

(National Coat-of-arms)

ROYAL DECREE

NS/RK/1297/91

ON THE LEGAL STATUTES OF ADMINISTRATIVE PUBLIC ESTABLISHMENTS

MINISTRY OF HEALTH	
IN	Dated April 12, ... (Illegible) 98 at 14:10 (Illegible) 58

I, the undersigned,
Preah Bat Samdech Preah Norodom Sihanouk
Reach Harivong Ouphaktosocheat Visothipong Akkamohaborosrath
Nikarodom Thomikmohareacheathireach Boromneath Borombopit Preah
Chaukrong Kampucheahipadey;

Pursuant to:

- The Constitution of the Kingdom of Cambodia;
- Royal Decree dated September 24, 1993, on the Appointment of the First and Second Prime Ministers;
- Royal Decree, dated November 1, 1993, on the Appointment of the Royal Government of Cambodia;
- Royal *Kram* No. 02 NS-94, dated July 20, 1994, on the Organization and Functioning of the Council of Ministers;
- Royal Decree No. NS-RD-1094-83, dated October 24, 1994, on the Modification to the Components of the Royal Government of Cambodia;
- Royal Decree No. CS-RD-0894-147, dated August 7, 1997, on the Modification to the Components of the Royal Government of Cambodia;
- Royal Decree No. NS-RD-1094-90, dated October 31, 1994, on the Modification to the Components of the Royal Government of Cambodia;
- Royal *Kram* No. NS-RK-0196-18, dated January 24, 1996, on the Establishment of the Ministry of Economy and Finance;
- Royal *Kram* No. 01NS, dated December 28, 1993, on the Financial System;
- Royal *Kram* No. NS-RK-1025-07, dated December 31, 1995, on the Law on Finance for Management for 1996;
- Request filed by the first and second Prime Ministers and from the Senior Minister and Minister of Economy and Finance in accordance with the approval from the Council of Ministers in the session on November 21, 1997;

Hereby order

Chapter 1 **General Provisions**

Article 1:

The administrative public establishment is the legal entity of public law principally in charge of the mission of public services in administrative, social, health, cultural, scientific or technical matters.

Article 2:

Administrative public establishments shall have financial autonomy. In this framework, the establishment shall meet the following requirements:

- 1- Possess a name and office;
- 2- Have objectives determining the type of activities;
- 3- Have a board of directors and separate management;
- 4- Have a personal budget;
- 5- Have property to operate its activity as planned in the objectives of the establishment;
- 6- Be able to enter into a contract and lodge a complaint or defense in the court;
- 7- Be responsible for the criminal and civil acts of its authorized representatives or employees while undertaking work for the establishment.

Article 3:

3.1 Administrative public establishments shall be established by a subdecree at the joint request of the ministry or technical guardian authorities and the Ministry of Economy and Finance.

3.2 The subdecree on the establishment of this establishment shall principally determine the mission, prerogative, obligations and components of the board of directors as well as the special rules for implementation in the management and inspection of the establishment. This subdecree shall also state the ministries or authorities that are the guardians.

3.3 The functioning of the establishment shall be determined by the internal regulations organized and requested by the head of the institution or the technical guardian authorities and the Minister of Economy and Finance. The internal regulations shall be attached as annex to the Subdecree on the Establishment of Administrative Public Establishments.

Article 4:

4.1 The internal regulations may be modified by the board of directors following the establishment of an administrative public establishment and it shall gain approval from the head of the institution or the technical guardian authorities and the Ministry of Economy and Finance.

4.2 Merger, separation, change or dissolution related to the establishment shall be determined by a subdecree at the joint request of the ministry or technical guardian authorities and the Ministry of Economy and Finance.

4.3 In case of dissolution other than the derogation stated in the subdecree, the assets that are the moveable and immoveable properties of the

establishment shall be transferred to be the State's property. The assets that are the currency shall be transferred into the National Treasury.

Chapter 2 Administration and Management

Section 1

Board of Directors of Administrative Public Establishments

Article 5:

Administrative public establishment shall be led by a board of directors in the name of the establishment to manage the tasks in the framework of its objectives determined by a subdecree and the internal regulations of the establishment.

