

**Kingdom of Cambodia
Nation Religion King**



**Ministry of Commerce
No.: 084 P.N. A.KBB.SSR**

**Decision
on
Formalities and Procedures for Calculation of Pecuniary Penalties on Violations
under Law on Competition**

Minister of Commerce

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Royal Decree No. NS/RKT/0918/925 dated 06 September 2018 on the Appointment of the Royal Government of Cambodia;
- Having seen Royal Decree No. NS/RKT/0320/421 dated 30 March 2020 on the Appointment and Adjustment of the Composition of the Royal Government of Cambodia;
- Having seen Royal Kram No. NS/RKM/0618/012 dated 28 June 2018 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen Royal Kram No. NS/RKM/0196/16 dated 24 January 1996 promulgating the Law on the Establishment of the Ministry of Commerce;
- Having seen Royal Kram No. NS/RKM/1021/013 dated 05 October 2021 promulgating the Law on Competition;
- Having seen Sub-Decree No. 38 ANKR.BK dated 16 March 2020 on the Organization and Functioning of the Ministry of Commerce;
- Having seen Sub-Decree No. 37 ANKR.BK dated 17 February 2022 on the Organization and Functioning of the Cambodia Competition Commission;
- According to the necessity of the Ministry of Commerce.

Hereby Decides

Chapter 1

General Provisions

Article 1.- Purpose

This Decision sets out formalities and procedures for the calculation of pecuniary penalties on violations under the Law on Competition and relevant provisions to ensure transparency, integrity and effectiveness of the calculation of the pecuniary penalties and to prevent any agreement or activities that restrict, distort or prevent competition in the Kingdom of Cambodia.

Article 2.- Scope

This Decision applies to all calculations of pecuniary penalties imposed for violations under the Law on Competition and relevant provisions.

Chapter 2

Competent Institution

Article 3.- Competent Institution

Cambodia Competition Commission (CCC), with the Consumer Protection Competition and Fraud Repression (CCF) Directorate-General as the implementing body, is the competent institution responsible for calculating pecuniary penalties for violations under the Law on Competition and relevant provisions.

Article 4.- Procedures for Calculating Pecuniary Penalties

CCC shall follow the prescribed procedures for the calculation of pecuniary penalties in the following order:

1. Calculation of statutory penalty;
2. Calculation of base penalty;
3. Adjustment of base penalty with the aggravating and mitigating circumstances;
4. Adjustment of base penalty with the statutory penalty; and
5. Final adjustment.

In the event that the Person repeatedly commits a violation or multiple violations simultaneously, without having previously received any written warning or pecuniary penalties, the calculation of pecuniary penalties for each violation shall be determined separately, or as decided by the CCC.

Chapter 3**Calculation of Statutory Penalty****Article 5.- Calculation of Statutory Penalty**

In accordance with Article 35 of the Law on Competition, a statutory penalty is the minimum and maximum pecuniary penalty set by law, which ranges from 3% to 10% of the Person's total turnover multiplied by 3 (three) years or the actual year and month if the violation period is less than 3 (three) years.

Article 6.- Determination of Total Turnover

The total turnover of a Person shall be the total turnover of the highest financial year within the violation period, where total turnover represents the Person's turnover in any financial year without deductions for money transfers, taxes, and tariffs of sale and turnover refers to the total sales of goods and services generated through business activities within the Kingdom of Cambodia.

In the event that the Person is part of a group, the total turnover shall be calculated by adding the highest total turnover of all Persons within the group, excluding the turnover generated by the sale of goods and services for the Person within the group.

In the event that the Person is part of an association, the total turnover shall be calculated by adding the highest total turnover of all Persons within the association, in which association encompasses both for-profit and not-for-profit entities such as Business Associations, Chambers of Commerce, and other institutions that protect and promote the interests of their members and the relevant sectors, regardless of their registration status within or outside the country.

If there is no available data on the total turnover in the designated financial year, or if the CCC determines that the data provided by the Person does not accurately reflect the business's actual activity and transactions, the CCC retains the discretion to select alternative years or use other data for calculating the statutory penalty.

Article 7.- Determination of the Violation Period

In the case where the violation period is less than 3 (three) years, the period of violation will be determined based on the actual year and/or month as follows:

1. If the violation period is less than 6 (six) months, it shall be considered a violation for a duration of six months.
2. If the violation period falls between 6 (six) months and 12 (twelve) months, it shall be considered a violation for a duration of one year.

The CCC shall determine the start and end dates of the violation in each case, taking into account the facts and actual circumstances surrounding the violation.

Chapter 4

Calculation of Base Penalty

Article 8.- Calculation of Base Penalty

The base penalty shall be calculated by multiplying a percentage, set by the CCC, with the relevant turnover of the Person and the period of violation.

The calculation of the base penalty shall be done in the following order:

1. Determine the percentage set by the CCC;
2. Determine the highest relevant turnover during the violation period;
3. Determine the violation period.

