

CSCO POSITION ON PROPOSED REGULATIONS FOR PART VIII OF THE PUBLIC FINANCE MANAGEMENT ACT, 2015- PETROLEUM REVENUE MANAGEMENT

Background

President Yoweri Museveni signed the Public Finance Management Act into law in February 2015. The Act contains provisions for petroleum revenue management. Specifically, Part VIII of the Act provides for collection, deposit, management, investment and expenditure of petroleum revenue that accrues to government from the exploitation of the petroleum reserves in Uganda.

To operationalize the Act, the Ministry of Finance, Planning and Economic Development drafted regulations. These regulations were shared with stakeholders for comments. However, the draft did not contain any proposals on petroleum revenue management. This policy brief is an attempt by civil society stakeholders to set out proposed regulations to guide the implementation of part VIII of the Act that deals with petroleum revenue management.

As a group, we feel strongly that Part VIII must be further elaborated upon through detailed regulations. While strong in many ways, the petroleum section currently lacks detail as some important components are left unspecified. If left unclear, this could lead to challenges of implementation of issues. To prevent issues arising and ensure good governance of oil revenues, it is essential that part VIII be accompanied by strong regulations.

A. Objectives of the Petroleum Fund

The objective of the Fund is to –

1. Support budget and macro-fiscal stability.
2. Provide heritage for future generations from savings and investment income derived from petroleum revenue.

Rationale

There should be explicitly defined main objectives for the Fund outlined in the law. While the law alludes to certain objectives, none are mentioned outright. The objectives of providing heritage to future generations as well as providing budget and macro- fiscal stability are not clearly enough outlined in the Act. Stating these explicit objectives helps bring the Act into accordance with the Oil and Gas Revenue Management Policy 2012.

B. Deposits into the Fund

1. For the purpose of section 57(5) petroleum received in kind by the National Oil Company shall be recorded as an asset according to the company that is paying the oil-in-kind and the value based on the rate pertaining on the day of receipt.

C. Withdrawals from the Petroleum Fund & Transfers to the Consolidated Fund

1. Notwithstanding Section 58, petroleum revenues transferred to the consolidated budget can be spent domestically. Funds in the Investment Reserve are savings, and should therefore only be invested internationally, to prevent circumventing the budget and creating macroeconomic imbalances.
2. Notwithstanding section 5(1), the Charter of Fiscal responsibility shall provide withdrawal rules guiding the split between transfers to the Consolidated Fund and Petroleum Revenue Investment Reserve with special attention to ensuring macroeconomic stability.
3. For the purpose of section 59 (3) “infrastructure and development projects” will be restricted to “projects defined and prioritized in the National Development Plans, the Vision 2040” or to “capital expenditure listed in the Medium Term Expenditure Framework.”
4. For avoidance of doubt, the term ‘Petroleum Revenue Holding Account’ in section 59(4) refers to the ‘Petroleum Fund’.
5. For purposes of Section 59(6), availability of funds at call will serve the purpose of budget stabilization.
6. For purposes of Section 59 (6) the phrase “be invested by Bank of Uganda” means invested as part of the Petroleum Investment Reserve according to the investment policy.
7. For purposes of section 59 (7) the ‘return on investments’ under subsection (6) shall be shall be returned to the Petroleum Fund as un-appropriated petroleum revenues.
8. In accordance with section 62 (3), no funds that have been appropriated will remain in the Petroleum Fund by the end of each financial year.

Rationale

Providing regulations regarding the withdrawal of funds from the Petroleum Fund further helps to illustrate and operationalize the objectives of the Fund.

Defining what is meant by ‘infrastructure and development projects of government’ will help to ensure petroleum revenues are earmarked to the intended spending, and not diverted by an overly broad definition of development projects. This is an opportunity to link more directly spending from oil revenues and development objectives defined in the National Development Plan.

D. Reports on Petroleum Fund to Parliament

1. For the purpose of section 61 (1) and (2) the information regarding “the source of the petroleum revenue” to be included in the report on the performance of the fund published on the Ministry website and in newspapers of ‘national circulation’ should include detailed

information disaggregated by company regardless of whether the funds are paid directly into the fund or are collected by the Uganda Revenue Authority.

