Cristal Advocates

Providing Reserved Goods and Services in Uganda's Oil and Gas Sector

The Pertinent National Content Issues

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Cristal Knowledge Series

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1. Introduction

To maximize the participation of local enterprises in the oil and gas value supply chain, Uganda has enacted robust national content requirements that are being enforced to the letter by the Petroleum Authority of Uganda ("PAU"). As we discussed in our earlier article that is found at this link http://cristaladvocates.com/?mdocs-file=22351, the supply of 16 categories of goods and services is exclusively reserved for Ugandan companies. This notwithstanding, there are exceptions within the law subject to the approval of PAU or via commercial structuring where non-Ugandan companies can actually participate in the provision of reserved goods and services as we highlight in this article.

2. Ugandan company for oil and gas purposes

Reserved goods and services in Uganda's oil and gas sector as a requirement of the law must be supplied by Ugandan companies. A Ugandan company for oil and gas purposes is not one necessarily owned by a majority of Ugandan citizens. A majority foreign owned entity can be a Ugandan company to the extent it is incorporated locally, employs at least 70% Ugandans and uses locally available goods and services.

Despite the push by some stakeholders to peg qualification as a Ugandan company for oil and gas purposes to majority shareholding by Ugandan nationals, the rationale of the current definition can easily be understood. National content is mostly about ensuring that the labour, services and goods being used by the industry are provided from within the country.

Locking out foreign investors with the ability to generate domestic capacity for oil and gas contracts to be executed locally would have been adverse to Uganda's national content aspirations. What the country would achieve through denying the participation of non-nationals would be "Ugandanising" the sector but not necessarily localizing opportunities accruing from the oil and gas sector.

The reserved goods and services in Uganda's oil and gas sector 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.

3. Creation of a joint venture

A foreign company can participate in the supply of reserved goods and services in Uganda's oil and gas sector by creating a joint venture ("JV") that is approved by the PAU with a qualifying Ugandan company. For the upstream oil and gas subsector, the Ugandan company should have a participating interest of at least 48% in the JV. There is no threshold for participating interest in the JV for midstream oil and gas activities.

The parties seeking the approval of a JV should present an executed JV agreement that has been registered with the Uganda Registration Services Bureau mainly highlighting the scope of work to be performed by either party, the way the Ugandan company shall ably participate financially, technically and personnel wise. The JV agreement should also explicitly provide for the joint and several liability of the parties.

It is also worth noting that the parties to the intended JV should both be registered on the National Suppliers Database ("NSD") in the case of an unincorporated JV. If the parties incorporate a joint venture company, it must have separate NSD registration from the JV shareholders.

PAU exercises its discretion regarding the approval of the JV guided by the spirit of the law in the applicable National Content Regulations. PAU is presently very strict with such JV approvals. PAU is likely to approve the JV if it is demonstrated that the intended partnership amongst others would help the Ugandan company grow its capacity to serve the oil and gas sector in through technology transfer, skills and capacity sharing amongst others.

4. Approval by PAU

If Ugandan companies including those in joint ventures are unable to supply the required ring-fenced goods and services due to inadequate financial or technical capacity, PAU may authorize the oil companies to use foreign companies to provide goods and services within a period it specifies.

In giving this approval, PAU requires a sourcing evaluation report documenting the inability of local companies to provide the supplies in question. Further, PAU inquires into why the company seeking to provide the supplies in question cannot enter a JV with a Ugandan company and the period for which the supplies in question will be made.

5. Share acquisition

Via corporate structuring, foreign companies can participate in the provision of goods and services in Uganda's oil and gas sector by acquiring shares in local entities that already qualify as Ugandan companies for oil and gas purposes. The acquired entity can then be the vehicle through which reserved contracts for Uganda's oil and gas sector are executed.

6. Conclusion

Uganda's National Content Regulations set out the minimum standards that players in the oil and gas sector must adhere to. The Petroleum Authority of Uganda is strictly enforcing these requirements to ensure that contracts in Uganda's oil and gas sector are only awarded to eligible entities. Companies participating in Uganda's oil and gas sector are however encouraged to go over and over the minimum requirements as a means of getting their activities and operations embraced by the respective communities in which they will operate.
For support structuring commercial viable tax and legal investment vehicles compliant with Uganda's national content requirements, please contact your usual Cristal Advocates Advisor.

Contacts for this Publication

Denis Yekoyasi Kakembo

dkakembo@cristaladvocates.com

+256 751 834 168

Co-Author

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. ■

Lilian Arinda

Co-Author

larinda@cristaladvocates.com

Lilian is a Legal Associate at Cristal Advocates. She holds a Bachelor of Laws from Makerere University, a Post Graduate Diploma in Legal Practice from the Law Development Centre and is currently pursuing a Post Graduate Diploma in Tax and Revenue Administration ■

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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