

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

**Draft 9**

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

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

**COMMERCIAL LAW**

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

This Law provides for commercial activities .

**CHAPTER I  
GENERAL PROVISIONS**

**Section 1  
Governing scope and applicability**

**Article 1. Governing scope and applicability**

This Law governs the following:

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

**Article 2. Applicability**

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

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

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

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

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

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

1. Where an international treaty to which Vietnam is a member contains provisions

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

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

2. “Goods” comprise:

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

(b) things attached to land;

(c) property rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 20. Obligations of representative offices**

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

1. Not to directly conduct profitable activities in Vietnam.

2. Only to conduct commercial activities

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

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

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

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

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

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

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

1. Expiry of the term of its licence;
2. In accordance with the conditions stated in the contract, charter of the trader or the parties' agreement;
3. In accordance with a decision of a competent State authority on the ground that



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

b. In an event of emergency stipulated by laws.

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

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

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

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

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

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

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

3. On the basis of socio-economic conditions from time to time and the international



## **Section 2**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. If the contract only provides for a time limit for delivery of goods, instead of a specific point of time, the seller can deliver goods at any time during that time limit and such



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The seller must ensure that:

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

2. Goods are legal.

3. The delivery of goods is valid.

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

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

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

**Article 50. Notice requirements**

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

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







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

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

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

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

### **Section 3**

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

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

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

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

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

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

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

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

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

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

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

b) Managing trading operations;

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



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

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

5. Other acts prohibited by law.

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

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

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

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

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

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

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

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

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

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

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

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

**Section 2**

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

**Article 79. Obligations of service providers**

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

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

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

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

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

**Article 80. Obligations of service providers on the basi**

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

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

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

**Article 86. Obligations of customers**

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

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

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

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

**Article 87. Service fees**

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

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

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

**Article 88. Time limit of Payment**

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

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

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

**CHAPTER IV  
COMMERCIAL PROMOTIONS**

**Section 1**  
**Sales Promotion**

**Article 89. Sales promotions**

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

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

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

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

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

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

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

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

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

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

8. Organizing cultural, artistic or entertainment programs or other events for the



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

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

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

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

4. With regard to the forms of sales promotion as prescribed in Article 93.6 of this Law, the trader must contribute 50% of the value of the prizes already announced to the

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

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

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

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

**Section 2  
Commercial Advertising**

**Article 103. Commercial advertising**

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

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

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

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

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

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

**Article 106. Commercial advertising products**

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

**Article 107. Means of commercial advertising**

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

2. Means of commercial advertising comprise:

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

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

1. The use of the commercial advertising





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. To pay service charges and other related costs.



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

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

1. To request the service hirers to supply goods and/or services to be displayed according to the time limit agreed upon in the contract;
2. To request the service hirers to supply information about displayed goods and/or services and other necessary facilities as agreed upon;
3. To receive service charges and other fees;

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

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

1. To display goods and/or services as agreed upon in the contract;
2. To maintain the displayed goods, documents and facilities provided during the performance of the contract; to return all displayed goods, documents and facilities provided during the performance of the contract;

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

1. Vietnamese traders, branches of Vietnamese traders, branches of foreign traders in Vietnam shall be entitled to directly organize or participate in trade fairs and exhibitions in respect of goods and/or services they trade in

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

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

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

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

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

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

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

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

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

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

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

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

1. It is permitted to sell, give and supply

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. To be entitled to sell and/

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

3. To request the service hirers to provide information about the goods to be displayed at the trade fairs or exhibitions and ot

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 2 Commercial brokerage**

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

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

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

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

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

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

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

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

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

**Section 3**

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

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

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



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

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

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

**Article 164. Obligations of the mandator**

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

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

2. To pay a mandate commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 178. Term of agency**

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

2. Except where otherwise agreed by the parties

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

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

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

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

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

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

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

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

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

3. In case of processing for foreign individuals or organizations, to be entitled to

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

## **Section 2 Auction of goods**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. To conduct the auction of goods;

4. To request the buyer to make payment;

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

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

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

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

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

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

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

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

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

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

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

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

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

2. To monitor the administration of auction of goods.

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



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

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

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

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

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

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

1. A person who has no civil act capacity or has insufficient civil act capacity or has lost his/her civil act capacity or is restricted in his/her civil act capacity in accordance with the provision of the Civil Code or a person who at the time of the auction, is not conscious of or cannot control his/her act;





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

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

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

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

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

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

Except where otherwise agreed by the auctioneer and the buyer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public tender is a form of tender in which the number of bidders is not limited by the tenderer.