Rationale

Disaggregated disclosure of revenue to the Fund by revenue type¹ and project² regardless of whether that payment was paid directly into the Petroleum Fund, through the Uganda Revenue Authority or another government entity will help to increase transparency and help parliament and other stakeholders to track petroleum revenue collection. The revenue types that mainly contribute to petroleum revenue include;

- a. Government share of production
- b. Taxes Royalties
- c. Bonuses
- d. Fees
- e. Dividends
- f. Payments for infrastructure improvements

E. The Petroleum Revenue Investment Reserve

1. For the purpose of section 62(1) and 59(6), the objective of the Petroleum Revenue Investment Reserve will be to serve as a stabilization account as well as a heritage fund for future generations.

Rationale

The rationale of defining the objectives of the PRIR is to determine where the savings can be invested, and clarify what the “qualifying instruments” of section 63 (2)(c) would be. In addition, the objectives of the PRIR will also determine when the savings and returns can be accessed and withdrawn. In particular, outlining the objectives will help to clarify:

- i. Whether the reserve has a stabilization role. If it does, then a specified portion of the savings should be invested in liquid assets (bonds, money market, etc.) that can easily be accessed in case of budget shortfalls.
- ii. Whether it is for future generations only, then the restrictions on access should be tighter. For instance, the regulations should stipulate that the savings may only be accessed once oil reserves have been depleted. In that case, the savings would be invested in long-term, less liquid assets (stocks, real estate, etc.).

¹ The definitions of these payment types should align with the definitions provided in the EU Accounting Directive 2013/34/EU of June 2013 - Chapter 10, Article 41 (5). This will ensure that the information provided is compatible with the emerging global standard for EU, US and Norwegian registered/listed companies and EITI countries.

² ‘Project’ means the operational activities which are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government

F. Investments under the Petroleum Revenue Investment Reserve

1. For the purpose of section 70(2), the report of the Bank of Uganda would provide disaggregated investment disclosures for all investments under the PRIR.

Rationale

Disaggregated disclosure of investments would bolster Parliament oversight role in terms of detailed areas where the petroleum investment reserve is being invested, and reduce opportunities for unprofessional conduct of fund managers.

G. Management of the Petroleum Revenue Investment Reserve

1. For the purposes of Section 63 (2) (c) “any other qualifying instrument prescribed by the Minister” should be on the advice of the Investment Advisory Committee. The allowable qualifying instruments should also be clarified to specify limitations to this discretion.

Rationale

The act currently allows the Minister to use their discretion in determining a qualifying instrument for investment from the Reserve. The definition of a qualifying instrument should not be left to the discretion of the Minister. Rather, the regulations should outline explicit investment rules including an exact definition of appropriate qualifying instruments for investment. While an instrument designated by the Minister must be tabled before Parliament as a new addition to the law, the regulations could still help provide more clarity by clearly delineating and identifying qualifying instruments so as to prevent any issue.

H. External Investment Managers

1. For purposes of section 64 (9) the Bank of Uganda will publish the criteria and process for selection of/ and the performance of the external manager.

Rationale

Publication of the criteria for selection of/ and the performance of the external Fund Manager and would increase accountability of the Bank of Uganda to Parliament and Ugandan citizens. External managers could also be required to a code of conduct and ethical standards.

I. Financial statements and Performance reports on the Petroleum Revenue Investment Reserve

1. For purposes of section 72 (2) the Annual report of the PRIR should contain information regarding the:
 - i. Size of the fund,
 - ii. Returns on investment,
 - iii. Geographic location of investments,

- iv. Categories of investments (“instruments”, i.e. fixed income, equity, etc.),and;
- v. List of specific investments and the currency composition of investments.

Rationale

Adequate transparency and information sharing regarding investments made under the reserve is necessary in order to ensure accountability as well as adherence to the investment policy.

J. Sharing of Revenues from Royalties

1. For purpose of section 75(9) ‘Development purposes’ should be defined in a way that is consistent with the National Development Plan and Vision 2040.
2. For avoidance of doubt, the one percentage point share of royalties due to a gazette cultural or traditional institution will be calculated after deduction of the six percentage points due to local governments in the oil producing regions.

Rationale

Similar to the national level, defining what is meant as ‘development purposes’ will help to ensure petroleum revenues are earmarked for appropriate spending, and not diverted or misused due to an overly broad definition of development.

The exact practice for calculating the one percentage point share of royalties due to cultural or traditional institutions must be explicitly outlined to avoid misinterpretation.