



GLOBAL FINANCIAL INTEGRITY



# Corporate Transparency

*A guide for beneficial  
ownership laws in Uganda*

## **Corporate Transparency: A guide for beneficial ownership laws in Uganda**

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# LIST OF ABBREVIATIONS

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AML	Anti-Money Laundering
BO	Beneficial Ownership
BVI	British Virgin Islands
CDD	Customer Due Diligence
DNFBPs	Designated Non-Financial Businesses and Professions
EITI	Extractive Industries Transparency Initiative
ESAAMLG	Eastern and Southern Anti-Money Laundering Group
FATF	Financial Action Task Force
GAVI	Global Alliance for Vaccine and Immunisation
IFF	Illicit Financial Flows
IG	Inspectorate of Government
LLC	Limited Liability Company
LLP	Limited Liability Partnership
PACRA	Patents and Companies Registration Agency (of Zambia)
PEP	Politically Exposed Person
PPDA	Public Procurement and Disposal of Public Assets Authority
RGD	Registrar-General's Department (of Ghana)
TIN	Taxpayer Identification Number
UNRA	Uganda Roads Authority
URSB	Uganda Registration Services Bureau

## INTRODUCTION



Each year, the Ugandan economy loses over UGX 2 trillion (US\$550 million) in illicit financial flows (IFFs).<sup>1</sup> This loss to the Ugandan economy is more than just a number. For Ugandan citizens, it translates into “missed development opportunities, lost livelihoods and increased poverty.”<sup>2</sup> The global COVID-19 pandemic has exacerbated these negative impacts, causing reductions in basic social services such as healthcare, education, and sanitation. Further, it erodes the resource base needed for larger infrastructure projects like mining and oil and gas exploration that can fully realize the potential of the Ugandan economy.

In Uganda and across the African continent, the main sources of IFFs include corruption, money laundering, organized crime, trade misinvoicing, and tax evasion. The recurrent theme across all these sources of illicit money is that criminals and corrupt government officials use companies, limited liability companies (LLCs), and other types of legal entities as vehicles to mask their identity and hide their ill-gotten gains both in Uganda and across the financial centres of the world. The lack of information on company ownership in turn handicaps the Ugandan government’s ability to successfully track these criminal actors and recover valuable tax revenue. This concept of identifying the individual that truly owns, controls, and economically benefits from a company or legal entity is termed ‘beneficial ownership’ (BO) transparency. Globally, beneficial ownership transparency has emerged as a critical tool to unmask criminals and curb the use of anonymous companies as vehicles for illicit activity.

**There are currently 113 countries that have committed to beneficial ownership transparency.**

Leaks such as the Pandora and Paradise Papers have exposed how Ugandan and other African government officials used shell companies and offshore trusts to stash and hide wealth identified by financial institutions as high risk. These and many other case examples highlighted in this guide demonstrate how the failure to collect beneficial ownership information is frequently exploited by individuals looking for a convenient way to move illicit proceeds and hide their criminal activity.

Using these case studies in addition to benchmarking examples from beneficial ownership legislation in other African countries, this paper provides a guide for the implementation of a strong beneficial ownership law in the Ugandan context. By analyzing the risks that arise from these case examples, this paper demonstrates a clear need for the inclusion of four key elements in any future beneficial ownership legislation in Uganda:



### Key element 1

Introduce a central beneficial ownership registry that records all beneficial ownership information in one, easy to access source;



### Key element 3

Require appropriate ID information on beneficial owners to accurately identify them;



### Key element 2

Apply the requirement of beneficial ownership disclosure to a wide variety of legal entities and legal arrangements;



### Key element 4

Introduce a robust verification mechanism and updating requirement that ensures the accuracy of beneficial ownership data.

1. Orene, A.G. (2021). Uganda Losing Revenue in Illicit Flows. The Observer, <https://observer.ug/businessnews/68701-uganda-losing-revenue-in-illicit-flows>

2. Charlier, F. (2021). Tackling illicit financial flows to secure Africa's future, curb conflict. Africa Renewal. <https://www.un.org/africarenewal/magazine/february-2021/tackling-illicit-financial-flows-secure-africas-future-curb-conflict>

## SETTING THE CONTEXT: INTERNATIONAL AND NATIONAL DEVELOPMENTS

International beneficial ownership (BO) standards from the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) have fed into national efforts to strengthen BO transparency. In Uganda, the requirements to submit BO information are spread across multiple pieces of legislation, all with differing definitions of the term 'beneficial owner'.<sup>3</sup> Uganda's Anti-Money Laundering (AML) Act requires certain 'accountable persons' such as lawyers and accountants to collect BO information on their clients on an ad-hoc basis.<sup>4</sup> Similarly, the Mining and Minerals Bill, 2021 that was recently passed into law, will also require companies applying for a mineral right license to disclose their BO information in a publicly available database. However, companies in every other sector will not be covered by this law. Finally, the Income Tax Amendment Act, 2021 also provides a definition of BO for tax purposes.<sup>5</sup>

In 2020, Uganda joined the Extractive Industries Transparency Initiative (EITI) Standard, which requires a publicly available register of beneficial owners of corporate entities in the extractive industry. The EITI process has provided the government and civil society with new impetus to incorporate better BO disclosures nationally. Several Ugandan agencies have since started to take administrative steps to capture BO information of companies.

<i>Public Procurement and Disposal of Public Assets Authority (PPDA)</i>	Requests BO disclosure from companies bidding to undertake public works. <sup>6</sup>
<i>Uganda Registration Services Bureau (URSB)</i>	Published forms to capture BO information of companies registering with the URSB; <sup>7</sup> Developed Beneficial Ownership Guidelines on the role of the URSB in the prevention of money laundering, terrorist financing and other suspicious transactions (August 2020); <sup>8</sup> Developed proposals to introduce BO provisions in the Companies Act.

These national developments are important steps towards curtailing the use of anonymous companies for financial crimes. However, despite these piecemeal legislative and administrative efforts, there is still no central legal requirement to collect BO information for either companies created in Uganda, or foreign companies registered in Uganda. This creates a plethora of loopholes that could be exploited by criminals to thwart ownership scrutiny. Additionally, the ongoing efforts should be cognizant of certain pitfalls that could undermine the efficacy of the BO regime, such as the exclusion of certain legal vehicles like trusts and the absence of verification mechanisms. Finally, future legislative efforts in Uganda should keep in mind that the failure to include foreign companies that have a connection to Uganda and all companies would be in contravention of the new revised FATF recommendation on BO.<sup>9</sup> To ensure that the efforts result in a strong and robust system of BO transparency, this paper seeks to tackle some of the challenges and questions that ought to be addressed in the course of streamlining BO disclosure in Uganda.

3. GFI & ACOE (2021). Q&A on beneficial ownership in Uganda. <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/04/GFI-BO-FAQ-Uganda-jw-edit-v2.pdf>

4. Ibid

5. Suubo, F., Masembe, T.K. & Walukagga, I. (2021). Amendments to Ugandan tax legislation in 2021. <http://www.mmaks.co.ug/articles/2021/07/08/amendments-ugandan-tax-legislation-2021>

6. Circular on submission of Beneficial Ownership Information for firms which are awarded government contracts (PPDA Circular No.1 of 2021).

