

# **BENEFICIAL OWNERSHIP LAWS IN UGANDA AND THE ROLE OF STAKEHOLDERS**



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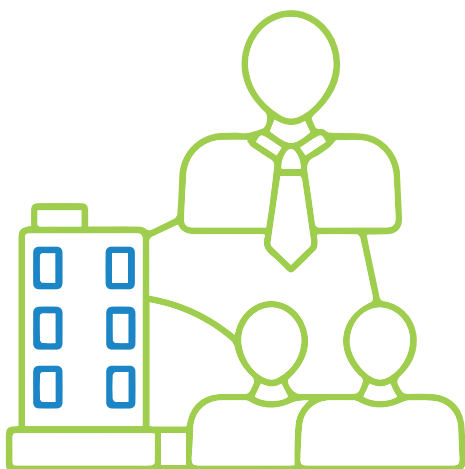
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# TABLE OF CONTENTS

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WHAT IS BENEFICIAL OWNERSHIP?	1
WHAT ARE THE COMMON MISCONCEPTIONS ABOUT BENEFICIAL OWNERSHIP?	2
WHY IS BENEFICIAL OWNERSHIP DISCLOSURE IMPORTANT?	3
WHICH LEGAL FRAMEWORKS PROVIDE FOR BENEFICIAL OWNERSHIP	4
WHAT ARE THE OBLIGATIONS OF THE DIFFERENT GOVERNMENT STAKEHOLDERS?	7
WHAT ARE THE STEPS SO FAR TAKEN TO ADDRESS BENEFICIAL OWNERSHIP IN UGANDA?	8
WHAT ARE THE OFFENCES AND PENALTIES FOR NON-COMPLIANCE WITH BENEFICIAL OWNERSHIP LAWS?	9

# 1 | WHAT IS BENEFICIAL OWNERSHIP?



Beneficial ownership (BO) refers to the ultimate ownership or control of a legal arrangement, entity or asset. It identifies the individual(s) referred to as beneficial owners who enjoy the benefits of ownership, such as profits and voting rights. According to Ugandan laws, a beneficial owner means a natural person or persons who exercises ultimate control over a company or a natural person on whose behalf a transaction is conducted in a company.<sup>1</sup> In essence, beneficial owners are persons that own or control an interest in a legal entity or arrangement like a company, partnership, trust or foundation, even if they are not listed as official owners.

Beneficial ownership is distinguished from legal ownership, but in most cases, the legal owner(s) – the person who owns the legal title and beneficial owner(s) – a person who is entitled to the benefits of the property may be one and the same.<sup>2</sup> In Uganda, beneficial ownership legislation does not set a threshold and obligated entities are required to register owners regardless of percentage in shareholding.<sup>3</sup> However, the Mining and Minerals Act, 2022 defines a beneficial owner in the context of a holder of a license and sets a threshold for persons required to provide beneficial ownership in a legal entity.<sup>4</sup> Under section 43 (7) a person automatically qualifies to be a beneficial owner where such a person owns five percent or more of the legal entity in question.

<sup>1</sup> This definition is found in The Companies (Amendment) Act, 2022, among other pieces of legislation.

<sup>2</sup> <https://www.meaby.co.uk/the-difference-between-legal-and-beneficial-ownership/>

<sup>3</sup> <https://www.dlapiperafrica.com/en/uganda/insights/2023/beneficial-ownership-in-Uganda-.html>

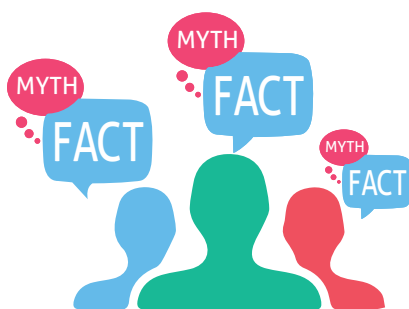
<sup>4</sup> Refer to Sections 35(2) (b) (iv), 41(d) (ii), 43 (5) (6) and (7) and Section 60 of the Mining and Minerals Act, 2022.



## 2 | WHAT ARE THE COMMON MISCONCEPTIONS ABOUT BENEFICIAL OWNERSHIP?

There are several common misconceptions about beneficial ownership, which include:

- ➔ beneficial ownership disclosure applies only to large corporations;
- ➔ beneficial owners are high net-worth individuals;
- ➔ beneficial ownership is only relevant in developing countries with weak governance structures, and;
- ➔ beneficial ownership is a complicated topic that only experts can understand.



The fact is, beneficial ownership disclosure is relevant for all types and sizes of companies. Being a beneficial owner is not limited by net-worth. Beneficial ownership transparency is an important issue in both developed and developing countries. While it can be a complex topic, beneficial ownership can be explained in a clear and simple manner.



