

# Vietnam

## Law on Credit Institutions

In order to ensure the soundness, prudence and efficient operations of credit institutions, to protect the interest of the State and the rights and legitimate interests of organisations and individuals, to contribute to the implementation of national monetary policy, to the development of a socialist - oriented multi - sector market economy operating under the State management:

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This law provides for the organisation and operation of credit institutions and banking activities of other organizations

### Chapter 1: General provisions

#### **Article 1. :** Governing scope

This law provides for the organisation and operation of credit institutions and banking activities of other organisations in the Socialist Republic of Vietnam.

#### **Article 2.:** Application of the law on credit institutions and relevant laws.

The organisation and operation of credit institutions and banking activities of other organisations shall comply with the provisions of this law and other relevant laws. The Government shall stipulate in detail the banking activities of other organisations.

#### **Article 3.:** Application of international treaties and international banking practices to banking activities with foreign parties

1. In cases where international treaties to which the Socialist Republic of Vietnam is a signatory or has acceded to contain provisions that are different from those in this law, the provisions of such international treaties shall apply.

2. Parties engaging in banking activities may agree to apply international banking practice which is not contrary to the laws of the Socialist Republic of Vietnam.

#### **Article 4:** State policies on developing types of credit institutions

1. Unifying the management of all banking activities and developing a modern system of credit institutions which is capable of meeting the capital requirements of, banking services for the economy and population; contributing to the implementation of national monetary policy; ensuring the prudence of the system of credit institutions, protecting the lawful interests of depositors.

2. Investing capital and other resources in developing state-owned credit institutions, facilitating their key and leading role in the financial market.

3. Developing policy banks, operating on a nonprofit basis to serve the poor and other underprivileged persons in order to implement the socio-economic policies of the State.

4. Protecting the ownership, other legal rights and interests of cooperative credit institutions in their activities, thus facilitating mutual assistance among labourers in their production and life.

5. Setting up banks for the development of agriculture, rural areas and farmers, with preferential policies on financing, interest rates and lending conditions.

#### **Article 5. :** Credit policies

The State shall issue policies to mobilise primarily domestic resources and to make the most of overseas resources; to expand investment by the provision of credits, to contribute to freeing all production

capacities, promoting the potential of all economic sectors, ensuring the major role of the state-owned enterprises; to hold fast to the socialist orientation, and national sovereignty; to ensure the prudence of the national financial, monetary system; to broaden international co-operation and integration; to industrialise and modernise the country; to contribute to meeting the requirements of socio-economic development, ensuring the national defense and security and improving the people's living standard.

**Article 6.:** Credit policies applicable to state-owned enterprises

The State shall issue credit policies on financing, lending conditions applicable to state-owned enterprises so as to enable those enterprises to renew equipment, modernise technology, effectively expand the scope of production and business, play the leading role in the national economy, contribute to the socio-economic development of the country.

**Article 7:** Credit policies applicable to cooperatives and other forms of co-operative economy

The State shall issue credit policies which create favorable conditions on financing and lending conditions to support co-operatives and other forms of co-operative economy and to ensure that the state economy together with the co-operative economy shall become the foundation of the national economy.

**Article 8. :** Credit policies applicable to agriculture, rural areas and farmers

The State shall issue preferential credit policies on financing, interest rates, lending conditions and duration applicable to agriculture, rural areas and farmers in order to contribute to the construction of material bases and infrastructure, to promote the economic structural transformation in agriculture, to develop the commodity production, to implement the industrialisation and modernisation of agriculture and rural areas.

**Article 9. :** Credit policies applicable to mountainous areas, islands, outlying, remote areas and needy socio-economic areas.

The State shall issue preferential credit policies on financing, interest rates, lending conditions and duration, expanding investment for the development of the commodity economy, economic exchanges in the mountainous areas, islands, outlying and remote areas and needy socio-economic areas.

**Article 10. :** Credit policies applicable to the poor and other underprivileged persons.

1. The State shall issue preferential credit policies on financing, interest rates, lending conditions and duration applicable to the poor and other underprivileged persons. to facilitate the development of their businesses and production.

2. The State shall issue preferential credit policies on interest rates and lending conditions and duration applicable to poor students, to create favorable conditions for their studies.

**Article 11. :** International co-operation in the banking area

The State shall uniformly manage, issue policies to expand international co-operation in banking areas on the basis of respect to independence, sovereignty, equality and mutual benefit under the direction of multilateralisation and diversification; to encourage the mobilisation of overseas credit sources for investment in the economic development of Vietnam; to create favorable conditions for credit institutions to strengthen their co-operation with foreign parties in order to enhance the efficient operations of such institutions.

**Article 12.:** Types of credit institutions

1. Vietnamese credit institutions shall include: state-owned credit institutions, joint-stock credit institutions owned by the State and the people, and cooperative credit institutions.

2. The State shall, depending on the need for the socio-economic development of the country, permit the establishment of joint venture credit institutions and non-bank credit institutions with 100% foreign-owned capital in Vietnam, and the opening of foreign bank branches in Vietnam.

Foreign credit institutions may open representative offices in Vietnam; Representative offices shall not be permitted to do business in Vietnam.

3. Only credit institutions meeting all requirements stipulated by the law shall be permitted to conduct the full range of monetary business and banking services . to provide services to various areas of the socio-economy activities.

**Article 13:** Banking activities of organisations not being credit institutions

1. Organisations which are not credit institutions may be allowed by the State Bank to conduct some banking activities if they meet all of the requirements prescribed in clause 2, Article 22 of this law.

2. Organisations which are not credit institutions, but conducting banking activities shall be subject to the relevant provisions of this law concerning the permitted banking activities.

**Article 14.:** Rights to conduct banking activities

Any organisation which meet all conditions as provided for by this law and other relevant provisions of applicable laws and has been granted a licence by the State Bank, shall be entitled to conduct all or some banking activities in Vietnam.

**Article 15. :** Rights to business autonomy

Credit institutions shall have business autonomy and shall be responsible for their business results. No organisation or individual shall be permitted to interfere illegally with the business autonomy of credit institutions. Credit institutions have the right to refuse any request for credit extension, capital contributions. provision of banking services if such request is considered unjustified, inefficient, not in compliance with the laws.

**Article 16. :** Co-operation and competition in banking activities

1. Organisations conducting banking activities may co-operate and compete legally.

2. Any act of competition that is illegal, detrimental to the implementation of national monetary policy, the prudence of the system of credit institutions and the legal interests of the parties shall be strictly prohibited.

3. Illegal acts of competition shall include:

a) Illegal sales-promotion;

b) Providing false information, thereby causing damage to the interests of other credit institutions and customers;

c) Manipulative speculation of the financial, gold and foreign currency markets; and

d) Other acts of illegal competition.

**Article 17.:** Protection of depositors' interests

Credit institutions shall be responsible to:

1. Participate in a deposit guarantee or deposit insurance organisation; the guarantee or insurance coverage shall be stipulated by the Government.

2. Create favorable conditions for deposit and withdrawal of money by the customers upon request; to ensure the full and timely payment of both principal and interest on any deposit;

3. Ensure the confidentiality of the deposit balances of customers: refuse any investigation into. blockage, retention, transfer of any deposit money without the consent of the customers, unless otherwise provided

by the laws;

4. Publicly announce deposit interest rates.

**Article 18. :** Business hours

Credit institutions must publicly announce business hours and shall not, at its own discretion, cease transactions during the business hours so announced. In case of cessation of business, credit institutions shall display such announcement at their place of business at least 24 hours before such cessation.

**Article 19.:** Responsibilities in connection with funds of illegal origins

1. Credit institutions and other organisations conducting banking activities must not conceal, provide any service relating to funds of which evidences of illegal origins have been established.

