



## Overview of Uganda's Employment Regulatory Regime

### All Angles Covered

#### 1. Introduction

This is the first of a series of articles highlighting the salient features of Uganda's employment regulatory regime. Like many other countries, the principles espoused by the International Labour Organisation ("ILO") to which Uganda has been a member since 1969 have influenced its regime.

Founded in 1919 following the end of a destructive World War One, ILO was established to uphold social justice through the promotion of labour rights and improvement of working conditions. ILO has led the way in developing international labour standards against which countries have benchmarked their employment laws.

#### 2. Fundamental Principles and Rights of Work

The 1998 ILO Declaration on Fundamental Principles and Rights of Work ("1998 ILO Declaration") not only underlined the fundamental rights of workers but also led to many countries prioritising the reformation of their employment regulatory regimes to reflect international best practices.

ILO member countries are obligated to respect the rights of workers that the 1998 ILO Declaration classified in 4 broad categories regardless of whether the underlying conventions have been ratified or not. These categories are the freedom of association and the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination. These

principles have been adopted in the employment laws of several countries Uganda inclusive.

#### 3. The Constitution

The 1995 Constitution provides the overarching framework for Uganda's employment regulatory regime. The right for every person to practice his or her profession and to carry on any lawful occupation, trade or business is enshrined in the Constitution which also outlaws slavery and servitude, forced labour and the exploitation of children.

The Constitution further amplifies the right to freedom of association, right to work under satisfactory, safe and healthy conditions, right to equal pay for equal work without discrimination, right to rest and reasonable working hours and periods of holidays with pay and remuneration. The rights of workers to form and join trade unions and the protection of women during and after birth are also guaranteed by the Constitution.

#### 4. Implementing the Constitution

Several laws have been enacted to operationalise the employment rights entrenched in Uganda's Constitution. The key ones include the Employment Act No. 6 of 2006; the Labour Unions Act No. 7 of 2006; the Labour Disputes (Arbitration and Settlement) No. 8 of 2006; the Occupational Safety and Health Act No. 9 of 2006, the National Disability Act (2006), the Equal Opportunities Commission Act (2007), the Prevention of Trafficking in Persons Act (2008;), the

Public Service Act (2008) the Public Service (Negotiating, Consultative and Disputes) Settlement Machinery Act (2008), the Uganda Citizenship and Immigration Act (1999), the National Social Security Act, Cap 220, and Statutory Instrument No. 62, Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations (2005).

## 5. The Employment Act No.6 of 2006

The current Employment Act came into force in 2006 repealing the 1977 employment legislation. It is famed for introducing an employee based dispensation. It consolidates all laws in Uganda governing individual employment relationship and applies to all employees in Uganda in the public and private sector employed by an employer under a contract of services. In a subsequent publication, we will discuss the distinction between a contract for services and contract of services which is key in the determination of the enforcement of employment rights and obligations. .

The provisions of the Employment Act however do not apply to employers and their dependant relatives when the dependant relatives are the only employees in a family undertaking as long as the total number of dependent relatives does not exceed 5. Members of the Uganda People's Defence Forces save for those employed in civilian capacity are also excluded from the application of the Employment Act. The Minister of Labour is granted discretion to exclude more employment categories from the ambit of the Act but he/she should do so after consulting with the Labour Advisory Board and putting into consideration the requirements under international treaties.

## 6. Proposed amendments to the Employment Act

On 14th October 2019, the Employment (Amendment) Bill, 2019 was published in the Uganda Gazette. If enacted into law by Parliament, the Bill will substantially revise the existing legal regime on employment by introducing several new obligations on employers and redefining and expanding a number of the current provisions. The Bill seeks to improve working conditions for domestic and casual workers, provide a formula for calculation of severance allowance and remove conditions attached to such payments, define the scope of sexual harassment and provide for recruitment and employment of migrant workers in Uganda and outside Uganda. It also offers protection for breast feeding mothers and requires employers to put in place policies and facilities for breastfeeding mothers. Thus, the Bill will overhaul a number of key aspects of the existing law and greatly alter the legal landscape on employer-employee relations.

## 7. Employment (Recruitment of Ugandan

## Migrant Workers Abroad) Regulations 2005

These regulations were aimed at regulating the recruitment and the deployment of Ugandan migrant workers to countries which have existing labour and social laws or are signatories to international agreements protecting the rights of migrants. They provide the legal framework for the recruitment of Ugandan migrant workers including establishing a mechanism for issuing licenses to agencies that are recruiting workers for deployment outside of Uganda.