## 3 | WHY IS BENEFICIAL OWNERSHIP DISCLOSURE IMPORTANT?



Beneficial ownership disclosure has become an important concept in the corporate transparency discourse due to challenges associated with the use of shell, anonymous and front companies to undertake business transactions. The Panama Papers leaks revealed how individuals and companies use offshore companies to hide their identity, exposing high-profile individuals found to have beneficial ownership of companies that were involved in illegal activities.

Therefore, beneficial ownership disclosure, or corporate transparency, can be used to solve a number of challenges, including:

- » **Addressing financial crimes.** By identifying the individuals that ultimately own or control a company, beneficial ownership information enables authorities to investigate and/or prosecute individuals or entities engaged in financial crimes such as corruption, money laundering, tax evasion, and terrorist financing.
- » **Minimizing customer risk.** Having access to beneficial ownership information allows business entities, such as financial institutions, to have a clearer understanding of the risks associated with a potential customer or third party.
- » **Promoting corporate responsibility.** Beneficial ownership can be used to promote corporate responsibility by allowing stakeholders to understand who ultimately controls a company and therefore hold them accountable for their actions and encourage them to act in a socially responsible manner.



## 4 | WHICH LEGAL FRAMEWORKS PROVIDE FOR BENEFICIAL OWNERSHIP?

### Key International And Regional Frameworks For Beneficial Ownership

Globally, there is a push for countries to enact robust legislation obligating legal entities and arrangements to report information on their beneficial owners. The international and regional frameworks that support beneficial ownership legislation include the following:

- » **Financial Action Task Force (FATF):** FATF Recommendation 24 aims to strengthen the international standards on beneficial ownership by requiring countries to ensure that competent authorities have access to adequate, accurate and up-to-date information on the true owners of legal entities while FATF Recommendation 25 aims at ensuring transparency and beneficial ownership (BO) of legal arrangements.
- » **UN High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel):** The FACTI Panel released a report in February 2021 which provided a set of 14 recommendations for achieving financial integrity for sustainable development, including a recommendation (Rec. 3A) that calls for countries to establish a centralized BO registry.
- » **Report of the High-Level Panel on Illicit Financial Flows from Africa:** The Panel calls for countries to require transparency in the ownership and control of any legal entity that can hold assets or open bank accounts.
- » **Africa Mining Vision Governance Framework:** Encourages countries to enact laws and put in place legal and institutional frameworks for contract transparency including BO disclosure.

### The Legal Framework In Uganda



The main law that provides for beneficial ownership is the Anti-Money Laundering Act, 2013 (as amended in 2022). This law requires companies to identify and maintain accurate records of their beneficial owners, and to submit this information to the government for inclusion in a central register.

In addition, there are other key laws and regulations in place that relate to beneficial ownership such as the Companies Act, 2012, Income Tax Act, 2014, and Petroleum (Exploration, Development and Production) Act, 2013. These laws provide for the disclosure of beneficial ownership information for tax and company registration purposes.

In 2022, the government introduced a number of amendments to the existing laws to

strengthen the implementation of BO requirements. These amendments include the Companies (Amendment) Act, 2022, Partnerships (Amendment) Act, 2022, Cooperative Societies (Amendment) Act, 2022, Trustees Incorporation (Amendment) Act, 2022, and Income Tax (Amendment) Act, 2022. The government also repealed the Mining Act, 2003 and enacted the Mining and Minerals Act, 2022.

