowed machinery and equipment, and raw materials, auxiliary materials, supplies and scrap after liquidation of the processing contract.
3. To sell, destroy or make a gift of on-the-spot¹⁷ processed products, leased or borrowed machinery and equipment, excess raw materials, auxiliary materials and supplies, and faulty products and scrap in accordance with the agreement and in accordance with law.
4. To assign representatives to inspect and supervise processing activities at the processing place, and to assign experts to guide production technology and to examine the quality of processed products as agreed in the processing contract.
5. To be responsible for the lawfulness of intellectual property rights with respect to processed goods and raw materials, supplies, machinery and equipment delivered to the processor for use in processing activities.

Article 182 *Rights and obligations of processors*

1. To provide part or all of the raw materials and supplies for processing in accordance with the agreements with the supplier on quantity, quality, technical specifications and price.
2. To receive remuneration of a processor and other reasonable expenses.
3. In the case of processing for foreign individuals or organizations, a processor shall be entitled to conduct on-the-spot export of processed products; leased or borrowed machinery and equipment; excess raw materials, auxiliary materials and supplies; and faulty products and scrap in accordance with the authorization of the supplier.
4. In the case of processing for foreign individuals or organizations, a processor shall be entitled, in accordance with the law on duties, to exemption from import duty on machinery, equipment, raw materials, auxiliary materials and supplies which are temporarily imported at stipulated limits in order to perform the processing contract.

17 *Phillips Fox Note: This is an adverb qualifying "sell, destroy or make a gift of".*

5. To be liable for the lawfulness of the processing activities when the goods being processed are on the list of goods in which business is prohibited or on the list of goods which are prohibited imports or prohibited exports.

Article 183 *Remuneration of processor*

1. Processors may receive remuneration of a processor in cash or by way of processed products and machinery and equipment used to perform the processing.
2. In the case of processing for foreign individuals or organizations, if the processor receives remuneration of a processor by way of processed products and machinery and equipment used to perform the processing, [*the processor*] must comply with the regulations on importation of such products, machinery and equipment.

Article 184 *Technology transfer in processing with foreign organizations and individuals*

Technology transfer in processing with foreign organizations and individuals shall be implemented in accordance with the agreements contained in the processing contracts and must be in accordance with the provisions on technology transfer of the law of Vietnam.

SECTION 2

Auction of Goods

Article 185 *Auction of goods*

1. Auction of goods means a commercial activity whereby the seller itself conducts, or hires an auctioneer to conduct, the public sale of goods in order to select the purchaser offering the highest price.
2. An auction of goods shall be performed by one of the following two methods:
 - (a) Upward bidding method means the auction method by which the bidder offering the highest price compared with the reserve price has the right to purchase the goods;
 - (b) Downward bidding method means the auction method by which the first bidder accepting the reserve price or a price lower than the reserve price has the right to purchase the goods.

Article 186 *Auctioneers and sellers of goods*

1. Auctioneer means a business entity with business registration for auctioneering services or a seller of goods itself conducting an auction.
2. Seller of goods means the owner of goods or the person authorized by the owner of goods to sell the goods or a person with the right pursuant to law to sell goods belonging to others.

Article 187 *Auction participants and auction administrators*

1. Auction participants are organizations or individuals having registered to participate in an auction.
2. The auction administrator shall be the auctioneer or a person authorized by the auctioneer to administer the auction.

Article 188 *Principles for auctions*

The auction of goods in commerce shall be conducted on the principles of publicity, truthfulness and protection of the lawful rights and interests of all participants.

Article 189 *Rights of auctioneers*

Unless otherwise agreed, an auctioneer has the following rights:

1. To request the seller of goods to provide promptly complete, accurate and necessary information relating to the goods to be auctioned; and to facilitate the auctioneer or the auction participants in their examination of goods to be auctioned and in the delivery of the auctioned goods to the purchaser where the auctioneer is a different entity from the seller of goods¹⁸;
2. To fix a reserve price where the auctioneer is a different entity from the seller of goods or [*where the auctioneer*] is so authorized by the seller of goods;
3. To conduct the auction of goods;
4. To request the purchaser to make payment;
5. To receive the fees for auctioneering services paid by the seller in accordance with article 211 of this Law.

18 *Phillips Fox Note: The literal translation is "where the auctioneer is not the seller of goods".*

Article 190 *Obligations of auctioneers*

1. To conduct the auction in accordance with the principles and procedures stipulated by law and in accordance with the auction method agreed with the seller of goods.
2. To announce and display publicly the complete, accurate and necessary information relating to the goods to be auctioned.
3. To preserve the goods to be auctioned when they are entrusted to the auctioneer by the seller of goods.
4. To display goods, goods samples or materials introducing the goods for the consideration of auction participants.
5. To prepare a deed of auction of goods and to send it to the seller, the purchaser and other related parties stipulated in article 203 of this Law.
6. To deliver the auctioned goods to the purchaser in accordance with the contract for provision of auctioneering services.
7. Unless otherwise agreed with the seller, to complete procedures to transfer ownership in auctioned goods for which the law requires ownership to be registered.
8. To pay the proceeds of goods sold to the seller of goods, including any price differential collected as a result of a bidder withdrawing its offered price in accordance with article 204.3 of this Law, or to return unsold goods to the seller of goods in accordance with the agreement. In the absence of any such agreement, to pay the proceeds to the seller of goods no later than three working days after receipt of the proceeds from the purchaser or to return the goods promptly within a reasonable time after the auction.

Article 191 *Rights of seller of goods being different entity from auctioneer*

Unless otherwise agreed, a seller of goods has the following rights:

1. To receive the proceeds of goods sold and the price differential collected as stipulated in article 204.3 of this Law or to receive the return of unsold goods in the case of an unsuccessful auction.
2. To supervise the holding of the auction of goods.

Article 192 *Obligations of seller of goods being different entity from auctioneer*

Unless otherwise agreed, a seller of goods has the following obligations:

1. To deliver the goods to the auctioneer; to facilitate the auctioneer and the auction participants to inspect the goods; and to provide promptly complete, accurate and necessary information relating to the goods to be auctioned.
2. To pay fees for the services of holding the auction in accordance with article 211 of this Law.

Article 193 *Service contracts to hold auction of goods*

1. A service contract to hold an auction of goods¹⁹ must be made in writing or in another form with equivalent legal validity.
2. In the case of an auction of pledged or mortgaged goods, the service contract to hold the auction must be approved by the pledgee or mortgagee and the seller must notify the auction participants that the goods are pledged or mortgaged goods.
3. If an auction is agreed on in a pledge or mortgage contract but the pledgor or mortgagor is absent without legitimate reason or refuses to sign a service contract to hold an auction of the goods, a service contract to hold an auction of the goods shall be signed between the pledgee or mortgagee and the auctioneer.

Article 194 *Determination of reserve price*

1. The seller of goods must fix a reserve price. If the auctioneer is authorized to fix the reserve price, the auctioneer must notify the seller of such price prior to listing notice of the auction.
2. In the case of an auction of pledged or mortgaged goods, the pledgee or mortgagee must agree with the pledgor or mortgagor on a reserve price.
3. If an auction is agreed on in a pledge or mortgage contract but the pledgor or mortgagor is absent without legitimate reason or refuses to sign a service contract to hold an auction of the goods, the pledgee or mortgagee shall fix the reserve price.

19 *Phillips Fox Note: This is the literal translation. It differs from the Vietnamese text for "contract for provision of auctioneering services" in article 190.6 above. Whether a difference in meaning is intended is not clear.*

Article 195 *Notification to persons with related interests and obligations in case of mortgaged or pledged goods*

In the case where the goods to be auctioned are pledged or mortgaged goods, at the same time as the auctioneer lists notice of the auction, it shall also notify persons with related interests and obligations [*of the particulars*] stipulated in article 197 of this Law no later than seven working days prior to the date on which the auction is to take place.

Article 196 *Time-limit for notification and for listing notice of auction of goods*

1. No later than seven working days prior to the date on which the auction is to take place, the auctioneer must list notice of the auction at the place of auction, at the place where the goods are displayed, and at the office of the auctioneer, with the particulars stipulated in article 197 of this Law.
2. Where the auctioneer is the same entity as the seller of goods, the seller of goods shall make its own decision on the time-limit for listing notice of the auction.

Article 197 *Contents of announcement and of listed notice of auction of goods*

An announcement and a listed notice of an auction of goods must contain all of the following particulars:

1. Time and location of the auction.
2. Name and address of the auctioneer.
3. Name and address of the seller of goods.
4. List of goods and their quantity and quality.
5. Reserve price.
6. Necessary information relating to the goods.
7. Location and time of display of the goods.
8. Location and time for reference to the file of the goods.
9. Location and time of registration to purchase the goods.

Article 198 *Persons not permitted to participate in auctions*

1. Any person lacking capacity for civil acts, having lost capacity for civil acts or having restricted capacity for civil acts in accordance with the *Civil Code* or any person being incapable of being aware of or controlling his or her own acts at the time of the auction.
2. Any person working in auctioneering organizations or the parent, spouse or child of such person.
3. Any person having assessed directly the goods to be auctioned or the parent, spouse or child of such person.
4. Any other person without the right to purchase auctioned goods as stipulated by law.

