

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ



គណៈកម្មការមូលបត្រកម្ពុជា  
SECURITIES AND EXCHANGE COMMISSION OF CAMBODIA

ប្រកាស

ស្តីពី

ការផ្តល់ការអនុញ្ញាតធ្វើជាប្រតិបត្តិករទីផ្សារមូលបត្រ ប្រតិបត្តិករប្រព័ន្ធជាត់ទាត់  
និងទូទាត់មូលបត្រ និងប្រតិបត្តិករអគ្រូទុកមូលបត្រ

PRAKAS

ON

THE GRANT OF APPROVAL TO THE OPERATOR OF A SECURITIES MARKET,  
THE OPERATOR OF A CLEARANCE AND SETTLEMENT FACILITY AND THE  
OPERATOR OF A SECURITIES DEPOSITORY



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**  
**KINGDOM OF CAMBODIA**  
**Nation Religion King**

**គណៈកម្មការមូលបត្រកម្ពុជា**  
**SECURITIES AND EXCHANGE COMMISSION OF CAMBODIA**  
**N°.....011.....SECC/.....**

**PRAKAS**  
**ON THE GRANT OF APPROVAL**  
**TO THE OPERATOR OF A SECURITIES MARKET,**  
**THE OPERATOR OF A CLEARANCE AND SETTLEMENT**  
**FACILITY AND THE OPERATOR OF A SECURITIES DEPOSITORY**

\* \* \* \* \*

**Deputy Prime Minister**  
**Minister of Economy and Finance**  
**Chairman of the Securities and Exchange Commission of Cambodia**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Preah Reach Kret No. NS/RKT/0908/1055 on 25 September 2008 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Having seen the Preah Reach Kram No. 02/NS/94 on 20 July 1994 promulgating the Law on the Organizing and Functioning of the Council of Ministers;
- Having seen the Preah Reach Kram No. NS/RKM/0196/18 on 24 January 1996 promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having seen the Preah Reach Kram No. NS/RKM/0107/001 on 10 January 2007 promulgating the Law on Government Securities;
- Having seen the Preah Reach Kram No. NS/RKM/0107/028 on 19 October 2007 promulgating the Law on the Issuance and Trading of Non-Government Securities;

Unofficial Translation

- Having seen the Anukret No. 97/ANKR/BK on 23 July 2008 on the Organizing and Functioning of the Securities and Exchange Commission of Cambodia;
- Having seen the Anukret No. 54/ANKR/BK on 08 April 2009 on the Implementation of the Law on the Issuance and Trading of Non-Government Securities;
- In accordance with the approval made by the plenary session of the Securities and Exchange Commission of Cambodia on 27 October 2009.

**HEREBY DECIDES**

**Chapter 1**  
**General provisions**

**Article 1**

The purpose of this Prakas is to prescribe requirements and procedures to grant an approval to conduct activities as an operator of a securities market, an operator of a clearance and settlement facility and an operator of a securities depository; and to determine obligations of each operator in accordance with the Law on the Issuance and Trading of Non-Government Securities and the Anukret on the Implementation of the Law on the Issuance and Trading of Non-Government Securities.

**Article 2**

Unless the context requires otherwise, terms used in the Prakas have the meaning defined in this article or in the glossary of the Annexes of the Law on the Issuance and Trading of Non-Government Securities and of the Anukret on the Implementation of the Law on the Issuance and Trading of Non-Government Securities.

- "Law" means the Law on the Issuance and Trading of Non-Government Securities.

- "Anukret" means the Anukret on the Implementation of the Law on the Issuance and Trading of Non-Government Securities.

- "Clearance and settlement facility" means a system that enables the parties to a transaction for the sale or purchase of securities to meet their obligation to each other, by verifying the detail of the transaction and securing payment of the purchase price to the seller in exchange for the transfer of the securities to the purchaser. The clearance and settlement facility includes:

- a. Securities clearance and settlement facility which means a system for the clearing and settlement for the exchange in ownership of securities between the parties to a transaction for the sale and purchase of securities.
- b. Cash clearance and settlement facility which means a system for the clearing and settlement for the exchange in cash between the parties to a transaction for the sale and purchase of securities.



- "Senior Staff" means president, chief executive officer, managing director, department manager and internal auditor.

- "Minority Shareholder" means a shareholder who owns less than five percents of the voting shares of the person applying for an approval.