Limited tender is a form of tender in which only a number of the most eligible bidders are invited by the tenderer to participate.

2. The form of tender shall be decided by the tenderer.

#### **Article 218. Methods of tender**

1. Methods of tender consist of tender with one sealed file and tender with two sealed files. The tenderer shall have the right to select the method of tender and must notify in advance to the bidders.

2. In the one-file method, the bidder shall submit its proposals on technical and financial matters in one single sealed file of documents in accordance with the requirements in tender documents and the opening of tender files shall be carried out once.

3. In the two-file method, the bidder shall submit its proposals on technical and financial matters in two separate sealed files of documents to be submitted simultaneously and the opening of tender files shall be carried out twice. The file on technical proposals shall be opened first.

#### **Article 219. Prequalification of bidders**

The tenderer may pre-qualify the bidders in order to select the bidders that are capable of satisfying the conditions set out by the tenderer.

#### **Article 220. Tender invitation documents**

1. Tender invitation documents shall comprise:

- (a) A tender invitation letter;
- (b) Requirements in relation to goods and services being the subject of the tender;
- (c) Methods of evaluation, comparison, classification and selection of bidders;
- (d) Other instructions relating to tendering.

2. The charges of documents provided to bidders shall be stipulated by the tenderer.

#### **Article 221. Tender invitation letter**

1. A tender invitation letter shall comprise the following main contents:

- a. Name and address of the tenderer;
- b. Brief description of the tender details;
- c. Time limit, location and procedures for receipt of tender invitation documents;
- d. Time limit, location and procedures for submission of tender documents;
- dd. Instructions for reading tender invitation documents.

2. The tenderer shall notify on the media if the tender is a public tender and shall notify to each eligible bidders if the tender is a limited tender.

#### **Article 222. Instructions to bidders**

The tenderer shall be responsible for providing instructions to bidders concerning the tendering conditions, procedures applied during the tendering process and for answering questions asked by bidders.

#### **Article 223. Management of tender documents**

The tenderer shall be responsible for managing tender documents.

#### **Article 224. Bid bonds**

1. A bid bond shall be made in form of a deposit, escrow deposit or a tender guarantee.

2. The tenderer may require that bidders make a deposit, escrow deposit or provide a tender guarantee when submitting their tender documents. The percentage of a deposit, escrow deposit a tender guarantee shall be set out by the tenderer but not exceeding 3% of the total estimated value of goods and services put out for tender.

3. The tenderer shall stipulate the method and conditions of making the deposit, escrow deposit or providing tender guarantee. With regard to deposits and escrow deposits, they shall be returned to unsuccessful bidders within seven (7) days from the date of the publication of the tender results.

4. A bidder who fails to withdraw his tender documents after the expiry date of the tender submission time limit (or called the “tender closure”), who fails to sign a contract or refuses to implement the contract after being selected as the successful tenderer, shall not be entitled to a refund of his deposit or escrow deposit.

5. The guarantor of a bidder is obliged to provide such bidder with tender guarantee to the extent of the value of being equal to the deposit or escrow deposit.

#### **Article 225. Confidentiality of tendering information**

1. The tenderer shall keep confidential the tender documents.

2. Organizations and individuals involved in the organization of a tender and in the evaluation and selection of bidders are obliged to keep confidential all the relevant information.

#### **Article 226. Tender opening**

1. Tender opening is the opening of tender documents at the fixed time, if there is no time that has been fixed in advance, the time for opening tender shall be immediately after close of tender.

2. All tender documents submitted on time must be opened publicly by the tenderer. Bidders shall have the right to attend the tender opening.

3. Tender documents that were not submitted on time shall be rejected and returned to bidders unopened.

#### **Article 227. Consideration of tender documents upon tender opening**

The consideration of tender documents upon tender opening shall include:

1. Consideration of the validity of tender documents;

2. The tenderer may request bidders to clarify unclear contents of their tender documents. Any such request and clarification of tender documents must be in writing.

#### **Article 228. Minutes of tender opening**

1. Upon tender opening, the tenderer and bidders in attendance must sign the minutes of tender opening.



2. The minutes of tender opening must contain the following details:

- (a) Name of the tendered goods/services;
- (b) Date, time and location of the tender opening;
- (c) Names and addresses of the bidders;
- (d) The tender prices of all bidders;
- (dd) Written amendments or additions and other relevant details, if any.