2. In case any funds is identified as having signs of illegality, credit institutions and other organisations conducting banking activities must forthwith inform the competent authorities of the same.

**Article 20.:** Interpretations

For the purpose of this Law, the following terms shall be construed as follows:

1. "Credit institution" shall mean an enterprise, established in accordance with this law and other applicable laws, conducting monetary business and providing banking services in the form of receiving deposits and using the same to extend credits, provide payment services;

2. "Bank" shall mean a credit institution permitted to conduct all banking activities and other related business operations. Depending on the nature and purpose of their operations, banks may consist of different types, such as commercial banks, development banks, investment banks, policy banks, cooperative banks and other types of banks;

3. "Non-bank credit institution" shall mean a credit institution permitted to engage in some banking activities as its regular business, but not permitted to receive demand deposits and to provide payment services. Non-bank credit institutions consist of finance companies, finance leasing companies and other non-bank credit institutions;

4. "Foreign credit institution" shall mean a credit institution established under the law of foreign countries;

5. "Cooperative credit institution" shall mean an institution conducting monetary business and providing banking services which is established by organisations, individuals and family households on a voluntary basis in order to conduct banking activities under this law and the law on cooperatives for the main purposes of mutual assistance in the development of production, business and daily life. Cooperative credit institutions consist of cooperative banks, people's credit funds, credit cooperatives and other forms;

6. "Major shareholder" shall mean any individual who, or organisation which, owns more than 10% of the charter capital or more than 10% of the voting shares of a credit institution;

7. "Banking activities" shall mean monetary business activities and banking services, the regular operation of which is the receipt of deposits and use of the same to extend credits, provide payment services;

8. "Credit activities" shall mean the use of the equity and funds mobilised by the credit institutions to extend credits;

9. A "Deposit" shall mean an amount of money deposited with a credit institution by its customer whether as a demand deposit, term deposit, savings deposit or others. A deposit may or may not bear interest, but it must be returned to the depositor;

10. "Extension of credit" shall mean an act of commitment by a credit institution to the use of a sum of money by a customer on the principle of repayment through the operations of providing loans, discounts, finance leasing, issuing of bank guarantees and others;

11. "Finance leasing" shall mean a medium-term or long-term credit activity, based on an asset lease contract entered into between a credit institution as the lessor and a customer as the lessee. Upon expiry of the lease, the lessee shall either purchase the leased assets or continue the lease under the terms and conditions as agreed in the lease contract. During the lease, the parties concerned shall not unilaterally terminate the lease contract;

12. "Bank guarantee" shall mean a written commitment of a credit institution to the obligee committing the fulfilment of financial obligations on behalf of its customer in case the customer fails to duly perform its obligations; the customer must acknowledge the debt and repay to the credit institution the amount of money which the credit institution has paid on its behalf;

13. "Own capital" shall mean the real value of the charter capital, reserve funds and certain other liabilities of a credit institution as may be stipulated by the State Bank. Own capital serves as a basis for calculating the prudential ratios in banking activities;

14. "Discount" shall mean the purchase by a credit institution of commercial papers and other short-term valuable papers from beneficiaries prior to their due date;

15. "Re-discount" shall mean the purchase of commercial papers and other short-term valuable papers that have been discounted, prior to their due date.

## **Chapter 2: Organisation and management of credit institutions**

### **Section 1: Issuance of establishment and operation licences**

#### **Article 21.:** Authority to issue establishment and operation licences

The State Bank shall be the competent body to issue establishment and operation licences to credit institutions and banking operation licences to other organisations in accordance with the provisions of this law and other applicable provisions of the relevant laws.

#### **Article 22.:** Conditions for issuance of establishment and operation licences

##### 1. Conditions for credit institutions to be issued the establishment and operation licence

a) There is a need for banking activities in the area(s) where such activities are applied for;

b) The capital requirements under Article 83 of this law are met;

c) The founding members are organisations which, or individuals, who have financial capability and prestige;

d) The directors and executives shall possess full capacity for civil acts and professional qualifications required by the type of credit institution;

d) A charter of organisation and operations is already in place and in conformity with the provisions of this Law and other applicable provisions of the relevant laws; the business plan is feasible.

e) There is a feasible business plan.

##### 2. Conditions for an organisation which is not a credit institutions to be issued a banking operation licence;

- a) Banking activities are necessary and closely related to its main activities;
- b) Such organisation has sufficient capital, appropriate material conditions as required for banking activities;
- c) Such organisation has a team of experts knowledgeable about banking operations:
- d) Such organisation has a feasible business plan of banking operations.

**Article 23.:** Application file for establishment and operation licence

1. An application file for the establishment and operation licence of a domestic credit institution shall include:

- a) Application for the establishment and operation licence;
- b) Draft of the charter;
- c) Business plan for the first three years, highlighting the benefits and economic efficiency of the banking activities;
- d) List, curriculum vitae and certificates evidencing the qualification and professional capability of the founding members, members of the board of directors, and the controllers committee, and the (general) director;
- d) Amount, plan of capital contribution and a list of organisations and individuals making capital contributions;
- e) Financial conditions and other relevant information relating to major shareholders;
- g) Approval by the relevant people's committee of 'the location where the Head-office of -the credit institution is to be located.

2. An application file for the operation licence of an organisation which is not a credit institution shall include:

- a) Application for a banking operation licence;
- b) Decision or permit of establishment, certificate of business registration of current business line;
- c) Charter:
- d) List and curriculum vitae of members of the board of directors, the (general) director, and the controllers committee (if any);
- d) Financial conditions in the last three years; and .
- e) Business plan for banking activities.

**Article 24.:** Licencing period

Within ninety (90) days from the date of receipt of the complete application file for the establishment and operation licence of a credit institution or the banking operation licence of an organisation which is not a

credit institution, the State Bank shall either issue a licence or refuse to do so. In the event of refusal, the State Bank shall serve a written notice giving the reasons therefor.

**Article 25.:** Licencing fee

licenced organisation shall pay a licencing fee in accordance with the applicable provisions of relevant laws.

**Article 26.:** Use of the licence

1. Licenced organisations shall make proper use of . its name and shall operate in strict compliance with the provisions stated in the licence.

2. It is strictly forbidden to falsify, erase, transfer, lease or lend the licence.

**Article 27.:** Business registration

Upon issuance of the licence, the credit institutions shall carry out the business registration in accordance with applicable provisions of relevant laws.

**Article 28.:** Conditions for operations

1. In order to conduct banking operations, a licenced credit institution must satisfy following conditions:

a) Its charter has been approved by the State Bank of Vietnam;

b) Its certificate of business registration has been issued, its legal capital has been contributed in full and its head office must be suitable to the requirements of banking activities;

c) The legal capital which has been contributed in cash has to be deposited to an non-interest escrow account with the State Bank at least 30 days prior to the commencement of operation. The deposited funds shall be released only after the commencement of operation by the credit institution;

d) Announcement in central, local newspaper of the provisions stated in the licence has been made in accordance with applicable provisions of relevant laws.

2. In order to conduct its banking operations, an licenced organisation which is not a credit institution must satisfy following conditions:

a) Its certificate of business registration has been issued, its head-office is suitable to the requirements of banking activities;

b) Announcement in central, local newspaper of the provisions stated in the licence has been made in accordance with applicable provisions of relevant laws.

3. Within 12 months from the date of the licence, an organisation licenced by the State Bank shall commence its operations.

**Article 29. :** Revocation of a licence

1. The licence of the licenced organisations may be revoked in the following cases:

a) There is an established evidence that the application file for the licence deliberately contains false information;

b) It fails to commence its operations within the time limit prescribed in Article 28 of this Law;

c) It is dissolved, whether on a voluntary basis or it is compulsorily dissolved by the State competent authority;

- d) It is divided, merged with or integrated into another organisation, or it is bankrupt;
  - d) It carries out its activities other than for the permitted purposes;
  - e) It fails to meet conditions prescribed in clauses 1 and 2 of Article 28 of this law.
2. Organisations shall promptly terminate the banking activities upon the revocation of the licence.
  3. The decision to revoke the licence shall be made public by the State Bank on the mass media.

