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- Licensing of Banking and Financial Institutions in Cambodia

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1. Introduction

The banking system in Cambodia has significantly changing with the continuing economic growth, financial stability, macroeconomic stability, enjoyment of full peace as well as the development of other sectors including the regional and global cooperation and integration. The banking system in Cambodia consists of central bank (National Bank of Cambodia-NBC), commercial banks, specialized banks, microfinance institutions, depositing taking microfinance institutions as well as leasing companies. As of June 2015, there are 36 commercial banks including foreign bank branches, 11 specialized banks, 34 microfinance institutions, 7 microfinance depositing taking institutions, 8 representative offices of foreign banks and 6 leasing companies¹. The National Bank of Cambodia (“NBC”), is the central bank and the sole regulatory body that has power to grant license, revoke license, and supervise all banking and financial institutions within the country². Cambodia has also issued A Financial Sector Development Strategy 2011-2020 been issued by Cambodia describing the progress, challenges and government action plans in banking sectors.

So, we have analyses and explain various steps with the basic guideline in relation to application for banking and financial institutions’ license in Cambodia. In this way, the investors should not merely rely on this guide and need to seek further legal professional advice. BNG Legal provides legal advice for investors to meet relevant legal requirements and procedure to obtain banking and financial institutions license.

2. Laws and Regulations Relating to Banking and Financial Institutions



¹ National Bank of Cambodia, <<http://www.nbc.org.kh>> accessed on 13 June 2015.

² Article 7 of the NBC Law

The primary governing laws and regulations are the following:

Laws applicable to banks and financial institutions:

- Law on Organization and Conduct of the National Bank of Cambodia promulgated on 26 January 1996 and amended on 29 December 2006 (“the NBC Law”);
- Law on Foreign Exchange promulgated on 22 August 1997 (“the Exchange Law”);
- Law on Banking and Financial Institutions promulgated on 18 November 1999 (“the Banking Law”);
- Law on Negotiable Instruments and Payment Transactions promulgated on 24 October 2005 (“the Payment Law”);
- Law on Commercial Enterprise promulgated on 19 June 2005 (“the Commercial Law”);
- Law on Anti-Money Laundering and Combating the Financing of Terrorism promulgated on 24 June 2007 (“the Anti-Money Laundering Law”).

Regulations applicable to banks and financial institutions:

- Prakas on Conditions for Banks and Financial Institutions adopted on 29 December 1997 (“the Conditions Prakas”);
- Prakas on Fit and Proper Regulatory Requirements for Applying Entities and Licensed Banks and Financial Institutions adopted on 25 September 2008;
- Prakas on Fee for Banking and Financial Institutions adopted on 30 May 2013 (“the Fees Prakas”).

Regulations applicable to banks:

- Prakas on the Licensing of Commercial Banks adopted on 10 January 2000 (“the Commercial Bank Licensing Prakas”);
- Prakas on the Licensing of Rural Credit Specialized Banks adopted on 11 January 2000 (“the Specialized Banks Licensing Prakas”);
- Prakas on Bank’s Capital Guarantee adopted on 15 October 2001 (“the Bank Capital Guarantee Prakas”);
- Prakas on Security Transaction of Banks Licensed in Cambodia adopted on 25 December 2002 (“Security Transaction Prakas”);
- Prakas on Amendment to Prakas on Licensing of Commercial Banks adopted on

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- Prakas on Amendment to Prakas on Licensing of Specialized Banks adopted on 13 September 2006;
- Prakas on New Capital Requirement and Criteria for Licensing Approval of Banks adopted 19 September 2008 (“the New Banking Capital Requirement”);
- Prakas on the Maintenance of Minimum Reserve Requirements in Banking and Financial Institution adopted on 25 February 2009;
- Circular on Investment Grade issued on 07 July 2010.
- Prakas on the Maintenance of Reserve Requirements against Commercial Bank’s Deposit and Borrowing adopted on 13 September 2012;

Regulation applicable to microfinance institutions and leasing companies:

- Prakas on the Licensing of Microfinance Institutions adopted on 11 January 2000 (“the Microfinance Licensing Prakas”);
- Prakas on Registration and Licensing of Microfinance Institutions adopted on 25 February 2002 (“the Microfinance Registrations Prakas”);
- Prakas on Amendment to Prakas on Licensing of Microfinance Institutions adopted on 13 September 2006 (“the Amendment Microfinance Registrations Prakas”);
- Prakas on Licensing of Microfinance Deposit Taking Institutions adopted on 13 December 2007 (“the Microfinance Deposit Licensing Prakas”);
- Prakas on License Fee applicable to Microfinance Deposit Taking Institutions adopted on 20 January 2009 (“the Microfinance Deposition License Fee Prakas”);
- Prakas on Financial Leasing Business adopted on 27 December 2011;
- Prakas on Licensing of Financial Lease companies adopted on 27 December 2011.

