

KINGDOM OF CAMBODIA
NATION RELIGION KING



**SECURITIES AND EXCHANGE
COMMISSION OF CAMBODIA
No.003/12 SECC/BR.K**

PRAKAS
ON
REQUIREMENTS OF FINANCIAL SOUNDNESS OF SECURITIES FIRMS

Deputy Prime Minister
Minister of Economy and Finance
And the 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 dated 25th September 2008 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Having seen the Preah Reach Kram No. 02/NS/94 dated 20th July 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Preah Reach Kram No. NS/RKM/0196/18 dated 24th January 1996 promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having seen the Preah Reach Kram No. NS/RKM/0702/011 dated 8th July 2002 promulgating the Law on Corporate Accounts, Their Audit and Accounting Profession;
- Having seen the Preah Reach Kram No. NS/RKM/0107/001 dated 10th January 2007 promulgating the Law on Government Securities;
- Having seen the Preah Reach Kram No. NS/RKM/1007/028 dated 19th October 2007 promulgating the Law on the Issuance and Trading of Non-Government Securities;

- Having seen the Anukret No. 97 ANKR/BK on 23rd July 2008 on the Conduct and Organization of the Securities and Exchange Commission of Cambodia.
- Having seen the Anukret No. 54 ANKR/BK dated 8th April 2009 on the Implementation of the Law on the Issuance and Trading of Non-Government Securities;
- Having seen the Prakas No. 009 SECC dated 10th November 2009 on Licensing of Securities Firms and Securities Representation.
- Upon the approval by the Securities and Exchange Commission of Cambodia in plenary meeting on 22nd May 2012.

HEREBY DECIDES

CHAPTER 1

GENERAL PROVISION

Article 1.- Purpose

The purpose of this Prakas is to prescribe provisions for supervising financial soundness of securities firms carrying out business as securities underwriter, securities dealer and securities broker in accordance with the Law on the Issuance and Trading of Non-government Securities and the Sub-decree on the Implementation of the Law on the Issuance and Trading of Non-government Securities.

Article 2.- Definitions

Technical terms used in this Prakas are defined in this article and available in the glossaries of the annexes of the Law on the Issuance and Trading of Non-Government Securities and the Sub-decree on the Implementation of the Law on the Issuance and Trading of Non-government Securities:

“Prescribed Level of Net Capital” refers to the minimum level of Net Capital, which the securities firm shall maintain at all times, as defined in Article 17 of this Prakas.

“Management Improvement Requirement” refers to the requirement to securities firm to improve its management when the Net Capital Ratio of that firm falls below 120% as stipulated in Article 23 of this Prakas.

“Management Improvement Order” refers to the order to securities firm to improve its management when the Net Capital Ratio of that firm falls below 100% as stipulated in Article 24 of this Prakas;

“Law” refers to the Law on the Issuance and Trading of Non-Government Securities;

“Prakas on Licensing of Securities Firm” refers to Prakas on Licensing of Securities Firms and Securities Representatives.

“Shareholders’ Equity” refers to the residual interest in the assets after deducting all liabilities from the total asset of the securities firm, in accordance with Cambodian International Financial Reporting Standards (CIFRS);

“Cross Default” refers to provisions in loan agreement which protects the interests of creditors in which a borrower with multiple debt obligations defaults on one of the debts, triggering an automatic default on all other debts.

“Negative Pledge” refers to provisions in loan agreement which prohibits the borrower from taking on additional debt without consent from the original lender.

“Sub-decree” refers to the Sub-decree on the Implementation of the Law on the Issuance and Trading of Non-government Securities.

“Net Capital Ratio” refers to the ratio of Net Capital to Prescribed Level of Net Capital.

“Management Improvement Recommendation” refers to recommendation to securities firm to improve the management when Net Capital Ratio of securities firm falls below 150% as stipulated in Article 22 of this Prakas.

“Non-Trading Receivable” refers to payments due from clients other than trading receivable.

“Trading Receivable” refers to payments due from clients for the purchase order including brokerage fees.

CHAPTER 2

REQUIREMENT OF SHAREHOLDERS’ EQUITY

Article 3.-Financial Reporting Standard

The securities firm shall prepare financial statements in compliance with Law on Corporate Accounts, Their Audit and the Accounting Profession and relevant regulations and shall calculate the Net Capital in accordance with this Prakas.

