

Uganda

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I. Summary

A. Types of Organizations

Ugandan law allows for the establishment of a variety of not-for-profit organisations (NPOs), and the country is host to a number of national, regional, and international organisations. NPOs interacting with foreign grantmakers are most commonly constituted as:

- Non-governmental organisations (NGOs);
- Trusts; and
- Foundations. [1]

NGOs are primarily governed by the Non-Governmental Organisations Act, 2016 (“NGO Act”). This Act repealed the Non-Governmental Organisations Registration Act, 1989 (“NGO Registration Act”) and the Non-Governmental Organisations Registration (Amendment) Act, 2006 (“NGO Registration (Amendment) Act”) [2] The NGO Act defines an “organisation” as “a legally constituted non-governmental

organisation...which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes” (NGO Act Section 3).

Trusts are covered by the Trustees Act Chapter 164 (1954) and the Trustees Incorporation Act Chapter 165 (1939).

Foundations can be registered either under the Trustees Incorporation Act or as companies limited by guarantee under the Companies Act Chapter 110.

B. Tax Laws

Uganda’s Income Tax Act establishes a category of exempt organisations which includes those that are of a religious, charitable, educational, or public character. Qualifying organisations are exempt from tax on almost all categories of income.

Individuals and legal entities are eligible for tax deductions for charitable contributions. Ugandan law subjects certain sales of goods and services to VAT, with a fairly broad range of exempt activities. Foreign grants are exempt from VAT.

II. Applicable Laws

- Constitution of the Republic of Uganda (1995), as amended by Act 11 of 2005 and Act 21 of 2006 [3]
- Non-Governmental Organisations Act (2016)
- The Companies Act (2012)
- The Trustees Act, Chapter 164 (1954)
- The Trustees Incorporation Act, Chapter 165 (1939)
- Income Tax Act, Chapter 340 (1997), as amended by Act 10 of 2007
- Value Added Tax Act, Chapter 349 (1997), as amended by Act 12 of 2006
- The Value Added Tax (Amendment) Act (2005)
- East African Community Customs Management (EACCM) Act (2004)
- The Advocates (Legal Aid to Indigent Persons) Regulations, SI 12 (2007)
- Public Order Management Act (2013)

III. Relevant Legal Forms

A. General Legal Forms

Ugandan law provides for several types of not-for-profit organisations (NPOs), including NGOs, trusts, and foundations. Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include: community-based organisations, cooperative societies, societies, communal land associations, political parties, religious entities, and trade unions.

The NGO Act distinguishes between foreign, indigenous, and international organisations. An indigenous organisation is wholly-controlled by Ugandans. A foreign organisation is one that does not have original incorporation in any country, is partially or wholly-controlled by citizens of other countries not among the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the National Bureau of Non-Governmental Organisations (hereinafter “Bureau”). An

international organisation is an organisation that has its original incorporation in a country other than a Partner State of the East African Community, is partially or wholly-controlled by citizens of one or more countries other than those of the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau (NGO Act Section 3).

There are currently no regulations for the NGO Act. Under the old regulations – the Non-Governmental Organisations Registration Regulations, 2009 (“NGO Registration Regulations”) – an application for registration of a local NGO required a fee of 20,000 Ugandan Shillings (approximately \$6), while the application of a foreign company required a fee of approximately \$100 (NGO Registration Regulations Section 2).

NGOs. The NGO Act defines an organisation as “a legally constituted non-governmental organisation...which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes” (NGO Act Section 3). NGOs must register with the National Bureau of Non-Governmental Organisations (NGO Act Section 29(1)). The Act restricts membership to the Board of Directors of the Bureau (NGO Act Section 9).

Section 4 of the Advocates (Legal Aid to Indigent Persons) Regulations (2007) defines a legal aid provider as a person, organisation, or institution whose main objective is the provision of legal aid and who is registered by the Law Council as a legal aid provider. (Section 6 of the Regulations requires NPOs that provide legal aid to register as legal aid service providers with the Law Council.)

Trusts and Foundations. The Trustees Act and the Trustees Incorporation Act govern trusts and foundations. Trusts may be established by anybody or association for any “religious, educational, literary, scientific, social or charitable purpose” (Trustees Incorporation Act Section 1(1)). Trusts and foundations are established to provide grants, and in some cases loan financing at a more affordable rate to NGOs, community-based organisations, and private organisations in support of their goals and objectives. [4] Section 126 of the Companies Act provides that “[a] notice of any trust, expressed, implied or constructive shall not be entered on the register or be receivable by the registrar.”

