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AF Mpanga Advocates (Bowmans Uganda) is the Ugandan office of the pan-African firm Bowmans, with offices in South Africa, Tanzania, Kenya, Mauritius and Ethiopia. The firm has experience across the spectrum of finance matters including banking, project finance, financial sector regulation, debt capital markets and restructuring. Specific expertise extends to bilateral and syndicated loans, guarantee and security issues and regulatory matters including the establishment of banks and the carrying on of lending

and investment banking activities. The firm is currently advising an international Islamic finance institution on what could be the first Islamic finance transactions in Uganda, worth over USD8 million for the agricultural sector. The firm's major clients in the recent years have included the Central Bank, Citibank, the National Development Bank of Sri Lanka, the China Exim Bank, the China Development Fund and over half of the local banks operating in Uganda.

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1. Loan Market Panorama

1.1 Impact of Regulatory Environment and Economic Cycles

In spite of the tightened global financial conditions, Uganda's economy continued its recovery, growing by 6.2% in 2017-18 and it is forecast to grow marginally by 6.3%. This growth has been supported by accommodative monetary policy, favourable weather conditions, FDI and public investment in oil-related infrastructure. This growth in turn has led to an increase in lending, especially in the manufacturing, construction and real estate sectors.

Even though the Central Bank has continued to reduce the Central Bank Rate (CBR), but the commercial banks have been slow in reducing their prime lending rates in the short term citing the high cost of business.

1.2 The High-yield Market

The bond market in Uganda is dominated by government (Central Bank) bonds. The high yields on bonds seen in 2015 attracted an influx of foreign investors in the bond market. Local financial institutions reduced their provision of credit to the private sector, preferring to increase their holdings in the bond market.

The yields on government securities have steadily declined in Uganda since 2018, in line with the protracted easing of monetary policy and lower inflation expectations. Short term bonds have also seen a decline in yield rates. Reduced participation in the bond market, among other factors, has led to financial institutions easing credit to the private sector as returns on the bonds have fallen.

1.3 Alternative Credit Providers

There has been a significant increase in the number of players in the credit market. These include deposit-taking microfinance institutions, the savings and credit co-operatives (SACCOs), non-deposit taking financial institutions, self-help groups, community-based microfinance institutions, money lenders and savings and loan products offered by mobile telephone companies.

Competition from these new lenders has prompted banks to review their lending rules, re-examine their speed and efficiency in delivering credit decisions, devise competing products and to revise their charges downwards.

1.4 Banking and Finance Techniques

Uganda's financial institutions have adapted in various ways to the banking sector's low level of penetration into rural areas of the country:

- Banks have embraced 'mobile money' and partnered with telecommunications companies to enable people to

conduct financial transactions directly using their mobile phones; and

- an amendment to the financial institutions law has introduced 'agency banking' which enables commercial banks to use other typical business establishments such as petrol stations, shops and supermarkets to provide simple services such as cash transactions and loan applications on their behalf.

Uganda has also seen a rapid growth in financial technology, with a number of banks adopting and offering electronic and mobile banking services.

1.5 Legal, Tax, Regulatory or Other Developments

This year (2019) the Chattels Securities Registry came into operation. This is expected to ease borrowers' path to accessing affordable credit from the formal and regulated financial sector as opposed to the informal sector. This has also made more forms of security available to financial institutions for loans issued and, as such, is expected to boost the loan market in Uganda.

2. Authorisation

2.1 Authorisation to Provide Financing to a Company

Banks and non-banks providing financing to a company in Uganda are required to hold a license issued by either the Central Bank or the Uganda Microfinance Regulatory Authority.

For a bank or non-bank to be issued a license by the Central Bank to carry on financing business in Uganda, it must:

- be constituted as a company;
- submit an application to the Central Bank setting out the details of its shareholders, directors and attaching to this application its business and financial plans, board risk management policies, management operating procedures and any other information relating to its viability; and
- have the minimum paid up cash capital. For a Tier 1 Commercial Bank it is UGX equivalent of about USD6.8 million; for a Tier 2 Credit Institution, the equivalent of about USD270,270; and for a Tier 3 Micro Finance Deposit Taking Institution, the equivalent of about USD135,135.

