



National Bank of Cambodia

Number: B7.08-088 Prokor

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

Unofficial translation

**Prakas
on
Financial Lease**

The Governor of the National Bank of Cambodia,

- With reference to the Constitution of the Kingdom of Cambodia,
- With reference to the Royal Kram NS/RKM/ 0196/27 of January 26, 1996 promulgating the Law on the Organization and Conduct of the National Bank of Cambodia,
- With reference to the Royal Kram NS/RKM/1199/13 of November 18, 1999 promulgating the Law on Banking and Financial Institutions,
- With reference to the Royal Decree NS/RKT/0508/526 of May 13, 2008 on the reappointment of His Excellency Chea Chanto as Governor General of the National Bank of Cambodia, equivalent to Senior Minister,
- Pursuant to the recommendation made by National Bank of Cambodia management during the May 21, 2008, meeting.

DECIDES

Article 1.-

To authorize commercial banks and specialized banks, hereinafter referred to as “the bank” to conduct financial leasing business according to article 2.1 of the Law on Banking and Financial Institutions.

Article 2.-

The bank must have policies and procedures for conducting leasing business, and have appropriate operational systems, risk management systems, and internal control systems.

Article 3.-

For the purpose of this Prakas, the terms shall be defined as follows:

- **Lessor** a person, natural or legal, who transfers the right of possession and use of movable property to a lessee.
 - **Lessee** a person, natural or legal, who receives the right of possession and use of movable property from a lessor.
 - **Movable property** all properties, plants, and equipment except land and buildings.
 - **Term** the period of time specified in the lease agreement in which the lessee is allowed the possession and use of the leased movable property.
 - **Lease** a transaction in which a lessor enters into an agreement with a lessee in which the lessee is granted the right to possession and use of movable property for a term in return for periodic lease payments or their equivalent. "Lease" shall include a sub-lease.
 - **Sub-lease** a transaction in which leased property is re-leased by the original lessee to other parties, and the lease agreement between the original parties remains in effect.
 - **Financial lease** a lease for an initial non-cancelable term of a year or more, in which:
 - i- the lessee specifies the movable property and selects the supplier without relying primarily on the skill and judgment of the lessor; and
 - ii- the movable property is acquired by the lessor in connection with a financial lease agreement for leasing to the lessee.
- Provided, however, that a subsequent lease of previously leased movable property is from the same lessor, such a lease can still qualify as a financial lease.
- A lease may be a financial lease without regard to:
- i- whether or not the periodic lease payments are calculated so as to take into account the amortization of the whole or a substantial part of the cost of the movable property, or
 - ii- whether or not the lessee has or subsequently acquires the option to buy the movable property or hold it on lease for a further period.
- **Advance lease payment** any number of periodic lease payments that are paid by the lessee at or before the inception of the lease. Advance lease payments are not a security deposit.

- ***Security deposit*** an amount identified in a lease agreement as an amount paid by the Lessee and to be held by the Lessor as security for the full and regular obligations by the Lessee under the Lease Agreement.
- ***Supplier*** a person, natural or legal, from whom a lessor acquires movable property to be leased to a lessee. The lessor's acquisition could be by purchase, lease, and assignment of a right to purchase or lease, including assignment of right from the lessee. The lessee could be a supplier in a sale-leaseback transaction.
- ***Supply agreement*** the agreement by which the lessor acquires possession and use of the movable property to be leased to the lessee.
- ***Financial lease agreement*** an agreement in which the lessor purchases movable property selected by the lessee from the supplier, leases this movable property to the lessee and authorizes the lessee to periodically pay the lease payment.

Article 4.-

Financial leases which do not meet the definition in article 3 of this Prakas will continue to be treated as a traditional rental, hire or operational lease that does not fall under the definition of banking operations.

Article 5.-

Banks are allowed to do all sorts of leasing, including financial and operational leasing, whereas non-banks are prohibited from doing financial leases on a regular basis.

Article 6.-

Banks who wish to conduct financial leases shall:

- (a) have good financial conditions and operating performance, a good solvency ratio, and hold other financial ratios in compliance with the regulations of the National Bank of Cambodia.
- (b) have a written business plan for the financial lease approved by the board of directors of the bank. Such a plan shall include the following contents:
 - (i) policy and procedure for business operations
 - (ii) details of the risk management system, internal control system, and accounting system. The details of the risk management system shall at the very least include:
 - the credit analysis system, procedures in setting customer's line of credit, procedures in setting security deposit and other fee.
 - procedures in property management, including the acquisition of movable property, management of confiscated movable property, the monitoring and inspection of movable property, the valuation of movable property, and the valuation of residual value of movable property.

