**Business requirements for Digital Lending Business model feasibility study**

We are considering several options of obtaining a license for conducting a digital money lending business in the future.

I would appreciate you provide us with a legal opinion with regard to carrying on money lending business under pawnbroker’s license.

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| **#** | **Parameter** | **Ratio** |
| 1 | **Date** | 17.10.2016 |
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| 3 | **Task name** | Digital lending business model feasibility study – Cambodia |
| 4 | **Desired finishing time** | 7 working days |
| 5 | **Task description** | **We are looking for a feasibility study of the legal setup of the Digital Lending service (to be launched in Cambodia) to be provided by the local professional legal advisory firm.**  **General description:**  We aim to establish a digital lending facility under pawnshop **(if any other form of registering is applicable pls advise)** in which we will provide lending services to individuals related to facilitating short term lending (with loan amount of up to 200 USD and repayment up to 1 month).  Digital lending under **Pawnshop (or another entity)** itself will conduct credit activity and will process the entire operations from **Granting** to **Recovery** through ONLINE surface such as   1. Filling-in borrower’s application form and uploading scans/photos of the documents on a web-site in order to apply for a loan from the **Pawnshop (or another entity)** to take credit decision. Providing templates of the legal documents needed to be signed to get the loan. 2. Obtaining borrower’s explicit consent with making credit agreement with Lending Company. 3. Communicating repayment schedule and reminding about the payday. 4. Facilitating loan disbursement from Lending company to borrower’s bank/e-wallet account and loan repayment from borrower’s account to Lending company.   Note: All transactions will be online. No face to face communication |
|  | **Target product** | Target clients – private individuals  Product type – unsecured  Loan amount range – 50 USD – 200 USD  Tenure range – 7 / 14 / 21 / 30 days  Time to money – 1 hour – 1 day  Loan disbursement - Bank transfer / Payment system e-wallet |
|  | **Interest rate** | **Effective Interest rate** - 1% per day (could be from 2 companies):   * Interest rate: * within Interest rate cap for the Licensed Lender  (if any) * charged by the Licensed Lender (if any) * Consulting Fee / Service fee / Upfront fee / Social scoring fee * 1% per day -  allowed interest rate per day (could be in %% or in absolute amount) * Could be charged or by License (if allowed) or by independent 3d company (Lead Generation Company, Risk Management Company). See attached examples |
|  |  | **Late fee – 2% per day (could be from 2 companies):**   * Late Interest rate: * within Late Interest rate cap for the Licensed Lender * charged by the Licensed Lender * Debt Collection fee * 2% per day -  allowed Late Interest rate per day (could be in %% or in absolute amount) * Could be charged or by License (if allowed) or by independent 3d company (Risk Management Company, Debt Collection company). |
|  | **Target**  **Business model** | Fully Online  *Please see our working companies websites:*[*https://doctordong.vn/*](https://doctordong.vn/)*,*[*https://doctorcash.ph/*](https://doctorcash.ph/)*,*[*https://drrupiah.com/*](https://drrupiah.com/)*,*[*https://doctorringgit.my/*](https://doctorringgit.my/)*,* [*https://doctorcash.cn*](https://doctorcash.cn)  Application - Application form available on website or mobile app  Filling application - Borrower fills in online application form  Pre-screening – minimum acceptance criteria’s online checks, credit bureau data check, etc.  Preliminary decision - Within 1 hour, Upon preliminary loan approval, borrower will be notified preliminary loan offer via sms / mobile app  Final credit decision – if borrower agrees with the offer, he must upload his ID copy, income proof and address proof for final approval. Upon final approval, borrower will be informed by sms / mobile app  Loan agreement signing – if borrower accepts the final offer, contract will be signed by confirmation with code sent via SMS by Licensed Lender  Loan disbursement - Bank transfer |

All the below questions are related to pawnshop. If you make advice on any other licensing options – please do so.

