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A general review of the Anti-Money Laundering Bill 2009

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Uganda's geographic position in East Africa and its turbulent past has made it susceptible to being used as a transit point for illegitimate funds and resources. These have been used for all manner of illicit purposes locally and also to destabilize many of its neighbours including Somalia, Southern Sudan and the Democratic Republic of Congo. This has affected the financial sector, the economy and Uganda's international relations.

With the stability and economic growth characterized over the last 24 years, and taking into consideration international policies, the need to address the issue of Money Laundering has become of paramount importance. Legislation against this has been in the works since 2002 and has culminated in the Anti-Money Laundering Bill No 13 of 2009 before our Parliament.

The policy and principle behind the Bill is to combat money laundering through criminalizing money laundering and controlling the financing of terrorism.

Whereas the current legal regime in particular the Financial Institutions Act 2004 and Central Bank guidelines attempt to set up mechanisms for the curbing of money laundering in financial institutions by demanding inter alia a thorough background check on customers, flagging suspicious transactions and categorizing risk customers, the area of operation of this Act is restricted to Financial institutions and not other areas like casinos, real property, minerals etc.

The Anti-Money Laundering Bill has sought to extend the scope by defining money laundering to relate to illegitimately obtained property including the concealing or disguis-

ing of the nature, source, location, disposition or movement of the proceeds of crime or any activity constituting a crime. Property has been given a much wider scope than financial transactions. It is in part similar to that given under UK common law and includes property or assets of any kind, nature or description including currency, monetary instruments, vehicles, aircraft, ships, art, gems, precious metals, land and legal documents or instruments evidencing title in such property or assets.

The Bill is very ambitious in its provisions and it will certainly take more than mere economic and political will to have the same fully implemented and to fulfil the purpose for which it has been enacted. This is in part because the Anti Money Laundering Bill No 13 of 2009 places a heavy obligation on all "accountable persons" to verify the customer's identity using reliable independent source documents, data or information including passports, birth certificates, identity cards. The accountable persons referred to in the Bill include advocates, executors, trustees, casinos (including internet casinos), real estate agents, dealers in precious metals and gems, financial institutions, licensed brokers, insurance companies, registrars of lands and companies and all licensing authorities.

Whereas this may make perfect sense especially in light of the *know your customer* policy of financial institutions the reality is that many of these accountable persons lack the necessary man power and resource information to undertake detailed vetting of clients or transactions as required by the Bill. This is worsened by the fact that Ugandans do not have a national identity document and other documents that may be relied upon to ascertain identity are not very well controlled and are easy to abuse.

It is also clear that the executive while preparing this Bill worked on the wrong presumption that all other key players in the

enforcement of this law have in place good systems or software. This is not the case for Uganda. Various registries have only just been computerized and only a small fraction of their records have been subjected to data input. Further whereas the country has a fully operational Interpol Office, the fingerprinting and vetting process to compile thorough criminal records faces certain challenges.

Regrettably the fact is that many of these accountable persons for example the advocates, Companies' and Land's registries etc are dependent on the utmost good faith of their clients and practically have no way of verifying most of the information given to them.

The Bill however has several positives that cannot be overlooked, for example, any accountable person providing information in good faith is immune from liability. It further provides for the creation of a Financial Intelligence Authority and it expressly increases the extra territorial jurisdiction of Ugandan Courts over offences connected to money laundering. It enables the extradition to Uganda of fugitives for trial in Ugandan Courts even where the offence is committed outside Uganda and for the confiscation of property in Uganda connected to a crime committed against the laws of another state.

The Bill further provides for the seizure, freezing and forfeiture of property that is the subject of money laundering and for lifting of the veil when assessing the value of the benefits derived by a person from the commission of a crime. This is very significant in as far as recovery is concerned.

The Bill however appears to rule out the defence of double jeopardy by categorically stating that the crime of money laundering is a separate crime distinct from and in addition to other crimes under the laws of Uganda. This makes it possible for a party to have parallel proceedings that may in essence arise out of the same circumstances and both with penal consequences.

It is worth noting however that the Bill prohibits any person from “intentionally” participating in money laundering. This invariably creates a defence open to a party accused of money laundering in that “intent” must as of necessity be proven. Intent unfortunately always remains a matter of fact.