- (c) obtain prior approval from the National Bank of Cambodia.

Article 7.-

Banks shall have at least two written financial lease agreements with their clients whereby all related parties shall agree upon and abide by the terms and conditions as specified in the present Prakas. The agreement shall have at least two copies, one of which shall be given to the lessee. The financial lease agreement shall mention, at the very least, the following important points:

- (a) a description of the leased movable property;
- (b) the amount, periodicity, and duration of the financial lease payments;
- (c) the commencement date of the financial lease and;
- (d) the signature of the lessor and the lessee.

Article 8.-

In cases where the agreement has been terminated and movable property is confiscated from the lessee, the bank shall sell or re-lease the movable property within three months from the termination date or confiscating date. If, after such period, the bank cannot sell or re-lease that property, the bank shall classify and make provisions for that movable property according to the Prakas on Loans Classification, Provisioning and Advance of Banks and Financial Institutions.

Article 9.-

The ownership right to the leased movable property shall remain with the lessor at all times during the lease term, and thereafter, until transferred to the lessee or other parties. The lessor has the following rights and obligations:

- (a) shall be responsible for all import duties and fiscal obligation stated by law and for registration fees upon the leased movable property, unless the lease agreement provides otherwise.
- (b) has an obligation to pay for the movable property to the supplier once the lessee has accepted it without condition or reservation.
- (c) warrants the quiet use and possession of the leased movable property to the lessee for the lease term to be free from interference, provided that the lessee is not in breach of the lease agreement.
- (d) shall not be liable to the lessee in respect of the movable property except to the extent that the lessee has suffered losses as a result of the lessor's intervention in the selection of the movable property or in the specification of the movable property.
- (e) during the implementation of the financial lease agreement, the lessor shall not be liable for any damages to third parties caused by the lessee using the leased movable property.
- (f) in the event of a default of the financial lease agreement by the lessee, the lessor shall have in addition to such rights as provided by the lease agreement, the following rights.-
 - (i) may require the lessee to pay the accrued unpaid lease payments together with interest and damages.

- (ii) may also require accelerated payments of the future lease payments, may terminate the lease agreement, and may recover possession of the leased movable property if:
 - the lessee does not pay the lease payments pursuant to the lease agreement for two consecutive lease payment periods;
 - the lessee breaches any other provision of the lease agreement and fails after receiving written notice from the lessor to remedy such breach within ten (10) days;
 - the lessee has a guarantor who is insolvent, bankrupt, or dissolved and the lessee has failed to find a substitute guarantor acceptable to the lessor within thirty (30) days of a written demand by the lessor to do so; or
 - the lessee is insolvent, bankrupt, dissolved or dead without assignee.
- (iii) Whether or not the lease agreement is terminated prior to its expiration, the lessor may:-
 - recover possession of the leased movable property without having to go to court if such action would not cause a breach of the peace; and
 - recover such damages as acceptable by the lessor, including the additional costs caused by the default of the lessee; the lease agreement may provide for the manner in which such damages are to be computed and such computation shall be enforceable by the two parties unless it would result in damages substantially in excess of those which will place the lessor in the position in which it would have been had the lessee performed the lease agreement in accordance with its terms.
- (iv) If necessary, the lessor may request a court order directing the lessee to immediately return the movable property to the lessor upon presentation of an affidavit stating that the lessee is in default of the lease agreement. But the lessor shall remain liable for any damages caused to the lessee if it is subsequently proven that repossession was a breach of the lease agreement by the lessor.
- (g) has the right to require that the lessee indemnify the lessor from any and all losses, claims, damages or other consequences arising from or in connection with the lessee's use and possession of the leased movable property.
- (h) may require that the lessee obtain, maintain and pay for liability and casualty insurance covering the leased movable property during all times that s/he is in the possession or control of the lessee until the leased movable property has been returned to the possession and control of the lessor, even if the lease term has come to an end or the lease agreement had been terminated at an earlier time. If the lessee is obligated to obtain and pay for insurance, and fails to do so, the lessor has the right, but not the duty, to obtain such insurance and the lessee shall immediately reimburse the lessor if s/he has incurred such a cost.
- (i) The leased movable property shall not be part of the lessee's estate. In this regard, in the case of bankruptcy of the lessee, all creditors of the lessee, including those who obtained the right to foreclose the lessee's property by court decision, shall have no right in the case of the leased movable property.
- (j) may assign, transfer or otherwise deal with any or all of its rights in the leased movable property or under the lease agreement to any parties without the consent

of the lessee. Such a transfer shall not relieve the lessor of any of her/his obligations or alter the nature of the lease agreement. The lease agreement may provide that lessee not agree to assert any offsets, defenses or claims against any assignee or transferee of lessor.

