

KINGDOM OF CAMBODIA

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**Royal Government of Cambodia**

No..... GNKR.BK

*Draft*

## **Sub Decree on the Establishment of the Collective Management Organization**

**Royal Government of Cambodia**

- Seen the Constitution of the Kingdom of Cambodia;
- Seen the Royal Decree No. 02/NS/94 dated July 20, 1994 promulgating the Law on the Organization and the Functioning of council of ministers;
- Seen the Royal Decree NS/RKT/0704/124 date July 15, 2004 on appointment of the Royal Government of Cambodia;
- Seen the Royal Decree No. NS/RKM/0196/01 dated January 24, 1996 promulgating the Law on the establishment of Ministry of Culture and Fine Arts;
- Seen Sub Decree on No. 24 HNKR.BK dated March 19, 2007 on the Organization and Functioning of Ministry of Culture and Fine Arts;
- Seen the Royal Decree NS/RKM/0303/008 dated March 05, 2003 promulgating the Law on Copyright and Related Right;
- Pursuant of the proposal of the Senior Minister, Minister of Culture and Fine Arts.

**It is Herby Decided**

### **Chapter 1 General Provision**

#### Article 1

This sub-Decree is intended to establish the collective management organization in Cambodia.

#### Article 2

The objectives of the establishment of the Collective Management Organization are:

- Encourage the act of invention, creativity, research and scientific development;
- Promote the cultural industry in order to disseminate culture;
- Represent and protect the works in Cambodia and Oversea;
- Joint all efforts to promote the artistic creativity, literature, musicality and science;

-Full fill the obligation of Cambodia to comply with World Trade Organization rule.

### Article 3

The Collective Management Organization is referred to the Organization, the Association or the Agency or the KLEP which takes account of the character of Collective Management as a service of authors, performers or right holders but without the aim to make profit for the organization as such.

The Collective Management Organization shall be established in any legal form of Copyright and Related Rights.

## **Chapter 2 Establishment**

### Article 4

Natural person and legal entity that are interested in establishing a Collective Management Organization can make an application for permission by Ministry of Culture and Fine Arts. After the Ministry of Culture and Fine Arts accepts the application, the application will be transferred to Ministry of Interior in order to be either recognized for the Organization or the Association. The application must include the following documents:

- (a) The by-laws of the Collective Management Organization;
- (b) A list of name and address of board of director;
- (c) A statement on the premises, equipment and (envisaged) staff members in order to show that the organization will be able to carry out the Collective Management.
- (d) A statement on the number of the authors and/or related right holders who have entrusted the Collective Management Organization certain rights.

### Article 5

The application form must be submitted to Ministry of Culture and Fine Arts to be acknowledged and it will then either deliver to Ministry of Interior, in case of termination, setting up new branches, changing address, changing composition of board of director, changing of organization structure of the Collective Management Organization.

### Article 6

When the Collective Management Organization acts contrary to the law on copyrights and related rights or this sub-degree, The Ministry of Culture and Fine Arts can order by way of a decision that such irregularities are eliminated from members and it shall be officially reported to Ministry of Interior.

In case of representative or people who run the Collective Management Organization has contrastingly acted against the law of Copyrights and Related Rights, the Ministry will take measure to suspend the position with limited time but during suspension, acting chief must manage the temporary works to avoid the consequence of this organization. If during the period of suspended position is not affect the process of the Collective Management Organization, the Ministry is authorized to change or exchange the compositions.

#### Article 7

- (1) The Ministry of Culture and Fine Arts shall grant the permission to the applying Collective Management Organization based on:
- The by-laws of organization comply with the law on Copyright and Related Rights and this sub-decree;
  - The Ministry is convinced that the applying Organization has the economic basic and means to successfully carry out the activity of collective management; and
  - The board of director of the organization possesses the loyalty and the trustworthiness which is necessary in order to carry out this activity.
- (2) The Ministry of Culture and Fine Art shall grant the permission only to one Collective Management Organization per category of rights owners in respect of the relevant rights. If there are several applicants for the same category of right owners and rights, it shall grant permission to the Organization which has the best economic basis and qualification to carry out the activity of Collective Management.

### **Chapter 3 Board of Director and Membership**

#### Article 8

The Composition of Board of Director of Collective Management Organization consists of:

- (a) A director, must be knowledgeable of Law on Copyrights and Related Rights
- (b) Some Deputy Directors and members if needed.

Director, Deputy Director and member of board of director are elected by general assembly depending on the by-law of Collective Management Organization.

Board of Director will establish an internal regulation in related to the management of meeting and its discussion leading.

#### Article 9

According to the terms, Board of Director can nominate and structure the roles and duties of the Collective Management Organization to be processed.

#### Article 10

The Board of Director shall administer and manage all the funds and assets of the Collective Management Organization in such ways it consider to be in the best interest of the Collective Management Organisation.

