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NATIONAL TREASURY CIRCULAR NO. 09/2025

To: All Principal Secretaries/Accounting Officers

All Chief Executive Officers of State Corporations

All County Secretaries of County Governments

Guidelines for Identifying and Evaluating Investors in Special Economic Zones, Export Processing Zones and other public entities when leasing public land

1. The purpose of this circular is to provide guidance to Ministries, Counties, State Departments, Agencies, Constitutional Commissions and Independent Offices on the criteria to be considered when identifying and evaluating investors to lease public land under the Special Economic Zones (SEZs), Export Processing Zones (EPZ) and in any other public entities.

2. Government owns vast assets, particularly land, which if optimally managed can serve as a catalyst for sustainable economic development. Leasing and partnership with the private investors through SEZs/EPZs, commercialization of agriculture land among others has emerged as viable strategies raise Government revenue. The SEZs/EPZs are effective instruments to promote industrialization by way of attracting foreign direct investments (FDIs) mostly in the manufacturing sector, creating jobs, enhancing trade balance and foreign exchanges. To maximize the potential of SEZs/EPZs, Kenya must attract investors who align with its economic development goals, prioritize sustainability, and foster local economic integration. In addition, as Government engages in public private partnerships especially on commercialisation of agricultural land, it must ensure there is value for money and benefits to great citizens.

3. To enhance optimal utilization of public land, there is need for a standardized criteria on identifying and evaluating investors when leasing public land especially in the SEZs/EPZs and agricultural land. Clear government guidelines should govern the use of public land as collateral, ensure regulatory compliance, and align investments with national and geopolitical priorities. This approach will promote transparency, attract quality investors, and position public land as a strategic asset for sustainable

development and revenue generation to compliment tax revenues.

4. Section 12 (2) (g) of the Public Finance Management Act, Cap 412A provides that the National Treasury shall be the custodian of all Government assets. Further, Section 12(3) of the Land Act, Cap 280 allows the National Land Commission to allocate public land for investment purposes upon request by the national or county government. In addition, Section 4(4) of the Special Economic Zones Act (Cap 517A) a public land designated as an SEZ can be alienated to special economic zone developers, operators or enterprises or other bodies established within a special economic zone.

5. Pursuant to Section 12 (2) (k) of the Public Finance Management Act, Cap 412A laws of Kenya, the National Treasury and in alignment with national development priorities, the National Treasury hereby guides the public entities to consider the following factors when identifying, evaluating, and engaging investors seeking to lease public land:

A. Investors Evaluation Criteria

i. Financial Strength and Investment Capacity

6. Investors must demonstrate the requisite financial capacity and investment sustainability. Assessment will be based on;

a) *Track Record:* verifiable experience in managing large-scale projects, particularly in sectors such as manufacturing, logistics, ICT and business process outsourcing among others.

b) *Capital Availability:* Investors should possess adequate financial resources, whether through self-financing, venture capital, institutional investors or other viable financing arrangements.

c) *Risk Management:* Clear evidence of risk mitigation strategies should be presented to mitigate potential uncertainties.

ii. Industry Alignment and Economic Vision Compliance:

7. Investors must demonstrate alignment with Kenya's national development priorities including the Kenya Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA). For projects within Special Economic Zones (SEZs) and Export Processing Zones (EPZs), proposals must also support the objectives outlined in the SEZ Master Plan and EPZ master plan, which will be subject to review every ten years. The assessment criteria shall include;

a) *Target Industries*: Priority sectors include manufacturing, agribusiness, technology, renewable energy, and logistics *among others.*

b) *Economic Diversification*: Projects should contribute to the diversification of the economy by introducing new industries, technologies, innovations or expanding existing value chains.

c) *Government Vision:* Investors must demonstrate alignment with the government's development agenda, including the Kenya Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA) and prevailing service regulations.

d) *Geopolitical Considerations:* Investments that strengthen Kenya's strategic geopolitical and geoeconomic position and safeguarding national interests should be prioritized.

iii. Job Creation and Human Capital Development:

8. Investments should contribute significantly to employment creation and human capital development.

a) *Employment Opportunities:* Investors should provide projections for job creation at all skill levels.