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|  | **General introduction:** |  |
|  | Who regulate pawnshop? | Ministry of Economy and Finance ("MEF") |
|  | What number of Act explaining pawnshop activity? | Three laws and two prakas. Please see item 8 below |
| 1 | **Interest rate** |  |
| 1,1 | What is the formula of calculating the interest rate for loan? | Agreed by the parties.  " The interest rate must be set with the agreement between the vendor and the customer. But the agreement on the interest rate must not oppose the laws. "  Art. 15 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 1,2 | Any restrictions about maximum interest rate? | in accordance with Art. 585 of the Cambodian Civil Code 2007, the interest rate shall be agreed mutually by the parties, as determined by other laws or regulations. Then, in 2009, the NBC issued a Prakas on liberalization of determining the interest rate to allow the banks and financial institutions to set out its own interest rate. Please note that in 2011, the Law on Implementation of Civil Code was promulgated. This law on implementation of the Civil Code gives the authority to the Minister of Justice to set the interest rate between 10% and 30%. However, the NBC claims that the Prakas of MOJ is not applicable on banks and financial institution.  Art. 1 of Prakas No. 128 MOJ.P/11 on Determination of Interest Rate |
| 1,3 | What commissions included in interest cap? What size of this commissions (if it regulated)? Who should receive it? | N/A |
| 1,4 | What else commissions we can charge, excluding interest cap commissions? (For example: late payment, money transfer or others….) And what size this commissions? Who should receive it? | Any expense occurred by the pawnshop for the purpose management, safekeeping or any other expense for the improvement of the collaterals. |
| 1,5 | How does regulator usually track the actual interest rate accrued by lender? What is the procedure? | The Pawnshop is required to submit a monthly and annual report to the MEF. Moreover, the regulator will conduct the on-site inspection from time to time. |
| 1,6 | What are the penalties for Lender (and for his managing director) in case of over limiting the interest cap or other commissions? | Such interest rate shall be considered as null and void and the interest rate shall be calculated in accordance with the limited interest rate determined by the Prakas. However, as a matter of practice, although the governing authority knows about the over limiting the interest rate, however, no action taken against such over limitation. |
| 2 | **Licensing procedure.** |  |
| 2,1 | Can foreigner investor be 100% shareholder of Pawnshop? If no, what share foreigner investor can have? | Only Cambodian individual and legal entity, which has at least 51% of total shares hold by Cambodian, can apply for this license  Art. 8 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,2 | Can we launch sale early then receive License? (Company what I told you last time, tell me about they have 3 months testing period) And how long time it can be? What process for testing launching? | No, there is no launch testing period allowed under the law or regulation. Before commencing business operation, the pawnshop license is required.  Art. 4 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,3 | If we want buy a current company with license, do we need inform regulator about changing shareholders? Or get any approval? | Yes. There shall be a prior approval from the MEF and register the shares transfer with the Ministry of Commerce ("**MOC**").  Art. 11 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security and Art. 239 of the Law on Commercial Enterprises |
| 2,3,1 | Example: I am foreigner and I have 49% of shares in pawnshop legal entity. I want to sell my shares to another company. Do I need any approval from MEF? |  |
| 2,4 | Do you have type of license as license for foreigner company and license for local company? What’s the difference? | No. Please refer to our answer in 2.1  Art. 6 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security determines the different types of license |
| 2,5 | Requirement capital for pawnshop license? And any other payments (per office, per loan, per employees…….) | Minimum Capital for Pawn Business is KHR 80,000,000 (approx. US$20,000) and deposit 10% of the registered capital or the minimum of KHR 40,000,000 (approx. US$10,000) in the MEF's account at the National Bank of Cambodia ("**NBC**")  Art. 8 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,5,1 | as I know there is 3 kind of pawnshop licenses, am i right? Silver \ gold \ white? What is a difference? What is a loan portfolio limit with each license? What is a price of this licenses? |  |
| 2,6 | What minimum requirements for getting pawnshop license? And what package of documents we need provide to regulator? | For the application for the licensing of the pawn business, the applicant shall be qualified as the followings: - Cambodian national; - No criminal charge against; - Proper address in Cambodia; - Hold bachelor degree of economic, finance or law or other relevant major.  Art. 8 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,7 | Are we need make confirmation our staff with regulator? | Yes. However, with regards to the employees, it is more relevant with the Ministry of Labor and Vocational Training ("**MLVT**"), which the pawnshop is required to notify the MLVT in the event there is any coming or leaving staff. On the other hand, with regards to the MEF, the pawnshop is only required to mention such movement of staff in its monthly report. However, such report requirement has not been strictly complied with.  