Article 199 *Registration of participation in auction*

1. An auctioneer may request a person wishing to participate in an auction to register for participation prior to the auction taking place.
2. The auctioneer may request a person wishing to participate in an auction to pay a deposit in advance, but any such deposit shall not exceed two per cent of the reserve price of the goods to be auctioned.
3. Where a person participating in an auction purchases the auctioned goods, its deposit shall be deducted from the purchase price; with respect to persons participating in an auction but not purchasing the auctioned goods, their deposits shall be refunded to them immediately upon completion of the auction.
4. Where a person registers to participate in an auction and pays a deposit in advance but is thereafter not able to attend the auction, the auctioneer has the right to retain the deposit.

Article 200 *Display of goods to be auctioned*

Goods, goods samples, materials introducing goods and other necessary information about such goods must be displayed at the location stated in the notice from the date of listing notice of the auction.

Article 201 *Conducting auctions*

An auction shall be conducted in the following order:

1. The auction administrator shall make a roll call of the persons having registered to participate in the auction.

2. The auction administrator shall introduce each of the goods to be auctioned, repeat the reserve prices, answer questions of the auction participants, and invite auction participants to place bids.
3. With respect to the upward bidding method, the auction administrator must announce clearly and accurately any bid which is higher than the previous bid on at least three occasions, with at least thirty (30) seconds elapsing between each such occasion. The auction administrator may announce that there is a purchaser of the auctioned goods only if, after repeating the price offered by such person on three occasions, no other person offers a higher bid.
4. With respect to the downward bidding method, the auction administrator must announce clearly and accurately any bid which is lower than the reserve price on at least three occasions, with at least thirty (30) seconds elapsing between each such occasion. The auction administrator shall announce immediately the name of the bidder being first to accept the reserve price level or a lower price level as the person with the right to purchase the auctioned goods.
5. In the case where a number of persons concurrently offer the same final price at an auction using the upward bidding method, or concurrently offer the initial price at an auction using the downward bidding method, the auction administrator must organize a drawing of lots amongst such auction participants and shall announce the person having won the drawing of lots as the purchaser of the auctioned goods.
6. The auction administrator must prepare a deed of auction of goods while still present at the auction, even when the auction is unsuccessful. The deed of auction of goods must specify the auction results and be signed by the auction administrator, the purchaser, and two witnesses from amongst the auction participants. With respect to auctioned goods which the law requires to be notarized, the deed of auction of goods must also be notarized.

Article 202 *Unsuccessful auctions*

An auction shall be deemed unsuccessful in the following circumstances:

1. There are no auction participants and no bidders.
2. In the case of an auction using the upward bidding method, the highest bid offered is lower than the reserve price.

Article 203 *Deed of auction of goods*

1. Deed of auction of goods means the document confirming the purchase and sale. A deed of auction of goods must contain the following particulars:
 - (a) Name and address of the auctioneer;
 - (b) Name and address of the auction administrator;
 - (c) Name and address of the seller of goods;
 - (d) Name and address of the purchaser of goods;
 - (dd) Time and location where the auction was held;
 - (e) Goods which were auctioned;
 - (g) Price at which the goods were sold;
 - (h) Names and addresses of two witnesses.
2. The deed of auction of goods must be sent to the seller, the purchaser and other related parties.
3. In the case of an unsuccessful auction, the deed of auction of goods must record that the auction was unsuccessful and must contain the particulars stipulated in sub-clauses (a), (b), (c), (dd), (e) and (h) of clause 1 of this article.

Article 204 *Withdrawal of bids*

1. With respect to the upward bidding method, if the highest bidder immediately withdraws its bid, the auction shall continue with the bid of the last previous bidder. With respect to the downward bidding method, if the first person to accept the price withdraws the accepted price, the auction shall continue with the bid of the last previous bidder.
2. Any person withdrawing a bid or withdrawing acceptance of a price shall not be permitted to participate further in the auction.
3. Where the auctioned goods are sold at a price lower than a withdrawn bid in an auction by the upward bidding method or an accepted price which was withdrawn in an auction by the downward bidding method, the bidder having withdrawn its bid must pay the price differential to the auctioneer; but if the goods are sold at a higher price, the bidder having withdrawn its bid shall not be entitled to such price differential.

4. If an auction is unsuccessful, the person having withdrawn its bid shall bear the costs of the auction and shall not be eligible for a refund of its deposit.

Article 205 *Refusal to purchase*

1. Unless otherwise agreed, upon declaration that an auction is completed, the purchaser at the auction shall be bound and liable [*to purchase*]; thereafter, if the purchaser refuses to purchase the goods, such refusal must be accepted by the seller of goods, but the purchaser must bear all costs related to the auction.
2. In the case where the successful purchaser at an auction has paid a deposit in advance but refuses to purchase the goods [*after the auction*], such purchaser shall not be entitled to a refund of such deposit, which shall be forfeited to the seller of goods.

Article 206 *Registration of ownership*

1. The deed of auction of goods shall serve as the basis for the transfer of ownership in auctioned goods for which the law requires ownership to be registered.
2. Based on the deed of auction of goods and other valid papers, the competent State agency shall be responsible to register the ownership of goods for the purchaser of auctioned the goods in accordance with law.
3. The seller and the auctioneer shall be obliged to conduct procedures to transfer ownership in auctioned goods to the purchaser. Unless otherwise agreed, the expenses of conducting procedures for transfer of ownership shall be deducted from the proceeds of the sale of goods.

Article 207 *Time for payment of purchase price of goods*

The time for payment of the purchase price of goods shall be as agreed between the auctioneer and the purchaser; where there is no such agreement, the time shall be as stipulated in article 55 of this Law.

Article 208 *Location for payment of purchase price of goods*

The location for payment of the purchase price of goods shall be as agreed between the auctioneer and the purchaser; where there is no such agreement, the location for payment shall be the business office of the auctioneer.

Article 209 *Time-limit for delivery of auctioned goods*

Unless otherwise agreed between the auctioneer and the purchaser, the time-limit for delivery of auctioned goods shall be regulated as follows:

1. With respect to goods for which the law does not require ownership to be registered, the auctioneer must deliver the goods to the purchaser immediately after the deed of auction of goods is completed.
2. With respect to goods for which ownership has to be registered, the auctioneer must conduct immediately the procedures to transfer ownership and, immediately after completion of procedures for transfer of ownership, must deliver the goods to the purchaser.

Article 210 *Location for delivery of auctioned goods*

1. Where the goods are objects attached to land, the location for delivery of auctioned goods shall be the location where the goods are situated.
2. Where the goods are moveable assets²⁰, the location for delivery of auctioned goods shall be the location where the auction is held, unless otherwise agreed between the auctioneer and the purchaser of goods.

Article 211 *Remuneration for goods auctioneering services*

Where there is no agreement on the amount of remuneration for goods auctioneering services, such remuneration shall be fixed as follows:

1. In the case of a successful auction, the remuneration for the auctioneering service shall be fixed in accordance with article 86 of this Law.
2. In the case of an unsuccessful auction, the seller must pay remuneration equal to fifty (50) per cent of the rate of remuneration provided for in clause 1 of this article.

Article 212 *Costs relating to auctions of goods*

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

1. The seller of goods must bear the cost of transportation of the goods to the agreed location and the costs of preservation of the goods in the case where the goods to be auctioned are not delivered to the auctioneer for preservation.

20 *Phillips Fox Note: The Vietnamese text is different from "objects" in article 210.1 above.*

2. The auctioneer shall bear the costs of preservation of delivered goods, the cost of announcement and listing notices, the costs of holding the auction, and other related costs.

Article 213 *Liability for auctioned goods not conforming with announcement and listed notice*

1. If the auctioned goods do not conform with the announcement and listed notice, the purchaser has the right, within the time-limit stipulated in article 318 of this Law, to return the goods to the auctioneer and to request damages for loss.
2. If the auctioneer referred to in clause 1 of this article is a different entity from the seller of goods and if the incorrect contents of the announcement and listed notice was the fault of the seller of goods, the auctioneer has the right to return the goods [*to the seller*] and to request that the seller pay damages for loss.

SECTION 3

Tendering of Goods and Services

Article 214 *Tendering of goods and services*

1. Tendering of goods and services means a commercial activity whereby one party purchases goods or services by way of an invitation to tender (referred to as the *party calling for tenders*) aimed at selecting from a number of business entities participating in the tendering (referred to as the *tenderers*) the business entity which best satisfies the requirements stipulated by the party calling for tenders and which is selected to enter into and to perform a contract (referred to as the *successful tenderer*).
2. The provisions on tendering in this Law shall not apply to tendering for procurement of goods for public works in accordance with law.

