PRAKAS
ON
GOVERNANCE IN BANK AND FINANCIAL INSTITUTIONS
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CHAPTER 1
GENERAL REGULATIONS

Article 1

The purpose of this Prakas is to strengthen governance of Banks and Financial Institutions, hereafter called “Institutions” by organizing different levels of management such as an independent and active board, an Executive board, and specialized committees with the qualifications, capacity and integrity for effectively managing the institutions.

Article 2

For the purposes of implementing this regulation the following definitions shall apply.

“Decision-making body” or “Board”: the collegiate body that is responsible for supervising the management and situation of the financial institution on behalf of the shareholders, i.e., the board of directors of public limited companies governed by the Law on Commercial Enterprises or the equivalent supervisory board of firms having a different legal form.

“Executive body”: the persons who are responsible for the effective management of the financial institution, referred to in Article 6 of the Prakas B7-00-04 on the Licensing of Banks, Article 5h of the Prakas B7-00-05 on the Licensing of Rural Credit Specialized Banks or Article 5h of the Prakas B7-00-06 on the Licensing of microfinance Institutions.

“Audit committee”: a specialized committee that may be set up by the decision-making body. The decision-making body shall determine its membership, tasks, operating procedures and the conditions in which the statutory auditors and any other person belonging to the institution shall be involved in its work.

“Risk committee”: a specialized committee that may be set up by the decision-making body. The decision-making body shall determine its membership, tasks and operating procedures.

“Remuneration and nomination committee”: a specialized committee that may be set up by the decision-making body. The decision-making body shall determine its membership, tasks and operating procedures.

“Senior management”: a group of key executives overseeing day-to-day management of the institution.
CHAPTER 2
QUALIFIED, ACTIVE AND INDEPENDENT BOARD

Article 3

Board members should be qualified. This means that they shall:

- Undergo the fit and proper testing process at the NBC which is part of the licensing processes;
- Understand their role, including the institution's risk profile;
- Be trained if necessary so as to maintain a collective expertise;
- Understand their duties to shareholders, to the institution, and to stakeholders;
- Understand the overall regulatory environment in order to be knowledgeable of regulatory issues that could arise;
- Follow up on current market conditions and be knowledgeable of the competitive environment of the institution's business.
- Have time and energy to be able to act efficiently.

Article 4

Board members should be active. They should at least:

- Approve the institution's strategy, the risk policy and management procedures;
- Structure themselves in a way to make discussions efficient;
- Select, monitor, replace key executives;
- Question senior management;
- Design a reporting system that enables them to perform their duties in a timely and knowledgeable manner;
- Meet regularly with senior management and internal audit;
- Regularly assess their practices;
- Periodically assess the institution's policies in light of performance and potential issues and problems that can be identified;
- Exercise forward-looking judgment in order to identify potential issues and problems facing the institution and ensure that adequate corrective actions be taken promptly where required.

A board member shall attend meetings at least two times in one year. A board member shall be dismissed when he/she does not attend three consecutive board meetings without an appropriate reason.

It is the Board's responsibility to immediately inform the National Bank of Cambodia of any foreseen or of any existing changes in ownership and/or in voting rights held in the banking institution. This reporting responsibility not only concerns any change leading to reach a 5% or a 20% threshold in capital holdings or in voting rights held but also any change that would have a direct or indirect impact in terms of effective control of the banking institution, either through percentage of shares held or voting rights detained. This reporting responsibility applies to the Board without any prejudice to other regulatory requirements related to new or transferred shares and/or voting rights.
Article 5
Board members should exercise sound judgment. They should:
- Avoid conflicts of interest;
- Decline from participating in decision-making when in such conflict;
- Promote the institution’s safety and soundness.

Article 6
1. For commercial banks, except foreign bank branches, the board shall include at least two independent members. Independent members are defined as being capable of exercising judgment independent of the views of management, political interests or inappropriate outside interests.
2. For specialized banks and Microfinance Institutions, the body acting as a board of directors shall at least be composed of 3 board members, among whom 1 should be independent under the definition provided in Article 6.1. Should such institutions have a board of directors composed of more than 3 members, they shall ensure that, a minimum, one third of its members are independent.
3. Foreign bank branches are required to adopt good governance policies and procedures aimed at complying with the principles set forth in this Prakas. The strength of local governance of a foreign bank branch shall be commensurate with the level of management autonomy granted by foreign headquarters to local executives.