b) *Training and Skills Development:* Demonstrate capacity-building programs and partnerships with local educational institutions.

c) *Knowledge Transfer:* Emphasis should be placed on transferring technical expertise and management skills to the local workforce.

d) *Joint ventures and integration of local industries:* Emphasis should be placed on fostering joint ventures and strengthening linkages with local industries.

iv. Export Potential and Market Reach

9. Investors should contribute to Kenya's export competitiveness. Particularly priority investments should be those that promote;

a) *Export-led Growth and Trade Balance Optimization:* Investments with strong export potential should be prioritized to enhance Kenya's trade balance and foreign exchange earnings.

b) *Regional and Global Market Access:* Investors with established global and regional networks and access to regional and international markets should be prioritized.

c) *Support for the AfCFTA:* Investments that leverage Kenya's strategic position as a hub for the African Continental Free Trade Area (AfCFTA) should be considered and prioritized.

v. Innovation, Technology, and Process Efficiency

10. Technological advancement and innovation are essential for competitive SEZ/EPZ operations and agricultural land Commercialization.

a) *Research and Development (R&D):* Investors must commit to R&D activities that drive innovation, product development and commercialization subject to rebates at predetermined rates under a framework to monitor the R&D qualifying expenditure for the Government to provide rebates.

b) *Adoption of Advanced Technologies:* Integration of automation, *Generative/*artificial intelligence, and digital solutions should be emphasized.

c) *Business Process Outsourcing (BPO):* SEZs should promote BPO services, creating an ecosystem for digital service exports.

vi. Infrastructure Compatibility and Regulatory Compliance

11. Investors should align with the available infrastructure and regulatory frameworks.

a) *Infrastructure Requirements:* Projects must be compatible with existing infrastructure, including power supply, transport networks, and warehousing-among others.

b) *Development of new infrastructure:* Projects which provide for development of new infrastructure and common user facilities by the investors will be prioritized.

c) *Regulatory Compliance:* Investors must comply with all legal and regulatory requirements, including SEZ/EPZ-specific regulations.

d) *Environmental Compliance:* Clear adherence to environmental conservation standards and the use of sustainable production methods is essential.

vii. Sustainability and Environmental Responsibility

12. Sustainable investments are crucial for long-term SEZ viability.

a) *Eco-Friendly Practices:* Extent to which investments promote the adoption of green technologies and sustainable production processes that reduce environmental impact

b) *Waste Management:* Implementation of effective waste management systems, including reduction, recycling, and safe disposal, to minimize ecological footprint.

c) *Climate Resilience:* Prioritization of infrastructure and operational practices designed to withstand and adapt to climate-related risks and uncertainties

d) *Commitment to Environmental, Social, and Governance (ESG) Principles:* Demonstrated commitment to ESG initiatives that directly contributed to economic development, social inclusion, and responsible governance.

viii. Social Impact and Corporate Responsibility

13. Investors should contribute positively to the social and economic well-being of local communities.

a) *Corporate Social Responsibility (CSR):* Demonstrated commitment to CSR initiatives and ESG initiatives that directly benefit the local community and address social challenges.

b) *Ethical Business Practices:* Strict adherence to ethical business conduct and labor practices.

c) *Community Engagement:* Incorporate the creation of community liaison committees as part of community engagement and public participation as envisioned in the national policy.

ix. Long-Term Commitment and Scalability

14. Investments should demonstrate stability and growth potential.

a) *Long-Term Lease Agreements:* Preference should be given to investors willing to enter long-term lease agreements.

b) *Scalability:* Projects should demonstrate the potential for expansion, including the ability to increase production capacity and market reach within the leased acreage and lease duration.

c) *Business Continuity Plans:* Investors should present strategies for business continuity and risk mitigation.

x. Integration with Local Supply Chains

15. Investors should strengthen local economic linkages.

a) *Local Sourcing:* Engagement with local suppliers to boost value addition and support Kenyan industries.

b) *Backward and Forward Linkages:* Strengthening connections within the SEZ/EPZ ecosystem and the broader economy.

c) *Capacity Building:* Support for local businesses to meet supply chain requirements and improve local, regional and global competitiveness.

