



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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Ref: NALM/2/34 A (68)

23rd January, 2025

TREASURY CIRCULAR NO.1/2025

To: All Cabinet Secretaries

All County Governors

All Principal Secretaries (*With sufficient copies to all Chief Executive Officers of State Corporations and Agencies*)

REQUIREMENTS FOR SEEKING APPROVAL TO LEASE PUBLIC ASSETS

1. Government owns assets to facilitate delivery of public services. Therefore, it is essential that the same is properly managed to maximize social and economic benefits to the country accruing maximum of value for money. While the public sector continues to adopt and inculcate good corporate governance practices, it is imperative to ensure that robust policies and guidelines are put in place to provide guidance in the management of public assets including leasing public assets. Accounting officers will be expected to ensure that decisions to leasing align to a system that is equitable, transparent, fair, competitive and cost effective.
2. Accordingly, therefore, there are various laws which govern leasing by government which include among others the Land Act, 2012, Land Registration Act and the Public Procurement and Assets Disposal Act (PPADA) Section 80 (2) which by extension support various evaluation criteria in the standard procurement document, 2015 providing policy guidance with respect to public assets leasing.
3. The Government of Kenya is both a Lessor and Lessee. Leasing transactions have become even more prevalent given the financial space it offers to the actors. The Lessor gains in funds while still owning the property while the lessee gains value by the use of property without financing costs of acquiring the property. However, historical and current leasing transactions involving the Government of Kenya have presented a number of key challenges among others lack of operational procedures governing leases in the Public Sector.

In view of the foregoing, the National Treasury has developed this circular to guide Ministries, Counties, State Departments and Agencies with respect to processing leases in the Public Service.

A. General Leasing Principles

4. Any lease signed by a Ministry/County/State Department/Agency shall at minimum provide:
- (i) Length of the Lease Term, together with the security provided by the Tenancy;
 - (ii) Parties to the Lease;
 - (iii) Commencement and duration of the Lease;
 - (iv) Dispute Resolution;
 - (v) Parties Obligations;
 - (vi) Justification for leasing;
 - (vii) Monitoring of the Lessor's and Lessee's performance;
 - (viii) Performance Bond (where applicable);
 - (ix) Compliance with relevant laws and policies;
 - (x) Insurance (where applicable);
 - (xi) Parties' rights;
 - (xii) Assets description;
 - (xiii) Conditions that can lead to termination of the Lease Agreement; and
 - (xiv) Renewal process of existing leases to commence at least 6 months before expiry.

B. Land Lease

B1. Ministries, State Departments, Government Agencies and Counties

5. Any lease of land from a Ministry/County/State Department/Agency/Counties except for Special Economic Zones/Export Processing Zones shall require the following:
- i. Board Approval in concurrence with the relevant Cabinet Secretary;
 - ii. Approval by the National Land Commission;
 - iii. Valuation by the Chief Government Valuer;
 - iv. Certified copy of lease and certificate of lease;
 - v. Term sheet approved by the Accounting Officer for the period of the lease;
 - vi. Approval of Lease Agreement by the relevant Accounting Officer;
 - vii. An authenticated survey plan of the suit land with area to be leased clearly marked;
 - viii. Land Suitability Assessment report as well as Environmental and Social Impact Assessment Risk assessment report; and obtain approval from NEMA within one (1) year but before commencement of any project on the leased Land;
 - ix. Clearance of the Lease Agreement by the Attorney General; and
 - x. All leases to investors to be registered with the Ministry of Lands upon execution and a copy submitted to The National Treasury.

B2. Special Economic Zones (SEZ)/Export Processing Zones (EPZ)

6. Any lease of land from the Special Economic Zones Authority (SEZA)/Export Processing Zones Authority (EPZA) shall require the following:
 - i. Cabinet Approval for each SEZ/EPZ including the zone master plan;
 - ii. Individual leases to the investors within these zones to obtain approvals from their respective Boards, with concurrence of the respective line Cabinet Secretary;
 - iii. Approval by the National Land Commission;
 - iv. Valuation by the Chief Government Valuer;
 - v. Certified copy of lease and certificate of lease;
 - vi. Term sheet approved by the Accounting Officer for the period of the lease;
 - vii. Approval of Lease Agreement by the relevant Accounting Officer;
 - viii. An authenticated survey plan of the land with area to be leased clearly marked for each SEZ/EPZ and any individual lease to investors;
 - ix. NEMA approval on Land Suitability Assessment report including Environmental and Social Impact Assessment report, as well as Risk assessment report for entire zone;
 - x. NEMA approval on Environment Impact Assessment (EIA) for individual investor leases to be obtained within one (1) year upon execution of lease;
 - xi. Clearance of the Lease Agreement by the Attorney General; and
 - xii. All leases to investors to be registered with the Ministry responsible for Lands upon execution and a copy submitted to The National Treasury.

