Legal Syndication Primer

Uganda

Created by

ORTUS ADVOCATES

African Angel Academy

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Legal Syndication Primer

Uganda

African Angel Academy

Contents

About the African Angel Academy

The African Angel Academy (AAA) is an online programme and knowledge community, which was established in 2020 by Viridian and ViKtoria Ventures. The academy's aim is to grow the number of active angel investors on the continent. Drawing on the expertise of early-stage investors from across Africa, the academy offers virtual learning and networking courses for those looking to start or grow their angel investing portfolio. As of 2024, the AAA Alumni network comprises more than 500 members from 23 countries

The AAA online course is available for anyone to purchase and start learning at their own pace, and the academy also offers cohort programmes with partners throughout the year. In the cohort format, the online course is offered to selected participants along with live masterclasses, investor Q&As, networking and mentorship opportunities, and showcase events featuring promising local startups.

To find out more about AAA's programme and course offerings, visit africanangelacademy.com/programmes.

About Viridian

Viridian is an impact agency that designs and delivers programmes for early-stage entrepreneurs, investors, and entrepreneur support organizations across Africa's entrepreneurial ecosystem. Our programmes act as a catalyst for these key economic actors, ultimately growing shared prosperity across Sub-Saharan Africa.

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About ViKtoria Ventures

ViKtoria Ventures is a consulting and fund management firm with a focus on entrepreneurial finance in East Africa.

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About the Dutch Good Growth Fund

The development of these legal guides is supported by the Dutch Good Growth Fund (DGGF), an initiative of the Netherlands Ministry of Foreign Affairs, as a part of the Seed Capital and Business Development (SC&BD) facility. The SC&BD facility is working with the AAA to train new and aspiring angel investors, and build stronger business angel networks across the continent over three years, while developing unique, local content for the angel community at the same time.

About the authors

Established in 2019, Ortus Advocates is now Uganda's largest independent full-service law firm, offering expertise in law, business advisory services, and tax. With a team of astute lawyers, the firm strategically positions itself as a powerhouse within the African legal landscape. With a focus on delivering inspired business solutions, Ortus Advocates has built a strong reputation for providing solid legal answers to complex issues. Actively engaged in shaping legislation in Uganda, the firm's in-depth knowledge of the region's sociopolitical climate positions it as a key player in facilitating successful transactions. Specialising in areas such as banking and finance; corporate and commercial; dispute resolution; insolvency and debt recovery; project finance; procurement and disposal; technology media and telecommunications and; employment and labour.

Ortus Advocates is dedicated to fostering long-standing professional relationships with clients across diverse sectors and industries.

About the Legal Syndication Primer for Uganda

This short guide was developed as a resource for AAA Alumni, as well as the broader African investor community for a new supplementary AAA module: the AAA Active Angel Series Syndication Module. The guide outlines common syndication and angel deal structures available to angels in Uganda as of December 2023.

For further detail on each structure and the suitability of using a specific structure for your deal or syndicate, please feel free to contact the authors at info@ortusadvocates.com

Please note that the content of this guide cannot be considered to be legal advice and that the AAA or Ortus Advocates is not responsible for any consequences arising from the selection of any of the structures outlined in this guide.

Part 1

Overview of the legal framework

Overview of the legal framework

There are currently no specific legal structures for the purposes of entering into angel investments in Uganda, and therefore, both local and foreign investors have the flexibility to choose the most suitable legal option for their specific investment needs. The chosen structure can be customised to some extent to meet the preferences of the investor group involved in a particular venture or startup. Investments of this nature are presently governed by the laws and regulations that apply to regular investments. However, if the startup or investor chooses to operate in a regulated sector, such as insurance, telecommunications, or banking, specific legal regulations may impose certain licensing and regulatory requirements on such angel and early-stage investors.

In general, investments made by angel and early-stage investors are bound by the standard contract laws, and the parties involved have the freedom to negotiate and agree on the specific terms of their contract while still adhering to any mandatory legal obligations, such as statutory voting thresholds that are required to approve certain decisions.

Part 2

Syndication legal structures

In Uganda, there are several types of investment structures available, such as single-member companies, private limited liability companies, joint ventures (both incorporated and unincorporated), partnerships, and trusts. The private limited liability company is the most frequently used.

Limited liability companies

The most common vehicle for investment in Uganda is the private, limited liability company (LLC). A private LLC is a company in which articles restrict the transfer of shares and securities, membership is limited to a maximum of one hundred subscribers (excluding company employees and former employees) and any public invitations for share or debenture subscriptions are prohibited. It also includes single-member companies.

An LLC is a separate legal entity with the ability to own property in its own name and to sue and be sued in its own name. The liability of the members or shareholders is limited to the shares they hold in the capital of the company and, unless there are exceptional circumstances, the members or shareholders are not liable for the company's liabilities.

The following considerations should be taken into account when considering using a limited liability company as a syndication legal structure:

Key Considerations	Notes
Regulatory considerations	At the point of incorporation, a private company should file a memorandum and articles of association, disclose directors and natural persons who are its beneficial owners, share allotment details, and share the registered and postal address to which all communications should be addressed. There is no requirement to have any Ugandan resident directors, except for financial institutions that are regulated by the Bank of Uganda and insurance companies. Every company must also appoint a company secretary (firm or individual), who must be resident in Uganda, and appoint an auditor who is a member of the Institute of Certified Public Accountants of Uganda or one of the other professional bodies referred to in the Ugandan Accountants Act (Cap. 266).
Licences and permissions	Companies operating in Uganda must hold a valid trading licence from the relevant municipal licensing authority. A separate trading licence is to be obtained with respect to each branch or store of an entity. The cost of each licence is dependent on the types of activities carried out by the company. Industry-specific licences may also be required. All companies seeking a trading licence are required to have a tax identification number (TIN). The company should also register for value added tax (VAT) if its total value of taxable goods or services surpasses the threshold of UGX50 000 000 (50 million Uganda shillings). In addition, every ompany must register with the National Social Security Fund (NSSF) within 21 days of becoming liable to register as a contributing employer.
Exchange control regulation	Uganda does not impose any restrictions on exchange controls. However, every payment made in foreign currency to or from Uganda between residents and non-residents, or between non-residents, must be made through a commercial bank.
Suitability	Locally incorporated companies may be more favourable in comparison to a branch if a long-term business presence in Uganda is envisioned. Local companies can perform any activity set out in their objects clause, even if different from the parent company.
Tax implications	Uganda, like many other countries, operates a self-assessment tax system that requires at the onset that every company be registered for taxes and obtain a TIN. LLCs are subject to corporate income tax at a rate of 30% of their chargeable income. The subsequent tax implications largely hinge on the nature of the returns anticipated. **Dividend income:** Where dividends are earned from a tax-resident company, the distribution is subject to withholding tax (WHT) at a rate of 15% of the gross amount of the dividend. This can be utilised as a credit at the point of computing the final tax payable on this investment income. However, where the dividend is paid to the syndicated structure that controls 25% or more of the voting power in the company, the distribution is exempt from the 15% WHT. In the hands of the entity, the dividend is then subject to the earlier stated corporate income tax of 30%. **Interest income:** Interest earned from quasi-equity instruments, such as convertible notes, is also subject to WHT at a rate of 15%. Much like the dividend income, this can also be utilised as a credit at the point of computing the final tax payable on this investment income. **Exit:** At the point of exit, any gains derived from the disposal of shares (through a share transfer) are subject to capital gains tax at a rate of 30% Capital gains are included in and taxed together with the business income at a rate of 30%. There is no separate capital gains tax.
Advantages	The biggest advantage of using this business vehicle is the limited liability, as a private company is viewed as a separate legal entity to its members. It involves a relatively simple incorporation and registration process, making it well-suited for investment purposes. It can be registered conveniently through the Uganda Registration Services Bureau's (URSB) e-services platform.
Disadvantages	The compliance requirements can be cumbersome. There are many regulatory bodies that have to be dealt with at the point of registration and operation of the business. The process of dissolution or de-registering the company can be complicated, lengthy, and costly. The veil of incorporation may also be lifted if the controlling mind of the company (directors and shareholders) hide behind this veil to shield their wrongdoings.

Costs and timelines	Company incorporation (legal fees): UGX2 000 000 Preparing all necessary documentation: UGX1 000 000 Acquisition of licenses: (This is dependent on the nature of the activities done by the company.) Registration can take between one and two weeks from the date of submission of the documents to the URSB, depending on whether it's a regulated industry or not.

Foreign registered companies (incorporated outside Uganda)

Foreign companies or branches of such companies are registered in Uganda under the Companies Act, 2012, and a certificate of registration is issued upon registration.

The following considerations should be taken into account when considering using a foreign registered company as a syndication legal structure:

Key Considerations	Notes
Registration	Foreign companies or branches are registered in Uganda under the Companies Act, 2012, and a certificate of registration is issued upon registration. To facilitate the registration of a company branch in Uganda, the following documents must be provided by the parent company and submitted to the URSB. • A certified copy of the mother company's own memorandum and articles of association or equivalent documents of constitution (with an English translation, if necessary) • A certified copy of the certificate of incorporation • A list containing the names, addresses, nationalities and occupations of its directors and company secretary • A statement of existing mortgages and charges created by the company in Uganda, if any • The names and addresses of one or more Ugandan residents who are authorised to accept legal notices on the company's behalf • The address of the company's registered or principal office The foreign company is obliged to submit the above documents and information at the URSB within 30 days of its establishment. The documents listed above must be authenticated by a notary public registered in the country of origin.
Regulatory considerations	Foreign registered companies must do the following: • Submit to the registrar of audited books of account for the head office unless the exemptions for commonwealth incorporated companies apply. • File annual returns filed by local companies need not be prepared by the branch office, except for designated changes with the parent company which need to be updated periodically. • Maintain a comprehensive register of its beneficial owners, which must include personal information, details of ownership or control, and dates of becoming or ceasing to be beneficial owners. • Notify the URSB about the location of the beneficial owners' register and provide a copy of the register within 14 days from its creation.
Specific requirements for foreign investors	• Investors need to apply for an investment licence, which is issued by the Uganda Investment Authority. • Investors in regulated sectors must obtain a "primary licence" from the regulating ministry, department or agency prior to applying for an investment licence.
Land acquisition	A foreign-registered company can enter into long-term leases for a maximum period of 99 years.
Tax implication	**Tax residency:** Branches are non-resident entities for tax purposes, unless management and control or majority of its annual operations are undertaken in Uganda. The rate of income tax on profits is 30%, and a further tax of 15% is payable on repatriation of profits. In addition, losses on foreign-source income cannot be set off against domestic income. **Limitations on interest deductibility:** Interest in respect of all debts owed by a company which is a member of a group can be claimed as a deduction limited to 30% of the taxable earnings before interest, tax, depreciation, and amortisation (EBITDA). The restriction does not apply to financial institutions and insurance companies. **Transfer pricing:** Transactions between associates (related parties) must be entered into on an arm's length basis. A penal tax of UGX50 million is owed by the taxpayer for failure to provide records requested by the Commissioner General (URA) in respect of transfer pricing. A company is also regarded as an associate of another person if that person, either alone or together with an associate or associates, controls 50% or more of the voting power in the company – either directly or through one or more interposed companies, partnerships or trusts.
Advantages	Easy to wind up and easy to operate and control.
Disadvantages	A foreign company or branch (as an extension of its parent company) may only carry out activities defined in the head office constitution documents. Liability can extend to the parent company.

Partnerships

Partnerships in Uganda can take the form of a general partnership, or a limited liability partnership. A general partnership is an entity that is created by a mutual understanding between two or more parties to carry on a business in common with a view to generating a profit.

In a general partnership, all partners have unlimited liability in respect of the debts and obligations incurred by the partnership. A partner's personal assets are liable to the partnership obligations, and all partners can be sued for the entirety of a partnership's business debts. General partnerships may be dissolved when one of the partners dies, becomes disabled or leaves the partnership – unless stated otherwise in the partnership deed.

Limited liability partnership

In a limited liability partnership (LLP), there is a maximum limit of 20 partners. The entity should also have one or more general partners, who are liable for all debts and obligations of the firm. The LLP should also have one or more limited liability partners, who each contribute a specified amount of capital and are not liable for debts beyond their contributed capital. The partners in an LLP are prohibited from withdrawing or reclaiming any portion of their capital during the partnership's existence: if they do so, they become responsible for the partnership's debts up to the withdrawn or reclaimed amount. A corporate entity (company) can act as a limited liability partner.