Article 9.- Determination of the Percentage

CCC has the discretion to determine the percentage to be applied when multiplying it with the relevant turnover, considering the facts and actual circumstances surrounding the violation.

Article 10.- Determination of Relevant Turnover

The relevant turnover of a Person shall be the highest turnover in any financial year within the period of violation, in which the relevant turnover refers to the Person's turnover in any financial year in the affected market directly impacted by the violation, excluding deductions for money transfers, taxes, and tariffs of sale.

If there is no available data on the relevant turnover in the designated financial year, or if the CCC determines that the data provided by the Person does not accurately reflect the business's actual activity and transactions, the CCC retains the discretion to select alternative years or use other data for calculating the statutory penalty.

If there is no relevant turnover available, the relevant turnover shall be calculated by using the turnover from the year preceding the violation.

Article 11.- Determination of the Violation Period

The period of violation will be determined based on the actual year and month as follows:

1. If the violation period is less than 6 (six) months, it shall be considered a violation for a duration of six months.

2. If the violation period falls between 6 (six) months and 12 (twelve) months, it shall be considered a violation for a duration of one year.

The CCC shall determine the start and end dates of the violation in each case, taking into account the facts and actual circumstances surrounding the violation.

Chapter 5

Adjustment

Article 12.- Adjustment of Base Penalty with the Aggravating and Mitigating Circumstances

The base penalty is subject to augmentation or reduction based on aggravating and mitigating circumstances, as stipulated in the following cases:

a. Aggravating Circumstances:

1. High degree of organization with detailed plans;
2. Role of the leader or Person that commits the violation;
3. Involvement of governor or senior management;
4. Coercive or retaliatory measures employed to ensure the continuation of the violation;
5. Persistence of the violation during the primary review and investigation;
6. Obstruction and non-cooperation during the primary review and investigation;
7. Intentional conduct rather than inadvertent;
8. Simultaneous commission of multiple violations;
9. Repetitive commission of violations without prior written warnings or pecuniary penalties being issued;
10. Violations committed by Persons within the same group for the same violation;
11. Failure to provide accurate financial information, total turnover, relevant turnover, or other relevant information;
12. Size of the business entity that commits the violation.
13. Exploitation of opportunities during a state of war, state of emergency, natural disaster, the spread of a pandemic, or other events to commit the violation.
14. Other factors determined based on facts and actual circumstances.

b. Mitigating Circumstances:

1. High degree of organization with detailed plans, but the violation was committed under duress or pressure;
2. First commission of the violation, in which the CCC shall take into account the impact of the violation based on the actual circumstance;
3. Issuance of a business compliance program;
4. Adequate implementation to ensure compliance with the Law on Competition and relevant provisions;
5. Implementation of activities that restrict or mitigate the impact resulting from the violation or voluntary compensation or implementation of any measures.
6. Termination of the violation during the primary review and investigation;
7. Cooperation and provision of assistance to enhance the effective implementation of the Law on Competition and relevant provisions;
8. Other factors determined based on facts and actual circumstances.

Article 13.- Adjustment of Base Penalty with the Statutory Penalty

After the adjustment based on aggravating and mitigating circumstances, the base penalty shall be further adjusted in accordance with the statutory penalty as stated in Article 5 of this Decision.

Article 14.- Final Adjustment

Following the adjustment of the base penalty with the statutory penalty by the CCC, the base penalty may be further adjusted if the Person that commits the violation successfully negotiates through settlement as stated under the Law on Competition.

If deemed necessary, the CCC has the authority to reduce the pecuniary penalty by considering the ability of the Person that commits the violation to pay, while taking into account the prevailing societal and economic circumstances. However, a reduction will not be granted if the Person's financial loss is the sole reason. The reduction of the pecuniary penalty will be granted only when there is objectively accepted evidence proving that the penalty would have an irreparable impact on the economic status of the Person, resulting in an inability to recover.

CCC has the discretion to determine any further reduction of the pecuniary penalty, in accordance with other applicable provisions.

Chapter 6

Final Provisions

Article 15.- Abrogation

Any provisions contrary to this decision shall be abrogated.

Article 16.- Implementation

Members of the CCC, Chief of Cabinet, Delegate of the Royal Government in charge as the Director General of the Consumer Protection, Competition and Fraud Repression Directorate-General, and the Head of relevant institutions shall implement this Decision from the date of this signature.

[Buddhist Date]

Done in Phnom Penh, 24th February 2023

Minister of Commerce

and Chairman of Cambodia Competition Commission

[seal and signature]

Pan Sorasak

Recipients:

- Council of Ministers
- Cabinet of Samdech Akka Moha Sena Padei Techo Prime Minister
- Cabinet of Samdech, His Excellency and Her Excellency Deputy Prime Ministers
- Municipal and Provincial Administrations
- As stated in Article 16
- Royal Gazette
- Documentation and Archive