NAFUNA & CO. CLIENT GUIDES · GOLD & MINERALS · NO. 06

Is This Gold Deal Legal?

When a Gold Transaction Is Illegal Under Ugandan Law

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Introduction

A gold transaction may breach Ugandan law because of how the gold was obtained, who is dealing in it, how it entered the country, how payment is handled, or how it is exported.

> A lawful transaction requires the relevant authority at each stage. A genuine assay report, registered company or signed sale agreement answers only part of that inquiry.

The Mining and Minerals Act, Cap. 159 (Act of 2022) governs mineral dealing and export. Customs, tax, anti-money laundering and criminal laws may also apply, depending on the transaction.

WHERE A TRANSACTION CAN BREAK THE LAW

1 Dealing without the required authority

2 Buying gold from an unlawful source

3 Exporting without the required permit

4 Concealing ownership or the source of funds

5 False documents and misleading payment demands

6 Purity and legality are separate questions

7 What illegality means for the buyer

— What should be checked before payment?

SECTION 1

Dealing Without the Required Authority

The first question is whether each participant has the authority required for the activity they undertake. Mining, mineral dealing, processing and export involve distinct legal requirements. Registration of a company establishes the business entity. It does not itself authorise regulated mineral activities.

A buyer should verify the supplier's current licence, its scope and the identity of the holder. Where an intermediary acts for the supplier, the intermediary's mandate should also be established. A licence belonging to another business requires examination of the actual contractual and operational arrangement. It cannot simply be treated as a document available for anyone's use.

See Client Guide No. 02, How to Verify a Ugandan Mineral Dealer's Licence.

SECTION 2

Buying Gold From an Unlawful Source

A licensed dealer's obligations extend to the source of the gold. The Mining and Minerals Act requires a licensed mineral dealer to buy, in the course of business, from a person who acquired the minerals lawfully and in accordance with applicable law.

The transaction record should therefore establish the supplier, the basis of acquisition and the chain through which the consignment reached the seller. Where gold was mined, the inquiry includes the authority under which it was extracted. Where it was purchased, the relevant purchase and supply records matter.

> ***Possession of gold alone leaves its lawful source unresolved.***

SECTION 3

Exporting Without the Required Permit

Export requires its own authorisation. The Mining and Minerals Act provides for mineral export permits, subject to the applicable conditions. A sale agreement or dealer's licence cannot be assumed to satisfy every export requirement.

Before dispatch, the parties should confirm the permissions and declarations applicable to the particular consignment. The gold presented for export should correspond to its supporting records, including its description, quantity, supplier and destination. Discrepancies require resolution before shipment.

SECTION 4

Concealing Ownership or the Source of Funds

Gold transactions also engage anti-money laundering obligations. Uganda's Financial Intelligence Authority requires dealers in precious stones and metals to register as accountable persons. Its guidance addresses customer identification, beneficial ownership, transaction records and suspicious activity.

The parties should be able to explain who owns the gold, who ultimately benefits from the transaction, who is paying and why a particular account receives the money. Third-party payments and intermediaries require a documented commercial explanation.

A transaction may raise serious concerns where participants conceal their identities, refuse ownership information, provide inconsistent explanations or seek to disguise the source or

movement of funds. The applicable reporting duties must be considered before the transaction proceeds.

See Client Guide No. 05, The Seller Wants You to Pay Someone Else.

SECTION 5

False Documents and Misleading Payment Demands

A document must be verified for both authenticity and relevance.

> An authentic licence may belong to a different company.

> An assay certificate may concern a different sample.

> A payment receipt may relate to another consignment or a different government charge.

Requests for money described as “tax clearance,” “release fees” or “export charges” should identify the legal charge, the responsible authority, the official payment reference and the transaction to which it relates. The amount payable requires assessment against the applicable law and the consignment’s facts. A supplier’s quotation alone provides insufficient assurance.

An irregular document or unexplained payment request is a reason to investigate. Whether it establishes fraud, forgery, tax evasion or another offence depends on the evidence and the elements of the relevant law.

See Client Guide No. 04, Before You Pay.

SECTION 6

Purity and Legality Are Separate Questions

An assay establishes information about the material tested. Its evidential value depends on the sampling process, chain of custody and connection to the consignment being sold.

Even where the gold’s purity is confirmed, the parties must still establish lawful sourcing, the seller’s authority, the necessary permissions and compliance with financial obligations. Equally, a dispute about weight, purity, price or delivery requires examination of the agreement and representations made. The legal consequences follow from the facts proved.

SECTION 7

What Illegality Means for the Buyer

Illegality affects more than regulatory or criminal exposure. It can also affect the remedies available to the buyer when the transaction fails.

Under section 18 of the Contracts Act, 2010, the consideration or object of an agreement is unlawful where, among other things, it is forbidden by law, would defeat the provisions of any law, or is fraudulent. An agreement whose object or consideration is unlawful is void, and no suit lies to recover money paid, things delivered or compensation for anything done under it, unless one of four exceptions applies:

EXCEPTION	SECTION 18(2) OF THE CONTRACTS ACT, 2010
(a) Ignorance	The court is satisfied that the claimant was ignorant of the illegality of the consideration or object of the agreement.
(b) Repudiation	The illegal consideration or object had not been carried out when the claimant became aware of the illegality, and the claimant repudiated the agreement.
(c) Fraud or pressure	The claimant's consent was induced by fraud, misrepresentation, coercion or undue influence.
(d) Protective law	A written law declares the agreement illegal in order to protect a class of persons to which the claimant belongs.

Whether recovery remains available therefore depends on what was unlawful, whether the illegality formed part of the agreement itself, what the buyer knew and when, whether the buyer was deceived about the legality of the arrangement, and what remedy is sought.

NAFUNA & CO. PRINCIPLE

Illegality can compromise a remedy without necessarily extinguishing every remedy.

A buyer can be the victim of fraud and still have participated in an unlawful arrangement. Both matters may require investigation, and neither answers the other. Some fraudulent schemes rely on this: a buyer drawn into a shortcut may hesitate to report the loss, and that hesitation becomes part of the fraud.

Before agreeing to any special arrangement, ask one question:

> ***Would I be comfortable describing this exact arrangement, truthfully and completely, to my bank, my lawyer, customs, the mineral regulator and a court?***

CHECKLIST

What Should Be Checked Before Payment?

A transaction review should cover:

01	The parties' identities, beneficial ownership and authority to act
02	Current licences and their permitted activities
03	The seller's lawful acquisition and supply records
04	Independent assay arrangements and identification of the consignment
05	Applicable import, export, customs and tax requirements
06	Payment recipients, conditions for release of funds and delivery obligations
07	Anti-money laundering registration and compliance obligations

Before Funds Are Released

Nafuna & Co. Advocates and Legal Consultants advises buyers, suppliers and investors on the legal structure, documentation and regulatory requirements of gold transactions involving Uganda.

A transaction-specific review should begin before funds are released or shipment arrangements become binding. The firm's services and engagement procedure are set out in _____.

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

IMPORTANT NOTICE

This Client Guide provides general information concerning the legality of gold transactions involving Uganda. It does not constitute legal advice concerning any particular transaction or determine whether particular conduct is lawful or unlawful.

Legal requirements and their consequences depend upon the statutory provisions involved, the facts of the transaction and the conduct of the parties. Regulatory requirements may change, and readers should obtain transaction-specific advice before relying on a particular legal position.

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