The following considerations should be taken into when considering using partnerships as a syndication legal structure:

Key Considerations	Notes
Registration and set up	• An LLP must be registered if operating a business under a business name that does not include the names of all the registered partners (individuals), as well as the corporate names of all corporation partners. • For a partnership formed for the purpose of carrying on a profession, the number of professionals shall not exceed fifty. • Registration of an LLP is mandatory and the LLP is mandated to keep a register of its beneficial owners.
Regulatory considerations	• An LLP is required to maintain a comprehensive register of its beneficial owners and provide a copy of the register to the URSB within 14 days from its creation. • It may carry out such business activities as set out in the partnership deed. • Every partner is bound to render true accounts. • There is no need to prepare audited books of accounts, unless the annual turnover exceeds UGX500 million.
Licenses and permission	• An LLP must hold a valid trading licence from the relevant municipal licensing authority. • The cost of the licence is dependent on the types of activities carried out. • For partnerships offering regulated services, further permissions need to be sought from the regulator of that particular sector.
Tax implications	• Partnerships, whether general or limited liability, file returns but are not liable for the payment of tax since they are not distinct legal entities. The partners are charged with fulfilling the tax obligations of the partnership. This is paid by both resident and non-resident partners. • The gross income of a resident partner for the year of income includes the partner's share of partnership income for that year, less the allowable deductions incurred in the production of that income. The gross income of a non-resident partner for the year of income includes the partner's share of income attributable to sources in Uganda. • A partnership in Uganda is considered a resident partnership if any of the partners is a resident person in Uganda during the year for tax purposes under the Income Tax Act Cap. 340 as amended.
Advantages	• There is less need to file constant documentation, unlike with companies. There is no need to file annual returns, although updates of changes to the partnership need to be submitted periodically. A partnership easily comes to an end upon the death of one of the members, or insolvency or insanity of any one of the partners. • A limited partnership can easily be converted into a general partnership by surrendering the certificate of its registration to the URSB for cancellation.
Disadvantages	• The partners in a general partnership are jointly and severally liable to each other for partnership debts and liabilities. • Limited partners are, however, only liable to the extent of their capital contribution. • Where a partner dies, his or her estate is severally liable in due course of administration for the debts and obligations of the firm so far as they remain unsatisfied but subject to the prior payment of his or her separate debts. • Winding up of this vehicle is not as straightforward as it is for general partnerships. It follows a similar process as that of companies, which may be costly.

Individual investing

Individual investing may be done in Uganda either through direct investing by an individual, that is, buying shares in an already existing corporation or by registering a sole proprietorship.

A sole proprietorship in Uganda is established through registering a business name and using the business name to conduct business.

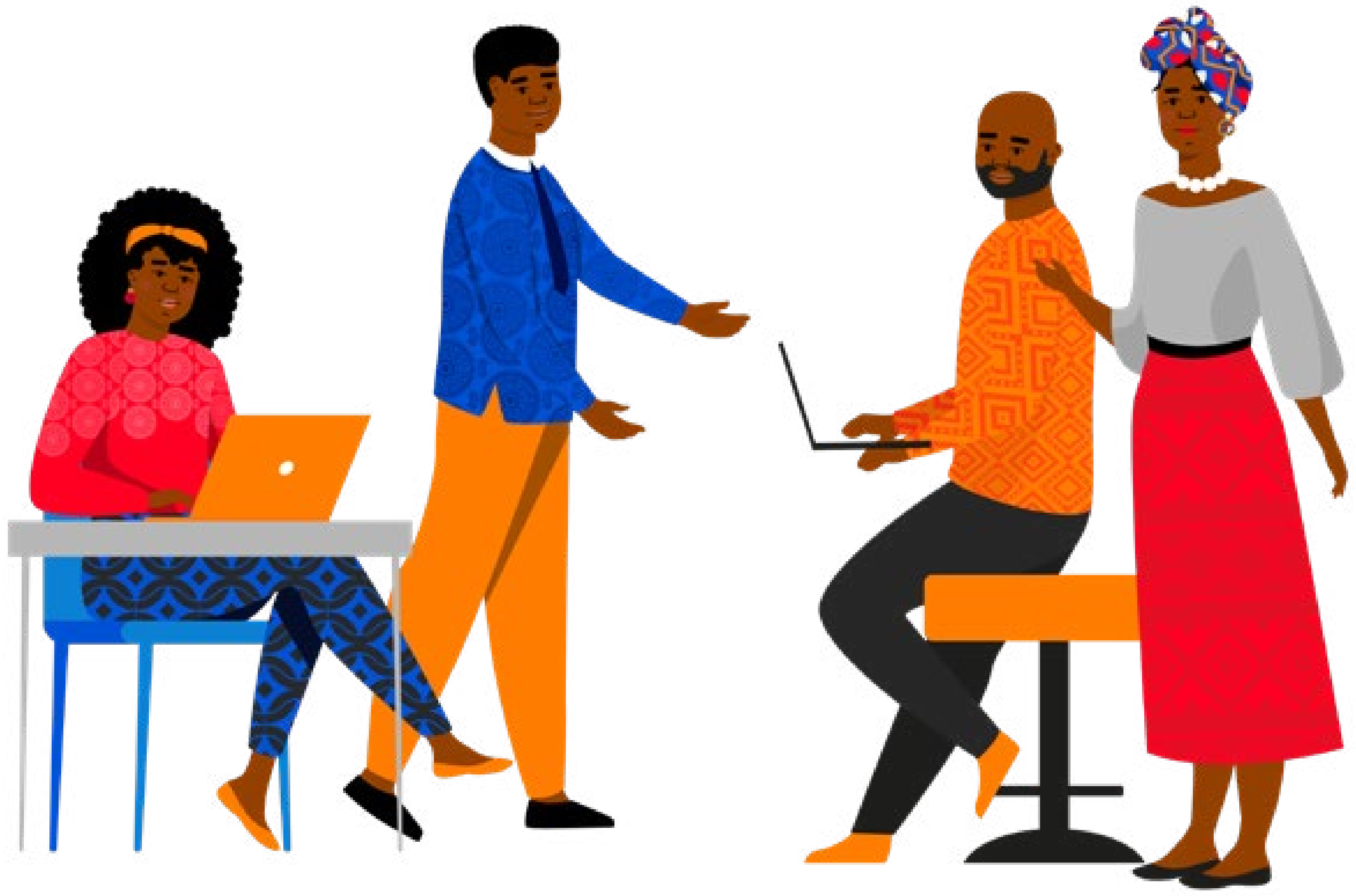
When investing is done through a sole proprietorship, there is no separate legal personality between the investor and the sole proprietorship. Consequently, the individual investor is personally liable for any liabilities incurred during the investment or business, and their personal assets may be used to settle the liabilities. Individual investing therefore exposes the angel investor(s) to limitless financial risks that arise from their investment activities.