Article 6:

6.1 The board of directors of an administrative public establishment shall have at least five members and no more than 11 members, and must include the following:

- Representative of the Ministry of Economy and Finance;
- Representative of the technical guardian ministry;
- Representative of the Office of the Council of Ministers;

6.2 The staff of the establishment shall have one seat in the board of directors. This representative shall automatically be a member who is to be chosen by the staff members from among the staff members for a period no more than three years according to the formalities determined by the board of directors of the establishment. The mandate of the representative of staff members can be renewed. This representative shall be on the board of directors from the date of being elected without any appointment. Upon the conclusion of the mandate, this representative shall be automatically no longer entitled to attend this board of directors.

6.3 Subdecree on the establishment of administrative public establishments can prepare other automatic members in the board of directors. This automatic member shall be on the board of directors from the date of appointment that s/he can attend the board of directors without granting ratification for participation by subdecree. These automatic members shall fulfill their duties during the period they have taken office.

6.4 The members of the board of directors apart from the automatic members shall be appointed by a subdecree for a period of three years, prepared by the ministry or technical guardian authorities at the request of the ministry or authorities represented by those members. Various members of the board of directors shall be appointed based on their qualifications and experience from among the civil servants who have worked for at least five years or retired Cambodian dignitaries who have been acknowledged as having aptitude in [the fields of] economics, law and the sciences. This mandate may be renewed.

In all circumstances, the termination of the mandate of the members of the board of directors shall be done by subdecree as per the request of the authorities represented by those members.

6.5 The chairperson of the board of directors shall be appointed by subdecree from among the members of the board of directors at the request of the technical guardian ministry.

6.6 The functions of the members of the board of directors of an administrative public establishment shall be incompatible with the functions of parliamentarians or the members of the Royal Government.

6.7 A staff member shall not be appointed to the board of directors of an administrative public establishment or the board of directors of any public enterprise for more than two places.

6.8 Civil responsibility within the framework of undertaking a mission as members of the board of directors of an administrative public establishment shall be the burden of the State except where the members have committed a mistake intentionally or have openly committed any act against the law. Criminal responsibility shall be the direct responsibility of each member.

Article 7

7.1 At the request of the board of directors, the technical guardian minister and the Minister of the Ministry of Economy and Finance shall in principle determine the remuneration of the functions of the members of the board of directors of administrative public establishments and determine the remuneration to be offered.

7.2 An offer of remuneration may be suspended by the authorities that have requested appointments for all members of the board of directors who fail to fulfill the obligations of their mandate:

- 1- Diligence;
- 2- Abide by the provisions of the law and the regulations of the establishment;
- 3- Fail to fulfill their duties as per their appointment;
- 4- Obligation to report on their activities;

Article 8

Without affecting the provisions on the implementation of the State's guardianship, the board of directors shall be provided with a general mission for orientation and inspection of the establishment. In this framework, the board of directors shall:

- Make decisions on the annual incomes and expenses and the annual budget of the establishment;
- Examine and make decisions on management reports and annual financial accounts;
- Determine the organization of the structure and general duties of other subordinate units;

- Promote the process of the committee and commission that is planned in the subdecree on the creation of establishments or in internal regulations and establishment of committee and commission if necessary;
- Determine the formalities of selection, promotion of ranks and offering of remuneration without affecting the provisions of the law or regulations relevant to the benefits of the establishment's employees;
- Make decisions on the framework of the number of staff members authorized for the establishment;
- Make decisions on procurement contracts;
- Evaluate outcomes and corrective measures taken for implementation on an interval and regular basis;

Article 9

9.1 In accordance with the provisions of the internal regulations of the establishment, the board of directors may delegate the power necessary for the daily running of the establishment to the head or director of the establishment; however, this power delegation shall not be the transfer of responsibility from the board of directors.