Article 4.- Obligation to Maintain Shareholders’ Equity

The securities firm shall maintain its shareholders’ equity at all times not less than minimum capital requirement as stipulated in Prakas on Licensing of Securities Firm, in respect of each type of securities business as follows:

1. KHR40,000,000,000 (forty billion) for the securities firm carrying out business as a securities underwriter;
2. KHR25,000,000,000 (twenty-five billion) for the securities firm carrying out business as a securities dealer;
3. KHR6,000,000,000 (six billion) for the securities firm carrying out business as securities broker;

In case the securities firm licensed to carry out more than one of these categories of securities business, the securities firm shall fulfill the greatest minimum capital requirement in paragraph (1) of this Article for the securities business as determined in each license condition.

Article 5.- Obligation to Lodge a Securities Bond and/or Securities Instrument

The securities firm shall maintain at all time a securities bond and/or securities instrument as stipulated in Prakas on Licensing of Securities Firm, in respect of each type of securities business as follow:

- at least KHR4,000,000,000 (four billion) for the securities firm carrying out business as a securities underwriter.
- at least KHR2,500,000,000 (two thousand and five hundred million) for the securities firm carrying out business as securities dealer.
- at least KHR1,000,000,000 (one billion) for the securities firm carrying out business as securities broker.

In case the securities firm licensed to carry out more than one of these categories of securities business, the securities firm shall fulfill the greatest requirement in paragraph (1) of this Article for the securities business as determined in each license condition.

Article 6.- Usage of Securities Bond and/or Securities Instruments

The securities firm shall not use the lodged securities bond and/or securities instrument under Article 5 of this Prakas as a guarantee to support other financing of the business unless withdrawal to be used in the events as stipulated in Prakas on Licensing of Securities Firm and with approval from the SECC.

Article 7.- Obligation to Notify

The securities firm shall notify immediately the Director General of SECC if it fails to comply with or become aware that it will fail to comply with Articles 4, 5 or 6 of this Prakas.

CHAPTER 3

NET CAPITAL REQUIREMENT

Article 8.- Obligation to Maintain Net Capital

To ensure that the securities firm is capable of meeting its financial obligation, the securities firm shall calculate net capital in accordance with Article 9 of this Prakas and maintain its net capital at all times not less than prescribed level of net capital and net capital ratio in accordance with Article 17 of this Prakas.

The securities firm shall not enter into any transaction which would mean that the firm cannot continually meet the requirement in paragraph (1) of this Article.

The securities firm shall notify immediately the Director General of **SECC** if it fails to comply with or become aware that it will fail to comply with paragraph (1) of this Article.

Article 9.- Net Capital Calculation

Net capital shall be calculated as follow:

Net Capital = Current Assets – Total External Liabilities.

Article 10.- Current Assets

Current Assets in accordance with this Prakas include:

- 1- Cash and all assets as per CIFRS definitions that can be converted to cash within two weeks.
- 2- The lodged securities bond and/or securities instrument as stipulated in Prakas on Licensing of Securities Firm.
- 3- Securities held by the securities firm which meet requirements and be valued in accordance with Article 11 of this Prakas.
- 4- Any other assets as determined by the SECC.

The assets that are not included in current assets pursuant to this Prakas are:

- 1- Any loan or receivables which is made to shareholders, securities representatives, investment advisory representatives, senior staff,

employees and their specially related person and related person of securities firm.

- 2- All intangible assets.
- 3- Proportion of any debt owed by a client, which is more than 10% of current assets.
- 4- Any trading receivable over 5 (five) trading days, except where there is an approval from the Director General of **SECC**.
- 5- Non-trading receivables exceeding 3 (three) months.
- 6- Any other assets determined by **SECC**.

Article 11.- Inclusion of Securities into Current Assets

A securities firm may include its held securities into current assets if those securities:

1-are traded successfully within the last 5 (five) trading days in the permitted securities market in the Kingdom of Cambodia.

2-are valued at current market price.

Equity securities held by a securities firm prescribed in paragraph (1) of this Article shall be valued as follows:

1-Equity securities of listed companies in permitted securities market of Cambodia shall not valued over 70 (seventy) percent of the market price of that securities.

2-Equity securities that are listed or to be listed on permitted securities market in the Kingdom of Cambodia which the company has subscribed and/or underwritten and/or sub-underwritten shall not be valued over 70 (seventy) percent of the lesser value between their subscription price and their market price.

Debt securities held by a securities firm prescribed in paragraph (1) of this Article shall be valued as follows:

1-Government bond shall not valued over 90 (ninety) percent of market price.

2-Investment grade bonds and bonds guaranteed by the Royal Government of Cambodia shall not valued over 70 (seventy) percent of their market price.

3-Other issued corporate bonds in the Kingdom of Cambodia shall not valued over 40 (forty) percent of their market price.

