

PRAKAS
ON
FIT AND PROPER REGULATORY REQUIREMENTS FOR APPLYING
ENTITIES AND LICENSED BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 1
GENERAL PROVISIONS

Article 1

This Prakas establishes minimum requirements that persons holding key positions in licensed banks and financial institutions or in legal entities applying for such a license must be assessed for the purposes of being deemed “fit and proper” for the exercise of such responsibilities.

The objectives of this regulation are:

- (i) To safeguard the interests of depositors and stakeholders by ensuring that banks and financial institutions are soundly and prudently managed and directed;
- (ii) To set out a minimum framework which can be used by banks and financial institutions themselves when determining whether a person approached about taking a key position is fit and proper;
- (iii) To address the risk of serious mismanagement of a banking or a financial institution and to prevent from potential threats to the overall banking system and to the depositors’ interests’ protection.

Article 2

Although the main responsibility for designating “fit and proper” board members primarily lies with the shareholders and that all institutions shall have adequate internal policies establishing safe and sound standards for the selection of their executives and senior management personnel, it is also the licensing and supervisory authority’s responsibility to assess the honesty, integrity, reputation, competence and capability of current and prospective key persons in terms of effective direction of the institutions.

These persons shall also fully comply with the requirements established in Prakas B7-08-211 on Governance in Banks and Financial Institutions; dated November 25, 2008.

Article 3

In performing its fitness and propriety assessments, NBC will also determine if the applicants for key positions at a banking or financial institution have the degree of competence and experience commensurate with their responsibilities. Competence and experience shall be assessed against the size and risk-profile of the institution as well as against the size and complexity of business and against the sophistication of transactions performed.

CHAPTER 2

KEY PERSONS REQUIRED TO UNDERGO THE FIT AND PROPER TESTING

BY THE NATIONAL BANK OF CAMBODIA

Article 4

Key persons required to undergo the Fit and Proper Testing by NBC are:

- (i) Board members;
- (ii) Senior Management in the sense of members of the Executive Body as defined in Prakas B7-08-211 on Governance in Banks and Financial Institutions; dated November 25, 2008, Article 2;
- (iii) Foreign Bank Branch managers; And
- (iv) Any person acting as an alternate or a proxy of any above-mentioned persons.

Article 5

Undergoing the Fit and Proper Testing is required in all the following circumstances for any applicant mentioned in Article 4:

- (i) Application for a Banking or a Financial Institution license in Cambodia;
- (ii) Application from a foreign bank to open a subsidiary in Cambodia;
- (iii) Application for opening a foreign bank branch in Cambodia;
- (iv) Any decision made by the Shareholders' Assembly or by the Board itself resulting in an increase of the number of Board members;
- (v) Any decision made by a Foreign Bank that has established a subsidiary in Cambodia resulting in an increase of the number of Board members;
- (vi) Any decision leading to designate alternates or proxies of persons mentioned in article 4, (i), (ii) and (iii); And,
- (vii) More generally, any change occurring after dismissal or resignation of such persons.

CHAPTER 3

INFORMATION REQUIREMENTS

Article 6

In the course of a licensing process for a new banking or financial institution, required information related to fit and proper assessments of key persons should be provided to NBC as part of the application's supporting files. In addition, functions to be held and responsibilities to exercised shall be discussed on help of the submitted organization chart.

Article 7

For already licensed institutions, any change in key persons shall be immediately reported in writing to NBC no later than 30 days after any resignation, retirement or removal of a key person.

For a vacant or newly established position, NBC will review the fitness and propriety of a proposed candidate prior to the finalization of the appointment. NBC will not be able to

confirm that it has no objection to such an appointment until it has received and reviewed all the required information.

The NBC might require and conduct an interview with the proposed person in order to further elaborate its opinion on the applicant's fitness and propriety in light of the offered position and the overall institution's risk profile.

Article 8

Subject to effective completion of the corresponding application file, NBC shall notify its decision in writing to the banking or financial institution within 30 days.

CHAPTER 4

FIT AND PROPER ASSESSMENT AND CRITERIA

Article 9

Applicants for key positions will be assessed against several types of criteria in order to determine if they are sufficiently fit and proper to meet the following requirements:

- (i) Honesty, integrity, reputation and fairness;
- (ii) Education, competence and capacity; and
- (iii) Financial soundness.

Article 10

To assess honesty, integrity, reputation and fairness, NBC will consider all appropriate factors, including, but not limited to:

- (i) Whether the person has been convicted or found guilty of a criminal or disciplinary offence;
- (ii) Whether the person has been found guilty of perjury or false evidence;
- (iii) Where the person is a controlling or influential shareholder, whether the person has been disciplined or suspended by a regulatory or a professional body, a court, publicly or privately;
- (iv) Whether the person has been the owner of, or held a responsibility position within, a company or organization that has been refused registration or had its license revoked, withdrawn or terminated;
- (v) Whether the person has been dismissed or asked to resign from employment because of concerns over his/her integrity and honesty;
- (vi) Whether a person has ever been disqualified from acting as a director or serving in a managerial position because of wrongdoing;
- (vii) Whether the person has not been ethical, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities;
- (viii) Whether the person might have been involved in activities such as money laundering, financing of terrorist activities, forgery or corruption, although legal qualification of acting or degree of participation in such activities might not lead to a criminal qualification in certain countries;
- (ix) Whether the person is able to make independent judgment and decision in light of the responsibilities to be exercised; and

- (x) Whether the person demonstrates a readiness and willingness to comply with the regulatory requirements and best practices aimed at supporting a safe and sound banking system.