9.2 The power division shall indicate that the head or director shall receive all the power necessary for the daily operation of the establishment except for the power that the board of directors is of the opinion shall be retained and this power shall clearly be specified. Two types of power that the board of directors shall retain include:

A- The power determined in Article 8 above, which is the power within the direct competence of the board of directors;

B- Various powers for division shall be based on the direct determination of the board of directors.

Based on the types of activity and the size of the establishment, the board of directors can facilitate the power it has retained in order to balance its obligations in inspection and the necessity of daily management.

9.3 The formalities of power division shall be made by the board of directors in its first session after the board of directors has been established and minutes shall also be taken.

Article 10

10.1 The board of directors of the administrative public establishment shall convene a meeting every time the benefits of the establishment require and at least every three months.

The board of directors shall discuss the issues mentioned in the agenda. This agenda shall be provided to all members of the board of directors and to all relevant members as specified in Article 28 of this Royal Decree at least ten days in advance.

Members of the board of directors shall attend the meeting at the initiative of the chairperson as per the request of two-thirds of the members, or of the chairperson. The director shall attend the meeting of the board of directors and select a secretary of the meeting but this secretary shall not be entitled to vote.

The financial inspection official as set forth in Article 36 of this Royal Decree shall attend the meeting of the board of directors but this official shall not be entitled to vote.

10.2 The meeting of the board of directors may not be valid unless there are at least 50% of members in attendance. The members of the board of directors who are absent shall not send any substitutes.

If the quorum is not sufficient, an invitation to a second meeting shall be made in the next 15 days. This subsequent meeting shall not require a sufficient quorum and shall discuss the agenda of the first meeting only.

It is required to have the list of attendance signed by the members who are present. The decision shall be approved by the majority of members who are present. In case of a tied vote, the vote of the chairperson of the board of directors shall prevail.

10.3 The decision of the board of directors shall be recorded in writing, retained at the office of the establishment signed by the chairperson and the staff member appointed as the meeting secretary. The minutes shall be forwarded to all members of the board of directors and other relevant members as specified in this Royal Decree within a period of ten days at the latest following the meeting. The minutes shall reflect the reality of discussion of the meeting. In case of an objection being made by any member at the following meeting of the board of directors, those objections shall be recorded in the minutes of this final meeting.

Section 2 Executive Body of the Establishment

Article 11

11.1 The subdecree on the establishment of an administrative public establishment may hand over the executive tasks of the establishment to:

- 1- The chairperson of the board of directors, entitled chairperson;
- 2- The director does not necessarily have to be a member of the board of directors and s/he shall be appointed by subdecree at the request of the head of the institution or the technical guardian authorities. The position of director may be removed in all circumstances by subdecree as set forth in the conditions determined above.

11.2 The functions of the head or director of administrative public establishments are incompatible with the functions of the member of the national assembly or the members of the Royal Government.

Article 12

12.1 The chairperson or director shall fulfill his/her mission in the framework of the power division as set forth in Article 9 above.

12.2 The chairperson or director shall be the representative of the establishment in communication with the third person.

12.3 The chairperson or the director shall have the following duties:

- Organize a meeting of the board of directors;
- Be in charge of undertaking the decision of the board of directors and introducing the policy determined by the board of directors;
- Prepare annual budget of the establishment to be submitted to the board of directors for examination and to make decisions;
- Make annual reports on management tasks, inspect the annual financial account and submit these documents to the board of directors for examination;
- If necessary, confirm the duty of other subordinate units of the establishment;
- Fulfill the position of the establishment within the framework of the number of staff members approved by the board of directors and in conformity with the rules on management of staff members;
- Fulfill the position according to the hierarchy for all staff members of the establishment;
- Make decisions on procurement tasks and sign other conventions in compliance with the decision of the board of directors on power division and in compliance with internal regulations and other relevant provisions on this matter;
- In conclusion, to undertake various administrative and management functions being delegated according to the internal regulations of the establishment and decision of the board of directors.

Section 3

Staff Members of the Establishment

Article 13

13.1 Permanent staff members of the administrative public establishment include civil servants who have been appointed or transferred to undertake the tasks in the establishment in compliance with various regulations of the law and other relevant texts of civil servants and the Subdecree on the Creation of Establishments.