The following considerations should be taken into when considering using individual investing as a syndication legal structure:

Key Considerations	Notes
Regulatory requirements	• This business type is straightforward to establish and operate as there is no need for extensive document filings. • While registration is not mandatory, it is advisable for individuals operating this business structure to consider registration.
Costs and timelines	• The costs of setting up this business are low, and they mainly constitute obtaining trading licences from municipal authorities. • Licence costs are dependent on the type of business venture being carried out.
Tax implications	• The applicable rates of tax depend on whether the individual is a resident or non-resident for tax purposes, but range between 10% and 40%. • The ITA defines a resident individual as one who has a permanent home in Uganda; or is present in Uganda: i. for a period of, or periods amounting in aggregate to, 183 days or more in any twelve-month period that commences or ends during the year of income; or ii. during the year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income. • An individual who does not qualify as a resident according to the above definition is a non-resident. The essence of the distinction between resident and non-resident individual is that: • the gross income of a resident person includes income derived from all the geographical sources, while the gross income of a non-resident person is income derived only from sources in Uganda. • A resident individual is entitled to an annual tax threshold of UGX2 820 000, whereas there is no tax threshold for a non-resident individual • On the premise of the above, individual investors will incur income tax. Importantly, the tax will be collected in the form of withholding tax at a rate of 15%. This is a final tax, so it implies that there is no further tax payable on the income.
Advantages	• The single individual retains control over both profit and revenue. Furthermore, there are no continuous regulatory obligations, such as the need for annual filings. • Decision-making remains unburdened by bureaucracy because the business is overseen by a sole proprietor. Additionally, initiating the business is cost-effective, since there is no need to engage multiple regulatory bodies.
Disadvantages	• Sole proprietors face unlimited personal liability for the business's debts and legal issues, which puts their personal assets at risk. • They may also struggle to attract investors or secure loans, and the business's continuity relies on the owner's well-being. • This structure is typically unsuitable for capital-intensive ventures.

Summary: Taxation overview for different syndication legal structures

Entity or structure	Tax implication details
LLCs	• Tax registration: Must register and obtain a TIN in Uganda. • Corporate income tax: Taxed at 30% of chargeable income. • WHT on dividends: 15% of gross dividend. • WHT on significant shareholding: Exempt if holding 25% or more of voting power. • WHT on interest: 15% for quasi-equity instruments.
Partnerships	• Income is taxed in the hands of partners. • Different rates apply, based on whether partners are individuals or companies.
Individual investing	• Subject to personal income tax rates ranging between 0% and 40%. • Dividend income and interest may have different taxation rates, but which range from 10% to 15%.



Part 3

Investment instruments

In Uganda, there is currently no specific legal framework tailored exclusively for early-stage investments. Angel investors operating within the country will find themselves governed primarily by general contract law, contingent upon the investment vehicle they choose to employ. The absence of dedicated legislation implies that early-stage investors must rely on established contractual agreements and principles to guide their investment activities.

It is essential to note that certain regulated sectors impose specific legal requirements on investors. In such cases, angel investors are obliged to adhere to the sector-specific regulations and laws applicable to their investment, which ensures compliance with the requirements of those industries.

Equity financing

The two main forms of equity are ordinary and preference shares. While many companies have only one class of ordinary shares, it is feasible to issue multiple classes with varying entitlements.

- **Ordinary shares:** Ordinary shares possess voting privileges, receive annual dividends, and retain a claim on the company's remaining assets in the event of liquidation once all obligations and higher-priority claims have been settled.

- **Preference shares:** Preference shareholders have priority over ordinary shareholders in receiving dividends and claiming the residual assets of the company at liquidation or winding up. Despite this preferential treatment, preference shareholders do not have voting rights. Preference shares are issued with a par value which serves as the benchmark for calculating dividend amounts and establishing the claim to the company's assets in the event of liquidation or winding up.

The following considerations should be taken into account when considering using equity financing to raise capital:

Key Considerations	Note
Regulatory considerations	• These encompass the submission of statutory documents, including but not limited to returns on allotment. In cases where there is an increase in the company's shares, it is mandatory to file a notice of increase of share capital. The company must issue share certificates to the new shareholders.
Forex difference	• The share capital of the Ugandan legal entities is denominated in Uganda shillings. Therefore, no forex differences arise in the company's books on equity.
Ideal use	• Equity financing is the most ideal means of financing at early stages of a business.
Tax implications	• Dividends payments are not tax-deductible expenses. • Stamp duty is imposed on the authorised share capital of the company. • Withholding tax is payable to the tax authorities upon payment of dividends unless there is an exemption.
Advantages	• Provides investors with the right to participate in the management and control of the startup or business.
Disadvantages	• Lengthy time periods to complete transaction due to negotiations. • Delays from negotiations over valuation of equity. • Dividends are received only when the company has profits available to distribute. • Currently in Uganda, venture capitalists are reportedly subject to double taxation (due to capital gains tax) when cashing out of an investment. This can be a disincentive to invest.

Simple Agreement for Future Equity

A Simple Agreement for Future Equity (SAFE) is an investment financing contract between a startup and an investor that entitles the investor to a right of future equity if triggered by a specific event. The exact conditions of a SAFE may vary according to the interests of the investors. These can be used in the early stages since valuation cannot be accurately and comfortably computed.