The Uganda Microfinance Regulatory Authority, on the other hand, regulates the financing business of savings and credit co-operatives, non-deposit taking microfinance institutions, self-help groups, community based microfinance institutions and money lenders. To be issued with a license, these entities are required to submit an application together with their constitutional documents and details of their management. Once the Authority is satisfied that the entity

is fit to carry on business and upon payment of license fees, a license will be issued.

3. Structuring and Documentation Considerations

3.1 Restrictions on Foreign Lenders Granting Loans

Foreign lenders are not restricted, in any way, from granting loans in Uganda.

3.2 Restrictions on Granting Security to Foreign Lenders

The granting of security or guarantees to foreign lenders is generally not restricted or impeded in anyway, except that charges over real estate may only be governed by Ugandan law.

3.3 Restrictions and Controls on Foreign Currency Exchange

Uganda has a fully liberalised capital account and there are no exchange restrictions or controls on the transfer of funds from Uganda. However, all payments in foreign currency to or from Uganda, between residents and non-residents, or between non-residents, must be made through a bank. Additionally, transfers into Uganda of sums of USD10,000 and above, or the equivalent in any other currency, are subject to reporting obligations by the financial institution for purposes of anti-money laundering compliance.

3.4 Restrictions on the Borrower's Use of Proceeds

There are no restrictions on a borrower's use of proceeds from loans or debt securities except those set out in the loan documentation and a borrower's constitutive documents. A borrower may not obtain a loan to finance or facilitate activity considered illegal in Uganda.

3.5 Agent and Trust Concepts

The agent and trust concepts are recognised and regularly practised in Uganda. These concepts, as practiced in Uganda, are premised on the Ugandan Contracts Act and English common law. As an alternative to the trust structure, lenders will use the agency structure.

3.6 Loan Transfer Mechanisms

Loans in Uganda may be transferred through a security trust, novation, assignment or refinancing.

In the instance of an assignment, it is necessary that both the debt and the security are assigned to the transferee to enable the transferee to enforce the security interest. The transfer of a loan, particularly where the security in question is land, requires notice to be given to the debtor. In instances of other types of assets, the requirement for notice or consent of the debtor or obligor will depend on the contractual

documents. For Ugandan law purposes, where there is an assignment or novation of a loan, it is possible that such a transaction would be subjected to stamp duty in Uganda either as a deed, which would attract a nominal stamp duty of USD4, or as a transfer, subject to a stamp duty of 1.5% of the value/consideration paid. If the instrument (such as a transfer certificate or assignment agreement) is executed outside of Uganda, then the obligation to pay stamp duty will only arise upon delivery of the instrument into Uganda. If the transfer involves only foreign lenders and the instrument of transfer is not delivered in Uganda, payment of stamp duty would not be required. However, if the transfer instrument is delivered to Uganda, or executed in Uganda or by a party in Uganda, then the instrument is liable for stamp duty.

Transfers among lenders where there is a security trustee will not, per se, trigger registration requirements, provided the identity of the security trustee is not altered. The requirement for consent or notice to the debtor will depend on the contractual documents. A re-financing carried out by a new lender that results in new security documents being executed will require that the security interest held is released by the transferor, which will trigger registration/perfection of the security and payment of stamp duty.

3.7 Debt Buy-back

Debt buy-back by a borrower or sponsor is permitted under Ugandan law.

3.8 Public Acquisition Finance

In public acquisition finance, for Ugandan law purposes an offeror/bidder is required to ensure that their financial adviser is satisfied that a takeover offer will not fail due to insufficient financing, and that every accepting shareholder will be paid in full. As such, where the offer is for cash (whether wholly or partly), then any offer document submitted to the target entity must contain a confirmation from the offeror's financial adviser that the offeror is financially capable of accepting and carrying out the takeover offer in full.

In addition, an offeror is required to deposit in an escrow account, 10% of the total consideration payable. This escrow amount may be in the form of:

- a cash deposit with a commercial bank;
- a bank guarantee in favour of the offeree that is payable on demand; or
- deposit of acceptable securities, with appropriate margin, with a commercial banker.

