

**KRAM DATED JUNE 17, 1996****ON THE GENERAL STATUTE OF PUBLIC ENTERPRISES**

We,

His Majesty Prince Norodom Sihanouk,

The King of the Kingdom of Cambodia,

- having seen the 1993 Constitution of the Kingdom of Cambodia;
- having seen Kret dated November 1, 1993 on the appointment of the Royal Government of Cambodia;
- having seen Kret dated September 24, 1993 on the appointment of the First Prime Minister and the Second Prime Minister of the Royal Government of Cambodia;
- having seen Kram No. 02 dated July 20, 1994 on the organization and functioning of the Council of Ministers;
- having seen Kret No. 1094-83 dated October 24, 1994 on the modification of the composition of the Royal Government of Cambodia;
- having seen Kret No. 1094-90 dated October 31, 1994 on the modification of the composition of the Royal Government of Cambodia;
- having seen Kram No. 0196-18 dated January 24, 1996 on the creation of the Ministry of Economy and Finance;

upon the proposition of the two Prime Ministers, the State Minister, and the Minister of Economy and Finance;

promulgate;

the law on the General Statute of Public Enterprises, adopted by the National Assembly of the Kingdom of Cambodia on May 22, 1996, during the 6<sup>th</sup> session of the first legislature, the text of which appears below:

**CHAPTER 1****GENERAL PROVISIONS****Article 1**

The purpose of this law is to govern the public enterprise sector and to define conditions applicable to its legal status, functioning and control.

**Article 2**

The public enterprise is an enterprise that all or most of its capital belongs to the State. The public enterprises has its mission to enable the country's economic and social development, namely to increase the value of natural resources and to create professions.

**Article 3**

The public enterprise sector consists of:

- public establishments with economic characteristics
- State companies
- joint ventures in which the State directly or indirectly hold more than 51% of the capital or the right to vote.

**Article 4**

The public enterprises are the legal entities with financial autonomy.

The Council of Administration of the public enterprise, hereinafter called Council, is the highest governing body of the public enterprise that fulfills its function with full autonomy. Number of the Council's members shall not exceed seven.

Unless otherwise stipulated under the provisions of this law, the management in all fields of public enterprises shall be in accordance with principles and procedure of the law on commercial company.

## Article 5

The public enterprises shall be under the common legal system of tax and duty, unless otherwise stipulated in the law.

## Article 6

The public enterprises shall be under the technical responsibility of a ministry or public authority depending on the type of the enterprise's activities.

## Article 7

The public enterprises shall be under:

- the State control as specified in [section 3, chapter 2 of this law](#).
- the financial control and inspection of concerned ministries or institutions.

## Article 8

Personnel who work for the public enterprises shall be subject to a separate statute, decided by the Council of Administrations of the enterprises.

## **CHAPTER II**

### **GENERAL PROVISIONS FOR PUBLIC ENTERPRISES**

#### *Section 1*

#### *Duties and functioning of the council of administration*

## Article 9

Among the seat of the members of the Council of Administration there shall be one seat reserved for the representative of the employees of the public enterprise who shall be selected from and by the employees of the public enterprise.

## Article 10

The Council of Administration delegates necessary power to the President of the General Managers or the General Manager to the daily routine operation of the enterprise, but this delegation of power is not a delegation of responsibilities of the Council.

The function of the President General Director, General Director, or member of the Council of Administration is incompatible with the function of member of the National Assembly and the Royal Government.

## Article 11

The Council of Administration determines the objectives and controls the management of the enterprise, and to insure the rationality and effectiveness of the organization and functioning of the public enterprise.

In order to fulfil this function, the Council of Administration, namely, has the following duties:

- decide on the development project of the enterprise
- periodically evaluate, the result achieved and set forth adjusting measures for the implementation.
- decide on the proposed budget for the functioning of investment and financing scheme
- adopt the balance and management of various accounts
- determine the organizational structure of the enterprise, the statute of the personnel and the salary system.
- adopt the public bidding

## Article 12

The Council of Administration shall meet at least once in three months to discuss the issues listed in the agenda. This agenda shall be notified at least 10 days in advance to all members of the Council, State controllers and the responsible ministry or authority.

The Council of Administration shall manage to finalize the minutes within 10 days after the meeting.

#### Article 13

Unless stipulated in the provisions of the statute or regulations relating to the organization of any public enterprise, the Council of Administration may hold a valid meeting only when the majority of its members attend. The President of the Council is entitled to cast a deciding vote in case of a tie.