Cambodian Labor Law and Art. 8 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,8 | What term for this license? | One year from the date of the license (renewable)  Art. 7 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 2,9 | Any reason for decline license application? And any reason for suspension of license? | Yes. The application will be declined if any of the information provided are false and inaccurate and refuse to provide the information as requested. The MEF will withdraw or suspend the license if the pawnshop violates the laws and regulations, not obeying the instructions of the MEF, fail to make tax payments for two consecutive months or bankrupt.  Art. 9 for refusal of issuance of license; Art. 13 for suspension and withdrawal of license  of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 3 | **Collateral (PAWNSHOP)** |  |
| 3,1 | In PRAKAS there is a quote: "Pawn: refers to the act that customers put movable objects, documents of confirmation of owning real estate or any document with the vendor to guarantee the loan and interest payment." (We will mention in loan contract that we are taking a mobile phone (or smartphone) of our borrower as collateral, but keep this phone in the hands of borrower. can we do it?) | Kindly note that even though the Prakas does not specify clearly whether the pawnshop must take original or copy of the document; however, in accordance with Art. 818 of the Civil Code, as a principle of the formation of pledge, a pledge shall be created when the thing to be pledged is delivered to the pledgee or having the actual possession of the property. Therefore, I would like to elaborate in the event of both movable and immovable property as follows: - Movable property: in accordance with Art. 829 of the Civil Code, the pawnshop cannot assert its right against third party if the pawnshop does not have the actual possession of the property. In the event the debtor fails to repay the loan, the pawnshop may sell the pledged property without going through court procedure.  - Immovable property: in accordance with the definition you raised to us, document certifying the possessory right or ownership right over immovable property can be used to pledge at pawnshop. The law and regulation is silent on whether the document must be original or copy. However, in the event the pawnshop would like to enforce and assert its right against the third party, the pawnshop must have the document in possession and register the pledge with the land authority. Therefore, for this purpose, original document is required.  However, as a matter of practice, it depends on the practice of the pawnshop itself to whether register the pledge with the land authority or not. The registration of pledge with the land authority is to mitigate the risk of the pawnshop. Moreover, in the event the debtor fails to repay the loan, to enforce the pledge over immovable property, the pawnshop must go through court procedure in order to sell the immovable property, unlike the sell of movable property. However, as a matter of practice, there has no such enforcement of pledge over immovable property before since the maximum loan allowed under the Prakas is US$5,000. Going through court is very cost and time consuming.  In addition to the above, please note that pledge practiced by pawnshop is different pledge under the Civil Code. As the MEF adapt a more flexible practice, which might seems in contrast with the stipulation under the Civil Code.  Art. 3 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 3,2 | How Pawnshop should keep track of collaterals?  Are there any requirements by Regulator for collateral records (format, media)?  Could all the collateral records to be recorded in electronic form only (with no paper form)? | All pawnshops must have their proper records on entry and settlement of collateral. The Prakas requires the records to be in paper form/book; however, as a matter of practice, the MEF allows the pawnshops to keep track of the records by any means such as computerized or any other media form, which allows the pawnshop to provide the MEF documents when the MEF conduct the on-site inspection or requests.  Art. 10 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 3,3 | Could we sign special agreement with customer to make him in charge of safe keeping the collateral in customer’s house? (We will mention in loan contract that we are taking a mobile phone (or smartphone) of our borrower as collateral, but keep this phone in the hands of borrower. can we do it?) | Art. 10 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security and Art. 818 of the Cambodian Civil Code |
| 3,4 | How regulator checks that the pawnshop suits the requirements on processing the collateral? | The MEF will check through monthly and annual report submitted by Pawnshop. Moreover, the regulator will conduct the on-site inspection from time to time.  Art. 10, Art. 18, Art. 19 and Art. 20 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 3,5 | What are the penalties for breaking the rules of keeping the collateral | Fine, suspend and withdraw the license.  as a matter of practice and in accordance with the procedure, in order to fine, suspend and withdraw the license, the MEF does not need to go to court to implement such sanction. And might be criminalized.  We used the term "criminalized" is expand the understanding that in the event the pawnshop is still not complied with the laws and regulations or order of the MEF after the withdrawal of the license and still conduct such business. The pawnshop will be considered committed fraud or other crime as determined by the Cambodian Criminal Code. Therefore, this will lead to other crimes in accordance with the Cambodian Criminal Code.  Art. 21 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 3,6 | What are the requirement of Regulator to collateral appraisal? Are there any limits on discount rates to value of collateral? | As a matter of practice, it is the pawnshop to determine the price of the collateral itself by seeking independent appraisal to evaluate the value of the collateral. |
