



Uganda Extractive Industries Transparency Initiative

ENGAGEMENT ON THE DEVELOPMENT OF BENEFICIAL OWNERSHIP TRANSPARENCY IN UGANDA

Summary Report

20th – 21st December 2022,
Fairway Hotel,
Kampala – Uganda

Abbreviations & Acronyms

AML	Anti Money Laundering
BO	Beneficial Ownership
BOT	Beneficial Ownership Transparency
CMA	Capital Markets Authority
CSO	Civil Society Organization
DRM	Domestic Revenue Mobilization
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Finance Action Task Force
FIA	Financial Intelligence Authority
FPC	First Parliamentary Council
MDAs	Ministries, Departments and Agencies
MOFPED	Ministry of Finance, Planning and Economic Development
MoJCA	Ministry of Justice and Constitutional Affairs
MSG	Multi-Stakeholder Group
NBOC	National Beneficial Ownership Committee
NIRA	National Identification Regulatory Authority
PEP	Politically Exposed Person
PPDA	Public Procurement and Disposal of Public Assets Authority
UGEITI	Uganda Extractive Industries Transparency Initiative
TI	Transparency International
URSB	Uganda Registration Services Bureau

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1.0 INTRODUCTION

New challenges have emerged and made Domestic Revenue Mobilization (DRM) capabilities of developing countries dwindle especially with the recent COVID-19 pandemic contributing to the collapse of economies thus putting pressure on financing for provision of essential services. To address some of these challenges that confront DRM, it is imperative to improve transparency and accountability through BO disclosure.

Recently, Uganda has made commendable efforts in carrying out Legal and Regulatory Reforms to support BO through the various amendments to legislation that touch on BO disclosure. The AML Act, Mining Act, Companies Act and Income Tax Act among others have made efforts to include some of the aspects of BO such as defining BO, entities covered, type of information to be collected and the penalties.

This report is about an engagement on the development of Beneficial Ownership Transparency in Uganda. The Two-day meeting was held from 20th to 21st December 2022, at Fairway Hotel, Kampala, Uganda.

The meeting was attended by members from NBOC, MDAs, CSOs, Law Firms and UGEITI Secretariat.

The general output of the workshop was to engage members and seek views to support the formulation of Draft Regulations for BOT. The meeting was supported by Transparency International Uganda, designed and conducted UGEITI in collaboration with URSB. The facilitators were:

- a) Mr. Edwin Birech, Transparency International Kenya
- b) Mr. Patricia Opoka, Manager Document Registration and Licensing, URSB , and
- c) Mr. Paul , FPC, MoJCA

This engagement provided stakeholders with an opportunity to enhance knowledge on BO. It was also used to help understand the context and challenges faced in the implementation of BOT. Through the need to enhance the DRM strategy, there was need to identify and provide alternative views to the Draft Regulations for BO. This was therefore a platform used by stakeholders to present and agree on alternative views that could be submitted to MoJCA through the FPC for consideration in drafting of regulations.

2.0 OBJECTIVE OF THE MEETING

The objectives of the engagement were to review and draft BO regulations for Uganda. The expected outputs were:

- i) An agreed strategy for developing BO regulations for Uganda.
- ii) Draft BO regulations in place.

Day 1: Tuesday, 20th December 2022

The meeting commenced with a Prayer led by Mr. Francis Okello from UGEITI Secretariat, the Moderator Mr. Edwin Kanakulya Kavuma then asked participants to introduce themselves and took them through the programme of the day.

4.0 OFFICIAL OPENING REMARKS

The remarks were made by Mr. Peter Wander, Executive Director, and TI-Uganda. He welcomed all participants to the workshop and thanked them for taking the time to attend. He noted that TI was always pleased to join partners in promoting transparency and accountability across all sectors while carrying out its work. They were implementing the DRM project with the support of TI-Kenya across the East African states of Kenya, Burundi, Rwanda, Tanzania and Uganda. The project focuses on four main research and assessment areas namely; evaluation of BO legal frame works, recent Auditor General Reports, country mining laws and conducting a Transparency in Corporate Reporting study. TI-Uganda was partnering with MoFPED and all stakeholders to see that

BO Transparency implementation was achieved such that the country could comply with international standards. URSB was developing Regulations hence the need for the workshop. Recently, Uganda was put on the Grey List under FATF so Parliament passed and amended a number of laws that touch on BO disclosure such as the AML (Amendment) Act 2022, Companies (Amendment) Act 2022, Trustees (Amendment) Act 2022, Anti-Terrorism Financing (Amendment) Bill 2022, Mining Act 2022 and Income Tax Act 2022. There was therefore need for a regulatory framework to support implementation. There was need to understand what BO is, the regulatory framework, the standard required, build the capacity of all stakeholders, develop inter-agency cooperation, creation of data wealth and management as well as take advantage of and adopt new technologies for accurate documentation and verification.