C. Office Accommodation Leases or Leasing Out Government Buildings

7. Ministries, State Departments and Agencies, intending to procure office accommodation through leases or lease out government buildings to third parties shall require the following:
 - i. Approval by Accounting Officer
 - ii. Confirmation of budgetary provision for the fiscal year and medium term;
 - iii. Valuation by Chief Government Valuer;
 - iv. Term sheet approved by the Accounting Officer for the entire period of the lease;
 - v. Clearance by the relevant Cabinet Secretary responsible for Housing;
 - vi. Clearance of the Lease Agreement by the Attorney General; and
 - vii. Submission of a copy of the fully executed Lease Agreement to the National Treasury.

D. Motor Vehicle Lease

8. Ministries, State Departments and Agencies, intending to procure Motor Vehicles through leases from third parties shall require the following:

- i. Approval by Accounting Officer;
- ii. Confirmation of budgetary provision for the fiscal year and medium term;
- iii. Term sheet approved by the Accounting Officer for the period of the lease;
- iv. Clearance Report by the Chief Mechanical and Transport Engineer or for security organs by their Authorized Engineer;
- v. Confirmation by the Accounting Officer that the lease will provide value for money to government;
- vi. Clearance of the Lease Agreement by the Attorney General; and
- vii. Submission of a copy of the fully executed Lease Agreement to the National Treasury.

E. ICT Equipment Leases

9. ICT sector is dynamic and volatile in nature. It is subject to development and technological changes within short cycles of time. Therefore, it is prudent to lease such equipment and software e.g. cloud storage compared to owning as it gives flexibility in case of a need for an upgrade. This helps mitigate the risk attached to the complex procedure of disposal.

10. Any lease for ICT Equipment shall require the following:

- i. Approval by the Cabinet Secretary for Information Communication Technology;
- ii. Confirmation of budgetary provision for the fiscal year and medium term;
- iii. Term sheet approved by the Accounting Officer for the entire period of lease;
- iv. Confirmation by the relevant Accounting Officer that the Government will get value for money;
- v. Clearance of the Lease Agreement by the Attorney General; and
- vi. Submission of a copy of the fully executed Lease Agreement to the National Treasury.

F. Health Equipment Lease

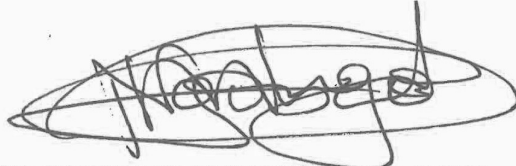
11. Any lease for Health Equipment leases shall require the following:

- i. Approval by the Cabinet Secretary for Health;
- ii. Approval by the relevant Accounting Officer;
- iii. Confirmation of budgetary provision for the fiscal year and in the Medium Term;
- iv. Term sheet approved by the accounting officer for the period of lease;
- v. Certificate from the Director of Medical Services confirming that the equipment being leased meet all World Health Organization (WHO) requirements;
- vi. Clearance of the Lease Agreement by the Attorney General; and
- vii. Submission of a copy of the fully executed Lease Agreement to the National Treasury.

12. This Circular is geared towards ensuring prudent management of Government Assets to promote optimal economic, environmental and social benefits to the public and mitigate government exposure to potential contingent liabilities. Therefore, Ministries, Counties, State Departments and Agencies are required to ensure full compliance with the contents of this Circular. This Circular will apply to County Governments with appropriate modifications.

This Circular supersedes the National Treasury Circular No. 9 of 18th January 2024.

Please bring the contents of this Circular to the Officers under you.



**HON. FCPA JOHN MBADI NG'ONGO, EGH
CABINET SECRETARY**

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