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# Conducting oil and gas activities in Uganda

## Laws and regulations

### List the main legislation governing petroleum exploration and production activity in your country.

The relevant legislation governing petroleum exploration and production activities in Uganda is as follows:

- The Petroleum (Exploration, Development and Production) Act, 2013 (the '**Upstream Act**').
- The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations, S.I. 150-1 (the '**Petroleum Regulations**').

### Identify the Government, regulatory and/or oversight bodies principally responsible for regulating oil and gas activities.

- The Minister of Energy and Mineral Development (the '**Minister**') is responsible for, inter alia, granting and revoking licences, initiating, developing and implementing oil and gas policy, submitting draft legislation to Parliament and negotiating and endorsing petroleum agreements.
- The petroleum sector policy objectives of the Ministry of Energy and Mineral Development are carried out by the Petroleum Production and Exploration Department (the '**Petroleum Authority**'). The Petroleum Authority is responsible for, inter alia, monitoring and regulating petroleum activities including reserve estimation and measurement of the produced oil and gas, reviewing and approving any proposed exploration activity contained in the annual work programme, appraisal programme and production forecasts submitted by a licensee, reviewing and approving budgets submitted by a licensee and assessing field development plans and making recommendations to the Minister for approval, amendment or rejection of the plans.

- The Parliament exercises an oversight function over the oil and gas sector.
- The Cabinet, apart from having important roles in relation to the Petroleum Authority (such as approving the remuneration of its board members), also approves the model form production sharing agreement ('**PSA**') to be used by the Minister. The Minister must also seek the approval of the Cabinet before: (i) opening an area for petroleum exploration; (ii) granting an exploration licence; or (iii) granting a production licence.

## Entry requirements

### What are the registration requirements for becoming a licensee of an oil and gas production sharing contract/licence/concession ('Licence') in your country? For instance, is it necessary to incorporate a subsidiary, or register a branch?

There is no requirement under the Upstream Act for a licensee to incorporate a subsidiary or register a branch in Uganda. It is necessary, however, to incorporate a subsidiary or register a branch if a foreign entity intends to set up physical premises or engage employees.

### Are there any foreign investment approval requirements or restrictions when commencing business in your country (e.g. a minimum local shareholding in the entity undertaking the activity)?

There is a requirement to obtain an investment licence under the Investment Code Act (Cap 92).

There are no minimum local shareholding requirements on holders of petroleum exploration and production licences.

## Licensing

### Identify the main fiscal/legal model granting rights to explore and produce oil and gas.

#### Legal

Under the Upstream Act, the property in and the control of petroleum in its natural condition in or upon any land or waters in Uganda is vested in the Government on behalf of the Republic of Uganda. Rights to explore and produce oil are granted through a PSA after which the relevant Licence is granted to the contractor which is issued in accordance with the terms provided in the PSA.

#### Fiscal

- A contractor is subject to income tax in accordance with the Income Tax Act, (Cap 340) (the 'ITA') and the PSA. Uganda has special provisions for taxation of petroleum operations. These are incorporated in Part IXA of the ITA. In summary the tax rules in Part IXA of the ITA state that:
  - (a) The gains taxable on petroleum companies are those derived after taking account of petroleum sales (which should be determined at arm's length) and claiming certain eligible expenses such as:
    - (i) cost of an asset or other exploration expenditure incurred in undertaking petroleum operations;
    - (ii) development and production expenditure;
    - (iii) any expenditure incurred in transportation facilities;
    - (iv) operating expenses;
    - (v) service costs; and
    - (vi) general and administrative expenses (as defined in the schedule to the ITA).Contractors are taxed on their share of the profit oil only.
  - (b) For the purpose of determining contractor's gross income derived from petroleum operations from a contract area, petroleum is valued and measured in accordance with the provisions of the petroleum agreement, subject to any further procedures that may be agreed in writing between the Government and the contractor.
  - (c) Repatriation of profits by contractors: a participation dividend paid by a resident contractor to a non-resident company is liable to withholding tax at a rate of 15%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favourable double taxation agreement.
  - (d) Contract areas are ring fenced for tax purposes. Each contract area of a contractor is taxed as if it is a separate tax payer. Therefore this puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects undertaken by the same taxpayer. Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and

development expenditure in one contract area or block or oil field will only be deducted from income derived from that contract area only. Losses arising from activities in one contract area will only be carried forward and offset against future income derived from petroleum operations of that contract area.