In conclusion, he wished all participants fruitful deliberations such that they could come up with good regulations to ensure compliance with BO Transparency in Uganda.

5.0 Remarks from National Coordinator, UGEITI

The remarks were made by Mr. Edwin Kanakulya Kavuma, Compliance Officer, UGEITI Secretariat on behalf of the NC. He said that UGEITI Secretariat was ready to support initiatives geared towards achieving BO Transparency in Uganda. EITI was a global standard used to promote transparency and good governance in the extractive sector. Uganda joined EITI in 2019 through a Cabinet decision and MoFPED was tasked with the role of setting up the institutional framework for its implementation. EITI implementation was overseen by an MSG and the first report was produced in May 2022.

BO was a requirement for all implementing countries according to Requirement

2.5 of the EITI Standard 2019. UGEITI Secretariat with support from EU got a BO Expert to support BO Transparency implementation. Uganda needed to put in place a roadmap for achieving BOT implementation because EITI required that this information should be made publicly available.

The recent EU Court Ruling on BO stated that making this information publicly available was illegal. This would have a ripple effect across other jurisdictions but the Head of EITI International's Board in a recent engagement noted that this would not affect the EITI Standard 2019. So implementing countries were still required to meet the Requirement.

The technical Support from the Consultant resulted in a study on the Legal and Regulatory framework and gaps were noted especially with the definition of BO in the new Companies Act 2022. There was need to have a threshold for identifying who qualifies. For the mining sector a threshold of 5% was noted so there was need for uniformity across the board. The new law granted powers to the Minister to develop regulations for implementing BO. BO Transparency could be a tool used to fight corruption as well as provide support for implementing the DRM Strategy. URSB had informed stakeholders that the Regulations would be out by end of the year.

In conclusion, he thanked TI-Uganda for support and all for taking time to attend the event.

6.0 Remarks from the Registrar General, URSB

The remarks were made by Ms. Caroline Egesa on behalf of the Registrar General, URSB. She welcomed all participants to the engagement and thanked TI and UGEITI Secretariat for the support rendered such that the country could implement BOT. She said Uganda had a taskforce for AML. The country was still on the Grey List under FATF. BOT was existing according to the law through the Companies Act 2022. URSB was working with FPC, UGEITI and other

stakeholders on BO to see that the country is removed from the Grey List. The regulations to support BO implementation were in place and awaiting the Minister's signature. There was need to develop an implementation plan with support from all partners like TI-Uganda etc.

With BO implementation, there was need for more engagements such that there is better understanding of the definition, benefits, what is required for implementation etc. More work needed to be done to meet the requirements under FATF as well as other international obligations.

In conclusion, she thanked all for the engagement and taking time to attend the event.

7.0 Presentation on Beneficial Ownership Transparency in Kenya

The presentation was made by Mr. Edwin Birech, TI-Kenya. He said he would be providing BO experience from the Kenyan perspective. The key highlights were:

- Legal and Regulatory framework
- Challenges during implementation

8.0 Moderated Discussion

The Moderator, Mr. Mr. Edwin Kanakulya Kavuma from UGEITI while reacting to the presentation noted that from the legal framework of Kenya, one must seek consent from the beneficial owner if such information was to be provided. He asked whether owners of this information were consenting and wanted to know if the country had defined PEPs since they were very active in the sectors with a lot of influence.

Other participants raised a number of issues that included:

-The need for clarification on how to maintain the BO Register, what it means for a closed Register, threshold and Betting companies.

-Clarification on real estate sector.

-Why it was necessary to have a threshold in the definition and the challenges noted during implementation considering that other company owners could be shareholders because there was a proposal for Uganda to include this.

Response from TI-Kenya

Seeking consent: The request is from a citizen by writing to a competent authority but also for investigating authorities.

PEPs: These were people who held public offices and had undue influence in the award process for different activities. They include politicians like Ministers, Governors, MPs, Judges, Military officers, Board of Parastatals etc. It had also been expanded to include spouses and business associates.