13.2 The subdecree on the creation of establishments may authorize the selection of non-framework staff members of the civil service through contracts to undertake any special tasks. These staff members shall be under the management of internal regulations and at the decision of the board of directors in compliance with the Labor Law.

Article 14

Staff members of the administrative public establishment shall be under the management of the regulations on staff members approved by the board of directors.

For civil servants of the civil service, these regulations on staff members shall not be contrary to the various provisions of the law and other relevant texts of civil servants.

Section 4 Property of the Establishment

Article 15

15.1 The administrative public establishment shall undertake to manage the State's property in accordance with the conditions set forth in various provisions on this matter.

15.2 The administrative public establishment may have personal property under its private ownership and that can be obtained and managed in compliance with the provisions of the internal regulations that manage the establishment.

Section 5 Financial Management and Accounting of Establishment

Article 16

With the exception of the separate provisions set forth in the subdecree on the creation of administrative public establishments, the establishment shall be under the principles of public accounting of financial and accounting management as set forth in Article 122 of Subdecree No. 82, dated November 16, 1995 on the General Regulations for Public Accounting.

Article 17

17.1 The head or director shall be the manager in the establishment. In this regard, in order to be in conformity with the internal regulations of the establishment, the head or director shall have the following duties:

- Inspect funds and payment of revenue;
- Manage payment and issue expense orders;

17.2 The manager may delegate authority to the person assigned to order expenses or establish petty revenue or advances with mutual agreement from the accountant.

Article 18

18.1 Financial transaction and accounting management shall be implemented in compliance with the internal regulations of the establishment under the direct responsibility of the accountant.

This accountant shall be appointed by a *prakas* from the Minister of Economy and Finance by means of taking an oath before taking office. This accountant shall attend the meeting of the board of directors as a consultant.

The Subdecree on the Creation of Administrative Public Establishments may plan the appointment of an accountant as a person responsible for the financial units of the establishment. In this position, the accountant shall be under the supervision of the head or director.

18.2 The accountant shall have the following duties:

- To collect revenue;
- Pay for expenses;
- Retain and manage the use of funds and other valuable things;
- Retain legal papers and manage the accounting records;

18.3 The accountant may delegate some power to the officials working in the office.

Article 19

19.1 The sources of resources of the administrative public establishment include:

- Preliminary resources provided by the establishment when the establishment was first created;
- Transfer in the form of public intervention as specified in the State's budget such as subsidy for the operation and capital subsidy;
- Taxes and duty that the company is entitled to directly obtain and it has been planned by a subdecree on the creation of this establishment;
- Transfer of tax and duties to the profits of the establishment specified by the Law on Finance;
- Gift and bequest obtained by the establishment;
- Outcomes of work and the provision of finished services or offered by the establishment;
- Fees related to the property of the establishment and revenue generated from the sale of these properties;
- Fees related to property handed over to the establishment.

19.2 The annual revenue, expenses and capital of the administrative public establishment shall be planned in the annual budget of the establishment. The board of directors of the establishment shall determine the formalities of the organization, management and application of budget. Various decisions of the board of directors in relation to the formalities of the organization, management and application of budget shall gain approval from the Minister of Economy and Finance.

19.3 The budget shall be prepared by the manager and submitted to the board of directors who shall make a decision by September 30 each year at the latest. The budget shall ensure the balance between revenue and expenses.

Article 20

20.1 The accounting works of the administrative public establishment include:

- General accounting managed as a double-entry accounting system specifying the operation of treasury budget and the transactions implemented with a third person;
- Accounting of immoveable property, raw materials and cost accounting;
- Analytical accounting if necessary;
- Establishment accounting shall:
 - 1- Comply with the rules determined by a *prakas* of the Minister of Economy and Finance;
 - 2- Abide by the accounting plan of the establishment plan approved by the board of directors. This accounting plan shall be approved by the Minister of Economy and Finance;

20.2 Annual financial accounts of the establishment shall be prepared by an accountant and shall be submitted by the manager enclosing a management report to the board of directors for examination and to make a decision within a period of three months at the latest following the closing of the accounting period.

