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THE REPUBLIC OF UGANDA

**ATTORNEY GENERAL'S CHAMBERS**  
P.O. BOX 7183,  
Kampala, Uganda

5<sup>th</sup> July, 2024

Hon. Ministers  
Hon. Ministers of State  
Permanent Secretaries  
Accounting Officers

**ADVISORY ON MEMORANDA OF UNDERSTANDING BETWEEN:**

- (A) THE GOVERNMENT AND COMMERCIAL ENTITIES**
  - (B) REGULATORY BODIES AND REGULATED ENTITIES**
  - (C) MINISTRIES, DEPARTMENTS, AGENCIES AND LOCAL GOVERNMENTS**
  - (D) MINISTRIES, DEPARTMENTS, AGENCIES, AND LOCAL GOVERNMENTS; AND NON-GOVERNMENTAL ORGANISATIONS/COMMUNITY-BASED ORGANISATIONS**
  - (E) MINISTRIES, DEPARTMENTS, AGENCIES, AND LOCAL GOVERNMENTS AND FOREIGN COUNTRIES OR ORGANISATIONS**
1. Article 119(5) of the Constitution provides that no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from the Attorney General.
  2. From time to time, this office receives requests from different Ministries, Departments, Agencies and Local Governments (MDA/LGs) for review and clearance of proposed memoranda of understanding (MOUs) with commercial entities concerning targeted projects; mainly in the infrastructure, water, power, information and communications

technology, etc. sectors. The office also receives, almost with the same regularity, proposed MOUs between and among MDA/LGs in relation to the performance of their respective legal and policy mandates.

3. In other instances, reports or images of Government officials signing MOUs with foreign or local entities appear in the social and mainstream media without this Office having been consulted on the legality, appropriateness or necessity of such MOUs.
4. We have, therefore, found it necessary to issue this Advisory Circular, in order to prevent any further involvement of the Government in unlawful agreements by MDA/LGs.
5. An agreement, by whatever name called, is a solemn document that serves as a record of the commitments of both parties. Consequently, an agreement is not to be entered into without deliberate consideration of its legal or policy basis, purpose, effect, etc.
6. Commercial contracting by the Government (through MDA/LGs) is a consequential and structured process governed and regulated by specific legislative enactments. These, mainly, are:
  - (a) The Public Procurement and Disposal of Public Assets Act, 2003 (as amended); and
  - (b) The Public-Private Partnerships Act, 2015.
7. The above legislative enactments specify the types of commercial agreements that the Government (as represented by an MDA/LG) may enter into, as well as the processes that must be adhered to before entering into such agreements. In either case, the processes are intended to, and do, serve as handmaidens of the following basic tenets of public procurement:
  - (a) non-discrimination;
  - (b) accountability;
  - (c) fairness;
  - (d) transparency;
  - (e) competition;
  - (f) economy;

- (g) efficiency; and
- (f) value for money.

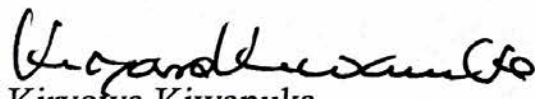
8. Investment agreements, too, are governed by the relevant sector or subject matter laws. The said laws prescribe procedures and other regulatory aspects that must be followed by applicants, licensees, etc. before or after the execution of the agreements.
9. None of the laws referred or alluded to above provides for execution of an MOU as part of the pre-contracting process. Consequently, we have come to the conclusion that the practice of entering into MOUs, especially with prospective contractors, is inimical to the letter and spirit of the tenets referred to in paragraph (7) above. More significantly, it has turned out, intended or not, to be a device that is used to circumvent the competitive processes prescribed by the respective laws. This is achieved by tying the Government to a particular contractor on grounds that since the contractor "assisted" the Government by conducting the feasibility studies, it is only "logical" or "fair" that he or she be awarded the commercial contract upon the required funds being obtained.
10. Similarly, there is no justification for two (or more) Government entities entering into an MOU in order for them to work together or to assist each other in the performance of their respective mandates. In the same vein, there is no legal basis or justification for a Ministry, local government or any other statutory or regulatory authority entering into an MOU with a private entity that the Ministry, local government or statutory authority is by law mandated to regulate or facilitate. Technically, such an MOU, whose purpose and effect is to create between the regulator and the regulated a non-arm's length relationship, is unlawful.

The only exception to the above would be an MOU between one MDA/LG and another MDA/LG for the execution of works under Force Account Mechanism and/or Contracting Out, pursuant to sections 39(b)(i) and 95A of the Public Procurement and Disposal of Public Assets Act, 2003 (as amended) respectively.

11. MOUs are best-suited for non-commercial arrangements between States, State agencies, etc. for general cooperation in any areas of mutual interest.
12. This, therefore, is to advise that, going forward:
  - (a) Any MDA/LG submitting an MOU preceding a commercial contract for our review and clearance must indicate the specific provision of the law that provides for the execution of the MOU. Where such clarity shall be absent, this Office shall not advise the signing of the same;
  - (b) Likewise, this Office shall not recommend signature of an MOU between a regulatory body and a regulated private entity – except where there shall be a clear legal or policy reason to do so.
  - (c) An MDA/LG must in every case follow the legally-prescribed procedures to the letter. An exception may only be made where the conclusion of [the] MOU with a prospective contractor is a prerequisite to accessing a given type of financing. The other exception shall be where the President (or the Cabinet) has determined that, notwithstanding anything, entering into the MOU is of strategic interest to the country.
  - (d) A Government entity does not require an MOU with another in order for the two to cooperate on, or coordinate, activities falling under their respective mandates. Accordingly, this Office shall not be advising Government entities intending to work together on any subject matter to sign an MOU. Such entities may document their commitments or agreed *modus operandi*, if they must, through usual official correspondence, minutes or records of meetings, etc. The only exception shall be those compatible with the law, such as those relating to the implementation of the Force Account mechanism or Contracting Out under the Public Procurement and Disposal of Public Assets Act, or those to be entered into on the basis that it is a requirement of a financing agreement between the Government and a development partner.
  - (e) An MDA/LG submitting an MOU with a non-governmental organization (NGO) or a community-based organization (CBO) for

review by this Office, shall, except one to be concluded pursuant to reg. 42(1) of the Non-Governmental Organizations Regulations, 2017, be required to indicate:

- (i) The particular mandate of the MDA/LG to which the MOU relates;
  - (ii) Whether the MDA/LG has signed a similar MOU with any other NGO or CBO, and if so, why it is necessary to enter into another MOU with another NGO or CBO;
  - (iii) The actual benefits to be derived from entering into the MOU; and
  - (iv) The track record of the NGO or CBO.
13. This Office will recommend signature of an ordinary, non-treaty MOU with a foreign country (or a state agency of a foreign country) or an international organization only where there is proof that the Ministry of Foreign Affairs has been consulted and that it has expressed its no-objection.
14. Finally, it must be underscored that any MOU entered into, whether with a foreign or domestic entity, without the prior advice or approval of this Office shall be null and void. Further, non-compliance with the law may attract criminal and/or civil actions [liability] against the breaching public official as previously observed by courts of law.



Kiryowa Kiwanuka

**ATTORNEY GENERAL**

c.c.: Rt. Hon. Prime Minister  
Hon. Minister of Justice and Constitutional Affairs  
Hon. Deputy Attorney General  
Head of Public Service and Secretary to Cabinet  
Auditor General  
Solicitor General  
Deputy Solicitor General