### What do Uganda's laws say about beneficial ownership?

No.	Principal Act	Amendment	Relevant Section(s)	Summary
1	The Companies Act, 2012	The Companies (Amendment) Act, 2022	Section 1(a)	Defines "beneficial owner" for purposes of companies
			Section 21	Provides for the beneficial owners register of a company, contents of the register, where the register can be kept, notice when changes are made empowers the Minister to make regulations for beneficial ownership and penalties for default.
2	The Income Tax Act, 2019	Income Tax (Amendment) Act 2022	Section 2	Provides for the definition of "beneficial owner," introduces the definition of a "legal person," provides a methodology for the identification of beneficial owners for legal entities and a group of beneficiaries who are not individually identified in the trust deed.
3	The Anti-Money Laundering Act, 2013	The Anti-Money Laundering (Amendment) Act, 2017	Section 1(b)	Provides a definition that clarifies who is the beneficial owner.
4	The Partnerships Act, 2010	The Partnerships (Amendment) Act, 2022	Section 1	Defines "beneficial owner" for purposes of partnerships
			Section 2	Provides for the beneficial owners register under a limited liability partnership, contents of the register, where the register can be kept, notice when changes are made, empowers the Minister to make regulations for beneficial ownership and penalties for default.
5	The Trustees Incorporation Act, CAP 165	The Trustees Incorporation (Amendment) Act, 2022	Section 2	Defines "beneficial owner" for purposes of trustees
			Section 3	Provides for the beneficial owners register for trustee, contents of the register, where the register can be kept, notice when changes are made, empowers the Minister to make regulations for beneficial ownership and penalties for default.
6	The Cooperative Societies Act, CAP 112	The Cooperative Societies (Amendment) Act, 2022	Section 1	Defines "beneficial owner" for the purpose of cooperative societies
			Section 2	Provides for the beneficial owners register for cooperative societies, contents of the register,
7	The Mining Act, 2003	Mining and Minerals Act, 2022	Section 35	Requires the name of every shareholder who is a beneficial owner of five percent or more when applying for a prospecting license
			Section 41	Requires the name of any person who is the beneficial owner of more than five per cent of the issued share capital when applying for an exploration license
			Section 43 (5, 6 and 7)	Defines beneficial ownership in the context of mining and mineral, defines the qualifying criteria of a beneficial owner and prohibits beneficial owners from holding more than five exploration licenses at any given time
			Section 60	Requires names and nationalities of beneficial owners of five percent or more of the issued share capital when applying for large-scale mining license
			Section 283 (1, 2, 4, and 5)	Requires the provision of accurate information on the beneficial ownership as part of the application or bid documents and throughout the duration of a mineral right or license, and requires the minister to promptly publish beneficial ownership information of mineral rights, license or permit holders, defines beneficial ownership and qualifying criteria.



## 5 | WHAT ARE THE ROLES OF DIFFERENT GOVERNMENT STAKEHOLDERS?

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The mandate to oversee beneficial ownership information collection and disclosure to various government agencies. The following key institutions have a major role in BO implementation in Uganda:

**Uganda Registration Services Bureau (URSB):** The URSB is a government agency mandated among others, to provide business registration services. The URSB is also responsible for the implementation and maintenance of a central BO register in Uganda.

**Financial Intelligence Authority (FIA):** The FIA is Uganda's financial intelligence unit and serves as its national centre for the receipt and analysis of financial data and the dissemination of financial intelligence to relevant authorities and to combat money laundering. It ensures that accountable persons (as defined in the Second Schedule of The Anti-Money Laundering Act) conduct the necessary customer due diligence and collect the BO information of all customers based on the nature of transactions.<sup>5</sup> Additionally, the FIA coordinates between accountable persons and law enforcement agencies to verify BO information.

**Department of Geological Survey and Mines (DGSM):** Under the Ministry of Energy and Minerals Development, the DGSM is responsible for the collection, processing, maintenance, verification, and disclosure of BO information from all companies that apply for a mining exploration license in Uganda.<sup>6</sup>

**Petroleum Authority of Uganda (PAU):** The PAU bears the overall responsibility to collect and maintain the beneficial ownership information of all companies that apply for a petroleum exploration license.

**Uganda Revenue Authority (URA):** The URA is charged with assessing, collecting, and accounting for tax revenues. URA also collects BO information from companies to ensure double taxation exemptions are appropriately applied.

**Uganda Extractives Industries Transparency Initiative (UGEITI):** In 2020, Uganda joined the Extractive Industries Transparency Initiative (EITI), which requires the implementing countries to maintain a publicly available register of beneficial owners of corporate entities in the extractive industry. EITI promotes the open and accountable management of oil, gas, and mineral resources. UGEITI coordinates with extractive stakeholders to collect and publish BO information of all companies that bid for, invest or operate in the extractive sector in Uganda.

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<sup>5</sup> The nature of the transactions could relate to the volume, origin of transactions and movement of cash and Bearer Negotiable Instruments

<sup>6</sup> Section 283<sup>(1)</sup>(2)(3) of the Mining and Minerals Act, 2022

## 6 | WHAT ARE THE STEPS SO FAR TAKEN TO ADDRESS BENEFICIAL OWNERSHIP IN UGANDA?



Enactment of new laws and amending of existing laws to provide for BO collection and disclosure.



Enacting BO regulations.



Issuing public notice for compliance with BO Laws.



Public awareness campaign through the mainstream media, social media and public meetings.



## 7 | WHAT ARE THE OFFENCES AND PENALTIES FOR NON-COMPLIANCE WITH BENEFICIAL OWNERSHIP LAWS?

Offence	Penalty
Failure to keep a register of beneficial owners	Daily default fine of twenty-five currency points (UGX 500,000 approximately USD 135).
Failure to notify the registrar of companies of any changes in the beneficial owners or the place where the register is kept.	Daily default fine of twenty-five currency points (UGX 500,000 approximately USD 135).
Making false statements	Daily default fine of twenty-five currency points (UGX 500,000 approximately USD 135).



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