'Certain funds' are not required in private acquisitions. However, for transactions involving fairly large corporations, it is not unusual for sellers to request 'certain funds' commitments.

In regard to documentation, finance document forms used by Ugandan banks have not been standardised and vary by bank, particularly in purely domestic transactions. Generally, the use of Loan Market Association (LMA) documents will be limited to cases where one of the lenders is a foreign financial institution; the governing law in such cases is often English law. There is no requirement to file these publicly.

4. Tax

4.1 Withholding Tax

Payments of interest to foreign lenders is subject to a 15% withholding tax. Payments of principal are, however, not subject to any withholding tax in Uganda.

Similarly, withholding tax is levied on international payments; that is, on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda. The tax is withheld by the payer at the rate of 15% of the gross amount before payment/remittance of the amount is made. This however does not apply to amounts from activities of a Ugandan branch of the non-resident.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Lenders making loans to entities in Uganda or taking security and guarantees from Uganda have to take into account that, generally, a stamp duty of 0.5% of the principal amount is levied on charges over real estate and of 1% of the principal amount on charges over assets of a company. Security documents and guarantees are also subject to a nominal stamp duty of about USD3.

4.3 Usury Laws

There are generally no usury laws or other rules limiting the amount of interest that can be charged except that money lenders may not charge interest that may be considered unconscionable. The test as to what may be determined unconscionable is made on a case by case basis.

5. Guarantees and Security

5.1 Assets and Forms of Security

The assets typically available as collateral are detailed below.

Real property

This includes land, as well as any buildings and fixtures on the land, and is effected by executing a mortgage deed between the debtor/obligor (mortgagor) and the person to whom the security interest is granted (mortgagee). The mortgage deed should be witnessed by persons such as an advocate or notary public. The mortgage deed should accurately describe the property over which a security interest is

created. The certificate of title to which the property relates, together with the security documents, are submitted to the Uganda revenue authority ('URA') for tax assessment. These typically attract a stamp duty of 0.5%. Once the assessed tax and registration fees (approximately USD30) are paid, the certificate of title is handed over to the land registry, whereupon the charge is entered on the certificate of title. A charge created by a company over its property should be registered with the companies' registry within 42 days of its creation (the date of execution of the relevant instrument). Registration at the land registry typically takes five to seven working days, barring any administrative inconveniences.

Shares

A charge/security may be created by a company over its uncalled capital, and by shareholders over their shares, by way of a share pledge agreement. Share pledges created by a company should be registered with the companies registry within 42 days of execution of the pledge. The registration of the share pledge agreement will be evidenced by means of a certificate of registration. In practice, lenders typically require the borrower to deposit the relevant share certificates with the secured party together with signed share transfer forms, or by issuance of powers of attorney to the lender to sign the share transfer forms.

Registration of a share pledge agreement attracts a nominal duty of USD4.

Accounts

Security over the proceeds of a bank account can be taken by way of a fixed or floating charge. This may be by way of a debenture or a charge over the account deed. A charge over a bank account must be registered with the companies' registry within 42 days and attracts a stamp duty of 0.5%.

Contractual rights

Security can be granted over contractual rights by way of an assignment, provided that there is nothing in the relevant contract that prohibits the granting of such security. Contractual rights that may be assigned include:

- any policies of insurance held; and
- specified agreements to which an obligor is party, and the benefit of any guarantee or security it holds for performance of those agreements.

Where consent and notice of a counterparty are required before an assignment, then such notice should duly be given. Where a debenture is issued to effect such assignment, then the debenture should be registered within 42 days with the companies registry and will attract a stamp duty of 0.5% if the debenture is the primary instrument. A deed of assignment will attract nominal duty of USD4.

Licences

Security can be taken over licences. However, where the licence is in a regulated sector, such as electricity and mining, then consent from the line regulator to pledge/assign the licence is required. Typically, lenders should require the assignor to produce an acknowledgment letter from its line regulator. A charge over licences may be issued by a debenture which should be registered with the companies' registry within 42 days and attracts a stamp duty of 0.5%. The absence of consent from a regulator would invalidate the charge created.