B. Public Benefit Status

The NGO Act includes in its definition of “organisations” those that provide “voluntary services to the community or any part” (NGO Act Section 3). The Act, however, does not define the term “voluntary services.” Nor does it otherwise confer a special status on voluntary or public benefit organisations. The Trustees Incorporation Act also does not define “charitable purpose” as the term is used in the section on establishing a trust.

Notably, however, the Income Tax Act limits “exempt organisation” status to those organisations, institutions, or irrevocable trusts that qualify as religious, charitable, or educational institutions of a public character that have been issued a written ruling by the Commissioner stating that it is an exempt organisation (Income Tax Act Section 2(bb)).

Charitable organisations established under the Companies Act do not benefit from any tax exemptions.

IV. Specific Questions Regarding Local Law

A. Inurement

Common law practice dictates that neither the income nor assets of a not-for-profit organisation can be distributed to employees, directors, founders, or any other person other than for the fulfillment of the organisation's statutory purposes. (Reasonable compensation for services rendered in the course of fulfilling the activities of an organisation is allowed.) According to local experts, as a matter of common law practice, this prohibition extends to NGOs, trusts, and foundations.

An organisation, member, or employee of the organisation must not engage in profitable activities for personal gain. According to local experts, as a matter of common law practice, this expectation extends to all NPOs, including trusts and foundations.

B. Proprietary Interest

NGOs possess legal personality, so property is vested in the organisation as a legal entity. There are no express legal provisions that allow donors to retrieve donated property or determine the destination of their contributed assets outside applicable contract obligations. The use of donor-recipient contracts is common in Uganda, but a donor cannot enter into a contract with an organisation that enables the donor to recoup his or her donation if the organisation dissolves. According to local experts, as a matter of common law practice, this prohibition extends to trusts and foundations as well.

C. Dissolution

Ugandan law does not provide for the distribution of assets upon liquidation of an NPO. Rather, the law requires the constitution of each organisation to establish procedures for the disposition of the organisation's assets upon dissolution (NGO Act Section 49(1)), and organisations that have made a resolution for voluntary dissolution must develop and submit to the NGO Bureau and to the official receiver a statement of their affairs, showing particulars of assets, liabilities, names, residence, and occupations of the creditors and the securities held by them (NGO Act Section 49(6)). According to local experts, the general practice is that upon dissolution and winding-up of an organisation, its debts and liabilities are settled first and the remaining property is distributed to other organisations with similar aims and objectives. The law prohibits the distribution of assets among members.

D. Activities

1. General

Objective V of the Constitution on National Objective and Directive Principles provides that:

- (i) The State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively.

- (ii) The State shall guarantee and respect the independence of non-governmental organisations that promote human rights.

At the same time, the NGO Act allows the Government of Uganda to exercise considerable control over the operation of NGOs. An NGO is prohibited from operating in Uganda unless it has registered with the Bureau (NGO Act Section 29). Applications for registration are to include “(a) the operations of the organisation; (b) the areas where the organisation may carry out its activities; (c) staffing of the organisation; (d) geographical area of coverage of the organisation; (e) location of the organisation’s headquarters; and (f) date of expiry of the previous permit.” (NGO Act Section 31(5)).

Moreover, the NGO Act requires an NGO to: (a) not carry out activities in any part of the country, unless it has received the approval of the DNMC [District NGO Monitoring Committee] and Local Government of that area and has signed a memorandum of understanding with the Local Government to that effect; (b) not extend its operations to any new area beyond the area it is permitted to operate unless it has received a recommendation from the Bureau through the DNMC of that area; (c) co-operate with local councils in the area of its operation and relevant DNMC and SNMC [Sub-county NGO Monitoring Committee]; (d) not engage in any act which is prejudicial to the security and laws of Uganda; (e) restrict its operations to the area of Uganda in which it is permitted to operate; (f) not engage in any act which is prejudicial to the interests of Uganda and the dignity of the people of Uganda; (g) be non-partisan and not engage in fundraising or campaigning to support or oppose any political party or candidate for an appointive office or elective political office, nor propose or register a candidate for elective political office; and (h) have a memorandum of understanding with its donors, sponsors, affiliates, local and foreigner partners, if any, specifying the terms and conditions of ownership, employment, resources mobilized for the organisation and any other relevant matter (Section 44).