Article 215 *Forms of tendering*

1. Tendering of goods or services shall be conducted in one of the following forms:
 - (a) Open tendering, being the form of tendering in which the party calling for tenders does not restrict the number of tenderers;
 - (b) Limited tendering, being the form of tendering in which the party calling for tenders invites only a specified number of contractors to participate in the tendering.

2. The party calling for tenders shall make the decision to select either the form of open tendering or the form of limited tendering.

Article 216 *Methods of tendering*

1. Methods of tendering shall comprise single envelope tendering and dual envelope tendering. The party calling for tenders has the right to select the method of tendering and must provide advance notice of it to the tenderers.
2. Where tendering is conducted by the single envelope method, the tenderer shall submit its tender, comprising technical and financial proposals, in one envelope in accordance with the requirements in the tender invitation documents, and the tender opening shall be conducted on a single occasion.
3. Where tendering is conducted by the dual envelope method, the tenderer shall submit its tender, comprising technical and financial proposals, in two separate envelopes at the same time, and the tender opening shall be conducted on two occasions. The envelopes containing technical proposals shall be opened first.

Article 217 *Prequalification of tenderers*

The party calling for tenders may hold a prequalification of tenderers in order to select the tenderers capable of satisfying the requirements stipulated by the party calling for tenders.

Article 218 *Tender invitation documents*

1. Tender invitation documents shall comprise the following:
 - (a) Tender invitation letter²¹;
 - (b) Requirements in relation to the goods and services the subject of the tendering;
 - (c) Method of assessment, comparison and classification of tenderers and of selection of contractors;
 - (d) Other instructions relating to the tendering.
2. The party calling for tenders shall regulate the fees for provision of tender invitation documents.

²¹ *Phillips Fox Note: The literal translation is "tender invitation notice".*

Article 219 *Tender invitation letter*

1. A tender invitation letter shall comprise the following main items:
 - (a) Name and address of the party calling for tenders;
 - (b) Brief description of the subject matter of the tendering;
 - (c) Time-limit, location and procedures for receipt of tender invitation documents;
 - (d) Time-limit, location and procedures for submission of tenders;
 - (dd) Instructions for reading the tender invitation documents.
2. The party calling for tenders shall be responsible to make a wide-ranging announcement on the mass media in the case of open tendering, and to send an invitation to register for participation in the tendering to contractors satisfying the conditions in the case of limited tendering.

Article 220 *Instructions to tenderers*

The party calling for tenders shall be responsible for providing instructions to tenderers concerning the conditions for participation in the tendering and instructions on the procedures applicable during the tendering process and for answering questions raised by tenderers.

Article 221 *Management of tenders*

The party calling for tenders shall be responsible for managing tenders.

Article 222 *Security for participation in tendering*

1. Security for participation in tendering shall be provided in the form of a deposit, an escrow deposit or a tender guarantee.
2. The party calling for tenders may require tenderers to pay a deposit or escrow deposit or to provide a tender guarantee when submitting their tenders. The percentage of a deposit or escrow deposit by a tenderer shall be fixed by the party calling for tenders, but shall not exceed three per cent of the total estimated value of the goods and services the subject of the tendering.
3. The party calling for tenders shall stipulate the method and conditions of paying the deposit or escrow deposit or of providing a tender guarantee. Deposits and escrow deposits paid for participation in tendering shall be refunded to unsuccessful tenderers within seven working days from the date of announcement of the tendering results.

4. A tenderer shall not be refunded its deposit or escrow deposit paid for participation in the tendering in the case where the tenderer withdraws its tender after the expiry of the time-limit for submission of tenders (referred to as *tender closing*), or where a successful tenderer fails to sign a contract or refuses to perform a contract.
5. The guarantor of a tenderer shall be obliged to provide the beneficiary with tender security of a value equivalent to the amount of a deposit or escrow deposit.

Article 223 *Confidentiality of tendering information*

1. The party calling for tenders must maintain the confidentiality of tenders.
2. All organizations and individuals involved in the conduct of tendering, in the evaluation of tenderers and in the selection of successful tenderers must maintain the confidentiality of tendering information.

Article 224 *Tender opening*

1. Tender opening means holding an opening of tenders at the fixed time or, if no such time was fixed in advance, the time for tender opening shall be immediately after tender closing.
2. All tenders submitted on time must be opened publicly by the party calling for tenders. Tenderers have the right to attend the tender opening.
3. Tender documents which are not submitted on time shall be rejected and shall be returned unopened to tenderers.

Article 225 *Consideration of tenders upon tender opening*

1. The party calling for tenders shall consider the validity of tenders.
2. The party calling for tenders may request tenderers to clarify any unclear items in their tenders. Any such request and clarification must be made in writing.

Article 226 *Minutes of tender opening*

1. After tender opening, the party calling for tenders and the tenderers in attendance must sign the minutes of the tender opening.
2. The minutes of the tender opening must contain the following particulars:
 - (a) Name of the goods or services the subject of the tendering;

- (b) Date, time and location of the tender opening;
- (c) Names and addresses of the party calling for tenders and of the tenderers;
- (d) Tender prices of all tenderers;
- (dd) Amendments of or additions to any of the particulars and any other relevant items.

Article 227 *Assessment and comparison of tenders*

1. Tenders shall be assessed and compared with respect to each criterion to provide grounds for an overall assessment.

The party calling for tenders shall regulate the criteria for assessment of tenders.

2. The criteria as stipulated pursuant to clause 1 of this article shall be evaluated by marking points out of a total score or in accordance with another method as fixed prior to the tender opening.

Article 228 *Amendments of tender documents*

1. Tenderers shall not be permitted to amend their tenders after the tender opening.
2. Throughout the process of assessment and comparison of tenders, the party calling for tenders may request tenderers to clarify issues relating to their tenders. Any such request by the party calling for tenders and any responses from tenderers must be made in writing.
3. Where the party calling for tenders amends any contents of the tender invitation documents, such party must send the written amendments to all tenderers at least ten (10) days prior to the final deadline for submission of tenders in order for all tenderers to have the opportunity to adjust their tenders.

Article 229 *Classification and selection of contractors*

1. On the basis of the results of assessment of tenders, the party calling for tenders must classify and select tenderers in accordance with the method previously fixed.
2. Where several tenderers obtain equal marks and satisfy the same level of criteria for winning the tendering, the party calling for tenders has the right to select the successful tenderer.

Article 230 *Notification of tendering results and signing of contract*

1. Immediately after the tendering results are available, the party calling for tenders shall be responsible to notify the tenderers of the tendering results.
2. The party calling for tenders shall prepare²² a contract and arrange signing of the contract with the successful tenderer on the basis of the following matters:
 - (a) Tendering results;
 - (b) Requirements stipulated in the tender invitation documents;
 - (c) Contents of the tender.

Article 231 *Security for performance of contract*

1. The parties may agree that the successful tenderer must pay a deposit or escrow deposit or provide a guarantee to secure performance of the contract. The party calling for tenders shall stipulate the amount of the deposit or escrow deposit, which shall not exceed ten (10) per cent of the contract value.
2. The means for securing performance of the contract shall be effective until the successful tenderer performs fully its contractual obligations.
3. Unless otherwise agreed, the deposit or escrow deposit paid to secure performance of the contract shall be returned to the successful tenderer upon liquidation of the contract. The successful tenderer shall not be entitled to the return of the deposit or escrow deposit made to secure performance of the contract if the successful tenderer refuses to implement the contract after having entered into it.
4. After [*the successful tenderer*] has paid a deposit or escrow deposit to secure performance of the contract, the deposit or escrow deposit paid as tender security shall be refunded to the successful tenderer.

Article 232 *Re-organization of tendering*

Re-organization of tendering shall be conducted in one of the following circumstances:

1. When there is a breach of the regulations on tendering;
2. When all tenderers fail to satisfy the requirements of the tendering.

²² *Phillips Fox Note: The literal translation is "complete".*

SECTION 4

Logistic Services**Article 233** *Logistic services*

Logistic services means a commercial activity whereby a business entity organizes the implementation of one or more tasks²³, including receiving goods; arranging transportation, warehousing, storage, completion of customs formalities and other documentation procedures; providing consultancy to clients; packing goods and labelling them with their codes, and goods delivery or other services relating to goods in accordance with an agreement with clients in order to enjoy remuneration. The phonetic transcription of "logistic services" in Vietnamese shall be "dich vu lo-gi-stic".²⁴

Article 234 *Conditions for engaging in business of logistic services*

1. A business entity engaging in business of logistic services means an enterprise which satisfies all of the conditions required for the business of logistic services as stipulated by law.
2. The Government shall provide detailed regulations on the conditions required for the business of logistic services.