7. See Beneficial Ownership Forms at <https://ursb.go.ug/>

8. Submission by the URSB to the EITI Multi-Stakeholder Group, 2021.

9. FATF (2022). Public Statement on revisions to R.24. <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html>



## KEY ELEMENT 1: CREATE A CENTRAL BENEFICIAL OWNERSHIP REGISTER



### Characteristics of a centralized beneficial ownership register

While there are different approaches to BO transparency, a centralized BO register has been found to be the most effective method in ensuring timely access to adequate, accurate, and up-to-date information of beneficial ownership of companies.<sup>10</sup> Unlike decentralized systems, in which companies and/or various public institutions collect and record their own BO data, a centralized BO registry has the following characteristics:

- The data is available in one single, nationwide source;
- Data from all companies across the country is collected, submitted and recorded in a standardized format;
- One public agency is responsible for the implementation and maintenance of the BO register.

### The advantages of a central beneficial ownership register

A central beneficial ownership register provides a number of benefits:

- *It provides effective use of and access to BO data:* By providing standardized data from one single source, law enforcement, tax authorities and other authorized regulators do not have to depend on obtaining the data from different decentralized registers, financial institutions, designated non-financial businesses and professions (DNFBPs), or the companies themselves – all of whom might record the data in different formats. A central register provides all user groups, including government authorities, with faster access to BO data and in a more cost-effective manner;
- *It streamlines the customer due diligence process (CDD) of AML-obligated entities:* If those entities are granted access to the BO register, it allows them to check and verify whether the information they collected is accurate. This also offers an additional verification mechanism for the BO data;
- *It facilitates supervision by regulators over compliance with AML obligations:* A central registry offers regulators an efficient way to check and ensure that companies, financial institutions and DNFBPs are actually complying with their legal obligation to collect BO information, and to check whether they filed updates on any change in BO information in a timely fashion;
- *It improves inter-agency coordination:* Having one lead public agency in charge of the BO register navigates challenges around inter-agency coordination, and competing, overlapping and conflicting mandates from different government agencies involved in BO transparency;
- *The improved access makes it easier for authorities to investigate and prevent the use of companies to hide illicit proceeds:* Additionally, it prevents suspicious legal vehicles from finding out that their information is used for an investigation because authorities can access their BO data from the register directly, rather than having to contact the company for this information;
- *It could improve verification systems:* A centralized register provides the possibility of implementing automated verification mechanisms.



10. Transparency International (2019). Who is behind the wheel? Fixing the global standards in company ownership. [https://images.transparencycdn.org/images/2019\\_Who\\_is\\_behind\\_the\\_wheel\\_EN.pdf](https://images.transparencycdn.org/images/2019_Who_is_behind_the_wheel_EN.pdf)

## A central BO register in Uganda: Benchmarking example from Zambia

In Uganda, the main laws that cover BO are the AML Act 2013, and the Mining Act, 2003, which will be overhauled by the Mining and Minerals Act. Under the AML Act, certain 'accountable persons', such as financial institutions and legal professionals, are required to collect BO information from their clients as part of their CDD obligations. However, this information is held by these accountable persons themselves. Uganda does not have a BO registry at present. Although the Mining and Minerals Act will require the Minister for Minerals to establish a public registry for companies operating in the extractives sector, this will not cover companies operating in other sectors, where the risks of IFFs are equally significant.

In Zambia, the Companies Act, 2017 and the implementing Companies (General) Regulations, 2019 provide a good example of a central legislative framework for BO transparency.<sup>11</sup> This framework mandates the implementation of a central BO register applicable to all companies registered in the country. That includes not only companies operating across all sectors, but also companies that may be simply used to hold assets or open bank accounts. Uganda should adopt a similar model by incorporating the beneficial ownership provisions as outlined in Table I below, through an amendment of its Companies Act:

*Table I: Recommendations for central BO legislation in Uganda*

	<b>Zambia Benchmarking Example</b> 	<b>Recommendation for Uganda</b> 
<b>Central BO definition</b>	The Zambian Companies Act adopts one common definition of 'beneficial owner' that applies to all companies incorporated under the Act. As such, it provides a comprehensive BO transparency regime that applies the same standard to companies operating in every sector, instead of applying different BO definitions scattered through various pieces of legislation that apply to separate sectors.	Uganda should amend the Companies Act, 2012 to adopt one common definition of 'beneficial ownership' applicable to companies with business operations in all sectors, as well as companies incorporated to merely hold assets or bank accounts.
<b>Collection of BO information</b>	Companies are required to keep and maintain a record of its beneficial owners (s. 30(1)(b)(ii) Companies Act).	All companies incorporated or registered in Uganda should be required to collect BO data, keep it updated, and maintain records of it.
	Companies have to submit the particulars of their beneficial owners with the national company registrar, the Patents and Companies Registration Agency (PACRA), at time of their incorporation (s. 12(3)(e) Companies Act).	All companies should be required to submit their BO records with the Uganda Registration Services Bureau (URSB) in standardized format.

11. Companies Act, 2017 (<https://www.pacra.org.zm/wp-content/uploads/2021/09/CompaniesAct2017.pdf>); Companies (General) Regulations, 2019 ([https://www.pacra.org.zm/wp-content/uploads/2021/08/CompaniesActStatutoryInstrument-No14\\_of\\_2019.pdf](https://www.pacra.org.zm/wp-content/uploads/2021/08/CompaniesActStatutoryInstrument-No14_of_2019.pdf))



<b>Lead institution housing central BO register</b>	PACRA is designated as the lead institution to establish and maintain a register of beneficial owners, in which it enters the BO information submitted by the companies (s. 21(2) Companies Act).	The URSB should be designated as the lead institution responsible for establishing and maintaining a central BO register, compiling the data submitted to them by companies. Using the already existing company register maintained by the URSB and upgrading it to include the collection of BO information would be a cost-effective approach to implementing a BO register in Uganda.
<b>Inclusion of foreign companies</b>	Although not incorporated under the Companies Act, foreign companies that apply for registration with PACRA are also required to submit particulars on the beneficial ownership of their shares (s. 299(2)(c) Companies Act).	The Companies Act should be amended for the purpose of extending the BO requirement to all legal entities that operate in Uganda, including those that are not incorporated under the Companies Act. For example, foreign companies operating in Uganda are not incorporated under the Companies Act, but beneficial ownership disclosure requirements should equally apply to them.
<b>Access to BO data</b>	Law enforcement officers have unrestricted access to the beneficial ownership information upon request, and any person showing 'sufficient interest' to the PACRA may also request access (s. 10 Companies Regulations).	Competent government authorities, including investigative, prosecuting, judicial, regulatory or supervisory authorities of the Government of Uganda (i.e. the Revenue Authority, the Financial Intelligence Authority, and other AML regulators), should be granted access to the BO register.  Additionally, 'accountable persons' under the AML Act should be granted access to this central BO registry. This would significantly streamline and benefit the accuracy of their CDD processes.

