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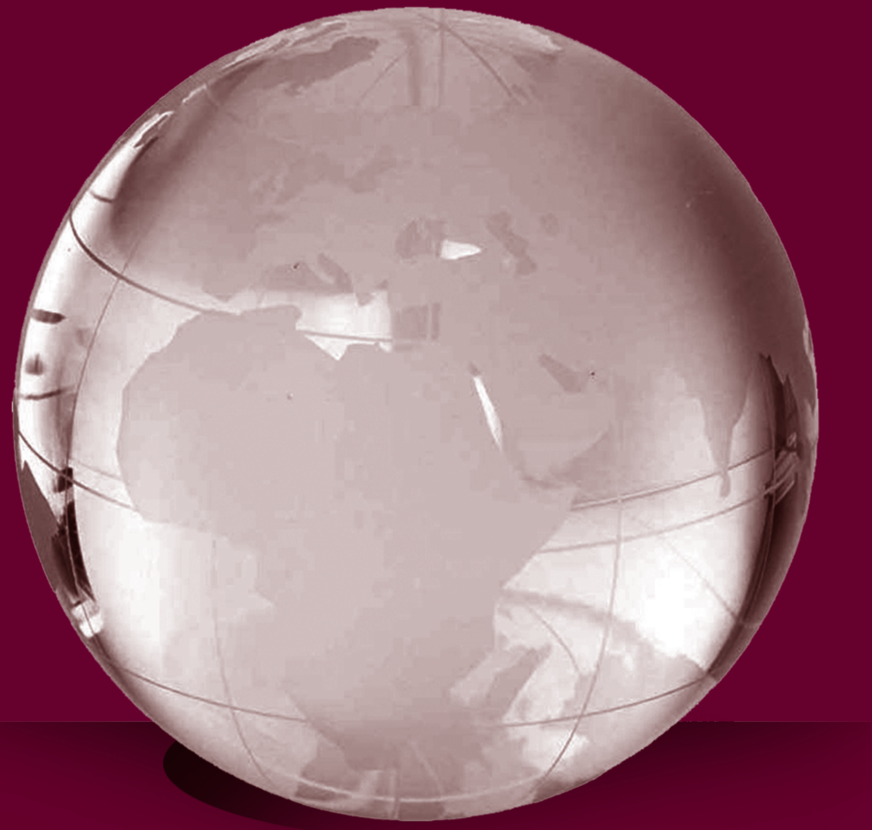

Expatriate Regulatory Compliance Toolkit

An overview of the tax, social security and work permit considerations in East Africa

September 2018

This publication provides a high level overview of the tax, social security and work permit regulatory compliance requirements for expatriates engaged to work in East Africa specifically in Uganda, Kenya and Tanzania. An expatriate for purposes of this publication is an employee who has left his/her native country to temporarily reside and work in a foreign country. Expatriate regulatory compliance issues can be more complex than set out in this publication especially for oil field services that usually involve the use of rotating staff ensuring the ability to serve clients 24 hours a day, 7 days a week. Rotation can be on a 28/28 basis i.e. rotators working in country for 28 days and then going on paid leave in their home countries for 28 days. There are also tax equalisation issues synonymous with expatriate staff. Please feel free to get in touch with us for more of this information if interested.

The discussion herein draws on the relevant provisions of the respective Income Tax, Social Security and Immigration legislation of Uganda, Kenya and Tanzania. We have not considered the provisions in the Investment Code Laws of these countries, Upstream Oil and Gas Production Sharing Contracts and related Agreements, Bilateral agreements with International or equivalent bodies and Double Tax Treaties that may vary the specific requirements under the applicable legislation.

East Africa Double Tax Treaties

Country	Uganda	Kenya	Tanzania
Double Tax Agreements	• Denmark • India • Italy • Mauritius • Netherlands • Norway • South Africa • United Kingdom • Zambia	• Denmark • India • Canada • Mauritius • France • Norway • South Africa • United Kingdom • Zambia • Germany • Sweden	• Denmark • India • Canada • Italy • Norway • South Africa • Sweden • Zambia • Finland

Organisations commonly misclassify foreign individuals that they engage for work purposes, which exposes them to fiscal penalties and interest. These individuals are sometimes treated as independent consultants yet in reality are employees. Different consequences arise depending on whether these individuals are employees or independent consultants. Tax authorities in East Africa evaluate this by determining whether the individuals in question are under a contract of services or contract for services. A contract for services represents an independent contractor relationship while a contract of services denotes a general employment relationship.