- (k) In the case of lessor bankruptcy, the lessor's creditors and other interested parties shall have no greater rights than the lessor has pursuant to such financial lease agreements.

Article 10.-

A lessee has the obligation to accept the leased movable property if it is delivered in a timely fashion and conforms to the supply agreement. If the leased movable property is not delivered or is delivered late or does not conform to the supply agreement, then at or before the time for acceptance, but not after, the lessee has the right to reject the movable property, demand from the supplier the immediate cure of its defect or defects, or cancel the lease agreement, but shall have no right to terminate, rescind or modify the supply agreement without the consent of the lessor.

The lessor has the right to ask the supplier to supply the movable property in conformity with the supply agreement but he has no obligation to be responsible for the failure caused by the supplier.

The lessee has the followings rights and obligations:

- (a) acceptance of the movable property may be made by making a document acknowledging acceptance, or by other means which include:
 - (i) lessee by its actions with respect to the leased movable properties has indicated that the movable property is acceptable, whether within compliance with the supply agreement or without;
 - (ii) lessee has failed to give timely notice as specified in the supply agreement to lessor and supplier of specific non-compliance with the supply agreement, where the supplier or lessor could have conveniently solved the non-compliance had they been given timely notice;
 - (iii) The lease agreement may provide that the lessee shall be deemed to have accepted the movable property unless the lessor receives a written notice of the lessee's rejection, detailing the specific reasons for rejection, within a specified period of ten (10) business days after the lessee has received the movable property.
- (b) the lessee's obligations under a financial lease, including the obligation to pay the lease payment, become absolute and irrevocable upon the lessee's acceptance of the movable property.
- (c) shall use the movable property in a reasonable manner in accord with its movable properties and purpose, and in compliance with all applicable laws, rules and regulations, operational manuals, and manufacturer requirements. Lessee shall also at its own expense maintain and repair the movable property and keep it in good condition and usable unless the lease agreement provides otherwise.
- (d) at the expiration of the lease term or upon termination of the lease agreement, and in the absence of the proper exercise of any purchase option or renewal option, lessee shall return the leased movable property to lessor in as good a condition as originally delivered, except for normal wear and tear.

- (e) shall bear all risk of loss respecting the leased movable property from the time of its delivery until it is returned to the lessor.
- (f) The lessee shall not mortgage, pledge, encumber, lien or otherwise create a charge over the leased movable property.
- (g) lessee is obligated to keep lessor informed in writing as to the current and the removal to a new location of the leased movable property unless the lease agreement provides otherwise.
- (h) the obligations of the supplier under the supply agreement shall also be owed to the lessee as if it were a party to the supply agreement and as if the leased movable property were to be supplied directly to the lessee. However, the supplier shall not be liable to both the lessor and the lessee in respect to the same damage. The lessee's rights derived from the supply agreement shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless s/he consented to that variation.
- (i) may not sublease, assign or transfer the right to the possession or use of the leased movable property under the lease agreement or in the leased movable property without the prior written consent of the lessor and subject to the rights of third parties. Any such attempted sublease, assignment or transfer without lessor's prior written consent shall be null and void.

Article 11.-

The National Bank of Cambodia has the authority to stop the leasing business operation in the following cases:

- the bank does not comply with the rules and conditions as specified in the Prakas.
- the bank does not act in accordance with its own business plan.
- other cases in which the National Bank of Cambodia considers public security and interest threatened.

Article 12.-

The General Direction, the General Secretariat, the General Inspection, the General Cashier, banks, all Departments of the National Bank of Cambodia and under the National Bank of Cambodia's supervisory authority shall strictly implement this Prakas.

Article 13.-

This Prakas shall take effect from the signing date.

Phnom Penh, May 30, 2008

The Governor,
Signed : Chea Chanto

- cc:
- The Members of the Board of Directors
 - The parties concerned as stated in Article 12
 - File
 - CM "for info"
 - Administration Department of CM
 - "for publication in the National Gazette".