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KINGDOM OF CAMBODIA
Nation Religion King



Royal Government of Cambodia
No: 129 ANKr.BK

Sub-Decree
On
Rules and Procedures on Reclassification of State Public Properties and
Public Entities

- Having seen Constitution of Cambodia
- Having seen Royal Kram No NS/RKM/0704/124 dated July 15, 2004 on the Appointment of Royal Government of Cambodia
- Having seen Royal Kram No 02/NS/94 dated July 20, 1994 promulgated by Law on the Organization and Functioning of the Council of Ministers
- Having seen Royal Kram 01/NS/93 dated December 28, 1993 promulgated by Law on Financial System and any law that amended this law
- Having seen Royal Kram No NS/RKM/0196/18 dated January 24, 1996 promulgated by Law on the Establishment of the Ministry of Economy and Finance
- Having seen Royal Kram No NS/RKM/0801/14 dated August 30, 2001 promulgated by Land Law
- Having seen Royal Decree No NS/RKT/0806/339 dated August 03, 2006 on Principal and Regulation Time of Secularization on Public Property of State and of Public Entity
- Having seen Sub-Decree No 04 ANKr.BK dated January 20, 2000 on the Organization and Functioning of the Ministry of Economy and Finance
- Having seen Sub-Decree No 78 ANKr.BK dated November 18, 2004 on the Addition and Amendment on some Department of Ministry Economy and Finance
- Having received agreement from Council of Ministers during Plenary Session of the Council of Ministers dated July 28, 2006

Hereby Decided

Chapter 1
General Provision

Article 1

This Sub-Decree aim to set principal, strategy, and legal procedure on managing and functioning on state property in relation to:

- Management on inventory of state property
- Lease on state property
- Sale on state private property
- Exchange on private state property.

Article 2

General principals for the management and control of state properties are follows:

1. The Royal Government is the one who manages all state properties which are under the possession, use, oversight, business of the ministries, institutions, provincial, municipal, district, commune authorities, and all public entities. Ministry of Economy and Finance is the authority which manages the state property. The State Property Management Authority is the organ of the Royal Government with regard to the sale, exchange, and lease of state property. State Property Management Authority shall report to the Royal Government the results of the lease, sale and oversee exchange of moveable and immoveable property of the state.
2. Ministries, institutions, provincial, municipal, district, commune authorities, and other public entities that possess, use, oversee, do business on state property is a State Property Possession Authority within the meaning of this Sub-Decree. A State Property Possession Authority has the obligation to use, care for, and to propose the sale, exchange, or lease only.
3. All state property including property that is still under the possession of public entities shall be registered in the state property inventory according to the form and procedure that is to be set out in a PRAKAS of Ministry of Economy and Finance.
4. All state property including property that is still under the possession of public entities may be not be sold, exchanged, leased or subject to the grant of concession unless those properties have been registered in the state property inventory. Conditions and procedures of the sale, exchange and lease of the state property must follow the rules set out in this Sub-Decree. Conditions and procedures for granting of concessions over state property shall be set out separately.

Article 3

State property includes state public property and state private property. These properties may be moveable and immoveable property. State property refers to any property under the possession, use, oversight, business of the ministries, institutions, provincial, municipal, district, commune authorities, and all other properties that state has given to other public entities to possess, use, oversee and do business.

State private property is all state property except state public property as stated in Article 58 of Constitution 1993, as well as Article 12 and Article 15 of Land Law, promulgated by Royal Kram No NS/RKM/0801/14 dated August 30, 2001.

Article 4

All state private property including property that is still under the possession of the state or other public entities may be the subject of sale and exchange pursuant to the rule set out in this Sub-Decree.

State public properties including public properties of public entities can not be the subject of sale, exchange, or alienation of any rights. This state public property may be the subject of a lease but must be in accordance with the conditions and procedures set out in this Sub-Decree.

Chapter 2

Organization of Inventory of State Property

Article 5

State property to be registered in State Property Inventory are all moveable and immoveable properties that are under the possession of a state property authority such as the ministries, institutions, provincial, municipal, district, commune authorities, and other public entities.

Article 6

The State Property Inventory shall be divided into 4 classes such as:

1. Central class or class of ministry, institution

Commission of State Property Inventory that possessed by ministry, institution shall be created in order to create Inventory Property with the following members:

- Ministry's, institution's leader as Chief
- Chief of relevant technical department as Member

Chief and member of this commission shall sign to be responsible for the inventory Property that already created.

