CRISTAL
'total solutions'

Cristal Advocates

Doing business in Uganda

An overview of corporate structuring

November 2018

1 Introduction

There are seven main business structures in Uganda. These are sole proprietorships, private companies limited by shares or guarantee, public limited companies, unlimited companies, statutory corporations, branches of foreign legal entities and partnerships. Branches of foreign legal entities and locally incorporated private limited companies however predominate. The structure of doing business in Uganda is influenced by legal, tax and commercial considerations though in some cases the law is specific on the entity type to undertake regulated business.

In this publication, we provide an overview of the legal, tax and commercial considerations of doing business in Uganda as a branch, local company or partnership. The discussion herein is high level and may not address the consequences that arise from the specific circumstances of the underlying business structures.

2 Locally incorporated companies

With the exception of statutory corporations that are established by respective Acts of Parliament, local companies are incorporated under the provisions of the Companies Act 2012. Any one or more persons, associated for any lawful purpose, may by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Companies Act 2012 form an incorporated company with or without limited liabilities.

The first step in incorporating a company is to reserve and obtain the approval of the registrar of companies for the name of the company. The founder members (subscribers), who can be nominees for the true shareholders, then sign the company constitution documents namely the memorandum and articles of association in the presence of a witness. The memorandum provides the following information:

- Company's name;
- Company's objectives;
- The situation of the company's legal address or registered office (which must be in Uganda);
- The company's limited liability status or otherwise;
- The amount of the company's authorized share capital or otherwise; and
- A list containing the names, addresses and number of shares taken by each shareholder.

The articles of association regulate the company's internal management and the rights of its members. The signed memorandum and articles with other information such as the members, directors, registered office, passport sized photographs and identification documents for the shareholders and directors are submitted to the registrar of companies who then issues a certificate of incorporation that brings the company into existence.

a) Private companies limited by shares

Private companies limited by shares are those entities whose articles limit membership to 100 persons. The right of transfer of shares is restricted so is the subscription for the company's shares and debentures by the public. The liability of the members is also limited to their shareholding in the company.

It is noteworthy that the Companies Act 2012 introduced the concept of a single member company. This company is akin to sole proprietorship but with limited liability protection.

b) Private companies limited by guarantee

A private company limited by guarantee is also known as a guarantee company. The purest form of a guarantee company is one having the liability of its members limited by the memorandum to the amount that the members undertake to contribute to the assets of the company if it is wound up. This organization is common with charities, sports clubs and professional bodies.

There is also a hybrid form of a guarantee company that can raise capital from its members by way of issue of shares but also provide for its members to guarantee contributing to the assets of the company on winding up. The memorandum of association should state the authorized capital of the company and a statement relating to the amount each member would contribute to the assets of the company on winding up.

c) Public limited companies

Public limited companies are entities which under the Companies Act 2012 are not private limited companies. Such entities can offer their shares to the general public but also have limited liability. The shares can be acquired during an initial public offering or through trading on the stock exchange.

A public company must at the time of its incorporation adopt and incorporate into its articles the provisions of the code of corporate governance that the Companies Act 2012 lays out. This code should provide among others for a board, define the board composition and duties, remuneration, board meetings, board committees and financial reporting guidelines.

d) Unlimited companies

Unlimited companies are a type of private company where the shareholders have unlimited liability. This means each member is jointly and severally liable for the debts of the company in the event of winding up. It is fairly easy to return capital to shareholders as the restrictions on the reduction of capital contained in the Companies Act 2012 only apply to limited companies.

e) Statutory corporations

Statutory corporations or public corporations are public bodies that are established by respective Acts of Parliament. Statutory corporations are usually managed by Board of Directors appointed by the government through the line Minister or the President and are accountable to the public and Parliament.

3 Foreign registered companies

Foreign companies or branches are registered in Uganda under the Companies Act, 2012 and a certificate of compliance is issued upon registration. To facilitate registration of a branch in Uganda, the following documents must be provided by the parent company and submitted to the registrar of companies.

- A certified copy of the mother company's own Memorandum and Articles of Association or equivalent constitution documents (with an English translation if necessary);
- A certified copy of the certificate of incorporation;
- A list containing the names, addresses, nationalities and occupation of its directors and company secretary;
- A statement of existing mortgages and charges created by the company in Uganda, if any;
- The names and addresses of one or more Ugandan residents who are authorized to accept legal notices on the company's behalf; and
- The address of the company's registered or principal office.

