



Non-Bank Financial Services Authority

N°: 051 FSA. BRK

UNOFFICIAL TRANSLATION

PRAKAS
ON
MODALITY AND PROCEDURE OF TRUST INSPECTION

Deputy Prime Minister,
Minister of Ministry of Economy and Finance
And The Chairman of the Non-Bank Financial Services Authority

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Preah Reach Kret No. NS/RKT/0918/925 on 06 September 2018 on the Appointment of the Royal Government of Kingdom of Cambodia;
- Having seen the Preah Reach Kret No. NS/RKT/0320/421 on 30 March 2020 on the amendment and adding the composition of the government of the Kingdom of Cambodia;
- Having seen Preah Reach Kram No. NS/RKM/0618/012 on 28 June 2018 promulgating the Law on the Organizing and Functioning on the Council of Ministers;
- Having seen Preah Reach Kram No. NS/RKM/0121/003 on 16 January 2021 promulgating the Law on the Establishment of Non- Bank Financial Services Authority;
- Having seen Preah Reach Kram No. NS/RKM/0119/002 on 02 January 2019 promulgating the Law on Trust;
- Having seen Preah Reach Kram No. NS/RKM/0807/024 on 10 August 2007 promulgating the Code of Criminal Procedure;
- Having seen Preah Reach Kram No. NS/RKM/0620/019 on 27 June 2020 promulgating the Law on Combating Financing of Proliferation of Weapons of Mass Destruction;
- Having seen Preah Reach Kram No. NS/RKM/0620/021 on 27 June 2020 promulgating the Law on Combating Money Laundering and Financing of Terrorism;
- Having Seen the Sub-degree No. 113 ANKR. BK on 14 July 2021 on Organization and Establishment of Line-Entities of Non-Bank Financial Services Authority;

- Having Seen the Sub-degree No. 476 ANKR. BK on 26 August 2013 on Financial Trust;
- Having Seen the Sub-degree No. 114 ANKR. BK on 02 August 2019 on Trust Registration;
- According to the adoption of the Plenary Meeting of Beard of Non-Bank Financial Services Authority on 12 October 2022.

CHAPTER 1 GENERAL PROVISIONS

Article 1.

The objective of the Prakas is to prescribe the modality, mechanism, and procedure of Trust inspection for legal compliance and law enforcement in Trust sector in Royal Kingdom of Cambodia.

Article 2.

The scope of the Prakas shall apply for inspection on activities and operations related to Trust sector in Royal Kingdom of Cambodia in accordance with Law on Trust and relevant regulations.

Article 3.

The terminologies definitions, which are used in this Prakas, are defined in this article and a glossary which is annexed of Law on Trust.

- **Inspection** refers to examine, investigation, search by Trust Inspector in suspicion case of violating the law and/or regulations in Trust sector for strengthening law enforcement and/or Trust registration supervision, operation of Trust operator, and other participants in Trust sector.
- **Person under inspection** refers to the person under the supervision of a Trust operation, including a person who has obtained a license/approval/registration/accreditation from the **TR**, and other persons suspected of violating or related to violations of laws and/or regulations in Trust sector.
- **Trust Inspector** refers to **TR**'s officials who are qualified to be legal capacity as judicial police officers and assigned by **TR** to inspect in the Trust sector in accordance with the Law on Trust and relevant regulations.
- **Public Information** refers referrals obtained from all media dissemination, either domestic or foreign.
- **Confidential Information** refers to information which Trust Inspector receives from the officers of the line-departments of the **TR**, reporting entities, specialized arm unit, agencies, institutions, national or international organizations as partners in exchanging information to prevent and suppress crime.
- **Inspection Case** refers to the case under the inspection of Trust Inspector, including legal compliance and law enforcement in Trust sector.

CHAPTER 2
TYPE, SOURCE, AND AUTHORITY OF INSPECTION

Article 4.

There are two types of Inspections such as Inspection for legal compliance and inspection for law enforcement in Trust sector.

