NAFUNA & CO. CLIENT GUIDES · GOLD & MINERALS · NO. 13

# Can You Use Escrow to Buy Gold in Uganda?

*Stakeholder Accounts, Release Conditions and Common Mistakes*


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# Introduction

> Every gold transaction begins with two parties who each want the other to move first.

**The buyer wants proof that the gold exists, belongs to the seller, meets the agreed purity and can lawfully be delivered or exported before any money leaves its control. The seller wants proof that the money exists and will be paid once it performs, before any gold leaves its control. Each side holds the other's risk.**

Escrow resolves that deadlock by placing the money with an independent holder who releases it only when defined conditions are met. The seller sees that the funds are committed. The buyer knows they move only against performance.

The protection comes from the structure. It rests on four things: the terms of the arrangement, the identity and duties of the holder, the custody of the money and of the gold, and the evidence required for release. A document headed "escrow agreement" supplies none of these by its title.

The question for any proposed escrow is whether payment follows performance that someone independent can verify.

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SECTION 1

## What Escrow Is

Escrow is an arrangement under which money, documents or property are held by a third party pending satisfaction of agreed conditions. In a gold transaction, the buyer deposits the price with a stakeholder, who holds it until the agreed events occur. Typical events are:

- verification of the seller's licence and authority to sell
- confirmation of ownership and provenance
- delivery of the identified consignment into agreed custody
- an independent assay
- satisfaction of the delivery or export conditions

When the conditions are established, the stakeholder releases the funds as the agreement directs. When they fail, the agreement determines whether and how the funds return to the buyer. The legal force of the arrangement lies in the precision and enforceability of those terms.

SECTION 2

## Escrow Under Ugandan Law

Ugandan law recognises advocates holding money as stakeholders. The Advocates Act and the Advocates (Accounts) Rules regulate the receipt, custody, recording and withdrawal of money held by an advocate in the course of practice. The Rules define client money to include money held or received by an advocate as a stakeholder, and they require such money to be kept in a client account, separate from the advocate's own funds, with withdrawals permitted only on the grounds the Rules allow.

An advocate who accepts a stakeholder role therefore takes on two sets of obligations: the contractual mandate in the stakeholder agreement, and the statutory accounting and professional duties that govern all client money. The arrangement must also satisfy banking requirements and the Anti-Money Laundering Act, Cap. 118, under which advocates are accountable persons with identification and reporting obligations.

SECTION 3

## The Client Account and the Stakeholder Agreement

A client account is a regulated place of custody. A stakeholder agreement is the instrument that says what the money is for and when it moves.

Money paid into a client account without a stakeholder agreement is simply client money held for the client who sent it, and the advocate holds it on that client's instructions. Money paid in under a

stakeholder agreement is held for a stated transaction, with a stated beneficial position, and is released only on the stated conditions. Both buyer and seller should therefore see, before any transfer:

- the identity of the law firm and the advocate responsible
- the account details, confirmed through independently sourced contact details
- a signed stakeholder agreement identifying the transaction, the interests in the funds and the release conditions

NAFUNA & CO. PRINCIPLE

**The account provides custody. The agreement provides the conditions for release.**

SECTION 4

## Who Should Hold the Funds

The holder needs legal capacity, independence and the practical ability to verify the release conditions. In Uganda the usual holder is an advocate acting as stakeholder, or an institution lawfully able to perform that function.

The parties should establish the holder's position at the outset. A holder may act for one party and accept a limited stakeholder mandate, or act for neither party. Its professional duties, any conflicts of interest and its duties of confidentiality should be disclosed before appointment.

A holder proposed by the seller, or connected with the seller, controls the very risk the buyer is trying to remove. See Client Guide No. 04.

SECTION 5

## The Sale and Purchase Agreement and the Stakeholder Agreement

The Sale and Purchase Agreement governs the commercial transaction: the parties, the commodity, quantity, purity, price, delivery, warranties and remedies. The stakeholder agreement governs the custody and release of the money. The two documents operate as one mechanism.

