NAFUNA & CO. CLIENT GUIDES · GOLD & MINERALS · NO. 05

The Seller Wants You to Pay Someone Else

Third-Party Accounts in Ugandan Gold Transactions

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Introduction

You have negotiated with a gold supplier. The supplier has sent its company documents and Mineral Dealer's Licence. Perhaps you have received a quotation or signed a Sale and Purchase Agreement.

Then the payment instructions arrive.

> The company selling you the gold is **Company A.**

> The bank account belongs to **Company B.** Or to a director, a broker, or an individual you have never previously dealt with.

The explanation may sound simple:

"*That is our partner.*"

"*Our company account has a temporary problem.*"

"*That is the director's account.*"

"*Our financier receives the money.*"

"*Pay our agent. It is normal here.*"

There may be a legitimate explanation, and it is the seller's to supply.

Where the person selling the gold and the person receiving the money are different, establish the legal bridge between them before you pay.

SECTION 1

Third-Party Accounts Can Be Legitimate

Commercial transactions can legitimately involve third parties. A payment may properly be made to an escrow holder, refinery, clearing agent, professional adviser, financier, authorised collection agent or another service provider.

The relevant question therefore goes beyond "Is this a third-party account?" It is:

> *"Why is this third party entitled to receive this particular money in this particular transaction?"*

That question should have an answer capable of independent verification.

SECTION 2

Start With the Contract

Identify the legal seller. **If ABC Minerals Limited agreed to sell the gold, begin with the proposition that ABC Minerals Limited is the contractual counterparty.**

Then examine:

- ? who issued the invoice
- ? who owns or claims to own the gold
- ? who holds the relevant mineral licence
- ? who is required to perform the seller's obligations
- ? who the contract identifies as entitled to payment

Now compare those facts with the proposed bank beneficiary. If they do not correspond, investigate why.

NAFUNA & CO. PRINCIPLE

The payment trail should be capable of reconciliation with the contractual trail.

SECTION 3

"Pay the Director Personally"

A company and its directors are legally distinct. The fact that an individual owns, controls or manages a company does not by itself establish that the company's customers should pay company debts or purchase prices into that individual's personal account.

Ask:

Why is the company not receiving its own sale proceeds?

What authority permits the director to receive them personally?

How will the company account for the payment?

Will payment to the director discharge your contractual obligation to the company?

Does the company formally acknowledge that payment to that account constitutes payment to it?

The purchaser should establish each answer, in writing, before paying.

SECTION 4

“Pay Our Broker”

A broker may have authority to introduce the parties without having authority to receive their money.

If a broker requests the purchase price, deposit or another substantial transaction payment, establish the broker’s authority to receive it. Where appropriate, obtain confirmation directly from the contracting seller through independently verified channels.

NAFUNA & CO. PRINCIPLE

Authority to introduce a transaction is not authority to receive its proceeds.

SECTION 5

“Pay Our Sister Company or Partner”

Ask what that description means legally. Two companies may share directors, shareholders, offices or commercial interests and remain separate legal entities. “Partner” can describe almost anything in casual commercial conversation.

Request documentation establishing:

? the identity of the recipient

- ? its relationship with the seller
- ? the reason it is receiving the payment
- ? its authority to receive the payment
- ? how the payment will be treated between the entities
- ? confirmation that payment to it discharges the purchaser's obligation

The more substantial the payment, the less appropriate it is to rely upon an unexplained relationship.

SECTION 6

"Pay the Refinery, Clearing Agent or Other Service Provider"

This can be entirely legitimate, provided both the service and the service provider are verified. For example, if USD 8,000 is said to be payable to a refinery:

Is the refinery genuine?	**Did it actually issue the invoice?**
What service is being provided?	**Does the quoted amount correspond with that service?**
Is the seller asking you to pay its own obligation?	**Have you contacted the refinery using contact information obtained independently of the seller?**

The same methodology applies to clearing agents, insurers, transport providers and other transaction participants.

> ***A genuine third party can still be invoked in support of a false payment demand.***

SECTION 7

"This Is the Account for the Government Payment"

A request to send a purported government tax, royalty, licence fee, permit charge, customs charge or other statutory payment to a private account requires immediate verification. Establish independently:

Which government institution imposed the charge?	**What law or official process creates it?**
Who is legally liable?	**How was the amount assessed?**
What is the authorised payment mechanism?	**Who is the lawful recipient?**

Do not establish those facts from the telephone number, email address or website supplied by the person requesting the money.

NAFUNA & CO. PRINCIPLE

Do not verify a government payment through the person asking you to pay it.

SECTION 8

“Our Company Account Has a Problem”

Banking problems can occur, and they leave the legal question open. If the contracting company cannot receive the purchase funds through its normal account, establish why the proposed alternative is legally and commercially appropriate.

> ***A temporary inconvenience to the seller is no reason for the purchaser to take on additional legal risk.***

SECTION 9

The Account Suddenly Changes

Particular caution is warranted where valid-looking bank instructions are replaced shortly before payment. This may arise from fraud external to the underlying gold transaction, including compromised email or messaging accounts and payment-instruction fraud.

Do not verify changed bank details simply by replying to the same message that announced the change. Use a previously established, independently verified communication channel.