2. Economic Activities

NPOs in Uganda may not pursue economic activities as their sole purpose. [5]

The Income Tax Act, Chapter 340, Section 2(f) provides guidance on the types of economic activities that exempt organisations may engage in without becoming liable for income tax payments. The Income Tax Act provides that income other than property income or business income not related to the functions constituting the basis for an organisation’s existence will be subject to tax.

E. Political Activities

The law does not impose a limit on the resources of an organisation or share of its budget that can be devoted to lobbying or other legislative activities.

As for “political” activities, Ugandan NGOs are not permitted to belong to any political group. The NGO Act requires an NGO to be non-partisan and not engage in fundraising or campaigning to support or oppose any political party or candidate for an appointive office or elective political office, nor propose or register a candidate for elective political office. NGOs can actively participate in the election process through conducting educational seminars on current topics of political concern, however, including understanding the platform of various candidates. Moreover, organisations are allowed to engage in monitoring and observing the electoral process, documenting election irregularities, cooperating with the Electoral Commission, and proposing improvements to the process of elections. In the past, organisations have also supported candidates in their bids to challenge election results.

F. Discrimination

The Constitution of the Republic of Uganda prohibits discrimination in all spheres of political, social, and cultural life, as well as based on sex, race, color, tribe, origin, birth, social or economic standing or disability (Constitution Article 21). In addition, the Constitution includes National Objectives and Directive Principles of State Policy that provide, “The State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible” (Constitution Objective 18). These provisions bind all persons, including educational institutions.

G. Control of Organization

Ugandan law does not restrict other organisations or persons from controlling a Ugandan NPO. A not-for-profit entity might establish an NPO and continue to control or own it. Likewise, a Ugandan NPO could be controlled by a foreign grantor charity.

H. Foreign Grants

The NGO Act requires an organisation to “submit to the Bureau annual returns and a report of the audited books of accounts by a certified auditor” (Section 39(3)(a)). Further, an organisation must “declare and submit to the District technical planning committee, the DNMC [District Non-Governmental Organisations Monitoring Committee] and SNMC [Subcounty Non-Governmental Organisations Monitoring Committee] of the area in which it operates, estimates of its income and expenditure, budget, work plan, information on funds received, and the sources of funds” (NGO Act Section 39(3)(b)).

V. Tax Laws

A. Tax Exemption

Uganda’s Income Tax Act provides that an organisation is exempt from paying income tax if it falls within the definition of “exempt organisation” under Section 2(bb) of the Income Tax Act and has been issued a formal ruling from the Tax Commissioner qualifying it as an exempt organisation. The Income Tax Act defines an exempt organisation as a company, institution, or irrevocable trust that is:

- a. An amateur sporting association;
- b. A religious, charitable, or educational institution of a public character; or
- c. A trade union, employees’ association, an association of employers registered under any law of Uganda, or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Uganda.

All income of an exempt organisation is exempt from income tax, with the exception of property income received by the organisation. Rental income of immovable property, however, may be also exempt if it is used by the lessee exclusively for the activities of the organisation specified in the Act. In addition, business income received by an NGO that is not related to the function constituting the basis of the organisation’s existence is subject to tax (Income Tax Act Section 21(f)).

Individuals and legal entities are eligible for tax deductions for charitable contributions to a tax-exempt organisation listed in Section 2(bb), (a) and (b) of the Income Tax Act. An

individual may claim as a deduction up to 5 percent of that individual's taxable income for the year in which the gift is made.

B. Value Added Tax

The standard VAT rate is 18 percent (Value Added Tax (Amendment) Act (2005) Section 3). Foreign grants are not subject to VAT. Certain supplies are exempt from VAT, including: unprocessed foodstuffs and agricultural products; educational, medical, dental, or nursing services; social welfare services; and medical equipment (VAT Act Schedule 2 Section 19).

The legislation also makes provision for select zero-rated supplies, including drugs and medicines, and educational materials (Section 24(4) and 3rd Schedule of VAT Act (1997) Chapter 34).

The annual registration threshold is one hundred and fifty million Uganda shillings (approximately \$41,000) (Value Added Tax (Amendment) Act of 2015 Section 7(2)).

C. Import Duties

The East African Community Customs Management (EACCM) Act regulates the management and administration of customs duties on imports in Uganda and the region. Goods and equipment used in aid funded projects are exempt from customs duties (EACCM Act Section 114 Schedule 5(10)). However, the Act does not define "aid funded projects." In addition, goods imported by international and regional organisations with diplomatic accreditation as well as donor agencies are similarly exempt from paying import duties (EACCM Act Section 114 Schedule 5(6)). The Act does not list local or national NGOs as entities entitled to an automatic exemption on imports.