**Article 229. Evaluation and comparison of tender documents**

1. Tender documents shall be evaluated and compared with respect to each criterion before an overall evaluation.

The criteria for evaluation shall be provided for by the tenderer.

2. The criteria stipulated in clause 1 of this article shall be evaluated in accordance with a score system or otherwise as de

### **Article 233. Performance bond**

1. The parties may agree that the successful bidder should make a deposit or escrow deposit or provide a guarantee to secure the performance of the contract. The value of the deposit or escrow deposit shall be stipulated by the tenderer but not exceeding 10% of the contract value.

2. The performance bond shall be effective up to the completion of contractual obligations by the successful bidder.

3. Except where otherwise agreed, the successful bidder shall, upon the liquidation of the contract, receive back the deposit or escrow deposit already made to secure the performance of the contract. The successful bidder shall not be entitled to receive back the deposit or escrow deposit made to secure the performance of the contract, if he refuses to implement that contract after having entered into it.

4. The successful tenderer shall have his bid bond refunded upon payment of the performance bond.

### **Article 234. Reorganization of tendering**

A tender shall be reorganized in the following cases:

1. The regulations on tendering are breached;
2. All bidders fail to satisfy the tendering requirements.

## **Section 4 Logistic services**

### **Article 235. Logistic services**

Logistic services is a commercial act whereby a trader organizes the implementation of one or more services including take-over of goods, transportation, warehouse, storage, completion of customs formalities, other paper procedures, customers' consultancy, packing, labelling, delivery and other services relating to goods in accordance with an agreement entered into between the trader and a customer in order to enjoy remuneration.

### **Article 236. Conditions for logistic service business**

1. A trader engaged in the business of providing logistic services must be an enterprise satisfying all the conditions required for logistics service business as provided for by law.

2. The Government shall provide for in detail logistic service business conditions.

(b) To depart from the instructions of

d) Where the loss occurs as the result of cases of liability exemptions in accordance with the law and customs on transportations, as the case may be.

dd) Where the trader engaged in the business of providing sale and purchase supporting services does not receive any notice of complaint within fourteen days from the date of delivery of goods by him/her to the recipient.

e) Where, after being complained against, the trader engaged in the business of providing logistic services does not receive any written notice of any lawsuit being instituted at a court or arbitration within nine months from the date of delivery of goods.

2. A trader engaged in the business of providing sale and purchase supporting services shall not be liable for the loss of profits which the customer would have earned; for any delay in supply, or supply to a wrong address, of logistic services but not at his fault.

#### **Article 240. Limitations to liability**

1. Except where otherwise agreed by the parties, the liability of a trader engaged in the business of providing logistic services shall not exceed the limitation of liability in respect of loss to the goods.

2. The Government shall stipulate the detailed limitations on liability of traders engaged in logistic business in conformity to law and international customary practice.

3 Traders engaged in logistic business shall not be exempted of liability if the person whose rights are affected proves that the loss, damage or late delivery of the goods is caused by the trader's deliberate action or inaction with the intention to cause such loss, damage or late delivery or the trader's action or inaction is known to be risky with the obvious consequence of loss, damage, or lateness.

#### **Article 241. The right to withhold and dispose of goods.**

1. A trader engaged in the business of providing logistic services shall be entitled to withhold a certain quantity of goods and their related documents in order to claim payment of a due debt from the customer and shall notify the customer thereof in writing immediately.

2. If the customer fails to pay the debt after forty five (45) days from the date of the notice of the withholding of goods and their related documents, the trader engaged in the business of providing logistic services shall be entitled to dispose of those goods or documents in accordance with the provisions of law. Where there are indications of deterioration of goods, the right of the trader engaged in the business of providing logistic services to dispose of the goods arises immediately upon any debt by the customer becoming due.

3. Before disposing of goods, the trader engaged in the business of providing logistic services must immediately notify the customer of such disposition.

4. All costs relating to the withholding and disposal of such goods shall be borne by the customer.

5. A trader engaged in the business of providing logistic services shall be entitled to use the proceeds from the disposal of goods to pay for the debt owed to it by the customer and to pay for related expenses. If the proceeds of the disposal of the goods exceed the value of the due debts, the balance must be returned to the customer. From that point of time, the trader engaged in the business of providing logistic services shall no longer be responsible for the goods or documents already disposed of.