The following considerations should be taken into account when considering using a SAFE to raise capital:

Key Considerations	Note
Regulatory considerations	• Although SAFEs are not conventionally regulated securities, and although they are not governed by specific legislation, their utilisation is subject to compliance with securities laws and regulations in Uganda, with a specific focus on the Capital Markets Authority Act, Cap. 84.
Tax implications	• Since SAFEs are initially neither equity nor debt, they don't yield dividends or interest at the outset. However, once converted to equity in a financing round, any dividends derived thereafter are typically treated like standard equity dividends, subject to the aforementioned tax structures. • It is important to note that the initial investment in a SAFE might have other tax implications, depending on the specifics of the agreement.
Advantages	• SAFEs do not result in immediate equity dilution for founders, as they promise future equity upon a triggering event (for example, a future funding round), which allows startups to secure funding without giving up ownership stakes right away. • SAFEs can be customised to meet the specific needs and terms of the fundraising round, thereby providing flexibility in structuring the investment. • SAFEs typically offer flexibility in terms of conversion to equity, which enables investors to participate in future rounds on favourable terms. • Since SAFEs are simpler than traditional equity financing documents, they often involve lower legal fees, which can be advantageous for early-stage startups with limited resources. • SAFEs can facilitate faster fundraising rounds, since they involve fewer negotiations and documentation requirements, which allows for more rapid access to capital for startups. • SAFEs can be attractive to early-stage investors who wish to support startups, but prefer not to determine the valuation of the company immediately, thereby potentially reducing negotiation hurdles. • SAFEs align the interests of founders and investors, since both parties benefit when the company's valuation increases before conversion.

Disadvantages	• SAFEs typically do not grant investors any voting rights in the company, which means they may not have a say in important decisions, which potentially leads to a lack of investor influence. • The triggering events for SAFEs to convert into equity must be defined clearly in the agreement. Ambiguity or disputes regarding these events can cause issues and delays. • SAFEs do not provide investors with any dividends or interest payments while they hold the agreement – unlike some other forms of financing. • When the SAFE converts into equity, it can lead to dilution of the ownership stakes of existing shareholders, including founders and early investors, which may be a concern for some parties. • SAFEs delay the determination of the company's valuation until a future event, potentially causing misalignment of interests between founders and investors, especially if the valuation increases significantly. • As a company raises multiple rounds of funding with SAFEs, it can create complex capital structures that might be challenging to manage. • Not all investors are familiar with or comfortable with SAFEs, which could limit the pool of potential investors for a startup. • SAFEs do not guarantee that investors will receive equity, as the triggering events must occur for conversion to happen. This can create uncertainty for investors. • If future funding rounds do not materialise, there may be a risk of capital gaps or a failure to reach conversion, thereby leaving investors with no equity and startups with no capital.

Convertible loans

A convertible loan is a loan that is usually converted into equity at a later date, or in some cases, is repaid to the lender. The trigger for the conversion can be negotiated between the lender and the startup to be either at an agreed date or at a specific round of equity financing. Conversion into equity in the company or startup may occur at a discounted valuation, which acts as a reward for the early investor.

The following considerations should be taken into account when considering using convertible loans to raise capital:

Key Considerations	Note
Regulatory considerations	• Takes the form of a loan that can be repaid or converted into equity. • Conversion is triggered by a specific, prior agreed-to event or date. • Valuation of equity as converted from the loan obligation is vital, and must be agreed upon in advance and included in the agreement. • Interest rates should be favourable to encourage repayment.
Forex treatment	• Forex differences arise if the loan is denominated, and loan repayments are made in a currency other than the currency used to prepare the financial statements.
Tax implications	• These debt instruments have the potential to convert into equity at a later date – often during subsequent financing rounds. Until conversion, returns on convertible notes are characterised as interest and are subject to the tax treatment of interest income. • Upon conversion, any returns take the form of dividends from the now-acquired equity. This dual nature necessitates a keen understanding. · While in their debt phase, convertible notes accrue interest, which is taxed accordingly. Once converted, any dividends from the equity are subject to the standard tax treatment for dividends, as highlighted earlier. • Interest in respect of all debts owed by a company which is a member of a group can be claimed as a deduction limited to 30% of the taxable earnings before interest, tax, depreciation, and amortisation (EBITDA). The restriction does not apply to financial institutions and insurance companies. • Stamp duty does not arise in relation to debt financing except, on the loan agreement and security perfection documentation. • Withholding tax is payable to the tax authorities upon payment of interest, unless there is an exemption
Advantages	• Crowdfunding has lower economic risk than equity financing since the debtor has an obligation to pay the loan. • Debt holders are also assured of payment of the principal and interest, unlike shareholders who can only be paid out of the profits of the business or startup. • Within tolerable limits, secured debt offers the lowest cost of capital because of the lower return required by a secured lender and the tax deductibility of the interest payable.
Disadvantage	• These loans are considered lower in priority at liquidation of the company than other traditional lenders. • There is limited control and oversight for the angel investor over the operations of the business or startup. • Too much debt increases the bankruptcy risk to shareholders due to the cash required to service the debt and the return on equity that they require.

Crowdfunding

Crowdfunding is a financing strategy that aims to raise capital from a large pool of people (potential investors) largely through online platforms. The large pool of investors operates with a view to accumulation by encouraging individual investors to invest small sums that can be aggregated into significant financing. The small sums lower the investment barriers for individuals, which enable them to potentially invest in a startup that they are interested in and feel drawn to.

By registering an account on an online crowdfunding platform, a startup can gather small amounts of capital from a large number of individuals to finance a new business venture. In the traditional approach to crowdfunding, the startup offers a first-run product or some other incentive in exchange for a monetary contribution. Contributors receive no equity and are not entitled to be repaid.

Uganda does not have dedicated legislation for the regulation of crowdfunding. Therefore, legal and regulatory considerations, such as taxes applicable, are inferred from the already existing laws. In many cases, the process is essentially a pre-sale of the startup's product or service and not an investment.

The following considerations should be taken into account when considering using crowdfunding to raise capital:

Key Considerations	Note
Forex differences	Forex differences arise if the loan is denominated and loan repayments are made in a currency other than the currency used to prepare the financial statements.
Advantages	• Crowdfunding provides alternative sources of funding for African entrepreneurs who often face challenges in obtaining loans from risk-averse banks due to their small scale or lack of credit history. This allows them to connect directly with supporters and potential customers without extensive credit checks. • The widespread adoption of mobile technology in Uganda can facilitate crowdfunding, as people use their phones for various online transactions. While online fundraising may be less familiar, the prevalence of mobile phones offers a promising avenue for increased crowdfunding activity.
Disadvantages	• One significant challenge is the lack of regulatory oversight in Uganda, leaving investors vulnerable and lacking adequate protections. In the absence of clear laws and regulations, trust in crowdfunding may be compromised. • The lack of legal clarity regarding the status of crowdfunding organisations in Uganda and Africa could deter international investors due to concerns about money laundering and fraud.