## Case studies: Beneficial ownership legislation should apply to companies operating across all sectors in Uganda

### CASE STUDIES: BENEFICIAL OWNERSHIP LEGISLATION SHOULD APPLY TO COMPANIES OPERATING ACROSS ALL SECTORS IN UGANDA

Uganda does not currently have a BO law that requires companies to proactively record and register their beneficial owners in a central registry. The Mining and Minerals Act will introduce this BO disclosure requirement for companies applying for a mineral right license. However, the risk of using opaque corporate structures to obscure the ownership and flows of (potentially) tainted money does not only exist in the extractives sector, as exemplified by the road construction case study below. A BO law that is applicable to all companies that are required to register in Uganda, regardless of the sector they operate in, can penetrate complex corporate structures to identify the beneficial owner of such businesses used to launder illicit gains.

## CASE STUDY 1: ROAD CONSTRUCTION COMPANY EUTAW OPERATES AS A SHELL COMPANY TO FRAUD UGANDA ROADS AUTHORITY

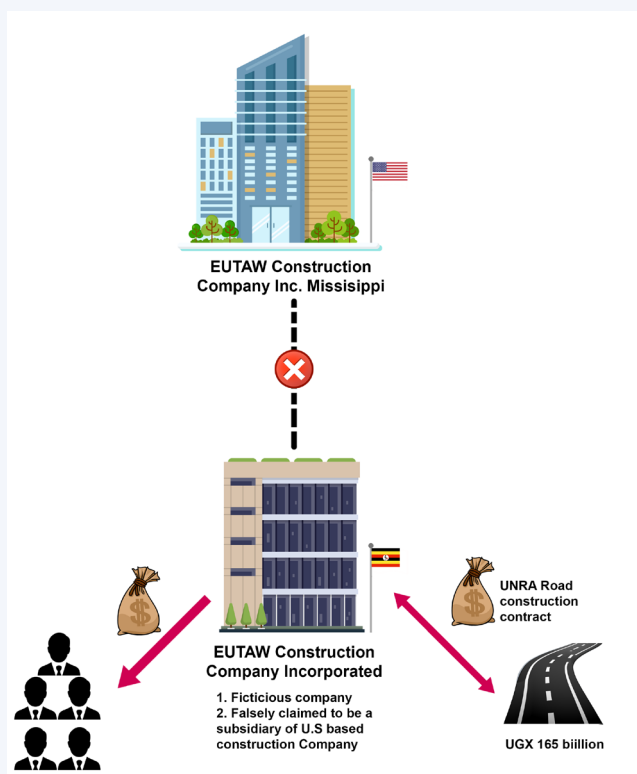
In 2013, EUTAW Construction Company Inc., a Ugandan company that claimed to be the subsidiary of an identically named construction company based in Mississippi, United States, was awarded a contract worth UGX 165 billion (US\$63.5 million) by the Uganda National Roads Authority (UNRA) to construct a 74 km Mukono-Katosi/Kisoga-Nyenga road. The company subsequently subcontracted the work to CICO Construction Corporation, a Chinese company, and work commenced in 2014.<sup>12</sup>

It later turned out that the Ugandan subsidiary company was in reality a shell company that did not exist. Both the tender documents that supported the bid, as well as the insurance bond that was used to allow for an advance payment to the company amounting to UGX 24.7 billion (US\$9.5 million), had been forged. Later in 2014, the Inspectorate of Government (IG) wrote to UNRA to not allow the company to subcontract or to ratify any subcontract that they may have executed until the IG had carried out and concluded her investigations into the contract that was suspected to be a fraudulent transaction.<sup>13</sup>

When the IG completed investigations, it was established that the company was indeed fictitious and was not linked to the one that existed in the U.S. The proprietors of EUTAW Construction Company Inc. of Mississippi, U.S. disclaimed any connection to EUTAW Construction Inc. in Uganda and informed the IG that the person who signed the bid and the accompanying powers of attorney in the procurement process was not known to them. As a result, the contract was canceled. At the time of cancellation of the contract, it was also established by the IG investigating team that only 3% of the works, worth UGX 6.1 billion (US\$2.34 million), had been finalized.

In 2016, UNRA went to court seeking for orders to compel EUTAW Construction Company Inc. and its directors to refund the remaining UGX 18.6 billion (US\$6.8 million) which was never used since the project was stopped. The High Court in Kampala subsequently ruled that five people, led by the company country representative Apollo Senkeeto, and their fictitious company were involved in a scam and purported to work for a company that did not exist.<sup>14</sup> In 2018, the Anti-

*A beneficial ownership law that is applicable to all companies regardless of the sector they operate in, can penetrate complex corporate structures to identify the beneficial owner of a business used to launder illicit gains.*



12. ESAAMLG (2019). Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region, [https://www.esaamlg.org/reports/Report\\_procurement.pdf](https://www.esaamlg.org/reports/Report_procurement.pdf) p. 30; Uganda v Byandala & 6 Ors, [2018] UGHACAD 1 (29 August 2018). <https://ulii.org/ug/judgment/hc-anti-corruption-division-uganda/2018/1>

13. Letter from IG dated 17th July, 2014 halting all transactions regarding Mukono-Kyetume-Katosi /Kisoga-Nyenga road construction.

14. Kazibwe, K. (2020). Court directs Senkeeto, five others to refund UNRAshs20bn in botched Kyetume-Katosi road saga. NilePost. <https://nilepost.co.ug/2020/11/05/court-directs-senkeeto-five-others-to-refund-unra-shs20bn-in-botched-kyetume-katosi-road-saga/>, accessed on 15th November, 2021

Corruption Court convicted Senkeeto of theft, “uttering false documents”, and execution of securities by false pretense. Three others were also convicted for failure to undertake due diligence and subsequently causing financial loss.<sup>15</sup>

The EUTAW case highlights the relevance of BO information and the importance of capturing BO data. A central BO registry would have been a source of information on the ownership structure, including the real beneficial owners, of the company. The lack of this data facilitated the use of a shell company to commit this crime. Moreover, BO provisions in Uganda are still scattered in a number of legislations especially those relating to mining, oil and gas.<sup>16</sup> This is problematic since the mischief intended to be addressed by BO provisions is not limited to the extractives industry but relates to companies across all sectors, including road construction companies like EUTAW.

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15. Uganda Versus Hon. Eng. Abraham Byandala and 6 Others, HCCS No.12/2015.

16. Both the Mining and Minerals Bill, 2021 and the Petroleum (Exploration, Development and production) Act, 2013 provide for beneficial ownership disclosures.





## KEY ELEMENT 2: BENEFICIAL OWNERSHIP LEGISLATION SHOULD COVER ALL LEGAL ENTITIES AND ARRANGEMENTS IN UGANDA



### The need to cover all types of legal entities and arrangements

In drafting BO legislation, governments determine which legal entities are to be covered by it. The type of legal entities that are required to report on BO vary by jurisdiction. However, all legal entities and legal arrangements that are formed for either undertaking business or holding assets, including limited liability companies (LLCs), limited liability partnerships (LLPs), trusts, foundations, foreign companies, multinational corporations, and investment clubs, are susceptible and can be involved in financial misconduct or economic crimes. This also applies to legal entities that do not conduct any business activities but are established with the sole purpose of holding (illicitly obtained) assets. The examples provided below exemplify the need that new BO legislation in Uganda should require a wide variety of legal entities to disclose their beneficial owners.