- "Director" means chairman and members of the Board of Directors of the applicant or of the operator of a securities market, the operator of a clearance and settlement facility or the operator of a securities depository.

## **Chapter 2**

### **Approval requirements**

#### **Article 3**

A person, who aims to conduct activities as an operator of a securities market, an operator of a clearance and settlement facility or an operator of a securities depository, shall file with the SECC an application for approval and must obtain an approval from the Director General of the SECC in accordance with the provisions of the Chapter 4 of the Law, the Chapter 3 of the Anukret and of this Prakas.

#### **Article 4**

The Applicant shall be a company, incorporated and registered in accordance with Law on Commercial Enterprises or Law on the General Statute of Public Enterprise of the Kingdom of Cambodia. The articles of incorporation of the applicant shall conform to all the requirements determined in the article 19 of the Anukret and shall prescribe at least the following matters:

- 1- Name and type of company;
- 2- Company registered office in the Kingdom of Cambodia;
- 3- Objectives of the company;
- 4- Amount of capital to be stated in national currency which is:
  - Not less than KHR 40,000 million (forty thousand million Riels) for person applying for an approval as an operator of a securities market
  - Not less than KHR 20,000 million (twenty thousand million Riels) for person applying for an approval as an operator of a clearance and settlement facility
  - Not less than KHR 20,000 million (twenty thousand million Riels) for person applying for an approval as an operator of a securities depository
  - Not less than KHR 80,000 million (eighty thousand million Riels) for person applying for an approval as an operator of a securities market, as an operator of a clearance and settlement facility and as an operator of a securities depository

5- Classes and number of shares and par value per share, including the procedure and criteria for evaluation of the contribution as capital by each shareholder;

6- Name and complete address of each founder shareholder and substantial interest shareholder;

7- Rights and obligations of shareholders, particularly minority shareholders;

8- Organizing and functioning of the Board of Directors of the company, including roles and responsibilities of each director. The Board of directors of the applicant shall be composed at least 05 (five) directors;

9- Rules, control procedures and procedures to address conflict of interest issues arising inside the company;

10- Methods of providing public notice regarding relevant information.

11- Procedure for the meetings of the Board of directors and for the general assembly of shareholders;

## **Article 5**

The Applicant, applying for an approval as an operator of a securities market, an operator of a clearance and settlement facility or an operator of a securities depository, shall:

1- Have sufficient resources such as:

- a. Adequate and properly equipped premises to be managed prudently for the conduct of its business;
- b. Human resources with qualification and experience appropriate to their respective work;
- c. Appropriate systems and mechanisms for conducting its proposed operations; and
- d. Systems for back-up that shall be systemically safe and efficient for conducting its operations.

2- Have a management structure that can assure the company with accountability, transparency and good corporate governance. In the case of application for an approval for all of the activities of an operator of a securities market, an operator of a clearance and settlement facility and an operator of a securities depository, the applicant shall have a separate management structure for each operation;

3. Have internal audit with discipline and procedures, and an audit committee.

## **Article 6**

The Applicant, candidates for directors, or senior staffs of the applicant must meet the requirements as follows:

1- Have a good moral character, as prescribed in the article 42 of the Anukret;



2- Have never been declared bankrupt or been a director or senior staffs who cause one or more companies to go bankrupt;

3- Have never committed a disgraceful act in the securities market or in the financial sector in general;

4- Have never been removed or fired from his/her position or from the market in accordance with the Law, the Anukret and other relevant regulations;

5- Have never acted in any way against the public interest.

#### **Article 7**

The Applicant for an approval as an operator of a clearance and settlement facility or an operator of a securities depository shall:

1- Have a substantial majority of shares of the applicant owned by the operator of a securities market;

2- Have the rest of the shares owned only by securities companies, financial institutions or other persons approved by the SECC, in the case that the operator of a securities market is the majority shareholder.

Shares of the applicant applying for an approval as an operator of a clearance and settlement facility or as an operator of a securities depository may be only transferred among operator of the securities market, securities companies, financial institutions or other persons approved by the SECC. However, the operator of a securities market still owns substantial voting shares of the applicant.