Venture debt

Venture debt is a type of debt financing that is offered to startups or early-stage companies that need to raise capital but have little-to-no experience generating revenue. It is provided for by specialised banks and other non-bank lenders who are willing to take on a higher level of risk in exchange for the potential of higher returns – often at high interest rates and with shorter repayment periods. Venture debt does not need to include giving up ownership of the company through shares or equity. This type of debt financing is typically used as a complementary method alongside equity financing.

Key Considerations	Note
Regulatory considerations	• The loan agreements must be registered with the URSB and pay duty for agreements to be valid.
Forex difference	• Forex differences arise if the loan is denominated and loan repayments are made in a currency other than the currency used to prepare the financial statements.
Suitability	• Venture debt is rarely used as a long-term financing solution. Typically, these loans are repaid within a period of 18 months, but sometimes up to two or three years.
Tax implications	• Interest in respect of all debts owed by a company which is a member of a group can be claimed as a deduction limited to 30% of the taxable EBITDA. The restriction does not apply to financial institutions and insurance companies. • Stamp duty does not arise in relation to debt financing, except on the loan agreement and security perfection documentation. • Withholding tax is payable to the tax authorities upon payment of interest unless there is an exemption
Advantages	• Venture debt does not involve giving up equity. • It caters to startups that might not be able to raise capital from traditional lenders, such as banks. • Within tolerable limits, venture debt offers the lowest cost of capital because of the lower return required by a secured lender and the tax deductibility of the interest payable.
Disadvantages	• The interest rates on loans are high. • The repayment periods are shorter. • Too much debt increases the bankruptcy risk to shareholders due to the cash required to service the debt and the return on equity that they require.

Part 4

Tax implications on exit strategies

For angel investors, both as companies and individuals, a critical tax consideration during exit is that of capital gains tax (CGT). CGT is imposed on the gains derived from the disposal of an investment. This gain is generally calculated as the difference between the acquisition cost and the selling price of the investment. In Uganda, the applicable tax rate on this capital gain is set at 30%.

Whether the exit strategy involves mergers and acquisitions, an initial public offering, selling the business outright, or other methods, the fundamental tax implication remains the CGT. Given this consistent tax liability, it is essential for angel investors to factor in the potential CGT when planning and strategising their investment exits.

Tax implications on investment instrument

Instrument	Tax implication details
SAFEs	• Tax treatment will largely depend on the eventual conversion: equity or cash. • There is a potential CGT on gains, post-conversion.
Convertible notes	• Interest earned is subject to WHT at 15%. • On conversion to equity, it also attracts 15% withholding tax.

Part 5

Additional factors to consider when investing in Uganda.

Special considerations for foreign investors

There are no specific regulatory requirements imposed exclusively on foreign investors. This means that foreign investors are not required to register with the Uganda Revenue Authority (URA) or other regulatory bodies. The primary consideration for foreign investors revolves around tax obligations on income sourced from Uganda. Typically, this income is subject to a 15% tax rate on the gross income, which is efficiently managed through a withholding tax mechanism at the source. This approach ensures that tax obligations are met without imposing administrative burdens on the foreign investor. The actual tax rate can be influenced by double taxation agreements that Uganda has with various countries, which may potentially offer relief or different tax structures based on the investor's country of residence.

The responsibility of withholding and remitting taxes to the URA falls on the investment vehicles – typically the Ugandan startups or entities through which the investments are made. This arrangement removes the need for individual foreign investors to engage directly with tax authorities for compliance purposes.

Due diligence

The URSB significantly aids the due diligence process for new investors. It acts as a centralised repository of business-related information, granting investors easy access to corporate records, ownership details, and financial reports, which allows for a proper understanding of the businesses they may consider.

The URSB's mandate for companies and limited liability partnerships to maintain beneficial ownership registers enhances due diligence by offering clear insights into ownership structures, and helping to assess potential risks associated with investments. The URSB's role in verifying legal compliance safeguards investors from engaging with non-compliant entities, while its commitment to preventing money laundering and terrorist financing contributes to a safer investment environment. The URSB can provide legal certifications and documentation and aid in due diligence, data validation, and conflict resolution, which collectively reduce the risk for investors and thereby promote a transparent and secure investment landscape in Uganda.

Acceptance of notarised foreign documents

Foreign notarised documents (including IDs, introduction letters and Interpol certificates) are essential for various legal and administrative processes in Uganda, particularly for international transactions and legal matters. Uganda, not being a party to the Apostille Convention, follows its own set of procedures for accepting these documents.

First, the document must be notarised in the foreign country by a recognised notary public, who affixes their signature, seal, and other necessary details. Then, the notarised document is submitted to the Ugandan embassy or consulate in the country where it was notarised. They examine the document's authenticity and, if satisfied, legalise it by affixing an official stamp or seal, thereby confirming that the notary's signature and seal are genuine. If the document is in a language other than English, it may need to be translated into English by a certified translator. The recipient in Uganda must verify the document's authenticity by checking the notary's signature, the legalisation by the Ugandan embassy or consulate, and the translation, if required. Once verified, the document can be used for its intended purpose in Uganda, such as in legal proceedings, business transactions, or other official matters.

Notarised documents must comply with Ugandan legal requirements, and specific documents, such as academic transcripts or business documents, may require additional authentication.

Priority sectors areas in the Investment Code Act, 2019

In alignment with the National Development Plan, Uganda has identified key priority sectors to focus its efforts and resources for sustainable economic growth. A list of current priority areas (as at the date of writing this brief) for investment is contained in Schedule 2 of the Investment Code Act and includes areas as diverse as food processing, oil milling and IT (see full list in section 5.5). Engaging in these priority areas qualifies an investor for incentives under the Investment Code Act.