*All legal entities and legal arrangements, whether formed for the purpose of undertaking business or the holding of assets, are susceptible to financial misconduct and economic crimes.*

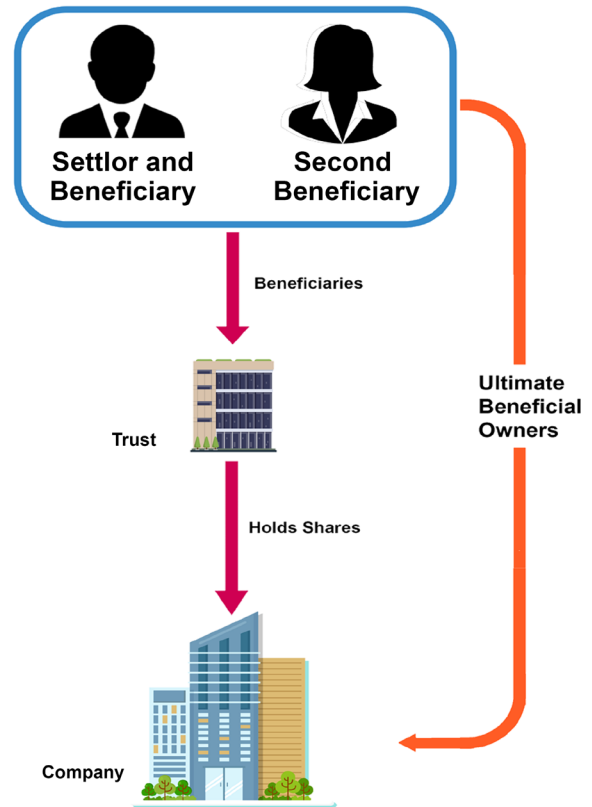
### Case studies: Beneficial ownership legislation should cover trusts

#### CASE STUDY: THE USE OF TRUSTS BY CORRUPT GOVERNMENT OFFICIALS

The 2021 Pandora Papers as well as the 2017 Paradise Papers revealed how a lot of prominent political figures across the world use domestic and offshore trusts in tax havens to manage their wealth. For example, with the help of the Bermuda-headquartered law firm Appleby, whose leaked documents were at the center of the Paradise Papers, various politically exposed persons who had been involved in a series of corruption scandals created trusts in secrecy jurisdictions. Trusts are often used to hold, shield or circulate illicit money, and although it is often unclear whether the trusts identified by the leaks were actually used to that effect, the dubious financial background of these political persons demonstrates the relevance of more scrutiny into the beneficial owner of these legal arrangements across the world, including in Uganda.

A new BO law in Uganda should therefore not only cover legal entities such as companies, but also legal arrangements including trusts. This should apply equally to trusts registering their BO information directly, as well as to trusts that appear in the ownership chain of another legal entity. The diagram below exemplifies how a trust can feature in the ownership chain of a company. The layering of trusts with shell companies in this way further obfuscates the link between the beneficial owner and (illicit) proceeds, and creates the risk of blind spots in the disclosure regime if there is not sufficient guidance for legal entities on how to identify the beneficial owner of a trust in their ownership chain. Rather than merely registering the name of the trust itself, effective BO disclosure requirements should require legal entities to identify all natural persons who control and/or benefit from the trust.

Moreover, in drafting BO legislation, due attention should be given to the fact that the definition of 'beneficial owner' applies to trusts differently than to other legal persons. Globally, there is a wide variety of types of trusts, with varying degrees of complexity and each involving different parties. This can complicate the identification of the natural person who benefits from or exercises control over a trust. To mitigate this complexity, international standards have defined the 'beneficial owner' as all parties involved in a trust, including settlors, trustees, protectors, beneficiaries and any other natural person exercising ultimate effective control.<sup>17</sup> Likewise, whereas definitions of 'beneficial owner' for legal persons commonly feature ownership or control thresholds,<sup>18</sup> the nature of trusts does not allow for such thresholds. To ensure that no beneficial owner is left undetected, all parties to a trust should be considered beneficial owners.



17. Open Ownership (2021). Beneficial ownership transparency of trusts. <https://www.openownership.org/uploads/00%20BOT%20of%20trusts%20briefing%20July%202021.pdf>, p. 20.

18. For example, the Mineral and Mining Bill 2019 identifies the beneficial owner as a natural person who owns 5% or more of a legal entity.

## Case studies: Beneficial ownership legislation should cover legal entities not incorporated to do business but to hold assets

### **CASE STUDY: BANK EMPLOYEES SET UP A SHAM COMPANY TO HOLD ILLICITLY OBTAINED REAL ESTATE**

In 2017, several employees of Stanbic Bank (U) Ltd. used inside information to buy out a mortgaged property that a client was defaulting on. It started when the bank extended a loan facility of UGX 1.06 billion (US\$294,000) to enhance the working capital of MacDowell Foods and Beverages Ltd. a company in the business of bread, pastry, and cake manufacture.<sup>19</sup> The loan was secured by mortgaging several plots of land in Kampala.<sup>20</sup> The company subsequently failed to pay back this loan and in 2019 the bank sought to dispose of the mortgaged properties. The company reached an arrangement with the bank through a consent judgement but again defaulted on the consent judgment.

Not much later, the property was acquired by another company, Myriad Investment Club Ltd. at the low price of UGX 1 billion (US\$277,000), even though valuation reports showed a much higher market price of UGX 4 billion (US\$1.1 million). It later turned out that Myriad Investment Club Ltd. had been opportunistically incorporated in 2020 as a shell company by seven employees of the Stanbic Bank to purchase the properties mortgaged with the Bank, dealing on their inside information that the bank's client, MacDowell, had defaulted on their mortgages.<sup>21</sup> Myriad Investment Club was formed for the sole purpose of purchasing these properties and to defeat the Mortgage Act,<sup>22</sup> which prohibits the lender, its agents and employees, their family members or another person in position of any other privileged information with regard to the transaction, to purchase mortgaged property or land without permission of the court.<sup>23</sup>

MacDowell Foods and Beverages Ltd. sued the Bank and Myriad Investment Club Ltd. to recover the properties. If it had been mandatory for legal persons in Uganda to file BO details, the beneficial owners of Myriad Investment Club Ltd. could not have hidden behind the secrecy cloak of a company to buy mortgaged property from its employer. It would also have been easier for the bank to determine from the central registry and know that it was dealing with its own employees disguising under Myriad Investment Club Ltd. As the Myriad Investment Club was incorporated for the purpose of acquiring real property, this case proves that it is equally important to identify beneficial owners of a company created for purposes of holding assets rather than doing business.