#### **Article 8**

The Applicant for an approval as an operator of a securities market, an operator of a clearance and settlement facility or an operator of a securities depository, shall file an application form determined by the SECC which shall be accompanied by the following documents:

1- A certified true copy of the registration certificate of the company;

2- A certified true copy of VAT registration and Patent certificate;

3- A certified true copy of the articles of incorporation;

4- Evidence of minimum capital as defined by article 4 of this Prakas;

5- A list of all shareholders with the mention of number of shares, attaching copies of the passport or identity card with their original signature or thumbprint;

6- A list of all directors including their roles and experiences, attaching copies of the passport or identity card with their original signature or thumbprint as well as criminal record;

- 7- A list of all senior staffs, including their roles and experiences, attaching copies of the passport or identity card with their original signature or thumbprint as well as criminal record;
- 8- A list of persons who are aiming to be a member or participant of the applicant;
- 9- A business plan with a minimum duration of 03 (three) years from the date of lodgment of application;
- 10- A risk management plan and contingency plan;
- 11- Operating rules including rules and procedures related to the operations, rules and procedures governing members and participants, and the articles of incorporation of the applicant. In case of person applying for an approval as an operator of a securities market, the operating rules shall also include listing rules.

### **Article 9**

The Director General of the SECC, at any time after receiving the application form for grant of approval, may conduct any inquiry as it may deem necessary to satisfy all requirements as prescribed in this Prakas.

### **Article 10**

The Director General of the SECC may refuse the application form on any of the following grounds:

- 1- The applicant fails to comply with one of the conditions as prescribed by this Prakas, or any guideline made under this Prakas, or other relevant regulations;
- 2- Any information or document that is furnished by the applicant to the SECC is false or misleading;
- 3- The applicant is in the course of being wound up or otherwise dissolved;
- 4- The execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- 5- The applicant, or any of its directors, or any of its senior staffs, of the applicant:
  - c. Has conducted the business with fraud, in deceitful and improper way;
  - d. Has contravened any provision made by or under any written law appearing to be enacted for protecting the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of the companies;
  - e. Has engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and judgment;
  - f. May not be able to act in the best interest of their clients having regard to their reputation, character, or financial reliability; or



- g. May not be able to efficiently, loyally and fairly conduct its business in accordance with all the requirements of the approval.

6- Any of its directors, or any of its senior staffs, or any shareholders who hold substantial voting shares of the applicant, has been a subject to bankruptcy decision pronounced by the court whether within or outside Cambodia, within the most recent 05 (five) years preceding the date of lodgment of application;

7- There are other circumstances which are likely to:

- a. Lead to the improper conduct of business by the applicant, or any of its directors, or any of its senior staffs, or any shareholders who hold substantial voting shares of the applicant;
  - b. Reflect discredit on the manner of conducting the business of the applicant.
- 8- The applicant has been or will be involved in money laundering and the financing of terrorism or the grant of approval to the applicant may have the impacts against the public interest.

Notwithstanding the above paragraphs, the Director General of the SECC shall not refuse to grant approval without giving the applicant the reasons in writing and giving the applicant an opportunity to be heard.

## **Chapter 3**

### **Approval**

#### **Article 11**

Where the applicant fulfills all the requirements determined by the Law, other relevant regulations and this Prakas, the SECC shall make its decision on the application not later than 06 (six) months from the date of the lodgment of the application. The Director General of the SECC shall grant the approval or notify the refusal decision of the SECC to the applicant. In case where the Director General requests the correction or further information, the period for consideration of its decision recommences from the time those details are received.

#### **Article 12**

The approval of an applicant is valid for an indefinite period.

#### **Article 13**

The Applicant shall pay an application and processing fees of KHR 10 million (ten million Riels) for each application. Those fees are not returnable to the applicant in the case of the refusal of the application.



Beside the above-mentioned fees, the approved applicant shall pay an annual approval fee of KHR 20 million (twenty million Riels) for each operator. For the initial fiscal year, the payment shall be made at the moment of granting of the approval. For the following fiscal year, this annual approval fee should be paid not later than the 31<sup>st</sup> of December of the previous fiscal year.

## **Chapter 4**

### **Obligations of an operator of a securities market, an operator of a clearance and settlement facility and an operator of a securities depository**

#### **Article 14**

After receiving the approval, the operators shall start their business operations within a duration of 06 (six) months of the issue date of the approval.