4-Debty securities that have been listed or to be listed on permitted securities market in the Kingdom of Cambodia which the company has subscribed and/or underwritten and/or sub-underwritten shall not be valued

over 70 (seventy) percent of the lesser value between their subscription price and their market price.

Article 12.- Reduction of Current Assets

For the purposes of calculating net capital, a securities firm shall reduce the following items from current assets:

1-Provisions for bad debt. A securities firm shall submit to **SECC** their internal policy on debt management and the estimation of provisions for bad debt. The Director General of SECC may review the policy on bad debt management and require the company to increase the level of provisions for bad debt.

2-Other items determined by the Director General of **SECC**.

Article 13.- Off Record Transactions

Securities firm shall disclose to **SECC** all off record transactions in the accounting book. The Director General of **SECC** may, at its sole discretion, determines the appropriate reduction level of the current assets in the calculation of net capital for off record transactions.

Article 14.- Discretion to Adjust Risk Factors

The Director General of **SECC** may, at its discretion, adjust any risk factors stipulated in Article 11 and Article 12 of this Prakas after assessing individual cases.

Article 15.- Total External Liabilities

Total External Liabilities accordance with this Prakas includes:

- 1- All liabilities as per Cambodia International Financial Reporting Standard;
- 2- All contingent liabilities that exists even though those liabilities are not showed in the financial statements of the securities firm;
- 3- Other items determined by the Director General of **SECC**.

Some items excluded from Total External Liabilities include:

- 1- Approved subordinated loans;
- 2- Debit and credit balances for which a legal right of set-off exists may be treated as a net balance in calculating a net capital.
- 3- Other items determined by the **SECC**.

Article 16.- Approved Subordinated Loan

Securities firm may exclude an amount owing under a subordinated loan agreement from Total External Liabilities if it has fulfilled the following conditions:

- 1- the subordinated loan has not less than 2 years to maturity at the time the loan is first drawn down;
- 2- the aggregate amount of the subordinated loan shall not be more than 50 (fifty) percent of the shareholders' equity;
- 3- the subordinated loan agreement shall be in the form that includes the following conditions:
 - a) the creditor of subordinated loan shall not claim or receive from the securities firm any subordinated loan repayment by cash payment or set-off or in any other manner until maturity or until all senior debts have been paid unless that firm obtains a prior written approval from the Director General of **SECC**;
 - b) any claim to repayment by the creditor of subordinated loan shall be subordinated to the claim to repayment by all other creditors;
 - c) any right to receive principal and interest during the term of the loan shall be subordinated to all other creditors;
 - d) the obligation to repay the loan and pay interest of subordinated loan shall be suspended if the net capital of securities firm falls below the prescribed level of net capital;
 - e) in the event of liquidation or reorganization of securities firm, the other creditors shall be first entitled to receive payment in full before the creditor of subordinated loan receives any payment of subordinated loan;
 - f) the subordinated loan agreement shall not contain any terms which would enable the creditor of subordinated loan to claim the repayment before maturity or accelerate the repayment;
 - g) the subordinated loan agreement shall not contain any cross-default or negative pledge;
 - h) repayment of subordinated loan in whole or in part shall be made only with the prior written approval from the Director General of **SECC**.

SECC may determine other form of subordinated loan agreement.

CHAPTER 4

PRESCRIBED LEVEL OF NET CAPITAL

Article 17.- Prescribed Level of Net Capital and Net Capital Ratio

The prescribed level of net capital of securities firm is the highest between point 1 and point 2 as below:

1. 5 (five) percent of shareholders' equity.
2. the sum of:
 - a. 10 (ten) percent of total external liabilities and
 - b. 10 (ten) percent of underwriting commitment and/or sub-underwriting commitment and/or subscription commitments from the investors who are the clients of firm.

Securities firm shall maintain its net capital ratio not less than 150 (one hundred fifty) percent.

Article 18.- Obligation to Prepare Daily Net Capital Report

Securities firm shall calculate net capital and prescribed level of net capital on a daily basis and send to **SECC** on a daily basis the daily net capital report via an email determined by **SECC**.

Article 19.- Discretion to Adjust the Prescribed Level of Net capital

SECC may in its complete discretion adjust the prescribed level of net capital and require the securities firm to increase net capital by considering the following factors:

- 1- Illiquid assets;
- 2- Risk profiles;
- 3- Other risks.

