

Vietnam

VNA Legal

1 What are the main bodies responsible for regulating financial services in Vietnam?

The main bodies responsible for regulating financial services in Vietnam are:

- The Ministry of Finance (“MOF”);
- The State Securities Commission (“SSC”); and
- The State Bank of Vietnam (“SBV”).

2 What does each of these bodies regulate?

MOF

Generally, the MOF is responsible for state finances, the state budget, taxation, charges, fees and other state budget revenues, the national reserve, state financial funds, financial investments, enterprise finance and financial service activities, customs, accountancy, independent audits and pricing nationwide; securities; insurance; and state management over public services in the finance sector. The MOF has the following responsibilities in relation to the financial management of banks, non-bank financial institutions and other financial services:

- submit to the Government and / or to the Prime Minister draft legal instruments in the financial services sector and strategies of development planning on matters under its authority;
- promulgate legal instruments under its authority and to direct, guide, inspect and take responsibility for implementation of legal documents, strategies and plans after they are approved on matters under its authority;
- manage, inspect and supervise the implementation of the state’s regulations on insurance, on securities and the stock exchange and to issue, suspend and withdraw operation licences of enterprises engaged in insurance and in securities;
- perform the state financial management over the operations of the State Bank, commercial banks, policy banks and state-run credit institutions and financial organisations; and
- negotiate and sign international finance agreements under the authorisation of the State President or the Prime Minister.

SSC

The SSC is a body under the authority of the MOF. It is generally responsible for assisting the Minister of Finance in undertaking the function of state administration of securities and the securities market, to directly manage and supervise securities and securities market activities and manage service activities in the securities market sector. The SSC performs the duties and has the powers stipulated in the Law on Securities including:

- submit to the Minister of Finance for promulgation within its own authority or for promulgation by the competent authority legal instruments on securities and the securities market and strategies, plans and policies on securities and the securities market;
- organise the implementation of the strategies, plans and policies for the development of the securities market;
- issue, extend and withdraw licences and certificates relating to securities activities and the securities market and to approve changes relating to securities activities and the securities market;

- administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions and to temporarily suspend trading and depository operations of the Stock Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors; and
- conduct inspections and supervision to deal with administrative breaches and to resolve complaints and denunciations during securities activities and securities market activities.

SBV

The SBV is a ministerial-level government agency which oversees monetary and banking activities and public services. The SBV also acts as the representative of the owner of state capital portions in state owned enterprises operating in the banking field and is the central bank of the Socialist Republic of Vietnam. The SBV's specific powers and duties include:

- operate for the purposes of stabilising the value of money; ensure the safety of banking operations and of the system of credit institutions; ensure the safety and effectiveness of the national payment system;
- submit to the Government and / or the Prime Minister draft legal instruments on monetary and banking activities and the development strategies and plans on monetary and banking activities;
- guide, inspect and take responsibility for the implementation of legal instruments, strategies and plans within the scope of its authority;
- formulate the national monetary policies for the Government to consider and submit to the National Assembly and the schemes on the development of the system of banks and credit institutions;
- grant and withdraw permits for the establishment and operation of credit institutions, grant and withdraw permits for banking activities of other organisations and to decide on the dissolution and approve the splitting, separation, consolidation or merger of credit institutions;
- examine and inspect banking activities; control credit; inspect, supervise and handle complaints and denunciations; combat corruption and handle law violations in the field of monetary and banking activities according to its authority;
- make decisions applying special measures to deal with credit institutions which commit a serious breach of the law on currency and banking, or which suffer financial difficulties, or which are likely to place the safety of the banking system in danger;
- manage the borrowing and repayment of foreign debts by enterprises; and
- manage foreign exchange, foreign exchange related activities as well as gold import and export.

3 What is the source of financial services regulation in Vietnam?

The principal law regulating the securities industry in Vietnam is the Law on Securities together with its implementing legislation. Supplemental regulations are also issued by the Government, the Prime Minister, the MOF and the SSC.

The banking activities of banks and credit institutions in Vietnam are primarily governed by the Law on Credit Institutions and the Law on State Bank of Vietnam together with its implementing legislation. Supplemental regulations are also issued by the Government, the Prime Minister and the SBV.

The principal law governing the insurance industry in Vietnam is the Law on Insurance Business together with its implementing legislation. Supplemental regulations are also issued by the Government and the MOF.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No.

5 What powers of investigation do these bodies have?

MOF

The MOF may guide, inspect and supervise organisations providing financial, accounting, auditing or tax consultancy services, non-bank financial organisations and organisations engaged in securities business and trading.

The MOF may also conduct inspections and checks of insurance business activities. A financial inspection of an institution can only be conducted once per year. An extraordinary inspection may only be conducted when there is an indication of a breach of the law.