B. Criteria Implementation Tools

16. Effective selection and monitoring of investors require robust tools.

a) *Scoring Systems:* Develop a weighted scoring model to rank applicants based on the above criteria **as shown in annex 1.**

b) *Due Diligence:* Conduct thorough background checks (financial, legal, environmental, technical capacity).

c) *Agreements:* Include clauses for performance milestones, penalties for non-compliance, exit mechanisms, dispute resolution including the Center for Dispute Resolution by Nairobi International Centre being given preference.

C. Use of Leased Public Land as Collateral

17. Investors intending to use SEZEPZ-leased land for securing financing must adhere to prescribed SEZ/EPZ guidelines. Any land outside SEZ/EPZ will require approval of the Board and the line Ministry Cabinet Secretary to authorize Government ***leased*** land to be used as collateral for purposes of raising capital by private parties subject to:-

a) *Government Safeguards:* leased land represents a strategic public asset critical to Kenya's industrial development agenda. Permitting its use as collateral without adequate safeguards could expose the government to the risk of land loss.

b) *Approval Framework:* Any Board and Cabinet Secretary of the line Ministry approval granting consent for the use of public leased land as collateral should clearly provide that all conditions of the lease shall apply during the term of the loan facility and any breach of Lease terms shall discharge the public entity from any related obligations.

c) *Investor Responsibility:* Investors must provide comprehensive business continuity and repayment guarantees to safeguard public assets. These safeguards must remain valid and enforceable for the full duration of the loan facility.

d) *Mitigation Strategies:* The government should implement policy measures that prevent the permanent transfer of leased SEZ/EPZ land ***or any other public entity land*** to financial institutions in the event of loan default, ensuring that land reverts to public ownership.

e) The Master Lease should be longer than the sub-Lease by at least 10 years.

f) Where the Lessee intends to issue a Sub-Lease, the terms and conditions should be similar to that of the Lease Agreement.

g) A Lessee who intends to use the Leasehold Interest as collateral must obtain Lessor's written consent. The validity of the consent will be dependent on the Lessee's continued compliance of its obligations under the Lease Agreement.

D. Framework for granting Incentives

18. To ensure a structured and transparent approach to investment incentives, there is a need to establish a clear and consistent framework for granting such incentives as provided under various tax laws, with particular emphasis on defining minimum investment thresholds. Specifically, for Special Economic Zones (SEZs) and Export Processing Zones (EPZs), each Authority will develop regulations pursuant to the SEZ Act or EPZ Act, establishing the minimum investment outlay required for investors to qualify for tax holidays, exemptions, and capital deductions.

Please bring the contents of this circular to the attention of all public officers under your purview.

Yours Sincerely

HON. FCPA JOHN MBADI NG'ONGO, EGH
<u>CABINET SECRETARY</u>

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Annex I:

a) **Investors Evaluation and Onboarding Process**

1. Pre-screening by relevant authorities specific to a particular SEZ/public land through analysis of preliminary data on the investment.
2. Screening by SEZA/EPZA/public entity, together with the related Agency or County, specific to a particular SEZ/public land based on the recommendations of the Pre-screening report. Screening to employ transparent evaluation criteria and thorough due diligence.
3. Approval for onboarding the Investor by the accounting officer/Principal Secretaries, the Board level (for agencies) /County Government Investment committee.

b) **Investor Performance Monitoring Process:**

1. Pre-monitoring and evaluation framework by the relevant authorities, in case of a particular SEZ, guided/approved by SEZA.
2. Monitoring and Evaluation by the related agency or County Government, specific to a particular public land based on the recommendations of the Pre-monitoring and evaluation report.
3. Submission of Monitoring and Evaluation report to relevant authority.

c) **Investor Scoring System**

The scoring formula incorporates the 10 key areas for onboarding investors, along with appropriate weightings. These weightings can be adjusted based on the specific needs and priorities of the organization or project.

Summary of the Process:

1. **Assign weights** to each key area based on your priorities.
2. **Score each investor** on a 1-5 scale for each key area.
3. **Multiply the score by the weight** for each area and sum the results.
4. **Interpret the total score** to assess if the investor is suitable for onboarding.