Article 235 *Rights and obligations of business entities engaging in business of logistic services*

1. Unless otherwise agreed, a business entity engaging in the business of logistic services has the following rights and obligations:
 - (a) To receive remuneration for logistic services and other reasonable expenses;
 - (b) If during the performance of the contract there is a legitimate reason which will ensure the interests of the client, the business entity may perform the contract other than in compliance with the instructions of the client provided that immediate notice is served on the client;
 - (c) To provide immediate notice to the client requesting further instructions if any event occurs which may result in non-performance of part or all of the instructions of the client;

23 *Phillips Fox Note: The literal translation is "work items", which may comprise a single act or a series of acts.*

24 *Phillips Fox Note: The term "dich vu lo-gi-stic" has been adopted due to the lack of any equivalent in the Vietnamese language for the English concept of "logistics".*

- (d) To fulfil obligations within a reasonable period of time if there is no specific agreement on the time-limit for fulfilment of obligations owed to the client.
2. When arranging transportation of goods, a business entity engaging in the business of logistic services must comply with the law and practice on transportation.

Article 236 *Rights and obligations of clients*

Unless otherwise agreed, a client has the following rights and obligations:

1. To guide, inspect and supervise performance of the contract.
2. To provide sufficient instructions to the business entity engaging in the business of logistic services.
3. To provide promptly detailed, complete and accurate information about the goods to the business entity engaging in the business of logistic services.
4. To pack and code mark the goods in accordance with the contract for purchase and sale of the goods, unless there is an agreement that this task will be undertaken by the business entity engaging in the business of logistic services.
5. To pay damages for loss and to pay reasonable costs incurred by the business entity engaging in the business of logistic services if [*such business entity*] has correctly complied with the instructions of the client or if the client is at fault.
6. To pay all sums falling due to the business entity engaging in the business of logistic services.

Article 237 *Cases of exemption from liability for business entities engaging in business of logistic services*

1. In addition to the cases of exemption from liability stipulated in article 294 of this Law, business entities engaging in the business of logistic services shall not be liable for loss or damage to goods occurring in the following circumstances:
 - (a) Where loss or damage was due to the fault of the client or of a person authorized by the client;
 - (b) Where loss or damage arose because the business entity engaging in the business of logistic services correctly complied with the instructions of the client or of a person authorized by the client;

- (c) Where loss or damage was due to defects in the goods;
 - (d) Where the business entity engaging in the business of logistic services arranged transportation, and the loss or damage arose in circumstances where the law and practice on transportation stipulate that such business entity is exempt from liability;
 - (dd) Where the business entity engaging in the business of logistic services does not receive a notice of a complaint within a time-limit of fourteen (14) days from the date of delivery of the goods by such business entity to the recipient;
 - (e) Where, after a complaint has been made, the business entity engaging in the business of logistic services does not receive notice of arbitration proceedings or of court proceedings having been instituted within a time-limit of nine months from the date of delivery of the goods.
2. A business entity engaging in the business of logistic services shall not be liable for loss of profits which the client would have earned where delay in providing logistic services or provision to the wrong address was not due to the fault of such business entity.

Article 238 *Limitations on liability*

1. Unless otherwise agreed, the liability of a business entity engaging in the business of logistic services shall not exceed the limitation of liability in respect of total loss or damage to the goods.
2. The Government shall provide detailed regulations on limitations on liability of business entities engaging in the business of logistic services, consistent with provisions of law and international practice.
3. Business entities engaging in the business of logistic services shall not be entitled to limitations on liability if any person with related rights and interests proves that loss or damage to goods or late delivery of the goods was caused by the deliberate action or inaction of such business entity with the intention of causing loss or damage to the goods or of causing late delivery of the goods; [*or proves that*] action or inaction of such business entity was taken recklessly with the knowledge that the loss or damage to goods or the late delivery of the goods would definitely occur.

Article 239 *Right to lien over goods and right to dispose of goods*

1. A business entity engaging in the business of logistic services has the right to a lien over a specified quantity of goods and the vouchers relating to them in order to claim payment of due debts from the client, but such

business entity must provide immediate written notice to the client [*of the exercise of the lien*].

2. If the client fails to pay the debt after forty five (45) days from the date of the notice of exercise of a lien over goods or the vouchers relating to them, the business entity engaging in the business of logistic services has the right to dispose of such goods or their vouchers in accordance with law; if there are indications that the goods have deteriorated, the right of such business entity to dispose of the goods shall arise immediately upon any debt owed by the client falling due.
3. Prior to disposing of goods, the business entity engaging in the business of logistic services must provide immediate notice of disposal to the client.
4. All costs relating to the exercise of a lien over goods and to the disposal of the goods shall be borne by the client.
5. A business entity engaging in the business of logistic services shall be entitled to use the proceeds from the disposal of goods to pay all debts owed to it by the client and to pay any related expenses; if the proceeds from the disposal of the goods exceed the value of the debts, the excess must be returned to the client. From that point of time onwards, the business entity engaging in the business of logistic services shall no longer be liable for the goods or vouchers disposed of.

Article 240 *Obligations of business entities engaging in business of logistic services upon exercise of lien over goods*

Business entities engaging in the business of logistic services which exercise a lien over goods and which have not yet exercised the right to dispose of goods as stipulated in article 239 of this Law have the following obligations:

1. To preserve and maintain the goods.
2. Not to be entitled to use the goods without permission of the owner of goods over which a lien is exercised.
3. To return the goods when the conditions for exercising a lien over them and for disposing of them as stipulated in article 239 of this Law no longer exist.
4. To pay damages for loss to the owner of goods over which a lien is exercised if the goods are lost or damaged.

SECTION 5

**Transit of Goods through Territory of Vietnam and
Goods Transiting Services****Article 241** *Transit of goods*

Transit of goods means the transportation of goods owned by a foreign organization or individual through the territory of Vietnam, including entrepôt, transportation, storage, batch separation and change of method of transportation or other tasks conducted during the period of transit.

Article 242 *Right to transit goods*

1. All goods owned by foreign organizations and individuals shall be permitted to transit through the territory of Vietnam and shall only be required to conduct customs clearance procedures at the import and export bordergates in accordance with law, except for the following:
 - (a) Goods being weapons of various types, ammunition, explosive materials, and other high risk goods, except where permitted by the Prime Minister of the Government;
 - (b) Goods in which business is prohibited and goods on the list of prohibited imports and prohibited exports, which shall only be permitted to transit through the territory of Vietnam with a permit from the Minister of Trade.
2. Goods in transit when being exported from and means of transportation carrying such goods in transit when exiting the territory of Vietnam must be the same goods which were previously imported into and the same means of transportation which entered the territory of Vietnam.
3. Any foreign individual or organization wishing to transit goods through the territory of Vietnam must hire a Vietnamese business entity engaging in providing [*goods*] transiting services to do so, except in the case stipulated in clause 4 of this article.
4. A foreign individual or organization shall itself carry out the transiting of goods through the territory of Vietnam or hire a foreign business entity to do so in accordance with international treaties of which the Socialist Republic of Vietnam is a member, and must comply with Vietnamese laws on entry and exit and on communications and transportation.

Article 243 *Routes for transit*

1. Goods shall only be permitted to transit via international bordergates and designated routes within the territory of Vietnam.

2. On the basis of international treaties of which the Socialist Republic of Vietnam is a member, the Minister of Transport and Communications shall provide specific regulations on the permissible routes for transportation of goods in transit.
3. Any change of a route for transportation of goods in transit during the period of transit must be approved by the Minister of Transport and Communications.

Article 244 *Transit by airlines*

Transit of goods by airlines shall be implemented in accordance with international treaties on aviation of which the Socialist Republic of Vietnam is a member.

Article 245 *Supervision of goods in transit*

Goods being transited through the territory of Vietnam shall be subject to supervision by the customs offices of Vietnam throughout the entire period of transit.

Article 246 *Period of transit*

1. The maximum [*permissible*] period of transit of goods through the territory of Vietnam shall be thirty (30) days from the date of completion of customs clearance procedures at the import bordergate, unless the goods are stored in Vietnam or are damaged or lost during the period of transit.
2. Where goods are in storage in Vietnam or where they are damaged or lost during the period of transit, thereby requiring a further period for storage or rectification of the damage or loss, the period of transit shall be extended by the amount of time necessary for such rectification subject to approval from the customs office where transit procedures were completed or subject to approval from the Minister of Trade in the case of goods being transited pursuant to a permit issued by the Minister of Trade.
3. During storage or during rectification of damage or loss as stipulated in clause 2 of this article, the goods and the means of transportation carrying such goods shall remain under the supervision of the customs offices of Vietnam.

Article 247 *Goods in transit being sold in Vietnam*

1. Goods in transit in the categories stipulated in clause 1(a) and (b) of article 242 of this Law shall not be permitted to be sold in Vietnam.

2. Apart from the goods referred to in clause 1 of this article, goods in transit shall be permitted to be sold in Vietnam with written approval from the Minister of Trade.
3. The sale in Vietnam of goods in transit must comply with the laws of Vietnam on importation of goods, taxes, fees and charges and other financial obligations.

Article 248 *Prohibited acts during transit*

1. Payment of remuneration for goods transiting services by way of the [actual] goods in transit.
2. Unlawful sale of goods in transit or of means of transportation carrying such goods.

Article 249 *Goods transiting services*

Goods transiting services means a commercial activity whereby a business entity carries out the transit through the territory of Vietnam of goods owned by a foreign organization or individual in order to receive remuneration.