**Article 242. Obligations of the trader engaged in the business of providing logistic services during withholding goods**

Where the right to dispose of goods under Article 180 of this Law is not yet exercised, the party engaged in the business of providing logistic services which withholds goods shall have the following obligations:

1. To maintain, preserve goods
2. Not to be entitled to use goods without permission of the owner of goods.



When goods in transit are being circulated in Vietnam, they must comply with the provisions of the Vietnamese law concerning importation of goods and must be liable for taxes, fees, charges and other relevant financial obligations as provided for by the Vietnamese law.

2. Goods in transit referred to in Articles 183.1(a) and 183.1(b) shall not be permitted for consumption in the territory of Vietnam.

**Article 250. Prohibited acts during transit**

1. To pay for transit remuneration by way of the goods in transit.
2. To illegally consume goods in transit or vehicles transporting goods in transit.

**Article 251. Goods transiting services**

Goods transiting services mean a commercial act whereby a trader carries out the transit of the goods under the ownership of a foreign organization or individual through the territory of Vietnam in order to enjoy remuneration.

**Article 252. Conditions for conducting the business in providing transiting services**

A trader engaged in the business of providing transiting services must be an

1. To take over the goods at the import border gate at the agreed time.
2. To import procedures to import and export the goods in transit to and from the territory of Vietnam, respectively.
3. To be held liable for the goods during the transit in the territory of Vietnam.
4. To complete procedures as necessary to minimize loss and damages to the goods in transit during the time they are in transit in the territory of Vietnam
5. To pay various types of fees and charges and other financial obligations applicable to goods in transit in accordance with the Vietnamese law.
6. To coordinate with authorized State bodies of Vietnam in dealing with any matter arising in relation to the goods in transit.

## **Section 6 Survey Services**

### **Article 256. Survey services**

Survey services means a commercial act by which a trader carries out all necessary jobs to determine the actual status of goods, the results of the provision of services and other



Traders engaged in the business of providing survey services shall only be entitled to provide survey services in those areas of surveys for which they have met all the required conditions as referred to in clauses 2 and 3 of Article 198 of this Law.

#### **Article 261. Criteria of surveyors**

1. A surveyor must meet one of the following criteria:

a) Have university or college level degrees with a major appropriate with the requirements and area of survey.

b) Have at least 3 years' experience working in the area relating to goods or services surveyed.

c) Have appropriate professional certificates as so required by a specialized law.

2. The director of an enterprise engaged in the business of providing survey services shall, on the basis of the criteria referred to in clause 1 of this Article, recognize surveyors and be responsible before the law for his decisions.

#### **Article 262. Survey certificates**

1. A survey certificate means a document determining the actual status of goods and services in terms of the survey aspects required by the customer.

2. Survey certificates shall be signed by the competent representative of the enterprise engaged in the business of providing survey services and by the surveyor with his/her full name stated; and shall be sealed with the professional stamp already registered with a competent body.

3. Survey certificates shall only be valid for those details already surveyed.

4. Survey certificates shall bind upon the enterprise engaged in the business of providing survey services as to the accuracy of the survey conclusions and statements set out therein.

#### **Article 263. The legal status of survey certificates with respect to the party requesting surveys**

The survey certificate shall be binding on the party requesting the survey if that party cannot prove that the survey results are not objective, untruthful or [the survey] was carried out with technical mistakes.

#### **Article 264. Legal status of survey certificates with respect to parties to contracts**

1. If the parties to a contract agree on the use of survey certificates issued by a particular trader engaging in the surveying business, such survey certificates shall be binding on all the parties if it cannot be proved that the survey results are not objective, dishonest or there has been a technical mistake.

2. If the parties to a contract do not agree on the use of survey certificates issued by a particular trader engaging in the surveying business, the survey certificate shall only be

binding on the party requesting the survey in accordance with Article 263 of this Law. The other party to the contract shall be able to request a re-survey.

3. If the certificate of the re-survey is not consistent with the original survey certificate:

a) If the trader issuing the original survey certificate accepts the survey certificate issued for the re-survey, the certificate of the re-survey shall be binding on all parties;

b) If the trader issuing the original survey certificate does not accept the survey certificate issued for the re-survey, the parties shall agree to choose another trader in the survey business to re-survey for the second time. The result of the second re-survey shall be binding on all the parties.

