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Circular No: PS/SP/SB/Circular/06/2019

December 19, 2019

To All Secretaries of Ministries,

Rationalization of the Prevailing Mechanism on Engaging with Investors, Lending Agencies, Foreign Organizations and Missions

It has been observed that Line Ministries, Provincial Councils, Government Departments, Regulatory Agencies, Promotional Institutions, Statutory Agencies, State Corporations and other Government and Semi Government agencies continue to engage with investors, lending agencies, foreign organizations and missions to discuss various financing programs, borrowing arrangements, credit lines and other similar types of instruments and even proceed beyond by entering into various Memoranda of Understanding (MOUs) and Agreements, without following due process envisaged in the related governing framework. It has also been noted that many such transactions are done without the prior knowledge or concurrence of the Ministries associated with external relations, relevant Treasury Departments and the Central Bank of Sri Lanka. Attention has also been drawn to the fact that many bilateral and multilateral agreements and MOUs entered into in the past are poorly formulated with no proper needs assessment or sufficient preparatory work carried out, leading to multifaceted implementation difficulties including legal obstacles. This has given rise to credibility gaps, misunderstandings among parties, legal disputes, reputational damage and even alleged irregular practices.

Furthermore, attention has been drawn to high transaction costs in project management, over reliance on multiple consultancies having to spend extensive sums of money as part of project costs, adoption of lender specific procurement practices instead of using the National Procurement process, maintenance of separate project offices instead of deploying manpower resources in the Government particularly in relation to smaller projects, hiring of buildings, vehicles and logistic support instead of using available resources etc. that have in turn adversely affected prudent public financial management and accountability.

It should also be noted that any Government spending programme, including projects, require the approval of the Cabinet of Ministers to commence as well as budgetary allocation as approved by the Parliament to enable spending, audit clearance etc. once the project enters the budget cycle.

In this backdrop, attention is drawn to the Government Policy Statement which is very explicit in terms of its commitment to quality governance with a view to establishing a credible Government service delivery mechanism. You are, therefore, instructed to strictly adhere to the following:

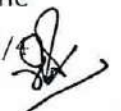
1. Best Practices

1.1 With immediate effect, refrain from making any new commitments and from entering into any MOUs or Agreements with foreign Governments and organizations. Please note that such steps are the responsibility of the Ministry of

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Foreign Relations. Any clarifications as may be required, should be referred to the Ministry of Foreign Relations which will designate one of its officers who would directly interface with line ministries, provincial councils and such other entities, as may be necessary.

- 1.2 With immediate effect, refrain from dealing with investment proposals, financing proposals or bilateral or multilateral funding arrangements on public investment projects either in the form of grant aid or foreign loans. These are responsibilities of the Ministry of Finance, Economy and Policy Development and the Central Bank of Sri Lanka.
 - 1.3 Enforce Public Contracts Act No. 3 of 1987 provided for the registration of public contractors and persons who tender or enter into public contracts with any public body. Ensure that any agent or sponsor fully discloses his particulars, tax details, credentials and also his service fee and how such amounts are paid and by whom.
 - 1.4 Collate an exhaustive list of signed as well as pending MOUs and Agreements and avail same to the Ministry of Foreign Relations seeking guidance and advise on how to set about, so that a streamlined approach could be adopted while suitably dealing with situations including delays etc.
 - 1.5 Concentrate on projects and programmes already committed to and formalize the related tender processes whilst checking on the availability of required necessities such as the approval of the Cabinet of Ministers, approval from the Cabinet Appointed Tender Board or such other authorized entity or person based on the value and other considerations, Hon. Attorney General's approval to the contracts, loan agreements, guarantees etc. proposed to be signed, whether budgetary provisions as approved by the Ministry of Finance are available, and whether there are any procedural and statutory requirements required to be fulfilled to ensure that the Secretary to the line Ministry as the Chief Accounting Officer is fully aware and satisfied to proceed expeditiously.
2. **Requirement for prior approvals** - Refrain from entering into any MOUs or Agreements without following the process in this Circular or without obtaining prior approval from Hon. Attorney General and the Cabinet of Ministers.
 3. **Investment Proposals** - Refer all investment proposals of prospective investors to the "Front Office Desk" being set up at the Board of Investment (BOI) dedicated and authorized to receive all such proposals. The Front Office Desk will in turn refer all proposals to the Back Office entrusted with the responsibility of processing such investment proposals. The Front Office Desk will also ensure that investors do not liaise with the Back Office to ensure an independent evaluation. A nominated Experts Panel will carry out due diligence of the prospective investor, the proposed funding sources, the likelihood of success of the proposed investment considering past experience and success achieved by the prospective investor in similar investments etc. Such Experts Panel will also examine the proposals in the context of the proposed Policy framework of the Government, commitments sought from the Government such as having to provide land, environmental related clearances, legal and regulatory obligations, any national security related concerns, tax related concessions expected, and investment readiness from the perspective of the Government. Once the said process is concluded, the

