

PRAKAS

On

Systemic Risk Management of Payment System



Article 1.-

Definitions stated in Article 2 of the NIPTL are incorporated into this Prakas, unless hereafter modified or where the context requires otherwise:

1. **“Central counter-party”** means a corporation, association, partnership, agency or other service provider or person in a clearing and settlement system with whom all participants’ payment rights and obligations are netted to produce a single amount owing as between each participant and the central counter-party;
2. **“Clearing and settlement system”** means a system or arrangement for the clearing or settlement of payment obligations in the financial system, in any currency, and in which there are at least three participants, at least one of which is a financial institution. For greater certainty, it includes a system or arrangement for the clearing or settlement in the official currency of Cambodia, or for securities transactions, foreign exchange transactions or other transactions or financial contracts where the system or arrangement also clears or settles payment obligations arising from those transactions and contracts;
3. **“Clearing house”** means a corporation, association, partnership, agency or other entity, organization or person that provides clearing or settlement services for a clearing and settlement system, but does not include the NBC;
4. **“Designated clearing and settlement system”** means a clearing and settlement system designated under Article 2(1);
5. **“Financial institution”** means
 - (i) A licensed commercial bank;
 - (ii) Such other person, entity or person or entity within a class of persons or service providers engaged primarily in the business of providing financial services as may be designated by the NBC to be a financial institution for the purposes of this Prakas;
6. **“Financial system”** means the financial system of Cambodia
7. **“Instruction”** includes directive;
8. **“Participant”** means a member of a clearing house or a party to an arrangement that establishes a clearing and settlement system;

9. **“Systemic risk”** means the risk that the inability of a participant to meet its obligations in a clearing and settlement system as they become due or a disruption to a clearing and settlement system that could, through the transmittal of financial problems through the system, cause
 - (i) Other participants in the clearing and settlement system to be unable to meet their obligations as they become due,
 - (ii) Financial institutions in other parts of the financial system of Cambodia to be unable to meet their obligations as they become due, or
10. The clearing and settlement system's clearing house or the clearing house of another clearing and settlement system within the financial system of Cambodia to be unable to meet its obligations as they become due.

Article 2.-

- Where the NBC is of the opinion that a clearing and settlement system may be operated in such a manner as to pose a systemic risk, the NBC may designate the clearing and settlement system as a systematically important clearing and settlement system that is subject to this Prakas.
- The NBC shall notify a designated clearing and settlement system's clearing house of the designation and shall cause a copy of the designation to be published in the *Official Gazette*.
- Designation of a clearing and settlement system as systematically important under this Prakas may be given in addition to the designation of the same system under Prakas on payment clearing systems. Persons subject to both Prakass shall comply with requirements under both.

Article 3.-

The NBC may enter into an agreement with, or issue instructions to, a clearing house or a participant of a designated clearing and settlement system, or both, in respect of:

- a. Netting arrangements;
- b. Risk sharing and risk control mechanisms;
- c. Certainty of settlement and finality of payment;
- d. The nature of financial arrangements among participants;
- e. The operational systems and financial soundness of the clearing house; and
- f. Such other matters that in the view of the NBC pertain to systemic risk.

Article 4.-

1. Where the NBC is of the opinion that:

- a. A clearing house for a designated clearing and settlement system is engaging in or is about to engage in any act, omission or course of conduct,
- b. A participant is engaging in or is about to engage in any act, omission, or course of conduct with respect to its participation in the designated clearing and settlement system, or
- c. The designated clearing and settlement system is operating or is about to operate in a way,

that results or is likely to result in systemic risk being inadequately controlled, the NBC may issue an instruction to the clearing house requiring it, within such time as the NBC considers necessary and may specify in the instruction, that such party:

- (i) Cease or refrain from engaging in the act, omission or course of conduct or have the participants cease or refrain from engaging in the act, omission or course of conduct, and
- (ii) Perform such acts or have the participants perform such acts as in the opinion of the NBC are necessary to remedy the situation.