Although the Bill is a welcome addition to our legislation and in particular for the financial sector, the economy and regional stability, it is important that other facilities, services and institutions are improved upon to ensure that the provisions of the Bill can actually be implemented in practice. Without this being put in place the Bill will remain just another redundant piece of legislation.

Financial and corporate

Recommended firms

Tier 1

Katende Ssempebwa & Co
MMAKS Advocates
Sebalu & Lule Advocates
Shonubi Musoke & Associates

Tier 2

AF Mpanza
Byenkya Kihika & Co
Kateera & Kagumire Advocates

Tier 3

Kampala Associated Advocates
Lex Uganda

Tier 4

Barugarahe & Co
Birungyi Barata & Associates
JB Byamugisha
Kasirye Byaruhanga Advocates
Magezi Ibale & Co

The legal profession in Uganda has been going through a boom and according to one local partner in the past decade the number of law graduates has gone up ten-fold. At the top end, many leading law firms have been recruiting, developing and expanding, with one firm opening a new office in the industrial city of Jinja.

SNR Denton is already active in the market through Kampala Associated Advocates (KAA) and DLA Piper recently did a sweep through Tanzania and Uganda in search of potential local affiliates, and firms hint that it may have already found one.

As with some other African nations, the country's difficulties have at least remained constant while the financial crisis affected developed economies, leaving Uganda in a

comparatively stronger position. Additionally, the country has seen increased activity in the oil and telecom sectors, which bolstered an already strong showing in the M&A markets. The banks were also more active than usual and the capital markets provided reliably good returns.

“The banks have been competing hard with each other to lend and they are more receptive to propositions for different projects,” says a partner, adding that “we have done almost double the amount of banking compared to last year.” There was a number of successful IPOs over the year, and when Stanbic Bank floated its shares, “everyone made a three fold profit in a couple of weeks” according to one lawyer. Safaricom and the National Insurance Corporation also completed oversubscribed public offerings.

“We have had a lot of enquiries from big organisations, especially from international banks bringing ideas to introduce new products,” says another partner, although ideas to introduce asset-backed securities had a frosty reception from banks and lawyers.

On the national level, the government is working on a new oil law, essentially aiming to establish a national oil company controlled by a minister in charge of oil, and amendments to the contracts law, company law and bankruptcy proceedings. The only uncertainty, say lawyers, will come from regional developments, the most uncertain being political developments in the Sudan.

Katende Ssempebwa & Co

KS is firmly in the premier league of corporate and financial firms. It is the biggest firm and for the first time in 18 years it has expanded, taking on two extra floors for office space, changing logos and brochures, and looking to recruit. Crucially for Uganda, the firm has the resources to manage a strong in-house training programme.

“The qualification and background of the senior and junior partners was impressive; they have a strong presence across all Africa with their network and every person we talked to had good things to say about them,” says a client.

It “has high calibre, dedicated and skilled staff ... they also have a good rapport with local regulators, the Bank of Uganda and the capital markets authority,” says another client, while another adds: “You are also sure that their reputation will not be undermined, there are no skeletons in the closet.”

In highlight M&A deals, John and Sim Katende advised Warid Telecom Uganda and its main shareholders (Warid Telecom and Warid Uganda Holding) on a multi-million dollar sale of a majority interest to Essar

Group. The firm also advised the International Medical Group and International Air Ambulance on its acquisition of a leading local insurance company and merger with International Medical Group.

In finance, John and Soogi Katende and Stephen Opolot acted for ICICI Bank on a \$20 million facility to an international tea producer, partly funding the acquisition of a local tea company, and Frederick Ssempebwa and Sim and Arthur Katende advised Total on its acquisition of an oil exploration license.

Leading lawyers

John Katende
Sim Katende
Soogi Katende
Frederick Ssempebwa

MMAKS Advocates

MMAKS distinguishes itself in the market by having a team of eight lawyers fully dedicated to transactional work, rather than litigation. According to the majority of clients and competitors, the firm is strongest when it comes to banking and finance.

“For banking it is one of the best firms in Uganda and I would not go with anyone else,” says one client. “They are quite on time with requests and always get opinions before the deadline,” says another, “they have a good understanding of the banking industry and of the regulator, they are able to react very quickly to any changes in the law and are quite effective at looking after new regulation.”

