



គណៈកម្មការមូលបត្រកម្ពុជា
SECURITIES AND EXCHANGE COMMISSION OF CAMBODIA
N° ០០៩/១០ SECC/B&K

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
KINGDOM OF CAMBODIA
Nation Religion King

PRAKAS

ON

THE ACCREDITATION TO THE CASH SETTLEMENT AGENT

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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/1199/13 on 18 November 1999 promulgating the Law on Banking and Financial Institutions;
- 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/1007/028 on 19 October 2007 promulgating the Law on the Issuance and Trading of Non-Government Securities;
- 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 12 May 2010.

Unofficial Translation

HEREBY DECIDES

CHAPTER 1

GENERAL PROVISIONS

Article 1: Purpose

The purpose of this Prakas is to prescribe requirements, procedures to grant an accreditation to conduct activities as a Cash Settlement Agent and to determine its obligations 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: Definition

Technical terms used in this Prakas are defined in this article and are available 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 No. 54/ANKR/BK on 08 April 2009 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 obligations to each other, by verifying the details of the transaction and securities payment of the purchase price to the sellers in exchange for the transfer of the securities to the purchaser. The Clearance and Settlement Facility includes:

- a. **Securities Clearance and Settlement Facility:** means a system for the clearing and settlement for the exchange in ownership of securities between the parties to a transaction for the sale or purchase of securities.

- b. **Cash Clearance and Settlement Facility:** means a system for the clearing and settlement for the exchange between the parties to a transaction for the sale or purchase of securities.

- **Applicant:** means the person who is applying for an accreditation to conduct activities as a Cash Settlement Agent.

- **Senior Staffs:** means staff who is appointed as president to department manager, including internal auditor.

CHAPTER 2

ACCREDITATION REQUIREMENTS

Article 3: Eligible Person

A person, who aims to conduct activities as a Cash Settlement Agent, shall file with the SECC an application for accreditation and must obtain an accreditation from the Director General of the SECC, in accordance with the provisions of the Law, the Anukret and this Prakas.

Article 4: The Grant of an Accreditation to the Cash Settlement Agent

The Applicant shall be a Commercial Bank licensed by the National Bank of Cambodia in accordance with the Law on Banking and Financial Institutions and related regulations of the National Bank of Cambodia and shall obtain a letter “Non-refusal” from the National Bank of Cambodia.

Article 5: Accreditation Requirements

The Applicant shall:

1. Have framework and sound corporate governance procedures;
2. Have strong financial integrity and operational capacity;
3. Have human resources with adequate and appropriate qualification and experiences in the securities, banking, financial and commercial sectors for the cash settlement operations, and a good moral character, as prescribed in the article 42 of the Anukret on the Implementation of the Law on the Issuance and Trading of Non-Government Securities;
4. Have modern technology and other mechanisms to ensure the swift, efficient, safe and reliable settlement of securities transactions;
5. Have sufficient technology capacity available to ensure efficient and reliable connections with the Clearance and Settlement Facility system, cash payment systems and relevant securities firms;
6. Have appropriate back-up systems and contingency plans to respond to operational or unexpected risk;
7. Have accurate procedures for the provision of cash settlement services to the securities trading clients.
8. Comply with any requirements determined by the Operator of a Clearance and Settlement facility.

Article 6: Documents accompanied the application form

The Applicant shall file an application form as determined by the SECC which shall be accompanied by the following documents:

1. Certified true copy of banking license;
2. Certified true copy of Patent certificate;
3. Certified true copy of articles of incorporation;
4. Evidence of minimum capital and certificate of deposit and reserve requirements issued by the National Bank of Cambodia;
5. Information on framework and corporate governance procedures;
6. List of all shareholders stating the number of shares held, attaching copies of the passport or identity card with their original signature or thumbprint;
7. 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;
8. Organizational structure and list of relevant 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;
9. Operational procedures related to banking activities in general and cash settlement operations in particular;
10. Business plan with a minimum duration of 03 (three) years from the date of lodgment of application;
11. Audited financial reports or consolidated financial reports in the last 03 (three) years;
12. Current risk management plans and contingency plans especially related to the cash settlement operations.

The Director General of the SECC may require the Applicant to provide additional information it may deem necessary.

