

THE LEGAL FRAMEWORK FOR PETROLEUM MIDSTREAM ACTIVITIES IN UGANDA

The primary laws governing petroleum midstream activities

Petroleum midstream activities primarily comprise the storage, processing and transportation of petroleum products. The primary laws for this sector include:

- The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (the “Midstream Act”);
- The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Regulations, 2016;
- The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016; and
- The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (Health Safety and Environment) Regulations, 2016.

Additional laws regulating (inter-alia) local content, health and safety, governance, environment would also apply.

Regulatory authority

Regulatory authority for midstream activities in Uganda is exercised by the Minister of Energy and Mineral Development (the “Minister”) and the Petroleum Authority of Uganda (the “PAU”). The Minister is in addition to various other functions responsible for the issuance and revocation of licenses while the PAU is responsible for (inter-alia) the regulation and monitoring of midstream activities, including the issuance of certain permits and approval of tariffs and plans submitted by licensees.

Government participation in the midstream sector

The government’s direct participation in the midstream sector is carried out through the Uganda National Oil Company (“UNOC”) which is established as a government owned limited liability company with a mandate to invest and participate in the oil and gas ventures. UNOC has in turn established two subsidiaries: (i) National Pipeline Company (U) Ltd, its investment vehicle for pipeline, storage and downstream business ventures; and (ii) Uganda National Refinery Holding Company Ltd, its investment vehicle for refining and petrochemical related ventures.

Activities requiring a license

A license issued by the Minister is required for the following midstream activities:

- the construction of: (i) a refinery or other petroleum processing plant; (ii) a facility for conversion of natural gas; (iii) a transmission pipeline; (iv) a midstream storage facility; or (v) any other facility for the purpose of midstream operations; and
- the operation of: (i) a refinery, conversion plant or other petroleum process plant; (ii) a pipeline; (iii) a midstream storage facility; or (iv) the transmission of petroleum commodities by road, rail or water.

A license would not be required for a midstream facility / pipeline where: (i) it is located entirely within an industrial site for which the required license has been granted; or (ii) its storage capacity does not exceed fifty metric cubic meters of any one product. However, a person carrying out operations in such circumstances has to register with the PAU and submit information relating to the operation.

In addition, a permit issued by the PAU is required for the commencement of operation of: (i) a refinery or other petroleum processing plant; (ii) a pipeline; (iii) the transmission of petroleum commodities by road; and (iv) a midstream storage facility.

Sanctions for conducting activities without a license

A natural person who carries out the above activities without a license is liable on conviction to a fine of two billion Uganda shillings or imprisonment not exceeding ten years or both. A company is liable on conviction to a fine not exceeding four billion Uganda shillings.

Application for a license

The application may be made by one person or two or more persons jointly in writing to the Minister. Where two or more people are the applicants, the agreement made pursuant to the joint operation shall be submitted along with the application to the Minister. The application would include information on various corporate, technical and commercial aspects of the applicant and the project.

The Minister is required to cause a notice of the application to be published in the Gazette and in at least one national newspaper of wide circulation in Uganda, within forty-five days after receiving the application for a license. The Minister may thereafter in consultation with the PAU and with the approval of Cabinet grant the license.

Grounds for rejection of an application for a license

An application for a license may be rejected by the Minister on grounds of failure of an applicant to submit all the required information or failure of an application to meet the requirements. Where an application is rejected, the Minister is required to notify the applicant in writing within thirty days of the rejection, stating the grounds for rejection.

Performance security and insurance

An applicant for a license to construct and operate a facility would be required to provide the following within ninety days of being granted a license:

- a performance bond of ten percent of the total capital expenditure and if the total capex exceeds one billion United States dollars, the value of the bond shall be capped at ten percent of one billion United States dollars; or
- other forms of security approved by the Minister for the performance and observance of his or her obligations to which the license maybe subject, which may include: (i) a cash deposit in an escrow account operated by the Government of the Republic of Uganda and the licensee depositing the bond; or (ii) a bank guarantee and any other form of credit support as maybe agreed under an agreement entered into.

The licensee would also be required to take out the necessary insurance policy as approved by the Minister. The law further provides that the licensee would at all times, keep the Republic of Uganda indemnified against any claims that may be made against the Government by reason of anything done by the licensee.

Duration of license

A license to construct a midstream operations facility is issued for an initial period of five years or such further period as the Minister may determine. A license to operate a midstream operations facility would be ordinarily issued for a period of twenty years, followed by renewable periods of five years.