19. Nakaweesi, D. (2021). Stanbic staff illegally sold themselves client's properties, court rules. Monitor. <https://www.monitor.co.ug/uganda/business/finance/stanbic-staff-illegally-sold-themselves-client-s-properties-court-rules--3291540>

20. MacDowell Food Beverages Ltd Vs Stanbic Bank (U) ltd and Myriad Investment Club Limited, HCCS N0.222/2019

21. Nakaweesi, D. (2021). Stanbic staff illegally sold themselves client's properties, court rules. Monitor. <https://www.monitor.co.ug/uganda/business/finance/stanbic-staff-illegally-sold-themselves-client-s-properties-court-rules--3291540>

22. Observation of the judge in MacDowell Food Beverages Ltd Vs Stanbic Bank (U) ltd and Myriad Investment Club Limited, HCCS N0.222/2019

23. Section 30 of the Mortgage Act, 2009



## KEY ELEMENT 3: COLLECT ID INFORMATION TO ACCURATELY IDENTIFY THE BENEFICIAL OWNER



### Why is collecting ID information from beneficial owners important?

Governments have to make decisions about what data to collect when they are implementing a BO disclosure regime. Although this data should be limited to what is necessary, it should be adequate for the policy goal of accurately identifying the real individual behind the company, and ultimately of curbing IFFs.

It is critical to collect key ID information from the beneficial owner for a number of reasons:

- It enables users to accurately determine which individuals the BO declaration refers to. It helps avoid confusion about the specific individual being named. For example, if two different companies refer to a common name, additional data is necessary to determine whether this refers to the same person or two different persons with the same name;
- It enables the registry holder or regulator to verify the authenticity of information being provided, thereby addressing the risk of false information;
- It reduces the risk of a company using an individual as a nominee shareholder in an effort to shield the beneficial owner, especially when that nominee is unaware of it;
- It can help flag higher risk cases;
- It assists registry users, including law enforcement pursuing investigations, to contact the individual.

To enable verification of the authenticity of the BO particulars, beneficial owners should be required to support their submission with a type of official identification that provides their full name, date of birth, and photo. To ensure the security and legitimacy of the document, this ID document should be one that is issued by the national government, is unique to that person, and is not easily subject to fraud. Acceptable ID documents could include, for example, a national identity card, a passport, or an alien identification card. The required ID document for foreign nationals, however, should always be a passport.

***To enable checking the authenticity of BO data, beneficial owners should be required to submit official identification that provides their full name, date of birth and photo.***

### ID information requirements in Uganda: Benchmarking example from Ghana

Under Uganda's current BO regime, the AML Act requires 'accountable persons' to identify the beneficial owners of their clients, but it does not specify exactly which information they are required to collect. Moreover, the Mining and Minerals Bill will only require mining companies to submit the name of their beneficial owner. It would not require records of any further information or ID documents from the beneficial owner.

To accurately identify the beneficial owner, Uganda should expand its BO data collection requirements by specifying the particulars and ID documents required from companies and their beneficial owners. A good benchmarking example for Uganda is the Ghana Companies Act, 2019 (Act 992), which requires all companies to record and keep a register of its beneficial owners and submit the particulars of their beneficial owners when applying for incorporation with the Registrar-General's Department (RGD). The Act and the RGD's subsequent guidance list the required information to be submitted.<sup>24</sup>

Table ii: Recommendations for ID information requirements in Uganda

	Ghana benchmarking example 	Recommendations for Uganda 
<b>Information on beneficial owner:</b>	Full name and any former names	Full name
	Date of birth and place of birth	Date of birth
	Residential address and digital address	Physical address (residential or business). P.O. boxes should not be permitted, as this would again mask the true residence of the BO, complicating the process of locating them and their assets.
	Nationality (if it is a foreign national)	Nationality
	Telephone number, and e-mail address if applicable	Means of contact, including email address and/or telephone number
	Nationally accepted identity card number for Ghanaian nationals, or a passport number (or other unique identification) for foreign nationals;	Identification details, such as national identity number or unique identifying number such as a social security number or taxpayer identification number (TIN).
	Declaration on whether the natural person meets the definition of politically exposed person (PEP).	<i>PEP declaration would be useful for risk assessment, but not a minimum requirement for identification of BO.</i>
<b>ID document:</b>	Personal ID that is valid, issued by a national government agency, and is unique to the person. This includes: <ul style="list-style-type: none"> <li>• TIN</li> <li>• Passport</li> <li>• National identity card</li> <li>• Social security number or equivalent</li> <li>• Driving license</li> </ul>	Personal ID that is issued by the national government, unique to the person and not easily subject to fraud. For Ugandan nationals, this could include: <ul style="list-style-type: none"> <li>• TIN</li> <li>• National identity card</li> <li>• Passport</li> </ul> <p>An important consideration in this determination is the fact that a high degree of Ugandan nationals does not have an ID card.<sup>25</sup> To make sure that they are not prevented from participating in the economy, an appropriate alternative should be available.</p> <p>For foreign nationals, a passport should be the minimum requirement.</p>

24. RGD, Beneficial Ownership Help Desk, Frequently Asked Questions, <https://rgd.gov.gh/docs/FAOs%20Exercise.pdf>

25. Okiror, S. (2021). Uganda's ID scheme excludes nearly a third from healthcare, says report. The Guardian. <https://www.theguardian.com/global-development/2021/jun/09/ugandas-id-scheme-excludes-nearly-a-third-from-healthcare-says-report>



Notably, the Ghana Companies Act requires companies to indicate whether the beneficial owner is a PEP. Including this in the BO registry is helpful as it helps identify the risks involved with the company and the beneficial owner. Given Uganda's history of political figures and their families being involved in corruption scandals and media exposés such as the Pandora and Panama Papers, a declaration on PEP identification would be useful in this local context as well.

## Case studies: Collection of ID information of foreign nationals behind companies

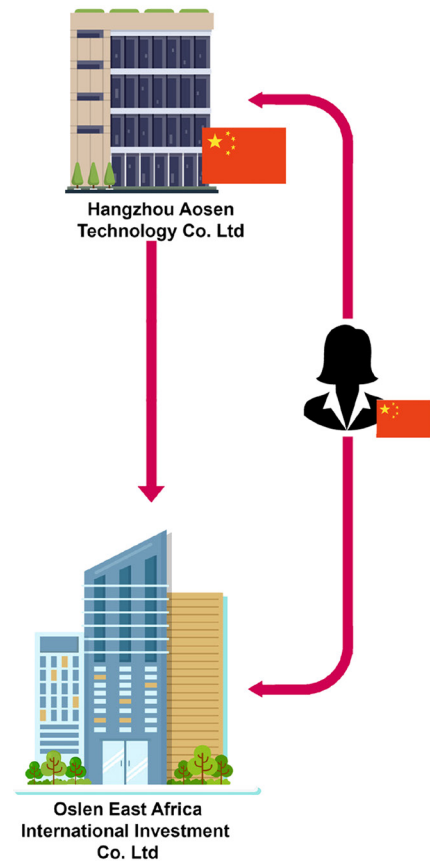
### CASE STUDY: CHINESE BENEFICIAL OWNERSHIP BEHIND UGANDAN COMPANY INVOLVED IN PANGOLIN TRAFFICKING

Olsen East Africa International Investment Co. Ltd., a company established in Uganda in 2013 by the Chinese national Ma Jinru, obtained a permit to breed pangolins and trade pangolin scales and products in Uganda. In 2016, the company was raided by Ugandan authorities who had grown suspicious that the facilities were instead serving as cover for the trafficking of pangolins caught illegally from the wild.