> ***Where substantial money is involved, a changed beneficiary is a new fact requiring verification.***

SECTION 10

Red Flags Before Paying a Third Party

Further investigation is warranted where:

1. The seller and bank-account holder are different without a documented explanation.
2. A company requests substantial purchase funds into a personal account.
3. The beneficiary changes shortly before payment.
4. The invoice and beneficiary names do not correspond.
5. The recipient has no apparent relationship with the gold transaction.
6. A broker insists that the purchase money must pass through the broker.
7. Several portions of the purchase price are directed to unrelated recipients.
8. The recipient is located in a country with no apparent connection to the transaction.
9. The seller refuses to document the third party's authority.
10. Explanations for the payment arrangement change.
11. The purchaser is told not to contact the recipient independently.
12. The purchaser is discouraged from consulting its lawyer or bank.
13. The purchaser is instructed to conceal the true purpose of the transfer.
14. Urgency increases when the purchaser asks for verification.

A red flag identifies something to resolve before the money moves. On its own, it does not establish fraud.

SECTION 11

Never Falsify the Purpose of the Transfer

A particularly serious warning sign arises where the purchaser is instructed:

> *"Do not mention gold."*

> *"Put consultancy."*

> *"Say it is a loan."*

> *"Call it equipment."*

> *"Split it into smaller transfers."*

A purchaser should not knowingly create a false banking record to make a transaction easier to process. Such arrangements may raise banking, regulatory, tax, anti-money-laundering and contractual issues and may materially complicate the purchaser's position if the transaction subsequently fails.

There is also a basic evidential problem.

> ***If you later need to prove that you transferred USD 100,000 to purchase gold, why voluntarily create a banking record saying that the USD 100,000 was for something else?***

NAFUNA & CO. PRINCIPLE

Do not create a false payment trail in a transaction whose legality you may later need to prove.

SECTION 12

What If the Seller Authorises the Third-Party Payment?

Seller authorisation is relevant, and the inquiry continues. Establish:

? that the instruction genuinely came from the seller

? that the person giving it had authority

? the legal basis upon which the recipient receives the money

? whether the arrangement is consistent with the SPA

? whether there are regulatory implications

? whether payment will legally discharge the purchaser

Where necessary, the payment arrangement should be recorded in the transaction documents themselves. An informal WhatsApp instruction is a weak foundation for a substantial payment.

SECTION 13

The Recovery Problem

The significance of the payment recipient becomes painfully apparent when the transaction fails. Suppose:

1 Company A sold you the gold

2 Broker B negotiated the transaction

3 Company C received your USD 100,000

4 Individual D transferred some of it elsewhere

Who do you sue?	**Who received your money?**
On whose behalf?	**Who benefited?**
Who made the representations you relied on?	**What happened to the funds after receipt?**

Those questions can become central to both civil recovery and criminal investigation.

> ***The purchaser who treated the bank beneficiary as an administrative detail may discover that it has become one of the most important facts in the case.***

SECTION 14

Follow the Money Before You Send the Money

For every substantial payment, record:

Payer	Amount	Currency
Account holder	Bank	Country
Purpose	Legal basis	Person requesting payment
Authority of recipient	Event triggering payment	

Then compare that information against the contract and the proposed movement of the gold.

THE METHOD

The Nafuna & Co. Three-Trail Test

A gold transaction creates three important evidential trails.

TRAIL	QUESTIONS
The document trail	Who are the legal parties? What do the licence, SPA, invoice, corporate records and regulatory documents establish?
The gold trail	Where did the gold originate? Who acquired it? Who owns or controls it? What material is actually being sold?
The money trail	Who requests payment? Who receives it? Why? Where does the money go afterwards?

The three trails should describe one coherent transaction. Where they lead to different people, companies or explanations, investigate the divergence before proceeding.

NAFUNA & CO. PRINCIPLE

Follow the documents, the gold and the money.

CHECKLIST

Seven Questions Before Paying Someone Other Than the Seller

Before transferring funds to a third party, ask:

01	Why am I not paying the contracting seller?
02	Who owns the proposed account?
03	What is that person's legal relationship with the seller?
04	What authorises that person to receive this particular payment?
05	Has that authority been independently verified?
06	Will payment legally discharge my obligation to the seller?
07	If the transaction fails, on what legal basis can I recover the money from the person who actually received it?

> ***If those questions cannot be answered satisfactorily, the payment structure is not yet ready.***

CAN NAFUNA & CO. VERIFY A PROPOSED PAYMENT RECIPIENT?

Yes. Nafuna & Co. Advocates and Legal Consultants assists foreign purchasers to examine payment structures before substantial funds are transferred in Ugandan gold and mineral transactions.

Within the scope of a given engagement, the firm can examine the contracting entities, proposed beneficiary, corporate relationships, authority to receive payment, transaction documents and supporting payment demands, and advise on appropriate contractual and verification safeguards.

For preliminary review, a purchaser should ordinarily provide the SPA or proposed agreement, invoice or payment demand, beneficiary details, seller information, relevant correspondence and any explanation supplied for the proposed third-party payment. The firm's services and engagement procedure are set out in *Gold & Mineral Transaction Services*.

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. 06 Is This Gold Deal Legal? When a Gold Transaction Is Illegal Under Ugandan Law

IMPORTANT NOTICE

This Client Guide provides general information and does not constitute legal advice concerning any particular payment, supplier, beneficiary or transaction.

A third-party payment is not necessarily unlawful or fraudulent. Its legal effect depends upon the transaction, contractual arrangements, authority of the parties, purpose of the payment and applicable law.

Transaction-specific advice and verification by Nafuna & Co. are subject to formal professional engagement and the results of independent investigation.

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