- (e) The rate of tax applicable to a contractor's share of the profit oil is the standard corporation rate tax of 30%.
- Other forms of revenue under the Upstream Act and the PSAs include:
  - (a) Royalty, the extent of which is included in the PSA (there being no specific level stated in the Upstream Act);
  - (b) Annual fees including acreage rental and training and research fees as may be prescribed in the Petroleum Regulations;
  - (c) Signature bonus; and
  - (d) Discovery bonus.

### Please outline the procedure to apply to the Government for an interest in a Licence in your country. Please include details of cost and timing for obtaining such interest.

- The Minister is required first to announce areas open for bidding for an exploration licence by notice published in the Gazette and a newspaper of national and international circulation. The bidding process must be carried out in a fair, open and competitive manner in accordance with the Public Procurement and Disposal of Public Assets Act, 2003. In exceptional circumstances, the Minister is permitted to receive direct applications for an exploration licence including: (i) where there are no applications received in response to an invitation for bids for an area; (ii) applications in respect of areas that are adjacent to an existing licensed reservoir; and (iii) promotion of national interests.
- Any party affected by the proposed exploration activity is given an opportunity to lodge, with the Minister, an objection to the grant of the exploration licence, setting out the grounds of the objection.
- An application for an exploration licence must be submitted in writing and must: (i) contain the name of the body corporate, place of incorporation, the names and nationality of the directors, its share capital, and the names of holders of more than five percent of the issued share capital; (ii) identify the block or blocks in respect of which it is made (it should be in respect of not more than 10 blocks); (iii) be accompanied by a statement giving particulars of work and the minimum expenditure proposed for the blocks over which the Licence is sought; (iv) give information on the financial status and the technical and industrial competence and experience of the applicant; and (v) be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Uganda.

- The Minister is required, within 60 days of receipt of the application for the exploration licence, to confirm to the applicant in writing that its application is complete in all respects.
- The applicant shall be required: (i) to make arrangements as may be satisfactory to the Minister for the execution of a bond or other form of security for the performance and observance of the conditions to which the Licence may be subject; and (ii) to take the necessary insurance policies to protect against liabilities that may arise as a result of activities done under the exploration licence.
- The Minister is required to consult with the Petroleum Authority on an application and to process the application within 180 days of receipt of the application.
- The Minister may grant the exploration licence after consultation with the Petroleum Authority and with the approval of the Cabinet.
- The application must be accompanied by a prescribed fee. The fees are to be prescribed in the Regulations made under the Upstream Act.

The holder of an exploration licence who has made a discovery of petroleum in an exploration area shall have exclusive right to apply for the grant of a production licence over any block or blocks in that area which, following appraisal, have been shown to contain a petroleum reservoir or part of a petroleum reservoir.

The application for a production licence must be made within two years of the date on which the technical evaluation of test results was submitted to the Minister or other period as may be stipulated in the PSA. The application for grant of a production licence shall be made to the Minister in a prescribed form and must be accompanied by the prescribed fee. The application must also be accompanied by:

- A report on the petroleum reservoir;
- A field development plan;
- Any relevant information that the Minister may reasonably require, including information relating to alternative proposals for development and production not included in the development plan; and
- Any other information that the applicant may deem necessary.

#### **What is the customary duration of the relevant Licence?**

An exploration licence, unless otherwise determined by surrender or cancellation, shall remain in force for the period stipulated in the Licence, which shall not exceed two years after the date of the grant. It may be renewed for a further period of two years, but the Licence shall not be renewed more than twice.

A production licence shall remain in force for the period for which the application has been made but not exceeding 20 years from the date of the grant and for any period for which the Licence is renewed under the Upstream Act.

#### **Does the Government have any right to participate and be carried in the Licence? If so, please describe the extent of this entitlement.**

#### **Is there any mechanism for recovery of carry costs?**

The Upstream Act contains provision on the right of the Government to participate in petroleum operations. It provides that the Government may participate in petroleum activities through a specified participating interest of a Licence or contract granted under the Upstream Act and in the joint venture established by a joint operating agreement in accordance with the Licence and the Upstream Act. The Minister shall, with the approval of the Cabinet, specify the Government share under this section.