CHAPTER 5

OBLIGATION TO REPORT NET CAPITAL

Article 20.- Monthly Reports

Securities firm shall calculate net capital and prescribed level of net capital and submit to the Director General of **SECC** the monthly reports no later than the 10th of the following month as follow:

- 1- Trial Balance in summary.
- 2- Liquidity statement.

Article 21.- Discretion to Require to Calculate and to Report Net Capital

The Director General of **SECC** may require the securities firm to calculate and report net capital and prescribed level of net capital at any time as deemed necessary.

CHAPTER 6

PROMPT CORRECTIVE ACTION

Article 22.- Management Improvement Recommendation

In case where net capital of securities firm falls below 150 (one hundred fifty) percent of prescribed level of net capital, the Director General of **SECC** shall recommend such the securities firm to take prompt corrective actions.

Prompt corrective actions stipulated under paragraph (1) of this Article refers to the following measures in part or in whole:

- 1- Improvement of manpower and organization management;
- 2- Curtailment of expenditures;
- 3- Restriction on any act that causes a decrease in net capital;
- 4- Other necessary measures determined by the Director General of **SECC**.

Article 23.- Management Improvement Requirement

In case where the net capital of securities firm falls below 120 (one hundred twenty) percent of prescribed level of net capital, the Director General of **SECC** shall require that securities firm to take a prompt corrective action.

The prompt corrective actions stipulated under paragraph (1) refer to those in the following, in part or in whole:

- 1- Restrictions on holding highly risky assets and disposition of assets;
- 2- Closure and consolidation of business offices, or restriction on opening thereof;
- 3- Demand for the replacement of officers;
- 4- Measures stipulated under paragraph (2) of Article 22 of this Prakas;
- 5- Other necessary measures determined by the Director General of **SECC**.

Article 24.- Management Improvement Order

In case where the net capital of securities firm falls below 100 (one hundred) percent of prescribed level of net capital, the Director General of **SECC** shall order that securities firm to take a prompt corrective action.

The prompt corrective actions stipulated under paragraph (1) refer to those in the following, in part or in whole:

- 1- Immediately cease or reduce any trading activities or financing;

- 2- transfer all or part of customer's securities, collateral, assets and accounts to one or more other securities firms;
- 3- operate its business in respect of the conditions determined by the Director General of **SECC**;
- 4- Suspend the management of business operation by a manager and appoint an administrator;
- 5- Measures as stipulated under paragraph (2) of Article 23 of this Prakas;
- 6- Other necessary measures determined by the Director General of **SECC**.

Article 25.- Provision of Reason

The Director General of **SECC** shall provide the securities firm under a prompt corrective action with the ground and reason of taking the measures set forth in Article 22, Article 23 and Article 24 of this Prakas.

Article 26.- Temporary Exemption of Prompt Corrective Actions

Although a securities firm falls under the circumstances as stipulated in paragraph (1) of Article 22, paragraph (1) of Article 23 or paragraph (1) of Article 24, Director General of SECC may exempt temporarily the prompt corrective action for a specified period of time if such securities firm is judged not to fall under such circumstance for prompt corrective action through the increase of its capital or sale of its assets and so on.

Article 27.- Submission and Evaluation of Management Improvement Plan

Any securities firm which has received management improvement recommendation, requirement or order pursuant to Article 22, Article 23 and Article 24 shall file a management improvement plan with the contents that reflect such management improvement recommendation, requirement or order and submit it to the Director General of **SECC** for approval within 1 (one) month from the date of receiving such management improvement recommendation, requirement or order or other period specified by Director General of **SECC**.

The Director General of **SECC** shall decide over the management improvement plan submitted by the securities firm receiving management improvement recommendation, requirement or order pursuant to Article 22, Article 23 or Article 24 of this Prakas within no later than one (1) month from the date of receiving such management improvement plan.

In case the management improvement plan is not proper in accordance with management improvement recommendation, requirement or order, the

Director General of **SECC** may require or order that securities firm take prompt corrective action as stipulated in Article 23 or Article 24 of this Prakas. The securities firm shall resubmit the management improvement plan to the Director General of **SECC** within a period time specified by the Director General of **SECC**. In case the securities firm still cannot fulfil the requirements or orders, Director General of **SECC** may impose administrative sanction as stipulated in Article 35 of this Prakas.

Article 28.- Implementation Period of Management Improvement Plan

The implementing period of the management improvement plan shall be as follows:

- 1- Within 6 (six) months from the approval date of such plan for management improvement recommendation;
- 2- Within 1 (one) year from the approval date of such plan for management improvement requirement;
- 3- the implementing period of management improvement plan for management improvement order shall be determined by the Director General of **SECC**.