The same Chinese national, Ma Jinru, also owned 46% of Olsen's Chinese parent company, Hangzhou Aosen Technology Co. Ltd, which had extended its activities into pharmaceutical industry around 2013, suggesting that the company may have been selling these illegally obtained pangolin scales to China's pharmaceutical industry.<sup>26</sup>

Ma Jinru further served as the director of two more Chinese companies.<sup>27</sup> These shareholder and director links in a set of companies could potentially cloak illegal international pangolin trafficking. Trading under a complex web of companies like in this case can conceal a lot of information regarding the natural persons behind them.

This case exemplifies that companies involved in illicit activity often have foreign owners. The identification of foreign beneficial owners, such as Ma Jinru, poses additional challenges in comparison to collecting and verifying ID information of Ugandan nationals. With a Chinese national as the company's owner, this case highlights the need to consider and address challenges connected to the proper identification of foreign beneficial owners. As indicated in *table ii*, whereas Ugandan beneficial owners can be identified using a wider range of ID documentation that could potentially be cross-checked with other registries in Uganda for verification, this option does not exist for foreign nationals. To minimize the risk of fraud, the use of a passport should be the minimum identification requirement for foreign beneficial owners.



26. C4ADS: TIPPING THE SCALES: Exposing the Growing Trade of Africa Pangolins into China's Traditional Medicine industry. <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5f63b35ea44ed56361a512c4/1600369515449/Tipping+the+Scales.pdf>

27. Ibid.





## KEY ELEMENT 4: ENSURE ACCURACY OF BENEFICIAL OWNERSHIP DATA THROUGH APPROPRIATE VERIFICATION AND UPDATING REQUIREMENTS

### Verification of beneficial ownership data: What is it and why is it important?

Verification is the process of checking BO data to ensure it provides an accurate and complete representation of who owns or controls a particular company. The process of verification aims to ensure that information submitted to the register is “plausible, appears in the correct format, is free from omissions,” was “provided by a relevant, authorized person” and is “free from all error.”<sup>28</sup> A good verification process addresses both “accidental errors” and “deliberate falsehoods” in BO data.<sup>29</sup>



Ensuring accuracy of the data through verification is instrumental to maximizing the impact of a BO register, because it improves the ability of government authorities and other users to trust and rely on the recorded data. Without a verification mechanism, BO data becomes significantly less useful as it makes the submission of misleading or deliberately false information more likely. This ultimately undermines the registry’s purpose of creating transparency.

### Verification of beneficial ownership data in Uganda: Benchmarking examples from Zambia and Ghana

There are many different approaches and methods to verification, ranging from reactive to proactive methods, and from straightforward to more complex checks. The appropriate approach depends on the local context in Uganda, but the overarching Open Ownership principles for effective verification mechanisms provide useful building blocks. Moreover, Uganda can draw inspiration from the verification mechanisms implemented by countries like Zambia and Ghana.



**Step 1** The verification mechanism should ensure that the data is real and conforms to the ID information of a real person. To ensure this, the Open Ownership principles recommend several steps that a verification process can take at the time of submission of the data:<sup>30</sup>

- To remove accidental errors, check whether the submitted information such as birth dates make sense in terms of what that data is expected to look like. Examples include preventing registration of more than 100% of the shares, or automatic rejections of inadmissible dates. For example, the system should make it impossible to register a birth date as 31/2/1998 or 31/13/1998.
- To ensure that the submitted data actually exists, cross-check the submitted data with other government registries, such as the Ugandan National Identification Register, Taxpayer Identification registration system, or national land register.
- Confirm the accuracy of data and the authenticity of submitted supporting documents through notarization or certification. For example, the Ghana Companies Act requires a foreign company in Ghana to notarize the statement of beneficial ownership particulars in its jurisdiction of origin, before submitting it to the RGD (s. 330(c) Companies Act).

28. Open Ownership (2020). Verification of Beneficial Ownership Data. <https://www.openownership.org/uploads/OpenOwnership%20Verification%20Briefing.pdf>, p. 2.

29. Ibid

30. Open Ownership (2021). The Open Ownership Principles – Verification. <https://www.openownership.org/principles/verification/>



**Step 2** The verification process should also confirm whether that person is the actual beneficial owner of the company, or whether that real person's information is merely used as a nominee to shield the true beneficial owner. To identify such inaccuracies, there should be requirements in place to ensure that the data is kept up-to-date by the companies, and that the data is frequently checked. Making the public registry public is one cost-effective way of achieving this, as it allows public scrutiny of the data by civil society, the media and private sector actors to identify and report inaccuracies. For example, the RGD in Ghana is to make an electronic format of the Register available to the public for inspection (s. 373(3) Companies Act Ghana). It is equally important that AML-obligated entities have this access to empower them to submit suspicious activity reports of information they suspect to be incorrect.



**Step 3** Finally, to ensure that the verification mechanism has real teeth, BO requirements should be backed up with penalties. The authorities, such as national financial intelligence units, should subsequently have sufficient resources to investigate information that is suspected of being false. In the case of Ghana, for example, the sanctions for failing to provide the required information or providing false or misleading information include a fine up to 6000 GHC (UGX 3.5 million/US\$980), imprisonment up to two years, or both.<sup>31</sup> Uganda should consider similar sanctions to improve compliance and sufficiently deter companies from entering false information.

#### WHO SHOULD VERIFY BENEFICIAL OWNERSHIP DATA?

*Ideally, the public agency housing the BO registry or another government body should be responsible for the verification of BO information. One of the main challenges in BO verification is that it can be a resource-intensive process. Although this might tempt governments to outsource the verification process to the private sector (such as financial institutions and DNFBPs with AML obligations), this approach would still require the government regulator to spend resources on monitoring their compliance. As such, outsourcing the verification process does not necessarily address the resource challenge.<sup>32</sup> Centralizing this responsibility is likely to be more effective.*

*In both Zambia and Ghana, the primary responsibility for verification of BO data lies with the central public body housing the BO registry: the central company registrar, PACRA and the RGD respectively. If Uganda were to implement a BO registry through the Companies Act, 2012, it could follow this example by making the URSB responsible for verification of BO data.*

#### Updating beneficial ownership data: What is it and why is it important?

Beyond verification, keeping BO information current is also a prerequisite for data accuracy. It is therefore crucial that companies submit changes in their BO within a timely fashion, so that government authorities and other users of BO data can trust and rely on it. It also closes a loophole that would otherwise enable companies to circumvent the identification of their true beneficial owner by making BO changes shortly after registering.