**Article 30.:** Charter

1. The charter of a credit institution shall contain substantially the following main contents:

- a) Name and place of its head-office;
- b) Content and scope of its activities;
- c) Duration of its operation;
- d) Charter capital and form of capital contribution;
- d) Responsibilities and powers of the board of directors, (general) director and controllers committee;
- e) Procedures for appointment and dismissal of the members of the board of directors, (general) director and controllers committee;
- g) Rights and obligations of shareholders;
- h) Financial principles, accounting and internal control and auditing;
- i) Events of dissolution and procedures for dissolution;
- k) Procedures for making amendments to the charter.

2. The charter of a credit institution shall be effective only upon the State Bank's approval, unless otherwise provided by relevant laws.

**Article 31.:** Changes subject to approval

1. Any change to be made by a credit institution to any of the matters listed below shall be subject to the State Bank's written approval:

- a. Name of the credit institution;
- b. Charter capital, allocated capital;
- c. Location of the head-office, transaction office, branch or representative office;
- d. Content and scope of its activities and duration of its operation;
- d. Assignment of a number of bearer shares in excess of the proportion prescribed by the State Bank;
- e. Proportion of shares owned by major shareholders;
- g. Members of the board of directors, members of the controllers committee, and the (general) director.

2. The credit institution shall, upon the State Bank's approval, register with the competent state authority any changes as stipulated in clause 1 of this Article and shall announce such changes in central, local newspapers in accordance with applicable provisions of relevant laws;

## **Section 2: Organisational structure of credit institutions**

**Article 32.:** Setting up transaction offices, branches, representative offices, and establishment of companies and administrative units

A credit institution shall be entitled to:

1. Set up a transaction office, a branch, a representative office in any place inside or outside Vietnam where there is a demand for its activities, including the place where its head office is located subject to the State Bank's written approval;
2. Establish a subsidiary company of separate judicial person and independent accounting status by using its own capital to engage in financial, banking, and insurance businesses in accordance with Government's regulations.
3. Establish administrative units subject to the State Bank's approval.

**Article 33. :** Conditions, application file, procedures for setting up a transaction office, branch, representative office, establishment of a company

1. A credit institution may set up a transaction office, a branch, a representative office, establish a company in accordance with provisions of Article 32 of this Law, provided the following conditions are satisfied:

- a) It has been operating for a minimum period of time as stipulated by the State Bank;
- b) Its business is profitable, the financial condition is sound;
- c) Its management, executive bodies and internal control system operate efficiently;
- d) Its information system come up to the requirements of the business management;
- d) It has not violated any prudential stipulation in banking operations and applicable provisions of relevant laws.

2. The application file, procedures for setting up a transaction office, a branch or a representative office, establishment of a subsidiary of a credit institution shall be carried out in accordance with the State Bank regulations.

**Article 34. :** Division, separation, intergration, merger, acquisition and dissolution

The division, separation, integration, merger, acquisition or dissolution of credit institutions shall be subject to the State Bank's written approval.

**Article 35.:** Joint operations among cooperative credit institutions

Cooperative credit institutions shall have the right to cooperate with one another in regulating funds transfer and providing financial support to strengthen their ability of mutual assistance in order to ensure the prudence and effectiveness in the operation of each institution.

## **Section 3: Administration, management and control**

**Article 36.:** Administration, management, control

1. The election, appointment or dismissal of the chairman and any member of the board of directors, the

Chief controller and any member of the controllers committee, or the (general) director of a credit institution shall be conducted in accordance with applicable provisions of relevant laws.

2. The appointment of the chairman, and any member of the board of directors, the Chief controller and any member of the controllers committee, and the (general) director of a credit institution must be approved by the Governor of the State Bank or by the person who is authorised by the Governor of the State Bank except for appointments required to be made by the Prime Minister.

**Article 37.:** Board of directors

1. The board of directors shall perform the function of managing the credit institution in accordance with this law and applicable provisions of relevant laws.

2. The board of directors shall have at least three members who must be highly reputable, professionally ethic and knowledgeable of banking activities.

3. The chairman and members of the board of directors shall not delegate any of their duties and powers to any person who is not a member of the board of directors.

4. The chairman of the board of directors shall not concurrently be the (general) director or deputy (general director), except as otherwise provided for by relevant laws, of the credit institution.

5. The chairman of the board of directors of the credit institution shall not be a member of the board of directors or an executive officer of another credit institution, except in the case where the latter is a subsidiary of the credit institution.

**Article 38.:** Controllers committee

1. The controllers committee of a credit institution shall operate in accordance with provisions of this law and applicable provisions of relevant laws.

2. The controllers committee shall have the duty to control the financial operations of credit institutions, the compliance with the accounting procedures and the operations of their internal control and auditing systems.

3. The controllers committee of a credit institution shall have at least three persons, one of whom shall be the chief controller and at least half of the members shall be full time members.

4. All members of the controllers committee must satisfy the requirements for expertise and professional ethics as determined by the State Bank.

5. The controllers committee is entitled to use the internal control and auditing systems of the credit institution to perform its duties.

**Article 39.:** General director (director)

1. The (general) director of a credit institution shall be responsible to the board of directors for directing the day-to-day operations of the credit institution within the framework of his/her duties and powers and in accordance with this law and other applicable provisions of relevant laws.

2. The (general) director and deputy (general) director(s) of a credit institution must satisfy the following conditions:

a) Residing in Vietnam during his/her term of office;

b) Having expertise and capability to direct a credit institution as stipulated by the State Bank.

**Article 40.:** Persons not permitted to be members of the board of directors, the controllers committee or executive officers

1. The following persons shall not be selected to the board of directors, the controllers committee, or appointed as the (general) director or deputy (general) director:

a) Those who are under criminal prosecution:

b) Those who were sentenced for any serious crime against national security, grave misappropriation of socialist and citizen's property, other serious economic criminals;

c) Those who were convicted for any other crimes in relation to which the sentence has not been cleared from the court's records;

d) Those who were members of the board of directors or (general) director of a bankrupt company except for the cases provided in Clause 2 of Article 50 of the law on bankruptcy of enterprises;

d) Those who were legal representatives of a company whose operations were suspended as a result of a serious violation of laws.

2. None of the parents, spouses, children or siblings of any member of the board of directors or of the (general) director shall be a member of the controllers committee or the chief accountant of the same credit institution.

#### **Section 4: Internal control and auditing**

**Article 41.:** Internal control and auditing systems

A credit institution must establish an internal control and auditing system under the executive body to assist the (general) director to manage safely, smoothly and lawfully the professional activities of such credit institution.

**Article 42.:** Internal control

Credit institutions shall always control the observance of applicable laws and internal rules and directly control all aspects of operational activities at transaction offices, representative offices, branches and subsidiary companies.

**Article 43.:** Internal auditing

Credit institutions shall audit their operations, in each relevant period, each business area in order to accurately evaluate the results of their business operations and financial status.

**Article 44:** Internal control and auditing reports

Results of internal control and auditing shall be reported to the (general) director, the board of directors and the controllers committee.

### **Chapter 3: Credit institutions activities**

#### **Section 1: Capital mobilisation**

**Article 45.:** Receipt of deposits

1. Banks may receive deposits from organisations, individuals, and other credit institutions in the form of demand, term or other forms of deposit.

2. Non-bank credit institutions may receive deposits with the term of no less than one year from organisations and individuals in accordance with stipulations of the State Bank.

**Article 46.:** Issuance of valuable papers

Credit institutions may, upon the State Bank's approval, issue certificates of deposits, bonds and other valuable papers to mobilise funds from organisations and individuals both within and outside the country.

