



NATIONAL BANK OF CAMBODIA

Number..... B7-011-242 Prokor

Unofficial translation

PRAKAS
ON
LICENSING OF FINANCIAL LEASE COMPANIES

The Governor of the National Bank of Cambodia

- With reference to the Constitution of the Kingdom of Cambodia;
- With reference to the Royal Kram NS/RKM/0196/27 of January 26, 1996 promulgating the Law on Organization and Conduct of the National Bank of Cambodia;
- With reference to the Royal Kram NS/RKM/1206/036 of December 29, 2006 promulgating the Law on the Amendment of article 14 and 57 of Organization and Function of the National Bank of Cambodia;
- With reference to the Royal Kram NS/RKM/1199/13 of November 18, 1999 promulgating the Law on Banking and Financial Institutions;
- With reference to the Royal Kram NS/RKM/0609/008 of June 20, 2009 promulgating the Law on Financial Lease;
- With reference to the Royal Decree NS/RKT/0508/526 of May 13, 2008 on the reappointment of **His Excellency Chea Chanto** as Governor General of the National Bank of Cambodia, equivalent to Senior Minister;
- With reference to the Prakas on Financial Leasing Business, No B7-011-241 dated December 27, 2011;
- Pursuant to the request by General Directorate of Supervision;
- Pursuant to the recommendation made by National Bank of Cambodia Management meeting on 26 December 2011.

Decides:

Chapter I

General Provision

Article 1.- Objective

The purpose of this Prakas is to set up, promote and develop financial lease industry in the country, as well as to strengthen the supervision over and administration of financial lease

companies by providing a guidance for the licensing and regulation of companies engaged in financial lease.

Article 2.- Scope

This prakas covers financial lease companies operating in the Kingdom of Cambodia. Financial lease companies refer to institutions solely engaging in the financial lease business.

Article 3: Registered Capital

The minimum registered capital of a financial lease company is KHR 200,000,000 (two hundred million riels) and the registered capital shall be the paid-in money.

Chapter II License Application Procedures

Article 4: License Application

1. No person, whether natural or legal, shall carry on financial lease business unless the person holds a license issued by the National Bank of Cambodia.
2. The application for a license shall be drawn up by a duly authorized person (manager or person expressly empowered to such effect) and shall indicate the following:
 - a. Funding agreement or shareholder agreement.
 - b. Name or company's name.
 - c. Registered address of the head office, or of the branch in Cambodia in the case of a foreign company.
 - d. Legal form and the Articles of Association or other founding instruments.
 - e. Type of securities representing the capital, and connection between the holding of such securities and the exercise of voting rights.
 - f. Amount of authorized and paid-in equity capital.
 - g. Distribution of shares and voting rights, and possible agreements between shareholders acting in concert with a view to directing the policy of the institution.
 - h. Capital contributors which will hold 5% (five percent) or more of the voting rights must provide the information listed in article 13 below.
 - i. Identity of at least two persons responsible for the effective direction of the financial leasing business. These designated managers must fill in the curriculum vitae and questionnaire appended in Annex II and be attached to a copy of criminal record.
 - j. Identity of the decision-making person. This information must be supplemented by curriculum vitae and a statement certifying the person concerned is not subject to the prohibitions set forth in Article 14 of this Prakas and the person should have at least three years of lease and credit business experience.
 - k. If the legal entity for which the application is made has already been formed, provide a description of its business and certified copies of its audited financial statement for operations in any of the previous three years.
 - l. Satisfactory evidence of

- Risk management processes: risk identification, measurement, monitoring and control.
- Plans for controlling the following:
 - Liquidity, interest rate, and maturity risks (asset and liability management);
 - Credit risk;
 - Operational risk;
 - Market risk;
 - Asset Risk;
 - Documentation Risk;
 - Concentration Risk and;
 - All other risks to which the financial lease company will be exposed when engaged in the leasing activities envisaged by the business plan.

Article 5.- Any Change Requested

A financial lease company shall notify the National Bank of Cambodia in the following cases:

- a. change of name;
- b. change of organizational form;
- c. adjustment of business scope;
- d. change of registered capital;
- e. modification of articles of association;
- f. change of registration address;
- g. change of directors or senior managers;
- h. merger or division; or
- i. any other matter prescribed by the National Bank of Cambodia.