#### **Article 15**

The approved operator shall:

- 1- Make sure that the operation is safe and efficient as far as practicable;
- 2- Supervise and prudently control all risks related to their business and operation;
- 3- Accomplish all the obligations as prescribed in the Law, the Anukret, this Prakas and other relevant regulations; and shall not act against the public interest, or of the investors;
- 4- Implement prudently the operating rules and regulations prescribed by the SECC, National Bank of Cambodia and other relevant authorities;
- 5- Stimulate the access for participation in its facilities and ensure that its members or participants comply with the operating rules in order to maintain its facilities to be operated in a safe and efficient manner, as well as to protect the interests of the investors.

#### **Article 16**

The securities market operator shall ensure the continuity of the securities market's business operation, fulfill the notifying and reporting obligations, and keep safe the records and documents in accordance with the provisions of the Chapter 3 of the Anukret.

#### **Article 17**

As prescribed in the Article 27 of the Anukret, the operators shall submit reports audited by an auditing firm operated in compliance with the Law and regulations in force of the Kingdom of Cambodia and recognized by the Director General of the SECC.

### **Article 18**

Beside the reports as prescribed in Chapter 3 of the Anukret, operators shall submit other reports determined by the SECC.

### **Article 19**

All Directors and employees of the operators shall have obligations of confidentiality and shall not commit any prohibited behavior as prescribed in the Chapter 7 of the Law and in other relevant regulations.

### **Article 20**

All directors of the operators shall fully disclose in writing to the Board of directors their commercial, financial, agricultural, industrial or other interests that may have a direct or indirect bearing on any matter which becomes a subject for the Board's decision, prior to the commencement of the meeting to discuss the matter. Any such member shall excuse themselves from attending the Board meeting during any discussion or determination of the matter.

### **Article 21**

Neither the director, nor any employee of the operators, nor their spouse, nor their children shall accept any gifts from persons with whom he/she may have business or financial connection which would result in him/her being partial in the performance of his/her duties.

### **Article 22**

The operator of a securities market shall, set aside a compensation fund in order to compensate for damages incurred from settlement default. The procedure, the amount, the method for the custodian, the management of the fund shall be determined by the SECC.

### **Article 23**

Any appointment or rotation of any senior staff of the operators shall be approved by the Director General of the SECC. If there is senior position available, operators shall recruit new senior staffs for the available position within the period of 02 (two) months.

The Director General of the SECC shall make decision on the request for the appointment of senior staffs of the operators within 02 (two) weeks from the date of the request lodgment. Out of the period, the request for the appointment shall be considered as effective.

### **Article 24**

In complying with the article 27 of the Law, the Director General of the SECC can direct the person holding the approval, impose further conditions or restrictions on the approval, or suspend or revoke the approval in the following cases:

- 1- The operator has obtained the approval by falsity or in any other fraudulent ways;
- 2- The operator violates a condition of the approval in accordance with the Law, the Anukret, and this Prakas;
- 3- The operator fails to accomplish the obligations or satisfy the obligations determined by this Prakas;
- 4- The operator fails to comply with the direction issued by the Director General of the SECC;
- 5- The operator continues in business while being suspended;
- 6- The operator suspends its business without any prior notification to the Director General of the SECC;
- 7- The operator fails to satisfy a judgment debt in whole or in part;
- 8- The operator is in a weak technical and/or financial situation or is subject to dissolution by the court; or
- 9- The operator contravenes the provision of the Law, the Anukret or any relevant regulations.

## **Chapter 6**

### **Penalties**

#### **Article 25**

Any person who contravenes any provision of this Prakas shall be subject to the punishment in accordance with the Law, the Anukret and other relevant regulation of the Kingdom of Cambodia.

#### **Article 26**

For the late payment of approval annual fee as prescribed in Article 13 of this Prakas, the concerned operator shall be liable to the SECC's transitional fine of KHR 1 million (one million Riels) per day.

## **Chapter 7**

### **Final provisions**

#### **Article 27**

In order to facilitate the understanding and enforcing in compliance with this Prakas, the SECC may release guidelines or other necessary documents to the concerned operators, securities market participants and the public.



## Article 28

All provisions contrary to this Prakas are hereby abrogated.

## Article 29

The Director General, the Deputy Director Generals of the SECC, the Directors of the Department of Securities Market Supervision, the Department of Legal Affairs, all Departments and Unit of the Securities and Exchange Commission of Cambodia, and all related persons shall effectively implement this Prakas after the date of signing.

Phnom Penh, 01 December 2009

Signature and Seal

KEAT CHHON

### Copy and Distribution:

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