

UNOFFICIAL TRANSLATION

National Committee to Support the Communes/Sangkats

**Sub-decree on the Establishment of the
“Communes/Sangkats Fund”**

NCSC
7 February 2002

Chapter 1 ***General Provisions***

Article 1

The purpose of this Sub-Decree is to regulate the “Commune/Sangkat Fund” (The Fund) established by the Law on the Administration and Management of Communes/Sangkats.

Article 2

The purposes of the Commune/Sangkat Fund are:

- To enable the Communes/Sangkats to assume their general responsibilities for local administration and promotion of local development in accordance with the provisions of Articles 42, 43, and 44 of the Law on the Administration and Management of Communes/Sangkats.
- To reduce differences in the relative potential of the Communes/Sangkats to mobilize their own revenue, because of different demographic, social and economic conditions
- To act as an incentive for building the capacity for good governance of the Communes/Sangkats Councils.

Article 3

The Fund account shall be opened at the National Treasury. The Fund shall reflect:

(a) Revenues:

- Contributions from a share of the RGC recurrent domestic revenue
- Contributions from grants and loans made available by donors agencies and international financial institutions.
- Any other sources.

(b) Expenditures:

- Annual transfers to the budgets of Commune/Sangkat Councils.

Any monies not transferred to Communes/Sangkats in any given year shall be carried over to the subsequent year.

Chapter 2
Management of the Commune/Sangkat Fund

Article 4

The “Commune / Sangkat Fund Board” (the Fund Board) is hereby established.

The Fund Board shall be responsible for:

- Recommending to the RGC the share of total current domestic revenue to be allocated to the Fund
- Monitoring the flow of resources into the Fund from external grants and loans, and establishing targets for mobilization of external resources by the RGC
- Adopting the formula for distribution of the resources of the Fund, and recommending to the RGC any change in the formula referred to in Art. 11 below.
- Adopting and annually revising a classification of Communes/Sangkats, for the purpose of allocating the components of the Fund, as described in Art. 12 and 13 below.
- Approving the annual plan of distribution of the resources of the Fund, based on the above classification and formula.
- Communicating to Communes/Sangkats their individual annual entitlement to resources of the Fund and the indicative forecast of such entitlement over a 3-years period.
- Monitoring the actual transfers of the resources of the Fund to the Communes/Sangkats, against the approved annual distribution plan
- Approving the annual financial statement of the Fund

Within one month from its creation the Board shall adopt internal regulations to guide its process of decisions making.

Article 5

The Fund Board shall be composed of:

- A representative of the Minister of Economy and Finance (chair)
- A representative of the Minister of Interior

- A representative of the Minister of Planning.
- A representative of the Council for Development of Cambodia
- Three representatives of the elected Councils to be selected by the Minister of Interior from different development level areas.

Pending the establishment of a national association of the Cambodian Communes and Sangkats Councils, the Ministry of Interior shall be responsible for organizing the election of the Councils representatives in the Board.

Article 6

The Fund Board shall be supported by a permanent secretariat.

The secretariat shall be established within the Ministry of Economy and Finance and shall be responsible for:

- Facilitating and recording the discussions and deliberations of the Fund Board
- Preparing quarterly financial and activity reports on the operations of the Fund
- Providing all technical support to the Fund Board.

Article 7

The Minister of Interior shall be responsible for:

- Authorizing all transfers of resources from the Fund account to the individual Commune/Sangkat accounts, after verification that the beneficiary Communes/Sangkats have complied with the conditions of access stated in Art. 17 below
- Monitoring the performance of the Councils in the utilization of the Fund's resources.
- Providing the Fund Board with periodic detailed information on the transfer and utilization of the resources of the Fund

In performing the above tasks, the Minister of Interior shall act in accordance with all the deliberations of the Fund Board.

Article 8

The Minister of Interior shall delegate to the Provincial Governors the powers to:

- (a) Monitor and certify the compliance of the Commune/Sangkat Councils with the conditions of access to the Fund specified in Art 17 below
- (b) Monitor the performance of the Communes/Sangkats Council in the use of Fund resources.

Detailed instructions shall be issued by the Minister of Interior in consultation with the Minister of Finance to guide the Provincial Governors in the performance of the above functions.