2. Where the NBC has formed an opinion under paragraph (1) that systemic risk is being inadequately controlled and

- a. The clearing house fails to comply with a directive that has been issued to it under paragraph(1)
- b. The designated clearing and settlement system does not have a clearing house located in Cambodia, or
- c. In the opinion of the NBC,
 - (i) The systemic risk is being inadequately controlled due to an act, omission, or course of conduct by a participant with respect to its participation in the designated clearing and settlement system, and
 - (ii) The act, omission, or course of conduct is not subject to the by-laws, agreements, rules, procedures, guidelines, or other documentation governing the designated clearing and settlement system,

the NBC may issue an instruction to the participants requiring them, within such time as the NBC considers necessary and may specify in the instruction, that such party

- (i) Cease or refrain from engaging in certain acts, omissions, or courses of conduct with respect to their participation in the designated clearing and settlement system, and
- (ii) Perform such acts with respect to their participation as the NBC considers necessary to remedy the situation.

3. An instruction under this Article may be made in respect of any matter that is directly related to participation in the designated clearing and settlement system. For greater certainty, an instruction under this Article may not be made in respect of

- a. The capital adequacy of a participant;
- b. The management of its investments;

- c. Its corporate governance;
 - d. Its relations with customers who are not themselves participants in the designated clearing and settlement system; or
 - e. Its ownership structure.
4. An instruction may require that the payment obligations that arise from clearing within the designated clearing and settlement system shall be settled through adjustments to the account or accounts of one or more of the participants at the NBC.
 5. An instruction, if it so provides, applies to a designated clearing and settlement system that is established by or under any Law.
 6. An instruction shall be published in the *Official Gazette*.
 7. An instruction is binding on the person to whom it is given.

Article 5.-

1. The NBC may do all or any of the following things in relation to a designated clearing and settlement system and its clearing house:
 - a. Provide a secured or unsecured guarantee of settlement by participants;
 - b. Make liquidity loans to the clearing house and the central counter-party; and
 - c. Act as the central counter-party to the participants.
2. If the NBC is of the opinion that participation in a designated clearing and settlement system by a participant poses or is likely to pose, an unacceptable systemic risk, or an unacceptable risk to the NBC in guaranteeing settlement of that participant's obligations, the NBC may suspend participation of that participant, prohibit it from being a participant, or may require it to comply with such conditions, with respect to its participation, as the NBC considers necessary.

Article 6.-

1. In Article 6 and 7, "insolvency proceedings" shall mean any collective measure provided for in the law either to wind up the participant or to reorganize it, whether voluntary or involuntary, where such measure involves the suspending of, or imposing limitations on, payment orders and payments.
2. Payment orders entered into a designated clearing and settlement system and their netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that payment orders were entered into a system before the moment of opening of such insolvency proceedings.
3. Where payment orders are entered into a designated clearing and settlement system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the central counterparty or the clearing house

- can prove that they were not aware, nor should have been aware, of the opening of such proceedings.
4. The moment of entry of a payment order into a designated clearing and settlement system shall be defined by the rules of that system.
 5. For the purpose of this Article, the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.
 6. When a decision has been taken in accordance with paragraph 5, the relevant judicial or administrative authority shall immediately notify that decision to the NBC.
 7. Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from the clearing and settlement of payment obligations on a designated clearing and settlement system earlier than the moment of opening of such proceedings.