Article 250 *Conditions for conducting business of providing transiting services*

A business entity engaging in the business of providing transiting services must be an enterprise with business registration for transportation services or for providing logistics services pursuant to article 234 of this Law.

Article 251 *Contracts for transiting services*

A contract for transiting services must be made in writing or in another form with equivalent legal validity.

Article 252 *Rights and obligations of parties hiring transiting services*

1. Unless otherwise agreed, a party hiring transiting services has the following rights:
 - (a) To request the transiting services provider to receive goods at the import bordergate at the time specified in the agreement;
 - (b) To request the transiting services provider to notify promptly the status of goods in transit during the period of transit through the territory of Vietnam;
 - (c) To request the transiting services provider to conduct all necessary procedures to restrict loss and damage to the goods in transit during the period of transit through the territory of Vietnam.

2. Unless otherwise agreed, a party hiring transiting services has the following obligations:
 - (a) To bring the goods to the import bordergate of Vietnam at the correct time as specified in the agreement;
 - (b) To supply the transiting services provider with all necessary information about the goods;
 - (c) To supply all necessary vouchers in order to enable the transiting services provider to complete procedures for import, for transportation through the territory of Vietnam, and for export;
 - (d) To pay the transiting services provider remuneration for the transiting services and other reasonable expenses.

Article 253 *Rights and obligations of transiting services providers*

1. Unless otherwise agreed, a transiting services provider has the following rights:
 - (a) To request the party hiring the transiting services to bring the goods to the import bordergate of Vietnam at the correct time as specified in the agreement;
 - (b) To request the party hiring the transiting services to supply all necessary information about the goods;
 - (c) To request the party hiring the transiting services to supply all necessary vouchers in order to enable completion of procedures for import, for transportation through the territory of Vietnam, and for export;
 - (d) To receive remuneration for the transiting services and other reasonable expenses.
2. Unless otherwise agreed, a transiting services provider has the following obligations:
 - (a) To receive the goods at the import bordergate at the time specified in the agreement;
 - (b) To conduct procedures for importation of the goods into and for exportation of the goods in transit out of the territory of Vietnam;
 - (c) To be liable for goods in transit during the period of transit through the territory of Vietnam;

- (d) To complete all necessary procedures in order to restrict loss and damage to the goods in transit during the period of transit through the territory of Vietnam;
- (dd) To pay fees and charges and to fulfil other financial obligations applicable to goods in transit in accordance with the law of Vietnam;
- (e) To be responsible for co-ordination with the authorized State bodies of Vietnam in dealing with any issues which arise relating to goods in transit.

SECTION 6

Assessment Services

Article 254 *Assessment services*

Assessment services means a commercial activity whereby a business entity carries out all necessary tasks to verify the actual status of goods, the results of the provision of services, and other matters as requested by clients.

Article 255 *Contents of assessment*

An assessment shall comprise one or more items regarding quantity, quality, packaging, value of goods, origin of goods, losses or damage, degree of safety, standards of hygiene, epidemic prevention, results of the provision of services, method of provision of services, and other matters as requested by clients.

Article 256 *Business entities engaging in business of providing assessment services*

Only business entities which satisfy all conditions stipulated by law and which have been issued with a business registration certificate for commercial assessment services shall be permitted to provide assessment services and to issue assessment certificates.

Article 257 *Conditions for engaging in business of providing assessment services*

A business entity must satisfy all of the following conditions in order to engage in the business of providing assessment services:

1. It must be an enterprise established in accordance with law;
2. It must have assessors who satisfy the criteria stipulated in article 259 of this Law;

3. It must be capable of implementing the procedures and methods for assessment of goods or services in accordance with law, international standards, or standards which many countries have widely applied in the assessment of such goods or services.

Article 258 *Scope of business of providing assessment services*

Business entities engaging in the business of providing assessment services shall be permitted to provide assessment services only in sectors of assessment where they have satisfied all of the conditions stipulated in clauses 2 and 3 of article 257 of this Law.

Article 259 *Criteria for assessors*

1. An assessor must satisfy the following criteria:
 - (a) Have a university or college level degree appropriate to the requirements of the sector of assessment;
 - (b) Have a professional certificate in the sector of assessment where the law stipulates that such a certificate is required;
 - (c) Have at least three years experience working in the sector of assessment of goods or services.
2. Based on the criteria stipulated in clause 1 of this article, the director of an enterprise engaging in the business of providing assessment services shall recognize assessors and shall be responsible before the law for such decision.

Article 260 *Assessment certificates*

1. An assessment certificate means a document verifying the actual status of goods or services in terms of the matters assessed at the request of the client.
2. An assessment certificate must be signed by the authorized representative of the business entity engaging in the business of providing assessment services, must bear the full name and signature of the assessor, and must be sealed with the professional stamp which has been registered with the competent body.
3. An assessment certificate shall only be valid with respect to the matters assessed.

4. The business entity engaging in the business of providing assessment services shall be responsible for the accuracy of the results and conclusions stated in the assessment certificate.

Article 261 *Legal validity of assessment certificate with respect to party requesting assessment*

An assessment certificate shall be legally binding on²⁵ the party requesting the assessment, unless such party is able to prove that the results of the assessment were not objective or were untruthful or that there was an error in terms of the technical and/or professional aspects of the assessment.

Article 262 *Legal validity of assessment certificate with respect to parties to contract*

1. If parties [*to a contract*] have an agreement on use of an assessment certificate issued by a particular business entity engaging in the business of providing assessment services, such assessment certificate shall be legally binding on all of the parties, unless they are able to prove that the results of the assessment were not objective or were untruthful or that there was an error in terms of the technical and/or professional aspects of the assessment.
2. If parties [*to a contract*] do not have an agreement on use of an assessment certificate issued by a particular business entity engaging in the business of providing assessment services, such assessment certificate shall be legally binding only on the party requesting the assessment pursuant to article 261 of this Law. [*Any*] other party to the contract has the right to request a re-assessment.
3. If the re-assessment certificate contains results different from those of the original assessment certificate, the matter shall be dealt with as follows:
 - (a) If the business entity engaging in the business of providing assessment services which issued the original assessment certificate accepts the results contained in the re-assessment certificate, the results contained in the re-assessment certificate shall be legally binding on all of the parties;
 - (b) If the business entity engaging in the business of providing assessment services which issued the original assessment certificate does not accept the results contained in the re-assessment certificate, the parties shall agree on selection of another business entity engaging in the business of providing assessment services to

25 *Phillips Fox Note: The literal translation is "legally valid with respect to".*

conduct a second re-assessment. The results of the second re-assessment shall be binding on all of the parties.

Article 263 *Rights and obligations of business entities engaging in business of providing assessment services*

1. Business entities engaging in the business of providing assessment services have the following rights:
 - (a) To request clients to supply promptly the complete and accurate materials necessary in order to provide the assessment services;
 - (b) To receive remuneration for services and other reasonable charges.
2. Business entities engaging in the business of providing assessment services have the following obligations:
 - (a) To comply with standards and other provisions of the law relating to assessment services;
 - (b) To conduct assessments honestly, objectively, independently, promptly and strictly in accordance with the procedures for and methods of assessments;
 - (c) To issue assessment certificates;
 - (d) To pay penalties for breaches or damages for loss in accordance with article 266 of this Law.

Article 264 *Rights of clients*

Unless otherwise agreed, a client has the following rights:

1. To request the business entity engaging in the business of providing assessment services to conduct the assessment in accordance with the items agreed.
2. To request a re-assessment where there is a legitimate reason to believe that the business entity which provided the assessment services failed to perform properly the request of the client or did not conduct the assessment objectively, honestly or correctly in terms of the technical and/or professional aspects of the assessment.
3. To request payment of penalties for breaches or damages for loss in accordance with article 266 of this Law.

Article 265 *Obligations of clients*

Unless otherwise agreed, a client has the following obligations:

1. To supply promptly on request the complete and accurate materials necessary in order for the business entity to provide the assessment services;
2. To pay remuneration for the assessment services and other reasonable charges.

Article 266 *Penalties for breaches and damages for loss for incorrect assessment results*

1. If a business entity engaging in the business of providing assessment services issues an assessment certificate with incorrect results due to its negligence, it must pay a penalty to the client. The level of the penalty shall be as agreed between the parties, but shall not exceed ten (10) times the amount of the remuneration for the assessment services.
2. If a business entity engaging in the business of providing assessment services issues an assessment certificate with incorrect results due to its deliberate fault, it must pay damages for loss arising to the client which directly requested the assessment.
3. The client shall be obliged to prove that the results of the assessment certificate are incorrect and to prove the fault on the part of the business entity which provided the assessment services.

Article 267 *Authorization to assess goods and services*

If a foreign business entity engaging in the business of providing assessment services is hired to provide assessment services but it is not yet permitted to operate in Vietnam, such business entity may authorize a business entity engaging in the business of providing assessment services which is permitted to operate in Vietnam to carry out such service, and the [*foreign business entity*] shall remain liable for the results of the assessment.