**Article 47.:** Borrowings among credit institutions

Credit institutions may borrow funds from one another and from foreign credit institutions.

**Article 48.:** Borrowings from the State Bank

Credit institutions being banks may borrow on a short-term basis from the State Bank in the form of a refinancing facility, in accordance with Article 30 of the law on the State Bank of Vietnam.

## **Section 2: Credit activities**

**Article 49.:** Extension of credit

Credit institutions shall be entitled to extend credit to organisations and individuals in form of loans, discounting commercial and other valuable papers, issuing guarantees, finance leasing and others as permitted by the State Bank.

**Article 50.:** Types of loans

1. Credit institutions shall extend short-term loans to organisations and individuals to meet their financing requirements for production, business, services and living requirements.
2. Credit institutions may extend medium-term and long-term loans to organisations and individuals for implementation of investment projects to develop production, business, services and living requirements.

**Article 51.:** Credit agreement

The extension of a loan shall be made on the basis of a credit agreement. A credit agreement shall substantially cover lending conditions, purposes of the loan, type of loan, amount of the loan, interest rate, duration, form of security, value of assets used as security, mode of repayment and other commitments mutually agreed upon by the parties.

**Article 52.:** Security for a loan

1. Credit institutions shall actively seek production, business projects which are feasible, efficient and capable of repayment in order to extend loans.
2. Credit institutions shall extend a loan on the basis of being secured by a mortgage or collateral of the borrower, guarantee by a third party. It is not permitted to extend any loan on the basis of being secured by the shares of the lending credit institutions.
3. The extension of loans secured by assets which are created by the use of the loans and the extension of loans without security to customers shall be subject to the Government's regulations;
4. State-owned credit institutions may extend unsecured loans pursuant to the direction of the Government. Any loss on such loans occurring as result of objective reasons shall be dealt with by the Government.

**Article 53.:** Loan assessment, examination of the use of a loan.

1. Credit institutions may, before deciding whether to extend a loan, require the customer to provide documents evidencing a feasible business plan, the financial capability of the customer and the guarantor.
2. Credit institutions shall organise the assessment and approval of loans on the principle of the separation of the responsibilities between the loan appraisal stage and the loan approval stage.

3. Credit institutions shall examine and supervise the process of borrowing, using and repaying the loan by the customer.

**Article 54.:** Termination of a loan, dealing with debts, and adjustment of interest rates.

1. Credit institutions shall have the right to terminate and accelerate a loan in the event a customer is found to provide false information, violate the credit agreement.

2. In the event that the customer fails to repay its due debt, the credit institutions shall, except as otherwise agreed by the parties, have the right to:

a) Sell mortgaged assets; assign and sell the collateral assets to recover the debt within a particular period of time in accordance with applicable provisions of relevant laws;

b) Request the guarantor to perform its obligations;

c) Initiate a law suit against the customer violating the credit agreement and the guarantor in accordance with applicable provisions of relevant laws.

3. In the event that a borrower or a guarantor fails to repay the debt, due to its bankruptcy, the debt shall be recovered by the credit institution in accordance with the laws on bankruptcy of enterprises.

4. Credit institutions may exempt, reduce interest rates, fees, reschedule debts or sell, buy debts in accordance with regulations of the State Bank. The refinancing of a loan shall be conducted in accordance with the Government's regulations.

**Article 55.:** Maintenance of credit records

1. Credit institutions must keep a record of credit documentation, including:

a) The credit agreements and other documents clearly indicating the purposes of the loan and the legal documents of the assets used as security for the loan (if any);

b) Report on the actual financial status of the customer, the guarantor:

c) The decision to extend the loan signed by the authorised person or, in the case of a collective decision, minutes of meeting stating clearly the approval of the decision to extend the loan;

d) Other documents which arise in the process of using the loan in connection with the loan agreement.

2. The time period during which the credit records are kept shall be in accordance with applicable provisions of relevant laws.

**Article 56.:** Rights and obligations of borrowers

1. Borrowers shall have the following right:

a) To refuse those requirements by the credit institutions which are not in compliance with provisions of the credit agreement;

b) To file a complaint or initiate a lawsuit against the refusal to extend loans without any proper reasons and for any breaches of the credit agreement in accordance with applicable provisions of relevant laws.

2. Borrowers shall have the following obligations:

a) To provide accurate and full information and document relating to the borrowing and be responsible for the accuracy of the same;

- b) To use the loan for the permitted purposes and duly perform other terms as agreed in the credit agreement;
- c) To pay the principal of the loan and interest thereon as agreed in the credit agreement;
- d) To bear the legal responsibility for failure to implement the credit agreement.

**Article 57.:** Discounting, re-discounting and pledging commercial paper and other short term valuable papers

1. Credit institutions may extend credits in the form of discounting commercial papers and other short-term valuable papers. The owner of commercial papers and other short-term valuable papers must immediately transfer all the rights and legitimate benefits derived from such papers to the credit institutions.
2. Credit institutions may extend credits in the form of accepting a pledge of commercial papers and other short-term valuable papers. Credit institutions may exercise all rights and legal benefits derived from such papers in the event that the owner of such papers fails to perform fully its commitments as agreed upon in the credit agreement.
3. Credit institutions may re-discount, accept a pledge of commercial papers and other short-term valuable papers for and from other credit institutions.
4. Credit institutions being banks may have their papers rediscounted by the State Bank and receive credits extended by the State Bank against the pledge 'of the discounted commercial papers and other short-term valuable papers.
5. The discounting, re-discounting and pledge of commercial papers and other short-term valuable papers for the purpose of credit extension in the system of credit institutions shall be regulated by the State Bank.

**Article 58. :** Bank guarantee

1. Credit institutions may issue guarantees to the beneficiary against their creditability and financial capability.
2. Credit institutions may issue loan guarantees, payment guarantees, performance guarantees, tender guarantees and other forms of bank guarantees to organisations and individuals.
3. Only banks which are permitted to provide international payment services may issue guarantees for loans, payments and other forms of bank guarantees where the beneficiary is a foreign individual or organisation.

**Article 59.:** Rights and obligations of credit institutions issuing guarantees

1. Credit institutions issuing guarantees shall have the right to:
  - a) Request customers to provide documents evidencing their financial status and other documents relating to transactions to be guaranteed;
  - b) Request customers to provide security for the guarantees to be issued;
  - c) Charge a guarantee fee in accordance with the State Bank regulations;
  - d) Control the performance by the account party of its obligations;
  - e) Refuse to issue guarantees to non-creditable customers.

2. Credit institutions issuing guarantees shall have the obligation to perform its commitments to the beneficiary when the account party fails to perform or does not adequately fulfill its obligations.

**Article 60.:** Obligations of the account party

The account party shall have the obligation to:

1. Provide full and accurate information and documents relating to the guarantee at the request of the credit institution issuing the guarantee;
2. Perform properly its commitments to the beneficiary and the credit institution issuing the guarantee;
3. Subject itself to the supervision by the credit institution issuing the guarantee in respect of all activities relating to the guaranteed obligations;
4. Acknowledge the debt and pay principal, interest and costs, expenses that the credit institution has paid to perform the commitments of the guarantee.

**Article 61.:** Finance leasing

1. Finance leasing activities shall be carried out through finance leasing companies for organisations and individuals.

2. A finance leasing company (hereinafter referred to as "the Lessor") shall retain its ownership over the leased assets. Upon the expiry of lease contract, the lessee shall have the right to exercise the option to either purchase the leased assets or continue the lease as agreed in the lease contract.

