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Ref: DGIPE/A/1/80

Date: 16th June 2020

TREASURY CIRCULAR NO 10/2020

THE ATTORNEY GENERAL

ALL CABINET SECRETARIES

ALL ACCOUNTING OFFICERS/PRINCIPAL SECRETARIES

PRIORITIZATION OF PENDING BILLS BY STATE CORPORATIONS AND SEMI-AUTONOMOUS AGENCIES (SAGAS)

Despite numerous Circulars and Directives requiring State Corporations to prioritize payment of pending bills, it has been noted that the level of compliance with these Directives has been very low. Consequently, it has become necessary to remind Accounting Officers of their obligations, responsibilities and sanctions under the law. Accumulation of liabilities not sanctioned by law (pending bills) is expressly prohibited and may invite punitive actions against those responsible.

Responsibilities of Accounting Officers in financial management

The following sections of the law clearly spell out the responsibilities of Accounting Officers of public entities: -

- Section 226 (2) of the Constitution states that “*The accounting Officer of a national public entity is accountable to the National Assembly for its financial management...*”
- Section 23 of PFMA, (Regulations, 2015) states that Accounting Officers are accountable to the National Assembly for inter alia 1(c) “... *maintaining effective systems of internal control and measures taken to ensure that they are effective*”
- Section 2 of the Regulations states that the Accounting Officers shall inter alia (a) “*comply with any tax, levy, duty, pension, commitments ...*”
- Section 53 (8) of the Public Procurement and Disposal Act (2015) states that “*an Accounting Officer shall not commence any procurement proceedings until satisfied that sufficient funds to meet the obligations of the resulting contract (s) are reflected in approved budget estimates*”

Improper conduct in relation to unauthorized expenditures

Section 74 (4) of the PFMA (2012) states inter alia that: “...a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer—

- (a) contravenes or fails to comply with this Act, including their accounting responsibilities;
- (b) undermines any financial management procedures or controls that apply to the entity;
- (c) makes or permits expenditure that is unlawful or has not been authorized by the entity; or
- (d) fails, without reasonable excuse, **to pay eligible and approved bills promptly in circumstances where funds are provided for.**”

Sanctions for breach of law


Implementation of activities by Accounting Officers without approved budgets and or failing to pay for legally incurred expenditures is responsible for continued accumulation of pending bills and constitutes an offence under section 74 of the PFMA (2012). Accounting Officers therefore bear the ultimate responsibility in ensuring that all activities undertaken by their entities are in strict compliance with the law failing which disciplinary measures will be taken as provided for in the Constitution, Public Officers Ethics Act, 2003, Public Service Codes or any other relevant law.

Clearance of Pending Bills

In view of the foregoing and in order to ensure prompt clearance of pending bills, State Corporations are required to: -

- i. Settle by **30th June, 2020**
 - All unremitted SACCO staff and loan deductions
 - All statutory deductions (PAYE, NSSF, NHIF and Pension Arrears)
- ii. Ensure payment of pending bills are treated as a **first charge** on their 2020/21 FY approved budgets. State Corporations with pending bills are required to rationalize their budget for 2020/21 FY to ensure that eligible pending bills are incorporated in the budget before the same is approved by the National Treasury.
- iii. Separate disputed pending bills from eligible pending bills and prepare a plan for resolving them.

Soft copies of reports/correspondence on pending bills should be emailed to: dgipendingbills@treasury.go.ke


Hon. (Amb) Ukur K. Yatani, EGH
Cabinet Secretary/The National Treasury and Planning