Phillip Karugaba is the leading lawyer for transactional work and led on all key deals. In one of the highlight transactions in the market the firm advised the National Insurance Corporation (NICL) on a successful \$3.3 billion IPO.

MMAKS was also mandated by Proparco to advise on a \$30 million credit facility to a local financial institution and acted for BNP Paribas as agent and security trustee on a £1.5 billion facility to an oil company. In a fourth large deal, the firm advised Bharti Airtel on its \$11 million acquisition of Zain Africa's Uganda business.

Leading lawyers

Phillip Karugaba
Rachel Musoke

Sebalu & Lule Advocates

Sebalu & Lule moves up a tier this year thanks to consistent feedback from clients and competitors. The firm is one of the oldest in the market and is an established leader especially when it comes to banking and finance.

Notably, it was one of the four firms to be chosen by the International Finance Corporation to join its panel of local legal counsel.

“Nicholas Ecimu is brilliant, the top lawyer of our panel of lawyers through Africa,” says one international micro-finance company. “He was very helpful and although he is extremely busy he always finds time to help; very practical, very hands on and very sensitive to our clients’ businesses,” adds the client.

“They have been around for ages and it is one of the bigger firms with people who are higher ranked and more competent,” says a competitor.

Among large deals, the firm advised the New Forest Company Uganda on a \$6 million loan from the European Investment Bank to set up and develop a forestry project. Other clients include Standard Chartered Bank, the East African Development Bank, Heritage Oil & Gas Canada, Merrill Lynch, Toyota (Uganda), the Danish Development Agency and Total Uganda.

Leading lawyers

Nicholas Ecimu
James Sebugenyi
Barnabas Tumusingize

Shonubi Musoke & Associates

The firm has made a couple of recent innovative moves with the recruitment of a legal consultant and the opening of an office in Uganda’s second industrial city Jinja, en route to Nairobi and home of a number of banks.

The firm recruited consultant Tajdin Mitha, who has practiced in London and Vancouver and has over 25 years of experience working in international development with the Aga Khan development network. Elsewhere, the firm has been working to deepen working relations within the Africa Legal - International Legal Services Network.

“They are strong because of how the team works, they understand the local legal framework and they are very responsive,” says a client. “Their feedback is very efficient and that helps us move forward.” The firm is highly respected across the board and has a very strong track record for corporate work.

It advised Absa Bank (through Absa Capital and Barclays Bank Uganda) on a \$150 million syndicated loan, the largest single syndicated facility in Uganda, to MTN Uganda, and acted for Umeme, the concession holder for electricity distribution, on a \$25 million loan from the International Finance Corporation to expand its distribution network.

The firm also advised the European Investment Bank on a \$6 million finance facility to a local company to establish a forestry project, and acted for the Czech Export Bank on a \$1 million aircraft facility to Eagle Air; the deal was done according to international standards of aircraft financing.

Leading lawyers

Andrew Kibaya
Noah Mwesigwa
Alan Shonubi

AF Mpanga

The consensus is that AF Mpanga is a well-established leading firm with a strong foothold with both local and international clients. The group moves up a tier this year thanks to consistent feedback from clients and competitors. It is noted as especially strong in banking, project and corporate finance, which are primarily led by David Mpanga and William Kasozi.

“Very diligent in work, professional, works to the standards of our institution,” says one client of the firm. “They have all the corporate knowledge and strengths,” says another client.

The firm is a regular legal counsel to local banks such as Orient Bank and recently advised on highlight transactions for the Netherlands development institution FMO, advised DEG on financing for a hydroelectric dam, and acted for MTN International (Mauritius) on a shareholders’ agreement with Invesco.

Leading lawyers

David Mpanga

Byenkya Kihika & Co

Byenkya Kihika & Co comes highly recommended by competitors. It was one of the four firms chosen by the International Finance Corporation (IFC) as local counsel. It is strong on banking and finance and has a solid corporate practice, and the firm’s reputation is enhanced by its good track record in litigation.

Three partners head the practice: Ebert Byenkya, Oscar Kihika and Blaisie Paulsen. Between them they cover a range of banking, finance, corporate, capital markets and real-estate matters.

Among its high-profile cases, the firm recently advised the IFC on a \$25 million loan facility to electricity distributor Umeme to expand its distribution network.