**Article 265. Obligations of traders engaged in the business of providing survey services**

1. To survey goods independently, objectively, promptly and accurately under the method and process registered;

2. To issue survey certificates;

3. To be entitled to survey fees as agreed with the customer;

4. To pay fines or damages in accordance with Article 268 of this Law.

**Article 266. Rights of customers**

Unless otherwise agreed, the customer shall have the following rights:

1. To request the trader engaged in the business of providing survey services to carry out the survey in accordance with the agreement;

2. To request re-survey where there is a legitimate reason to believe that the trader engaged in the business of providing survey services fails to properly perform the customer's instructions or carries out the survey in an untruthful and subjective manner.

5. To claim fines or damages in accordance with Article 268 of this Law.

**Article 267. Obligations of customers**

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

1. To promptly, sufficiently and accurately provide all documents to the trader engaged in the business of providing survey services upon request;

2. To pay survey fees as agreed.

**Article 268. Fines and damages for incorrect survey conclusions**

1. If a trader engaged in the business of providing survey services issues an survey

2. If trader engaged in the business of providing survey services issues an survey certificate with inaccurate conclusions due to his/her intentional fault, the trader engaged in the business of providing survey services must pay damages to the customers.

3. The customer has the burden of proof in respect of the inaccurate survey conclusions or in respect of the survey not being carried out in an accurate and objective manner.

**Article 269. Authorized surveys**

Where a foreign trader engaged in the business of providing survey services is hired





#### **Article 280. Acceptance of the leased goods**

1. The lessee shall be deemed as having accepted the leased goods after he/she has been given a reasonable opportunity to check the leased goods and carried out one of the following acts:

- a. Not to reject the leased goods;
- b. Recognize the conformity of the leased goods;
- c. Accept to receive the goods despite of their non-conformity.

2. If the lessee discovers the non-conformity to the contract of the leased goods after having accepted the goods and such non-conformity would have been identified through a reasonable check before the acceptance, the lessee shall not be entitled to allege such non-conformity as a reason for returning the goods.

#### **Article 281. Withdrawal of acceptance**

1. A lessee may withdraw its acceptance of the whole or part of the leased goods if the non-conformity of those leased goods may result in the lessee being unable to reach the objective of the signing of the contract and within one of the following cases:

a) if the lessor does not carry out a reasonable rectification in accordance with Article 279 of this Law; or

b) if the lessee does not discover the non-conformity of the goods due to the lessor's assurances.

2. Any withdrawal of acceptance must be carried out within a reasonable time but not exceeding 3 months as from the date the lessee accepts the goods.

#### **Article 282. Responsibilities for defects of the leased goods**

Except in cases where otherwise agreed upon:

1. During the term of the lease, the lessor shall be responsible for any defects of the leased goods already existing at the time of the delivery of the goods to the lessee, except in the cases referred to in clauses 2 and 3 of this Article.

2. The lessor shall not be responsible for any defects of the leased goods already existing at the time of entering into the contract which the lessee has already known or ought to know.

3. The lessor shall not be responsible for any defects of the leased goods which are discovered after the lessee has accepted the goods and which would have been identified by the lessee through a reasonable check before accepting the goods.

4. The lessor shall be responsible for any defects of the leased goods arising after the

1. The lessee shall only be entitled to sub-lease the goods subject to the lessor's consent. The lessee shall still be responsible for the sub-leased goods, except where otherwise agreed with the lessor.

2. Where the lessee sub-leases the leased goods without the lessor's approval, the lessor shall be entitled to cancel the lease contract. The sub-lessee shall be responsible for immediately returning the goods to the lessor.

#### **Article 284. Benefits arising during the term of the lease**

Except where otherwise agreed, every benefit arising from the leased goods during the term of the lease shall belong to the lessee.

#### **Article 285. Changes in ownership right during the term of the lease**

Any changes in ownership right with respect to the leased goods shall not affect the validity of the lease contract.

### **Section 8 Franchise of commercial rights**

#### **Article 286. Franchise of commercial rights**

Franchise of commercial rights means a commercial activity by which the franchisor agrees and require the franchisee to sell goods or provide services in accordance with the following terms:

1. The sale of goods or provision of services shall be in the system designated by the franchisor and relating to the use the franchisor's trademark, trade name, business slogan, trade logo, and/or advertisements .

2. The franchisor shall be entitled to to supervise and assist the franchisee in the operation of the business.

#### **franchisorfranchiseefranchisorfranchiseeArticle 287. Contract for franchise of commercial rights**

A contract for franchise of commercial rights must be made in writing or other legal form with similar validity .