Article 7
Institutions shall establish an Audit Committee and Risk Committee and may establish a Specialized Committee as needed or as required by NBC.

Article 8
The Audit Committee of Institutions shall be chaired by an independent board member. It shall include at least an independent person with expertise in finance and accounting, and an independent person with expertise in legal issues and banking.

As a minimum, the Audit Committee shall be responsible for:
- ensuring that the information provided to the public and to NBC is clear, accurate and reliable;
- assessing the relevance of the accounting methods used to prepare the individual and consolidated accounts, if any;
- assessing the quality of internal control procedures, in particular whether the systems for measuring, monitoring and controlling risks are consistent, and recommending further action where appropriate.

Article 9
The Risk Committee of Institutions shall be chaired by a person with expertise in finance and risk management. That person shall be independent from day-to-day operations.

As a minimum, the Risk Committee shall be responsible for monitoring the implementation of risk management policies, as defined by the board.
Article 10

If an Institution has a Remuneration and Nomination Committee, the committee shall be chaired by an independent board member. It shall include at least one independent person with expertise in legal issues and banking.

As a minimum, the Remuneration and Nomination Committee shall be responsible for:

- ensuring that the remuneration policy is consistent with the long-term objectives and corporate values of the institution;
- recommending procedures to select and replace board members;
- recommending independent persons who will become committee members as referred to in this Prakas;
- approving the nomination of senior management.

CHAPTER 3

STRATEGIC OBJECTIVES AND CORPORATE VALUES

Article 11

The board should define corporate values and make sure they are spread, understood and adhered to within the organization. These corporate values must take into account the interests of shareholders and depositors.

Article 12

The board should make sure that policies and procedures are established in writing and fully complied with, especially with regard to the following:

- Conflicts of interest;
- Lending to officers and employees;
- Transactions with related parties and affiliates.

Article 13

Potential conflicts of interest deserve special attention from the board.

- Special attention is required where the institution is part of a group;
- Conflicts should be prevented, managed and disclosed;
- Information barriers should be set to avoid conflicts of interest;
- Information about clients should be clear and fair about conflicts of interest;
- Supervisors should be closely informed of potential conflicts of interest.

CHAPTER 4

CLEAR LINES OF RESPONSIBILITY

Article 14

The board should define its own responsibilities and those of senior management consistently with applicable laws and regulations.
Senior management should establish clear rules to delegate its duties to the staff. Senior management should also establish clear reporting requirements aimed at supporting an effective surveillance of compliance with the established rules discussed above.

Senior management which is part of the Executive Body, as defined in article 2 of this Prakas, shall undergo a fit and proper testing process at NBC prior to taking on their executive responsibilities within the institution.

Article 15

In banking groups, senior management should design the management structure at the group level and also at the level of each company that is part of the corporate group structure. The board of any subsidiary must fully retain its own governance responsibilities. Similarly, out sourcing of key functions does not eliminate the institution’s responsibilities in overseeing activities and managing risks.

Article 16

The board should ensure that there is appropriate oversight by senior management consistent with board policy. The senior management should have the necessary skills.

Senior management shall be accountable for its decisions and actions towards the Board. Senior management should fully adhere to policies established by the board and should, on a regular basis, report to the board on the institution’s risk-profile, performance, issues, major litigation and actual or potential regulatory issue(s).

CHAPTER 5

PROMOTION OF QUALITY AND EFFICIENCY OF AUDIT

Article 17

The board and senior management should effectively use the work of auditors and internal control functions.

- Management should communicate acknowledgement of internal and external auditors’ work importance throughout the institution;
- Findings of internal audits should result in effective corrective action where and when required;
- Timely implementation of required and effective corrective actions shall be considered in light of the findings’ gravity and of the risk for further deterioration of the overall institution’s risk profile and regulatory compliance condition.

CHAPTER 6

COMPENSATION POLICIES

Article 18

The board and, where relevant, the Remuneration and Nomination Committee, should ensure that compensation policies and practices are consistent with the institution’s corporate culture, long-term objectives and strategy, and control environment.
The board should determine or approve compensation of board members and senior management.