The Sale and Purchase Agreement defines the events that constitute performance. The stakeholder agreement defines how each event is proved and what the holder does on proof. Where the conditions in the two documents diverge, the result is a dispute over whether the seller has earned the price. Drafting them together, with matching defined terms, prevents that dispute.

SECTION 6

## Identifying the Gold

The money in escrow is released against a particular consignment of gold. If that consignment is described only loosely, the seller can deliver different or inferior gold and still claim the money. The agreement should therefore fix the quantity, form, purity, identifying marks, location and custodian of the particular consignment.

Where the gold is to be tested or refined, the agreement should set the procedure for sampling, sealing, recording and handling, so that the gold tested is the gold delivered. A seller's general statement that it holds gold establishes nothing about a particular consignment. Release conditions attach to a defined commodity.

SECTION 7

## Independent Assay as a Release Condition

An assay condition should identify the testing facility or the method for choosing one, the testing standard, the sampling method, who bears the cost, and the consequence of a disputed result.

The report should be tied to the identified consignment and authenticated through the agreed procedure, directly between the facility and the holder. Where the result falls short on purity or weight, the agreement should state whether the buyer may reject, adjust the price or terminate. The holder should receive a clear evidential test for whether the condition is met, and a separate mechanism, such as a second assay by an agreed facility, for resolving technical disputes. See Client Guide No. 01.

SECTION 8

## Custody of the Gold and Custody of the Money

The commonest structural weakness is an escrow that holds the money independently while the seller keeps unrestricted control of the gold. The seller can then substitute, remove or sell the consignment while the buyer's funds sit committed.

Control over payment works only when matched by control over the commodity. An independent refinery, vault or other custodian can hold the identified gold on documented terms covering access, release instructions, insurance, loss, substitution, liens and conflicting demands. The money and the gold then move in a single contractual sequence.

SECTION 9

## The Release Event

The release event is the central term of the arrangement. The parties may tie payment to delivery into independent custody, completion of assay, transfer of title, grant of the export permit, export itself, or a combination.

For each condition the agreement should state the evidence required, who may supply it, and whether independent confirmation is needed. A seller's own declaration that it has performed is an adequate trigger only if the buyer has knowingly accepted that risk. The holder acts on the agreed evidence and the law, and on nothing else.

SECTION 10

## Release Before or After Export

The seller often argues that it has performed once the gold reaches the refinery or other agreed point. The buyer often expects payment only after lawful export. The answer lies in the delivery terms and the allocation of risk.

Where the seller undertakes export, final release can await evidence of the export permit and completion of the agreed export steps. Where the buyer takes responsibility after a defined delivery event, release can occur at that event. Title, possession, custody and risk may each pass at different moments, and the agreement should fix each one.

A dispute over failed export is usually a dispute over whether the seller had already earned the price. Precise drafting settles it in advance. See Client Guides No. 07 and No. 12.

SECTION 11

## Staged Release

Escrow can release funds in stages: one portion after verification and delivery into custody, the balance after assay or export.

Each staged payment shifts risk to the buyer, since money released before final performance is hard to recover if the seller later defaults. The agreement should state whether each tranche is earned, refundable or subject to adjustment, and what happens on termination after a partial release. A milestone structure should track completed performance and the buyer's remaining exposure at each stage.

SECTION 12

## When the Seller Fails to Perform

The agreement should set a deadline for performance, a procedure for extension and the events that constitute default or termination. Where the seller fails to deliver the identified gold, the funds return to the buyer.

The refund mechanism should operate on objective events: expiry of a date, a failed assay, refusal of a permit. A refund that depends on the holder deciding a contested question outside its mandate is a refund that stalls. The agreement should also cover partial performance, disputed assay results, regulatory refusal and events beyond the parties' control.

SECTION 13

## Conflicting Instructions

At some point the buyer may demand a refund while the seller demands payment. The agreement should anticipate that moment.