A number of circumstances are examined at common law to determine the existence of a contract of service relationship. These are also known as the badges of employment. The regulatory compliance requirements set out in this discussion only arise if a contract of service relationship is established. It is noteworthy that sometimes legislation is explicit on what amounts to an employment relationship regardless of the common law position. In general, the following circumstances below strongly suggest the existence of a contract of service or employment relationship.

a) The individual performs a service for a company in exchange for remuneration;

b) There is control exercised on the individual on task performance;

c) There is control on the time of reporting and leaving work;

d) The individual executes duty using equipment provided by the company;

e) The task performed by the individual is non delegatable and an integral part of the business and not merely an accessory;

f) The individual receives benefits consistent with employment e.g. annual leave, medical benefits and entitlement to pension among others.

Once an employment relationship is established, the following tax, social security and work permit regulatory compliance issues in respect of expatriate staff arise.

Issue	Uganda	Kenya	Tanzania
a) Residency	• An individual is resident if he or she has a permanent home or is present in Uganda for more than 183 days in any 12 month period, or for periods averaging more than 122 days per year for the last 3 years.	• An individual is resident if he or she has a permanent home or is present in Kenya for more than 183 days in a year of income or for periods averaging more than 122 days in each year of income for the last 3 years.	• An individual is resident if he or she has a permanent home or is present in Tanzania for more than 183 days in a year, or for periods averaging more than 122 days for the last 3 years.
b) Taxability of employment income and rates	• Employment income is sourced and therefore subject to taxation to the extent it is derived from employment exercised in Uganda. Place of payment of salary is irrelevant as long as it relates to employment exercised in Uganda. • PAYE is at graduated rates from 10% to 40%. See J below for the tax tables. • Non-residents do not benefit from the exempt income threshold that is available to resident persons.	• Employment income wherever earned by a resident person or if earned by a non-resident person where the employer is resident or has a Permanent Establishment (PE) in Kenya is subject to taxation in Kenya. • PAYE is on a graduated scale up to 30%.See J below for the tax tables. • Non-residents do not benefit from the personal relief that is available to residents.	• Employment income is sourced and therefore subject to taxation in Tanzania to the extent it is derived from employment exercised in Tanzania. Place of payment of salary is irrelevant to the extent it relates to employment exercised in Tanzania. • PAYE is on a graduated scale for resident persons up to 30%.See J below for the tax tables. • The overall tax payable by non-resident persons is 30%.
c) Emoluments in cash	• All cash emoluments including but not limited to wages, salary, leave pay, payment in lieu of leave, commission, gratuity, bonus, overtime, fees, travel allowances, entertainment, utilities, cost of living, and housing, medical or other allowances are taxable. • Any allowance given for, and which does not exceed the cost actually incurred or likely to be incurred or a reimbursement or discharge of expenditure incurred by the employee on accommodation and travel expenses or meals while undertaking travel in the course of performing duties of employment is not taxable. • The amount of any discharge or reimbursement by an employer of expenditure incurred by an employee, other than expenditure incurred by an employee on behalf of the employer which serves the proper business purposes of the employer, is taxable. • Any amount derived as compensation for the termination or variation of work terms under any contract of employment is taxable. • Any amount paid by a tax exempt employer as a premium for insurance on the life of the employee and dependants is taxable.	• All cash emoluments including but not limited to wages, salary, leave pay, sick pay, payments in lieu of leave, commissions, bonus, gratuity, subsistence, travel, entertainment or other allowances are taxable. • Any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the recipient of any amount expended by him in the course of one's employment is not taxable. • An amount received as compensation for the termination of a contract of employment or service, whether or not provision is made in the contract for the payment of that compensation is taxable. • Overtime allowances and bonuses paid to low income employees whose monthly salary is less than Kenya Shilling (Kshs) 11,180 is not taxable. • The first Kshs 2,000 of daily per diem is not taxable. Any amount in excess is chargeable unless there is evidence that the amount paid is a reimbursement of employer expenses. • Persons with disability are exempted from tax on their income up to Kshs 150,000 per month.	• All cash emoluments including but not limited to salary, leave pay, payment in lieu if leave, commission, gratuity, bonus, overtime, fees, travel allowances, entertainment, utilities, cost of living, housing, medical or other allowances are taxable. • Any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the recipient of any amount expended by him in the course of one's employment is not taxable. • The amount of any discharge or reimbursement by an employer of expenditure incurred by an employee, other than expenditure incurred by an employee on behalf of the employer which serves the proper business purposes of the employer, is taxable. • Any amount derived as compensation for the termination or variation of terms of work under any contract of employment is taxable. • Payment for medical services, and payments for insurance for medical services are not taxable.