Article 7: Refusing the application

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

1. The Applicant fails to comply with one of the conditions as prescribed by this Prakas, or any guidelines 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 relevant senior staffs:
 - a. Has conducted the business with fraud, in deceitful and improper way;
 - b. 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;
 - c. 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 soundness of judgment;
 - d. May not be able to act in the best interest of their clients having regard to their reputation, character, financial integrity and reliability; or
 - e. May not be able to efficiently, loyally and fairly conduct their business in accordance with all the requirements of the approval.
6. The Applicant, 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 latest five (05) years till 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 relevant 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 engages or has engaged in money-laundering or the grant of accreditation to the applicant may be contrary to the public interest.

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

CHAPTER 3

ACCREDITATION DECISION

Article 8: Duration of the decision of grant of the accreditation

Where the Applicant fulfills all the requirements determined by the Law, other relevant regulations and this Prakas, the Director General of the SECC shall notify in writing to the applicant the decision on the grant of an accreditation or the refusal decision on the grant of an accreditation not later than 03 (three) months from the date of the lodgment of the application. Where an application fails to state details which are essential in order to decide whether accreditation should be granted, the period for consideration of its decision recommences from the time those details are received.

Article 9: Accreditation duration

Indefinite accreditation duration shall be provided by the SECC to all Cash Settlement Agents operating in the Kingdom of Cambodia.

Article 10: Annual accreditation fee and other fees

The applicant shall pay an application and processing fee of KHR 2,000,000.00 (Two million Riels) upon submission of the application for an accreditation. Those fees are not returnable to the applicant in the case of the refusal of the application.

Beside the above-mentioned fees, the person obtaining the accreditation shall pay an annual accreditation fee of KHR 40,000,000.00 (Forty million Riels) from the date of granting of the accreditation. For the following years, this annual accreditation fee should be paid not later than 30 (Thirty) days before the day and month of receiving the accreditation.

Chapter 4

Obligations of a Cash Settlement Agent

Article 11: Starting the business operations

After receiving the accreditation, the Cash Settlement Agent shall offer cash settlement operations within a duration of 03 (three) months of the issue date of the accreditation or other appropriate period permitted by the Director General of the SECC.

Article 12: General obligations of a Cash Settlement Agent

The Accredited Cash Settlement Agent shall:

1. Manage its clients' cash settlement account for securities trading, and conduct the cash transfer to other parties for the securities trading transactions in proper way and on time basis;
2. Make sure that the cash settlement operations are safe and efficient;
3. Conduct its cash settlement operations separately from its traditional banking operations;
4. Control and manage all risks related to its business and any of its operations prudently;
5. Meet all requirements including human resources, financial resources and technology in order to ensure that the cash settlement operations are safe and efficient;
6. Comply with the rules and procedures related to the operations of a clearance and settlement facility and other related rules;
7. Encourage the use of its services to ensure the safe and efficient operations;
8. Comply with the reporting obligation and any other information, and accomplish other obligations in the proper way, as prescribed by Law, Anukret, this Prakas and other relevant regulations;

Article 13: Management of Settlement Accounts

The Cash Settlement Agent shall ensure that its clients deposit their own money in accounts separate from their clients' monies for the cash settlement operations.

Article 14: Cash Settlement Services fees

The amount of the cash settlement services fees determined by the Cash Settlement Agent shall be approved by the SECC as prescribed by the Law, Anukret, this Prakas and other relevant regulations.

Article 15: Applying for an approval

The Cash settlement Agent shall apply for an approval from the Director General of the SECC in the following cases:

1. Increase or decrease in the types of its cash settlement services which possibly interrupt the cash settlement operations;
2. Changes in the cash settlement services fees;
3. Any changes in its technology systems and other mechanisms which possibly interrupt the efficiency and security of the cash settlement operations;

4. Temporary suspension or termination of its cash settlement services for any of its clients;
5. Investment in other business which possibly interrupt the cash settlement operations;

Article 16: Notification

The Cash settlement Agent shall immediately notify and report to the SECC in the following cases:

1. System deficiencies or interruption to the cash settlement operations;
2. Any doubt about any of its clients involved in money-laundering and in other violation;
3. Any of its clients are in default settlement;
4. Other related to the cash settlement operations if the Director General of the SECC may think fit.

Article 17: Monthly and Quarterly reports

The Cash settlement Agent shall provide the SECC with a monthly report within 05 (Five) working days at the end of each month and a quarterly report within 10 (Ten) working days after the end of each quarter by indicating the following information:

1. The number of cash settlement operations;
2. The number of the cash settlement failures and all settlement defaults with a detailed explanation and by stating the relevant securities companies' name and investors' name;
3. The clients' cash standing;
4. Any further information proposed by the Director General of the SECC.