The documents above must be prepared by a Notary Public registered in the country of origin. If satisfied that these documents and particulars comply with the provisions of the Companies Act, the registrar issues a certificate of registration and the company is registered in the branches/foreign companies register.

4 Partnerships

A partnership is a type of business organization where two or more persons but not exceeding 20 pool money, skills, and other resources to carry on business with a view to making a profit. Where a partnership is formed in Uganda for the purpose of carrying on a profession, the number of professionals, which constitutes the partnership should not exceed 50 persons. There are two main types of partnerships namely general partnerships and limited liability partnerships.

a) General partnerships

General partnerships carrying on business in Uganda under a business name not consisting of the true surnames of all partners who are individuals must register their name under the Business Names Registration Act

All partners have unlimited liability in respect of the debts and obligations incurred by the partnership. Partner's personal assets are liable to the partnership obligations and all partners can be sued for the entirety of a partnership's business debts. This is because each partner has agency powers to enter into a binding agreement, contract or business deal that all partners are obliged to adhere to.

General partnerships may be dissolved when one of the partners dies, becomes disabled or leaves the partnership unless stated otherwise in the partnership deed.

b) Limited Liability Partnerships

Limited liability partnerships (LLP) are governed under the provisions of the Partnership Act and consist of not more than 20 persons but have one or more persons called general partners. The general partners are those responsible for the day-to-day management of the limited partnership and are liable for the company's financial obligations, including debts and litigation.

An LLP must additionally have two or more persons called limited liability partners who must contribute a stated amount of capital to the firm and are not liable for the debts or obligations of the firm beyond the amount of the capital contributed.

A limited liability partnership must be registered with the registrar of companies and if not so registered is taken to be a general partnership and all its members general partners. A partnership registered as a limited liability partnership must add at the end of its name the letters "(LLP)". The name of the partnership must be reserved before the registrar pending its registration.

A limited liability partner is also prohibited during the continuance of the partnership to either directly or indirectly draw out or receive back any amount of their contribution to the partnership and also take part in the management of the partnership business and cannot bind the partnership.

5 Comparative matrix with the legal and tax implications of doing business as a branch, local company or partnership

As earlier stated, legal, tax and commercial considerations influence the business structures used in Uganda though in some cases the law is specific on the entity type to undertake regulated business. Locally incorporated companies may be more favorable in comparison to a branch if long term business presence in Uganda is envisioned. Local companies or subsidiaries can afford greater net benefit from a group perspective if profits are repatriated by way of dividends. Withholding tax (WHT) on dividends may be lowered or altogether exempted by favorable double tax agreements. The branch remittance tax at the rate of 15% on the repatriation of branch profits is rarely capped or exempted by double tax agreements. There may also be a timing benefit as dividends do not have to paid in any given tax period.

It may however be more commercially practical for companies that envisage longer periods of tax losses to operate by way of branches as other intra group means of profit repatriation by the head office such as interest, technical fees and management fees among others do not attract WHT applied on the underlying gross payments though the same payments are not deductible by the branch in determining their taxable profits. Some countries may also permit the head office to utilize the branch office tax losses including the tax capital allowances on qualifying fixed assets held by the branch in Uganda. This can create more net value to the group in comparison to a local company or subsidiary. A branch is also easier to close in the event of exit from Uganda so is the repatriation of excess capital when not needed though branch remittance tax may arise.

Partnerships are not taxed in their own right though they file income tax returns. Any losses or incomes that arise are allocated to the respective partners in proportion to their partnership interest who then combine this with their other business incomes in determining their taxable profits for the year. The partners may therefore benefit from partnership losses that can shelter profits from their other business activities unless ring fenced. Partnerships can also be advantageous to foreigners if business losses incurred in Uganda can flow through to be utilized outside of Uganda.

Below is a matrix of some of the legal and tax implications of doing business in Uganda by way of branch, local company or partnership. The discussion below is high level and may not address the consequences that arise from the specific circumstances of the underlying business structures.