SSC

The Inspectorate of the SSC may, amongst other things:

- request the entity being inspected to supply information, data, electronic data, written reports and explanations on issues relating to the contents of the inspection and request any organisation or individual with information or data relating to the contents of the inspection to supply such information and data;
- request an authorised person to seal and temporarily detain data, source documents, securities and electronic data relating to any breach of the law on securities and the securities market when it is considered necessary to immediately stop a breach or to verify circumstances providing evidence for the conclusion of the inspection;
- request an authorised person to freeze cash accounts, securities accounts, mortgaged assets or pledged assets relating to conduct in breach of the law on securities and the securities market when it is deemed necessary to verify circumstances which will provide a basis for a decision on dealing with a breach, or if such freezing would immediately prevent an act of dispersing money, securities, mortgaged or pledged assets relating to conduct in breach of the law on securities and the securities market;
- issue a decision dealing with a breach, or recommend that an authorised person issue such decision; inspect the implementation of such decisions; or
- transfer the file on a breach to the investigative body within five days from the date of discovery of a possible criminal offence.

SBV

The banking inspection body of the SBV may:

- inspect the observance of the laws on currency and banking operations and the implementation of provisions provided for in the licences for conducting banking transactions;
- consider and evaluate the level of risks, ability to control risks and financial condition of entities subject to the banking inspection;
- make proposals for competent State bodies to make amendments and additions to, revoke or issue legal instruments to satisfy requirements of State management of currency and banking;
- propose or request entities subject to the banking inspection to take measures to limit, minimise or deal with risks in order to ensure the safety of banking operations and prevent any acts resulting in a breach of the law; and
- discover, prevent and deal with in accordance with its authority, make proposals for relevant competent bodies to deal with breaches of the law on currency and banking.

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Under Vietnamese law, employees of regulatory bodies are required to keep secret information and documents relating to ongoing inspections when no official conclusion has been made. If employees of regulatory bodies disclose such information, they will be disciplined or examined for civil or criminal liability.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Individuals and entities must co-operate with any investigation carried out by regulatory bodies. They are required to supply information or documents requested in a prompt, full and accurate manner, and are responsible for the accuracy and truthfulness of such information and documents. There are no exemptions from the duty to co-operate and provide information on the ground of potential self-incrimination or legal professional privilege.

The right to legal representation at interviews is not available in investigations conducted by such regulatory bodies.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. The information obtained by these regulatory bodies in the course of their investigations can be used in criminal proceedings. If criminal activity is suspected, the regulatory bodies must transfer related documents to investigating bodies or a public prosecution office to consider whether to institute criminal proceedings.

9 What actions may these bodies take in exercising their regulatory functions?

Please refer to questions 2 and 5 above.

10 What disciplinary sanctions may these regulatory bodies impose?

Generally speaking these bodies may issue either a warning or fine for an administrative offence. Additional penalties may also be imposed.

Securities

Depending on the nature and gravity of the breach, the SSC may issue one or more of the following additional penalties:

- confiscation of the proceeds earned from the breach and the securities used to commit the breach;
- suspension for a fixed period or rescission of the public securities issue tranche, if the breach is not remedied after forty days from the date of the breach; or
- revocation for a limited or unlimited period of the certificate for the public issue of securities, or of the licence for the establishment and operation of the securities company, securities investment fund management company, or securities investment company; of the licence for registration of securities depository activities, or of the securities business practising certificate.

The SSC may also require one or more of the following measures to remedy the consequences of the breach:

- compulsory compliance with the law;
- compulsory rescission or correction of incorrect or false information; or
- compulsory recovery by the issuing organisation of the securities which were offered for sale, and refund of deposits or money paid for the securities by investors within a period of thirty days from the date of revocation of the right to use the certificate registering the public issue of securities.

Banking

Depending on the nature and seriousness of the breach, the SBV may:

- seize the evidence and the means used for the administrative violation; and

- recommend that the competent authorities suspend one or more operations relating to an administrative violation in the field of money and banking, with or without a time limit.

The SBV may also enforce compliance with the law and require the party in breach to remedy the breach.

Insurance

In addition to the right to impose warnings and fines, and depending on the nature and seriousness of the breach, the MOF may withdraw or suspend operation licences for enterprises engaged in insurance. The MOF may also order the violator to publish corrections of incorrect announcements, restore to the original state that was altered by the administrative violation and suspend operations for a definite term or narrow the operation contents or scope and geographic areas.

The MOF can enforce compliance with the law and require the party in breach to remedy the breach.