#### Article 14

Every year, the Council of Administration shall decide on the 30th of September, the latest, the proposed budget for the functioning and the investment as well as the financing scheme.

These documents shall be approved by the responsible ministry or authority, after an agreement from the Ministry of Economics and Finance, within a maximum period of 2 months from the date on which the documents has reached the responsible ministry or authority.

#### Article 15

The Council of Administration shall decide on the annual activity report, the balance, and the managing accounts as well as annexing documents within three months after the closing of the accounting book.

### *Section 2*

#### *The obligation of public enterprise*

#### Article 16

The public enterprises shall sent the following documents to the Council of Ministers, the Ministry of Economics and Finance and the responsible ministry or authority:

- minutes of the meeting of the Council of Administration
- budget for the functioning of investment
- report on the activities, balance, management accounts as well as annexing documents
- report on the audit of various accounts.

Every finalized document shall be sent to the destination within a period not later than 15 days.

The responsible ministry or authority has one month to make a challenge, if necessary. The Council of Administrations shall be given with the content of the challenge at the next meeting in order that it can take measures.

In cases that the Council does not agree with the challenge of the responsible ministry or authority, the Council shall provide reasons of that rejection and shall immediately inform the responsible ministry or authority.

#### Article 17

The accounts of the public enterprise shall be audited by the accounting expert, in accordance with conditions and procedures determined by anukret.

#### Article 18

The acquisition by public enterprise shall be done in accordance with conditions determined by the Ministry of Economics and Finance.

#### Article 19

The measures, the implementation and the control of the bidding shall be determined by anukret.

### *Section 3*

#### *The control of public enterprise*

## Article 20

The responsible ministry or authority shall economically control the enterprise through its representative sitting in the Council of Administration. This economic control shall be done to insure that decisions made by the Council are in conformity with the objectives of the Royal Government or in conformity with the instructions of the responsible ministry or authority.

## Article 21

State controllers are attached to each public enterprise and shall be in control of the following activities:

- fulfillment by the public enterprise of obligation stipulated the laws and regulations in effect.
- implementation of decision of the Council of Administration.
- follow-up on the functioning and evolution of the enterprise.
- regularities of activities which may affect the financial situation of the enterprise.

## Article 22

The State controller is appointed and removed by anukret following a request of the Ministry of Economics and Finance.

The State controller is selected from amongst the officials of the Ministry of Economics and Finance who are fulfilling public function at least for five years.

The State controller shall perform his/her duty following the instructions of the Ministry of Economics and Finance, and shall regularly report to the Ministry on the fulfillment of the duty.

## Article 23

The State controller shall attend the meeting of the Council of Administration, has the right to provide consultation, and is regularly invited to attend the congress.

The State controller shall provide opinion on issues listed in the agenda of the meeting of the Council of Administration. To fulfil this task, the State controller can ask for information or get access to documents or registers that are available at the enterprise.

## Article 24

The State controllers may challenge against the taking of any measures, if he/she sees it inconsistent with the law and practice which affect the rights and interest of the enterprise or the State, or inconsistent with the enterprise's objectives.

## Article 25

The challenge of the State controller shall be informed in writing to the Council of Administration at its meeting within three working days, after the Council meeting.

The State controllers shall immediately report the ministry of Finance, the responsible ministry or authority on the challenge against the decision of the Council of Administration. Within four days after the challenge of the State controllers, if the Ministry of Finance or the responsible ministry or authority does not justify it, by annulment or modification order, this decision shall be deemed valid.

### **CHAPTER III**

#### **PARTICULAR PROVISIONS**

##### **ON DIFFERENT TYPES OF PUBLIC ENTERPRISE**

###### *Section 1*

###### *Public institutions with economic characteristics*

## Article 26

The public institutions with economic characteristics are public legal entities whose financial management is autonomous. These institutions produce goods or sell services for the marketplace.

## Article 27

The institutions with economic characteristics are created by anukret following a joint proposal by the Ministry of Finance and the responsible ministry or authority. This Anukret determines namely their duties, capital, responsible ministry or authority composition of the Council of Administration, administrative and financial management, rules of operations of the establishments.

## Article 28

The public institution with economic characteristics is led by a President General Director who is at the same time President of the Council and a General Manager, and whose function is under the supervision of the Council of Administration.

The role of the President of the Council of Administration may be separated from the role of the General Manager. In this case the Executive Direction of the institution shall be led by the General Manager.