## 8. Employment (Sexual Harassment) Regulations, 2012

The Regulations provide for handling and management of sexual harassment complaints at the work place. Under the regulations, employers with 25 or more employees are required to adopt a sexual harassment policy and designate a sexual harassment committee to handle any sexual harassment complaints. A complaint which is not resolved within the internal structures of the employer, may be lodged with the Labour Officer, who may refer it to the Labour Commissioner from where it may be referred to the Industrial Court for final determination.

## 9. The Labour Disputes (Arbitration and Settlement) No. 8 of 2006

The Labour Disputes (Arbitration and Settlement) Act came into force in 2006 replacing the Trade Disputes (Arbitration and Settlement) Act Cap 224 enacted in 1964. It provides for and regulates the settlement and adjudication of labour disputes by conferring jurisdiction on the Office of the Labour Officer and Industrial Court. The Labour Officer is the forum of first instance and disputes only go to the Industrial Court on reference from the Labour Officer. Decisions of the Industrial Court are final on all matters of facts and can only be appealed to the Court of Appeal for determination of points of law.

Specific regulations contained in the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 regulate proceedings before the Industrial Court. However, disputes arising from the Workers Compensation Act or the Occupational Safety and Health Act are handled by the Chief Magistrates Court.

## 10. The Labour Unions Act No. 7 of 2006

The Labour Unions Act regulates the establishment, registration and management of labour unions. It enforces the constitutional right for workers to association and collective bargaining which is achieved through

the establishment of labour unions. This law protects employees from victimisation or discrimination by reason of participation in lawful industrial action.

### 11. The Occupational Safety and Health Act No. 9 of 2006

The Occupational Safety and Health Act sets out standards for safety and working conditions in workplaces with focus on industries and processing plants among others. Safety standards set out by the law must be adhered to by all workplaces which must be inspected, approved and certified.

### 12. The Workers Compensation Act

The Workers Compensation Act provides and regulates situations when accidents happen at the work place. It covers accidents and injuries sustained out of and in the course of employment. The object of the Act is to provide compensation to all workers for injuries suffered and scheduled diseases incurred in the course of and out of employment.

### 13. The Uganda Citizenship and Immigration Act

The Uganda Citizenship and Immigration Act regulates the circumstances under which foreign workers can work in Uganda. Any person intending to work or undertake business in Uganda must procure the necessary work permit in place as provided for by the law.

Further conditions for grant of work permits/admission to work in Uganda are prescribed by sector specific legislation. For example, foreigners' employment in the oil and gas industry in Uganda is subject to further restrictions under the national content laws and regulations governing the petroleum industry.

### 14. Retirement and pension benefits legislation

The Uganda Retirement Benefits Regulatory Act, National Social Security Fund Act Cap 222 and the Pensions Act are the principal laws governing social security retirement matters in Uganda. There are 3 social security retirement

schemes in Uganda namely voluntary private, mandatory contributory and non-contributory.

The National Social Security Fund ("NSSF or the Fund") is the only mandatory contributory retirement scheme in Uganda. It covers all employees in the private sector including state agencies excluded from the non-contributory public sector pension regime. The Fund established under the provisions of the NSSF Act Cap 222 is a provident fund meaning it pays out in lump sum members' retirement benefits when due.

Organisations can also operate supplementary voluntary private retirement benefit schemes in addition to the mandatory contributory NSSF.

Government of Uganda employees are covered by the non-contributory public service pension arrangement financed directly by tax revenues from the consolidated fund. Through the Ministry of Public Service, periodic pension payments are made to retired civil servants including members of the armed forces.

### 15. Children's Act Cap 59

The Children Act Cap 59 (amended in 2016) defines 16 years as the minimum age for employment of children. It specifically prohibits engagement of children in harmful employment which is defined to include conditions exposing children to among others; physical or psychological torture, sexual abuse, underground work, work at dangerous heights and in confined spaces, use of dangerous equipment and transportation of heavy loads. Others include, work with chemicals and dangerous substances, work under extreme temperatures and high levels of noise as well slavery and forced labour.

### 16. Minimum Wage Bill, 2015

In February 2019, Uganda's Parliament passed into law the Minimum Wage Bill that had been introduced on the floor of the house for deliberation in 2015. This Bill sought to put in place a minimum wage for employees in Uganda. The President however rejected assenting to the Bill which was returned back to the Parliament in September 2019 for consideration of his concerns. Until these issues are addressed and the revised Bill is assented to by the President, it will not have the force of law.

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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.

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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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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.

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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 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.

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