Plant and machinery

A company may charge its plant and machinery by issuing either a debenture or a chattels mortgage. A chattels mortgage should be registered with the chattels securities' registry within 30 days while a debenture should be registered with the companies' registry within 42 days. Both the debenture and chattels mortgage will attract a stamp duty of 0.5% of the facility.

It is also noteworthy that Ugandan law recognises the creation of charges over all the assets of a business by way of fixed and floating charges. An entity may issue a debenture charging all its assets. This would require registration with the companies' registry and payment of stamp duty at 0.5% of the facility amount.

Generally, failure to comply with any of the above formalities would mean the security interest is not perfected and, as such, the lender may lose the benefit of the security interest or be subordinated to other lenders.

It should also be noted that where multiple documents are used in a single transaction (such as a mortgage deed coupled with, say, a share pledge, deed of assignment or debenture), then only the primary instrument would be charged with stamp duty at 0.5% of the facility amount. The other related instruments would only be charged a nominal duty of approximately USD4.

5.2 Floating Charges or Other Universal or Similar Security Interests

The law in Uganda permits floating charges and other universal or similar security interest over all present and future assets of a company.

5.3 Downstream, Upstream and Cross-stream Guarantees

The Companies Act, 2012 of Uganda allows for downstream, upstream and cross stream guarantees. There generally no associated limitations and restrictions to the issuing of these guarantees.

5.4 Restrictions on Target

In the context of being acquired, the general rule under the Companies Act, 2012 of Uganda is that a company may not issue guarantees or security or financial assistance for the acquisition of its own shares except where it can be shown that the assistance is to be given in good faith, in the interests of the company.

The Companies Act, however, makes exception for public companies where it can be shown that the company has net assets which are not reduced by the financial assistance or to the extent that those assets are reduced by the financial assistance, if the assistance is provided out of distributable profits.

The Companies Act also allows for financial assistance for acquisition of shares in a private company where the acquisition of shares is in its holding company, where this holding company is a private company and the financial assistance has been approved by a Special Resolution of the members of the Company. Like with the public company, it must also be shown that the company has net assets which are not reduced by the financial assistance or to the extent that those assets are reduced by the financial assistance, if the assistance is provided out of distributable profits. Furthermore, before such financial assistance is given, the directors of the target are to make a statutory declaration stating that, in giving the financial assistance, the company is in compliance with the law.

5.5 Other Restrictions

Where a corporate guarantee is issued, this should typically be authorised by a board resolution.

5.6 Release of Typical Forms of Security

Charges over real property are released by the issuance of a deed of release from the lender which must be registered with the land registry and the particulars of the charge cancelled from the certificate of title. Registration of the release attracts a fee of approximately USD8.

In regard to debentures and other charges registered with the companies' registry, once the lender has provided a letter or deed of release, then the company should file a memorandum of satisfaction of charge with the companies' registry and pay stamp duty of approximately USD4.

5.7 Rules Governing the Priority of Competing Security Interests

The general rule governing the priority of competing security interests is that the first in time takes precedence over all others. Subordination is generally achieved contractually, and the parties may agree to vary priority by contract. Contractual subordination provisions will survive the insolvency of the borrower.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

Generally, facility documents will specify events of default upon which a lender will be entitled to enforce its security. Typically, these include the failure to make payments when due, the passing of a winding-up resolution by the borrower, or the issuance of a levy of substantial proportion of the borrower's business.

In a charge over shares, a chargee would enforce its security interest by using the power of attorney and share transfer form (both granted to it by charger upon perfection) to transfer the shares to it itself or a nominee. The chargee must then pay a duty of 1.5% of the value of the transfer and file the share transfer forms with the companies' registry.

Where a debenture is issued, the enforcement mechanisms are spelt out in the deed. These generally include enforcement by sale or the appointment of a receiver or manager. The power to appoint a receiver should be expressly included in the document, in the absence of which a court order would be necessary. Upon appointment of a receiver, notice should be given to the debtor/obligor. The receiver should also give public notice of their appointment within 14 days of its being made.