3. Type of Banks and Financial Institutions

The most common type of banks and financial institutions that can be established are commercial bank, specialized bank, and microfinance institution. Cambodia also allows foreign entities to operate under the form of a branch or a subsidiary.

3.1. Commercial Bank

Commercial banks are legal entities licensed to carry out banking operation including:

1. the credit operations for valuable consideration, including leasing, guarantees and commitments under signature;
2. the collection of non-earmarked deposits

from the public;

3. the provision of means of payment to customers and the processing of said means of payment in national currency or foreign exchange³.

Minimum capital requirement:

- Commercial banks having shareholders as individuals or companies must have a minimum capital of at least KHR 150,000,000,000 (150 billion) which is approximately US\$37.4 million⁴.
- Commercial banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with a rating “investment grade,” extended by a reputable rating agency, must have minimum capital equal to at least KHR 50,000,000,000 (50 billion) which is approximately US\$12.5million;

The percentage of minimum capital that shall be permanently deposited with the National Bank of Cambodia, as per article 16 of the Law on Banking and Financial Institutions, amounts to 10%⁵.

3.2. Specialized Bank

Specialized banks are the bank that operates only one of the basic activities of commercial bank⁶.

Minimum capital requirement:

- Specialized banks having shareholders as individuals or companies must have a minimum capital of at least KHR 30,000,000,000 (30 billion) which is approximately US\$7.5million⁷.
- Specialized banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with a rating “investment grade,” extended by a reputable rating agency must have minimum capital equal to at least KHR 10,000,000,000 (10 billion) which is approximately US\$2.5million;

3.3. Microfinance Institution

Microfinance institutions are institution that provides financial services such as loans and deposits, to poor and low-income households, and to micro-enterprises⁸.

Unless prohibited by the Microfinance Registrations Prakas or licensing terms, the license for microfinance institution shall permit the

³Article 2 of the Banking Law

⁴Article 7 of the New Banking Capital Requirement

⁵Article 1 of the Bank Capital Guarantee Prakas

⁶Article 2 of the Banking Law

⁷Article 8 of the New Banking Capital Requirement

⁸Article 2 of the Microfinance Registrations Prakas

institution to provide credit and saving services⁹.

However, the license does not permit the institution to provide the following services:

- leasing, derivatives and dealing in gold, precious metals, raw materials and commodities, whether spot and forward;
- providing payment services through checking accounts or swap or forward dealings in foreign currencies¹⁰.

An applicant for an MFI license must be a limited liability company or a cooperative¹¹.

Minimum capital requirement:

- Microfinance shall deposit minimum capital of KHR 250 million that is approximately US\$62,500¹².

3.4. Microfinance Deposit Taking Institution

The microfinance deposit taking institution refers to any MFI receiving additional license from NBC to collect the deposit from the public.

Minimum capital requirement:

Upon the Microfinance Deposit Licensing Prakas, in order for an MFI to apply to NBC for depositing taking license, the institution must have MFI license for at least 3 years, have paid up capital of at least KHR 10,000,000,000 (10 billion) equivalent to around USD 2.5 million, and have a sound profitability for the last two consecutive years.

3.5. Foreign Bank Branch or Subsidiary

The foreign bank may establish a branch or representative office in Cambodia. The foreign bank branch must hold an operating license granted by NBC and can conduct banking operation upon that banking license. An information, liaison or representative office, does not carry out banking operations, financial intermediation or canvassing operations¹³. In this way, the branches may use the business name of the foreign bank they represent¹⁴.

4. Procedure for Obtaining and Financial Institutions License

Before starting business, the banks and financial institutions must obtain license from the supervisory authority¹⁵. The process of applying for banking and financial institution license involves many submissions of information and relevant documents to the NBC.