3. Neither the lessor nor the lessee shall have the right to terminate the lease contract unilaterally.

**Article 62.:** Rights and obligations of the lessor

1. The lessor shall have the following rights :

- a) To directly purchase or import assets at the request of the lessee;
- b) To request the lessee to compensate any damage caused as a result of the lessee's failure to perform adequately its obligations of maintenance, repair and payment of insurance fees for the leased assets during the term of the lease; and
- c) To recover the leased assets and require the lessee to pay immediately all lease charges upon the lessee's breach of the lease contract.

2. The lessor shall have the following obligations:

- a) To sign a contract for purchase of assets, fulfill all procedures for the importation of assets and make full payment for the purchase of assets to be leased; and
- b) To compensate any damage to the lessee in the event that the lessor breaches the lease contract.

**Article 63. :** Rights and obligations of the lessee

1. The lessee shall have the following rights:

- a) To select, negotiate and agree with the supplier regarding technical specifications, type, price, insurance, terms and date of delivery, installation and maintenance of the assets to be leased:
- b) To directly receive the assets to be leased from the supplier pursuant to the agreements in the purchase contract;

c) To exercise the option either to continue the lease or to purchase the assets upon expiry of the lease contract.

2. The lessee shall have the following obligations:

a) To use the leased assets for the purposes as agreed in the lease contract, not transfer the right to use such assets to any other individual or organisation without prior written approval of the lessor;

b) To pay lease charges under the lease contract and all costs and expenses incurred in connection with the importation, taxation and insurance in respect of the leased assets;

c) To bear any risk of loss or damage to the leased assets and any risk caused by the leased assets to other individuals and organisations;

d) To maintain and repair the leased assets during the term of the lease;

d) Upon expiry of the lease contract, to purchase the leased assets or continue the lease as agreed in the lease contract; and

e) To refrain from using the leased assets as mortgage, collateral or as security for any financial obligations.

**Article 64. :** Credit activities of cooperative credit institutions

Cooperative credit institutions may mobilise funds from their members and other organisations, individuals for the purpose of providing loans to their members. Any loan to be provided to persons other than their members must be approved by the general meeting of the members or meeting of the representatives of the members and shall not exceed a maximum ratio as determined by the State Bank.

### **Section 3: Payment and treasury services**

**Article 65.:** Opening accounts

1. Credit institutions may open deposit accounts with the State Bank and with other credit institutions.

2. Credit institutions receiving deposits must open a deposit account with the State Bank and maintain therein a balance which shall on average be not less than the level of compulsory reserves as determined by the State Bank.

3. Credit institutions being banks shall open accounts for foreign and domestic customers. Customers shall have the right to select a bank to open their main transaction account.

**Article 66.:** Payment services

Credit institutions being banks shall be entitled to provide following payment services

1. To provide means of payment;

2. To provide domestic payment services to customers;

3. To provide international payment services when permitted by the State Bank;

4. To act as collecting and paying agent;

5. To provide other payment services as stipulated by the State Bank.

**Article 67. :** Treasury services

Credit institutions may provide services relating to the collection and payment of cash to customers.

**Article 68.:** Setting up and participating in payment systems

Banks may set up their own inter-payment system and participate in the domestic inter-bank payment system. The participation in an international payment system shall require permission from the State Bank.

#### **Section 4: Other activities**

**Article 69. :** Capital contribution and share acquisition

Credit institutions may use their charter capital and reserve funds to make capital contributions to. to purchase shares in enterprises and other credit institutions in accordance with applicable provisions of relevant laws.

**Article 70.:** Participation in the monetary market

Credit institutions may participate in the monetary market organised by the State Bank, including the market for treasury bills auction, the inter-bank markets for local currency, foreign currency, the market for other short-term valuable papers as stipulated by the State Bank.

**Article 71:** Foreign exchange and gold business

Credit institutions may engage in the foreign exchange and gold business in domestic and international market when permitted by the State Bank.

**Article 72.:** Trust business and agent services

Credit institutions shall have the right to provide or accept trust services, to act as agent in any field related to banking activities, including management of any assets, investment funds of any organisations, individuals under a contract.

**Article 73.:** Real estate business

Credit institutions shall not be permitted to engage directly in the business of real estate.

**Article 74.:** Insurance business and services

1. Credit institutions may establish independent companies to engage in the insurance business in accordance with applicable provisions of relevant laws.
2. Banks may provide insurance services in accordance with applicable provisions of relevant laws.

**Article 75.:** Consultancy services

Credit institutions may provide consultancy services relating to financial and monetary matters to customers.

**Article 76.:** Other services relating to banking activities

Credit institutions may provide safe-keeping services in respect of the maintenance of precious assets and valuable papers, lease safe deposit boxes. provide pawning and other services to customers in accordance with applicable provisions of relevant laws.

#### **Section 5: Restrictions to ensure the prudence in the activities of credit institutions**

**Article 77.:** Persons not eligible for loan extension

1. A credit institutions shall not be permitted to extend loans to following persons
  - a) Any member of the board of directors, the controllers committee, the (general) director or deputy (general) director of the credit institution;
  - b) Any person in charge of appraisal and appo-\ing the loans;

c) Parents, spouse, children of a member of the board of directors, the controllers committee, the (general) director, deputy (general) director of the credit institution.

2. The provisions in clause 1 of this article shall not apply to cooperative credit institutions.

3. A credit institution shall not be permitted to accept any guarantee from any of the persons mentioned in clause 1 of this Article as security for any extension of credits to a customer.

**Article 78.:** Credit restriction

1. A credit institution shall not be permitted to extend unsecured credits, preferential credits to any of the following:

a) Any auditing company which, or any auditor who, is auditing the credit institution, the chief accountant, any inspector;

b) Any major shareholders of the credit institution;

c) Any enterprise of which more than 10% of charter capital is owned by any of the individuals listed in clause 1 of Article 77.

2. The total outstanding loans extended to the persons listed in clause 1 of this article shall not exceed 5% of the own capital of the credit institution.

**Article 79.:** Limits on the amount of loans and guarantees

1. Lending limits to a single customer shall be stipulated as follows:

a) The total outstanding loans extended to a single customer shall not exceed 15% of the own capital of the credit institution, except in the case of loans to be financed by funds trusted by the Government, any individuals, organisations, or where the customer is another credit institution;

b) In cases where the loan required by a single customer exceeds 15% of the own capital of a credit institution or if customers wish to be financed from different sources, credit institutions may syndicate the loan in accordance with the regulations of the Governor of the State Bank;

c) Where the credit institutions shall not be able to syndicate a loan to satisfy the borrowing requirement of a customer, the Prime Minister shall . in special cases, if the loan is for the implementation of socio-economic task. decide on the maximum lending limit for each particular case.

2. The amount of guarantees for a single customer. and the total amount of all guarantees a credit institution can issue, shall not exceed the maximum ratio of the own capital of the credit institution as determined by the State Bank.

**Article 80.:** Limits on capital contributions and share purchases

The amount of capital contributions to. the purchase of shares in a single enterprise . the total amount of capital contributions to, the purchase of shares in all enterprises made by a credit institution shall not exceed the maximum limit stipulated by the Governor of the State Bank for each type of credit institution.

**Article 81.:** Prudential ratios

1. Credit institutions must maintain the following prudential ratios:

a) The liquidity ratio, which shall be determined by the current asset to current liabilities ratio at a particular time of the credit institution;

b) The minimum capital adequacy ratio which shall be determined by the ratio of own capital to risk

adjusted assets, including off-balance sheet commitments;

c) The maximum ratio of short-term funds to medium- and long-term loans which are financed by that short-term funds;

d) The maximum ratio of the outstanding loans to the deposit balance.

2. The State Bank shall determine the ratios specified in clause 1 of this Article for each type of credit institution.

3. The total funds of a credit institution which are invested in another credit institutions under the form of capital contributions, share purchases shall be deducted from the own capital of the former when calculating its prudential ratios.