Leading lawyers

Ebert Byenkya
Oscar Kihika

Kateera & Kagumire Advocates

The firm is one of the most established in the market. It is best known among competitors for banking work, where it regularly advises some large banks including Stanbic Bank. The firm appears more on regulatory matters and mid-sized deals.

The leading lawyers at the firm are Yusuf Kagumire and John Kanyemibwa. Kagumire is a former member of the board of Uganda Posts and Telecommunications Corporation and was a board member of Agip Uganda. Kanyemibwa has a strong relationship with the banks and possesses an expertise on securitisation law.

The firm’s clients include AIG Uganda, the Swedish International Development Agency, Bank of Baroda (Uganda), African Development Bank, SN Brussels Airlines and a number of state-owned companies, especially in the electricity sector.

Leading lawyers

John Kanyemibwa
Yusuf Kagumire

Other ranked firms

Kampala Associated Advocates (KAA) moves up a tier this year in reflection of its growing reputation across the market for finance and corporate matters. The firm has a partnership with SNR Denton and close relationships with clients such as Tullow Oil.

“At partner and senior associate level they are fantastic people,” says a client. “Their turnaround times are very good, I trust them implicitly, I have never had to follow up on anything, they understand the context very well and when they give you advice it is not only legal but also a cultural and socio-economic opinion.”

Partner David Mpanga, a previous in-house lawyer at PricewaterhouseCoopers, is a “good reference point for general practice particularly with issues like land legislation and general commercial law,” says a client, while Aisha Kiwola is recommended as “sharp, well informed and for hands-on corporate and commercial legal advice.”

“They need to work on their depth,” says a client, but it is also the firm’s youth which gives it a certain edge according to competitors.

In top corporate deals, the firm advised SAB Miller alongside Hogan Lovells on the acquisition of Rwenzori Bottling, a mineral water producer, and its subsidiary Plastics Recycling, and assisted Sanlam Developing Markets on a \$2 million project to establish operations and obtain a licence for insurance activities.

In finance, it acted for MTN Uganda on a \$150 million loan from a syndicate of banks, and advised the African Import Export Bank on a \$10 million trade finance facility to the Uganda Development Bank.

Lex Uganda is known for being strong in M&A and banking. It is a slightly younger firm than some of its competitors and after a very strong few years competitors note that it has had a slightly lower profile in the market of late. The leading lawyer at the firm is Charles Odere.

Barugahare & Co Advocates has a reputable corporate and finance practice and is a well established name. The firm crops up on some of the large mandates in the market and it recently advised Eagle Air on a \$1 million aircraft financing from the Czech Export Bank.

Birungyi Barata & Associates enters the rankings for the first time. The firm is managed by Cephas Birungyi and Enoch Barata. Also of note is Martin Mbanza, who supports on major deals.

“Both partners are top guys, very good and very efficient and they quote hourly rates when most other firms ask for a percentage of the transaction as payment,” says a client. “They are a sensible and pragmatic bunch of people.”

The firm has a reputable corporate practice which benefits from its status as one of the, if not the only, premier firms in the country for tax-related corporate law advice. The firm advises clients including Warid Telecom, Sheraton Kampala Hotel, Aon and Crane Bank, and in a recent large corporate deal it assisted BMO Nesbitt Burns on a \$3 million transaction, and completed due diligence of the Flemish Gold Group in order to secure a loan facility.

Elsewhere, the firm advised Meera Investments on real-estate investment issues. The firm is also heavily involved in high-profile tax legislation work in Uganda and Liberia.

JB Byamugisha is managed by Joseph Byambara Byamugisha, who is a highly respected practitioner. As competing firms expand and recruit, Byamugisha’s challenge as a sole practitioner will be to maintain his market position. His reputation and expertise however place the firm within the leading group.

Kasirye Byaruhanga Advocates is an experienced firm, with lawyers who cover all areas of corporate and commercial law including privatisation, finance, banking and telecoms.

The leading lawyers are Andrew Kasirye and William Byaruhanga. Enoch Rukidi also brings real-estate expertise to the firm.

Magezi Ibale & Co has a well established corporate team managed by John Magezi and

Silver Owaraga. The firm consists of four lawyers who cover banking, corporate and commercial law.

Other notable firms

Sengendo & Co is one of the oldest firms in the country. It has a reputable name and is mostly recognised for its expertise in land and real-estate matters.