



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

REF. MOF/PDMO/20/01/ (02)

OCTOBER 29, 2018

TREASURY CIRCULAR NO. 12/2018

**TO: ALL CABINET SECRETARIES
ALL COUNTY GOVERNORS
ALL PRINCIPAL SECRETARIES (with Sufficient Copies to All Chief Executive
Officers of State Corporations and Agencies)**

**RE: CHECKLIST OF MANDATORY REQUIREMENTS FOR SEEKING EXTERNAL
RESOURCES FUNDING**

Reference is made to the Treasury Circular No. 3 of September 18, 2017 and Head of the Public Service Circular Ref. OP/CAB.39/1A of March 1, 2018 regarding the above subject matter (copies attached).

As affirmed in the Constitution, the Public Finance Management (PFM) Act, 2012, the Kenya External Resources Policy, 2014 and Treasury Circulars, the mandate of mobilizing external resources, which include Loans and Grants, is vested in the Cabinet Secretary to the National Treasury and Planning. All negotiations for external resources must be held under the guidance of the National Treasury.

Given the Presidential Directive, all Government Accounting Officers must ensure that all ongoing projects are completed before initiating new projects and sanctioning of new projects must receive express Authority from the National Treasury. Accordingly, the National Treasury's authority to sanction any new project in accomplishment of Kenya's Vision 2030 and the Government's Big Four Development Agenda must be demand driven and priority to the Kenyan people. This will ensure adherence to the principles of the public participation as enshrined in the Constitution of Kenya to ensure sustainability of the projects.

In view of the forgoing, the National Treasury is directing that the following checklist of mandatory requirements must be provided before seeking external financial support:

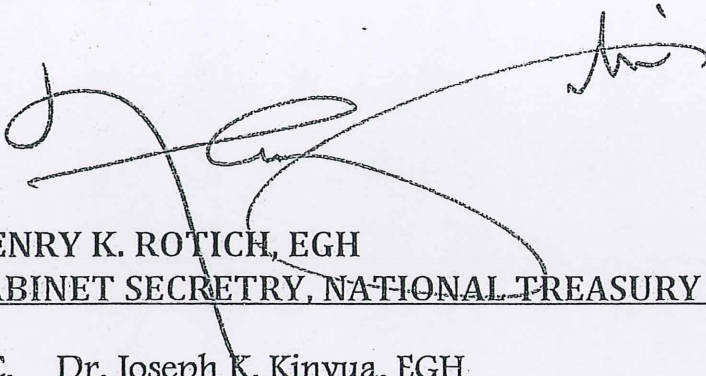
1. Feasibility study report inspected and approved by the relevant government entity informing the project economic viability, costing and design;
2. Confirmation of the land and wayleave acquisition for the project. The Resettlement Action Plan (RAP) report should be provided, if necessary;
3. Commitment to relocate public utilities like electric line, sewer line among others where necessary;
4. Confirmation of adequate human resources capacity for project implementation. Where there is a shortfall, the Implementing Ministries, Departments, Agencies (MDAs) and County Governments must commit to develop a strategy to fill the gap;
5. Prioritization and commitment of the Counterpart funding by all MDAs /County Governments where necessary;
6. Due diligence report to ascertain the financial, technical and legal competency for the firm procured competitively to undertake the project implementation. Kindly note, that this applies mainly to the projects that are undertaken under Engineering, Procurement, Construction and Financing (EPCF) Model; and
7. Any other requirements depending on either Bilateral or Multilateral Framework Agreement with the respective Development Partner.

Kindly note that the above checklist of mandatory requirements are critical in mitigating the Government against any potential financial risks of paying commitment fees and other charges on loan amounts due to delays in commencement of project implementation.

In addition, we wish to advice that all MDAs /County Governments undertakes advance surveys, mapping and ring-fencing Government assets e.g. land, wayleaves among others to avoid unnecessary compensations. Further, funding including but not limited to land and way leave compensations among others that form part of counterpart funding must be prioritized under the Ministry's Sector Allocation through the Normal Medium Term Expenditure Framework (MTEF) Budgeting Process in accordance with the requirements of the Loan Agreement. Kindly note that the National Treasury does not have special allocation for this purpose.