Article 5.

Any person who knows or suspects any activities or operations related to the Trust sector that does not obtain license/registration/accreditation by **TR** or commits any offenses in Trust sector shall immediately report to **TR** or Trust inspector.

Any person who obtained license/registration/accreditation by **TR**, and other persons who knows or suspects on activities related to money laundering, financing of terrorism, and financing of proliferation of weapons of mass destruction shall immediately report to **TR** or Trust inspector.

Article 6.

The inspection for legal compliance may carry out with the guidance of Director General of **TR** or as determined by the **TR** to implement the inspection plan for monitoring and examine the legal compliance of Trustee, Trust operator, or the parties of Trust, or other participants in Trust sector.

The inspections for law enforcement carry out due to inquiry/complaint submitted to **TR** or public information or confidential information that the Trust inspector has knew or received or the referral offense related Trust sector.

Article 7.

The **TR** shall assign the Trust inspector to be in-charge of the inspection case.

Trust inspector shall exercise his authority, roles, and duties in accordance with the laws and regulations in Trust sector as well as other relevant laws and regulations with a professional conscience and shall be responsible for his inspection activities.

Article 8.

The **TR** may decide to remove the Trust inspector from the inspection performance in any of the following cases:

- 1- Have a beneficial relationship with the person under inspection
- 2- Be or used to be his/her spouse with the person under inspection.
- 3- Have or have been lineage with one of the parties by parental link up to fourth degree or by alliance up to the third degree with the person under inspection.
- 4- There is a situation where bias or conflict of interests arises
- 5- Request to withdraw by the person, who aware any situations above.

CHAPTER 3
PROCEDURE OF INSPECTION

SECTION 1
INSPECTION FOR LEGAL COMPLIANCE

Article 9.

The inspections to legal compliance shall be conducted by the Trust inspector to monitor compliance with laws and/or regulations in order to promote and enhance the implementation of laws and/or regulations related to the Trust sector of a person under the requirements of Trust establishment of registered Trust, Trust operations and other participants in Trust sector.

Article 10.

Trust inspector shall conduct inspections in accordance with the **TR's** inspection plan and/or as directed by the Director General of the **TR** to examine and monitor legal compliance to promote the law implementing in Trust sector.

The modalities and mechanisms of inspection for legal compliance shall be further defined in the **TR's** guideline.

SECTION 2
INSPECTION FOR LAW ENFORCEMENT

Article 11.

The inspection for law enforcement shall be conducted by the purpose of monitoring, search, and investigation the activities or operations suspected of violating laws and regulations related to the Trust sector.

Article 12

The Trust inspectors shall be collected referrals or evidences that has been shown in the inquiries/complaints or reporting or public information, confidential information for immediately starting the inspection for legal enforcement.

Article 13

In a necessary case, for monitoring actual activities/operations and for additional verifying on offsite inspection, Trust inspectors may conduct onsite inspections at offices, and business location, document storage room, resident, or another place that is related to the persons under inspection.

During the onsite inspection, Trust inspectors may monitor, search and/or confiscate, report,

list, record keeping, data, information in hard-copy and Soft-copy, including in electronic devices, and other relevant documents.

Article 14

While carrying out inspection for law enforcement mission, Trust inspectors shall wear uniforms, insignia, and/or signal-rank of the Trust inspectors, as well as bring a authorized letter from the Director General of **TR**.

Article 15

The Trust inspectors may conduct voice records and/or action records during the interrogation or inspection process in accordance with the provisions of Code of Criminal Procedures of Cambodia, in order to verify the written records or other reports or using for advantage of inspection.

Article 16

Each hearing statement/interrogation shall make written record in Khmer language. The hearing statement shall record from accurate of interrogated person's response. In case the interrogated person is a foreigner and cannot understand Khmer language, that person shall seek an interpreter to translate to be accurate, which shall be responsible for the translation fees.

The hearing statement for inspection shall follow the form annexed to this Prakas.