Article 21

Funds of the administrative public establishment are public funds to be deposited as a matter of necessity into an account at the treasury except for the derogations that need to gain approval according to a *prakas* of the Minister of Economy and Finance.

Article 22

Use of surplus amounts of the administrative public establishment shall be approved by the board of directors following approval on account by the ministry or technical guardianship authorities. The surplus resources can be used for capital investment or interest bearing and it shall be approved by the ministry or the technical guardian authorities.

Article 23

The subdecree on the creation of administrative public establishments can specify the offering of the prerogative of public power to collect revenue, pay debt and protect property.

Section 6 Fiscal Regime of Establishment

Article 24: Except for any derogations specified by the law, the administrative public establishment shall be under a common law for fiscal regimes as being applied to various units of the State.

Section 7

Procurement by Administrative Public Establishment

Article 25: Approval, implementation and inspection of procurement in the administrative public establishment shall be governed by the provisions of Sudecree No. 60 S., dated July 31, 1995, on Public Procurement and other regulations related to this issue.

CHAPTER 3

GUARDIANSHIP

Article 26: The administrative public establishment shall be under:

- 1- The technical guardianship of the head of institution or guardian authorities in charge of the activities of the establishment or those of any other public authorities as specified in the subdecree on creation.
- 2- Financial guardianship of the Minister of Economy and Finance.

Article 27

The head of institution or guardian authorities can appoint an official to conduct inspections or monitoring, if necessary.

Article 28

28.1 The administrative public establishment shall provide the following documents to the Council of Ministers, head of institution or technical guardian authorities, the Minister of Economy and Finance and the financial inspection official as specified in Article 36 below:

- Minutes of the meeting of the board of directors;
- Plan to expand establishment;
- Annual budget;
- Report on management and annual financial accounts;

28.2 These documents shall be forwarded to the responsible person within a period of 15 days at the latest.

Section 1

Technical Guardianship

Article 29

29.1 Within a period of 15 days following the meeting of the board of directors, the chairperson or director shall submit the development program and budget plan to the head of institution or technical guardian authorities and the Minister of Economy and Finance for approval. The

Minister of Economy and Finance shall have one month from the date of receipt of document to prepare its comments to be submitted to the minister of the technical guardian ministry. The head of institution or the technical guardian authorities shall have two months from the date of receipt of documents submitted by the chairperson or director for approval of these documents.

29.2 Letter of approval shall be properly signed by the head of institution or technical guardian authorities or representative and then send it to the chairperson or director with copy to the Minister of Economy and Finance. The chairperson or director shall promptly inform the board of directors.

In case the head of institution or technical guardian authorities are unable to respond within the schedule, the development program or budget plan shall be deemed as approved.

Should the head of institution or technical guardian authorities object to the development program of this budget plan, the chairperson of the board of directors shall promptly convene a meeting of the board of directors for discussion and the means to deal with these objections.

The development program and equity expense budget cannot be used for implementation in case the objection made by the head of institution or technical guardian authorities has not yet settled these objections.

Regular expense budget can be used for implementation by means of a "twelve" division system when there is objection from the head of institution or technical guardian authorities.

Article 30

30.1 The head of institution or technical guardian authorities in the framework of the rights to make an objection can raise the objection to documents to forward to him/her as specified in Article 28 above, including: minutes of the meeting of the board of directors, annual report on management and financial accounts. The head of the institution or the technical guardian authorities shall have one month to make these objections.

30.2 The chairperson or director shall inform the board of directors of the substance of the objection raised by the head of the institution or the technical guardian authorities.

The board of directors shall promptly hold discussions on the objection made by the head of institution or the technical guardian authorities and seek measures to deal with these objections. Should the board of directors decide not to accept these objections, this decision shall certify the grounds and promptly inform the head of institution or the technical guardian authorities of this matter in writing.

Article 31

31-1 The head of institution or technical guardian authorities may delete or suspend the decision of the board of directors, that of the chairperson or that of the director in case that decision:

- Is contrary to the objective of the establishment;
- Is contrary to the laws and regulations;
- Is made by authorities that are not entitled to make decisions or is made by means of the unlawful meeting of the board of directors.