In relation to charges over land, the events of default will be similarly specified in the mortgage deed. Additionally, where the sums secured by the mortgage are made payable on demand, a demand in writing shall create a default in payment. In other cases a mortgagor is deemed in default of payment that remains outstanding for 30 days. The mortgagee may then serve a 45-day notice on the mortgagor requiring rectification of the default. The remedies available to a mortgagee are:

- to require the mortgagor to pay all monies owing on the mortgage;
- to appoint a receiver of the income of the mortgaged land;
- to lease or sub-lease the mortgaged land;
- to enter into possession of the mortgaged land; or
- to sell the mortgaged land.

It is an implied condition of every mortgage that the mortgagee has the power to appoint a receiver.

The mortgagee is required to serve an additional 15 working days' written notice to the mortgagor, prior to appointing a receiver or granting a lease on the land. The mortgagee is also required to serve an additional five working days' written notice to the mortgagor, informing them of the intention to take possession of the whole or part of the land. In regard to enforcement by sale, a mortgagee may sell, either by private contract (with the consent of the mortgagor) or

by public auction. A sale should only be conducted upon the giving of an additional 21 working days' written notice to the mortgagor informing them of the intended sale. Where a sale is to be conducted by public auction, a publicly advertised notice of the auction must be placed in a newspaper of wide circulation for 30 days.

Where the security involves a license, consent should be sought from the regulator before enforcement, particularly in regulated sectors such as mining and energy.

A guarantee will be enforceable in accordance with its terms. Ugandan law also recognises demand guarantees. However, any variance made in the terms of a contract between a principal debtor and a creditor without the consent of a guarantor discharges the guarantor from any transaction subsequent to the variance.

6.2 Foreign Law and Jurisdiction

Choice of foreign law and waivers of immunity will be enforced under Ugandan law.

6.3 A Judgment Given by a Foreign Court

Generally, in order for a foreign judgment to be recognised in Uganda, the foreign judgment must be obtained from a court of record in the Commonwealth or from a court of a country with which Uganda has reciprocal arrangements. However, Ugandan courts have recognised that even in the absence of reciprocal agreements, a foreign judgment can be enforced based on international comity, particularly if the judicial system under which the case was tried is beyond reproach.

Foreign arbitral awards are enforceable in Uganda. Ugandan law expressly acknowledges the enforcement of arbitral awards issued under the auspices of the ICSID Convention and awards originating from countries that are party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

6.4 A Foreign Lender's Ability to Enforce Its Rights

See 5.1 Assets Typically Available and Forms of Security.

7. Bankruptcy and Insolvency

7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency

A corporation may, where it seeks to enter into an arrangement or compromise (including reorganisation of share capital or amalgamation) with its creditors or a class of its creditors, petition court for a meeting of its creditors to be summoned. If three quarters of the creditors agree to the proposed compromise or arrangement, then the court shall sanction the arrangement, which shall be binding on the creditors and the company. In order for it to be effective, a

certified copy of the court order sanctioning the arrangement or compromise must be delivered to the registrar of companies for registration.

Where an amalgamation is proposed, the directors of each company must issue an amalgamation proposal to the shareholders within 21 days. The amalgamation must be approved by special resolution of the shareholders (at least 75% shareholding).

7.2 Impact of Insolvency Processes

The commencement of insolvency proceedings against a local entity creates a moratorium on all proceedings, execution or other legal process against the company or its property. Custody and control of the company's property are then vested in the liquidator. Secured creditors are therefore obliged to give notice of their debt and particulars of the assets charged to the liquidator.

In situations where the assets of the debtor are sufficient to meet the company's debts (such as in a voluntary winding-up), the secured creditors, having given notice of the particulars of their claims to the liquidator, may proceed to enforce their security. However, in circumstances where the assets are insufficient to pay preferential debts, the Insolvency Act, 2011 provides that "preferential debts shall, so far as the assets are insufficient to meet them, have priority over the claims of secured creditors in respect of assets which are subject to a security interest". 'Preferential debts' in this regard refers to liquidation expenses, four months' wages, workers' compensation (not exceeding USD270), unpaid withholding tax over the last 12 months and social security contributions. The Insolvency Act further provides that the priority of preferential debts shall apply notwithstanding any other law.