Article 7.-

1. In this Article, "Settlement rules" means the rules, however established, that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to the clearing house, a central counter-party or the other participants.
2. Notwithstanding anything to the contrary in any other law:
 - a. The settlement rules of a designated clearing and settlement system are valid and are binding on the clearing house, the participants, a central counter-party and the NBC. Any action may be taken or any payment made in accordance with the settlement rules;
 - b. The obligation of a participant, a clearing house or a central counter-party to make payments to a participant, and the right of a participant, a clearing house or a central counter-party to receive payments from a participant, a clearing house or a central counter-party, shall be netted, and a net settlement or close-out amount shall be determined in accordance with the settlement rules of the designated clearing and settlement system, if they so provide; and
 - c. Where the settlement rules of a designated clearing and settlement system provide that the settlement of a payment obligation through an entry to or a payment out of an account of a participant, a clearing house or a central counter-party at the NBC is final and irrevocable, the entry or payment shall not be reversed, repaid or set aside.
3. An entry to or a payment out of the account of a participant, a clearing house or a central counter-party at the NBC to settle a payment obligation in a designated clearing and settlement system shall not be the subject of any provision or order that operates as a stay of that activity.

4. The rights and remedies of a participant, a clearing house, a central counter-party or the NBC, with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a designated clearing and settlement system, may not be affected by insolvency proceedings. In particular, such rights and remedies may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.
5. Notwithstanding that all or part of the administration or operation of a designated clearing and settlement system is conducted outside Cambodia or that its settlement rules are governed by the laws of a foreign jurisdiction, where in any judicial proceedings in Cambodia a court determines that the rights and obligations of any person arising out of or in connection with the operation of the designated clearing and settlement system are governed in whole or in part by the law of Cambodia, the provisions of this Article shall be applied to the extent that the law of Cambodia applies in determining those rights and obligations.

Article 8.-

1. Every clearing house shall, with respect to its designated clearing and settlement system, provide the NBC with reasonable notice in advance of any change to be made by the clearing house that is of a significant nature in relation to the designated clearing and settlement system, and, without limiting the generality of the foregoing, the notice shall be provided with respect to any change affecting:
 - a. All documents relating to the formation, establishment, constitution, governance and operation of the clearing house, including its Sections or memorandum of association, by-laws, and relevant resolutions, agreements, rules and procedures;
 - b. The operation of the designated clearing and settlement system; or
 - c. The by-laws, agreements, rules, procedures, guidelines or other documentation governing the designated clearing and settlement system.
2. Every clearing house shall, forthwith after it makes any other changes in relation to the designated clearing and settlement system, provide the NBC with written notice of the change, and, without limiting the generality of the foregoing, the notice shall be provided in respect of any change affecting:
 - a. The composition of a board of directors of the clearing house due to resignation or otherwise; or
 - b. The appointed auditor of the clearing house.
3. Every clearing house shall, with respect to its designated clearing and settlement system, provide the NBC with such information, at such times and in such form, as the NBC may in writing require.

Article 9.-

1. The NBC may, for the purpose of carrying out its functions under the Article, conduct audits and inspections of a clearing house, and every clearing house shall, as required,

assist the NBC to the extent necessary for the purpose of enabling the NBC to carry out an audit or inspection.

2. At its sole discretion the NBC may have audits and inspections under paragraph (1) carried out on its behalf, in whole or in part, by independent external auditors who shall report to the NBC.
3. For the purpose of obtaining evidence under oath in relation to an audit or inspections under paragraph (1), the NBC has all the powers of a person appointed as a commissioner under *the law on the conduct and organization of NBC*.
4. The NBC may do all or any of the following things in relation to a clearing and settlement system and its clearing house:
 - a. Be a participant, participate, and act as a central counter-party, including in a loss-sharing mechanism;
 - b. Act as a custodian of financial assets, or act as a settlement agent, or both; and
 - c. Accept and pay interest on deposits from the clearing house, a participant or the central counter-party.
5. Where the NBC has reasonable grounds to believe that a system or arrangement exists for the clearing and settlement of payment obligations or payment messages but the NBC requires further information in order to determine whether the system or arrangement is a clearing and settlement system, the NBC may request a person who is a party to the system or arrangement to provide the NBC with such information and documents regarding the system or arrangement as the NBC may require to make the determination. Every person to whom a request is directed under this paragraph shall comply with the request.
6. Every clearing house shall, in respect of its clearing and settlement system provide the NBC with such information and documents as the NBC may from time to time require to enable the NBC to determine whether the clearing and settlement system poses a systemic risk. Without limiting the generality of the foregoing, the clearing house shall, in respect of the clearing and settlement system, provide the NBC with:
 - a. The names of its participants;
 - b. Copies of all documents relating to the formation, establishment, constitution, governance and operation of the clearing house, including its Sections or memorandum of association, by-laws, and relevant resolutions, agreements, rules, and procedures;
 - c. The names of its directors, committee members, and auditors;
 - d. Copies of its reports, statements or other documents that are required to be filed with any government agency or regulatory body; and
 - e. Copies of its financial statements.
7. A participant is not required to provide information to the NBC under this Article concerning another participant of a clearing and settlement system if that information is not available to all the participants.