Finally, we wish to re-affirm the spirit of the Cabinet Circular issued by the Head of the Public Service Ref. OP/CAB.39/1A of March 1, 2018 that *“all Memorandum of Understanding (MOU) and Commercial Contracts with local and foreign parties are to receive the concurrence of the respective Cabinet Secretary and approval of Cabinet prior to execution”*. The Commercial Contracts and MOUs must also receive concurrence from the National Treasury and the Office of the Attorney General and Department of Justice on Tax Exemption and Legal Clearance, respectively.

In view of the above, we therefore direct all MDAs /County Governments to strictly adhere to the above-mentioned provisions before seeking external financial support.



HENRY K. ROTICH, EGH
CABINET SECRETARY, NATIONAL TREASURY AND PLANNING

CC. Dr. Joseph K. Kinyua, EGH
Head of Public Service
Executive Office of the President
State House
NAIROBI

Justice Paul Kihara Kariuki
Attorney General
Office of the Attorney General & Department of Justice
Sheria House
NAIROBI

Ms. Jacqueline Mogeni
Chief Executive Officer
Council of Governors
Delta Building-Westland
NAIROBI

Ms. Abigael Mbagaya
Ag. Chairperson
National Land Commission
Ardhi House
NAIROBI

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Ref No. TREASURY CIRCULAR NO. 3

September 18, 2017

TO: CABINET SECRETARIES
PRINCIPAL SECRETARIES
CONTROLLER OF BUDGET
AUDITOR GENERAL
CHAIRPERSONS AND CHIEF EXECUTIVE OFFICERS OF STATE CORPORATIONS
CHAIRPERSONS AND CHIEF EXECUTIVE OFFICERS OF CONSTITUTIONAL
COMMISSIONS
CHAIR OF COUNTY GOVERNORS
COUNTY GOVERNORS

RE: GUIDELINES ON SOURCING OF OFFICIAL DEVELOPMENT ASSISTANCE

Reference is made to the Treasury Circulars No. AG/3/085/VOL V/17 of 24th September 2004 and EA/ERD/PCU/GEN/002(117) of 12th February, 2007 (copies attached) with regard to the above subject.


As affirmed in the Constitution, the Public Finance Management (PFM) Act, 2012, the Kenya External Resources Policy, 2014 and Treasury Circulars, the mandate of mobilizing external resources, which include Loans and Grants, is vested in the Cabinet Secretary to the National Treasury. All negotiations for external resources must be held under the guidance of the National Treasury.

Despite these Legal provisions, we have noted with concern that Ministries, Departments and Agencies, Independent Institutions and Commissions have continued to directly engage Development Partners on matters pertaining to mobilization of external resources without the National Treasury approval or involvement. This contravenes the legal provisions and guidance contained in the various Circulars, PFM Act and Regulations thereof.

It is critically important that our development agenda be funded in a coordinated manner and within the Constitution and stipulated laws. Accordingly, therefore, all project proposals and indeed requests for external financing, extensions and restructuring of ongoing programmes and projects for all public entities must be submitted to the National Treasury for economic and financial review before they are submitted to potential Development Partners for funding consideration.

Further, Kenya being a signatory to various International Conventions dealing with harmonization and co-ordination of effective development assistance, it is a contravention of the spirit of these conventions for MDAs to deal directly with Development Partners. For avoidance of doubt, all requests for Official Development Assistance (ODA) from our Development Partners must be channeled through the National Treasury without exceptio...

The purpose of this Circular, therefore, is to remind all Ministries, Departments and Agencies, Independent institutions and Commissions and our Development Partners that the mandate for mobilizing external resources legally rests with the National Treasury, as provided in the Constitution and the PFM, Act 2012 Sec. 12 (d), and this must be strictly adhered to.



Henry K. Rotich, EGH
CABINET SECRETARY, THE NATIONAL TREASURY

CC. Dr. Joseph Kinyua, EGH
Chief of Staff and Head of Public Service
The Presidency
NAIROBI

Hon. (Prof.) Githu Muigai, EGH, SC
Attorney General
Office of the Attorney General and Department of Justice
NAIROBI

All Development Partners

Encls.