The above provisions imply that the assets subject to charges in favour of secured creditors are subordinated to the listed preferential debts, to the extent that the debtor's assets are not sufficient to pay such preferential debts. In all other instances, however, secured creditors may enforce their securities in insolvency, subject to giving notice to the liquidator.

7.3 The Order Creditors Are Paid on Insolvency

In insolvency, preferential debts will be paid first, to the extent that the assets are sufficient to pay all of these debts. In all other instances, secured creditors take priority, followed by unsecured creditors who rank *pari passu*.

7.4 Concept of Equitable Subordination

Uganda's insolvency law does not expressly provide for the concept of equitable subordination, nor a concept substantially similar to it.

7.5 Risk Areas for Lenders

One risk to lenders in insolvency is that the security may be deemed unperfected and as such rank the lender as an unsecured creditor. Lenders also face the risk that the secured assets may be insufficient to satisfy the secured creditor's claim, with the result that any balance would have to be claimed as an unsecured creditor.

Another risk is that if the debtor's assets are insufficient to cover preferential debts, such as liquidation expenses, four months' wages and social security contributions. In this instance the assets held by secured creditors may be subordinated to preferential claims.

8. Project Finance

8.1 Introduction to Project Finance

Following the liberalisation of Uganda's economy in the 1990s there has been an increase in foreign direct investment in Uganda, particularly in the area of public infrastructure and energy. Projects are financed with a combination of debt and equity from commercial banks and multilateral development banks. Private sector financing is dominated by commercial bank loans.

The current focus of the government is on transport infrastructure, the oil and gas sector and electricity. The majority of projects have been implemented by foreign contractors, which has involved the use of special purpose vehicles, incorporated in Uganda. The lenders are generally foreign banks and multilateral development banks, including regional development banks.

Uganda passed a Public Private Partnership Act in 2015, allowing for private parties incorporated in Uganda as special purpose vehicles to partner with the government in implementing projects.

Projects in regulated sectors such as electricity, oil and gas will require approval from governmental authorities, and the issuing of licences to the project special purpose vehicle. The granting of security interests over project assets situated in Uganda is regulated by Ugandan law relating to mortgages and the creation of charges by companies over their property.

8.2 Overview of Public-Private Partnership Transactions

The legal regime in regard to public private partnerships ('PPPs') in Uganda is governed by the Public Private Partnership Act 2015 (the 'PPP Act').

The PPP Act requires that a participating private party must be incorporated in Uganda as a special purpose vehicle for the implementation of the PPP. Any change in the sharehold-

ing or corporate status of the company must be approved by the minister of finance.

There is a requirement that prior to the commencement of a PPP project, the contracting authority (government department or other authority) must conduct a preliminary analysis. If the project is suitable for implementation as a PPP, the project will be registered with the ministry of finance's PPP unit. After this registration, the line ministry conducts a feasibility study of the project and receives an approval from the PPP committee. Once approval is obtained, the procurement of the private party can be initiated.

If the Ugandan government is the financial sponsor of the project, there must be ministerial confirmation of availability of funds for the implementation of the PPP project before the procurement process commences.

The methods of bidding for a PPP project are open bidding, restricted bidding, direct procurement (where the circumstances do not allow for competition) and unsolicited proposals.

An evaluation committee is required to evaluate bids, factoring in the technical, professional and financial capacity of the bidder, including the source of the bidder's funds, the capital they have secured in the form of loans and any guarantees or assurances required.

The PPP Act prescribes the terms that should be in a PPP agreement and risk allocations to ensure project bankability. All PPP agreements above a certain monetary value require cabinet approval. The forms or models of PPP agreements provided for are:

- concession, operation and maintenance agreement;
- lease, develop and operate agreement;
- build, own and maintain agreement;
- build, own, operate and transfer agreement;
- design, build, finance and operate agreement; and
- build, own and operate agreement.