Article 17

The Trust inspectors may conduct inspection for examine, investigation, search to collect data or information at the office, head office, document storage room, and other places that relevant activities/operation of the person under inspection.

The person under inspection shall collaborate with Trust inspectors to facilitate the inspection as well as provide the report, list, recording note, data, information in hard-copy and soft-copy, including in electronic device and other relevant documents.

During onsite inspection, the Trust inspectors may confiscate the information, data and other relevant documents and exhibits.

Article 18

The confiscated items may be returned to the owner when the verification shows that there is not necessary for advantage of inspection.

Article 19

The Trust inspectors may invite any person who is suspected involving in committing any

offense or any person who can provide information to appear and provide relevant information in accordance with the Code of Criminal Procedures as stipulated in article 16 of this Prakas.

Article 20

The person under inspection has full right to seek a lawyer or legal representative.

The person who may provide information as stipulated in article 16 of this Prakas shall have a legal representative.

The person who may provide the answer, lawyer or legal representative may keep professional confidentiality and cannot interpret or use the information that received from ask and answer section unless obtained approval from **TR**.

SECTION 3

GENERAL PROCEDURE

Article 21

The information on the matter that related to the suspicious case may be:

- 1- Oral answer or Writing;
- 2- Report;
- 3- Recording note;
- 4- Data or Information from the electronic devices;
- 5- The other relevant documents.

The written or electronic information may provide to Trust inspectors as copy documents and Trust inspectors have the full rights to claim the original document to verify.

The person who may provide the relevant information of the fact may not provide fake information or misleading statement to **TR**.

Article 22

The Trust inspectors shall have case file which contain the minimum mentions as below:

- 1- Case/Referral number;
- 2- Date of receiving the case file/referral;
- 3- Identity of suspect;
- 4- Kind of offenses;
- 5- Name and position of Trust inspectors who is in-charged case;
- 6- Action taken on case/referral from Trust inspectors.

Article 23

To ensure the inspection, Trust inspectors may:

- 1- Put restriction to the person under inspection or other relevant persons as well as take

any appropriate action to ensure confidentiality;

2- Order the person, whom provide responds, to do or not to do any actions or conduct the other necessary restriction to make the inspection process being smooth.

Article 24.

In case the Trust inspector require to persons under inspection and relevant persons to provide the reports, list, recording note, data in soft-copy and hard-copy, including the information in electronic devices and other relevant documents, the person under inspection and the relevant persons shall provide documents according to the date set by the Trust inspector.

Article 25.

In necessary case, Trust inspector may order the person under inspection keep the original state of report, list, recording note, data in hard-copy and soft-copy, including information in electronic devices and other relevant documents in order to avoid damage, destruction, edition, fraud, or deletion.

Article 26.

In necessary case, Trust inspector may invite **TR**'s officials, relevant officials, employees or employers of the licensed/Approval/Registration/Accredited persons, and other relevant persons to verify the facts and other reports.

In necessary case and to facilitate the inspection process, Trust inspector may request the collaboration from the trustee, trustor, beneficiary, or the relevant Trust service providers who is under the jurisdiction of **TR**.

The person under inspection, employees, employers of person under inspection and other person, shall not interfere or cause any obstruction to Trust inspector during inspection.

In case of any rejecting collaboration or interfering with the inspection, the person shall sign or fingerprint on the letter of rejecting collaboration during inspection process. In case the person denied signing or affix fingerprint on letter of rejecting collaboration, the Trust inspector shall mention the statement and sign on the rejection letter.

Article 27.

In necessary case, Trust inspector may request any skillful person to conduct the examination individually or by requested from person under inspection. Any expenses on a technological examination support, shall be bore by person under inspection, unless any other determine from **TR**.

The person under inspection or other relevant persons shall collaborate as requested by the technician or the specialized skill persons, as stated in the paragraph 1 of this article.

Article 28.

The Trust inspector and **TR**'s officials shall maintain all confidential information that received during fulfill the duties, unless receiving the approval from **TR** or required by relevant laws or by court.