In case a securities firm receiving management improvement recommendation pursuant to Article 22 of this Prakas receives management improvement requirement and during the implementing period of the management improvement plan, that securities firm receives an additional management improvement requirement, the implementing period of management improvement plan shall not exceed one (1) year from the approval date of the management improvement plan for recommendation.

Article 29.- Request for Modifying Contents of Management Improvement Plan

In case the management improvement plan cannot be achieved as expected or it deems that it is difficult to implement such plan due to the changes in business environment, the securities firm may request in writing to the Director General of **SECC** for modifying the contents of management improvement plan with the attachment of new management improvement plan.

The Director General of **SECC** shall notify the approval of the request for modifying the contents of management improvement plan after evaluation of individual case. Provisions stipulated in paragraphs (3) of Article 27 of this Prakas shall also apply to the case where the securities firm receiving an approval for the request for modifying the contents of management improvement plan pursuant to

paragraph (1) of this Article.

Article 30.- Result Report of the Implementation of Management Improvement Plan

A securities firm receiving the approval for the management improvement plan pursuant to Article 27 of this Prakas shall submit to the Director General of **SECC** the quarterly result of the implementation of management improvement plan within 15 (fifteen) days or within a period of time specified by the Director General of **SECC** after the end of each quarter.

A securities firm which has implemented the management improvement plan shall submit to the Director General of **SECC** the result of the implementation of management improvement plan within 15 (fifteen) days or within a period of time specified by Director General of SECC after the end of plan implementation period as stipulated in Article 28 of this Prakas.

Article 31.- Decision on the Termination of Prompt Corrective Actions

During the implementation of management improvement plan, in case the securities firm receiving management improvement recommendation, requirement or order has maintained its net capital ratio above 150% of Prescribed Level of Net capital, the Director General of **SECC** may decide to terminate prompt corrective actions.

Article 32.- Measures against Non-Fulfillment of Management Improvement Plan

In case a securities firm, receiving a management improvement recommendation, requirement or order, fails or cannot implement the material parts of the management improvement plan, the Director General of **SECC** may take actions as stipulated in paragraph (2) of Article 24 of this Prakas or impose administrative sanctions as prescribed in Article 35 of this Prakas.

CHAPTER 7

PENALTIES

Article 33.- Sanction Report Submission

In case a securities firm does not comply with requirements as stipulated in Article 20 and Article 30 of this Prakas, that firm shall be subject to a transactional fine of KHR1,000,000 (one million) per day in regard to late report submission.

Article 34.- Sanction for Contravention of any Provision of this Prakas

Without considering other sanctions defined in the Law and other regulations in force in the Kingdom of Cambodia, a securities firm that contravenes any provision of this Prakas shall be liable for administrative sanctions as prescribed in Article 35 of this Prakas and/or be liable for a transactional fine from SECC in cash from KHR20,000,000 (twenty million) to KHR200,000,000 (two hundred million) for entity.

Article 35.- Administrative Sanctions

A securities firm that contravenes any provision of this Prakas, Director General of **SECC** may decide to impose the following administrative sanctions:

- 1- A warning.
- 2- A correction order.
- 3- A temporary suspension or dismissal of directors and/or senior staff.
- 4- Restrictions on the license.
- 5- Suspension or revocation of the license.

CHAPTER 8

FINAL PROVISIONS

Article 36.- Guidelines

SECC may issue guidelines for facilitating the understanding and implementation of the requirements of this Prakas for relevant persons, securities market participants and the public.

Article 37.- Contradiction

Any provision that contradicts this Prakas shall be hereby repealed.

Article 38.- Implementation

Director General of SECC, Securities Intermediaries Supervision Department, Legal Affairs Department, other departments and unit of SECC, securities firms and relevant persons shall implement this Prakas from the signing date.

Phnom Penh, 28th June 2012

(Signature and seal)

KEAT CHHON

Cc:

- Ministry of Royal Palace
- Secretariat of Constitutional Council
- Secretariat of Senate
- Secretariat of National Assembly
- Secretariat of Royal Government
- Cabinet of Samdach Akak Moha Sena Padei Techo **Hun Sen**
Prime Minister of the Kingdom of Cambodia
- Cabinet of His/Her Excellencies Deputy Prime Ministers
- Council of Ministers
- Ministry of Economy and Finance
- Ministry of Commerce
- Ministry of Justice
- National Bank of Cambodia
- Securities and Exchange Commission of Cambodia
- All relevant ministries and institutions
“for information”
- As prescribed in Article 38
“for implementation”
- Royal Gazette
- Archives-records