Article 11

A person must exhibit adequate education, competence, experience and an ability to understand the technical requirements of the business, the inherent risks and the management processes required to take over the responsibilities to conduct the operations effectively and in a safe and sound manner, with due regard to the interests of all stakeholders.

In evaluating the professional competence and capability of a person, the NBC will consider all relevant factors, including, but not limited to:

- (i) Whether the person has an appropriate educational background allowing for a fair and sufficient understanding of the business and its related risks;
- (ii) Whether the person has demonstrated, through qualifications, experience and performance at previous positions, the capacity to successfully undertake the responsibilities involved by the position;
- (iii) Whether the person has a sound knowledge of the business and the responsibilities of the position and whether this knowledge is commensurate to the risk-profile of the institution, to the size and complexity of business and to the level of sophistication of the transactions performed;
- (iv) Whether the person has ever been disciplined by a professional, trade or regulatory authority, dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; and
- (v) Whether the person disability for work that may affect his/her competency or independence of judgment.

Article 12

NBC shall also consider the financial soundness of applicants in evaluating fitness and propriety.

Proper and prudent management of a person's own financial affairs is a demonstration of the person's capacity to contribute to the safety and soundness of a financial institution and its interests as well as other stakeholders' interests. In addition, any unsound personal financial condition might also impact the independence of judgment of a person.

NBC shall consider all relevant factors, including but not limited to:

- (i) Whether the person has been subject to any judgment by a court or subject to disciplinary action before professional authorities, especially, if there are still outstanding claims related to such action;
- (ii) Whether the person has past due outstanding balances in another bank(s) and has not cleared his/her situation;
- (iii) Whether the person has made any arrangements with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings related to any of the above mentioned.

CHAPTER 5

CONTROLS ON FITNESS AND PROPRIETY OF KEY PERSONS

Article 13

Banks and financial institutions shall establish policies and processes aimed at ensuring that key persons, but also other already appointed personnel or applicants to vacant positions, comply with minimum Fit and Proper requirements.

Article 14

Should a key person no longer comply with the minimum Fit and Proper requirements, NBC shall be informed in writing of the situation and no later than 30 days after the facts were uncovered. Even if the circumstances that might lead to consider unfitness or impropriety remain unclear, such reporting to NBC shall be performed and supported by a detailed narration of facts and circumstances. NBC shall answer in writing within 30 days from reception of the complete information file to determine if, in its views, there is an objection for the key person to be maintained in the position or no objection to do so.

Article 15

No key person shall be appointed at a bank or at the financial institution prior to obtaining the non-objection decision from NBC in writing.

No key person who would no longer comply with the minimum requirements set forth in this Prakas shall be maintained in his/her position.

Article 16

For new applicants to key responsibilities defined in Article 4 of this Prakas, who would not fully comply with the requirements due, among other reasons, to insufficient education, training or experience, NBC would consider issuing a “non objection” decision that would make provisions such as taking training courses or being first appointed in a deputy or a proxy position over a probation period that shall not exceed 18 months.

Fulfillment of conditions set forth during the probation period shall be assessed by NBC at the end of the prescribed period. All information, files and performance records shall be sent to NBC within 30 days, starting from the end of the probation period. Pursuant the provisions set forth in Article 7, NBC might require and conduct an interview with the concerned person in order to comfort its opinion on his/her fitness and propriety in light of the effective fulfillment of conditions, judgment and managerial capacity and evidenced performance during the probation period.

CHAPTER 6

SANCTIONS

Article 17

NBC shall crosscheck information and data supporting evidence material sent with the application file for a key position at a bank or a financial institution. Should faithless or forged statements or police records or statements issued by professional or regulatory authorities be transmitted, NBC shall issue regulatory sanctions and fines against the institution as well as against the individuals who knowingly transmitted such information. In the course of a licensing assessment, such behavior could also lead to license rejection.

Article 18

If during the course of an on-site examination process at a banking or financial institution, NBC staff member in charge determines that:

- (i) Key persons did not undergo the Fit and Proper assessment laid out by this Prakas;
- (ii) Key persons actually do not satisfy further the minimum requirements to be considered fit and proper;
- (iii) Although not designated as “key persons,” individuals do actually exercise, de facto, key responsibilities and effectively direct the banking or financial institution;
- (iv) In contravention with an objection issued by NBC, an individual actually exercises key responsibilities within a banking or financial institution;
- (v) After a probation period that shall not exceed 18 months, a key person did not comply with the requirements set forth in Article 16 of this Prakas; or
- (vi) A key person, even though deemed fit and proper at the origin by NBC, no longer complies with minimum requirements;

Institutions in violation of the provisions of this Prakas will give rise to the disciplinary sanctions set forth in Article 52 of the Law on Banking and Financial Institutions.

CHAPTER 7

IMPLEMENTATION

Article 19

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

Article 20

This Prakas shall have effect from the date of signing.

Phnom Penh, 25 November 2008

The Governor

Signed and sealed: **Chea Chanto**