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Director General, BOI must not later than 45 days from the reference of a proposal to the BOI, inform the relevant prospective investor whether the proposal is acceptable or not. Until such evaluation process is concluded and a decision is conveyed to a prospective investor, BOI should not register any investor or charge any fee or service charge other than the fixed Evaluation Fee to be charged from all investors who hand over investment proposals.

4. **Financing Proposals** - Advise all bilateral and multilateral lending agencies, project financiers and their agents that the focal point in relation to all their financing proposals is the General Treasury which will also set up "Front Desk Office" to give best guidance and advise on such matters. The project formulation for related development activities coming under the purview of any Ministry or agency should be carried out under the guidance of the National Planning Department of the Ministry of Finance, Economy and Policy Development.
5. **Foreign financing** - The External Resources Department (ERD) is the apex unit of the Government in charge of securing foreign financing for development projects. The ERD will engage in related activities based on the recommendations of the National Planning Department and in consultation with other Treasury Departments, as relevant. As such, other Government Departments and agencies should refrain from seeking finances directly from external sources.
6. **Liaison with lending agencies at project formulation stage** - The Treasury, through the National Planning Department, External Resources Department and the National Budget Department in discussion with the relevant line Ministries, will liaise and coordinate with all bilateral and multilateral lending agencies, project financiers and their agents as the case may be, on all projects and programmes at the project formulation stage, so as to minimize numerous visits by missions of lending agencies. This does not include performance review missions to be undertaken by the relevant line Ministry in the project implementation stage.
7. **Review and monitoring of project implementation** - Project implementation progress review meetings and follow up work is the responsibility of the relevant line Ministry Secretary. Review meetings must be held on a monthly basis with the participation of the relevant State Secretary and senior staff responsible for implementation, with a view to resolving operational issues. Any unresolved issues must be listed to be taken up at the monthly Secretaries' Meeting that is attended by all Secretaries so that a solution is found.
8. **Operational meetings** - Separate operational meetings should be held as and when required, in respect of projects and programmes supported by bilateral and multilateral funding agencies so as to ensure that coordinated efforts are constantly made to ensure meaningful and effective public expenditure management.
9. **Continuation of existing projects** - At review meetings held at Line Ministry level, if the need is felt to continue any project or programme that is reaching the end, the line ministry should first do a cost benefit assessment at implementation level and report the need to the National Planning Department and the External Resource Department for further action. Until a clearance is given on continuity, no commitment should be made on a possibility basis since other development priorities could suffer as a consequence.



10. **Project procurement** - Procurement practices are being rationalized and harmonized aiming to introduce a unified National Procurement System that will be applicable to all public investment activities, based on international best practices. A committee is to be appointed shortly to formulate new guidelines to be applicable to new projects and all Secretaries are advised to fast track existing work and conclude at the earliest, to be able to migrate to a new system.

As the Government will be working on a Vote on Account from January 2020 until the first Annual Budget is approved by the Parliament, ministries and spending agencies are permitted to continue ongoing work, and collective effort by all ministries must be directed towards completing on going activities in a cost effective manner to provide maximum services to the people.

The Presidential Secretariat has been restructured to carry out the executive functions of the Constitution and perform the constitutional leadership entrusted upon His Excellency the President in consultation with the Hon. Prime Minister. The new organizational framework of the Office of the President provides line ministry secretaries, state secretaries and heads of departments, statutory agencies and state enterprises a direct access to Additional Secretaries to the President for any assistance required.

Any clarification on this Circular or organizational arrangement could be sought from Ms. Chandima Wickramasinghe, Additional Secretary to the President.



P B Jayasundera
Secretary to the President

Copy:

1. Secretary to Hon. Prime Minister
2. Secretary to the Cabinet of Ministers
3. Auditor General
4. Governor, Central Bank of Sri Lanka
5. Chairman, Board of Investment of Sri Lanka