Chapter 3 *Financing, Allocation and Use of the Fund*

Article 9

Pursuant to Art 77 of the Commune Law, the minimum level of contribution from the RGC domestic revenue to the Fund account shall be established in advance for at least 3 fiscal years.

For the fiscal year 2002 the level of contribution from the State Budget is specified in Art 20 of Chapter 5 (Transitional Provisions) of this Sub-Decree.

For the years 2003 and 2004 the level of contribution from the State Budget to the Fund account shall be as a percentage of the recurrent revenues:

- In fiscal year 2003: not less than 2.00% (two percent)
- In fiscal year 2004: not less than 2.50% (two point five percent)

The Royal Government of Cambodia shall consider an increase of these percentages upon request from the Fund Board.

Article 10

The Fund Board shall set annual targets for mobilization of external contributions to the Fund.

A Deposit Account in foreign currency entitled “Commune Fund” shall be opened, in the name of the Ministry of Economy and Finance (MEF) with the National Bank of Cambodia (NBC) to receive resources from grants and loans made available by donors’ agencies and international financial institutions.

Revenue of the “Commune Fund” account in the NBC shall be transferred in Riel currency to the Fund’s treasury account as and when required.

Article 11

The share of the total Fund resources transferable to individual Commune/Sangkat Councils shall be determined by a formula. The formula shall be consistent with the purpose of the Fund as stated in Art. 2 above.

At the latest, by the 1st of October of the fiscal year preceding the one in which the transfers will be effected, the Fund Board shall adopt the formula and announce the amounts to which each Commune/Sangkat will be entitled.

Article 12

The total resources of the Fund shall be divided into two components as follows:

- A General Administration Component. This component shall be not more than 1/3 of the total distributable resources of the Fund
- A Local Development Component. This component shall be not less than 2/3 of the total distributable resources of Fund.

The Fund Board shall determine the way in which the total Fund resources are divided between these two components, within the above limits.

Article 13

The Fund Board shall establish a classification of the Commune/Sangkat in two categories.

Category 1 shall include all the Communes/Sangkats that the Board deems capable of making effective and efficient use of the Fund transfers earmarked for development spending.

Category 2 shall include all other Communes/Sangkats

The Fund Board shall prepare and approve a multi-year plan for the gradual inclusion of all Communes/Sangkats Councils in Category 1. Based on the above plan and not later than the 1st of October of each year, the Fund Board shall determine the number of the Communes/Sangkats to be included in category 1 in the next fiscal year.

Article 14

Resources under the two components of the Fund shall be distributed and used according to the following provisions.

- (a) Resources of General Administration Component:
- Shall be accessed by all Councils in categories 1 and 2

- Shall be shared in proportion to the number of elected Commune/Sangkat councilors.
- May be applied by the recipient Councils to any eligible administration or development expenditures as defined in art. 15 below

(b) Resources of Local Development Component:

- Shall be accessed only by Councils included in category 1
- Shall be distributed in three shares: an equal share, a share proportional to the population of the Commune/Sangkat and a share proportional to a poverty index, weighted by the population of the Commune/Sangkat.
- May be applied by the recipient Councils only to development expenditures as defined in art. 15 below

The Ministry of Planning shall, not later than the 1st of September of each year, provide the Fund Board with updated official estimates of:

- The total population of all Communes/Sangkats
- The poverty index of each Commune/Sangkat.

Article 15

Transfers from the Commune/Sangkat Fund may be used by Commune/Sangkat Council to cover, in full or in part, any recurrent and investment expenditure that is reflected in the Council's approved budget and does not violate the Commune Law or any other law and regulation issued by the RGC.