Issue	**Branch**	**Local company**	**Partnerships**
Legal personality	A branch is not a separate legal entity but is an extension of its immediate parent company or head office.	A local company is a separate legal entity from the foreign company even if the foreign company holds 100% shareholding.	The partners in a general partnership are jointly and severally liable to each other for partnership debts and liabilities. Limited partners are however only liable to the extent of their capital contribution.
Business activities	A branch being an extension of its parent company may only carry on activities defined in the head office constitution documents.	Local companies can perform any activity set out in its object clause even if different from the parent company	Partnerships may carry out such business activities set out in the partnership deed
Annual returns	Annual returns filed by local companies need not be prepared by branch office except for designated changes with the parent company which need to be updated periodically	Local companies need to file annual returns with the registrar of companies	Need not file annual returns but updates of changes to the partnership need to be submitted periodically
Tax residence	Branches are non-resident persons for tax purposes unless management and control is exercised in Uganda or majority of its operations during a year of income are undertaken in Uganda.	Locally incorporated companies are resident persons for tax purposes in Uganda	A partnership is resident for tax purposes if at any time during a year, a partner in the partnership is a resident person.
Accounts	There is the requirement to submit to the registrar of companies audited books of account for the head office unless the exemptions for commonwealth incorporated companies apply. The Tax Procedures Code Act requires taxpayers whose annual turnover exceeds Uganda Shilling (UGX) 500 million to prepare audited books for tax return preparation.	Directors need to prepare books of accounts showing sales, receipts and expenses. It is mandatory for the books of accounts of public companies to be audited. The annual return for public companies must be submitted together with the audited books. The books of private companies need not be audited though the Tax Procedures Code Act requires taxpayers whose annual turnover exceeds Uganda Shilling (UGX) 500 million to prepare audited books for tax return preparation.	Every partner is bound to render true accounts and full information of all things affecting the partnership to any partner No need to prepare audited books of accounts though the Tax Procedure Code Act requires taxpayers whose annual turnover exceeds UGX 500 million to prepare audited financial statements for tax return preparation
Rate of Income Tax	Rate of income tax on profits is 30% but there is a further tax of 15% on repatriation of branch profits to its head office.	Rate of corporation tax on taxable income is 30%. However, there is WHT at the rate of 15% on dividends paid to shareholders unless double tax treaties provide otherwise.	Partnerships do not have to pay income tax but instead the profits and losses are "passed through" to the individual partners. Individual tax rates in Uganda are on a graduated scale from 0 to 40%.

Issue	Branch	Local company	Partnerships
Intra group recharges	Interest, royalties, professional and management fees paid by the branch to the head office are not deductible for corporate income tax purposes. They are also not subject to WHT.	Intra group interest, royalties, professional and management fees are deductible for income tax purposes though the same are subject to WHT if applicable.	Not Applicable
Meetings	No meetings are required for a branch	Board and General Meetings must be held for making decisions for the company.	As determined by the partnership
Bringing to an end	Fairly easy	The life of a company can last in its entirety. This therefore makes winding up of a company a lengthy process.	The life of a partnership can come to an end under the following circumstances unless provided otherwise. These include the death of one of the members, insolvency, or insanity of any one of the partner
Excess capital	Excess capital can easily be repatriated when not required but taxation can arise.	Reduction of issued share capital is a lengthy process as court sanction is required.	Easy to repatriate except for limited partners
VAT registration	Yes if registration thresholds are met	Yes if registration thresholds are met	Yes if registration thresholds are met
Trading license	Yes unless exempted	Yes unless exempted	Yes unless exempted

Contacts for this Publication

Bill Page
bpage@cristaladvocates.com

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. ■

Denis Yekoyasi Kakembo
dkakembo@cristaladvocates.com
+256 751 834 168

Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. 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. ■

John Teira
jteira@cristaladvocates.com
+256 704 493 997

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 of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■

Dickens Asiimwe Katta
dasiimwe@cristaladvocates.com
+256 772 370 021

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 Holding 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 UNOC's 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 enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

Francis Tumwesige Ateenyi
ftumwesige@cristaladvocates.com
+256 702 540 936

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. ■

CRISTAL
'total solutions'

- Energy & Infrastructure
- Business support
- Employment
- Banking & Finance
- School of Professional Excellence
- Tax
- Company Secretarial & Trustee Services
- Public Law & Policy Advocacy
- Dispute Resolution
- Corporate and Commercial

Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
Tel: +256 (414) 671 274
Email; admin@cristaladvocates.com
www.cristaladvocates.com