Article 268 *Assessments at request of State bodies*

1. Any business entity engaging in the business of providing assessment services which satisfies all of the conditions and standards appropriate to the request from a State body to conduct an assessment shall be responsible to conduct such assessment.
2. Any State body which requests an assessment shall be responsible to pay fees for assessment to the business entity engaging in the business of

providing assessment services in accordance with the agreement between the two parties on the basis of market prices.

SECTION 7

Leasing Goods

Article 269 *Leasing goods*

Leasing goods means a commercial activity whereby one party transfers the right to possess and use goods (hereinafter referred to as the *lessor*) to another party (hereinafter referred to as the *lessee*) for a specified period of time in order to receive rent.

Article 270 *Rights and obligations of lessors*

Unless otherwise agreed, a lessor has 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 of the lessee to possess and use the leased goods is free from any dispute with a third party during the term of the lease contract.
3. To ensure that the leased goods are suitable for the use purpose of the lessee 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 adversely affects the use of such goods by the lessee, the lessor shall be liable to reduce the rent or to extend the term of the lease for a period corresponding to the maintenance and repair period;
5. To receive rent as agreed or in accordance with law.
6. To take back the leased goods upon expiry of the lease.

Article 271 *Rights and obligations of lessees*

Unless otherwise agreed, a lessee has the following rights and obligations:

1. To possess and use the leased goods as agreed in the lease contract and in accordance with law. Where there is no specific agreement on the manner of use of the leased goods, such leased goods must be used in a manner appropriate to the nature of such goods.
2. To keep and preserve the leased goods during the term of the lease and to return them to the lessor upon expiry of the lease.

3. To request the lessor to maintain and repair the leased goods. If the lessor fails to fulfil this obligation within a reasonable time, the lessee may itself conduct the maintenance and repair of the leased goods and the lessor must bear all reasonable charges for such maintenance and repair.
4. To pay the rent as agreed or in accordance with law.
5. Not to sell or sub-lease the leased goods.

Article 272 *Repairs and alterations to original status of leased goods*

1. The lessee shall not be permitted to repair or alter the original status of the leased goods, except with the approval of the lessor.
2. Where a lessee repairs or alters the original status of the leased goods without the approval of the lessor, the lessor has the right to request the lessee to re-instate the original status of the leased goods or to claim damages for loss.

Article 273 *Liability for loss or damage during term of lease*

1. Unless otherwise agreed, the lessor shall bear any loss or damage to the leased goods during the term of the lease if such loss or damage was not caused by the fault of the lessee.
2. In the case stipulated in clause 1 of this article, the lessor shall be responsible for repairing the leased goods within a reasonable time in order to ensure the use purpose thereof for the lessee.

Article 274 *Passing of risk in relation to leased goods*

Where there is an agreement between the parties on the passing of risk to the lessee but the point of time of such passing is not fixed, the point of time of passing shall be determined as follows:

1. If the lease contract involves transportation of goods:
 - (a) If the contract does not require that the leased goods be delivered to a particular location, the risk shall pass to the lessee when the leased goods are delivered to the initial carrier;
 - (b) If the contract requires that the leased goods be delivered to a particular location, the risk shall pass to the lessee when the lessee or its nominee receives the goods at such location.

2. Where the leased goods are received by a bailee for delivery not being a carrier, the risk shall pass to the lessee upon acknowledgment by the bailee of the right of the lessee to possess the leased goods.
3. In other cases not stipulated in clauses 1 or 2 of this article, the risk shall pass to the lessee upon receipt by the lessee of the leased goods.

Article 275 *Leased goods not conforming with contract*

Where there is no specific agreement [*in a contract*], goods shall be deemed not to conform with the contract if the goods belong to one of the following cases:

1. The goods are unfit for the ordinary use purpose of goods in the same category.
2. The goods are unfit for the specific purpose of which the lessee informed the lessor or of which the lessor should have known at the time of entering into the contract.
3. The goods are not of the same quality as sample goods previously provided by the lessor to the lessee.

Article 276 *Refusal to receive goods*

1. The lessor must allow the lessee a reasonable time after receipt of goods to enable the goods to be inspected.
2. The lessee has the right to refuse receipt of the goods in the following cases:
 - (a) The lessor failed to provide the lessee with the conditions and reasonable time for inspection of the goods;
 - (b) Upon the inspection, the lessee discovered that the goods do not conform with the contract.

Article 277 *Rectification or replacement of leased goods not conforming with contract*

1. Where the lessee refuses receipt of the leased goods due to their non-conformity with the contract, if the time-limit for delivery of goods has not yet expired, the lessor may notify promptly the lessee of the [*proposed*] rectification or replacement of the goods by the lessor, and the lessor may perform such rectification or replacement of goods within the remainder of the unexpired time-limit.
2. When the lessor performs rectification as stipulated in clause 1 of this article but thereby creates a disadvantage for the lessee or causes the lessee

to incur unreasonable expenses, the lessee has the right to require the lessor to remedy such disadvantage or to pay such expenses.

Article 278 *Acceptance of leased goods*

1. The lessee shall be deemed to have accepted the leased goods after the lessee has had a reasonable opportunity to inspect the leased goods and has carried out one of the following acts:
 - (a) Non-refusal to accept the leased goods;
 - (b) Acknowledgement that the leased goods conform with the agreements in the contract;
 - (c) Confirmation that it will accept such goods despite their non-conformity with the agreements in the contract.
2. If the lessee discovers the leased goods do not conform with the contract after having accepted the goods and such non-conformity could have been identified by a reasonable inspection prior to acceptance, the lessee shall not be permitted to rely on such non-conformity in order to return the goods.

Article 279 *Withdrawal of acceptance*

1. A lessee may withdraw its acceptance of part or all of the leased goods if the non-conformity of such leased goods results in the inability of the lessee to achieve its objective in signing the contract and falls within one of the following cases:
 - (a) The lessor fails to carry out rectification in a reasonable manner in accordance with article 277 of this Law;
 - (b) It was due to [*reliance on*] assurances of the lessor that the lessee did not discover the non-conformity of the goods.
2. Any withdrawal of acceptance must be carried out within a reasonable time, which shall not exceed three months from the date of acceptance of the goods by the lessee.

Article 280 *Liability for defect in leased goods*

Unless otherwise agreed, liability for any defect in leased goods shall be regulated as follows:

1. During the term of the lease, the lessor shall be liable for any defect at all in the leased goods which already existed at the time of the delivery of the leased goods to the lessee, except in the cases stipulated in clauses 2 and 3 of this article.
2. The lessor shall not be liable for any defect in the leased goods which already existed at the time of entering into the contract of which the lessee knew or should have known.
3. The lessor shall not be liable for any defect in the leased goods which is discovered after the lessee has accepted the goods and which defect could have been identified by the lessee by an inspection in a reasonable manner prior to acceptance of the goods.
4. The lessor shall be liable for any defect in the goods arising after the time of risk passing if such defect results from the breach by the lessor of the obligations undertaken by it.

Article 281 *Sub-lease*

1. A lessee shall be permitted to sub-lease goods only with the consent of the lessor. The lessee shall be liable for the sub-leased goods, unless otherwise agreed with the lessor.
2. If the lessee sub-leases the leased goods without the approval of the lessor, the lessor has the right to rescind the lease contract. The sub-lessee shall be responsible to return immediately the goods to the lessor.

Article 282 *Benefits arising during term of lease*

Unless otherwise agreed, all benefits arising from the leased goods during the term of a lease shall belong to the lessee.

Article 283 *Changes in ownership during term of lease*

Any changes in ownership of leased goods shall not affect the validity of the lease contract.

SECTION 8

Franchising**Article 284** *Franchising*

Franchising means a commercial activity whereby a franchisor authorizes and requires a franchisee to conduct on its own behalf the purchase and sale of goods or provision of services in accordance with the following conditions:

1. The purchase and sale of goods or the provision of services must be conducted according to the method of business organization specified by the franchisor and be associated with the trademark, trade name, business know-how, business mission statements, business logo and advertising of the franchisor.
2. The franchisor has the right to control and offer assistance to the franchisee in the conduct of the business.

Article 285 *Franchise contracts*

A franchise contract must be made in writing or in another form with equivalent legal validity.

Article 286 *Rights of franchisors*

Unless otherwise agreed, a franchisor has the following rights:

1. To receive royalties.
2. To organize advertisement for the franchise system and franchise network.
3. To conduct regular or random inspections of the operations of the franchisee in order to ensure uniformity of the franchise system and the consistency of the quality of the goods or services.

Article 287 *Obligations of franchisors*

Unless otherwise agreed, a franchisor has the following obligations:

1. To provide the franchisee with the disclosure document²⁶ on the franchise system.

26 *Phillips Fox Note: The literal translation is "manual" or "guiding document".*

2. To provide the franchisee with initial training and ongoing technical assistance to enable [*the franchisee*] to operate [*the business*] in accordance with the franchise system.
3. To design and lay-out the goods or service sales outlet at the cost of the franchisee.
4. To ensure the intellectual property rights with respect to the objects stipulated in the franchise contract.
5. To accord equal treatment to franchisees in the franchise system.