Incentives

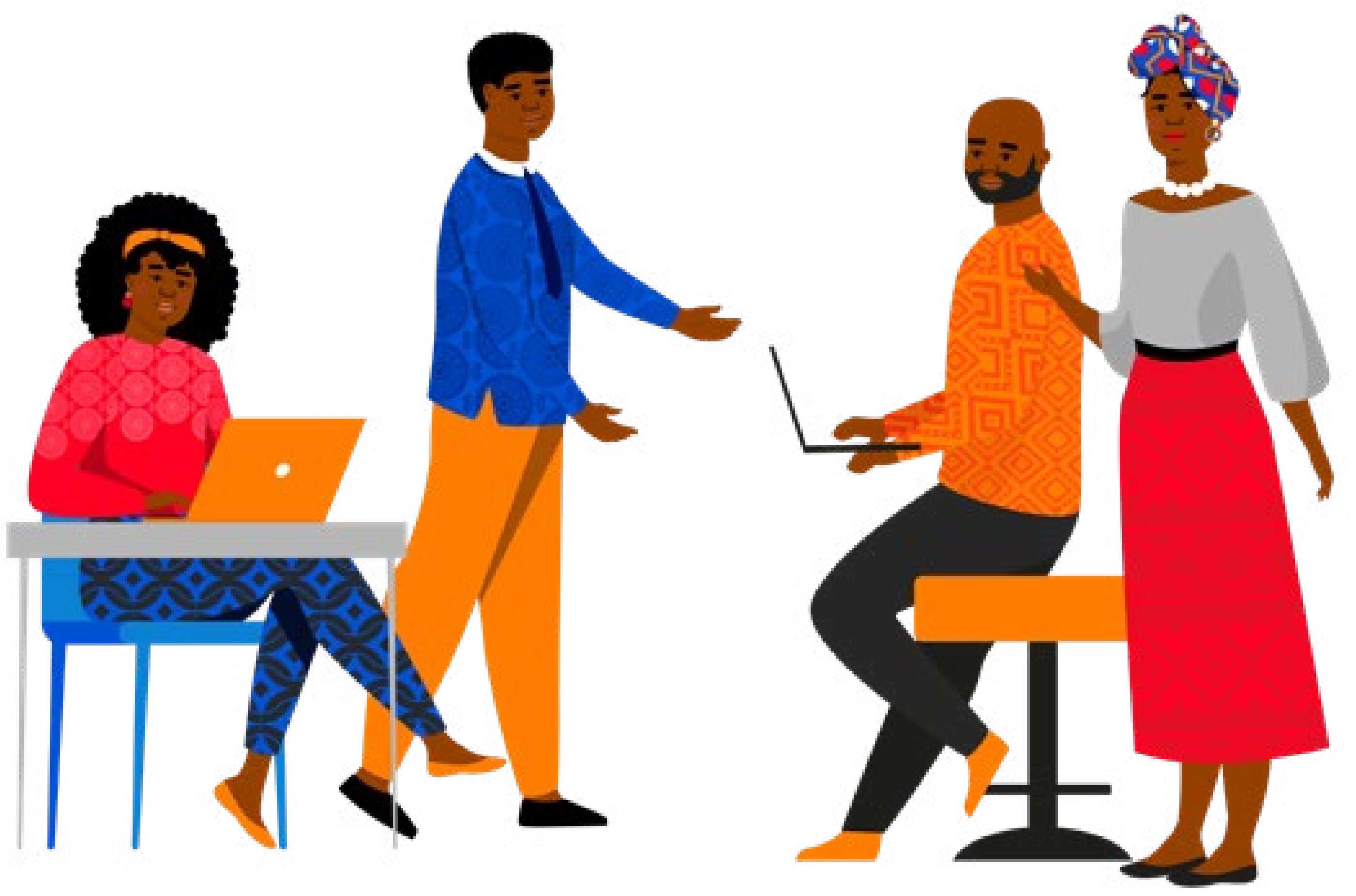
Uganda's code Investment Code Act provides a range of incentives to promote economic growth and investment in various sectors of Uganda's economy.

No.	Incentive	Breakdown
1	Agro processing	• 100% exemption from tax on income from agro processing • 100% exemption on expenditure on scientific research. • 100% exemption on training expenditure • Tax holiday for the first 10 years on export of finished consumer and capital goods · Exemption on export processing zone on imported raw materials and intermediate goods, machinery and equipment, spare parts for exclusive use in the free zone · Exemption from customs duty on plant and machinery • Accelerated deductibility of initial allowance in respect of plant and machinery: the provision grants a one-off accelerated tax depreciation allowance on the cost base of the property at the rate of 50% to persons who invest in plant and machinery outside the boundaries of Kampala. • Accelerated deductibility of initial allowance in respect of industrial buildings: the provision grants a one-off accelerated tax industrial building allowance on the cost base of the property at the rate of 20% to persons who use the new industrial buildings for the first time.
2	Logistics and warehousing	• 10 year tax exemption for foreign investors for leasing or renting an industrial park or free zone with a minimum investment capital of USD50 million • 10 year tax exemption for domestic investors for leasing or renting an industrial park or free zone with a minimum investment capital of USD10 million • 10 year tax exemption on VAT for any developer of an industrial park on the following: no VAT on any payment for feasibility studies, design, and construction services; earthmoving equipment and machinery; construction materials • 100% tax allowable on training costs

		• Accelerated deductibility of initial allowance in respect of plants and machinery. The provision grants a one-off accelerated tax depreciation allowance on the cost base of the property at the rate of 50% to persons who invest in plants and machinery outside the boundaries of Kampala. • Accelerated deductibility of initial allowance in respect of industrial buildings. The provision grants a one-off accelerated tax industrial building allowance on the cost base of the property at the rate of 20% to persons who use the new industrial buildings for the first time. • Exempting the supply of earth-moving equipment and machinery for development of free zones and industrial parks. The provision exempts the supply of earth-moving equipment and machinery for development of an industrial park or free zone to a developer of an industrial park or free zone. • Exempting the supply of construction materials for development of industrial parks. No excise duty is charged on construction materials for development of industrial parks or free zones. • Equipment is imported duty-free.
3	Mining industry	• 100% cost recovery on exploration, development, and production • 100% deduction of scientific research expenditure • 100% tax allowable on training costs • Indefinite cash relief of VAT (deemed VAT) on supplies by the contractor • Indefinite VAT exemption on other inputs to mining not covered under the deemed/ cash reliefMachinery and spare parts for direct and exclusive use in mining are exempted of all import duties under the fifth schedule of the East African Community Customs Management Act.