| 3,7 | What are the penalties for breaking the requirements those described in point 3.6? | No measure or mechanism set out by the laws or regulations or governing authority. |
| 3,8 | Are there any requirements by Regulator to Pawnshop to check a Customer’s rights to collateral? | No. The law and regulation are silent on this. However, to protect the pawnshop's interest, it is practical for the pawnshop to verify the right over the collateral |
| 3,9 | Can Pawnshop charges the customer with penalties without selling the collateral? | As a matter of practice, this can be done if the parties agree to do so in the agreement, there is no measure is taken by the governing authority. |
| 3,10 | What is the penalty to be applied for losing or damaging the collateral? | Under the Cambodian Civil Code, the pledgee has the obligation to take care of the collateral in good faith. Moreover, it is clearly stated under the same law that regardless the possession was in good faith, the possessor shall compensate for all damages or loss of the collateral.  Art. 21 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security, Art. 823 and Art. 157 of the Cambodian Civil Code |
| 4 | **Contract signing** |  |
| 4,1 | What is the data about customer should be stated in Pawn credit contract in a mandatory manner? (In the event the customer is an individual) | 1. In the event the customer is an individual, the Prakas requires the following information to be mentioned in the contract: - Name; - ID Card / passport - Address - Signature  2. In the event the customer is a legal entity, the following information is required to be mentioned in the contract: - Name of the entity; - Address of the entity; - Registration number; - Name of authorized representative; - ID Card / passport of the authorized representative; - Resolution approving the entry into the contract; and - Signature or thumbprint of authorized representative and the entity's stamp  Under Point 5 of Art. 10 of the Prakas No.028MEF.P, it requires the contract to be in accordance with template prescribed in the Book of Charge. There is no specification listing down all the points as mentioned in the answer. We advised that based on the practice and the Book of Charge, issued by the MEF. Please see Art. 10 of the Book of Charge. |
| 4,1,1 | Example:  we give money to customer. we not put on our loan agreement customer`s thumbprint or signature because he borrow money remotely, without a visit to our office.  we cannot sue(judge) our borrower - am I right? | Correct. If you not have any document or evidence based to sue your borrower or claim that your borrower owes you the money. |
| 4,1,2 | also we can not get any fine from MEF, because, legally speaking, there is no confirmation of the loan issue, no any document signed by any side, and therefore there is no violation of the law  - am I right? | As a matter of practice, the MEF **has not fined any pawnshop in the event of violation of such practice yet**. The MEF **simply notifies** or warns the pawnshop to rectify the practice. However, with regard to the signing of agreement/document on the loan, the Prakas requires the pawnshop to enter into a written agreement or document to provide loan with the borrower. However, such requirement is to protect the pawnshop as the lender. |
| 4,1,3 | Example:  1)we physically sign loan contract with borrower.  2) Give to borrower money 3) borrower repayed money back   * 1. In loan contract we wrote, that next time, if borrower need money, he can apply to take a loan using phone call \ email \ etc, and loan contract will be automatically extend on this new loan. The prove that we send money to borrover - receipt from payment system ( for exemple – payment system WING)   2. next time , when borrower need money, we are not sign new contract, we continue to use old contract | We do not see any problem with this type of practice. Moreover, there is no restriction under the law and regulation governing the pawn business as well. However, to be safe, the pawnshop should have some provisions in the first agreement covering such practice with the lender. |
| 4,1,4 | Face to face verification | Refers to the act of signing of agreement/contract face to face among the parties, there is no prohibition under the law and general principle of the contract law. Therefore, it is doable for the party to sign the agreement without having other party in front of them. |
| 4,1,5 | agreement with borrower: | Under the Prakas, it is required that the Pawnshop: "Must provide in writing in order to avoid the misunderstanding on every cancelation of the contract and guaranty on any trusted service for the customers.  Art. 10 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 4,2 | Could the following options be recognized equal to paper contract signing with Customer: - verbal consent of Customer recorded by audio technical means? - consent of Customer recorded by video technical means? - consent of Customer sent by SMS? - consent of Customer by ticking the related checkbox on WEB-site? - сonsent of Customer in form of predetermined set of concludent actions? | Under the Prakas, it is required that the Pawnshop shall enter into a written agreement with the customers, which has the template determined in the prescribed Book of Charge issued by the MEF. You will not be able to use this digital signature against any other party. |