“*Administration expenditures*” are recurrent and investment expenditures incurred by the Councils in the performance of their general administrative duties. They may cover the cost of:

- Allowances to Councilors
- Salaries of local staff and other personnel expenses
- Purchase or rental of Council's premises,
- Furniture and office equipment for the Council's or administration's facilities
- Repair and maintenance of administrative facilities
- Utility charges

- Purchase or rental of vehicles
- Fuel, lubricants and vehicles maintenance
- Other consumables and miscellaneous

“*Development expenditures*” are recurrent and investment expenditures incurred by the Council for the development of local infrastructures (with the exception of administrative facilities) and the delivery of local economic and social (but not administrative) services. They may include:

- The survey, design, construction, repair and maintenance of roads, bridges, markets, educational and health care facilities, community centers, irrigation networks and structures, agricultural storage facilities, water and power supply and other economic and social infrastructure.
- Personnel and other recurrent costs associated with the operation of the local infrastructure and the delivery of related services.
- Support of community development programs managed by local NGOs and community-based organization, including local education and information campaigns for women and youth, environmental protection and natural resources management and other programs impacting on the welfare of local population.

Detailed instructions shall be issued by the Ministry of Finance, in conjunction with the regulation of the Commune/Sangkat budget to reconcile the “administration” and “development” categories with the classification of expenditures in the budget.

Chapter 4 ***Transfers Procedures and Conditions of Access***

Article 16

All Communes/Sangkats shall hold a deposit account at the Provincial Treasuries or in a commercial bank as authorized by the MEF.

Pursuant to the provision of Art.7, the National Treasury, at the request of the Minister of Interior, shall transfer the approved annual allocation to which the individual Communes/Sangkats are entitled, into the accounts held by the Communes/Sangkats in their respective provincial treasuries or commercial banks.

The annual transfers shall be made in three installments. The first transfer shall be 50% of the total and shall be made not later than the 1st of March. The second transfer shall be 30% of the total and shall be made before the 1st of June. The third transfer shall be 20% of the total and shall be made before the 1st of September.

Article 17

To receive the transfers, the Councils shall demonstrate that they have:

- Followed a process of participatory planning, budgeting and implementation and
- Completed all financial reports on the execution of their budget and their development plan,
- Mobilized beneficiaries contributions and other local resources to complement the transfers from the Fund's Local Development Component.

Within 20 days from the receipt of the Councils applications for the Fund transfers, the Provincial Governors, on behalf of the Minister of Interior, shall:

- Verify the Council's compliance with the conditions of access to the Fund
- Recommend to the Ministry of Interior the finalization of the transfer.

In case of non-compliance by the Council, the Governor shall recommend the applicable corrective actions and provide the necessary technical assistance. The Governor may then request to the Ministry of Interior to withhold the transfer until the Council has taken the recommended actions and complied with all conditions of access to the Fund.

In case of conflict between the Council and the Provincial Governor, the concerned Commune/Sangkat Council should submit the case to the Fund Board, for review and decision. The decision of Fund Board shall be final.

Chapter 5 ***Transitional Arrangements***

Article 18

Pending the establishment of the Fund Board, the National Committee to Support the Communes (NCSC) shall ensure the execution of Article 4 above, with the assistance of the Finance Sub-Committee.

Article 19

During the mandate of the National Committee to Support the Communes, the Fund Board shall report and make recommendations regularly to the NCSC on the operation of the Fund.

Any regulations or guidelines relative to the operation of the Fund shall be submitted to the NCSC for approval.

Within 6 month from its establishment the Fund Board shall prepare and submit to the NCSC a multi-year plan for the gradual inclusion of all Communes/Sangkats Councils in Category 1.

Article 20

In 2002, the contribution of the RGC to the Fund shall be 20,000,000,000 (twenty billion) Cambodian Riels

Article 21

In 2002, the Communes/Sangkats to be included in Category 1 shall be those having a development plan, capacity to effectively use development funds, and confirmed resources.

Article 22

No conditions of access shall apply to the first and second installment of the transfer of Fund resources in FY 2002. The Ministry of Interior shall issue guidelines and reporting formats, applicable to the third installment, not later than the 1st of June 2002.

***Chapter 6
Final Provisions***

Article 23

Any provisions that are in contrary to this Sub-Decree shall be null and void.

Article 24

The Minister for the Council of Ministers, Ministers and Secretaries of State of all ministries, and relevant institutions as specified in Article 5 of this Sub-Decree, Governors of provinces and municipalities, Commune/Sangkat Councils, and Commune/Sangkat Chiefs shall be responsible for the implementation of this Sub-Decree.