## Article 29

The President General Director or the General Manager is appointed by anukret following the proposal by the responsible ministry or authority of the said public institution. The other members of the Council of Administration are appointed by anukret following the proposal by the ministry or authority whose representation is in the Council, and under the conditions specified in [article 43 of this law](#).

*Section 2**State Company*

## Article 30

The State company is the one whose total capital comes from the State.

## Article 31

The State company is created by anukret following a joint proposal by the ministry of Economics and Finance or the responsible ministry or authority. This Anukret specify namely the objective, legal status, responsible ministry or authority, applicable system of control, and the composition of the Council of Administration.

## Article 32

The Ministry of Economics and Finance is responsible to fill in the procedure of the establishment of the company by:

- preparing the statute of the company with the agreement from the responsible ministry or authority.
- conducting the commercial registration.
- fill in all forms according to the principle and procedure provided for under the Law on Commercial company.

## Article 33

Unless otherwise provided for in this law, the statute of the Sate company specifies namely the amount and the nature of the shares, administrative and financial organization, and the rules of operations of the company.

## Article 34

Notwithstanding any principles or procedures in the law on Commercial company, the power of the General Assembly of the State company is granted to the Council of Administration.

## Article 35

The initial capital and the adjusted shares of the State company shall be generated in accordance with provisions stipulated in the law on the financial system and the financial laws in force.

## Article 36

The President General Director or the General Manager is appointed by anukret following the proposal by the responsible ministry or

authority. The other members of the Council of Administration are appointed by anukret following the proposal by the ministry or authority whose representation is in the Council of Administration, and under the conditions specified in [article 43 of this law](#).

### *Section 3*

#### *Joint Venture*

##### Article 37

The public participation is the part of the capital of the Joint Venture owned by the State, public institution, or by the State company.

##### Article 38

The Joint Venture is created under the principles and procedures specified in the law on Commercial company in which the capital is jointly owned by a State legal entity or private natural person, or the State legal entity.

If the public participation is more than 51% of the capital or the right to vote, the Joint Venture is considered as a public enterprise.

##### Article 39

The Ministry of Economics and Finance insures the administrative aspect of the public participation.

##### Article 40

The financial operations of public participation are realized in accordance with provisions specified under the Law on the Financial System and the Financial laws in force.

##### Article 41

Notwithstanding any provisions of Law on commercial company, the State, the public establishments and the State are dispensed from the obligation to deposit their security shares for guaranteeing their representation in the Council of Administration of the participating enterprise.

##### Article 42

The representatives of the State, public establishment or the State company in the Council of Administration of the Joint Venture are appointed by anukret following a proposal by the Ministry of Finance.

The Administrators representing the State company are appointed by decision of the Council of Administration of the said company, after an agreement of the Ministry of Economics and Finance.

##### Article 43

The representatives of the State, public establishment and the State company in the Council of Administration of the Joint Venture, are selected based on their personal merits and experience, or selected from among the public officials working at least for five years or retired but not over 65 years old, or from among Khmer dignitaries who have competent in economics, laws or sciences.

Those representatives are dispensed from the obligation to deposit security money for their function in the Council, but they can not have any share in the enterprise.

##### Article 44

The civil liabilities of those representatives in the fulfillment of their duties shall fall under the State, public establishment and the State company, but they shall personally be liable for any criminal offense.

##### Article 45

The public officials who used to represent the State, public establishment or State company are prohibited to hold any position in the enterprise that they had involved with their function before the expiring period of three years, counting from the date of their termination of the work, unless otherwise particularly authorized by the Minister of Economics and Finance.

Article 46

There shall be a special representative of the State in the General Assembly of the Joint Venture. This special representative is incompatible with a position as General Manager of the said enterprise.

Article 47

The special representative has the duty to protect the interest of the State in the ordinary and extra-ordinary General Assembly; and has the right to vote on behalf on the party "State".

Article 48

The special representative is selected from amongst the public officials who have been working for five years at least. The special representative is appointed by Parkas of the Minister of Finance. The special representative shall ask for advice from the Minister of Finance before attending the General Assembly of the Joint Venture.

**CHAPTER IV**

**FINAL PROVISIONS**

Article 49

Any provisions contrary to this law shall be invalidated.

This law is adopted by the National Assembly of the Kingdom of Cambodia on May 22, 1996, at its 6th session, first Legislature.

Phnom Penh 28 May, 1996

Son Soubert