Chapter III License Approval and Related Fee

Article 6: Principle Approval

The National Bank of Cambodia shall provide written notification of its decision within 3 months from the receipt of complete set of application. Where appropriate, the National Bank of Cambodia shall set out the specific conditions and the timetable for the enforcement of the principle approval letter. If the set conditions have not been met upon expiry of the deadline and if no extension has been requested, the principle approval becomes void.

Article 7: License Approval

A Financial lease company must fulfill all conditions set forth in the principle approval letter before receiving license from the National Bank of Cambodia.

Article 8: Validity of a License.

A financial lease company's license is valid for a period of 5 years (five years), from the approval date and it can be renewed.

Article 9: Processing and License Fees.

The Financial lease companies shall pay a processing fee of KHR 500,000 (five hundred thousand riels) upon submission of the application for a license.

The annual license fee shall be paid before January 15 as follows:

- KHR 4,000,000 (four million riels) for a financial lease company head office,
- KHR 2,000,000 (two million riels) for each branch of a financial lease company.

For institutions established during the year, the license fee shall be calculated on a pro rata basis for the remaining period to the year's end.

Chapter IV

Prudential Rules

Article 10: Capital Deposit.

Applicants shall pay up 100% (one hundred percent) of registered capital into an account open with the National Bank of Cambodia prior to commencement of operations.

Each licensed financial lease company shall maintain an amount, bearing no interest, equal to 5% (five percent) of its registered capital in a permanent account with the National Bank of Cambodia.

The National Bank of Cambodia will only reimburse the capital deposit to a licensed financial lease company if it is liquidated and has no other liabilities

Article 11: Reporting Requirements.

A licensed financial lease company shall comply with reporting requirements as follow:

1. A financial lease company shall make information disclosure in accordance with related accounting standards for business enterprises and the related provisions of the National Bank of Cambodia;
2. A financial lease company shall prepare balance sheet, profit and loss statement and other statements as required by Supervisory Authority. The legal representative and other direct handlers shall be responsible for the authenticity of the statements provided;
3. A financial lease company shall submit to the National Bank of Cambodia a monthly report on associated transaction within 15 days of the following month.
4. A financial lease company is required to submit an annual audited report by auditor approved by the National Bank of Cambodia within 4 months as of the end of each accounting year.

Article 12: Prudential Regulation

Financial lease companies shall comply with prudential regulations set forth by the National Bank of Cambodia.

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Chapter V

Ownership Structure and Governance

Article 13.- Capital Contributors

Capital contributors must provide the following information to the National Bank of Cambodia:

1. identity of the capital contributor:
 - a. In the case of a legal entity, indicate the business name, legal form, address of the head office, audited financial reports, Articles of Association, and other information required by the Supervisory Authority.
 - b. In the case of an individual, state his or her full name, date and place of birth, nationality, address and other relevant documents.
2. amount and percentage of the proposed participation and its equivalent in voting rights. Describe in detail the legal and financial arrangements for the acquisition of the shares. If the contributor is an individual, indicate precisely the origin of invested funds.
3. percentage of ownership of share capital of all capital contributor, if needed:
 - a. state the distribution of the share capital of the parent company and of intermediate holding companies (give percentages in terms of shareholdings and voting rights);
 - b. list the main managers of the capital contributor.
4. if the capital contributor is part of a group, capital contributor shall:
 - a. provide a description of the main entities of said group together with an organizational chart;
 - b. Indicate whether the capital contributor has significant equity holdings in other credit institutions both local and oversea.
5. possible relations between capital contributor and the companies with financial activity such as bank, financial lease company or microfinance institution.
6. internal and external audit procedures of the capital contributor.
7. record of offenses of the capital contributor over the last ten years, if any.
8. capital contributor's objectives for the acquisition of an equity holding in the financial lease company applying for a license and give all relevant information.
9. significant business relations between the capital contributor and the applicant.
10. main financial lease relations of the capital contributor in Cambodia.
11. accounts of the capital contributor or its parent company for the last three years and a forecast for the current year (including consolidated information if any). If the capital contributor is a financial institution, furnish information on the main prudential ratios.
12. corporate governance (organizational chart, general assembly of shareholders, the board of directors, the board of supervisors and senior managers) by assigning clear responsibilities to ensure independent operation and effective check and balance as well as efficient policy-making, incentive and constraint mechanism.
13. rules for internal control policies and system.