The standard position is that the holder retains disputed funds until it receives joint instructions, an agreed expert or arbitral determination, or a court order. A stakeholder faced with competing claims may also ask the court to determine entitlement through interpleader proceedings. The agreement may provide for mediation or arbitration. What matters is that the holder's authority is fixed beforehand, so that complying with one party's unilateral demand never places the holder in breach of its obligation to the other.

SECTION 14

## Fees, Expenses and Interest

The holder's remuneration should be stated: who pays it, how, and whether any amount may be deducted from the deposit. Where an advocate holds the money, any deduction must comply with the Advocates (Accounts) Rules, which permit withdrawal from a client account only on specified grounds. The advocate's fees are separate from the parties' entitlement to the transaction funds. The agreement should also state who bears bank charges and currency conversion costs, and how any interest earned is treated. The holder keeps full records and accounts for every receipt and payment.

SECTION 15

## When the Holder Is Also the Buyer's Lawyer

This arrangement is common and lawful when properly structured. A buyer may instruct a Ugandan advocate to conduct due diligence, negotiate the Sale and Purchase Agreement and hold the purchase price pending completion.

The three services are related and legally distinct. As the buyer's advocate, the firm owes professional duties to the buyer. As stakeholder, it accepts obligations over money in which the seller holds a contingent interest. The engagement terms should identify each capacity, disclose the position to the seller, and state what happens if a dispute arises, including whether the firm continues to advise the buyer while holding disputed funds.

The seller is entitled to ask for terms that prevent release or refund on the buyer's instruction alone, and the buyer is entitled to terms that prevent release on the seller's demand alone. The stakeholder agreement reconciles the two by tying every movement of money to defined evidence. The seller should take its own independent advice on those terms.

SECTION 16

## Fake Escrow

Escrow is also a fraud device. The patterns are consistent:

- an "escrow account" controlled by the seller or an associate
- a genuine law firm's name used without its knowledge
- forged engagement letters, account details or payment instructions
- a late change of receiving account, explained by audit, tax or bank problems

A document labelled "escrow agreement" proves nothing about the arrangement behind it. The buyer verifies the holder's identity and professional standing through independently sourced contact details, checks the account beneficiary before transfer, confirms any change of instructions by a separate channel, and requires the holder's written acceptance of the stakeholder mandate. See Client Guides No. 05 and No. 08.

SECTION 17

## Source of Funds and Compliance

Gold transactions move large sums across borders. A stakeholder will carry out customer identification, beneficial-ownership checks and source-of-funds inquiries on the buyer, and will require evidence of the origin and ownership of the gold from the seller.

Escrow sits on top of mineral licensing, lawful provenance and export compliance, and leaves each of them to be satisfied in its own right. An escrow arrangement cannot make a prohibited transaction lawful, and the holder must be able to decline or suspend the arrangement where compliance requirements are unmet. See Client Guide No. 06.

SECTION 18

## What Escrow Can and Cannot Do

Escrow removes defined payment risks. It prevents the seller receiving money before specified obligations are performed, and it assures the seller that the buyer has committed the funds.

Ownership, assay accuracy, export authorisation and the performance of every participant each require their own verification and their own contractual safeguards. Escrow protects to the extent the underlying transaction has been verified and the release conditions are well drawn. Its protection comes from four elements together: independent custody, defined obligations, reliable evidence and enforceable instructions.

SECTION 19

## An Illustration: One Kilogram

Consider a purchase of one kilogram of refined gold from a Ugandan supplier.

1. **Verification.**
   Before any deposit, the supplier's identity, licence and authority to sell are independently checked.
2. **Identification.**
   The parties identify the consignment and agree that it will be delivered to a named independent facility for identification and assay.
3. **Deposit.**
   The buyer deposits the price with the stakeholder under a signed stakeholder agreement.
4. **Custody and assay.**
   The facility confirms receipt of the identified consignment and sends an authenticated report directly to the stakeholder.
5. **Completion.**
   The remaining conditions on title, delivery and export are satisfied and evidenced.