The Board of Director may adopt the rules and regulations which it considers appropriate for the accomplishment of its takes.

#### Article 11

The tariff must be published in the Official Gazette in Cambodia by Board of Director, such as 12 months the end of the calendar year.

#### Article 12

- (1) Under the subsection (2), only such documents are valid which have been signed by the Chairmen of the Board of Director or by a member of the Board of Director who has been designated for that purpose by the Chairman.

- (2) All the documents issued by the Collective Management Organisation shall be signed by:
- a. the chairmen; and
  - b. such other person who has explicitly been designated for that purpose by the Board of Director.

#### Article 13

- (1) The Collective Management Organization must accept any applications for members by an author or related rights holder who is a Cambodian citizen or resident in the Kingdom of Cambodia.
- (2) Authors and/or holders of related rights must transfer by contract those rights which they want to entrust for collective administration to the Collective Management Organization.

### **Chapter 4** **Functions of Collective Management Organizations**

#### Article 14

The Collective Management Organization has the duties as the following:

- It must conclude contract with the authors and related right holders;
- Facilitate with the users of amount of collected remuneration and other subject matters;
- Conclude licensing contracts with the users on the condition of use;
- Collect remuneration to the authors and other right holders;
- Initiate court proceedings and represent the relevant authors and/or related right holders as members.
- Distribute the collected remuneration on the agreed percentage;
- File petition to the court in order to protect the benefit of authors and right holder;
- Make relationship with both local and oversea Collective Management that is exploiting the works of the authors and the right holders in order to protect and collect the remuneration from exploitation;
- Manage on the economic right for authors and right holders;
- make communication with oversea Collective Management Organization for the benefit of right holder in Cambodia.
- Organize the standard of agreement to function the works for authors and right holders;
- encourage the compromise and understanding between the authors and the users of the works for protection of economic rights;
- disseminate and advice on the all issues related to copyrights for the authors and right holders.

#### Article 15

- 1- The Collective Management Organisation shall establish a collective account:
  - a- income
  - b- expenditure
- 2 - In the important case this Organisation can be established other account due to the agreement of its membership.

#### Article 16

To process effectively this Organisation able to withdraw the fund for salary expenses and bonus or other expenses legally.

#### Article 17

Notwithstanding any other law or regulation in force the Collective Management Organisation is exempt from payment of any tax on its income.

#### Article 18

The Collective Management Organisation must establish tariffs in respect of the different rights which they administer for the different groups of right owners. These tariffs must be approved by the Department of Copyrights and Related Rights of Ministry of Culture and Fine Arts.

#### Article 19

The representation of the performers and phonogram producers and their common remuneration right for the use of a phonogram for broadcasting and other communication to the public under Copyright and Related rights law.

#### Article 20

- (1) According to each kind of the right by Copyright and Related Right Department, Ministry of Culture and Fine Art, Collective Management Organization must set the percentage of distribution of agreed remuneration. This percentage must be officially public to user for the sake of basic negotiation.
- (2) If possible, this percentage can be calculated by the initial use, continual use, particularly, relying on the exploitation of organization in such place of broadcasting station, concert, or others public performance, advertisement, TV broadcasting stations, hotels, bar and entertainment club, restaurants and other scope of using.
- (3) By representative of large number of people such as hotels or restaurant which has a number of branches or a number of members of using works can be calculated by the lower price of using.

#### Article 21

- (1) Any person or other legal entity who want to use works or subject matter of related rights in respect of rights which are administered by the Collective Management organization must submit to the organization a request for the authorization of such use, before starting any such use. The request shall specify the kind and circumstances of the use such as the place, time and frequency of use.
- (2) The Collective Management Organization must grant the authorization if the user agrees to pay the remuneration according to the tariff or according to the contractually agreed remuneration, and if all terms and conditions are agreed on. The contract shall specify for the which kind of uses the authorization is granted, and under what conditions, such as the place, time and frequency of use as well as the remuneration.
- (3) The Contract shall also oblige the user to submit to the Collective Management Organization, without delay, any information relating to the

change of circumstances of the use, such as the use at a different place, or all the termination of the use, in order to allow the renegotiation of the contract or the revocation of the authorization.

- (4) Anyone, who enable to the use of works in his own building must be permitted by the Collective Management Organization, if such use has no authorization, the owner of building shall be fined.
- (5) Somebody uses the work which is prescribed in Article 7 of Law on Copyright and Related Rights without such authorization from the authors and related right holders must be punished in accordant with Article 64 and Article 65 on the Law on Copyright and Related Rights.
- (6) At a request of an author, related right holder and Collective Management Organization, the competent official of Copyrights and Related Rights Department, Ministry of Culture and Fine Arts, a police shall prohibit the public performance, business place or business building of works or other subject matter of protection if the organizer of the event has not the authorization of the author or of the Collective Management Organization.

