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Legal Alert!

DOING BUSINESS IN UGANDA

FOREIGN DIRECTORS OF UGANDAN COMPANIES: KEY PRE-REQUISITES AND COMPLIANCE OBLIGATIONS

Uganda continues to attract foreign direct investment across sectors, and it is increasingly common for global investors to appoint foreign nationals as directors of companies incorporated in Uganda. While the Companies Act Cap.106 does not impose a general residency requirement on directors, foreign directors must nonetheless satisfy specific tax, immigration and company law requirements before they may lawfully act, and particularly before they may perform executive functions or work within Uganda. This alert sets out what a foreign director should know.

1. Eligibility to Serve as a Director

1.1 Age and capacity

A director must be at least eighteen (18) years of age and of sound legal capacity.

1.2 Nationality and residency

There is no general statutory requirement that a private company must have a Ugandan national or resident as a director, and as such, foreign nationals and non-residents may validly serve as directors. Exceptions apply in regulated sectors such as banking, where sector-specific legislation requires resident directors.

2. Fiduciary Duties of Directors

Directors owe statutory fiduciary duties, including those codified under section 194 of the Companies Act Cap. 106 such as, acting in a manner that promotes the success of the business of the company, acting in good faith in the interests of the company as a whole, exercising a degree of skill and care as a reasonable person would do and ensuring compliance with the law among others. Directors are exposed to fines and, in appropriate cases, criminal liability for breach of their duties.

3. Tax Compliance

Every director of a Ugandan company should have an individual Tax Identification Number (TIN) issued by the Uganda Revenue Authority (URA). In practice, the director's TIN is needed before the company can complete its own tax registration. The taxes that may apply to a foreign director depend on what the director is paid for, and whether the director is treated as resident or non-resident for Ugandan tax purposes.

If the director is paid a salary or other employment benefits by the Ugandan company, the company must deduct Pay As You Earn (PAYE) from those payments. If the director is paid directors' fees, sitting allowances, consultancy fees or similar payments for services, withholding tax may apply, especially where the director is not tax-resident in Uganda. If the director is also a shareholder and receives dividends, tax may also be withheld on those dividends.

4. Immigration

Where a foreign director will be resident in Uganda and actively participate in the company's management, administration, operations or other gainful activities on a continuing basis, the director must obtain a work permit before commencing such activities. The work permit application must be sponsored by the Ugandan company and is assessed on the basis of the appointment and the supporting company documents.

5. Banking and other considerations

Beyond tax and immigration compliance, foreign directors and their appointing companies should note the following before or shortly after appointment:

- Banks conducting KYC for corporate account opening will require director identification, the company's TIN, proof of residential address and, in some cases, in-person verification for signatories.
- Although not a statutory requirement, it is advisable to have a written service agreement or appointment letter setting out the director's role, remuneration, confidentiality obligations and other key terms.
- Directors' and Officers' (D&O) liability insurance is recommended as a matter of good corporate governance to protect directors against claims arising from the performance of their duties.

Conclusion

The appointment of foreign nationals as directors of Ugandan companies is generally permitted under Ugandan law. However, foreign directors and their appointing companies must ensure compliance with applicable tax, immigration and corporate governance requirements, particularly regarding TIN registration, the tax treatment of remuneration, and work permit registration.

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