Article 288 *Rights of franchisees*

Unless otherwise agreed, a franchisee has the following rights:

1. To require the franchisor to provide all technical assistance related to the franchise system.
2. To require the franchisor to accord equal treatment to franchisees in the franchise system.

Article 289 *Obligations of franchisees*

Unless otherwise agreed, a franchisee has the following obligations:

1. To pay royalties and other amounts payable under the franchise contract.
2. To invest in adequate physical facilities, finance and human resources in order to receive rights and business know-how transferred by the franchisor.
3. To submit to the control, supervision and guidelines of the franchisor; to comply with the requirements of the franchisor regarding design and lay-out of the sales or service outlet.
4. To keep confidential the business know-how transferred, even after the expiry or termination of the franchise contract.
5. To cease to use any trademark, trade name, business slogan, business logo and other intellectual property rights (if any) or the system of the franchisor upon expiry or termination of the franchise contract.
6. To operate [*the business*] in accordance with the franchise system.
7. Not to sub-franchise without the consent of the franchisor²⁷.

²⁷ *Phillips Fox Note: The literal translation is "Not to sub-franchise in the case where the franchisor does not consent".*

Article 290 *Sub-franchise to third party*

1. A franchisee has the right to sub-franchise to a third party (referred to as the *sub-franchisee*) with the consent of the franchisor.
2. A sub-franchisee has the rights and obligations of a franchisee stipulated in articles 288 and 289 of this Law.

Article 291 *Registration of franchise*

1. Prior to commencing franchising, a prospective franchisor must register with the Ministry of Trade.
2. The Government shall provide detailed regulations on the conditions for operating in the franchise form and on the order and procedures for registration of franchises.

CHAPTER 7

**Remedies in Commerce and
Dispute Resolution in Commerce**

SECTION 1

Remedies in Commerce**Article 292** *Types of remedies in commerce*

1. Specific performance.
2. Penalty for breach.
3. Damages for loss.²⁸
4. Temporary cessation of performance of contract.
5. Termination of performance of contract.
6. Rescission of contract.
7. The parties may agree to apply other types of remedies provided that such remedies are not contrary to the fundamental principles of the law of Vietnam, to any international treaty of which the Socialist Republic of Vietnam is a member, or to international commercial practice.

28 *Phillips Fox Note: The literal translation is "compensation for damage".*

Article 293 *Imposition of remedies in commerce for insubstantial breaches*

Unless otherwise agreed, an aggrieved party shall not be permitted to impose temporary cessation of performance of a contract, termination of performance of a contract or rescission of a contract for an insubstantial breach.

Article 294 *Immunity from liability for acts in breach*

1. A defaulting party²⁹ shall be immune from liability in the following cases:
 - (a) Upon occurrence of any event which the parties have agreed will give rise to immunity from liability;
 - (b) Upon occurrence of an event of *force majeure*;
 - (c) Upon a breach by one party which was totally due to the fault of the other party;
 - (d) Upon a breach by one party which was due to implementation of a decision of a competent State administrative body of which the parties could not have known at the time of entering into the contract.
2. The defaulting party shall bear the burden of proof that an event [*gives rise to*] immunity from liability.

Article 295 *Notification³⁰ of events for which defaulting party entitled to immunity from liability*

1. A defaulting party must provide immediate written notice to the other party of any event for which [*the defaulting party*] is entitled to immunity from liability and of the possible consequences of such event.
2. Upon termination of the event for which the defaulting party is entitled to immunity from liability, such party must notify promptly the other party of such termination; and the defaulting party must pay damages for loss if it fails to notify, or does not notify promptly, the other party.
3. The defaulting party shall bear the burden of proof to the aggrieved party that an event is one for which the defaulting party is entitled to immunity from liability.

29 *Phillips Fox Note: The literal translation is "party in breach of a contract".*

30 *Phillips Fox Note: The words "and certification" appear in the Vietnamese text of the title of this article, however, the draft provision on certification was omitted from the final text of this Law. An official correction of this title has not yet been issued.*

Article 296 *Extension of time-limit [for contractual performance] [and] refusal to perform contract upon occurrence of event of force majeure*

1. Upon occurrence of an event of *force majeure*, the parties may agree to extend the time-limit for performance of contractual obligations; where the parties have no agreement or fail to reach agreement, the time-limit for performance of contractual obligations shall be extended for an additional period of time equal to the duration of the event of *force majeure* and a reasonable amount of time for remedying the consequences of such event, but not exceeding the following time-limits:
 - (a) Five months in respect of goods or services for which the agreed time-limit for delivery or provision is not more than twelve (12) months from the date when the contract was entered into;
 - (b) Eight months in respect of goods or services for which the agreed time-limit for delivery or provision is more than twelve (12) months from the date when the contract was entered into.
2. Upon expiry of the time-limits stipulated in clause 1 of this article, the parties have the right to refuse to perform the contract and neither party has the right to demand that the other party pay damages for loss.
3. Any party which refuses to perform a contract must, within a time-limit not to exceed ten (10) days from the date of expiry of the time-limits stipulated in clause 1 of this article, serve advance notice of refusal to perform the contract on the other party prior to commencement by the other party of performance of its contractual obligations.
4. The extension of the time-limit for performance of contractual obligations stipulated in clause 1 of this article shall not apply to contracts for purchase and sale of goods or to contracts for provision of services with a fixed time-limit for delivery of goods or provision of services.

Article 297 *Specific performance of contracts*

1. Specific performance of contract means the aggrieved party requests the defaulting party to implement properly the contract or to take other measures to cause the contract to be performed, and the defaulting party shall bear any costs incurred.
2. Where the defaulting party fails to deliver all goods or provides services which do not conform to the contract, such party shall be obliged to deliver all goods or provide services in accordance with the contractual terms and conditions. If the defaulting party delivers goods or provides services of poor quality, it shall be obliged to rectify the defect in the goods or services or to deliver substitute goods or to provide proper services in accordance with the contract. The defaulting party may not use

money or goods of other types or other services as substitutes without the consent of the aggrieved party.

3. If the defaulting party fails to comply with clause 2 of this article, the aggrieved party has the right to purchase goods or services of the correct type as stipulated in the contract from other parties as substitutes and [any] price differential and related costs shall be paid by the defaulting party; and the aggrieved party has the right to itself rectify the defect in the goods or services and the reasonable costs thereof shall be paid by the defaulting party.
4. Where the defaulting party has fulfilled all of its obligations stipulated in clause 2 of this article, the aggrieved party must receive the goods or services and must make payment therefor.
5. If the defaulting party is the purchaser, the seller has the right to demand that the purchaser pays for and receives the goods or fulfils other obligations stipulated in the contract and in this Law.

Article 298 *Extension of time-limit for performance of obligations*

In the case of specific performance of a contract, the aggrieved party may extend the time-limit by a reasonable period in order for the defaulting party to perform its obligations.

Article 299 *Relationship between specific performance and other remedies*

1. Unless otherwise agreed, during the period of application of the remedy of specific performance, the aggrieved party has the right to claim damages for loss and penalty for breach but it shall not be permitted to apply other types of remedies.
2. If the defaulting party fails to perform the remedy of specific performance of the contract within the time-limit fixed by the aggrieved party, the aggrieved party shall be permitted to apply other remedies in order to protect its legitimate rights.

Article 300 *Penalty for breach*

Penalty for breach [*is a remedy whereby*] the aggrieved party requires the defaulting party to pay a penalty sum for breach of contract if so agreed in the contract, except in cases of immunity from liability stipulated in article 294 of this Law.

Article 301 *Level of penalty*

The level of penalty in respect of any one breach of a contractual obligation or the total amount of penalty in respect of multiple breaches shall be as agreed by the parties in the contract, but shall not exceed eight per cent of the value of the contractual obligation which is the subject of the breach, except in the cases stipulated in article 266 of this Law.

Article 302 *Damages for loss*

1. Damages for loss means the defaulting party pays compensation for the loss caused to the aggrieved party by a breach of the contract.
2. The value of damages for loss shall comprise the value of the actual and direct loss which the aggrieved party has borne due to [*the breach of*] the defaulting party as well as the direct profits which the aggrieved party would have earned in the absence of such breach.

Article 303 *Grounds for liability to pay damages for loss*

Except in the cases of immunity from liability stipulated in article 294 of this Law, the liability to pay damages for loss shall arise when the following factors exist:

1. There is an act in breach of the contract;
2. There occurs an actual loss;
3. The act in breach of the contract is the direct cause of the loss.

Article 304 *Burden of proof of loss*

The party claiming damages for loss shall bear the burden of proof of the loss and of the amount of loss caused by the act of breach, and [*of the loss of*] direct profits which the aggrieved party would have earned in the absence of such breach.

Article 305 *Obligation to mitigate loss*

The party claiming damages for loss must take reasonable measures to mitigate the loss caused by a breach of the contract, including the loss of direct profits which would have been earned in the absence of such breach. If the party claiming damages fails to take such action, the defaulting party has the right to require a reduction in damages equal to the amount of loss that could have been mitigated.