⁹Ibid

¹⁰Ibid

¹¹Article 3 of the Microfinance Registrations Prakas

¹²Article 4 of the Microfinance Licensing Prakas

¹³Article 13 of the Banking Law

¹⁴Ibid

¹⁵Article 14 of the Banking Law

4.1. Submitting License Application

In preparing license application, the authorized individual shall provide the following information to NBC:

Application for banking license:

1. name or business name of the entity;
2. address of the head office or branch in Cambodia in case of a foreign entity;
3. legal form and the articles of association or other incorporating documents;
4. type of securities representing the capital in connection between the holding of such securities and the exercise of voting rights;
5. amount of existing or planned capital (or amount of capital endowment in case of a branch of a foreign company);
6. distribution of shares and voting rights;
7. identity of contributors of at least 5% of capital;
8. identity of at least two persons responsible for the effective direction of the banking business;
9. identity of the members of the decision-making body;
10. description of its business and certified copies of its last three audited balance sheets if the legal entity for which the application is made has already been founded;
11. description of the planned activity over the next three years;
12. composition of internal audit committee and procedure for ensuring compliance; and
13. identity of proposed external auditors and nature of auditors' assignment¹⁶.

Application for microfinance institution license:

1. name or business name of the institution;
2. registered address of the headquarters;
3. legal form and the Articles of Association or other founding instrument;
4. type of securities representing the capital, and connection between the holding of such securities and the exercise of voting rights;
5. amount of authorized and paid-in equity capital;
6. distribution of shares and voting rights, and possible agreements between shareholders acting in concert with a view to directing the policy of the institution;
7. capital contributors which will hold 5 percent or more of the voting rights must provide the information listed in Article 6 of the Microfinance Licensing Prakas;
8. identity of at least two persons responsible for the effective direction of the MFI's business;
9. identity of the members of the decision-making body. This information must be supplemented by a curriculum vitae and a statement certifying that none of the

¹⁶Article 4 of the Commercial Bank Licensing Prakas

- individuals concerned is subject to the prohibitions set forth in Article 18 of the Banking Law;
10. description of the planned activity over the next three years:
 - if the legal entity for which the application is made has already been formed, provide a description of its business and certified copies of its audited balance sheets for operations in any of the previous three years;
 11. description of the planned activity over the next three years:
 - nature and volume of the different types of lending liable to appear on the balance sheet, and other possible services offered to customers or members (for loans : nature, form, purpose, main terms and conditions, annual volume, and amount outstanding),
 - type of clients that the institution intends to seek,
 - nature of planned financial resources: own funds, subsidies, subordinated debt, deposits, borrowings, etc... As appropriate, specify the nature and ownership of these resources in the event of any ambiguity (subordinated debt for example),
 - likely number of employees over the next three years and corresponding payroll, broken down by category of staff,
 - location of existing branches or planned branches,
 - planned organization and resources, especially as regards accounting procedures and computer system,
 - balance sheet and profit and loss account forecasts for the next three accounting periods. Forecast level of main prudential ratios (as defined by the NBC) at the end of the next three accounting periods;
 12. composition of internal audit committee and procedure for ensuring compliance; and
 13. identity of proposed external auditors and nature of auditors' assignment¹⁷.

4.2. License Fee

Application license Fee

1. The applicant for license either as a commercial bank, specialized bank, foreign bank branch or foreign bank representative office shall pay the following fee to NBC:
 - Information inquiry fee
KHR 1 million
 - Application reviewing fee
KHR 5 million.
2. The applicant for license either as a microfinance deposit taking institution, microfinance institution, or leasing company shall pay the following fee to NBC:

- Information inquiry fee
KHR 0.5 million
- Application reviewing fee
KHR 2.5 million.