Deadline for commencement of activities

The licensee is required to commence activities related to the license within six months of issuance of the license. Where the licensee does not commence activities related to the license within the said period, the right to the license is deemed to have lapsed, unless the licensee demonstrates to the satisfaction of the Minister that the delay is not due to the fault of the licensee.

The Minister may, for reasons that he or she thinks sufficient, by notice served on the licensee: (i) extend the time within which to commence activities related to the license; or (ii) direct the licensee to commence activities related to the license within a period specified in the notice.

Renewal of a license

An application for renewal of a license must be made to the Minister six months before expiry of the license. The Minister shall not renew a license where the licensee has violated a provision of the Midstream Act or a condition of the license. Renewal of a license is for periods of five years.

Transfer a license

The written approval of the Minister is required for a licensee to transfer or lease of a license, the licensee's works or any interest therein. Transfer of a license would include the acquisition of control of the licensee. To grant such approval, the Minister has to be satisfied of the legal and technical capacity, competence and financial strength of the transferee.

The Minister is required not to unreasonably withhold consent to an application to transfer a license unless he or she has reason to believe that the public interest or safety is likely to be prejudiced by the transfer.

Creation of security over a license

A licensee may with the prior approval of the Minister (in consultation with the PAU), use a license or any interest therein as security for the financing of operations prescribed in a license. Where the Government requires removal of a facility, any lien, charge or encumbrance on the facility shall lapse.

Execution of licensee's works by third party

A licensee is required to obtain the written approval of the Minister to enter into any agreement for: (i) the amalgamation of his or her works with those of any other person or corporation; or (ii) the operation of his or her works by any other person or corporation.

Grounds for suspension or cancellation of a license

A license may be suspended or cancelled by the Minister in event of the following:

- if the licensee is adjudged bankrupt or enters into any agreement or scheme of composition with his or her creditors or takes advantage of any law for the benefit of debtors; or
- where the licensee is a body corporate, an order is made or a resolution is passed winding up the affairs of the body corporate, except where the winding up is for the purpose of: (i) amalgamation and the Minister has consented to the amalgamation; or (ii) reconstruction and the Minister has been given notice of the reconstruction.

Process of cancellation of a license

Where a licensee is in default, the Minister may, in consultation with the PAU and with the approval of Cabinet, by notice in writing served on the licensee, suspend or cancel the license. The Minister is required to inform Parliament of the suspension or cancellation of the license within fourteen days of service of the notice.

The licensee would not be treated as in default unless the Minister has served on the licensee a notice in writing giving the particulars of any default complained of and the licensee has not within a reasonable time specified in the notice remedied the default, or where the default cannot be remedied, offered to the Minister in respect of the default adequate compensation.

Where the license is held by two or more persons, the license may not be cancelled if one of the licensees satisfies the Minister that he or she is willing and is able to carry out the duties and obligations under the license.

Decommissioning and cessation of operations

A licensee that intends to decommission a plant is required to submit to the PAU, a decommissioning plan to the PAU: (i) before a license to install and operate a midstream facility expires or is surrendered; or (ii) before the use of a midstream facility is terminated permanently.

Where a license is terminated or revoked or expires, the licensee would be immediately required to deliver to the PAU in a format acceptable to it: (i) all records and data which the licensee maintained with respect to the license; (ii) all plans, maps, and technical designs of facilities which were prepared by or on the instruction of the licensee; (iii) all tapes, diagrams, profiles and charts which were prepared by the licensee; and (iv) such other documents as the PAU, may, by notice given to the licensee, require him or her to deliver.

Liability for environmental damage from midstream operations

The licensee is liable for pollution damage from midstream operations without regard to fault. The liability of the licensee may be reduced where it is demonstrated that an inevitable event of nature, act of war, exercise of public authority or a similar force majeure event has contributed to a considerable degree to the damage or its extent under circumstances which are beyond the control of the licensee.

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Where pollution damage occurs during operations conducted without a license, the party that conducted such operations is liable for the damage regardless of fault. The same liability rests on any other person who has taken part in the midstream operation, and who knew, or should have known, that the operation is being conducted without a license.

The information contained in this review is for general guidance and not a substitute for the need to get appropriate professional advice. If you require further information, please write to your usual contact person at Mukumbya Musoke Advocates.