Article 306 *Right to claim interest on delayed payment*

If the defaulting party delays in making payment for goods or payment of service charges and any other reasonable fees, the aggrieved party has the right to demand 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, unless otherwise agreed by the parties or otherwise provided by law.

Article 307 *Relationship between remedy of penalty for breach and remedy of damages*

1. If the parties do not have a specific agreement on penalty for breach, the aggrieved party has the right to demand only damages for loss, unless this Law otherwise provides.
2. If the parties have a specific agreement on penalty for breach, the aggrieved party has the right to apply both the remedy of penalty for breach and the remedy of damages, unless this Law otherwise provides.

Article 308 *Temporary cessation of performance of contract*

Except in the cases of immunity from liability stipulated in article 294 of this Law, temporary cessation of performance of a contract means one party ceases temporarily the performance of its contractual obligations in one of the following cases:

1. Upon occurrence of an act of breach which the parties have agreed shall be a condition resulting in temporary cessation of performance of the contract;
2. When one party commits a substantial breach of the contractual obligations.

Article 309 *Legal consequences of temporary cessation of performance of contract*

1. A contract in respect of which there is a temporary cessation of performance of a contract shall remain of full force and effect.
2. The aggrieved party has the right to claim damages for loss in accordance with this Law.

Article 310 *Termination of performance of contract*

Except in the cases of immunity from liability stipulated in article 294 of this Law, termination of performance of a contract means one party terminates the performance of its contractual obligations in one of the following cases:

1. Upon occurrence of an act of breach which the parties have agreed shall be a condition resulting in termination of performance of the contract.
2. When one party commits a substantial breach of the contractual obligations.

Article 311 *Legal consequences of termination of performance of contract*

1. When performance of a contract is terminated, it shall be deemed to have terminated as from the time of receipt by one party of a notice of termination. Neither party shall be required to continue to perform its contractual obligations. The party having performed its obligations has the right to demand that the other party pay or perform its corresponding obligations.
2. The aggrieved party has the right to claim damages for loss in accordance with this Law.

Article 312 *Rescission of contract*

1. Rescission of contract shall include rescission of part of a contract and rescission of an entire contract.
2. Rescission of an entire contract means the complete annulment of the performance of all contractual obligations of the entire contract.
3. Rescission of part of a contract means the annulment of the performance of a number of the contractual obligations, and other parts of the contract remain of full force and effect.
4. Except in the cases of immunity from liability stipulated in article 294 of this Law, the remedy of rescission of the contract shall apply in the following cases:
 - (a) Upon occurrence of an act of breach which the parties have agreed shall be a condition resulting in rescission of the contract;
 - (b) When one party commits a substantial breach of the contractual obligations.

Article 313 *Rescission of contract in cases of delivery of goods or provision of services on piecemeal basis*

1. Where the parties to a contract agree on the delivery of goods or provision of services on a piecemeal basis and one party fails to perform its obligations regarding delivery of goods or provision of services and such failure constitutes a substantial breach of the delivery of goods or provision of services on such occasion, the other party has the right to declare the rescission of the contract as it applies to such single delivery of goods or provision of services.
2. Where a party fails to perform its obligation regarding a single delivery of goods or provision of services and such failure provides the basis for the other party to conclude that a substantial breach of the contract will occur with regard to subsequent deliveries of goods or provision of services, the aggrieved party has the right to declare the rescission of the contract applicable to such subsequent deliveries of goods or provisions of services provided that such [aggrieved] party exercises this right within a reasonable time.
3. Where a party has declared the rescission of a contract as it applies to a single delivery of goods or provision of services, such party has, nevertheless, the right to declare the rescission of the contract as it applies to subsequent deliveries of goods or provision of services which have been implemented or which are yet to be implemented if the interrelationship between the deliveries of goods [or provisions of services] results in the delivered goods or provided services not being able to be used for their proper purpose as originally intended by the parties at the time they entered into the contract.

Article 314 *Legal consequences of rescission of contract*

1. Except in the cases stipulated in article 313 of this Law, after a contract has been rescinded, it shall no longer be effective as from the time it was entered into, and the parties shall not be required to continue performance of their contractual obligations, except for agreed provisions on rights and obligations applicable after rescission or on dispute resolution.
2. Any party has the right to claim benefits [gained by the other party] from the performance by such party of its contractual obligations. If both parties are obliged to make a refund, these obligations must be performed concurrently; and if it is impossible to refund the exact benefits which a party has gained, such party shall be obliged to make a refund in cash.
3. The aggrieved party has the right to claim damages for loss in accordance with this Law.

Article 315 *Notice of temporary cessation of performance of contract, of termination of performance of contract, and of rescission of contract*

Any party which ceases temporarily performance of a contract, terminates performance of a contract or rescinds a contract must notify immediately the other party of such temporary cessation, termination or rescission. In the case of failure to do so which results in loss to the other party, the party which ceased temporarily performance of the contract, terminated performance of the contract or rescinded the contract must pay damages for loss.

Article 316 *Right to claim damages for loss when other remedies already applied*

The right of a party to claim damages for loss for a breach of contract by the other party shall be preserved after other remedies have been applied.

SECTION 2

Commercial Dispute Resolution

Article 317 *Forms of dispute resolution*

1. Negotiation between the parties.
2. Conciliation between the parties in which a body, organization or individual selected by the parties acts as mediator.
3. Resolution by arbitration or by a court.

The procedures for commercial dispute resolution by arbitration or by a court shall be the litigation procedures which the law stipulates as applicable to arbitration or to courts.

Article 318 *Limitation period for lodging complaints*

Except in the case stipulated in article 237.1(dd) of this Law, the limitation period for a complaint shall be as agreed by the parties, but in the absence of such agreement, the limitation period for a complaint shall be regulated as follows:

1. With respect to a complaint relating to the quantity of goods, three months from the date of delivery of goods;
2. With respect to a complaint relating to the quality of goods, six months from the date of delivery of the goods or, if the goods are under warranty, three months from the expiry date of the warranty period;

3. With respect to complaints relating to other breaches, nine months from the date on which the defaulting party should have fulfilled its contractual obligations under the contract or, in a case under warranty, nine months from the expiry date of the warranty period.

Article 319 *Limitation period for initiating legal action*

The limitation period for initiating legal action applicable to commercial disputes shall be two years from the time of infringement of lawful rights and interests, except in the case stipulated in article 237.1(dd) of this Law.

CHAPTER 8

Dealing with Breaches of Commercial Laws

Article 320 *Acts constituting breach of commercial laws*

1. Acts constituting a breach of commercial laws shall comprise:
 - (a) Breach of provisions on business registration; on business licences of business entities; on establishment and operation of representative offices and branches of Vietnamese business entities and of foreign business entities;
 - (b) Breach of provisions on goods and services traded domestically and goods and services imported or exported; [*goods*] temporarily imported for re-export and temporarily exported for re-import; [*goods*] transferred via bordergates, and [*goods*] in transit;
 - (c) Breach of provisions on tax regime [*and*] on invoices, source documents, books of account and accounting reports;
 - (d) Breach of provisions on price of goods and services;
 - (dd) Breach of provisions on labelling of goods circulating domestically and labelling of imported and exported goods;
 - (e) Smuggling, conducting business in goods illegally imported, trading counterfeit goods or raw materials and supplies for producing counterfeit goods, and conducting illegal businesses;
 - (g) Breach of provisions relating to quality of goods and services in which business is conducted domestically and relating to quality of imported and exported goods and services;
 - (h) Deceiving and defrauding customers when purchasing and selling goods and services;

- (i) Breach of provisions on protection of consumer rights;
 - (k) Breach of provisions on intellectual property rights with respect to goods and services in which business is conducted domestically and with respect to imported and exported goods and services;
 - (l) Breach of provisions on origin of goods;
 - (m) Other breaches during commercial activities as stipulated by law.
2. The Government shall provide specific regulations on acts constituting a breach of commercial laws as referred to in clause 1 of this article.

Article 321 *Forms of dealing with breach of commercial laws*

1. Depending on the nature, seriousness and consequences of a breach, organizations and individuals shall be dealt with in one of the following forms:
- (a) By imposition of a penalty in accordance with the law on dealing with administrative offences;
 - (b) Where the act of breach contains sufficient elements to constitute a crime, the offender shall be prosecuted for criminal liability in accordance with law.
2. Where the act of breach causes harm to the interests of the State or to the lawful rights and interests of organizations and individuals, compensation must be paid in accordance with law.

Article 322 *Imposition of penalties for administrative offences during commercial activities*

The Government shall provide specific regulations on imposition of penalties for administrative offences during commercial activities.

CHAPTER 9

Implementing Provisions

Article 323

This Law shall be of full force and effect as of 1 January 2006.

This Law shall replace the *Commercial Law* dated 10 May 1997.

Article 324

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

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 7th Session on 14 June 2005.

The Chairman of the National Assembly

NGUYEN VAN AN