8.3 Government Approvals, Taxes, Fees or Other Charges

Where a project finance transaction relates to a regulated sector such as mining or energy, government consent and/or authorisation is required. Typically, the project special purpose vehicle will need to obtain a licence from the relevant government authority. This will attract licence fees, which vary by sector.

Lenders' creation of security interests over the project assets and cash-flows will also attract stamp duty and registration charges, typically 0.5% of the facility amount. The transaction documents, particularly those creating security interests, need to be presented to the revenue authority for assess-

ment of stamp duty, and filed with government registries. Transactional documents are ordinarily governed by either Ugandan law or English law.

8.4 The Responsible Government Body

Oil and gas

The primary laws are:

- the Constitution of the Republic of Uganda 1995;
- the Petroleum (Exploration, Development and Production) Act 2013;
- the Petroleum Supply Act 2003;
- the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013;
- the Land Act Cap. 227;
- the National Environment Act Cap. 153; and
- the Water Act Cap. 152.

Regulations include:

- the Petroleum (Exploration, Development, and Production) Regulations, 2016;
- the Petroleum (Exploration, Development, and Production) (Health, Safety, and Environment) Regulations, 2016;
- the Petroleum (Exploration, Development, and Production) (National Content) Regulations, 2016;
- the Water Resources Regulations 1998;
- the National Environment (Waste Management) Regulations 1999;
- the Environmental Impact Assessment Regulations 1998;
- the Water (Waste Discharge) Regulations 1998;
- the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000; and
- the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

The responsible authority is the ministry of energy and mineral development. The national environment management authority is responsible for the environmental aspects.

Power

The laws are:

- the Electricity Act 1999, Cap. 145; and
- the National Environment Act Cap. 153.

Regulations issued include the Electricity (Application for Permit, License and Tariff Review) Regulations, 2007.

The electricity regulatory authority (ERA) regulates Uganda's electricity sector.

Mining

The laws are:

- the Mining Act 2003; and
- the Mining Regulations 2004 enacted thereunder.

The responsible authority is the ministry of energy and mineral development.

8.5 The Main Issues When Structuring Deals

The main issues to be covered when structuring a project finance deal include ensuring that regulatory consents and licences/approvals are obtained. Consideration should also be given to the availability of viable off-take agreements, as well as the acquisition of proper title/land rights, particularly where the shareholders are not citizens of Uganda. Transaction documents should be reviewed for local law compliance, particularly in regard to the granting of security interests over the project assets. Tax considerations are also a crucial issue and any tax concessions should be obtained from the right authorities. Tribunals in Uganda have ruled that tax exemptions are the preserve of parliament, and government officials such as ministers do not have the legal authority to grant tax exemptions. In relation to this, Uganda has double taxation treaties with Belgium, Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the United Kingdom and Zambia, and holding companies domiciled in such countries may enjoy some tax benefits.

Typically, the project company is a special purpose vehicle structured as a limited liability company. Uganda has a generally liberalised economy and, as such, restrictions to foreign investment are limited. Generally, project companies in Uganda tend to be foreign owned. Nonetheless, certain regulated sectors (particularly the oil and gas sector) have local content requirements mandating licensees, contractors and sub-contractors to give priority to goods and services that are produced and available in Uganda and which are rendered by Ugandan citizens and companies during procurement. In addition, they are required to reserve the contracts for ring-fenced goods and services like security, food and beverages and hotel accommodation so that they may be supplied by Ugandan citizens and companies.

8.6 Typical Financing Sources and Structures for Project Financings

Projects are typically financed by a combination of debt from commercial banks, multilateral development banks, export credit agencies and project bonds.

8.7 The Acquisition and Export of Natural Resources

Both the acquisition and export of natural resources, such as minerals, require a licence issued by the relevant regulator. However, ownership of minerals and oil in Uganda vests in the government on behalf of the people and, as such, private ownership of such natural resources is not recognised.

8.8 Environmental, Health and Safety Laws

Environmental laws include the National Environment Act 2003, the Environmental Impact Assessment Regulation 1998, and the National Environment (Waste Management) Regulations 1999.

The responsible authority is the national environment management authority ('NEMA'). The Mining Act requires licensees to comply with environmental protection requirements under the National Environment Act 2003.

