

Are you a Ugandan Company for Oil and Gas Purposes? Upstream Petroleum National Content Requirements



Credit: <https://ihsmarkit.com/research-analysis/water-market-for-upstream-oil-gas-operations-in-us.html>

1. Introduction

The procurement of goods and services for the development phase of Uganda's oil and gas project is currently underway. Several major contracts have been awarded some conditionally subject to further enhancement of the contractors' national content commitments amongst other considerations while many others are still under evaluation. The successful bidders will in turn subcontract several packages of their project works to local enterprises in what promises to be a very busy first half of 2022.

To optimize the localization of oil and gas economic opportunities, Uganda's legislation places particular emphasis on national content. In general speak, national content is the added value to a country through the activities of the oil and gas industry beyond the direct oil and gas revenues. The Petroleum Authority of Uganda ("PAU"), the sector regulator, is now very keen on compliance with Uganda's oil and gas national content requirements prior to the approval of any oil and gas contract awards. It is expected that the oil companies and their contractors will going forward strictly evaluate national content compliance in making any further contract awards emulating PAU stance.

In this article, we highlight the significance of a Ugandan company in relation to the upstream oil and gas sector and the parameters for eligibility of such designation. The upstream sector focusses on the exploration, development and production of crude oil.

2. Ring fenced goods and services

The supply of 16 categories of goods and services for Uganda's oil and gas sector is presently reserved for entities that are designated as Ugandan companies for oil and gas purposes. The ring-fenced 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, the supply of locally available drilling and production materials, environment studies and impact assessment, communications and information technology services and waste management services to the extent possible.

It is understood that the supply of the aforementioned goods and services is reserved for Ugandan companies based on the findings of several studies including an industry baseline survey commissioned in 2013 which established that there was local capacity to provide those

industry inputs. To entrench further the participation of locally established companies in Uganda's oil and gas industry that employ locals but also create value addition locally, the government decided to give local enterprises the exclusive right of supply of the ring-fenced goods and services. By supporting the participation of local companies in the sector value chain, Uganda would extract more economic value from the oil and gas sector beyond the direct crude oil sales revenues.

3. What is a Ugandan Company?

A Ugandan company for oil and gas purposes is not one necessarily owned by Ugandan nationals. A foreign owned company can qualify as a Ugandan company for oil and gas purposes if it complies with all the conditions set out in the oil and gas legislation and underlying regulations.

The government was intentional about the definition of a Ugandan company. Pegging designation as a Ugandan company to majority shareholding by Ugandan nationals as had been proposed by some stakeholders had the potential to lock out foreign investors who equally play a major role in establishing local capacity that enables the exploitation domestically of the economic opportunities arising from the oil and gas sector. While a requirement for majority shareholding by locals would achieve the "ugandanisation" of the sector, this would not necessarily translate into the localization of opportunities if other investors with the potential to create domestic capacity to perform oil and gas works would be locked out.

Uganda's Oil and Gas National Content Regulations define a Ugandan company as one that is locally incorporated under the provisions of the Companies Act, 2021. To qualify as a Ugandan company, the entity must additionally employ 70% Ugandans, provide value addition to Uganda, use locally available raw materials but also be approved by PAU. It is increasingly becoming difficult for entities to achieve designation as Ugandan companies for oil and gas purposes from the Petroleum Authority of Uganda unless the foregoing conditions as set out in the Regulations are met.

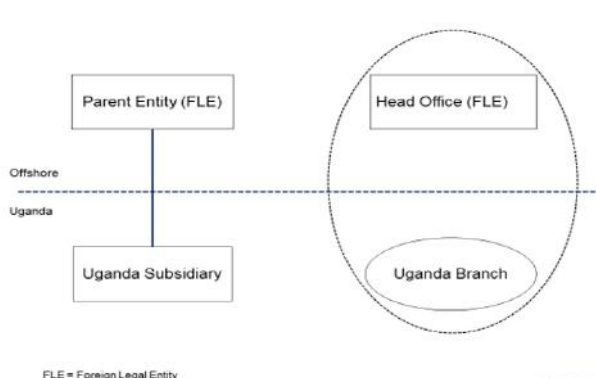
4. Incorporation versus registration

Amongst other considerations, an entity must be incorporated under the provisions of the Companies Act, 2012 to qualify as a Ugandan company for oil and gas purposes. It is worthwhile to note that incorporation of a company is different from registration as explained below.