2. Technical department class in province, municipal

Commission of Inventory property is created for creating Inventory Property with the following members:

- Chief of concern technical department who responsible for usage unit as Chief
- Chief of usage office of technical department as Member
- Chief of usage office in Srok, Khan as Member

Chief and member of this commission shall sign to be responsible for the Inventory Property and there shall be signature from Chief of Department of Economy and Finance provincial, municipal, as well as approval from Provincial, Municipality Chief.

3. Provincial, municipal class

Commission of Inventory Property is created with the following members:

a. Provincial, municipal office:

- Chief of cabinet or chief of finance as Chief
- All chief internal office of provincial, municipal office as Member

b. Srok, Khan office:

- Chief of Srok, Khan as Chief
- Chief of internal office as Member
- Chief of Khum-Sangkat as Member

Chief and member of this commission shall sign to be responsible for Inventory Property and there shall be signature from Chief of Department of Economy and Finance provincial, municipal, as well as approval from Provincial, Municipality Chief.

4. Other public entity class

Commission of inventory public property is created to create Inventory Property with the following members:

- Chief of unit as Chief
- Chief of relevant technical department as Member

Chief and member of this commission shall sign to be responsible for the already-made-inventory.

Article 7

State Property Possession Authority is one who encourages and advises State Property Authority to create inventory of state property in form and legal procedure set by Ministry of Economy and Finance.

State Property Management Authority shall create inventory of each year properly and send to State Property Possession Authority by the end of 1st quarter, next year.

State Property Management Authority shall be directly responsible in front of Royal Government in case there is no decision were reached for creating inventory on time and had not yet registered all the state property into the inventory.

Each inventory that already created State Property Management Authority shall provide two copies to State Property Possession Authority as archive and follow.

State Property Possession Authority shall report the result on managing inventory to Royal Government through Council of Ministers every year.

Chapter 3
Lease on State Property
Part 1
Lease on State Private Property

Article 8

State Property Possession Authority shall properly organize all the relevant document related to state property which is the subject of renting and raise a request to rent that state private property to State Property Management Authority for examining and to ask for Royal Government decision.

Article 9

State Property Management Authority shall create a commission value on state private property which is the subject of the renting by basing on technical, and market price; and raise a request of their own valuation to State Property Possession Authority. This Commission Valuation shall have a representative of State Property Possession Authority, a representative of State Property Management Authority, a representative of Council of Ministers, and a representative of relevant institution to value on state private property which is the subject of the renting.

Article 10

Renting state private property shall be created under the form of bidding or negotiating the price.

Base on request of State Property Possession Authority and the result of valuation on the property to be rented, State Property Management Authority shall examine, advice, and decide as the principal of bidding or negotiating the price. In case of necessity, there shall be a decision from Head of Royal Government in advance.

Detail procedure of bidding and negotiating the price shall be set by Prakas of Ministry of Economy and Finance.

Article 11

Renting state private movable property is the obligation of State Property Management Authority, except movable property with high price.

Renting state private immovable property is the obligation of Royal Government.

Article 12

Bidding can be held if there were participation of natural person or entity, national or international standard stated from 02 and depend on the size of state private property to be rented.

Bidding will be held as the following form:

1. Open competition in form national or international standard
2. Oral competition in form of national or international standard

Article 13

Negotiation and discussing the price could be held if there was one of the following:

1. Bidding receive no result
2. Special characteristic of state private property which oblige lessee to add more of other important condition.

3. There is only one natural person or entity

Article 14:

Base on the result of bidding or price negotiation which is officially recognized by the state property management authority or government, the State Property Possession authority and the State Management Authority has maximum 3 (three) months to discuss with the parties in agreement to draft the agreement. This period can be renewed for another three months when there is reasonable and necessary reason. In case the bidder fail to negotiate, discuss to prepare lease contract within given time, principle or result of the bidding will be cancelled and seize the deposit and put in state budget.