Issue	Uganda	Kenya	Tanzania
c) Emoluments in cash	• Foreign source income of short term employees is not taxable. A short-term resident means a resident individual, other than a citizen of Uganda, present in Uganda for a period or periods not exceeding 2 years. • Emoluments paid to employees of the East African Development Bank are not taxable. • Emoluments paid to individuals that enjoy immunity and exemptions under the Diplomatic Privileges Act are not taxable. • Any reimbursement or discharge of the employee's medical expenses is not taxable. • Employment income derived by an individual to the extent provided for in a technical assistance agreement. A technical assistance agreement means a grant agreement between the government of Uganda and a foreign government or equivalent international body for the provision of technical assistance to Uganda.	• Emoluments to non-resident persons payable out of foreign sources in respect of duties performed in Kenya pursuant to a technical assistance agreement are exempt from tax.	• Any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the recipient of any amount expended by him wholly and exclusively in the production of his income from his employment or services rendered is not taxable. • Emoluments paid to individuals that enjoy immunity and exemptions under the Diplomatic Privileges legislation are not taxable. • Foreign source income of employees in the public service of a foreign country is not taxable.
d) Travel expenses	• Travel allowances are taxable unless they reflect the actual cost of travel in the course of discharging employment duties. • Transport allowances paid to an employee to facilitate travel from home to workstation are taxable as this is deemed to be an expense of a private nature. • Leave allowances to facilitate one travel from workstation to home are taxable. • The cost incurred by an employer of any passage to and from Uganda in respect of the employee's appointment or termination of employment is not a taxable benefit where the employee was recruited outside of Uganda, is in Uganda solely for purposes of serving the employer and is not a citizen of Uganda.	• Travel allowances are taxable unless they reflect the actual cost of travel in the course of discharging employment duties. • Transport allowances paid to an employee to facilitate travel from home to workstation are taxable. • Leave allowances to facilitate one travel from work to homestation are taxable. • The cost incurred by an employer of any passage to and from Kenya in respect of the employee's appointment or termination of employment is not a taxable benefit where the employee was recruited outside of Kenya and is in Kenya solely for purposes of serving the employer and is not a citizen of Kenya.	• Travel allowances are taxable unless they reflect the actual cost of travel in the course of discharging employment duties. • Transport allowances paid to an employee to facilitate travel from home to work station are taxable. • Leave travel allowances to facilitate one travel from workstation to home are taxable. • Payment providing passage of the individual, spouse of the individual and up to four of their children to or from a place of employment which correspond to the actual travelling cost where the individual is domiciled more than 20 miles from the place of employment and is recruited or engaged for employment solely in the service of the employer at the place of employment is not taxable.