#### **Does the Government have any right to participate in the operatorship of the Licence?**

Unless otherwise stated in the PSA, the Government does not have a right to participate in the operatorship of the Licence.

### **Assignment**

#### **What Government and/or regulatory approvals are required for the acquisition of oil and gas interests held under a Licence (whether by asset or corporate sale/change of control)?**

#### **If any, what are the timing requirements and costs of obtaining such Government and/or regulatory approvals?**

Under the Upstream Act, an exploration or production licence shall not be transferred without the written consent of the Minister in consultation with the Petroleum Authority.

The requirement to obtain the Minister's consent also applies to any direct or indirect transfer of interest or participation in the Licence, including the assignment of shareholdings and other ownership shares which may provide decisive control of a licensee possessing a participating interest in a Licence. Control in relation to any person is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management of the licensee by that person, whether through the ownership of shares, voting, securities, partnership or other ownership or participation interests, agreements or otherwise.

The Upstream Act does not contain timing requirements and costs of obtaining such regulatory approval. These are to be prescribed under the Petroleum Regulations.

**Are there any pre-emptive rights reserved to any Government entities in the event of a proposed assignment of an interest held under a Licence? If so, what are the terms upon which such entities are allowed to acquire the interest?**

Subject to the PSA, there are no pre-emptive rights reserved to the Government in the event of a proposed assignment of an interest held under a Licence.

## Economic support

**Are parental guarantees or other economic supports commonly required to be provided by oil and gas companies?**

Under the Upstream Act, the Minister shall require an applicant to make arrangements, as may be satisfactory to the Minister, for the execution of a bond or other form of security for the performance and observance of the conditions to which the licence may be subject; and the applicant is required to take the necessary insurance policies to protect against liabilities that may arise.

Since PSAs that have been signed by the Government are not available to the public we are unable to comment with certainty on how commonly such guarantees are requested.

**Are security deposits required in respect of work commitments or otherwise?**

Yes, as above.

## Abandonment and Decommissioning

**What abandonment regime is in place?**

**Are security deposits required in respect of future decommissioning liabilities?**

The Upstream Act contains elaborate provisions on the decommissioning and abandonment process. A licensee is required to submit a decommissioning plan to the Petroleum Authority before a licence to install and operate facilities expires or is surrendered; or at the earliest four years but at the latest two years before the use of a facility is expected to be terminated permanently. A licensee is required to establish a decommissioning fund for each development area which must be applied to the implementation of activities approved in the decommissioning plan.

Payments into the decommissioning fund must commence from the calendar quarter in which any of the following situations occur:

- The petroleum production has reached 50% of the aggregate recoverable reserves as determined in an approved development plan and any subsequent reappraisal of such initial recoverable reserves;

- Five years before expiration of the Licence; or
- On notice of surrender.

For every subsequent calendar quarter in which petroleum is produced or a facility operated, the Petroleum Authority is required to charge the licensee a proportion of the estimated future cost for decommissioning of facilities to be deposited in the fund.

The amount deposited in the decommissioning fund is charged as operating costs subject to the cost recovery limitations stipulated in the PSA and/or the Regulations.

Further, the Petroleum Regulations provide that every exploratory well, whether a dry hole or a discovery, shall be abandoned in a safe condition. The wells must be plugged with appropriate cement plugs, the wellhead removed and a steel plate welded on the top of the casing. The location of the abandoned well must be restored to the original site condition to the extent possible and must be marked with the well name and number in a manner approved by the Minister.

**Information provided by:**

**Mr. Phillip Karugaba and Ms. Rehema Nakirya Masembe, Makubuya, Adriko, Karugaba and Ssekatawa Advocates** (MMAKS Advocates)  
3rd Floor, DTB Centre, Plot 17/19 Kampala Road  
P.O. Box 7166, Kampala, Uganda

**T** +256 414 251388  
[www.mmaks.co.ug](http://www.mmaks.co.ug)

## Contacts



**Bob Palmer**

Partner, Energy

**T** +44 (0)20 7367 3656

**M** +44 (0)7831 248814

**E** [bob.palmer@cms-cmck.com](mailto:bob.palmer@cms-cmck.com)

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CMS Cameron McKenna LLP  
Cannon Place  
78 Cannon Street  
London EC4N 6AF

**T** +44 (0)20 7367 3000

**F** +44 (0)20 7367 2000

**[www.law-now.com](http://www.law-now.com)**