Annual license fee

After obtaining license, the banks and institutions must pay an annual license fee before January 15 of each year¹⁸. The banks and financial institutions must pay annual license fees to the NBC as following¹⁹:

1. Foreign Bank Branch
 - Foreign commercial bank branch
 1. Branch
KHR 150 million
 2. From 1-7 provincial and city sub-branch
KHR 100 million each
 3. From 8 provincial and city sub-branch
KHR 40 million each
 - Foreign specialized bank branch
 1. Branch
KHR 70 million
 2. From 1-7 provincial and city sub-branch
KHR 40 million each
 3. From 8 provincial and city sub-branch
KHR 20 million each
2. Commercial Banks
 - Head office
KHR 150 million
 - From 1-7 provincial and city branch
KHR 100 million each
 - From 8 provincial and city branch upward
KHR 40 million each
 - Branches in district
KHR 10 million each
 - Service post
KHR 1 million
3. Specialized banks
 - Head office
KHR 70 million
 - From 1-7 provincial and city branch
KHR 40 million each
 - From 8 provincial and city branch upward
KHR 20 million each
 - Branch in district
KHR 5 million each
 - Service post
KHR 0.5 million
4. Microfinance Institutions
 - Head office
KHR 20 million
 - From 1-7 provincial and city branch
KHR 5 million each
 - From 8 provincial and city branch upward
KHR 1 million each
 - Branch in district
KHR 0.5 million each
 - Service post
KHR 0.2 million

¹⁷Article 4 of the Microfinance Licensing Prakas

¹⁸Article 11 of the Commercial Bank Licensing Prakas;
Article 11 of the Microfinance Licensing Prakas

¹⁹the Fees Prakas

ABOUT US

BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

CAMBODIAN LAW BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, www.bnglaw.net.

5. Microfinance Deposit Taking Institutions
 - Head office
KHR 70 million
 - From 1-7 provincial and city branch
KHR 40 million each
 - From 8 provincial and city branch upward
KHR 20 million each
 - Branch in district
KHR 5 million each
 - Service post
KHR 0.5 million
6. Representative offices of foreign bank branch
KHR 100 million

Article 5 of the Fees Prakas, in case it is the first payment of the annual license fee, the amount of payment may be reduced upon the remaining trimesters of the year.

In case that the banks and institutions fail to pay the annual license fee, the NBC shall impose interest on the banks and institutions up to 30 days²⁰. If the banks and institutions could not pay the annual license fee and interest after the period of 30 days is expired, the NBC will revoke the license²¹.

4.3. Issuing License of Banks And Financial Institutions

The NBC shall ensure the following requirements prior to issuing a license to banks and financial institutions:

1. the qualifications of the shareholders and the accuracy of their reported financial position;
2. the ability of the principal shareholders to fulfill, jointly and severally, their obligation to strengthen the bank's own funds if required to do so in accordance with the provisions of Article 27 of the Banking Law;
3. the adequacy of human, technical, and financial resources for the planned activities²².

After receiving the application for licensing and relevant documents, the NBC shall review and make decision within six (6) months. In event that NBC refuse of issuing license, the NBC must notify to applicant²³. In the case that NBC issue license of banks and financial institutions, the NBC shall publish in the bulletin of NBC and official gazette of the Kingdom of Cambodia²⁴.

5. Penalty

In the event that the banks and financial institutions breach any laws, regulations or fail to comply with injunction, the NBC may impose the following sanctions:

- caution,
- reprimand,
- prohibit the execution of certain operations and any place any other limitation on the business,

²⁰Ibid

²¹Ibid

²²Article 14 of the Banking Law

²³Article 15 of the Banking Law

²⁴Ibid

- temporarily suspend one of more of the executives,
- require a resignation of one or more of the executives,
- set up a provisional administration, or
- revoke the license and liquidate the entity²⁵.

The NBC may impose a fine not exceeding the minimum capital of the institutions in replace of or in addition to the sanctions²⁶.

It is important to note that carrying out the banking operations as main profession without a license is considered as a criminal offense and is punishable to imprisonment from 1 to 5 years and/or a fine from 5 million to 250 million riel²⁷. The person who acts on his own account or legal entity which is not as regular business and on behalf of the public shall imprisonment from 1 to 5 years and/or a fine from 1 million to 10 million riel²⁸.

6. Conclusion

The license is critical for operating banking and financial institutions in Cambodia so that investors must seriously taking into account all legal requirements and should further consult with legal professional in the country before starting the business. In doing so, it mitigates cost of operations and time of obtaining license as well as avoidance of any unpremeditated penalty and fine.

²⁵Article 52 of the Banking Law

²⁶Ibid

²⁷Article 55 (1) of the Banking Law

²⁸Article 55 (3) of the Banking Law