Issue	Uganda	Kenya	Tanzania
e) Employee share schemes	• The amount by which the value of shares issued to an employee exceeds the consideration given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire shares is taxable. • The amount of any gain derived by an employee on the disposal of a right or option to acquire shares under an employee share acquisition scheme is taxable.	• The benefit arising to employees on share options granted from schemes registered with the Commissioner of Income Tax is taxable at the end of the vesting period. • Rules are undeveloped with respect to share options from schemes not registered with the Commissioner for Income Tax. The general assumption is the benefit arising thereof will be taxable from the time it accrues to an employee	• The Income Tax Act does not provide explicit provisions regarding how employee share schemes are taxed but the assumption is that these are taxed as other benefits that accrue to employees. • The amount by which the value of shares issued to an employee exceeds the consideration given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire shares is taxable. • The amount of any gain derived by an employee on the disposal of a right or option to acquire shares under an employee share acquisition scheme is taxable.
f) Benefits in kind	• The value of any meal or refreshment provided by the employer to employees on premises operated by or on behalf of the employer solely for the benefit of employees and which is available to all full time employees on equal terms is not taxable. • The total value of benefits for each month less than Uganda Shilling (UGX) 10,000 is not taxable. • The use or availability of a company motor vehicle wholly or partly for private purposes by the employer is taxable. • The provision of domestic helps and assistants is taxable. • The provision or payment of utilities on behalf of the employee is taxable. • Low interest benefit on loans exceeding UGX 1,000,000 extended to employees is taxable. • Debt waiver by an employer on an employee too is taxable. • The provision of accommodation or housing other than by way of reimbursement or discharge to an employee is taxable. • The transfer or use of property or provision of a service to an employee is taxable. • Any other benefits to employees not explicitly exempted by legislation are taxable.	• The value of any meals or refreshment provided to employees is ordinarily taxable unless the aggregate monthly value of the meals is less than Kshs 4,000 per month. • The total value of benefits for each month less than Kshs 3,000 per month is not taxable. • Accommodation at a hotel of less than a month is not taxable. • The use or availability of a company motor vehicle wholly or partly for private purposes by the employer is taxable. • The provision of domestic helps and assistants is taxable. • Low interest benefit on loans extended to an employee also known as Fringe Benefit Tax is taxed on the employer. • Debt waiver by an employer to an employee too is taxable. • The provision of accommodation or housing to an employee is taxable • Provision of or payment of utilities on behalf of the employee too is taxable. • Use of property, furniture or provision of a service to an employee is taxable • Medical benefit is not taxable.	• On premises cafeteria services that are available to all staff on non-discriminatory basis are not taxable. • Benefits derived from the use of motor vehicle where the employer does not claim any deduction or relief in relation to the ownership, maintenance or operation of the vehicle are not taxable. • Benefit derived from the use of residential premises by an employee of the Government or any institution whose budget is fully or substantially out of Government budget subvention is not taxable. • Retirement contributions and retirement payments exempted under the Public Service Retirement Benefits Act are not taxable. • The use or availability of a company motor vehicle wholly or partly for private purposes by the employee is taxable. • The provision of domestic helps and assistants to employees is taxable. • The provision or payment of utilities for employees is taxable. • Low interest benefit on loans extended to staff is taxable. • Debt waivers by an employer on an employee too are taxable. • The provision of accommodation or housing to employees is taxable.

Issue	Uganda	Kenya	Tanzania
f) Benefits in kind	• The value of any right or option to acquire shares granted to an employee under an employee share option scheme is not taxable. • Any contribution or similar payment by the employer made to a retirement fund for the benefit of the employee or any of his dependents is not taxable. • Any amount paid as premium for insurance on the life of the employee other than a tax exempt employer and which insurance is for the benefit of the employee or any of his dependents is not taxable.		• The transfer or use of property or provision of a service to employees is taxable. • Any other benefits to employees not explicitly exempted by legislation are taxable.
g) Social security considerations	• An employer with 5 or more employees must register with the National Social Security Fund (NSSF) and also remit social security contributions for its employees. Proposals have been tabled before the Parliament of Uganda to amend the current law so that every employer registers for NSSF regardless of the number of employees. • The law currently enables employers with less than 5 employees to voluntarily register for NSSF. • The monthly NSSF contribution is 15% of the employee's wages. The employer can bear the entire cost or deduct 5% from the employee's wages and contribute the remaining 10%. • An expatriate unless provided otherwise is entitled to claim the contributions made to NSSF at the time of departing from Uganda. • The eligibility of expatriates to contribute to NSSF depends on whether the expatriates are non-resident persons or not. Non-residents are not eligible for membership to the NSSF. • A non-resident person is one who is not ordinarily resident in Uganda and employed in Uganda for 3 years or less; or if employed in Uganda for more than 3 years, with the approval of the NSSF Managing Director that they are non-resident. • The employer is required to pay a special contribution of 10% to the reserve fund for non-eligible expatriates. Special contributions cannot be claimed as a benefit by the expatriate staff at the time of leaving Uganda.	• Employees and employers must remit social security contributions to the NSSF. The 2013 NSSF legislation converts the Fund into a mandatory National Social Insurance Pension Scheme, whereby the employer and employee are each required to contribute 6% of the employee's monthly pensionable earnings but subject to caps provided in the legislation. • An expatriate unless provided otherwise is entitled to claim the contributions made to NSSF at the time of departing from Kenya. • Where expatriate employees who are not likely to be present in Kenya in excess of three years continue contributing to a social security plan in their home countries, they may be exempted from making social security contributions in Kenya on application.	• It is compulsory to register and remit statutory to either the National Social Security Fund ("NSSF") in respect of the employees' emoluments unless there is express exemption from the NSSF. • Employers are obliged to remit to the NSSF every month, an amount equal to 20% of the employees' monthly leave wages. 10% may be deducted from the employees' wages and the remaining 10% contributed by the employer • An expatriate unless provided otherwise is entitled to claim the contributions made to NSSF at the time of departing from Tanzania.