Article 10.-

1. In this Article:
 - a. "Net termination value" means the net amount obtained after setting off or otherwise netting the obligations between the parties to a netting agreement in accordance with its provisions;
 - b. "Netting agreement" means an agreement between two or more financial institutions or between the NBC and one or more financial institutions that provides for the netting or set-off of present or future obligations to make payments against the present or future rights to receive payments.
2. Notwithstanding anything in any law, whether or not it relates to bankruptcy or insolvency, or any order of a court made pursuant to the administration of a reorganization, arrangement, or receivership involving insolvency, where a financial institution or the NBC is a party to a netting agreement, the financial institution or the NBC may terminate the agreement and determine a net termination value or net settlement amount in accordance with the provisions of the agreement. The party entitled to the net termination value or settlement amount is to be a creditor of the party owing the net termination value or net settlement amount for that value or amount.

Article 11.-

1. Where a clearing house fails to comply with the obligations imposed on it under this Prakas with respect to its clearing and settlement system or otherwise contravenes this Prakas, the participants shall jointly and severally comply with those obligations and they shall be liable for the contravention of those obligations in the same manner and to the same extent, as the clearing house.
2. Where a clearing and settlement system does not have a clearing house located in Cambodia, the participants located in Cambodia
 - a. Shall comply with the obligations imposed under this Article on a clearing house with respect to a clearing and settlement system; and
 - b. Have all the rights conferred by this Article on a clearing house with respect to a clearing and settlement systemin the same manner and to the same extent as if the participants located in Cambodia were the clearing house on which those obligations and rights are imposed or conferred and, for that purpose, any action that the NBC may take in respect of a clearing house may only be taken in respect of the participants located in Cambodia. For the purpose of this paragraph, participant is located in Cambodia if the participant is incorporated or formed under the law applicable in Cambodia.
3. A foreign bank that is or wishes to be a participant in a designated clearing and settlement system shall, from time to time, provide the NBC with any information regarding the application of foreign laws to the foreign bank that the NBC considers necessary.

Article 12.-

1. Compliance with any provision of this Prakas or Instruction issued by the NBC in connection with any matter under the aforesaid provisions, or a lawful request for information directed under this Prakas may be enforced by the NBC's application to a court of competent jurisdiction for an order directing compliance with the provision, rule, instruction or request. Upon the application, the court may so order and make any further order it thinks fit.
2. On an application for judicial review of any designation under this Prakas or of any instruction issued thereunder, no stay of the designation or instruction shall be granted pending the final disposition of the application.

Article 13.-

1. Information and documents obtained under this Prakas are confidential and shall be treated accordingly.
2. Nothing in paragraph (1) prevents the NBC from disclosing any information or documents to any government agency or regulatory body charged with the Prakas of financial institutions, provided that the NBC is satisfied that the information or documents will be treated as confidential by the agency, body or person to whom they are disclosed.

Article 14.-

The General Director, 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 the NBC's supervisory authority shall strictly implement this Prakas.

Article 15.-

This Prakas shall have effect from the signing date.

Phnom Penh, December 04 , 2006
Governor

Signed and sealed: **CHEA CHANTO**