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a) Incorporation

A company is issued with a certificate of incorporation on formation. An entity incorporated in Uganda by a foreign company is referred to as a subsidiary as illustrated in the figure below.



The first step in incorporating a company is the reservation of the name of the proposed company. A name may be rejected if it is considered too similar to the name of an already existing entity or it is undesirable in the opinion of the Registrar.

The founder members (subscribers) must sign the constitutional documents namely the Memorandum and Articles of Association - in the presence of a witness. The signed Memorandum and Articles, together with various other statutory documents (members, directors, registered office, passport sized photographs and identification documents for the shareholders' and Directors' etc.) are submitted to the Registrar of Companies. If the Registrar is satisfied with these documents, a certificate of incorporation is issued which brings the company into existence.

b) Registration

A foreign company may register a branch in Uganda under the provisions of the Companies Act, 2012 as shown in the foregoing illustration above 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. These documents must be submitted to the Registrar of Companies in Uganda:

- A certified copy of the 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.

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.

5. Other requirements

In addition to incorporation as explained above, an entity can be designated as a Ugandan company for oil and gas purposes if it employs at least 70% Ugandans with at least 70% Ugandans as management staff, another 70% Ugandans as technical staff and 95% as support staff.

The entity must also provide value addition to Uganda, uses locally available raw materials and is approved by PAU. Evaluating the demonstration of value addition can be subjective depending on the nature and business of the entity. An entity can for instance establish production or processing facilities in-country to transform locally available or imported raw materials. Entities could also set up workshops or operational yards for the provision of specialized services if their nature of business demands for such. The company must also prove that it utilizes locally available raw materials or services as core inputs to the extent possible.

6. Approval by PAU

All entities seeking to participate in the supply value chain of Uganda's oil and gas sector must be registered on the National Supplier Database ("NSD") a central depository managed and run by PAU with approved vendors to Uganda's oil and gas sector.

An application for registration on the NSD must be submitted online to PAU. This application must be supported by proof of legal status including a certificate of incorporation or registration. The applicant must further provide up to date information on the shareholding and management

purposes had previously been registered on the NSD and designated as such but PAU continues to rectify this through undertaking an actual physical verification of these entities for affirmation that they meet all the conditions set out in the Regulations.

The strictness that we now see in the designation of entities as Ugandan companies is meant to ensure that only qualifying entities can participate in the supply chain of goods and services that are reserved for Ugandan companies. The purpose of the PAU physical verification is to ascertain that the company actually exists and is not only considered to be established. PAU is also keen to understand that the entity in question is not merely a briefcase company but is actually operational. In essence, the company must be in existence and not futuristic.

Through the physical verification, PAU is able see the office premises, review employees' contracts and remittance of tax to the tax authorities , listing of services providers and vendors and the facilities at hand to enable it evaluate whether there is value addition from the applicant's activities. It is after this stage that the entity would be designated as a

Ugandan company on the NSD. There is actually a possibility that some companies previously designated as Ugandan may be re-designated as not after such a physical verification.

7. Conclusion

It should be noted that while the supply of certain goods and services is reserved to Ugandan companies, foreign investors are still able to establish local entities that qualify as Ugandan companies for oil and gas purposes in Uganda. Investors seeking to participate in Uganda's oil and gas sector should proactively pay particular attention to the national oil and gas local content requirements otherwise they may lose out on these opportunities for non-compliance as we presently see in practice.

For support structuring commercial viable tax and legal investment vehicles compliant with Uganda's national content requirements, please contact your usual Cristal Advocates Advisor.

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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.

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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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