**Updating requirements closes the loophole that would otherwise enable companies to circumvent BO identification by making changes in ownership shortly after registering.**

31. RGD, Beneficial Ownership Help Desk, Frequently Asked Questions, <https://rgd.gov.gh/docs/FAQs%20Exercise.pdf>



32. FATF Public Consultation - Comments of Global Financial Integrity on the draft Amendments to Recommendation 24.

## Keeping beneficial ownership information up to date in Uganda: Benchmarking example from Zambia

In Uganda, the AML Act requires reporting entities to keep the BO information on their clients up to date. However, the law does not specify a timeframe or deadline for this. Under the Mining and Minerals Act, mineral license holders will be required to inform the Minister of any changes to its BO information within one month of the change occurring.

To ensure that BO data remains up to date, Uganda can learn from the benchmarking example from Zambia in *Table iii* below.

*Table iii: Recommendations for updating requirements in Uganda*

	Zambia benchmarking example 	Recommendations for Uganda 
<b>Regular checks to ensure current and accurate information</b>	Beneficial owners have to communicate changes in their beneficial ownership interest to the company (s. 123(3) Companies Act);  Companies have to maintain and update information on beneficial ownership (s. 83(d) Companies Act);  Public companies are required to include updated beneficial ownership information in their annual returns (s. 270(3) Companies Act).	The Companies Act should require companies to keep BO information current and accurate.  Beneficial owners themselves should be required to communicate changes in their beneficial ownership interest to the company.  Companies should be required to confirm their BO records in their annual filings with the URSB.
<b>Timeframe for updating</b>	Companies have 14 days to bring changes to their BO information to the attention of PACRA (s. 21(3) Companies Act).	The Uganda Companies Act should specify the timeframe for all companies within which companies have to report changes to their BO information. At a minimum, it could follow the one-month timeframe as proposed under the Mining and Minerals bill, which is in compliance with the 'reasonable period' suggested by FATF in its revised Recommendation 24 on Beneficial Ownership. <sup>33</sup>

### Case Studies: Beneficial ownership legislation should be accompanied by a verification mechanism and a 30-day maximum updating requirement

#### **CASE STUDY 1: FORMER UGANDA GOVERNMENT OFFICIALS FALSELY CLAIMS THAT RELATIVES AND REGISTERED TRUSTEES OWN ILLICITLY ACQUIRED ASSETS**

In 2020, Godfrey Kazinda, a former Principal Accountant in the Office of the Prime Minister, was convicted on three counts of illicit enrichment.<sup>34</sup> The Anti-corruption Division of the High Court of Uganda found

33. . FATF (2021). Revisions to Recommendation 24 and the Interpretative Note – Public Consultation. [https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Pdf-file\\_R24-Beneficial-Ownership-Public-Consultation.pdf](https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Pdf-file_R24-Beneficial-Ownership-Public-Consultation.pdf)

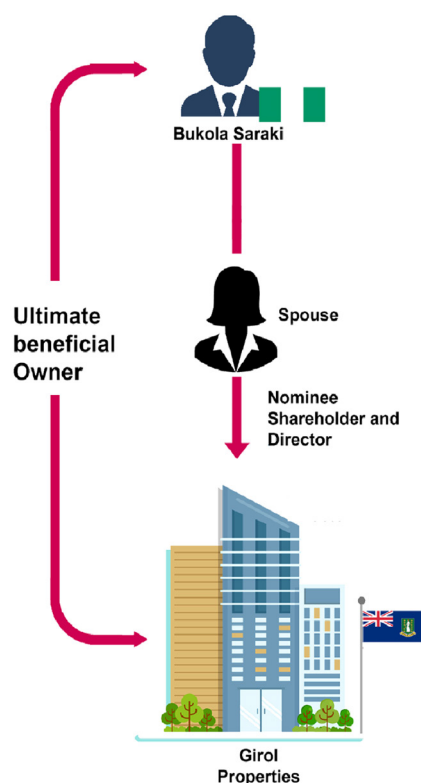
34. Walugembe, T. (2020). Uganda achieves landmark victory in USD 1.25 million illicit enrichment case. <https://baselgovernance.org/blog/uganda-achieves-landmark-victory-usd-125-million-illicit-enrichment-case>

that between 2010 and 2012, the accused was in control and possession of three plots of land in Bukoto, a prime area in Kampala worth a total value of UGX 3.6 billion (US\$ 990,000), and three luxury vehicles valued at UGX 762,083,747 (US\$205,000) which was disproportionate to his known sources of income.<sup>35</sup> The accused had tried to disassociate himself from these properties by transferring them as a gift to the registered trustees of a local Christian Monks' Group and to his relatives.

Three witnesses from the Monks' group testified that their society did not, in fact, own these properties. Their acquisition was not reflected in their Annual General Meeting reports of the years in question. Neither were they reflected in their inventory of properties. The vehicles were also not in control of the purported owners but remained in full control of the accused. So, although the accused had purported to have transferred these properties by way of a gift to the Monks, and the vehicles to his relatives, evidence showed that he remained in possession and control of the properties and vehicles.

This case demonstrates that the BO information that would be provided by companies should not be taken on face value. Some of the information needs to be verified and or triangulated against other sources other than those provided by the company itself. Even without the Monks' group documentation clearly refuting Kazinda's claim, verification of this information could have easily identified the inaccuracy of the information provided by him. Turning BO registries into depositories of self-declared information, regardless of the accuracy or truthfulness of the data, will render them less helpful.

## CASE STUDY 2: NIGERIAN SENATE PRESIDENT USES FAMILY MEMBERS AND CLOSE ASSOCIATE TO DISGUISE COMPANY OWNERSHIP



In 2016, the Panama Papers reported that Bukola Saraki, the former Nigerian Senate President, had allegedly been utilizing his family members as a front to disguise his ownership interests in offshore companies that were located in secrecy jurisdictions like the Seychelles and British Virgin Islands (BVI). The leaked documents indicated that many of these companies were held in the name of Saraki's wife, Toyin Ojora-Saraki, while the true person in control or benefitting from these companies – i.e. the beneficial owner – was Saraki himself.<sup>36</sup> The details of this case exemplify the importance of ensuring accuracy in the collection of BO data.

For example, Ojora-Saraki owned 25,000 shares and was appointed the only director of Girol Properties, an entity registered in the BVI. However, the Panama leaks exposed that Mossack Fonseca, the Panamanian law firm assisting her in setting up these companies, knew that she was merely a nominee director, and not the beneficial owner of the company.<sup>37</sup>

Similarly, another of these companies, Sandon Development Ltd., was registered in the Seychelles in 2011 and used as a vehicle to purchase a property in London.<sup>38</sup>

