Cristal Advocates

Uganda's Upstream Oil and Gas Local Content Regime

Keeping the right balance

Cristal Knowledge Series

October 2020

1. Introduction

It is now almost certain that Uganda's oil final investment decision (FID) is imminent. This follows the recent conclusion of three key agreements, first between the Government of Uganda and French oil major Total and between the Governments of Uganda and Tanzania. Pending is the Host Government Agreement with Tanzania and the associated commercial agreements to put in place a comprehensive contractual and legislative framework for the development of Uganda's crude oil discoveries but these are expected to be finalized shortly. There was an additional announcement by Total on 30th September 2020 at an investor's presentation in Paris that Uganda's oil project is among the three it expects to sanction globally before end of year.

FID is a key milestone as it will signify the irreversible commitment of the Uganda National Oil Company and the international oil companies (collectively referred to the licensees) to move ahead with field development for crude oil production. Up to $ 20 billion in investment capital will be unlocked on constructing the central processing facilities (CPFs), the crude oil pipeline and the refinery. The CPFs will gather the hydrocarbons and filter out water, sands and other unwanted substances. The crude oil pipeline will evacuate the hydrocarbons to the port of Tanga to be loaded unto supertankers for delivery to export markets while the refinery will upgrade and transform the hydrocarbons into more useful products such as gasoline, diesel fuel, asphalt base, heating oil, kerosene among others.

As the local and international community gears up and positions for the forthcoming business opportunities, we provide in this publication an overview of the local content requirements in Uganda's upstream oil and gas sector. Adherence to the local content rules will be key for enterprises vying for business opportunities in the value chain of Uganda's nascent oil and gas industry. This is because local content is embedded in the evaluation parameters for award of sector business tenders. Please note that the discussion herein only addresses local content considerations for the upstream oil and gas which deals with the exploration, development and production of crude oil. The rules applicable to the midstream segment where the pipeline project falls or downstream that covers the refinery venture may vary. Uganda's upstream oil and gas local content requirements derive from the provisions of the main oil contracts (PSAs) and legislation namely the Petroleum (Exploration, Development and Production) Act No.3 of 2013, and the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

2. Definition and objectives of local content

As Dominique Strauss-Kahn, former Managing Director of the International Monetary Fund once remarked, there are few areas of economic policy making in which the returns to good decisions are so high and the punishment of bad decisions so cruel as in the management of natural resource wealth. Rich endowments of oil, gas and minerals have set some countries on courses of sustained and robust prosperity; but they have left many others riddled with corruption and persistent poverty with little of lasting value to show for squandered wealth.

Many developing countries indeed have little of enduring value to show from oil production. While they have earned direct revenues from the sale of crude oil and collected the supplementary fiscal levies, there has been minimal if any trickle down impact on their domestic economies. To foster stronger sustainable growth beyond the lifetime of oil production, resource rich countries Uganda inclusive are now placing greater emphasis on the use of local or national content policy instruments to extract more economic value.

Though there is no universal definition of the term local content also referred to as national content, the general theme in the definitions adopted by the different countries is similar and generally represents the extent to which oil production prompts more value and benefits to the economy beyond the sale of crude oil and direct fiscal receipts. Uganda's upstream national content rules give a twofold definition of the term local content. In the first part, local or national content is the substantial combined value added or created in the Ugandan economy through the utilisation of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda. In the second part, it is the level of use of Ugandan local expertise, goods and services, Ugandan companies, Ugandan citizens, registered entities, businesses and financing in petroleum activities.

Local content rules prescribe in varying forms the preferential use of domestically available resources and manpower to spur and create backward and forward linkages for the local economy. Uganda's upstream oil local content rules are aimed at:

a) Promoting the training and employment of Ugandans;

b) Transferring of knowledge and technology and the provision of goods and services by Ugandan companies, Ugandan citizens and registered entities, in petroleum activities;

c) Requiring every licensee, contractor and subcontractor to give priority to the sourcing of goods and services from Ugandan companies, Ugandan citizens and registered entities, where the goods and services are competitive in terms of quality and timely availability;

d) Requiring the provision of goods and services not available in Uganda to be provided by a company that has entered into a joint venture with a Ugandan company;

e) Regulating the provision of goods and services by any other companies wholly owned by non-Ugandans, in exceptional cases where no capacity exists in Uganda, and with the approval of the Petroleum Authority of Uganda;

f) Ensuring enterprise development through the provision of support to Ugandan citizens and Ugandan companies; and

g) Promoting cooperation between licensees, contractors, subcontractors and Ugandan universities, research institutions and technical institutions.