#### **Article 82.: Risk provisioning**

1. Credit institution shall make provision for risks in the banking activities. The risk provision shall be charged to the operating expenses;

2. The classification of assets, the level, methodology of making risk provisions and the use of the provisions to settle risks in the banking activities shall be regulated by the Governor of the State Bank in agreement with the Minister of Finance;

3. In the event credit institutions recover any amount of the funds that has been settled by using the risk provision, the amount so recovered shall be treated as revenue of the credit institutions.

### **Chapter 4: Finance, accounting, reporting**

#### **Article 83.: Legal capital**

The legal capital applicable to each type of credit institution shall be stipulated by the Government.

#### **Article 84.: Financial revenue and expenditure**

1. The financial revenue and expenditure of a credit institution shall be accounted in accordance with applicable provisions of relevant laws.

2. The Minister of Finance shall provide guidelines for control of the implementation of the financial regime by credit institutions in accordance with applicable provisions of relevant laws.

#### **Article 85.: Fiscal year**

The fiscal year of credit institutions shall begin on 1st January and end on 31st December of each calendar year.

#### **Article 86.: Accounting**

Credit institutions shall perform its accounting based on the system of accounts and financial documents in accordance with the laws on accounting and statistics.

#### **Article 87.: Funds**

1. Each year. credit institutions shall set aside part of its after-tax profits to establish and maintain the following funds:

a) The reserve fund for supplementing its charter capital, to which an annual allocation of 5% of the after-tax profits shall be made. The maximum level of this fund shall be determined by the Government;

b) Other funds in accordance with applicable provisions of relevant laws.

2. Credit institutions shall not use any of its funds mentioned in clause 1 of this Article to pay the dividends.

**Article 88.: Purchase of investment in fixed assets**

Credit institutions may use up to 50% of its own capital for purchase of, investment in its fixed assets.

**Article 89.: Reporting**

1. Credit institutions shall comply with the financial reporting requirements in accordance with applicable provisions of relevant laws on accounting, statistics and the operational, periodical reporting requirements in accordance with stipulation of the Governor of the State Bank.

2. In addition to periodical reports, credit institutions shall be responsible to immediately report to the State Bank upon the occurrence of the following cases:

a) Irregular development in their operations that may seriously affect their business:

b) Major changes in their organisational structure.

3. Within 90 days of the close of a fiscal year, credit institutions must submit to the State Bank the annual reports in accordance with applicable provisions of relevant laws.

**Article 90: Public disclosure of financial reports**

Within 120 days from the date of the close of a fiscal year, a credit institution must make public its financial statements in accordance with applicable provisions of relevant laws.

## **Chapter 5: Special control, bankruptcy, dissolution, liquidation**

### **Section 1: Special control**

**Article 91: Report on difficulties to maintain the liquidity**

When there is a risk of becoming unable to make payment to their customers, credit institutions shall immediately report to the State Bank of their financial status, the reasons thereof and measures already taken and proposed to be taken to address the situation.

**Article 92.: Application of special control**

1. Special control is the state where a credit institution is put under the direct control of the State Bank due to the risk of becoming illiquid, insolvent.

2. The State Bank shall be responsible for inspecting, discovering in a timely fashion any events of potential illiquidity, insolvency.

3. A credit institution may be put under the special control in the following cases:

a) There is a potential risk of illiquidity;

b) Irrecoverable debts create the risk of insolvency;

c) Accumulated losses of the credit institution exceed 50% of its real charter capital and funds.

**Article 93: Decision on special control**

1. The Governor of the State Bank shall issue the decision to put credit institutions under the state of special control;

2. A decision to put a credit institution under the state of special control shall include the following:

- a) Name of the credit institution to be put under special control;
- b) Reasons for the special control;
- c) Full name of members and specific duties of the special control committee;
- d) Duration of special control.

3. The decision on special control shall be notified by the State Bank to local competent and relevant bodies for coordination in the implementation of such decision.

4. It shall not be made public when a credit institution is put under special control.

**Article 94:** Duties, powers and responsibilities of the special control committee

1. The special control committee shall have the following duties:

- a) To direct the board of directors, the controllers committee, the (general) director of the credit institution under special control to prepare a plan to improve its organisation and operation;
- b) To direct and supervise the implementation of the measures set forth in the credit institution improvement plan, as approved by the special control board; and
- c) To report to the State Bank on the operational performance of the credit institution and results of the implementation of the improvement plan.

2. The special control committee shall have the following powers:

- a) To suspend any activities not in compliance with the approved plan to improve the organisation and operation, the prudential ratios applicable to banking activities, which may be detrimental to the interests of depositors;
- b) If considered necessary, to suspend temporarily the right of any member of the board of directors or the controllers committee, the (general) director or deputy (general) director to take part in the administration, management or control of the credit institution;
- c) To request the board of directors, the [general] director to remove from office or suspend the employment of any official who commits a violation of laws or fails to comply with the approved plan on improvement of the organisation and operations;
- d) To propose to the Governor of the State Bank an extension or termination of the special control;
- S) To propose to the Governor of the State Bank a special loan to be extended to the credit institution.

3. The special control committee shall be responsible for all decisions it takes during the process of special control.

**Article 95:**

Responsibilities of the credit institution under the special control The board of directors, the controllers committee and the [general] director of the credit institution under special control shall be responsible for:

- 1. Preparing and submitting to the special control committee for approval a plan to improve the organisation and operations of the credit institution and organising the implementation of such plan;
- 2. Continuing the administration, control and management of operations and assuring the safety of the

assets of the credit institution, except in the cases provided for in paragraph b. Clause 2 of Article 94 of this law;

3. Complying with any requests of the special control committee related to the organisation, administration, control and management of the credit institution.

**Article 96:** Special loans

To ensure its ability to pay the depositor's funds, a credit institution may, in case of emergency, be granted special loans by other credit institutions or the State Bank. Such special loans shall have priority of repayment over all other debts owed by that credit institution.

**Article 97:** Termination of special control

1. The special control shall terminate in the following cases:

- a) The duration of the special control expires without being extended;
- b) The credit institution resumes its normal operations;
- c) The credit institution has been merged or intergrated prior to the expiry of the special control;
- d) The credit institution has moved into a state of bankruptcy.

2. The state of special control shall be terminated by a decision of the Governor of the State Bank. That decision shall be notified to all concerned bodies.

## **Section 2: Bankruptcy, dissolution, liquidation**

**Article 98.:** Bankruptcy of a credit institution

If, after the State Bank has issued a written document declaring not applying or terminating the application of the measures to restore the solvency of the credit institution, that credit institution still defaults on the payment due, the court may commence the proceedings to declare the credit institution bankrupt in accordance with the law on bankruptcy of enterprises.

**Article 99:** Dissolution of a credit institution

A credit institution shall be dissolved in the following cases:

1. It voluntarily applies for dissolution, provided that it is capable of repaying all debts and its application is approved by the State Bank;
2. It fails to apply for an extension of the term of operation upon the expiry of the term, or its application for an extension is rejected by the State Bank;
3. Its establishment and operation licence is revoked.

**Article 100.:** Liquidation of a credit institution

1. Where a credit institution is declared bankrupt, the liquidation shall be conducted in conformity with applicable provisions of relevant laws on bankruptcy of enterprises.

2. Where a credit institution is to be dissolved under Article 99 of this law, its liquidation must be conducted immediately under the supervision of the State Bank.

3. All costs and expenses arising in connection with the liquidation of a credit institution shall be borne by the credit institution itself.

## Chapter 6: Information and confidentiality

### Article 101: Information to account holders

Credit institutions shall periodically provide account holders with information on transactions and the balance of accounts they maintain with such credit institutions.

### Article 102: Exchange of information among credit institutions

Credit institutions may exchange information among themselves in respect of banking activities and customers.