<table>
<tr><th>Issue</th><th>Uganda</th><th>Kenya</th><th>Tanzania</th></tr>
<tr><td>g) Social security considerations</td><td>• If an individual is contributing to a similar social security fund in their home jurisdiction, the law envisions the window for exemption from contributing in Uganda on application.</td><td></td><td></td></tr>
<tr><td>h) Work permit considerations</td><td>• To employ a foreign citizen, the employer must apply for a Class G2 permit.
• There is also the short- term work permit that is issued for assignments that do not exceed 6 months.
• There are also Business Visas issued to business travellers coming into the country to attend meetings, training seminars, conferences and other business forums.</td><td>• To employ a foreign citizen, the employer must apply for a Class D permit.
• A special pass can suffice if the expatriate will only be in Kenya for 3 months in the calendar year.</td><td>• To employ a foreign citizen, the employer must apply for a Class B permit.
• There is also the short-term work permit that is issued for assignments that do not exceed 6 months.
• Business Visas are required to attend business meetings, conferences and undertaking research. These are for a period of 3 months.</td></tr>
<tr><td>i) Other issues</td><td>• There is currently a proposal under the National Health Insurance Bill 2012 to establish the National Health Insurance Scheme. An employee would contribute 4% of their monthly salary to the Scheme that the employer would also match.</td><td>• National Health Insurance Fund (NHIF) in respect of employees who accrue or derive their income in Kenya. The contributions are nominal ranging from Kshs 150 per month to a maximum of Kshs 1,700 per month
• The Finance Bill 2018 introduced a National Housing Development Fund where the employee and employer contribute 5% of the employee's monthly wage subject to a cap of Kshs 5,000.</td><td>• Employers must contribute a levy known as the Skills Development Levy ("SDL") to the Vocational Education and Training Authority each month equivalent to 4.5% of the gross monthly emoluments payable to employees in respect of that month.</td></tr>
<tr><td>j) Tax rates</td><td>Residents
Monthly pay (Ugx) | Tax rate
Up to 235,000 | Nil
235,001-335,000 | 10%
335,001-410,000 | 10,000 plus 20%
Above 410,000 | 25,000 plus 30% and an additional 10% on the amount exceeding 10,000,000

Non-residents
Monthly pay (Ugx) | Tax rate
Up to 335,000 | 10%
335,001-410,000 | 33,500 plus 20%
Above 410,000 | 48,500 plus 30% and an additional 10% on the amount exceeding 10,000,000</td><td>Residents
Monthly pay (Kshs) | Tax rate
Up to 12,298 | 10%
12,299-23,885 | 15%
23,886-35,472 | 20%
35,473-47,059 | 25%
Above 47,059 | 30%
Personal relief | (1,408)
• Rates above apply to non-residents but are not entitled to personal relief.</td><td>Residents
Monthly pay (Tshs) | Tax rate
Up to 170,000 | Nil
170,001-360,000 | 9%
360,001-540,000 | 17,100 plus 20%
540,001-720,000 | 53,100 plus 25%
Above 720,000 | 98,100 plus 30%
• Non-residents are taxed at the rate of 30% of their taxable pay.</td></tr>
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Contacts for this Publication

Bill Page

Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989.

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Denis leads the energy and tax practice at Cristal Advocates. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates. He had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws Degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom and various other qualifications.

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Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

He holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom and various other qualifications.

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

He holds a Bachelor's degree in Law, the Post Graduate Diploma in Legal Practise from the Law Development Centre and various other qualifications.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holdings Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOCs formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enactment of the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He holds a Bachelor's Degree Law from Makerere University, a Post Graduate Diploma in Legal Practice and Masters of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom.

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