Board of directors, employers, senior staffs, employees of licensed/Approval/Accredited Persons, or the relevant Trust service providers, the interrogated person, trustor, beneficiary, trustee, lawyer, or the legal representative, the technicians and other relevant persons shall maintain confidential information that obtained during the inspection process, until that information becomes public information.

CHAPTER 4

ACTION TAKEN BY TRUST INSPECTOR

Article 29.

The Action taken by trust inspector against natural persons or legal persons, whom commits an offense or violates the laws and regulations related trust sector, shall be in writing.

The Trust inspector may take one or more actions as stated in the laws and regulations related Trust sector, based on the actual situation of each offense.

The Trust inspector may take an action, based on the actual situation of offense, by the decision of **TR** according legal principles and legal procedures in force.

Article 30.

The Trust inspector may request the assistance from the Armed-Force Unit or Sub-National Administration at all levels and/or relevant authorities to join in the examination and suppression of crimes in Trust sector, in the inspection procedures, in accordance with the laws and regulations in force.

The armed-force units or sub-national administrations at all levels and/or relevant authorities shall cooperate, coordinate, and take any action as requested in the inspection process of Trust inspectors.

Article 31.

The line-departments/units of the **TR** should be escalated the suspicious cases to the Department of Legal Affairs and Inspection by attaching the supporting documents.

Article 32.

After reviewing the suspicious case or inquiries/complaints, public information, confidential information, or reporting the **TR** may assign Trust inspector to conduct investigation in accordance

with the Code of Criminal Procedures and this Prakas. In case there is any violation of laws and regulations related of Trust sector, Trust inspector may request the following further measures:

- 1- To take administrative sanction, monetary fine, or transitional fine in accordance with the modality and procedures of sanction as stipulated in the provision of laws and regulations in force.
- 2- To refer suspicious case or referral, that related any offenses as stipulated in the Law on Trust, or other Trust offense, to the prosecutor.

Article 33.

The Trust inspector may conduct a preliminary investigation as following:

- 1- Suspecting any offense related to Trust sector;
- 2- There are rumors that may affect organization and public order in trust sector;
- 3- It is necessary to protect the benefit of registered Trust or beneficiary;
- 4- Receiving the reporting of offense relevant to Trust sector;
- 5- Receiving the reporting of activities related to money laundering and the financing of terrorism or the financing of proliferation of weapons of mass destruction.

Article 34.

The person under inspection shall cooperate with Trust inspector who performs the duties in accordance with the laws and regulations.

Trust inspector shall show to person under inspection with the following documents:

- 1- Letter of appointment from the Director General of the **TR**, except for flagrant Offenses;
- 2- Trust inspector identification card.

In case the Trust inspector does not show the documents as stated in the paragraph 2 of this article, the person under inspection or the relevant person may refuse to cooperate with this inspection.

Article 35.

The flagrant investigation and preliminary investigation shall be conducted in accordance with the Code of Criminal Procedures of Cambodia.

The Trust inspector in-charge of the case shall immediately start the inspection procedure.

CHAPTER 5

RESULTS OF INSPECTION

Article 36.

After examining the result of inspection report, **TR** shall:

- 1- Escalating the referral/case to prosecutor, if it found any criminal stipulated in law on Trust;
- 2- Assign Trust inspector apply the following procedure related to transitional fine and administrative sanction or close case without further action.

Article 37.

The Trust inspector shall be allowed to make a public statement about name and activities of person who have guilty of criminal conduct in the trust sector, after receiving the permission from **TR**.

CHAPTER 6

PENALIES

Article 38.

Any person who breaches any provision of this Prakas, **TR** shall have the following Administrative Sanctions:

- Warning;
- Admonition/Reprimand;
- Restriction on management, administration, and/or safeguard keeping/retention of Trust properties.
- Suspension or dismissal from director, senior staff and/or person conduce offense.
- Suspension or revoke licenses/Approval/Registration/Accreditation.

