



# Q & A



## ON BENEFICIAL OWNERSHIP IN UGANDA

Uganda's main law on beneficial ownership is the Anti-Money Laundering Act. It requires certain 'accountable persons' to identify the beneficial owner of their clients for the purpose of money laundering prevention. In addition, references to beneficial ownership can now also be found in the Ugandan tax law and mining law.

### WHAT ARE THE LAWS THAT COVER BENEFICIAL OWNERSHIP?

There are three main laws that cover beneficial ownership in Uganda:

- 1. The Anti-Money Laundering (AML) Act, 2013, its implementing regulations from 2015, and amendments to the AML Act passed in 2017.
- 2. The Mining Act, 2003. This Act is expected to be overhauled through the enactment of the Mining and Mineral Bill, 2019.
- 3. The Income Tax Amendment Act.

### HOW DOES THE LAW DEFINE BENEFICIAL OWNERSHIP?

LAW	THE BENEFICIAL OWNER IS ...					
AML Act	The natural person who	ultimately owns or controls exercises ultimate control	a customer over a legal person or legal arrangement	OR	on whose behalf a transaction is conducted	
Mining Law	Any person	with more than 5% of the issued share capital	of a body corporate with a share capital			
Mining and Mineral Bill	Any natural person	with control, possession, custody or enjoyment, of a reasonably significant economic interest in who owns 5% or more of	a given legal entity	OR	receives significant economic benefit	directly or indirectly
Income Tax Act	The natural person who	owns or has a controlling interest over	a legal person other than an individual	AND	who exercises control over the management and policies of a legal person or legal arrangement	directly or indirectly whether through ownership or voting securities, by voting or otherwise.





### WHY IS IT IMPORTANT TO IDENTIFY THE BENEFICIAL OWNER?

Identifying the real person that beneficially owns a company or corporate structure can help fight corruption, tax evasion, terrorist financing and money laundering. Corruption scandals, such as the embezzlement of up to **UGX 65.8 billion (US\$37 million)** from the Global Fund to Fight AIDS, Tuberculosis and Malaria in 2005, took place because government officials used companies as vehicles to move and hide their illicit profits. Collecting beneficial ownership information provides greater financial transparency and helps law enforcement with investigations.

### WHAT IS ITS MAIN OBJECTIVE?

The main objective of the AML Act is the prevention of money laundering. The law requires certain 'accountable persons' that can be used for the purpose of money laundering by their clients, to identify and verify the identity of the beneficial owner of their clients.



### WHAT TYPES OF ENTITIES ARE COVERED UNDER IT?

All legal entities and legal arrangements that are clients of 'accountable persons' are covered under it. This includes all companies, partnerships, trusts, LLCs as well as other legal entities and arrangements.



If adopted, the Mineral and Mining Bill will cover all companies applying for, bidding for, or holding a license for a mineral right.



### WHO IS RESPONSIBLE FOR COLLECTING THIS INFORMATION?

The AML Act lists 15 different categories of 'accountable persons' that are required to collect beneficial ownership information on their clients. This includes legal professionals and accountants, trust and company service providers, casinos, real estate agents, dealers in precious metals and gems, financial institutions, investment brokers, insurance companies, and NGOs, churches and other charitable organizations.



### HOW WILL THE INFORMATION BE STORED?

The accountable person is required to keep records of all the information it collects. Uganda does not have a beneficial ownership registry at present.



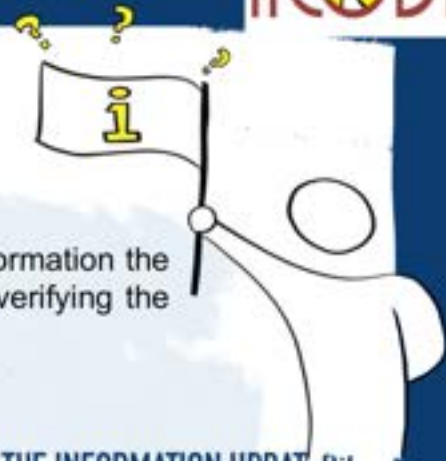
If adopted, the Mineral and Mining Bill will require the Minister for minerals to maintain this information and publish it in a publicly accessible format on its website.