Article 14.- Capacity of Directors and Managers

No one may be member of a board of directors or supervisory board or a manager of a licensed entity, or either directly or through an intermediary, direct, manage or run a licensed entity in any capacity, or be authorized to sign on behalf of such an institution if he :

1. has been convicted of :
 - a crime,
 - theft, fraud or breach of trust,
 - misappropriation when acting as a public depository,
 - extortion of funds or securities, criminal bankruptcy
 - usury,
 - money laundering,
 - forgery and / or the use of forgeries,
2. has been sentenced to a period of imprisonment for issuing bad checks,
3. has been convicted by a foreign court of law of one of the crimes or offenses listed in sections 1 and 2 above,
4. has been convicted in Cambodia or abroad for personal bankruptcy, receivership, or liquidation of assets,
5. has been relieved of his duties as a law official by virtue of a court ruling,
6. has been involved in a personal capacity in the management of a covered entity whose license has been withdrawn following a disciplinary action.

Each of the directors and managers expected to be appointed must provide at least the following information by filling in the curriculum vitae and questionnaire appended in Annex II.

Chapter VI

Enforcement Actions and Penalties

Article 15.- Regulatory Powers of the Supervisory Authority

1. The National Bank of Cambodia shall license, de-license, regulate, supervise and inspect the business of financial lease companies and may issue orders and directions as may be necessary.

2. The National Bank of Cambodia may suspend or revoke the license granted to a financial lease company for any one or more of the following reasons:

- a. the company has not commenced business within three months of the grant of license
- b. the company has violated any law or regulation governing the operation of the company;
- c. the company is unable to effectively carry on financial leasing activities;
- d. the company voluntarily terminates its operation after receiving approval for such termination;
- e. the company ceases to carry on financial leasing business in the Cambodia;
- f. the company is insolvent or is subject to bankruptcy or liquidation proceedings or a receiver of its assets has been appointed; or

Article 16.- Measures against Financial Lease Companies

1. If a financial lease company has violated the provisions of the Law on Financial Lease and regulations issued by the National Bank of Cambodia, the National Bank of Cambodia shall impose disciplinary sanction on the company according to the Article 35 of the Law on Financial Lease.

2. If a financial lease company goes against the related provisions in the present Prakas, the National Bank of Cambodia may order it to make corrections within a fixed period; if it fails to do so within the fixed period, or its act seriously endangers its stable operation or damages lawful rights and interests of clients, the National Bank of Cambodia shall, by considering the specific situations, adopt such supervisory measures as business suspension or restriction of shareholders' rights, etc. in accordance with existing regulations.

Article 17.- Transactional Sanctions

In addition to the disciplinary sanction, the National Bank of Cambodia shall impose transactional sanctions:

1- Financial lease companies which do not comply with reporting deadline requirement will be subject to the following fines:

- | a. For report: <u>No. of days late</u> | <u>Amount</u> |
|---|--|
| - From 1 to 5 days | KHR 50,000 (fifty thousand riels) per day |
| - From 6 to 10 days | KHR 300,000 (three hundred thousand riels) per day |
| - From 11 to 15 days | KHR 700,000 (seven hundred thousand riels) per day |
| - From more than 16 days, financial lease companies will be subject to a written warning and public announcement. | |

b. For replies letters and other information:

- | <u>No. of days late</u> | <u>Amount</u> |
|---|--|
| - From 1 to 5 days | KHR 50,000 (fifty thousand riels) per day |
| - From 6 to 10 days | KHR 300,000 (three hundred thousand riels) per day |
| - From more than 11 days, financial lease companies will be subject to a written warning and public announcement. | |

2- Infringement of the National Bank of Cambodia's regulations will be subject to a fine of KHR 1 million (one million riels) per day starting from the enforcement date imposed by the National Bank of Cambodia.

Chapter VII Final Provision

Article 18.-

Any person or company engaged or is engaging in financial lease business without license shall apply for a license from the National Bank of Cambodia within 6 months (six months) from the date this Prakas comes into effect.

Article 19.-

The General Secretariat, the General Directorate of Supervision, the Technical General Directorate, the General Inspection, General Cashier, all departments of the National Bank of Cambodia, and Financial Lease Companies under the National Bank of Cambodia's supervisory authority shall strictly implement this Prakas.

Article 20.-

This Prakas shall have effect from this signing date.