35. UgandaVs Geoffrey Kazinda, Session Case NO.HCT-ACCO- 004/2016

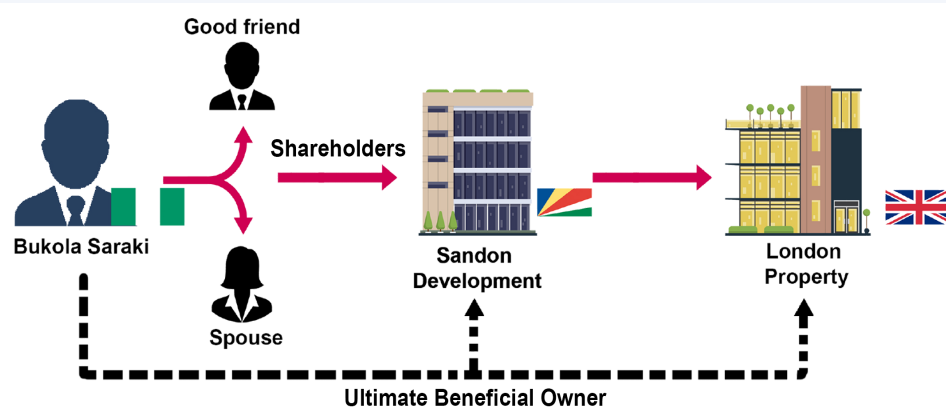
36. Mayah, E. (2016). Saraki offers 'rich wife' defence in Panama Papers findings. Mail & Guardian. <https://mg.co.za/article/2016-04-21-saraki-offers-rich-wife-defence-in-panama-papers-findings/>

37. Ibid

38. Ogunjipe, S. (2018). Seychelles begins probe of Saraki, wife, for alleged money laundering. <https://www.premiumtimesng.com/news/headlines/273330-exclusive-seychelles-begins-probe-of-saraki-wife-for-alleged-money-laundering.html>

In addition to his wife, Saraki's long-term personal aide and friend Babatunde Morakinyo, who in 2017 was identified as having laundered billions of naira in bribes on behalf of Saraki<sup>39</sup> and in 2020 charged with money laundering by the Economic and Financial Crimes Commission in Nigeria,<sup>40</sup> was also registered as a shareholder of the company. Shortly after Sandon was incorporated, Ojora-Saraki used it to purchase the London property from another entity that can be linked to Saraki, called Renocon Property Limited.<sup>41</sup> As such, the real estate transaction between the two companies seems to have been an effort to obfuscate Saraki's ownership of the property by using his wife and friend as nominee shareholders of the purchasing company.

In both cases, there were documents available that indicated that Saraki was the actual individual who benefitted from and was in control of the companies, and that his wife merely acted as a nominee shareholder or director. This exemplifies the importance of a verification mechanism of BO data to prevent such falsehoods from entering the system.



At the same time, the Saraki case shows that verification in isolation is not sufficient. Appropriate mechanisms must also exist to ensure that if there is any change or amendment to the information provided on the beneficial owner, that this change is recorded and captured in the BO register a timely manner. For instance, in 2014, a BVI-registered entity called Landfield International Developments identified Ojora-Saraki as its sole shareholder. However, shortly after its incorporation, Landfield was sold for UGX14.8 billion (US\$4.5 million) to a Jersey registered company ultimately owned by Saraki, called Londmeadow Holdings.<sup>42</sup> This transaction appears to have discreetly facilitated the transfer of Landfield's ownership from Saraki's wife, back to Saraki. If companies are not required to update BO data after a change to any of the details provided about the beneficial owner – whether it is a change in name, nationality, address – successive ownership transfers like these can be applied to circumvent BO identification requirements, thereby undermining the accuracy of the data.

For Uganda to have a meaningful and functional registry, its impact and efficacy would in large part depend on the accuracy of the BO data collected. Therefore, it is crucial that BO legislation is accompanied by:

- a. A verification mechanism that addresses both accidental errors and deliberate falsehoods.
- b. A short timeframe of 30 days or less within which companies have to submit any changes to information submitted on the beneficial owner.

39. . Ogunipie, S. (2017). How EFCC linked Saraki, aides to N3.5 billion Paris Club refund. <https://www.premiumtimesng.com/news/headlines/227572-exclusive-how-efcc-linked-saraki-aides-to-n3-5-billion-paris-club-refund.html>

40. . EFCC (2020). EFCC arraigns Property Firm, MD For \$1.29m, n46m. <https://www.efccnigeria.org/efcc/news/5921-money-laundering-efcc-arraigns-property-firm-md-for-1-29m-n46m>

41. Mayah, E. (2016). Saraki offers 'rich wife' defence in Panama Papers findings. Mail & Guardian <https://mg.co.za/article/2016-04-21-saraki-offers-rich-wife-defence-in-panama-papers-findings/>

42. Ibid

# CONCLUSION: THE GUIDE TOWARDS A ROBUST BENEFICIAL OWNERSHIP REGIME IN UGANDA



The case studies throughout this document have demonstrated that the elimination of anonymous companies and other opaque legal entities is an important step in the fight against illicit financial flows in Uganda. The ongoing efforts under the EITI process and by the PPDA and URSB to implement and improve the current beneficial ownership framework are therefore commendable. To ensure that these efforts result in a strong and robust system of beneficial ownership transparency, it is critically important to proactively address certain pitfalls and potential loopholes that could be exploited by companies and their criminal owners to thwart beneficial ownership scrutiny and continue to obscure their illicit assets. Therefore, the guide in this document outlines the key elements that any new legislative beneficial owner framework in Uganda should incorporate:



**Key element 1** The most effective method for Uganda to achieve beneficial ownership transparency is by amending the Companies Act to require all companies registered in the country to record their BO information in one single, nationwide registry that is administered by the URSB. As the case studies involving companies in the casino business and road construction sector demonstrate, it is important to extend the beneficial ownership framework beyond the extractive sector and EITI process. Taking the Zambian Companies Act as benchmarking example, amendments to the Uganda Companies Act should make the URSB responsible for establishing and maintaining the registry, require the same beneficial ownership disclosure requirements for foreign companies not incorporated in Uganda, and ensure that both the appropriate authorities and 'accountable persons' under the Anti-Money Laundering Act have access to the data.



**Key element 2** Additionally, the beneficial ownership disclosure regime should cover a wide variety of both domestic and foreign legal entities that operate in Uganda. As anonymous companies are often used to merely hold illicit wealth, beneficial ownership disclosure requirements should not only cover entities incorporated or registered to do business, but also those corporate structures that are merely used to open a bank account or hold assets such as real estate. Further, with case examples from various leaks like the Pandora, Panama and Paradise papers repeatedly exposing the use of trusts to hide illicit wealth, it is critically important to record the beneficial owners of these legal vehicles in Uganda as well.



**Key element 3** Moreover, the beneficial ownership legislation should detail the type of ID information and documentation that beneficial owners have to provide. While the ID requirement should not make it unnecessarily tedious for Ugandan nationals to establish a company and participate in the economy, it should at a minimum be a document that is issued by the government and contains a picture, so that it is not easily subject to fraud. Therefore, foreign nationals should always be required to submit a passport to prove their identity.



**Key element 4** Finally, the legislative framework should include provisions that ensure that beneficial ownership data is accurate and up-to-date. As such, the legislation should specify a timeframe of 30 days or less within which companies and beneficial owners should update their beneficial ownership information and appoint a central authority to be responsible for an adequate verification mechanism that checks the data for accuracy and completeness. After all, the effectiveness of a beneficial ownership register in Uganda would for a large part depend on its users being able to rely on the information it contains.

The implementation of a beneficial ownership regime takes resources, so it is important to get it right. At the same time, as a tool to combat tax evasion, money laundering, corruption and other financial crimes, a robust beneficial ownership register that leaves no room for loopholes has the potential to earn those resources back many times over for the government and the people of Uganda.

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