Other priority sectors in the Investment Code Act, 2019

No.	Priority sector
1	Food processing
2	Medical appliances
3	Building materials
4	Lighting industry
5	Automobile manufacturing and assembly
6	Household appliances
7	Furniture
8	Information technology
9	Commercial farming
10	Tourism
11	Steel industry
12	Chemical industries
13	Textile and leather industry
14	Oil milling industry
15	Paper production
16	Glass and plastic products industry
17	Ceramic industry
18	Construction and building industry
19	Real estate development industry
20	Packaging industry
21	Transport industry
22	Pharmaceutical industry
23	Telecommunications industry



Part 6

Considerations for Ugandan investors investing in foreign jurisdictions

Uganda maintains a liberal economy, allowing its citizens and economic participants considerable freedom in engaging in business and investments abroad. However, when investing in foreign jurisdictions, there are critical considerations that Ugandan investors need to be aware of, primarily concerning anti-money laundering regulations during repatriation and various tax considerations.

Anti-money laundering considerations

Ugandan individuals – especially those considered accountable persons – have reporting obligations of any amounts over the equivalent of USD10 000 under anti-money laundering laws when repatriating funds from foreign investments. Even if the investor does not report, this is a general reporting threshold to the regulator by intermediaries, such as financial institutions and insurance companies involved in these transactions, that are obligated to monitor and report suspicious activities. These entities must report any unusual transactions to the Financial Intelligence Authority (FIA) as part of Uganda's efforts to combat money laundering.

Tax considerations

Ugandan residents are taxed on their worldwide income. This means that any foreign-sourced income is also subject to taxation in Uganda, with specific provisions for tax relief based on double taxation agreements (DTAs).

Individuals are entitled to a credit for taxes paid on foreign-sourced income. This credit is applicable when the income subject to foreign tax is also included in the individual's taxable income in Uganda. However, the credit cannot exceed the Ugandan tax that would be due on that income. The tax credit calculation is conducted separately for income derived from business activities and other sources, allowing for a more tailored approach to tax relief.

Through the use of the DTAs, one may be able to enjoy some form of relief, either through reduced tax rates or credits for taxes paid in one country, offset against taxes due in the other. At this time, Uganda has DTAs with Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the United Kingdom and Zambia.

Part 7

Bank transfers involving investors and investee companies

In the investment process, it is important to keep abreast of banking systems and regulations so as to ensure seamless transactions between investors and the companies or entities being invested in.

Banks in Uganda have applied robust Know Your Customer (KYC) requirements that include the requirement to provide national identification cards for nationals and valid passports for foreign nationals before a bank account can be opened. Foreign nationals are required to provide a valid work permit and proof of address. In respect of companies, a company resolution that outlines the signatories to the account will be required by banks. This is in addition to the latest annual returns, register of beneficial owners and valid identification documents for each signatory, director and shareholder or beneficial owner.

Investors may make use of escrow accounts to facilitate cross-border transactions. This provides an avenue for funds to be controlled, depending on obligations that are to be fulfilled by the investee companies. It also acts as a bulwark against funds being misused by the investee company.

Angel investing may require the services of investment managers as well as legal, audit and accounting services that are contracted by the investee companies. The “Big 4” audit firms including Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers (PWC) all have a presence in Uganda. Such advisory services are contractual in nature and are required for the diligent handling of operations. There are other competent firms to satisfy all manner of advisory needs of any entity.

Part 8

Other tax considerations

Private equity or venture capital funds and re-investing

There is a significant tax advantage if involved in venture capital funds in Uganda. When a registered venture capital fund with the Capital Markets Authority (CMA) facilitates the sale of investments and then reinvests at least 50% of the proceeds within the same income year, the gains are exempted from capital gains tax. However, it is crucial for angel investors to ensure that the funds they participate in are appropriately registered to qualify for this benefit.

Carry-forward losses

In Uganda, business losses can typically be carried forward for a period of up to seven years. After this period, any unused losses are forfeited and cannot be deducted from future income.

For angel investors, the capacity of a prospective investee to carry forward its losses can be a compelling factor in the investment decision. Such companies, when they eventually become profitable, benefit from protection against immediate tax liabilities. This potentially enhances the company's valuation at the point of exit, which amplifies the appeal to investors. However, it is crucial to recognise the constraints attached to this benefit. If the company witnesses a more than 50% change in ownership from its stance a year ago, the entitlement to utilise these accumulated losses becomes contingent on the company maintaining its original business operations for at least two years post-change. Additionally, acquisitions primarily to exploit these tax losses are prohibited, ensuring genuine business pursuits, rather than mere tax-driven motives.

Double taxation agreement

Uganda has Double Tax Treaty (DTT) arrangements with several countries, including Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the United Kingdom, and Zambia. Angel investors originating from or connected to these countries can leverage these treaties to potentially minimise their tax liabilities on returns from Uganda. Specific clauses in these treaties, such as reduced withholding tax rates, can significantly influence the net returns, making it essential to be conversant with the specifics.

Transfer pricing considerations

Cross-border investing for angel investors is also affected by a transfer pricing regime. Uganda adheres to the arm's length principle for transactions between related entities. This means transactions must be priced as if they were between unrelated parties, to ensure that the appropriate level of tax is paid in Uganda. Investors, especially those establishing subsidiaries or related entities in Uganda, should maintain robust transfer pricing documentation, evidencing that their cross-border intra-group transactions are at arm's length. This is crucial not only for tax compliance but also to mitigate risks of adjustments and potential penalties.

Grants and not-for-profit funders

Grants to Ugandan entities are generally not taxable, as they are not considered income. However, the recipient organisation is still obligated to file tax returns and to obtain tax exemption status proving that they meet the requirements of a charitable entity. Additionally, for entities offering a mix of investment and grants, it is essential to clearly delineate these activities to ensure correct tax treatment. Investors aiming for such a blended finance model (where returns are mixed with charitable goals), should consider setting up separate entities or structures for their investment and grant-making activities to simplify tax compliance and reporting.

African Angel Academy