Threshold: The definition stated that the person should have 10% shares of ownership in a company, have voting rights and decision making power. It applied to all whether corporate owners or not. The challenge normally arose when calculating the 10% shareholding whether directly or indirectly with voting rights.

Responding to this, UGEITI said when looking at the definition, there were different parameters for defining BO. But in the regulations drafted by URSB, there would be a broad definition.

URSB said for companies, a shareholder may necessarily not be a legal owner. One needed to declare who the beneficial owner was.

Challenges: These relate to the slow update of the Register and were recorded at about 20% during implementation. Currently the country was moving towards digitization of the Register but the data was captured manually.

Real Estate: There was a Register for the sector because it was a sector with a lot of money laundering.

Betting Companies: These were noted as avenues for laundering with some penalties handed out for breach.

9.0 Presentation of the Amended Laws on Beneficial Ownership Transparency in Uganda

The presentation was made by Ms. Patricia Opoka – Manager Document Registration and Licensing, URSB. She noted the following:

- hoped all participants understood what BO was.
- Uganda was placed in the Grey List in February 2022 under recommendations 24 and 25 of FATF.
- URSB got involved in BO because it's the custodian for all business registration in the country.
- BO definition was adopted from the AML Act for purposes of the Companies Act 2022.
- In August 2022, a number of laws were passed by Parliament and they include, AML Act, Terrorism Financing Act, Companies Act, Trustees Act, Partnership Act and Cooperative Societies Act which were assented to by the President.
- BO was very fluid so can't put all definitions in the law. There was an ongoing process for drafting the regulations and the Minister was in charge. This would cater for the broad definition of BO.
- Definition of BO was in Section 2 of the draft regulations. The drafting of the regulations was the responsibility of FPC which would be endorsed by the Minister of Justice and Constitutional Affairs.
- There was an on-line registration platform which was rolled out in September 2022.
- URSB was going to carrying out advocacy on media platforms including radios and TVs and also carry out engagements with all stakeholders for awareness raising.

10.0 Moderated Discussion

First Session:

Participants raised a number of issues. These are:

- There was need for more clarification on the definition of BO.
- How would URSB carryout the role out of BO?
- How would URSB collect BO information from a company having shares in another?
- Where there any sanctions for default?
- How would BO apply to other jurisdictions?
- There was need for more clarity on the process for such.
- What was the relationship between URSB and other institutions when carrying out its duties including PPDA that collects this information?

Response from URSB

- The broad definition on BO will be captured in the regulations.
- The role out of the activity will be on media platforms including radio and TVs with fliers, adverts etc.
- For a company having shares in another, BO information required will be for the natural person of the company having shares in another.
- For sanctions, the default fine wasn't that high for clients. URSB also paid fine for default.
- For other jurisdictions, the regulations were to cover BO only.
- For search, one was expected to get information on what one asked for. So if the information required was BO, then it would only relate to BO.
- URSB always collaborated with other accountable persons like FIA, Interpol. It could report to FIA in case of an investigation.
- For PPDA, there was need for harmonization of the roles with the creation of a centralized registry. If the two agencies were all running parallel registries for collecting BO information, then this would cause a lot of challenges.
- Collection of all this information would apply to all companies in the register.

Second Session:

Participants raised a number of issues. These are:

- How URSB intended to collaborate and harmonize its role with other agencies.
- How it will handle companies like Oil companies that normally trade in shares.
- How URSB was going to collect the information.
- How were searches carried out?
- The rise of the public sector in business and compliance.
- Has URSB considered forming/joining a regional body to support implementation when there is need for collaboration?
- EU court ruling and its effects to Uganda.

Response from URSB

- For harmonization of roles, there is a national taskforce under the MoFPED and it includes Police, FIA etc. Feedback would be from all MDAs including UGEITI.
- There was collaboration with all relevant MDAs with a lot of engagements ongoing.
- Companies were regulated by CMA when trading in Capital Markets. For Oil companies the threshold was 5% and different sectors had different requirements.
- There was an automated system for collecting information with all applications carried out on-line. It's only missing a feature for digital signature from NIRA. Digitization would help institutions like law firms in carry out their duties.
- Searches were carried out per company at a fee. It's not possible for very many in a lumpsum.
- Rise of public sector in business was not a challenge as long as the business was compliant and operating under the law.
- Compliance was to be made easy to avoid default by players. For BO implementation, the information required was for people behind the company.
- There was no regional/international body to simplify access to information.
- The EU Court ruling was not binding to the Ugandan context.