Remuneration of non-executive directors should be proportionate to their involvement but not related to the short-term performance of the institution.

Incentives for board members and senior managers should aim at enhancing long-term corporate value.

CHAPTER 7
TRANSPARENCY

Article 19

Financial institutions should be governed in a transparent manner. Disclosure to the public should be proportionate to the financial institution’s size, activity, complexity and risk profile. Disclosure should include at least the following:

- Board structure and management structure of the institution,
- Basic ownership structure,
- Where applicable, corporate group structure and corresponding ownership shares held,
- Organization,
- Incentives,
- Code of conduct or ethical code,
- Policies as regards conflicts of interest,
- Lending policies and limits applying to related parties and affiliates.

CHAPTER 8
UNDERSTANDING OF INSTITUTION’S STRUCTURE

Article 20

The board and senior management:

- should understand the institution’s operational structure, including where the institution operates in jurisdictions or through structures that impede transparency;
- should ensure that senior management follows clear policies as regards operating through non-transparent structures or jurisdictions;
- appropriate policies should be in place for the approval and review of complex financial structures, instruments or products;
- should make sure that internal audit does not leave these structures or activities out of their regular reviews;
- should ensure that outsourced key activities remain under sufficient control and that the corresponding risks are adequately identified and monitored.
CHAPTER 9
TRANSITIONAL PROVISIONS

Article 21

1- Starting from the publication of the present regulation, commercial banks and specialized banks, except foreign bank branches, shall fully comply with all provisions and requirements established on governance and, more specifically, with the ones set forth in article 6 of this Prakas no later than:

- 12 months for institutions with a total headcount of higher than 300 or total assets higher than KHR 400 thousand million, at publication,
- 18 months for institutions with a total headcount of more than 150 but less than 300 or total assets from KHR 200 thousand million to KHR 400 thousand million at publication, and
- 24 months for institutions with a total headcount below 150 or total assets below KHR 200 thousand million at publication.

2- Within 9 months from publication of the present regulation, banking and financial institutions shall provide NBC with an action plan detailing the steps taken to be taken in order to fully comply with the requirements set forth. This action plan shall notably discuss:

- the profiles the bank is looking for to fill the positions with respect to its targeted organizational structure,
- a clear description of responsibilities for both independent and other board members, and
- intended responsibilities of independent board members especially with regard to the committees to be established.

3- Action plan and targeted organization and responsibilities discussed above shall be clearly discussed and reported in a timely fashion to NBC.

Article 22

Foreign bank branches shall report in writing within 9 months from the publication of the present regulation to NBC on their governance policies and procedures. They shall discuss:

- the decision-making autonomy granted by their headquarters
- the policies and procedures established on governance and control matters by the headquarters they have to comply with
- detail the reporting lines of branch executives to the board members and their responsibilities within the institution such as established in the headquarters
- discuss the delegations granted by the head office to local executive managers
• discuss the established internal control policies and procedures local risk management processes and authorities required from head office to engage the institution through transactions performed by the branch.

Underlying documentation above shall be addressed to NBC, through copies and with the report.

NBC might require a periodic update of such reporting in order to update its assessment of the strengths and weaknesses of foreign bank branches’ governance and controls.

**Article 23**

For microfinance institutions, compliance should be achieved no later than 24 months from publication of this regulation. Institutions shall provide NBC with an action plan detailing the steps taken/to be taken in order to fully comply with the requirements set forth. This action plan shall notably discuss:

• the profiles the bank is looking for to fill the positions with respect to its targeted organizational structure,

• a clear description of responsibilities for both, independent and other board members and

• intended responsibilities of independent board members especially with regards to the committees to be established.

Where necessary, an action plan should be sent to NBC within 9 months of publication.

**CHAPTER 10**

**FINAL PROVISIONS**

**Article 24**

The General Directorate, the General Secretariat, the General Inspection, the General Cashier and all Departments of the National Bank of Cambodia, and all financial institutions under NBC’s supervisory authority shall strictly implement this Prakas.

**Article 25**

This Prakas shall have effect from the signing date.

Phnom Penh, 25 November 2008

The Governor

Signed and sealed: Chea Chanto