In specific regard to the oil and gas sector, the following specific environmental regulations have been passed: the Petroleum (Exploration, Development, And Production) (Health, Safety, and Environment) Regulations 2016 and the Petroleum (Refining, Conversion, Transmission, and Mid-stream Storage) (Health, Safety, and Environment) Regulations 2016.

9. Islamic Finance

9.1 The Development of Islamic Finance

Islamic Finance was officially introduced into Uganda in January 2016 when the President of Uganda assented to the Financial Institutions (Amendment) Act, 2016. The Act put in place the legal framework for Islamic finance in Uganda. Furthermore, early last year the Financial Institutions (Islamic Banking) Regulations, 2018, were issued by the Central Bank. These regulations operationalise the Act and put in place practical steps for the operation of Islamic Finance in Uganda.

Ever since its introduction, Islamic Finance has experienced a slow but steady growth, with a mixed reaction from the public; while some were excited by its inception an equally large number were sceptical or resistant to it. The scepticism, experts believe, is largely premised on a lack of knowledge and/or appreciation of what Islamic finance is and how it works. The Central Bank reports that various entities have expressed interest in establishing Islamic Banking entities in Uganda. The Bank has intimated that it is currently processing three applications., one for an Islamic products window by a locally domiciled conventional Bank, and two applications by foreign entities interested in establishing fully fledged Islamic Banks in Uganda.

The Central Bank is yet to constitute the Shariah Advisory Council, as required by law. This council is meant to advise the Central Bank on matters of regulation and supervision of Islamic Banking systems in Uganda. The council is also meant to approve any product to be offered by financial institutions conducting Islamic Banking. Accordingly, the non-constitution of this Council could be hampering the growth of Islamic Finance industry in Uganda.

9.2 Regulatory and Tax Framework

Islamic banking regulations permit the central bank to issue a licence for operating an Islamic banking business in Uganda, either as a fully-fledged Islamic financial institution or to open an Islamic banking window alongside the conventional banking business. Each financial institution offering Islamic banking or Shari'a-compliant financial products is required to set up a Shari'a advisory board.

Following the introduction of Islamic banking, the ministry of finance has moved to make proposals for the introduction of regulations for the tax accounting of Islamic financial transactions. The ministry of finance also seeks to pass regulations for the value-added tax treatment of Islamic financial transactions and stamp duty on the execution of Islamic financial transactions such as *murabaha*, *mudaraba*, *musharaka*, *ijara*, *wakala*, *ju'ala*, *takaful* and *sukuk*. The rates to be applied will be prescribed by the minister of finance by statutory instrument with parliamentary approval.

Uganda has yet to make any sukuk issuances. Nonetheless, the capital markets authority of Uganda ('CMA') has issued a statement indicating plans to facilitate sukuk issuances in Uganda as part of its medium-term objectives. The infrastructure needs in Uganda, a growing, global, Muslim population and Uganda's membership in the International Organisation of Islamic Co-operation, create favourable conditions for Uganda to consider sukuk bonds as an alternative source of long-term capital.

9.3 Main Shari'a-compliant Products

There are no shariah-compliant products used in Uganda as yet. However, the Financial Institutions (Amendment) Act, 2016, provides for the following products that could be used in Uganda once institutional framework is fully set up:

- equity or partnership financing including *musharakah*, *musharakah*, *mutanaqisah* and *mudarabah*;
- lease based financing including *al-ijarah*, *alijarah thumma al-bai*;
- ale based financing including *i stisna*, *bai bithaman ajil*, *bai salam*, *murabahah* and *musawamah*;
- currency exchange contracts; and
- fee-based activity including *wakalah*.

9.4 Claims of Sukuk Holders in Insolvency or Restructuring Proceedings

Shari'a-compliant products are still novel in Uganda and, as such, the current restructuring and insolvency structures have not, to our knowledge, been tested in relation to sukuk instruments.

9.5 Recent Notable Cases

There have not yet been any notable cases regarding the application of shariah or the conflict of shariah and local law relevant to the banking and finance sector in Uganda.

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