

INVESTING IN UGANDA - NEW DEVELOPMENTS ON BENEFICIAL OWNERSHIP AND COMPLIANCE

1.0

Introduction and background

Uganda introduced the concept of beneficial ownership under the Companies (Amendment) Act 2022, Companies (Beneficial Owners) Regulations, 2023, the Partnership (Amendment) Act 2022, the Partnership (Beneficial Owner) Regulations, 2023, the Trustees Incorporation (Amendment) Act, 2022 and the Trustees Incorporation (Beneficial Owners) Regulations, 2023

All these laws require all companies to keep a register of their beneficial owners. These laws follow the requirement to file beneficial owners under the Anti-Money Laundering Act (AMLA) as Amended 2017, Mining and Minerals Act, 2022, and the Income Amendment Act, 2021

Financial Action Tax Force (FATF) lays down the international beneficial owner's standards; the FATF is the international standard setting body on Anti Money Laundering. The international standards of exchange of information for tax purposes (EOI standards) currently mandate transparency of beneficial owners, including the EOIR standard for transparency and information

exchange upon request and the AEOI standard for automatic transmission of financial account information. From a taxation standpoint, disclosing the identities of the persons behind entities not only aids a country in maintaining the integrity of its own tax system, but provides treaty partners with tools to meet their own tax objectives more effectively.

The United Nations Convention against Corruption (UNCAC) (to which Uganda is a state party) requires States Parties to promote transparency private enterprises, including actions pertaining to the identities of legal and natural persons engaged in the formation and management of business entities. The UNCAC further urges State Parties to establish a thorough domestic regulatory and supervisory framework for banks and non-bank financial institutions in order to collect and record information on business organizations' beneficial ownership for the aim of combating money laundering.

Any person who ultimately owns or controls a legal body or arrangement, such as a company, on whose behalf a transaction is being carried out, is referred to as a "beneficial owner." Global concern about the concealing of significant dubious financial activities made possible by enabling such beneficiaries to stay anonymous is growing, and several countries are calling

for more transparency regarding beneficial ownership and it is on this basis that Uganda promulgated laws to bring the country to the international standard requirement for beneficial owners.

To ensure alignment with the international standards on 11th day of January 2023, Uganda Registration Services Bureau issued a circular requiring all companies and partnerships to file their beneficial owners' information with the Registrar of companies within 30 days from date of circular; it noted that companies and partnerships would not be allowed to make transactions with URSB and registrations unless they provided beneficial owners' information.

In addition, the Uganda NGO Bureau reiterated the message in a circular dated 23rd January 2023 encouraging NGOs registered with URSB to file their beneficial ownership information with URSB.

For new entities intending to be registered with URSB, it is a requirement to file the beneficial ownership information at the time of incorporating the company.

This brief by Kleeva Associated Advocates is intended to inform our clients and partners on this process and new requirement following a series of queries from our clients.

2.0 --- Who is a beneficial owner?

The Companies (Beneficial owners) Regulations, Regulation 2 defines a beneficial owner as a natural person who has final ownership or control of a company or a natural person on whose behalf a transaction is conducted in a company and includes a natural person who exercises absolute control over an entity.

A natural person is a title used to identify an individual human being and is different from a legal person, which can be an individual or a company/body corporate.

A beneficial owner thus has the ultimate control

over the company or partnership. This person(s) may fund and determine the decisions within a company or partnership.

A beneficial owner is distinct from a shareholder.

3.0 --- Who is required to file beneficial ownership information?

Every Company, Trustee and Partnership registered with URSB is required to file the beneficial ownership information. Of these, private companies limited by shares including single member companies, public companies, companies limited by guarantee; these include churches and NGOs, companies registered as foreign companies with branches in Uganda, limited liability partnerships.

Companies whose members are companies will need to provide details of the person(s) who control the companies. This is so for subsidiary companies who have to provide details of who exercises significant control in the company.

For listed companies, given the big number of shareholders and the constant change in shareholding, such listed companies may write to the registrar of companies notifying them of the company being a listed company and the registrar may advise. This is so because the Beneficial Ownership regulations do not provide a percentage threshold beyond which a beneficial owner is to be disclosed.