Parties to the contract can sign the contract as long as they agreed all conditions in the draft and it is inspected modified and agreed by the State Management Authority within 45 (forty five) days after receiving from State Property Processing Authority

The agreement mentions necessary conditions as follow:

- 1- Lease fee and the payment of lease fee by monthly, quarterly, or annually base on the agreement between parties to agreement.
- 2- In case of late payment, 60 (sixty) days after the determination on payment of lease fee, the lessee shall be fined 2 (two) percent a month of the lease fee which is paid monthly, quarterly, annually. The fine is calculated by compounding interest formula.
- 3- In case the lessee fails to pay the lease fee for 6 (six) months, the State Property Possession Authority cancels the contract and takes legal action after there is approval from the State Property Management Authority. If the State Property Possession Authority is unable to fulfill its duty, the State Property Management Authority will take action within its jurisdiction to cancel the contract and take legal actions.

State private property lease agreement which does not abide by the procedure and does not meet required conditions is abrogated.

Part 2

Leasing State Public Property

Article 15:

State Property Possession Authority must appropriately prepare all documents involved state public property which is the subject for leasing and then make proposal to lease the public property to the State Property Possession Authority for inspection and asking for approval from the government.

Article 16:

Leasing of state public property must abide by following conditions:

1. Leasing of state public property must not change the direction of usage or damage to those properties.
2. Leasing of state public property must not effect or change its function in giving public service by that property.

Article 17:

After receiving approval from the State Property Management Authority, the State Property Possession Authority can arrange the process to lease the government public property by following the procedures as determined in part 2 of this chapter.

Article 18:

Leasing of state public property must not be exceed than 15 (fifteen) years. The leasing agreement is made in the form of temporary, irregular letter of approval to possess the state public property and it can be withdrawn any time in order to protect the state public property and to serve public interest.

The State Property Possession Authority has duty to prepare record book which determines the other conditions required in utilizing the state public property.

Part 3

Changes on Lease Agreement and Income Payment

Article 19:

The State Possession Property Authority who are the parties to the agreement has 9 (nine) months to inspect and amend the State Property lease agreement which is made before this Sub-Decree becomes effective by adding necessary conditions as mention in article 14 of this Sub-Decree.

Article 20:

The lessee must pay leasing fee on State Property to government budge at the income account for the State Property or the other accounts which is determined by government.

Chapter 4

Selling State Private Property

Article 21:

All regulations in this chapter shall be implemented in selling State Private property which is controlled and utilized, taken care, and exploited by ministries, departments, cities/provinces, districts/Khan, communes/Sangkat and other public entities both movable and immovable property.

Article 22:

State Property Authority is responsible for making proposal to sell State Private Property and prepares documents involve with property which is the subject for selling to another party by enclosing the relevant documents to the State Property Management Authority for inspection and asking for approval from government.

Article 23

Selling movable State Private Property is the competency of the State Property Management Authority except the movable property which has higher price.
Selling immovable State Private Property is the competency of government.

Article 24:

State Property Possession Authority must create a committee to assess the State Private Property which is the subject of selling base on the technical conditions and market price, and then send the proposal and assessment to the State Property Management Authority. The assessment commission comprises of representative from State Property Management Authority, State Property Possession Authority, Council of Minister and relevant technical authorities to assess the State Property which is the subject of selling.

Article 25:

The process of selling State Private Property is conducted in the form of bidding or price negotiation which is the same to leasing.
State Property Management Authority must inspect, consult, and decide whether selling of state private property is conducted in the form bidding or price negotiation base on the request from State Property Possession Authority and the result of the assessment. In the event of necessary, there must be prior approval from the Royal Government.

The detail process of bidding and price negotiation determines by declaration of the Ministry of Economy and Finance.

Article 26:

The bidding is conducted with participation of more than two of national and international natural person and entities and it depends on the extent of the State Private Property that will be sold.

3. Open competition in form of national or international standard
4. Oral competition in form of national or international standard

Article 27:

Price negotiation can be held in one of the following cases

- 1- If the bidding process do not get result.
- 2- There is only one natural person or entity.
- 3- The lessee request to buy the property from the State when the lessee has invested for 30 (thirty) percent of the investment project or in case the State already gave the existing means and infrastructure and the project has operated at least for one year.

Article 29:

Income from selling State Private Property shall deposit in revenue account of State Property or in other account which determined by the Royal Government.

Article 30:

Transferring of ownership from State to Private party can be conducted as long as there is clarification from the State Property Management Authority on the full payment to State budget account, complete the duties as require in the duty record book for bidding process or required in agreement, paying the stamp duty and other taxes required by the law.