31.2 Deletion or suspension shall be approved by a *prakas* of the head of institution or the technical guardian authorities by specifying the grounds of its opinion of the head of institution or guardian authorities or the complaint lodged by other relevant parties. Deletion or suspension of this decision shall notify the chairperson or director, and the chairperson or director shall inform the board of directors at the earliest convenience.

Article 32

In case the board of directors, chairperson or director fails to implement [activities] in accordance with the rules specified in the legal text or provisions and internal regulations of the establishment, the head of institution or technical guardian authorities following instruction and imposing a written restriction may manage the work and issue the above decision and may take all necessary measures.

Article 33

The head of institution or technical guardian authorities may re-manage the verification of inspection or review of tasks in the administrative public establishment where necessary in compliance with the conditions and formalities specified in the laws and provisions in force.

Section 2 Financial Guardianship

Article 34

34.1 Within a period of 15 days following the meeting of the board of directors, the chairperson or director shall submit a management report and annual financial account to the Minister of Economy and Finance and the head of the technical guardian authorities. The head of institution or technical guardian authorities shall have one month from the date of receipt of documents to provide comments to the Minister of Economy and Finance. The Minister of Economy and Finance shall have two months from the date of receipt of documents forwarded by the chairperson or director for providing approval of these documents.

34-2 The letter of approval properly signed by the Minister of Economy and Finance or representative shall be submitted to the chairperson or director with a copy to the head of institution or the technical guardian authorities.

The chairperson or director shall provide this information to the board of directors in a prompt manner.

Should the Minister of Economy and Finance fail to respond within a defined period, the annual management report and financial account shall be deemed to be approved.

Should the Minister of Economy and Finance make any objection to the report on annual management and financial account, the chairperson of the board of directors shall convene a meeting of the board of directors in a prompt manner for discussion and resolution to address these objections. The report on annual management and financial accounts shall not be approved if the objection made by the Minister of Economy and Finance has not yet been addressed.

Article 35

The decision of the board of directors, that of the chairperson or that of the director shall first be submitted for authorization from the Minister of Economy and Finance as per the comments provided by the financial inspection official, including:

- Decisions on the sale or transfer of estates;
- Decisions on the exception of debt exceeding the amount determined by a *prakas* of the Minister of Economy and Finance;
- Decisions on loan agreements and agreements on guarantees or similar certificates.

Article 36

The Minister of Economy and Finance shall appoint one financial inspection official at the administrative public establishment which has the duty to inspect in advance and inspect the establishment later as specified in Subdecree No. 81, dated November 16, 1998, on the Establishment of Financial Inspections and budget expenses in the ministries, local units in the provinces–municipalities and public units of an administrative nature.

Article 37

37.1 The management of the manager of the administrative public establishment shall be under the inspection of the financial inspectorate of the Ministry of Economy and Finance.

37.2 The management of the accountant shall be under the inspection of the central accountant of the National Treasury and under the inspection of the General Inspectorate of Finance.

37.3 The Minister of Economy and Finance may manage, verify, inspect or examine the administrative public establishment when necessary in compliance with the conditions and formalities specified in the laws and the regulations in force.

CHAPTER 4 Final Provisions

Article 38

Various provisions contrary to this Royal Decree shall be abrogated.

Article 39

The First and Second Prime Ministers of the Kingdom of Cambodia shall undertake to effectively implement this Royal Decree.

Article 40

This Royal Decree shall take effect from the date of royal signature onwards.

Phnom Penh, December 31, 1997

Royal Signature

NORODOM SIHANOUK

To have informed
Their Excellencies the First and
Second Prime Ministers

To have Informed the King for signature
First Prime Minister **Second Prime Minister**
Signature **Signature**

Senior Minister and Minister of
Economy and Finance
Signature
KEAT CHHON

ING HUOT

HUN SEN

No. 04 C.

For copy and distribution

Phnom Penh, January 6, 1998

Secretary-General of the Royal Government
(Signature and stamp)

NADY TANN