PRINCIPAL SECRETARY
NATIONAL TREASURY

15 MAR 2018

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P.O. Box 30007 - 00100, NAIROBI

THE PRINCIPAL / ADMINISTRATIVE SECRETARY
THE NATIONAL TREASURY
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THE PRESIDENCY

EXECUTIVE OFFICE OF THE PRESIDENT
HEAD OF THE PUBLIC SERVICE

Press
T-20-2227436
Please quote
OP/CAB.39/1A

and date

Attorney General
Principal Secretaries/Accounting Officers
Chief Executive Officers/Accounting Officers of State Corporations and Agencies

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya
March 1, 2018

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[Handwritten signature]
19/3/18

TRANSPARENCY AND ACCOUNTABILITY PRESCRIPTIONS FOR
ACCOUNTING OFFICERS OF MINISTRIES, DEPARTMENTS AND AGENCIES

Reference is made to the resolutions of the meeting convened by H.E. The President with Principal Secretaries and Chief Executive Officers of State Corporations and Agencies on 28th February 2018.

Discussed during the meeting, the responsibilities of accounting officers in ensuring the prudent and transparent use of public resources cannot be overemphasized. H.E. The President particularly emphasized the need for accounting officers to adhere to set principles of public financial management and public accountability, as well as tenets of ethics and integrity in exercising their mandate. He reiterated the fact that personal responsibility and culpability would attach to a person in breach of the set expectations notwithstanding any perceived pressure, protection or misguided implementation of improper orders.

Consequently, accounting officers are to adhere to the following prescriptions as directed by H.E. The President:

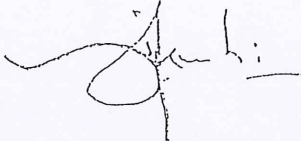
All Accounting Officers are to sign a pledge to commit to integrity and transparency in the management of public resources under their supervision and secure adherence to the same;

Upon receipt of credible accusations of corruption and the initiation of investigations under enabling legislation, accounting officers will be expected to step aside pending conclusion of investigations;

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3. All ICT procurement in government ministries and state corporations is to be centralized under the Ministry of Information, Communication and Technology (ICT) in order to assure economies of scale, and optimise upon the shared services strategy. The National Treasury and Ministry of ICT will issue directions on implementation of e-procurement in all agencies;
4. All State Corporations shall remit surplus funds to the National Treasury at the end of each financial year without deduction or delay. Use of surplus funds will be subject to Cabinet approval upon application by the relevant State Corporations and only for projects within the mandate and in pursuit of the entity objectives aligned to government priorities;
5. All Accounting Officers will take distinct action to allocate 30% of the total budget for procurement of goods and services (both recurrent and development) for women, youth and persons with disability. Accounting Officers must also ensure prioritization and prompt payment of reserved group tenders, taking cognizance of their unique cash flow challenges and comply with the requirement for statutory reporting to the National Treasury and Public Procurement Regulatory Authority;
6. By 30th March 2018, Accounting Officers will submit to the National Treasury with a copy to this office, a comprehensive programme implementation plan for the uptake of Development Partner financing negotiated within their specific sectors. National Treasury will communicate all available financing structures as negotiated to target sectors in immediate action.
7. Henceforth, no commitments are to be made outside the approved budget of ministries and state corporations without the concurrence of the respective Cabinet Secretary ^{N/A} and approval of the Cabinet.
8. All Memorandum of Understanding and Commercial Contracts with local and foreign partners are to receive the concurrence of the respective Cabinet Secretary and approval of the Cabinet prior to execution. All Ministries and State Corporations must ensure strict adherence to this requirement.

Please bring the content of this communication to the attention of all relevant staff within your entities, and take necessary action.



JOSEPH K. KINYUA, EGH
HEAD OF THE PUBLIC SERVICE

Copy to: Henry Rotich, EGH
Cabinet Secretary
National Treasury
NAIROBI

Joe Mucheru, EGH
Cabinet Secretary
Ministry of Information,
Communication and Technology
NAIROBI

To take necessary action

All Cabinet Secretaries