Way forward

It's not illegal for one to become a beneficial owner. The information was only needed during law enforcement.

CLOSING REMARKS

Mr. Mr. Edwin Kanakulya Kavuma from UGEITI provided the closing remarks. He said being a BO wasn't a crime and neither was a PEP. PEPs could own businesses. The interest for this information was whether one was using their status and businesses to carry out illegal activities. The initial phase for implementation would be voluntary but with time, there would be enforcement and the law would catch up with defaulters.

In conclusion, he thanked all for the engagement and taking time to attend the event.

Day 2: Wednesday, 21st December 2022

The meeting commenced with a Prayer led by Mr. Francis Okello from UGEITI Secretariat, the Moderator Mr. Edwin Kanakulya Kavuma then introduced the programme of the day and welcomed all to the engagement.

12.0 Recap of Day 1

Moderator Mr. Edwin Kanakulya Kavuma, UGEITI Secretariat provided the Recap of the day as:

OFFICIAL OPENING REMARKS

- TI-Uganda was executing a project that supports BOT in East Africa and reached out to UGEITI who then reached out to URSB.
- URSB was developing regulations hence the need for the workshop.
- Uganda being put on the Grey List under FAFT prompted TI to start implementing the activity.
- There was need for inter-agency engagement between government, private sector etc.

Remarks from National Coordinator, UGEITI

- Thanked TI-Uganda for support to the activity.
- Provided the background to EITI implementation and the need for BO.
- There was need for strong legal and regulatory framework.

Remarks from the Registrar General, URSB

- Thanked UGEITI and TI-Uganda for the support.
- URSB was working with all stakeholders under the AML Act to see that Uganda is removed from the Grey List.
- URSB was looking for further cooperation and support from stakeholders to achieve BOT implementation.

Presentation on Beneficial Ownership Transparency in Kenya

The key highlights were:

- Legal and Regulatory framework
- Challenges during implementation

Moderated Discussion

The discussions centered on a number of issues ranging from Seeking consent, PEPs, Threshold, Challenges, the Real Estate sector to Betting companies.

Presentation of the Amended Laws on Beneficial Ownership Transparency

in Uganda

The key highlights were:

- Background of URSB engagements prior to the new laws.
- What the laws provided for.
- The next steps were the development of regulations.

Moderated Discussion

The discussions ranged from;

- Issues related to the BO definition.
- Legal requirement for BO (whether penalties were harsh etc.)
- The EU Court ruling on BO stating that making the information public was illegal.
- PEPs, the categories and definition to;
- The need for inter-agency cooperation and harmonization of roles.

Way forward

It was agreed that it wasn't illegal for one to become a beneficial owner. The information was only needed once there was need in case of law enforcement.

13.0 Presentation of the draft Regulations for the Amended Laws by FPC

The presentation was made by Mr. Paul....., FPC, MoJCA. The key highlights were:

- The Draft was about provisions in the regulations and he was ready to take in comments.
- Companies Act amendment was for Section 111(a) giving the Minister Powers to make regulations.
- Section 119(a) is on the set of regulations.
- BO definition is the same as that in the Companies Act 2022.
- Competent authorities were already in the AML Act, so the interpretation and

definition were the same i.e. Police etc.

- Register to have official record/register of BO.
- Section 5 was inserted because it's a FATF Requirement. That is how FATF measured URSB's response to required information.
- Form 1 under regulations captured BO details.
- Form 2 is for notice of change of BO particulars.

14.0 Moderated Discussion

15.0 Way forward on the Next Steps beyond the Regulations

- Regulations were completed by FPC and URSB.
- Development of a Form for search to be included by FPC and URSB.

16.0 Closing Remarks

The first closing remarks were provided by Mr. Ntale Mustapher, Director, URSB. He said they were very serious as an agency to see BOT implemented in the country. URSB had deployed a new system to support their operations as well as BO implementation.

They were cooperating with other government agencies/stakeholders, and were in the process of linking their system with other implementing agencies. They were going to carry out sensitization activities for the public to understand the process. In conclusion, He thanked TI-Uganda and UGEITI for organizing the engagement.

The second closing remarks were provided by Mr.....TI-Uganda. He thanked URSB and MoFPED for facilitating the engagement. He said TI was ready to provide more support going forward such that the BO regulations are in place. There was need to achieve successful BOT implementation in the country. In conclusion, he thanked all for taking time to attend the event.