#### Article 22

- (1) On the basis of the contract between the Collective Management Organization and the relevant user or association of users, the organization must assert the agreed remuneration in the agreed period of time. In the context, it has the right to claim from the user to deliver the information which is necessary to calculate the amount of remuneration due, such as the income from which a percentage has to be paid to the Collective Management Organization. User also has the right to request the competent official of Copyright and Related Rights Department to supervise the uses for which authorization has been granted, and to make inspection of the relevant documents. At a request of the Collective Management Organization, competent authority such as police, official of Copyright and Related Rights Department shall provide it assistance in supervising the use of the subject matter of protection.
- (2) If the remuneration is not paid in due time, the Collective Management Organization may use the ordinary means under the law in order to enforce the claim for remuneration. If the remuneration has not been paid for more than three months, the Collective Management Organization can unilaterally revoke the license granted under the contract. If the user continues to use the works without license, the Collective Management Organization can take all measure permitted to court or under paragraph 5 of article 21 of this sub-degree. .

#### Article 23

- (1) After the payment of administration costs, rental of the building and other equipments, the Organisation will be distributed upon the limited remaining revenue.
- (2) The income from each kind of use shall be distributed to those right holders whose works and other subject matter were used in the relevant way. In

particular, the income from public performance of musical works shall be distributed only to the authors of musical or other works which were publicly performed.

- (3) The remuneration must be collected, as far as possible, according to the frequency of use of the individual works, on the basis of the relevant information delivered by the user or gained otherwise. In particular, a user shall submit to the Collective Management Organisation a list of works which were publicly performed, broadcast or otherwise used, and the number of times they were used, unless another way to indicate the relevant information has been agreed on.
- (4) Distribution of the remuneration shall be carried out at least once in a year. The Collective Management Organisation shall make the annual statement of accounts regarding the distribution and submit them to Copyrights and Related Rights Department, Ministry of Culture and Fine Arts for inspection.

#### Article 24

- (1) After each fiscal year, the Collective Management Organisation shall draw up a balance sheet, showing the income and expenditure, in all detail, together with the annual report.
- (2) The annual accounts shall be drawn up according to the rules of orderly bookkeeping and in a clear and easily understandable manner.
- (3) The annual accounts and the annual report shall be submitted to one or several external, independent and qualified auditors. The auditors shall render a written report on the result of their audit.
- (4) The overall annual accounts and the annual report must be submitted, without delay, together with the report of the auditor(s), to the Ministry of Culture and Fine Arts.

### **Chapter 5 Mediation**

#### Article 25

When the dispute happens between the user and the Collective Management Organization or representative of user on the condition and the agreed remuneration, each contracting party can file petition to the Department of Copyright and Related Right of Ministry of Culture and Fine Arts to be facilitated and settled. On the other hand, when the dispute occurs between the Collective Management Organization with authors or right holders, each party can make official request to Department of Copyright and Related Rights of Ministry of Culture and Fine Art to be reconciled.

## **Chapter 6**

### **Supervision of Collective Management Organisations**

#### Article 26

- (1) The Ministry of Culture and Fine Arts mandates to supervise the activities of the Collective Management Organisations in order to ensure that they correctly fulfill their obligations under the Copyright and Related Right, as well this sub-decree.
- (2) In this context of this task of supervision, the Ministry of Culture and Fine Arts has the right to demand from the collective Management Organisations at any time any kind of information which is necessary in order to control the lawfulness of the activities of the Collective Management Organisation. Also the Ministry has the right to be present at the meetings of the members of the organisation and of its board or other organ, where it exists.
- (3) The Ministry has the right to be informed by the Collective Management such as:
  - The acknowledged letter of establishments of Collective Management Organisation from Ministry of Culture and Fine Arts;
  - The acknowledged letter of establishments of Collective Management Organisation from Ministry of Interior;
  - Any amendment of the by-laws;
  - Reciprocal agreements with foreign Collective Management Organisations;
  - The decisions of any meeting of its members or of its board or other organ if it exists;
  - The annual accounts;
  - The annual accounts, the annual report and the auditors' report;
  - The strategic plans and some decisions in judicial or other proceedings in which the Collective Management Organization is a party.

## **Chapter 7**

### **Inter provision**

After this sub-degree comes to force, the existed Collective Management Organization or the organization which has already activated or will be activate as prescribed in article 3 of this sub-degree, shall implement the article 4 of this sub-degree.

## **Chapter 8**

### **Final Provision**

#### Article 28

Any provision which is contrary to this Sub-Decree shall be abrogated.

#### Article 29

This sub-degree comes in to force from the date of its signature.

**Done in Phnom Penh,  
Prime Minister**

**200....**

**Hun Sen**