3. Local Content Plan

Licensed oil companies prospecting, exploring or producing crude oil in Uganda are under duty to submit local content plans (LCPs) to the Petroleum Authority of Uganda (PAU) within 12 months of award of a license for approval. PAU would only approve the LCPs to the extent it deems them satisfactory and compliant to the provisions of the law.

The LCPs should outline proposals on:

- the employment and training of Ugandans;
- the required quality, health, safety and environment standards for goods and services to be procured;
- the transfer of technology, knowledge and skills to Ugandan companies, Ugandan citizens and registered entities;
- research and development in Uganda;
- the procurement of goods and services obtainable in Uganda;
- local supplier development;
- partnership with Ugandan companies, Ugandan citizens and registered entities;
- the succession of expatriates by Ugandan citizens;
- support to local education institutions;
- support to partnerships and collaborations;
- services to be provided by Ugandan companies, Ugandan citizens and registered entities

4. Training and employment of Ugandans

From the start of their petroleum operations in Uganda, licensees must employ at least 30% Ugandans in management roles progressively increasing to at least 70% within 5 years. A minimum of 40% Ugandans should hold technical roles growing to 60% in 5 years and 90% in 10 years. 95% of the support staff must be Ugandans. This is the reason why applications for work permits by expatriate staff in the oil sector must be recommended by PAU.

Contractors and subcontractors to the licensees are also obliged to employ a designated number of Ugandans as PAU may prescribe with respect to the execution of contracts in excess of $1 million.

5. Goods and services

As a rule of a thumb, the licensees, contractors and their subcontractors must give first priority to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies unless they are unavailable or are of inferior quality. Otherwise, foreign companies in joint venture with Ugandan companies holding at least 48% shareholding in the collaboration and upon the approval of PAU may make these supplies. A Ugandan company is not one necessarily owned by a majority of Ugandan citizens. A company incorporated locally, employs 70% Ugandans, uses locally available raw materials and is approved by PAU qualifies as such.

The foregoing notwithstanding, licenses, their contractors and subcontractors must have in place robust suppliers' development plans to support Ugandan companies and citizens achieve capacity to eventually supply and source locally all goods and services that the oil sector requires.

The supply of certain goods and services is however exclusively reserved for Ugandan companies and citizens regardless of the above highlighted exceptions in the law. This leaves the licensees, contractors and subcontractors with no option but help local companies grow their capacity to be able to supply them goods and services of worthy quality. The reserved goods and services are transportation, security, foods and beverages, hotel accommodation and catering, human resource management, office supplies, fuel supply, land surveying, clearing and forwarding, crane hire, locally available construction materials, civil works, supply of locally available drilling and production materials, environment studies and impact assessment, communications and information technology services as well as waste management, where possible. All vendors to oil companies and their subcontractors should be registered on the National Suppliers Database managed by PAU. Non-registered vendors are ineligible to vie for business opportunities in the sector.

To enable local companies take part in the supply opportunities, the licensees, contractors and their subcontractors are required to have a tender office that would disseminate information of the available opportunities. The underlying contracts available for award to the local companies must also be unbundled into work packages that Ugandan companies are able to compete for and execute.

6. Technology transfer

The licensees are also under obligation to submit to the PAU for approval an annual plan, satisfactory to the PAU, setting out details and initiatives aimed at promoting the effective transfer of technology, technical know-how and skills relating to petroleum activities from the licensee to the Government of Uganda, Ugandan companies, Ugandan citizens and registered entities

7. Conclusion and significance of local content

The significance of local content in Uganda's nascent oil and gas sector cannot be overemphasized. Not only local content is embedded in the evaluation parameters for award of sector business tenders but licensees are also required to contractually bind contractors and subcontractors to report on national content compliance to the licensee and the PAU if it requests. The law gives local content a total score of 10% in the evaluations for award of supply contracts by the licenses, contractors and their subcontractors. When the gap between the best evaluated bidder and second best is less than 5%, the vendor that scored higher on local content takes first priority for the tender award.

Contacts for this Publication

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, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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. ■

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