Where a company does not have a beneficial owner, they are still expected to file the beneficial owners' information and indicate that they do not have a beneficial owner.

If you are a not for profit organization incorporated outside Uganda but have a permit to operate in Uganda, in this case registered with the NGO Bureau under section 34 of the Non-Government Organizations Act of 2016 you are not bound by the beneficial owners clauses to submit beneficial owner's information with URSB, but other financial institutions and government entities may require you to submit such information.

4.0

What is the rationale for submitting particulars of Beneficial owner?

Identifying the beneficial owner of a company is for the purpose of preventing money laundering and the rationale is to stream-line Ugandan laws with international anti-money laundering requirements. Filing the identity of the person who funds and makes decisions for the company behind the company is believed to fight tax evasion, corruption, money laundering and terrorism financing.

The beneficial owner register discloses the personal information of the beneficial owners of a company or partnership, the nature of ownership or control they have in the company or a partnership, and the date they became or ceased to be beneficial owners.

A notice of the place where the register is kept, together with a copy of the beneficial owners' register, must be submitted to the URSB within 14 days from the date of creation of the register.

5.0

What information is required under Notice of Beneficial Owners (particulars required for the beneficial owner)?

The notice takes the format of form 1 in the Companies (Beneficial Owners) Regulations, 2023, the Trustees Incorporation (Beneficial Owners) Regulations, 2023 and the Partnerships (beneficial Owners) Regulations) 2023 which require.

1. Company name
2. Registration number of the company
3. Place and address

4. Date when a person became a beneficial owner.
5. Particulars of beneficial owner
 - a) Full name of beneficial owner
 - b) NIN/passport details
 - c) Nationality
 - d) Date of birth
 - e) Address
 - f) Postal address
 - g) Current email address
 - h) Current telephone number
 - i) Occupation

6.0

What is the Nature of beneficial ownership or control?

This takes the form of percentage shares person holds in the company, /partnership/ percentage of voting rights person holds in the company/ right to appoint or remove a majority of the board of directors of the company/ whether a person exercises significant influence or control over the company as provided in Form 1 in the First Schedule of the Companies (Beneficial Owners) Regulations.

7.0

Can Change in beneficial owner's information be effected?

Where the beneficial owner of the company changes, the company/partnership must notify the registrar of companies of such change and also amend the register of beneficial owner to reflect such change in accordance with Section 119A of the Companies Act and Regulation 6 of the Companies (Beneficial owner) Regulations.

8.0

What happens if an entity does not provide information on beneficial owner?

There are offences and penalties for failure to provide this information.

According to Regulation 10 of the Companies (Beneficial Owners) regulations, filing of false statements by any person on a beneficial owner information, knowing such statements to be false, such person is liable to a daily fine of twenty-five (25) currency the equivalent of which is five hundred Uganda shilling.

- For companies, failure to keep a register of beneficial owners and failure to notify the registrar of companies within fourteen days from date of creation of register/ change of register under Regulation 3 of the Companies (Beneficial Owner) Regulations makes one liable to a daily default fine of five currency points which is the equivalent of five hundred Uganda shillings (UGX 500,000/-).
- For Partnerships, failure to keep a register of beneficial owners and failure to notify the registrar of companies within fourteen days from date of creation of register/

change of register under Regulation 3 of the Partnership (Beneficial Owners) Regulations makes one liable to a daily default fine of five currency points which is the equivalent of five hundred Uganda shillings (UGX 500,000/-).

and

- For Trustees, failure to keep a register and failure to inform the minister responsible under Regulation 3 of the Trustees Incorporation (beneficial Owners) Regulations makes one liable to a daily default fine of five currency points which is the equivalent of five hundred Uganda shillings (UGX 500,000/-).

7.0

Conclusion

This being a new development in Uganda for Companies, Trustees and Partnerships, there is need for continuous education to ensure compliance and build our understanding of these new developments.

No information contained in this article should be construed as legal advice and neither is it intended to be a substitute for legal counsel on any subject matter. The information contained herein is general legal information only intended to act as a guide based on general practice.

For further information and clarification on this content contact us on:



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