Chapter 5

Exchange of State Private Property

Article 31

Exchange of State Private Property is the transfer of property right between private party and state party.

The exchange is conducted in order to manage the space for work place, to organize administrative area pursuant to the actual requirements and the development policy.

State Property Possession Authority may request the exchange of any State Private Properties (these State Private Properties include movable and immovable properties) in order to get back new and appropriate property that is provided by private party.

Article 32

State Property Possession Authority shall properly file and send all the relevant documents related to State Private Property, which is subject to the exchange with the property of private individual, to State Property Management Authority. The exchange shall be reviewed and decided by the government.

Article 33

The exchange of State Private movable property is under the competence of State Property Management Authority, except the high valued movable property.

The exchange of State Private immovable property is under the competence of the Royal Government.

Article 34

State Property Possession Authority shall create a commission to assess State Private Property with the participation of a representative of the management Authority, a representative of the possessing Authority, a representative of Council of Ministers and a representative of relevant institutions to value on state private properties, which are subject to the exchange, in accordant to technical conditions, and market price.

Article 35

The exchange between State Private Property and Private Party Property shall be conducted in form of public bidding or negotiating the price pursuant to procedure provided in Article 26 and Article 27 of this Sub-Decree.

Private party who joins the bidding or negotiating the price shall have enough wealth, which is subject to be bartered for State Private Property.

Conditions and settlement of the exchange price shall be determined by a Duty Record Book that shall be created by the State Property Possession Authority and this Authority shall send Duty Record Book to State Property Management Authority for review and decision of the Royal Government.

Article 36:

State Property Management Authority must inspect, consult, and decide whether the exchange of State Private Property is conducted in the form bidding or price negotiation by basing on the request from State Property Possession Authority and the result of the assessment on State Private Property. In a necessary case, there must be prior approval from the Royal Government.

The detail procedure of bidding and price negotiation must be determined by a declaration of the Ministry of Economy and Finance.

Article 37:

Based on the result of bidding and price negotiation which is officially recognized by State Property Management Authority or the Royal Government, State Property Possession Authority has maximum 3 (three) months to discuss the draft exchange agreement with the party who will sign the agreement. This period could be extended no longer than another three months if there is logical and necessary reason. In case where the bidder refuses to discuss the price within the given period, the policy or outcome resulting from the bidding would be considered null and void and the deposit would be seized and paid to the government budget.

Contracting parties can sign this agreement unless they agree on all conditions stated in this draft agreement. Also, these conditions must be reviewed, modified and agreed by the State Property Management Authority.

Article 38:

The transfer of property right from the state to private party may be conducted as long as there are clarification from the State Property Management Authority regarding the full payment to the State, completion of obligation pursuant to the bidding duty record book or the final agreement, completion of stamp duty and other taxes.

Article 39:

Lessee must pay lease fee on State Property, into income account of the state budget or other account determined by the government.

Chapter 6
Transitional Provision
On Rules and Procedure for Reclassification

Article 40:

The reclassification of State Public Property and public entities must abide by the principles and provisions mentioned in Royal Decree No NS/RKT/0806/ 339 dated August 03, 2006 on the Principles and Transitional Provisions on the reclassification on State Public Property and Public Entities

The rules and procedures of reclassification are provided in this Sub-Decree.

Article 41:

State Property Management Authority has duty to publicly observe and report the State Public Property that is disqualified from serving the public interest conditions provided in Royal Decree No NS/RKT/0806/ 339 dated August 03, 2006 on the Principles and Transitional Provisions on the Reclassification of State Public Property and Public Entities. The Authority

shall make a request to reclassify by attaching all documents to State Property Management Authority for review and to be consulted and ed by the Royal Government in accordance to this Sub-Decree.

Chapter 7 **Final Provision**

Article 42

All provisions that are not comply with this Sub-Decree, must be abrogated

Article 43:

The Minister of the Council of Ministers, Minister of Economy and Finance, Minister of Land Management, Urban Planning and Construction, Ministers, Secretary of States of the relevant ministries must implement this Sub-Decree from the signing date.

Phnom Penh November 27, 2006

Prime Minister

Hun Sen

CC:

- Ministry of Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of Senate
- General Secretariat of National Assembly
- Cabinet of Samdech Prime Minister
- Cabinet of Deputy Prime Minister
- General Secretariat of Royal Government
- The same article 43
- Archive Chronology.