1. Assign Weights to Each Key Criteria

The weight assigned to each area represents its relative importance. The sum of all the weights should equal 100%. **Suggested Weighting**

Key Area	Weight (%)	Rationale
1. Financial Strength and Investment Capacity	15%	Financial capacity, risk mitigation and strength are critical for sustained growth and funding operations. FDI vs. DDI
2. Industry Alignment and Economic Vision Compliance	10%	Ensuring that the investor's objectives align with the broader economic and

Key Area	Weigh t (%)	Rationale
(10-year Master Plan)		industry trends is vital for long-term success.
3. Job Creation and Workforce Development	15%	Investors contributing to employment and workforce development are crucial for social and economic growth.
4. Export Potential and Market Reach	15%	Investors who can expand into global markets have a higher potential for scaling.
5. Innovation, Technology, and Process Efficiency	10%	Innovation drives competitive advantage; and operational efficiency ensures profitability.
6. Infrastructure Compatibility and Regulatory Compliance	10%	Meeting regulatory requirements and having necessary infrastructure in place is essential for smooth operations.
7. Sustainability and Environmental Responsibility	10%	Investors who prioritize sustainability contribute to long-term viability and environmental stewardship.
8. Social Impact and Corporate Responsibility	5%	Positive social impact and strong corporate responsibility align with ethical standards and improve public perception.
9. Long-Term Commitment and Scalability	5%	A long-term commitment is necessary for sustained growth, and scalability ensures that the investor is ready for future expansion.
10. Integration with Local Supply Chains	5%	Strong local supply chain integration can reduce costs, avoid global shocks and ensure the investor is embedded in the local economy.

Total Weight = 100%

2. Scoring Scale

You can use a **1-5** scale to rate each investor on the 10 key areas. The score should reflect how well the investor meets the criteria for each area.

This should be based on the adequacy of evidence provided for the different criteria as per an organization's/agency's SOP and documentation required e.g. for SEZA financial capacity will involve creditworthiness checks, audited financial statements, past performance, sources and uses of capital, liquidity history, evidence of collateral provided against debt if any among others.

Score	Description
1	Poor/non-compliant
2	Below expectations
3	Meets expectations

Score	Description
4	Exceeds expectations
5	Excellent/Highly aligned

3. Scoring Formula

The total score for an investor is calculated by multiplying their score in each category by the weight of that category (converted to a decimal) and then summing the results.

Formula: Total Score equals Sum of Weighted Score for each Key Criteria

$$Total\ Score = \sum_{i=1}^{10} (S_i \times W_i)$$

Where:

- S_i= Score for key criteria (on a 1-5 scale)
- W_i = Weight of key criteria (in decimal form, e.g., 10% = 0.10)

4. Example Calculation

Let's assume an investor scores as follows:

Key Area	Score (1-5)	Weight (%)	Weight (Decimal)	Weighted Score (Score x Weight)
1. Financial Strength and Investment Capacity	4	15%	0.15	0.60
2. Industry Alignment and Economic Vision Compliance	3	10%	0.10	0.30
3. Job Creation and Workforce Development	4	15%	0.15	0.60
4. Export Potential and Market Reach	5	15%	0.15	0.75
5. Innovation, Technology, and Process Efficiency	4	10%	0.10	0.40
6. Infrastructure Compatibility and Regulatory Compliance	4	10%	0.10	0.40
7. Sustainability and Environmental Responsibility	5	10%	0.10	0.50
8. Social Impact and Corporate Responsibility	3	5%	0.05	0.15
9. Long-Term Commitment and Scalability	4	5%	0.05	0.20
10. Integration with Local	2	5%	0.05	0.10

Key Area	Score (1-5)	Weight (%)	Weight (Decimal)	Weighted Score (Score x Weight)
Supply Chains				
			Total Score Calculation =	4

5. Interpretation of Scores

- **Above 4.0**: **Highly Suitable for Onboarding**:– The investor is highly aligned with the organization's goals and key/priority areas of National investment.
- **3.0 - 4.0**: **Suitable for Onboarding with Some Improvements:**– The investor meets most criteria but may need to address specific areas for optimal alignment.
- **Below 3.0**: **Not Suitable for Onboarding:**– The investor falls short in critical areas that affect long-term success.