Phnom Penh, 27 December 2011

Governor

Signed & Sealed: **Chea Chanto**

Cc: - All members of the Board of Directors
- The parties concerned as stated in article 19
- File
- CM “ for info”
- Administration Department of CM
“ for publication in the National Gazette”

MODEL LETTER
TO BE SENT TO THE GOVERNOR OF THE NATIONAL BANK OF CAMBODIA

Dear Sir,

With a view to my appointment as a manager of (name of company) where I will hold the position of (.....) please find herewith the information (including curriculum vitae and questionnaire provided for in Annex II) requested under article 13 of this Prakas. I hereby certify that the information is complete and accurate and that, to the best of my knowledge there are no other material facts of which the National Bank of Cambodia should be informed. In particular, I certify that I am not subject to the prohibitions listed in article 14 this Prakas.

I undertake to inform the National Bank of Cambodia immediately of any change which would significantly alter the information provided.

I further undertake to ensure that the institution of which I am a manager will provide the National Bank of Cambodia with all regulatory information concerning its administrative and accounting organization, its financial condition, particularly regarding the quality of its leasing properties, and the financial condition of its shareholders.

Very truly yours,

Signature

CURRICULUM VITAE

and

**Questionnaire for individuals who are, or who propose to become,
Directors, Shareholders or Managers of a Financial Lease Company**

1. Family name:

2. Given name(s):

3. Other name(s) by which you are or have been known:

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4.1. Please state in what capacity you are completing this form, i.e. as a current or prospective director, shareholder or manager or any combination thereof.

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4.2. Please describe the particular duties and responsibilities attaching to the position(s).

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4.3. In carrying out your duties, will you act in concert with or in accordance with the instructions of another individual or legal entity other than the applicant? In either event, give all relevant information.

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4.4. Indicate if you are a capital contributor to the applicant and if you intend to carry out, directly or through an intermediary, personal or professional transactions with the applicant.

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5. Your private address:

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6. Your previous private address(es) during the last 5 years :

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7. Your date (day/month/year) and place of birth (including district, town or city).

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8. Your nationality and how it was acquired (birth, naturalization, marriage).

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9. Name(s) and address(es) of your bankers within the last 5 years.

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10. Your academic degrees and/or professional qualifications and the place and year they were obtained.

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11.1 Your current occupation and employment and over the past 10 years, including the name and address of the employer in each case, the nature of the business, the position held and relevant dates.

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11.2 Indicate whether you are or in the past ten years have been a significant shareholder (namely holding directly or indirectly at least 10 percent of the share capital or voting rights) in a company other than the applicant. If so, state the name and activities of such companies and the amount of your shareholding or interest in them.

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11.3. Indicate, to the best of your knowledge, which of the companies in which you have held or hold a position of responsibility, or in which you have been or are a significant shareholder, has or might soon have significant business relations with the applicant.

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12. Have you or any entity with which you are associated as a director, shareholder, or manager ever held or applied for a license or to carry on any business activity in any country? If so, if any such application was refused or withdrawn after it was made or if any authorization was revoked, give particulars.

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13. Have you, or any entity with which you have been involved in the conduct of its affairs, been disciplined, warned as to future conduct, publicly criticized, or the subject of an investigation by any regulatory supervisory authority or any professional body? If so, give particulars.

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14. Have you, in any country, been dismissed from any office or employment by your employer or barred from entry to any professional or occupation? If so, give particulars.

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15. Have you failed to satisfy any debt adjudged due and payable by you under an order of a court, or have you been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you? If so, give particulars.

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16. Have you, in connection with the management of any entity been adjudged by a court, in any country, to be legally liable for any fraud, or other misconduct by you toward such an entity or any of its members? If so, give particulars.

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17. Are you now, or do you other than in a professional capacity, expect to be, engaged in any litigation in any country? If so, give particulars.

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18. Please supply an audited statement of personal net worth providing a breakdown of your assets and liabilities.

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19. Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years.

20. Is there any additional information which you consider to be relevant for the consideration of your suitability for the position(s) listed in Question 4.1? The omission of material facts may constitute the provision of misleading information (see declaration below).

N.B. The information provided in response to this questionnaire shall be kept fully confidential by the National Bank of Cambodia, except in cases provided for by law.

DECLARATION

I am aware that it is an offense to knowingly or recklessly provide any false or misleading information in connection with an application for a banking license or a renewal of a license for a financial lease company.

I certify that the information provided in response to the above questions are complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the National Bank of Cambodia should be aware.

I undertake to inform the Supervisory Authority of any changes material to the application which arises while the Supervisory Authority is considering the application.

Name

Position held

Signed :Date / /