

MEF
Nº. 185

**Prakas
On
Requirements for Corporate Governance**

Senior Minister, Minister of Economy and Finance

- Referring to the Constitution of Kingdom of Cambodia.
- With reference to the Royal Decree No. NS/RKT/0704/001 dated July 13, 2004.
- Referring to the Royal Decree N° NS/RKT/0704/124 dated 15 July, 2004 on formation of Royal Government of the Kingdom of Cambodia.
- Referring to the Preach Reach Kram N°02/NS/94 dated 20 July 1994 on promulgation of the Law on Organization and Functions of the Council of Ministers.
- Referring to the Preach Reach Kram N°NS/RKM/0196/18 on 24 January 1996 Promulgation the law on establishment of the Ministry of the Economy and Finance.
- Referring to the Preach Reach Kram N° NS/RKM/0700/02 dated 25 July 2000 Promulgation the law on Insurance.
- Referring to the Sub-Decree on Insurance N° 106ANKr.BK dated 22 October 2001.
- Referring to the Sub Decree 04/ANK/BK dated 20 January 2000 on the Organization and Function of Ministry of Economy and Finance.
- With reference to the Sub Decree No 78/ANKr.BK dated November 18, 2000 on modifications of some departments of the Ministry of Economy and Finance.
- With reference to Prakas 584 MEF dated 19 September 2005 on modifications of organization and function of Department of Financial Industry.
- Pursuant to the need in supervising the insurance sector.

DECIDES:

PART I

General Provisions

Provision 1

This Prakas applies to all insurance companies, reinsurance companies or branches of foreign insurers and reinsurers authorized in the Kingdom of Cambodia irrespective of ownership.

Provision 2

No licensee shall appoint a person as director or chief executive officer unless it has obtained the prior written approval of MEF for the proposed appointment.

In this Prakas, unless the context otherwise requires, a 'director' includes a person who occupies the position of a director and includes a person in accordance with whose instructions the directors or officers are accustomed to act.

A 'chief executive officer', in relation to an institution, means an individual, who either individually or jointly with one or more persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the institution.

PART II

Fit and Proper Criteria

Provision 3

A licensee in determining whether a person is 'fit and proper' to hold the position of a director and chief executive officer shall have regard to:

- (a) his probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the diligence with which he is fulfilling or likely to fulfill those responsibilities;
- (c) Whether the interests of policy owners, insurance claimants, customers and creditors of the licensee, as the case maybe, are or are likely to be, in any way threatened by his holding that position.

Provision 4

A person who is, or is to be, a director of a licensee:

- (1) shall have educational qualifications and experience which will enable him to effectively perform his duties;
- (2) shall not have acted in a manner which may cast doubt on his fitness to hold the position of a director;

- (3) shall have agreed to attend, or have attended at least 75 per cent of the licensee's board of directors meetings in a year unless his absence is with the approval of MEF;
- (4) shall not have been a party to any action or decision of the board or management of the licensee which is detrimental to the interests of the licensee, and in the case of a licensed insurer, its policy owners.

Provision 5

A person who is, or is to be, a **chief executive officer** of a licensee:

- (1) shall have educational qualifications and experience which will enable him to satisfactorily discharge his responsibilities;
- (2) shall not have held a position of responsibility in the management of any company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;
- (3) shall not have held a position of responsibility in the management of any company which during his tenure of office:
 - (a) has defaulted in payment of any judgment sum against it;
 - (b) has suspended payment or has compounded with its creditors;
 - (c) has had a receiver or manager appointed in respect of its property.
- (4) shall be available for full time employment and shall not carry on any other business or vocation, except as a non executive director or shareholder of another company;
- (5) shall not be engaged actively in any political party;
- (6) shall not cause a conflict of interest situation with that of the licensee, either by himself or through his spouse, child, parent, brother or sister;
- (7) shall not have acted in a manner which may cast doubt on his fitness to hold the position of chief executive officer or manager, or acted in blatant disregard for proper professional conduct, especially in dealings with policy owners, claimants and customers; and
- (8) shall not have been a party to any action or decision of the management of the licensee which is detrimental to the interests of the licensee, or in the case of a licensed insurer, its policy owners.

Provision 6

The MEF shall have full discretion to determine whether a person has complied with the above requirements.

PART III

Composition of Board

Provision 7

- (1) The Chairman of the Board of Directors is a non-executive position.
- (2) The Board of Directors must comprise at least two independent non-executive directors. An independent director is one who represents the interest of the general public or shareholders other than the controlling shareholders. An independent director should also not:
 - (a) Hold more than 5% equity interest directly or indirectly in the insurer or related companies;
 - (b) Be employed in an executive position in the insurer or its related companies at least two years prior to his appointment date;
 - (c) Have an immediate family member who is, or has been in the past two years, employed by the insurer or any of its related companies;
 - (d) Be engaged, or have been engaged in the past two years, as professional adviser by the insurer or any of its related companies;
 - (e) Be engaged, or have been engaged in the past two years, in any business transaction of a value exceeding USD 70,000 with the insurer.
- (3) The primary responsibility of independent directors is to:
 - (a) To mitigate any possible conflict of interest between the policy making process and the day-to-day management of the insurer;
 - (b) To constructively challenge and contribute to the development of strategy of the insurer;
 - (c) To provide 'check and balance' function to the Board;
 - (d) To provide an objective overview on the performance of executive directors and senior management in meeting the agreed goals and objectives of the insurer.

PART IV

Audit Committee

Provision 8

- (1) The primary objective of the Audit Committee is to assist the Board of Directors in discharging its responsibilities relating to the integrity and transparency of the financial and accounting records, controls and the reporting practices of licensees;
- (2) The Audit Committee shall in particular:
 - (a) Oversee and appraise the quality of the audits conducted both by the licensee's Internal and External Auditors;
 - (b) Maintain an open line of communication and consultation between the Board of Directors, the Internal Auditors, the External Auditors and Management,
 - (c) Evaluate the adequacy and effectiveness of the licensee's administrative, operating and accounting controls and the integrity of its financial information.

Provision 9

- (1) The Audit Committee is appointed by the Board from amongst the Directors of the Company and shall comprise not fewer than three (3) members, the majority of whom should be independent.
- (2) No Audit Committee member should be employed in an executive position in the licensee or its related corporations or have a relationship which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the functions of the Audit Committee.
- (3) Members of the Audit Committee should not be directly responsible for, or part of any committee involved in, the management function of the licensee.
- (4) The members of the Audit Committee shall elect a Chairman from among them with the proviso that the Chairman so elected must be an independent non-executive director.

- (5) The Board shall review the term of office of the Audit Committee members no less than once every two (2) years.

PART V

Final Provisions

Provision 10

- 1) Any person who contravenes or fails to comply with a provision of this Prakas commits an offence and is liable to a fine KHR 10 million payable to the National Treasury within two weeks from the instruction of the Department of Financial Industry.
- 2) On application, MEF may accord flexibility to licensees to comply with the Provisions of this Prakas within an agreed time frame.

Provision 11

Any regulations that are contrary to this Prakas are abrogated.

Provision 12

This Prakas is effective from the date of signature.

Phnom Penh, 20 March 2007

Senior Minister
Minister of Economy and Finance

(Signed)

Keat Chhon

CC:

- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Office of the Prime Minister
- Council of Ministers
- Royal Journal
- File/Archive