## WHAT KIND OF INFORMATION MUST BE COLLECTED?

Neither the AML Act nor the AML Regulations specify what kind of information the accountable person has to collect for the purpose of identifying and verifying the identity of the beneficial owner.



## WHEN IS THE INFORMATION UPDATED?

The accountable person has to collect the beneficial ownership information before or during the course of opening an account for a customer, establishing a business relationship or conducting a transaction. They have to ensure this information is kept up to date, but the law does not specify deadlines to do this.



If adopted, the Mineral and Mining Bill will require mineral license holders to inform the Minister of any changes to its beneficial ownership information within one month of the change occurring.

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## WHAT IS THE PENALTY FOR FAILURE TO COLLECT THIS INFORMATION?

Compliance with the AML Act can be enforced through a court order. An accountable person who fails to comply with the court order to collect beneficial ownership information may be liable to a fine up to **UGX 36 million (approximately US\$9,750)**, and **UGX 36 million** for each day the failure to comply continues.



If a company fails to provide beneficial ownership information under the Mineral and Mining Bill, their license application shall be invalidated or their license revoked.

## WHO HAS ACCESS TO THIS INFORMATION?

The accountable person has to share the information with the Financial Intelligence Authority (FIA) upon request. The FIA may make this information available to any financial regulatory authority, supervisory authority, fiscal or tax agency, or fraud investigations agency within or outside Uganda, when required for the enforcement of the AML Act.

The beneficial ownership information shared under the Mineral and Mining Bill shall be made available to the public.



LAW ENFORCEMENT



**HOW DOES CURRENT UGANDAN LAW COMPARE TO THE EITI REQUIREMENTS?**

In 2020, Uganda joined the Extractive Industries Transparency Initiative (EITI). As part of this process, Uganda committed to implementing beneficial ownership requirements in the extractive industry.

	<b>EITI REQUIREMENT</b>	<b>CURRENT UGANDAN LAW</b>	<b>MINERAL AND MINING BILL</b>
<b>Definition of Beneficial Owner</b>	Natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.	The natural person who ultimately owns or controls a customer, or the natural person on whose behalf a transaction is conducted, and includes a natural person who exercises ultimate control over a legal person or legal arrangement.	A natural person who owns 5% or more of a legal entity, or a natural person with control, possession, custody or enjoyment, directly or indirectly, of a reasonably significant economic interest, or who receives a significant economic benefit from a legal entity.
<b>BO Register</b>	Publicly available register of beneficial owners.	No register of beneficial owners.	The Minister for Minerals will publish beneficial ownership information in a publicly accessible format on its website.
<b>Entities covered</b>	Corporate entities that apply for or hold a participating interest in an exploration or production license contract.	All legal entities and legal arrangements that are clients of 'accountable persons'.	Companies that apply for, bid for or hold a license for a mineral right.
<b>Entities responsible for collecting information</b>	Implementing countries request beneficial ownership information, and companies publicly disclose this.	15 different categories of 'accountable persons' that are required to collect beneficial ownership information on their clients.	Companies provide beneficial ownership information as part of their application. This information will be public.
<b>Required beneficial ownership information</b>	Name, nationality, country of residence, and identification of Politically Exposed Persons (PEPs). It is recommended to also include the national identity number, date of birth, residential or service address, and means of contact.	The AML law does not specify the required information.	The name of the beneficial owner.

**WHAT'S BEING DONE TO STRENGTHEN BENEFICIAL OWNERSHIP LAWS?**

- EITI implementation has started in Uganda and the preparation of the first EITI report is ongoing. The report is expected to cover progress on the beneficial ownership requirement.
- In September 2020, the Minister of State for Mineral Development stated that the Mining and Mineral Bill has been cleared by the first Parliamentary Council, and shall be tabled before Cabinet.
- In its 2020 National Strategy for combating money laundering and terrorist financing, the Financial Intelligence Authority of Uganda also committed to enhancing the transparency of legal persons. Action points included augmenting beneficial ownership requirements, ensuring that competent authorities have timely access to accurate beneficial ownership information, and to strengthen the sanctions for violations.

FOR ANY ENQUIRIES OR MORE INFORMATION ON BENEFICIAL OWNERSHIP IN UGANDA, KINDLY CONTACT US AT:

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