CRISTAL
'total solutions'

Cristal Advocates

Managing Social Security Compliance for Expatriates in Uganda

The Oil and Gas Sector Issues

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

Cristal Knowledge Series

March 2022

1. Introduction

From experience, managing social security compliance for expatriates in the oil and gas sector is a common challenge. It is even more pronounced for the oilfield companies executing the actual project works on behalf of the International Oil Companies ("IOCs"). These entities are many times several months or years behind compliance. It is usually costly streamlining compliance unless the underlying social security issues are treated correctly from the very beginning. This article therefore highlights the key social security compliance concerns that the IOCs and their contractors should consider as they mobilise expatriates for Uganda's oil development stage.

2. Expatriates in the oil and gas sector

A significant portion of technical manpower in Uganda's oil and gas industry especially at the construction stage will be rotators. These are also known as commuters. Rotators are employees who work in remote oilfield locations on a fixed rotational work schedule. These rotators who are internationally drawn are critical to the operational success of the oilfield 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.

There will also be other expatriates working for the IOCs and contractors. Unlike rotators that largely concentrate on field service operations and return to their home countries during their off days, these expatriates will have a fixed regular schedule of deployment in Uganda.

3. The social security obligations in Uganda

Social security contributions for expatriates working in Uganda's oil and gas sector are ordinarily remitted to the National Social Security Fund ("NSSF or the Fund"). NSSF is Uganda's only private sector mandatory social security contributory scheme. Organisations can also operate supplementary voluntary social security schemes in addition to the mandatory NSSF where expatriates can also be members.

The NSSF covers all employees including expatriates in the private sector and those working with state agencies but are excluded from the public sector pension regime. The Fund established under the provisions of the NSSF Act Cap 222 is a provident fund meaning it pays out in lump sum members' social security benefits when due.

4. Overview of the National Social Security Fund

NSSF presently has the monopoly over the mandatory social security contributory scheme in Uganda. All employers in Uganda with eligible employees must register with the Fund as contributing employers.

The NSSF Act defines eligible employees as those employees above the age of 16 years but below the age of 55 years. This excludes employees that are in excepted employment including non-resident employees and employees not employed in Uganda. The Minister responsible for NSSF however has power to declare any other persons outside the foregoing category as eligible employees for NSSF purposes.

Contributing employers must remit standard and special contributions to the Fund in respect of their employees. A standard contribution of 15% of the eligible employees' wages must be made to the Fund within 15 days next following the last day of the month the relevant wages are paid. The employer can contribute the entire 15% or deduct 5% of the employees' wages topping up the remaining 10%. The penalties are dire if contributions are not made timely.

Contributing employers must also make a special contribution equivalent to 10% of the ineligible employees' wages to the Fund within 15 days next following the last day of the month the relevant wages are paid. This contribution is wholly incurred by the employer. Ineligible employees include but are not limited to non-resident employees who are not eligible employees or employees of or above the age of fifty-five years in respect of whom the Minister responsible for NSSF has specifically designated.

It is noteworthy that while special contributions are credited to the NSSF reserve account, standard contributions are reflected on the member's account. This means that special contributions cannot be claimed as a benefit by an employee/member on exit from the fund while standard contributions can.

5. NSSF contributions for expatriates

As we expound further below, all contributing employers must make special or standard contributions to the NSSF in respect of all expatriate workers unless specifically exempted. The quantum of contribution and whether the expatriate can claim their social security

contributions on emigration from Uganda depends on whether the expatriate in question is an eligible or ineligible employee for NSSF purposes.

An expatriate is an eligible employee and therefore registerable as a member of the Fund if he/she is resident in Uganda. The NSSF Act defines a non-resident person as an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than 3 years or such longer period as is allowed in any particular case by the Managing Director of the NSSF. The Act does not define "not ordinarily resident in Uganda'. So we take this to imply someone who has come to Uganda for a limited period of time specifically for work and who will return to their home abroad at the end of this period.

Given that the NSSF Act does not explicitly designate who a resident person is, it can be inferred from the definition of a non-resident person that an expatriate is a resident person for NSSF purposes if he/she is expected to work in Uganda for a continuous period of more than 3 years. A resident expatriate is eligible for membership to the NSSF while a non-resident is ineligible. We would like to note that the NSSF does not strictly enforce the above criteria and expatriates are actually registered as eligible members of the Fund even if they are to stay and work in Uganda for a period of less than 3 years.

a) Eligible expatriate employees

A standard contribution of 15% of the eligible expatriates' wages must be made to the Fund within 15 days following the last day of the month the relevant wages are paid. The employer can contribute the entire 15% or deduct 5% of the employees' wages topping up the remaining 10%.

b) Ineligible expatriate employees

Contributing employers must make a special contribution of 10% of the ineligible expatriates' wages to the Fund within 15 days following the last day of the month the relevant wages are paid. This contribution is incurred by the employer. Ineligible employees include but are not limited to non-resident employees who are not eligible employees or employees of or above the age of fifty-five years in respect of whom the Minister responsible for NSSF has specifically designated.

6. Exemption from standard and special contributions

There are instances under which expatriates working in Uganda's oil and gas sector can be relieved from making standard and special social security contributions.

a) General provisions of the NSSF Act

Under the provisions of the NSSF Act, an employer can apply to the NSSF Managing Director ("MD") for exemption from making either standard or special contributions for expatriate workers. The persons in respect of whom the MD of NSSF may grant a certificate of exemption to an employer are:

- Persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from the social security scheme of another country, if that scheme is approved by the Minister responsible for NSSF for this purpose;

- Persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from any scheme associated with their employment under which benefits comparable to the benefits under the NSSF Act are provided, if that scheme is approved by the Minister responsible for NSSF. The process of applying for approval of the social security scheme of another country by the Ugandan Minister responsible for the Fund is however lengthy and the outcome is uncertain.

b) Provisions of the East Africa Crude Oil Pipeline Act,2021

Expatriate employees of the East Africa Crude Oil Pipeline (' EACOP) Project Company and its level 1 contractors are exempted from making standard and special social security contributions in Uganda to NSSF on the deemed basis of the law that these are enrolled in social security, retirement or pension schemes in their home countries which are comparable to the NSSF.

7. Emigration grant

An emigration grant is due to an employee who emigrates permanently from Uganda to a country with no reciprocal arrangement under the NSSF Act. If the retirement benefit contributions have been paid in respect of a member to the fund during 4 financial years, the expatriate is entitled to the full balance of his or her account in the Fund; and in any other case, he or she is entitled to his or her own 5% contribution, and the rest comprising the employer's 10% contribution is paid into the reserve account.

8. Conclusion

Though the NSSF Act contains provisions for reciprocity of social security arrangements, we are not aware that these have been operationalised. The transferability and portability of social security benefits to their home country schemes when expatriates are emigrating from Uganda is currently not possible though there are efforts

benefits to their home country schemes when expatriates are emigrating from Uganda is currently not possible though there are efforts amongst East African Community countries to effect this. It would also be fair given that secondments are usually short term that expatriates unlock their entire contribution to the Fund at emigration regardless of the number of years they have contributed to the NSSF. At the moment, expatriates can only claim 5% benefit representing their own contribution to the Fund unless they have been members to the Fund for 4 or more years in which case they would also be entitled to the employers 10% contribution.

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@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

- 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