|  | If we will not be able to use this digital signature against any other party,  so we cannot sue(judge) our borrower - am I right? | Correct. |
|  | also we cannot get any fine from MEF, because, legally speaking, there is no confirmation of the loan issue, no any document signed by any side, and therefore there is no violation of the law  - am I right? | Kindly note that as the MEF will regularly has its officials to inspect the pawnshop on-site and the officials will ask the pawnshop to provide some of the documents and reports. In the event the MEF official suspects any irregularity in the record of the pawnshop, the official might question the pawnshop about such irregularity. |
| 4,2,1 | Is it allowed digital signature in Cambodia and how we can use it? | We did not mean the digital signature is banned in Cambodia. We only refer that the law or regulation on such practice is not available in Cambodia. We would like to give advice to you based on practice that Cambodian authority or court or official will not accept this type signature. You will not be able to use this digital signature against any other party. |
| 4,3 | If 4.2 have negative answer - Could sign the contract with customer outside the office? | There is no restriction for the place of signing of the agreement in accordance with general principle of contract.  Point 21 of Art. 10 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 4,3,1 | our staff can go to customer - am i right?? | RTSH: Correct. |
| 4,4 | What is the penalty for breaking the rules of signing the Pawn contract? | Fine, suspend and withdraw the license.  as a matter of practice and in accordance with the procedure, in order to fine, suspend and withdraw the license, the MEF does not need to go to court to implement such sanction.  Art. 21 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| **5** | **Territory.** |  |
| 5,1 | Any restrictions about territory of operating license? How looks this restrictions? (example: client must be registered temporary in this area, client work in this area…….) | There is no restriction on territory. However, in the event the pawnshop would like to open a physically branch regardless where about, the pawnshop shall apply for a "Branch license" for each of its branch.  Art. 6 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 5,2 | How does the regulatory control that pawnshop follows the territorial requirements? | The MEF's officials at each respective territory will report to the MEF in the event there is any pawnshop opened in the area. |
| 5,3 | What are the consequences in case Regulatory finds that Pawnshop breaks the allowed territory limitation? | The MEF will issue a written warning and inform the unregistered pawnshop to register and comply with the laws and regulations within certain period. In the event the unregistered pawnshop does not comply, the MEF will take action by suspending the activity of the pawnshop. |
| 5,4 | What penalty if we not following this restrictions? | As mentioned above in 5.1, there is no territory restriction. However, in the event the MEF finds out the pawnshop opens a branch without license, the MEF will issue a written warning and inform the unregistered pawnshop to register and comply with the laws and regulations within certain period. In the event the unregistered pawnshop does not comply, the MEF will take action by suspending the activity of the pawnshop. |
| **6** | **Credit parameters** |  |
| 6,1 | What is minimum and maximum tenor/loan amount of Pawn credit defined by Law? | The pawnshop shall not provide loan to one customer or a group of customers more than **20%** of its registered capital.  The pawnshop shall not provide loan of more than **KHR 20,000,000 (approx. USD 5,000)** to anybody uses any document certifying the possessory rights over immovable property or any other document as collateral.  Point 19 and 20 of Art. 10 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| 6,2 | How does regulators control that we follow the requirements on credit tenor/loan amount? | The pawnshop is required to submit the monthly and annual report on the business activities of the pawnshop, with the certification of true and accurate by the license holder, to the MEF. Moreover, the MEF will also send its officials to conduct the on-site inspection.  Art. 18, 19 and 20 of the Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security |
| **7** | **Financing** |  |
| 7,1 | What are the ways/sources allowed to fund its’ credit portfolio? (for example: foreigners investments, bank loan, deposits from local individuals, deposits from foreigners individuals and other…..). What requirements for this operations? | The laws and regulations are silent on this point. It can be both equity and debt. |
| 7,2 | Can we take a loan secured by its’ pawn credit portfolio? | The laws and regulations are silent on this point. |
| 7,3 | Any restrictions for collect profit from local company to foreigner shareholder? | There is no restriction. |
| **8** | **Legislation** |  |
|  | Royal Kram No.NS/RK/1207/030 promulgating the Cambodian Civil Code dated 08 December 2007 |  |
|  | Royal Kram No.NS/RK/0511/007 promulgating the Law on Implementation of the Cambodian Civil Code dated 31 May 2011 |  |
|  | Royal Kram No.NS/RK/0605/019 promulgating the Law on Commercial Enterprises dated 19 June 2005 |  |
|  | Prakas No.028MEF.P on Licensing of Pawn and Sale-Purchase of Secured Property Business and Business of Transfer as Security dated 12 January 2010 |  |
|  | Prakas No. 128 MOJ.P/11 on Determination of Interest Rate dated 21 December 2011 |  |