### Article 103.: Exchange of information between the State Bank and credit institutions

Credit institutions are responsible for providing the State Bank with information relating to the extension of credits to customers at the request of the State Bank

and may, in turn, be provided by the State Bank with information on banking activities of customers with whom they may have relationships.

### Article 104.: Confidentiality of banking information

1. Staff members of credit institutions and other relevant persons shall not disclose any state secrets or business secrets of the credit institutions of which they may be aware.

2. Credit institutions shall have the right to refuse requests from any organisation or individual for any information on deposits or assets of any customer and the activities of the credit institutions, except in the case of a request of a competent state authority made in accordance with applicable provisions of relevant laws or with the consent of the customer.

## Chapter 7: Foreign credit institutions, representative offices of foreign credit institutions in Viet Nam

### Article 105.: Forms of operations

1. Foreign credit institutions shall be permitted to operate in Vietnam in the following forms:

- a) joint venture credit institutions;
- b) 100% foreign-owned non-bank credit institutions;
- c) Foreign bank branches in Vietnam.

2. Foreign credit institutions shall be permitted to set up representative offices in Vietnam. The representative offices of foreign credit institutions shall not be permitted to carry out business activities in Vietnam.

### Article 106.: Conditions for issuance of a licence for establishment and operation.

1. Conditions for issuance of a establishment and operation licence to a joint venture credit institution and a 100% foreign-owned non-bank credit institution are as follows:

- a) Conditions set forth in Clause 1. Article 22 of this law;
- b) The foreign credit institution is permitted by the competent bodies of its home country to carry out banking activities;
- c) The foreign credit institution is permitted by the competent bodies of its home country to operate in Vietnam.

2. Conditions for issuance of a branch licence to a foreign credit institution are as follows:

- a) Conditions set forth in paragraphs a, b, d, and e of Clause 1. Article 22 of this law:
- b) Such foreign institution is permitted by the competent bodies of its home country to open a bank branch in Vietnam:
- c) The competent bodies of its home country ensure in writing their capacity to supervise all operations of such branch in Vietnam:
- d) The foreign bank undertakes in writing to be liable for all obligations and commitments of its branch in Vietnam.

3. Conditions for issuance of a licence for the setting-up of a representative office of a foreign credit institution are as follows:

The foreign credit institution is a legal entity permitted to carry out banking activities in its home country;

- a) The foreign credit institution is permitted by the competent bodies of its home country to set up a representative office in Vietnam;
- b) The foreign credit institution maintains cooperative relationships with Vietnamese economic organisations.

**Article 107.:** Authority to issue licences

The State Bank shall issue the establishment and operation licences to joint venture credit institutions and 100% foreign-owned non-bank credit institutions;

licences for the establishment of foreign bank branches and representative offices of foreign credit institutions in Vietnam.

**Article 108.:** Application for a licence

1. An application file for the establishment and operation licence of a joint venture credit institution and a 100% foreign owned non-bank credit institution operating in Vietnam shall include:

- a) Application for establishment and operation licence;
- b) Draft charter;
- c) Business plan for first three years, highlighting the benefits and economic efficiency of the banking activities:
- d) List, curriculum vitae and certificates evidencing the qualification and professional capability of the founding members, members of the board of directors, the controllers committee and the (general) director;
- d) Amount, plan of capital contribution and a list of organisations and individuals making capital contributions;
- e) Financial conditions and other relevant information about the major shareholders;
- g) Approval of the relevant people's committee of provinces, cities where the head-office of the credit institution is located;
- h) Charter of the foreign credit institution;

- i) Operation licence of the foreign credit institution;
  - k) Document issued by the competent authorities of its home country permitting such foreign credit institution to operate in Vietnam;
  - 1) Audited balance sheet, loss-and-profit statement and report on the foreign credit institution's activities for the last three years;
  - m) The joint venture contract with respect to a joint venture credit institution; and
  - n) Full name of the (general) director of the joint venture credit institution or the 100% foreign-owned non-bank credit institution in Vietnam.
2. An application file for branch licence of a foreign bank shall include:
- a) Documents described in paragraphs a and c. clause 1 of this article;
  - b) Charter of the foreign bank;
  - c) Operation licence of the foreign bank;
  - d) Written documents issued by the competent authorities of its home country permitting the foreign bank to open a branch operating in Vietnam;
  - d) Audited balance sheet and loss-and-profit statement and report on the foreign bank's activities for the last three years; and
  - e) Full names and curriculum vitae of the (general) director of the foreign bank branch in Vietnam.
3. An application file for a licence to set up a representative office of a foreign credit institution in Vietnam shall include:
- a) Application for setting up a representative office in Vietnam;
  - b) Operating licence of the foreign credit institution;
  - c) Written document by the competent authorities of its home country permitting the foreign credit institution to set up a representative office in Vietnam;
  - d) Audited balance sheet, loss-and-profit statement and report on the foreign credit institution's activities for the last three years; and
  - d) Full name and curriculum vitae of the Chief of the representative office in Vietnam.

**Article 109.:** Scope of activities

The scope of activities of a joint venture credit institution, a 100% foreign-owned non-bank credit institution, foreign bank branch in Vietnam, a representative office of a foreign credit institution in Vietnam shall be subject to the provisions of this law and other applicable provisions of relevant Vietnamese laws.

**Article 110.:** Capital, revenues, expenditures of foreign credit institutions operating in Vietnam

1. The legal capital of joint venture credit institutions. 100% foreign-owned non-bank credit institutions and the appropriated capital of foreign bank branches operating in Vietnam shall be stipulated by the Government.

2. Revenues, expenditures of foreign credit institutions operating in Vietnam shall be subject to applicable provisions of relevant Vietnamese laws.

**Article 111.:** Accounting, reporting

1. Joint venture credit institutions, 100% foreign-owned non-bank credit institutions and foreign bank branches operating in Vietnam shall have obligations to conduct their accounting procedures under the system of accounts, the rule on records and financial reports in accordance with applicable provisions of relevant Vietnamese laws.

2. Within 180 days of the close of a fiscal year, joint venture credit institutions, 100% foreign-owned non-bank credit institutions, foreign bank branches and representative offices of foreign credit institutions shall submit annual reports of the foreign credit institutions to the State Bank.

**Article 112:** Remittance of profits, assets out of Vietnam

1. Foreign bank branches, 100% foreign-owned non-bank credit institutions in Vietnam shall be entitled to remit out of Vietnam its remaining profits under their ownership after making allocations to the funds and fulfilling all financial obligations in accordance with applicable provisions of relevant Vietnamese laws.

2. The foreign party to a joint venture credit institution shall be entitled to remit out of Vietnam its distributed profits after the joint-venture credit institution has made allocations to the funds and fulfilling all financial obligations in accordance with applicable provisions of relevant Vietnamese laws.

3. Foreign bank branches, 100% foreign-owned non-bank credit institutions and foreign parties to joint venture credit institutions shall be entitled to transfer out of Vietnam their remaining assets after liquidation, termination of their operations in Vietnam.

4. Any remittance of money and other assets out of Vietnam as described in Clauses 1.2 and 3 of this article shall be carried out in accordance with applicable provisions of relevant Vietnamese laws.

**Article 113:** Other provisions

Pursuant to the basic principles of this law, the Government shall stipulate in detail the organisation and operation of joint venture credit institutions, 100% foreign-owned non-bank credit institutions, foreign bank branches and representative offices of foreign credit institutions in Vietnam.

## **Chapter 8: State management of activities of credit institutions and banking activities of other organisations**

**Article 114:** Unified state management

The State shall conduct unified management over the activities of credit institutions and banking activities of other organisations.