Article 39.

The person under inspection who committed any offense or fail to apply the obligations, as stipulated in Article 5, paragraph 2 of article 17, paragraph 2 of article 20, paragraph 3 of article 21, article 24, 25, 26, 27, paragraph 2 of article 28, paragraph 1 of article 34 of this Prakas shall be monetary fine by Trust inspector in cash:

- from 10,000,000 (Ten million) Riels to 50,000,000 (fifty million) Riels in case for natural person;
- from 20,000,000 (twenty million) Riels to 200,000,000 (two hundred million) Riels in case for legal person.

Shall be subjected to any administrative sanction, stipulated in article 38 of this Prakas, by Trust inspector in addition to the monetary fine stipulated in paragraph 1 above, for persons under inspection who committed any offense as stated in paragraph 1 above.

In case of continuing to commit the same offense, shall be monetary fine by Trust inspector twice amounts of the previous monetary fine.

The management of the monetary fine shall be applied in accordance with the regulation in force.

The provisions of the single chapter (general regulation) of the content 1 (general regulation), the single chapter (physical coercion) of the chapter 8 of the Code of Criminal Procedures, shall apply in the case of decision on a definitive monetary fine in force.

Article 40.

TR's officials who breaches any provision of this Prakas, shall be subjected to disciplinary sanction, according to Law on General Statute of Civil Servants of the Kingdom of Cambodia or Prakas on Statutory Official of Non-Banking Financial Services Authority, or according to article 82 of Code of Criminal Procedures of Cambodia. A disciplinary sanction is not an obstacle to prosecuting if an offense is committed.

Article 41.

The Trust inspector shall fulfill roles and duties in accordance with this Prakas, laws and regulations in force. In case of misconduct, Trust inspector shall be subjected to disciplinary sanction as stated in the Law on the General Statute of Civil Servants of the Kingdom of Cambodia, regardless of the criminal penalties in accordance with the law and other regulations.

Anyone who pretends to be Trust inspector shall be punished according to the law in force.

Article 42.

Any person who obstructs or destroys exhibits or causing obstructs the inspection process of Trust inspector shall be punished in according to article 45 of Law on Trust.

Article 43.

The modality and procedures for administrative sanction and monetary fine as stated in this chapter shall be prescribed by Prakas of the Chairman of Board of the Non-Banking Financial Services Authority.

The person who has affected by the decision of Trust inspector as stated in this chapter may file a complaint in accordance with the procedures in the Law on Trust.

Article 44.

Administrative sanction and monetary fine that determine in this chapter do not obstacle to implement criminal code and exclude compensation for other damages.

CHAPTER 7

FINAL PROVISIONS

Article 45.

Trust inspector or **TR**'s officials are not able to sue for any civil and criminal responsibility for those activities related to Inspection and other consequence that arise out of inspection performance, tasks, and authority in integrity base on honesty as stated in this Prakas and the relevant regulations in force.

Article 46.

Director General of **TR**, Director of Legal Affairs and Inspection Department, every Directors of line-departments/units of **TR**, the Licensed/Approval/Registered/Accredited Persons, and other relevant persons shall apply this Prakas from this signing date here on.

Phnom Penh, 3 December 2022

Deputy Prime Minister

**Minister of Ministry of Economy and Finance
and as Chairman of board of the Non-Banking Financial
Services Authority**

Akka Pundit Sopheacha AUN PORNMONIROTH Rath

Copy and Distribution:

- Council of ministers.
- Ministry of Economic and Finance.
- Ministry of Commerce.
- Ministry of Justice.
- National Bank of Cambodia.
- Secretary-General of the Royal Government.
- Cabinet of Samdach Akak Moha Sena padei Techo Hun Sen
Prime Minister of Kingdom of Cambodia.
- Cabinet of His/Her Excellencies Deputy Prime Ministers.
- "For notification"
- As prescribed in Article 38
- "For implementation"
- Royal Gazette
- Archives-records.