6 **Release or refund.**
On the prescribed evidence, the stakeholder releases the funds. If the conditions fail, the agreement governs termination and refund.

The exact conditions vary with each transaction and its allocation of risk. The sequence remains constant: verify, identify, deposit, evidence, release.

CHECKLIST

## Ten Questions Before Depositing Money into Escrow

| | |
|---|---|
| 01 | Who is the holder, and how have I verified that identity independently? |
| 02 | What is the holder's legal and professional authority to hold the funds? |
| 03 | Into whose bank account will the money be paid? |
| 04 | Who holds the beneficial interest in the funds at each stage? |
| 05 | What exact conditions must be met before release? |
| 06 | Who verifies the gold, the assay, title and custody? |
| 07 | What happens if delivery or export fails? |
| 08 | Who may instruct the holder, and what happens if instructions conflict? |
| 09 | How are fees, charges and interest allocated? |
| 10 | What remedy do I have if the holder breaches the agreement? |

## How Nafuna & Co. Can Assist

Nafuna & Co. Advocates and Legal Consultants structures and documents gold transactions in Uganda. Within a defined engagement, the firm can:

- advise on escrow and stakeholder arrangements and review those proposed by a counterparty
- conduct transaction due diligence on the seller, the gold and the proposed custodians
- draft the Sale and Purchase Agreement and a matching stakeholder agreement
- coordinate independent identification, assay and custody
- draft release, refund and dispute provisions

Where appropriate, and subject to its professional, banking and compliance obligations, the firm may accept appointment as stakeholder under a separate written mandate. Its responsibilities, remuneration, authority over the funds and any conflict between its role as buyer's counsel and its role as stakeholder are settled in writing before any money is received. Nafuna & Co. accepts no commission, fee or other benefit from any supplier in a transaction in which it acts for the purchaser. See _____.

NAFUNA & CO. PRINCIPLE

**The contract defines what must happen. Independent evidence shows that it has happened. The stakeholder releases the funds on that evidence alone.**

### RELATED NAFUNA & CO. CLIENT GUIDES


No. 01 Buying Gold in Uganda: A Legal Due-Diligence Guide for Foreign Buyers

No. 02 How to Verify a Ugandan Mineral Dealer's Licence

No. 03 Ten Documents to Request Before Travelling to Uganda to Buy Gold

No. 04 Before You Pay: Payment Safeguards in a Ugandan Gold Transaction

No. 05 The Seller Wants You to Pay Someone Else: Third-Party Accounts in Ugandan Gold Transactions

No. 06 Is This Gold Deal Legal? When a Gold Transaction Is Illegal Under Ugandan Law

No. 07 "But the Gold Is Mine": Carrying Gold Through Entebbe Airport

No. 08 Common Gold Scams in Uganda: Warning Signs Foreign Buyers Should Know

No. 09 How to Prove a Gold Scam in Uganda: The Evidence You Need

No. 10 Recovering Money After a Gold Scam in Uganda

No. 11 You Reported a Gold Scam to the Police: What Should Happen Next?

No. 12 Gold Export Taxes, Royalties and Government Fees in Uganda: Who Pays What?

## AUTHORITIES

- Advocates Act and Advocates (Accounts) Rules
- Advocates (Professional Conduct) Regulations
- Anti-Money Laundering Act, Cap. 118
- Mining and Minerals Act, Cap. 159 (Act of 2022), section 150

## IMPORTANT NOTICE

This Client Guide provides general legal information concerning escrow and stakeholder arrangements in Uganda. It does not constitute legal advice concerning any particular transaction.

The availability and legal effect of any arrangement depend on its terms, the identity and regulatory status of the holder, the applicable professional obligations, banking requirements and the underlying transaction. Deposit of funds into an advocate's client account, without a stakeholder agreement, does not establish that the funds are held under an escrow mandate.

Nafuna & Co. undertakes transaction-specific services only under a formal professional engagement and subject to the applicable legal and compliance requirements. Submission of documents to Nafuna & Co. does not establish a professional engagement or constitute independent verification.

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