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Whilst not specified in law, it is generally possible to work with and negotiate settlements with the regulatory bodies. It is highly unusual for such a body to suspend or revoke an operating licence where the entity in breach works with the authority in good faith to resolve the breach.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Yes. If individuals and entities are dissatisfied with the decision of a regulatory authority, they have the right to make a complaint to the relevant regulatory body for an administrative review. If a complaint is not settled within the specified time limits or the complainant disagrees with the initial decision, they may lodge a further complaint to a higher body or initiate an administrative lawsuit at a court as prescribed by law.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Securities and futures market misconduct (eg, insider dealing, market manipulation etc) is currently an administrative offence and may also be subject to criminal proceedings in Vietnam.

Acting fraudulently during securities trading (ie, making of false statements or failure to report in accordance with the law), insider dealing and market manipulation are administrative offences subject to a civil action and a fine from thirty million to five hundred million VND for an individual or an organisation. Further, the entire income unlawfully derived from the breach can be confiscated. Serious offences may also be subject to criminal liability.

14 What civil remedies are there for investors?

Under the Law on Securities, any organisation or individual who suffers loss and damage as a result of conduct in breach of the law, including an investor, has the right, either individually or jointly with other organisations or persons who suffered loss and damage, to institute proceedings to claim compensation for the loss and damage.

Any dispute during a securities operation or securities market activities in Vietnam may be referred to an arbitrator or a court.

15 Do the police assist these regulatory bodies in investigations?

No. However, the police will be involved in the investigation of cases of criminal behaviour. The case can also be transferred by the regulatory body to the relevant police investigation bodies.

16 How do these regulatory bodies interact with overseas regulators?

Vietnam is a member of a number of international and regional organisations including the International Monetary Fund, World Bank, and the Asian Development Bank. In addition, Vietnam also co-operates with nations or regions in relation to banking operations.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Central Steering Committee for Corruption Prevention and Combat is headed by the Prime Minister. The Committee has national responsibility for preventing corruption. Provincial / municipal Steering Committees for Corruption Prevention and Combat have also been established.

The Anti-Money Laundering Steering Committee is headed by the Deputy Prime Minister with the Governor of the State Bank and a Leader of Ministry of Public Security as the Deputy heads of the Committee. The members of the Steering Committee are comprised of one leading member of the People's Supreme Court, of the People's Supreme Procuracy, of the Government Office, of the Ministry of Justice, of the Ministry of Foreign Affairs, of the Ministry of the Interior, of the Ministry of Finance, of the Ministry of Planning and Investment, of the Ministry of Information and Communications, of the Government Inspectorate, and of the Ministry of Defence. The Steering Committee shall assist the Prime Minister to direct and co-ordinate activities of ministries and branches in combating money laundering. The State Bank shall be the Standing Body of the Steering Committee and the Governor of the State Bank shall appoint a unit to be responsible for the work of combating money laundering, to assist the Standing Body, and to ensure proper operational conditions for the Steering Committee.

The Anti-Money Laundering Information Centre is a subsidiary unit of the SBV, with responsibility for collecting information in relation to money laundering. The Anti-Money Laundering Information Centre assists the SBV Governor and has the right to require any body, organisation or individual to provide data, files or information on transactions over certain values specified in the law and, in particular, in relation to suspicious transactions.

The SBV has the primary responsibility for the prevention of money laundering. It co-ordinates with the Public Security Ministry / police and other bodies to formulate and implement strategies, guidelines and policies to prevent and combat money laundering.

The Ministry of Police is responsible for organising teams to investigate money laundering-related crime, guiding other agencies in conducting preliminary investigations of money laundering-related crime and advising the SBV on investigations of money laundering-related cases.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Yes. There are various laws and regulations imposing obligations on a person to “whistle-blow” or disclose suspected financial services-related wrongdoing. Any person who has a responsibility to disclose and does not disclose suspected financial services-related wrongdoing within an organisation will be subject to administrative or criminal liability.

Any person who knows a crime is being planned or carried out but fails to make this information known to the authorities is liable under the Penal Code.

Any person who conceals an offence relating to the breach of regulations on loan provisions in the operations of credit institutions or counterfeiting of banknotes, cheques, bonds and other valuable papers may be sentenced to non-custodial reform for up to three years or between six months and five years' imprisonment. Any person who has knowledge of such an offence but fails to disclose this information may be subject to a warning, a non-custodial reform for up to three years or a prison term of between three months and three years.

19 How are hedge funds regulated?

The Law on Securities and implementing regulations regulate both “public funds” (ie, a securities investment fund which makes a public offer of certificates in the fund) which can be both open investment funds and closed investment funds, and “members funds” (ie, a securities investment fund with no more than thirty capital contributing members, all of which must be legal entities), which are closed investment funds. Detailed regulations on open-ended funds do not currently exist in Vietnam. The SSC is currently working on regulations detailing the establishment and management of open-ended funds.

20 Are there likely to be any significant reforms in the near future?

Reform will likely continue over the next few years. This reflects Vietnam’s status as a developing market, the recent introduction of a securities market and the gradual integration of the economy into the global market.

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