#### **Article 288. Rights of franchisors**

Except otherwise agreed, a franchisor has the following rights :

1. To be entitled to a franchise sum.

2. To organize advertising of the goods and services sold or provided by the franchised trader.

3. To conduct periodical or extraordinary inspections of the site of sale of goods or provision of services of the franchised trader.

### **Article 289. Obligations of franchisors**

Except otherwise agreed, a franchisor has the following obligations:

1. To provide to the franchisee all the materials guiding the system in writing;
2. To train, and provide technical assistance to, the trader which takes the concession of the rights so that the party operates in accordance with the system.
3. To design and arrange the site of sale of goods or provision of services at the expense of the franchised trader.
4. To ensure the intellectual property rights of those subjects of IPR in the system.
5. To equally treat all the franchised traders in the same system.

### **Article 290. Rights of franchisees**

Except otherwise agreed, a franchisee has the following rights :

1. To request the franchisor to provide all necessary technical assistance related to the franchised rights.
2. To request the franchising trader to equally treat all the franchised traders in the same system.

### **Article 291. Obligations of franchisees**

Except otherwise agreed, a franchisee has the following obligations :

1. To pay the franchise sum and other sums in accordance with the contract;.
2. To make appropriate investments in the facilities and to arrange both financial and human resources sufficient to take over the rights and professional know-hows to be franchised by the franchisor;
3. To allow inspection and supervision and guidance by the franchisor. To comply with all the franchisor's requirements as to the design and arrangement of the site of sale of goods or provision of services.
4. To keep confidential the franchised professional know-how during and after the period the contract is in effect.
5. Stop the use of the franchisor's trademark, trade name, business slogan, trade logo, and other intellectual property rights or the system of the franchisor when the contract expires or is terminated.
6. To operate in accordance with the system of franchised rights.
7. Not to re-franchise without the consent of the franchisor.

### **Article 292. Re-franchise to a third party**



1. The franchisee shall have the right to re-franchise to a third party (to be called the re-franchisee) if consented to by the franchisor.

2. The re-franchisee shall have the rights and obligations provided in Articles 290 and 291 of this Law.

#### **Article 293. Registration of franchises**

1. Before franchising, the intended franchisor shall register with the Ministry of Trade.

2. The Government shall make detailed provisions for conditions to exercise the right to conduct business by franchise and for the order and procedures for registering franchises.

### **Chapter VII**

## **REMEDIES IN COMMERCE AND DISPUTE RESOLUTION IN COMMERCE**

### **Section 1**

#### **Remedies in commerce**

#### **Article 294. Types of remedies in commerce**

1. Upon a breach of a contract by a party as referred to in Article 277 of this Law, on the basis of the seriousness of the breach and specific provisions of this Law, the aggrieved party is entitled to impose [one of] the following remedies :

- a. Coercion of proper implementation of contracts;
- b. Fine penalties;
- c. Damages;
- d. Temporary cessation of implementation of contracts;
- dd. Suspension of implementation of contracts;
- e. Cancellation of contracts.

2. The parties may agree to apply other types of remedies other than those referred to in clause 1 of this Article provided that such remedies are not contrary to the fundamental principles of the Vietnamese laws.

#### **Article 295. Imposing remedies in commerce upon insubstantial breaches**

Unless otherwise agreed, the aggrieved party is not entitled to impose temporary cessation of implementation of a contract, suspension of implementation of a contract or cancellation of a contract upon an insubstantial breach.

#### **Article 296. Immunities from liability for acts of breach**

1. A party that breaches the contract is entitled to immunity from liability in the following cases:

- a. Upon a case of liability immunity as agreed by the parties in their contract;
  - b. Upon an event of force majeure;
  - c. Upon a breach by one party being completely due to the other party's mistake;
  - d. Upon a breach by one party due to the necessity to implement the decisions of an authorized State management agency that it was impossible for the parties to know at the time of entering into the contract.
2. An event of force majeure means an obj





Temporary cessation of implementation of a contract means a party temporarily ceases the performance of its contractual obligations in one of the following cases, except for cases of liability immunity stipulated in Article 296 of this Law:

1. Upon occurrence of an act of breach which serves as a condition for temporary cessation of implementation of the cont



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

**Section 2**  
**Resolution of disputes in commerce**

**Article 319. Forms of dispute resolution**

Forms of resolution of disputes in commerce include:

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