**Article 115. :** Contents of state management over banking activities

State management of banking activities shall include:

1. Promulgating and guiding the implementation of regulatory documents on banking activities, developing policies, strategies and development plans for the system of credit institutions;

2. Issuing, revoking establishment and operation licences in the field of banking activities;

3. Supervising and inspecting the operations of credit institutions, banking activities of other organisations in accordance with applicable provisions of relevant laws;

4. Taking measures to prevent and reduce risks;

preventing any act of destruction of money and dealing with funds of illegal origins;

5. Organising the collection, processing, supply of information and forecasts of monetary and capital market developments;

6. Signing or acceding in international conventions relating to monetary and banking activities;

7. Managing the activities of Vietnamese credit institutions in foreign countries;

8. Organising and managing the research of banking science;

9. Organising the training, development of managerial and professional staff for the system of credit institutions.

**Article 116. :** State management bodies

1. The Government shall conduct unified state management over banking activities.

2. The Governor of the State Bank shall be responsible to the Government for conducting state management over banking activities.

3. Ministries, ministerial-level bodies and governmental agencies shall, within their respective scopes of duties and powers, be responsible for conducting state management over credit institutions and other organisations conducting banking activities in accordance with applicable provisions of relevant laws.

4. Local people's committees at all levels shall conduct state management over credit institutions and other organisations conducting banking activities in their respective geographical areas in accordance with applicable provisions of relevant laws.

## **Chapter 9: State bank inspection, auditing of credit institutions, banking activities of other organisations**

### **Section 1: The state bank inspection**

**Article 117:** State Bank Inspectorate

Credit institutions and other organisations conducting banking activities shall be subject to the inspection of the State Bank Inspectorate in accordance with applicable provisions of relevant laws.

**Article 118:** Rights of inspected organisations

During the inspection by the State Bank Inspectorate, inspected organisations shall have the following rights:

1. To request the inspectors to show the inspection decision and the inspector's card and to comply with regulations on inspection.;

2. To file complaints, petitions, initiate a law suit to the competent state authority against any acts taken by the inspector or any conclusion, decision made by the State Bank Inspectorate which they consider to be improper;

3. To request compensation for damage caused by any act or decision of the State Bank Inspectorate which is not in compliance with the applicable provisions of the laws.

**Article 119.:** Obligations of inspected organisations

During the inspection of the State Bank Inspectorate, the inspected organisations shall have the following obligations:

1. To satisfy requirements made by the State Bank Inspectorate with respect to the inspection; and
2. To comply with any decision made by the State Bank Inspectorate.

**Article 120.:** Rights of the State Bank Inspectorate

During the inspection the State Bank Inspectorate shall have the right to:

1. To request inspected organisations and other concerned parties to provide documents, evidences and responses to matters relating to the inspection;
2. To prepare the minutes of the inspection and recommend measures to be taken;
3. To apply preventive measures and deal with breaches in accordance with applicable provisions of relevant laws.

**Article 121.:** Responsibilities of the State Bank Inspectorate

During the inspection the State Bank Inspectorate shall be responsible for:

1. Presenting the inspection decision and the inspector's card;
2. Conducting proper inspection procedures, not impeding ordinary banking activities, causing losses to the legitimate interests of the credit institutions and other organisations conducting banking activities;
3. Making reports to the Governor of the State Bank on the results of the inspection and recommendation of measures to be taken;
4. Complying with applicable provisions of relevant laws, being responsible to the Governor of the State Bank and before the laws for their conclusions and any act, decision made by themselves.

## **Section 2: Auditing**

**Article 122:** Auditing

1. At least 30 days prior to the close of the fiscal year, credit institutions shall select an auditing company, other than its internal auditing body, to audit their operations. That auditing company must be approved by the State Bank.
2. During the process of auditing, credit institutions shall be responsible for the timely provision of accurate and adequate information at the request of auditors.
3. The auditing of cooperative credit institutions shall be provided for by the State Bank, taking into account their managerial requirements and scope of activities;

**Article 123.:** Responsibilities of auditors

After completion of the audit, auditors shall be responsible for:

1. Confirming the accuracy, reliability and legitimacy of documents, accounting data and financial statements of the credit institutions;
2. Assessing, commenting on the compliance by the credit institutions with the applicable financial and accounting policies and regime;
3. Making recommendations to the audited credit institutions on any matter discovered during the process of auditing.

## Chapter 10: Awards and dealing with violations

### Article 124: Awards

Organisations and individuals who attain achievements in banking activities, contribute to the development of production and business, discover any acts of violation of relevant laws on monetary and banking activities shall be rewarded in accordance with applicable provisions of relevant laws.

### Article 125.: Acts of violations of relevant laws on monetary and banking activities

Acts of violation of relevant laws on monetary and banking activities shall comprise:

1. Doing business without a licence or conducting activities other than as stated in the license issued by the State Bank;
2. Conducting banking activities after the licence has been suspended, revoked or expired;
3. Failing to comply with provisions on compulsory reserves and prudential ratios; not observing interest rates, commissions, service fees, and fines as announced, posted;
4. Violating provisions on accounting, book keeping; failing to record and keep books of accounts in an adequate and proper manner;
5. Imposing pressures upon the credit institution for the purpose of extending credits, contributing capital, purchasing shares or providing guarantees not in accordance with regulations; abusing positions and powers for personal interests, or concealing persons who have breached the law;
6. Engaging in illegal competition;
7. Preventing State bank inspectors from performance of official duties;
8. Committing other acts of violating of relevant laws on monetary and banking activities.

### Article 126.: Forms of dealing with violations

Organisations and individuals who violates any provisions in Article 125 of this law, shall, depending on the nature and seriousness of the violation, be subject to disciplinary punishment, administrative sanctions or prosecuted for criminal liability. In cases where damage is caused, such organisations and individuals shall be liable for compensation in accordance with applicable provisions of relevant laws.

### Article 127.: Authority to deal with violations

The State Bank shall have the authority to deal with administrative violations of organisations and individuals in respect of monetary and banking activities in accordance with applicable provisions of relevant laws.

### Article 128.: Complaint, commencement of proceedings against decisions dealing with administrative violations

1. Organisations which and individuals who are subject to administrative sanctions have the right to file a complaint against the decision on administrative sanction to the state competent bodies or to initiate a lawsuit at the Courts. Complaints shall be filed and lawsuits shall be initiated in accordance with the applicable provisions of relevant laws;
2. Pending the settlement of a complaint or a lawsuit, organisations which and individuals who are subject to administrative sanctions shall have to comply with the administrative sanction decision. When a decision on settlement of complaint is made by the state competent bodies or a judgment or decision by the Court has come into effect, such decision or judgment shall prevail.

## Chapter 11: Implementing provisions

**Article 129. :** Provisions applicable to organisations that are currently conducting banking activities

1. Credit institutions which have been established and operating pursuant to operation licences issued by the State Bank prior to the effective date of this Law shall not be required to apply for re-issuance of establishment and operation licence;

2. The State Bank shall provide specific timing for credit institutions to adjust their organisational structure and operations in accordance with provisions of this law and implementing regulations.

3. Organisations other than credit institutions which are currently conducting banking activities must, from the effective date of this law, terminate their banking activities or file an application for a banking operation licence.

**Article 130.:** Effectiveness

1. This law shall come into effect as of 01 October 1998.

2. The decree - law on banks, credit cooperatives and finance companies dated 23 May 1990 shall cease to be effective as of the effective date of this law.

3. The Government, the people's supreme court and the supreme prosecution shall, within their respective duties and powers, organise the revision of all legal provisions on monetary and banking activities in order to repeal, amend, supplement, issue new regulations or request the Standing Committee of the National Assembly or the National Assembly repeal, amend, supplement, issue new regulations in accordance with the provisions of this law.

**Article 131.:** Guidance for implementation of the Law

The Government shall make detailed provisions and guidance for the implementation of this Law.

This Law is passed by the X Legislature of the National Assembly of the Socialist Republic of Vietnam in its second session on 12 December 1997.