

Preparing for the Long Term Impact of Coronavirus

Some Ideas for Uganda's Business Community



1. Introduction

Thankfully, Uganda has so far had comparatively fewer and manageable cases of COVID-19 with no deaths reported at the time of writing. However other countries, particularly developed economies in Europe and the USA have large numbers of cases with many deaths and remain subject to lockdown measures. Vaccines and treatments are under development but are not likely to be available before 2021 at the earliest.

At this point a deep global recession seems inevitable. Uganda's own lockdown may have paid a critical role in minimising the spread of the virus here so far, but it has also had an impact on everyday life and economic activity. It is unclear how quickly global economic activity will recover, and some sectors affecting Uganda, such as tourism, airlines and oil industries, may not reach pre-crisis levels of activity for many years.

In this environment, Ugandan businesses need to recalibrate their strategies to prepare for a new reality which may include tougher access to capital, reduced domestic demand for goods and services and lower levels of cross-border trade. It's a grim picture and only those businesses which respond robustly will be able to survive. This article focuses on some of the critical issues that should be addressed as part of that response.

2. Involvement of the Board

For any incorporated business, the key body responsible for decision-making is the Board of Directors. The Board may delegate day-to-day operational management to executives, some (or all) of whom may themselves be members of the Board, but this does not dilute the Board's ultimate collective responsibility to shareholders and other stakeholders including employee, customers, suppliers, regulators and the tax authorities.

Faced with this responsibility in a time of significant business uncertainty, the Board should be considering the ability of the business to continue to trade, solvency and compliance with financial covenants, health and safety of employees, information technology (IT) capacity and data security issues and insurance coverage and as well as the notification obligations.

In addition, it is important that there are clear lines of responsibility and reporting to ensure that key business risks (particularly those with a financial implication) are being identified and addressed by the Board on a timely basis. This may mean more frequent Board meetings and taking input from external advisers where necessary to address key issues, including particularly the risk of insolvency.

3. Managing employee relationships

Employment law aspects have become a critical preoccupation. The businesses have legal as well as moral responsibilities to keep employees and their families safe from the risk of infection by use of social distancing and/or protective clothing and face masks. There may also be the risk of disruption if large numbers of employees are absent due to the virus. If a business is experiencing financial pressure because of reduced demand, it will need to look closely at all its cost. For many businesses staff wages will be one of the largest components.

Making staff redundant is a significant step and should be done in compliance with contractual and labour law obligations to ensure that the business does not open itself up to legal challenges that may be expensive to defend. It is also advisable to consider reputational risks: businesses which mishandle redundancy programmes can lose credibility with remaining employees and other stakeholders. Other options could be explored such as the possibility of unpaid leave, particularly in the case of employees who may be critical to rebuilding the business once the crisis begins to recede.

4. Force majeure

In addition to employees, businesses will have critical contractual relationships with suppliers and customers. The disruption brought by the pandemic may significantly impact the ability to fulfil contracts, for example if production facilities are closed due to lockdown rules it may be impossible to meet obligations to customers or utilise supplies of raw materials. In such cases, companies may be entitled to invoke *force majeure* provisions in contracts. The term *force majeure* implies the

existence of unforeseen circumstances, outside the parties' control which make it practically impossible to fulfil the terms of the contract. A business may also be entitled in some circumstances to claim for lost profits against business interruption insurance, though many policies exclude circumstances such as pandemics.

5. Managing Tax

Tax is a major cash cost for businesses and many countries have introduced schemes to enable taxpayers facing serious cash constraints because of falling demand to defer tax payment obligations. Though Uganda has tax proposals that aim to defer the payment of tax for businesses affected by the pandemic, they are not far reaching enough.

This notwithstanding the existing tax legislation in Uganda includes some provisions that businesses may take advantage of. Where businesses face cash flow problems, the Uganda Revenue Authority ("URA") has discretion to grant an extension of the deadline for payment of any tax though this does not necessarily waive the potential interest accruing from the late payment of taxes.

A business is entitled to income tax relief for an unpaid debt provided that the related revenue was included in income and steps have been taken to recover the amount due. Output VAT in respect of goods or services which have been supplied but not paid for wholly or in part may be repaid to a taxpayer but only after the elapse of 2 years, provided that appropriate steps have been taken to enforce settlement.

The URA has also committed to expedite tax refund applications to the extent taxpayers furnish the tax body timely with all the required supporting documentation.

6. Conclusion

We all hope and pray that the coronavirus crisis will pass soon. We must be prepared, however, for significant dislocation of normal business and tax compliance activity which will potentially last for many months after the health crisis has subsided as businesses struggle to recover from the economic impact. Cristal Advocates will continue highlighting to the business community the emerging issues as a result of the pandemic. A recording of a joint webinar between international partner firm Addleshaw Goddard and Cristal Advocates at this link <https://www.youtube.com/watch?v=XCB445Jhyic> provides more discussion of the foregoing issues.

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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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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.

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