Article 18: Annual report

Within 03 (three) months after the end of the fiscal year or after a period permitted by the Director General of the SECC, the Cash settlement Agent shall provide the SECC with a report of its activities for the preceding fiscal year, including an audited financial statement and a detailed reports of cash settlement activities for the year, including:

1. Any amendments of operational procedures related to an offer of any cash settlement services;
2. Changes in the membership of the board of directors;
3. Changes of relevant senior staff;
4. Any termination of cash settlement services for any of its clients or instances of re-offering services to those clients;

5. Non-compliance with the operational procedures committed by any of its clients, and any actions taken against those clients;
6. Any problems causing the default of the cash settlement services;
7. Actions taken to overcome adverse circumstances or other risks affecting the cash settlement operations;
8. Other information if the Director General of the SECC may think fit.

Article 19: Reporting in case of defaults

Where the cash settlement clients are in default, the Cash Settlement Agent shall immediately notify the Operator of a Clearance and Settlement Facility by indicating the identity of the client and the unsettled amount after those defaults occurred.

Article 20: Termination of cash settlement services for any of its clients

After receiving an approval from the Director General of the SECC, as prescribed in the article 15 of this Prakas, in case the Cash Settlement Agent has suspended or terminated its cash settlement services to any of its clients, the Cash Settlement Agent shall notify the Operator of a Clearance and Settlement Facility in writing.

Article 21: Amendment of the articles of incorporation and appointment or remove of relevant senior staffs

The Cash Settlement Agent shall notify in writing the SECC the amendment of the articles of incorporation and the appointment or remove of relevant senior staffs, not later than 07 (seven) working days after the date of decision-making.

Article 22: Confidentiality

All directors and employees of the Cash Settlement Agent shall have obligations of professional confidentiality in their functions, but not including the following cases:

1. Permitted by the Law;
2. By the court order;
3. Requested by the Director General of the SECC to perform the functions.

Article 23: Conflict of interests

All directors of the Cash Settlement Agent shall fully disclose to the Board of directors in writing their commercial, financial, agricultural, industrial or other interests that may have direct or indirect bearing on any matter related to the cash settlement operations which becomes a subject for the Board's decision, prior to the commencement of the meeting to discuss the matter.

Any such directors, as mentioned in the first paragraph, shall excuse themselves from attending the Board meeting during any discussion or voting decision.

Article 24: Prohibition

Neither the directors, nor any employees of the Cash Settlement Agent, nor their spouse, nor their children, third rank of relatives shall accept any gifts from persons with whom they may have business or financial connection which would result in them being partial in the performance of their duties in the cash settlement operations.

Article 25: Inspection by the SECC

A Cash Settlement Agent may be subject to inspection without notice by the SECC on the situation and efficiency of its cash settlement operations.

A Cash Settlement Agent shall cooperate with the inspection official of the SECC for the smooth functions.

CHAPTER 5 PENALTIES

Article 26: Administrative Sanctions

The Director General of the SECC can direct the person holding the accreditation, impose further conditions or restrictions on the accreditation, or suspend or revoke the accreditation in the following cases:

1. Obtaining the accreditation by falsity or in any other fraudulent ways;
2. Violating a condition of the accreditation;
3. Failing to accomplish the obligations or satisfy the obligation directed by this Prakas;
4. Failing to comply with the direction issued by the Director General of the SECC;
5. Continuing its cash settlement operations while being suspended;
6. Suspending its cash settlement operations without the approval from the Director General of the SECC;
7. Failing to satisfy a judgment debt in whole or in part;
8. Being in a weak technical and/or financial situation or subject to dissolution by the court;
9. Contravening the provision of the Law, the Anukret, this Prakas or any relevant regulations.

Article 27: Transitional fine

Yet including other penalties stipulated in effective laws and regulations in the Securities sector and effective laws and regulations in the Kingdom of Cambodia any person who contravenes any provision of this Prakas shall be liable to the SECC's transitional fine from KHR 50,000,000.00 (Fifty million Riels) to KHR 100,000,000.00 (One hundred million Riels). Otherwise, for the late payment of accreditation annual fee as prescribed in Article 10 of this Prakas the concerned Cash Settlement Agent shall be liable to the SECC's transitional fine of KHR 1 million (One million Riels) per day.

CHAPTER 6

FINAL PROVISIONS

Article 28: Other guidelines

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 29: Reverse provisions

All provisions contrary to this Prakas are hereby abrogated.

Article 30: Implementation

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

Phnom Penh, 28 June, 2010
(Signed and Sealed)

KEAT CHHON

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- Royal Gazette
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