Certain agricultural and health-related items are listed as exempt from import duties (Schedule 5 Part B).

D. Double Tax Treaties

No tax treaties have been entered into between Uganda and the United States.

VII. Knowledgeable Contacts

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Footnotes

[1] Due to their limited interaction with U.S. grantmakers, community-based organisations (CBOs), trade unions, cooperatives, cooperative societies, political parties, and religious entities will not be covered by this Note.

[2] The Ugandan Parliament passed the Non-Governmental Organisations Act, 2016 (NGO Act) in 2015. The President assented to the Act in January 2016. The Act repealed the old regulations cited as “Non-Governmental Organisations Registration Regulations, 2009,” which implemented the old Act. The process of enacting new regulations is currently underway.

Prior to the passing of this law, the Office of the Prime Minister (OPM) embarked on the formulation of a National NGO Policy within the framework of Article 108 of the 1995 Constitution of Uganda that mandates the Prime Minister to be responsible for coordinating the implementation of government policies across ministries, departments, and other public institutions. Various stakeholders including government agencies, NGOs, and donor representatives were consulted to provide input into the NGO Policy. The Policy was approved by the Cabinet in October 2010 and is now in force. However, there is a pending court case that may affect the Policy. The Policy impacts Section 5 of the NGO Act, which provides for the establishment and composition of the National Bureau of Non-Governmental Organisations (hereinafter “Bureau”).

The Bureau has authority to monitor NGO operations and develop policy guidelines for NGOs and community-based organisations (CBOs) (NGO Act Section 6). Additionally, NGOs are required to obtain a periodic permit to operate (NGOs are not absolved from the requirement that they register with the Bureau). The NGO Act also expanded the powers of the Ministry to regulate the dissolution of NGOs.

The Bureau has branch offices which supervise District Non-Governmental Organisations Monitoring Committees (DNMC) (NGO Act Section 19). Each district has a DNMC which is composed of the Chief Administrative Officer, District Community Development Officer, District Internal Security Officer, District Health Officer, District Education Officer, Secretary for Gender and Community Services, and a representative of NGOs in the district. At the subcounty level, the Bureau is represented by the Subcounty Non-Governmental Organisations Monitoring Committee (SNMC), which is composed of the Senior Assistant Chief Administrative Officer, Subcounty Community Development Officer, Gombolola (subcounty) Internal Security Officer, Subcounty Health Inspector, and a representative of NGOs in the subcounty.

The Policy also impacts Section 6 of the NGO Act. Under the Policy, the Bureau shall in addition to the functions provided under the Act be responsible for:

- a) Conducting background checks and scrutinizing the credentials and status of all international NGOs seeking to register and operate in Uganda;
- b) Consider applications for the renewal of NGO permits;
- c) Monitor compliance by all registered NGOs with the terms and conditions of their certificates of registration/incorporation and their constitutions;
- d) Provide appropriate guidelines for the operationalization of the NGO Policy at line ministry and lower levels of the district administration consistent with the principles of the Policy;
- e) In liaison with designated officers in line ministries and local government authorities, monitor district relations with NGOs to ensure compliance with set guidelines;
- f) Coordinate government engagement with the NGO sector;
- g) Coordinate government engagement with other stakeholders to establish a reliable database and information system on the NGO sector; and

- h) In consultation with the lead Ministry and NGO umbrella organisations, prepare periodic reports on the status, contribution and impact of the NGO sector on national development.

[3] Uganda's legal system is based on English Common Law and African Customary Law. Customary law governs to the extent that it does not contradict the statutory laws, although the 1995 Constitution, as amended, is the supreme law of the land. The articles of the Constitution referenced in this Note are those of the Constitution of the Republic of Uganda, as amended February 2006.

[4] A community-based organisation, or CBO, is an organisation "operating at a subcounty level and below, whose objective is to promote and advance the well-being of the members of the community" (NGO Act Section 3). CBOs typically are formed to accomplish one specific purpose: examples include forming groups to work collectively on members' farms or to support funeral ceremony preparations. A few groups take a wider community development role. CBOs are relatively small (usually involving 10-20 households).

[5] Microcredit associations that engage in business may be registered as NPOs with the sole purpose of doing business.