

Employment of Rotators in the Oil and Gas Industry An overview of Uganda compliance issues



Credit: https://www.rhstech.com/service_manpower.html

1. Introduction

Uganda's oil project estimated to cost up to \$ 15 billion in building the requisite infrastructure for hydrocarbon production enters decisive stage as the oil companies begin to award tenders for the major construction works. It is expected that the successful bidders will shortly begin setting up operational bases in Uganda including mobilising machinery and manpower. Individual contractors and rotators drawing from various jurisdictions in the world are prevalently used in the oil and gas industry. Given the fast paced nature of sector activities, it is usually the case that compliance lags behind. As businesses begin to think about recruiting and deploying international workforce especially the rotators that will be indispensable in the execution of project works, this publication highlights some of the key Ugandan compliance issues to give consideration ahead of time.

2. Rotators in the oil and gas industry

A significant portion of technical manpower in Uganda's oil and gas industry especially at construction stage will be rotators. Rotators are employees who work in remote offshore locations on a fixed rotational work schedule. Rotators are internationally drawn and are critical to the operational success of oil field service companies. The working schedule of rotators is characterised by an equal number of days on work and off for rest. Rotators can be on a 28/28 days schedule or otherwise as determined by their employer. This means that they are at their remote work place site for 28 days and also take off an equal number of days to rest. Rotators normally return to their home countries in this period of rest but they continue to draw a salary during this duration.

Rotators in the oil and gas are highly trained and skilled individuals. When deployed into a country, they usher in skills and expertise that may not readily be available thus diversifying the local talent pool in the medium to long term. With the impending commencement of Uganda oil project works, several rotators will be deployed.

3. The employment relationship in Uganda

Rotators would be physically present in Uganda during the duration of their shift. As such, this would be employment exercised in Uganda which is regulated under the provisions of the Employment Act 2006. Therefore, if any disputes arise between these rotators and their employers, Courts in Uganda would enforce their accruing employment rights in the same manner as would be applicable to Ugandan nationals.

Further, clauses in the employment contract are unenforceable at law in Uganda to the extent they limit or exclude the application of the Employment Act 2006 to the detriment of the employee. This notwithstanding, foreign workers can apply to the Minister responsible for labour matters to exclude part or whole of the Act as long as he or she can prove that they have a special arrangement which affords protection that is equivalent to or even better than that provided in Uganda's law.

4. Compliance with national local content requirements

Uganda's oil legislation imposes local content requirements that oil companies and their contractors must comply with. Rotators largely fall in the category of technical workers. Local content regulations prescribe that at least 40% of the technical staff at the start of petroleum activities must be Ugandan citizens increasing to at least 60% within five years after the start of the petroleum activities and 90% within ten years from the start of petroleum activities. Whether these targets are realistic is another matter but contractors should be cognisant of this requirement unless there is special waiver from the Petroleum Authority of Uganda ("PAU").

5. Right of entry and work in Uganda

There are punitive sanctions imposed on oil and companies and their contractors for using foreign workers who have not be cleared to work in Uganda. It is illegal for a foreigner to enter, stay and work in Uganda unless that person has a valid work and residence permit or pass. Prior to obtaining work permits from the Immigration Department, the PAU must give its approval premised on satisfaction that there are no locally qualified and skilled personnel to undertake the assignments in question.

6. Tax consequences.

From practice, tax compliance poses the biggest challenge in relation to the employment of rotators. Many contractors incur avoidable sanctions because they do not proactively address the underlying tax issues.

The tax consequences for rotators in Uganda principally depend on whether they are resident or non-resident persons. Resident persons are taxed on their world-wide income while non-residents are taxed only on income sourced in Uganda. A resident individual is one who has a permanent home in Uganda or is present in Uganda for 183 days or more in a 12-month period that begins or ends during the year of income or is present for periods averaging more than 122 days per year for the last 3 years. Non-resident individuals do not benefit from the exempt income threshold that is available to resident persons in as far as Pay As You Earn (PAYE) is concerned. Foreign source income earned by a short term resident is however exempt from taxation in Uganda. A short term resident is a resident individual other than a Ugandan Citizen present in Uganda for a period or periods not exceeding two years.

Rotators earn various allowances plus entitlement to several benefits some of which are actually paid or utilised in their home countries. It is important to seek professional advice on the Ugandan tax classification of these payments and benefits.

To ensure that the rotators are not in a worse or better off position than they would be if they had been working in their home countries as a result of the varying tax rates, rotators are usually tax equalised and sometimes subjected to a hypo tax by their employer. The gross up computation of the taxable income of the rotators cognisant of tax equalisation should be carefully handled to eliminate errors that may crystallise future penalties and charges.

7. Social security

Managing social security compliance for rotators is another common challenge. The body in charge of social security in Uganda is the National Social Security Fund (NSSF). Employers with 5 or more employees are mandated to register with NSSF. The standard contribution to be remitted by an employer to NSSF on behalf of an employee is 15% of the employee's wages. The employer is legally allowed to deduct 5% from the employee's wages and pay the remaining 10%. However, the employer can choose to settle the entire cost. The rotators would ordinarily be entitled to all their social security contributions at the end of their contractual stay in Uganda.

It is noteworthy that foreign rotators can be exempted by the Managing Director of NSSF from making social security contributions. This can be achieved if the expatriate can prove that they are already making contributions to a similar social security scheme in another country.

8. Conclusion

As earlier mentioned, compliance often lags behind because of the fast paced nature of operations especially in the early years of the oil and gas project activities. Based on our practice and experience of serving oil companies and their contractors, it is often the case that they are usually in catch up mode and incur significant yet avoidable costs remedying their non-compliance. For more support and information on managing rotator compliance in Uganda's oil and gas industry, please contact your usual Cristal adviser.

Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.

Contacts for this Publication



Denis Yekoyasi Kakembo

dkakembo@crystaladvocates.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

bp@crystaladvocates.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@crystaladvocates.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 Asiiimwe Katta

dasiimwe@crystaladvocates.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@crystaladvocates.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. ■



- 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