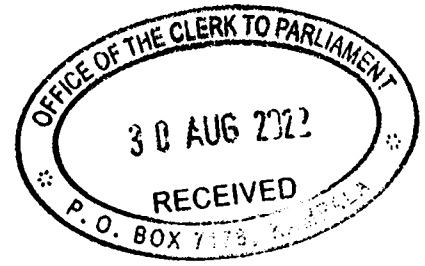




PARLIAMENT OF UGANDA



**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE TRUSTEES  
INCORPORATION (AMENDMENT) BILL, 2022**

**OFFICE OF THE CLERK TO PARLIAMENT  
PARLIAMENT BUILDING  
KAMPALA-UGANDA**

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**AUGUST, 2022**

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## 1.0. INTRODUCTION

The Trustees Incorporation (Amendment) Bill, 2022 was read for the first time on 23<sup>rd</sup> August, 2022 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda and the same was referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny. In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee has examined the Bill and hereby presents its report with observations and recommendations.

## 2.0. BACKGROUND

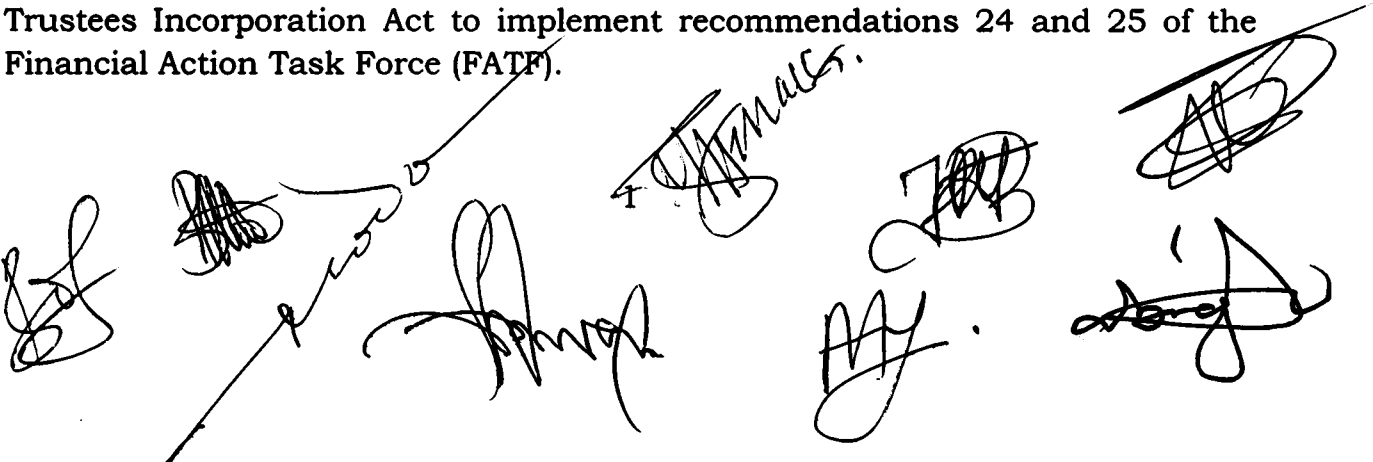
The Trustees Incorporation Act, Cap. 165 and that law regulates the incorporation of trustees of certain bodies and associations of persons in Uganda. The Act allows trustees or a trustee to be appointed by anybody or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and once appointed, the trustees are required to apply to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.

A “trust” is simply a word used to describe the relationship created when property is transferred by one person (the “settlor”) to another person (the “trustee”) to hold that property for the benefit of specified persons or a class of persons (the “beneficiaries”). A trust can be created by natural persons or entities such as churches and other charitable organisations, member associations and like organisations to hold their property and execute their work through the trust.

A person intending to create a Trust is required to appoint trustees under Section 1 of the Trustees Incorporation Act who then apply to the Minister for a certificate of registration as a corporate body.

Once registered and a certificate of incorporation granted, the trustees become a legal entity with perpetual succession, a common seal, and power to sue and be sued in the corporate name, and subject to the conditions and directions contained in the certificate to hold and acquire, convey, assign and demise any land or any interest in land belonging to, or held for the benefit of, such body or association of persons.

The Trustees Incorporation (Amendment) Bill, 2022 proposes to reform the Trustees Incorporation Act to implement recommendations 24 and 25 of the Financial Action Task Force (FATF).



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FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF recommendations are recognised as the Global Anti-Money Laundering (AML) and Counter-Terrorist Financing (CFT) standards.

The FATF recommendations require Uganda to enact provisions to strengthen and implement the system of sanctions for violations of beneficial ownership transparency obligations for legal arrangements. Further, Uganda is required to undertake robust legal reforms for trusts to address the deficiencies in the existing legal framework on beneficial ownership information of legal persons and arrangements.

### **3.0. THE OBJECT OF THE BILL**

The object of the Trustees Incorporation (Amendment) Bill, 2022 is to:

- (a) amend the Trustees Incorporation Act, Cap. 165 to widen the nature of trustees required to register with the Minister and to define beneficial owners in the context of trusts;
- (b) provide for a register of beneficial owners to be kept by a trustee or trustees which shall contain particulars of beneficial owners and other related matters.
- (c) empower the Minister to prescribe additional reporting requirements to be complied with by a trustee or trustees with beneficial owners.
- (d) provide for a fine for failure to comply with the provisions on beneficial ownership.

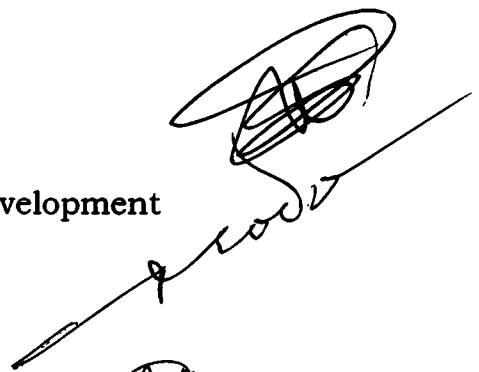
### **4.0. METHODOLOGY**

In the process of analyzing the Bill, the Committee;

- (a) met and held discussions with the following stakeholders;-
  - (i) Attorney General;
  - (ii) Ministry of Justice and Constitutional Affairs
  - (iii) Ministry of Defence and Veteran Affairs
  - (iv) Ministry of Internal Affairs
  - (v) Ministry of Trade, Industry and Cooperatives
  - (vi) Ministry of Finance, Planning and Economic Development
  - (vii) Uganda Revenue Authority (URA)
  - (viii) Bank of Uganda (BoU)
  - (ix) Financial Intelligence Authority(FIA);
  - (x) Uganda Registration Services Bureau (URSB);



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- (xi) The Insurance Regulatory Authority (IRA)
- (xii) Uganda Bankers' Association (UBA)
- (xiii) External Security Organisation (ESO)
- (xiv) Internal Security Organisation (ISO)

(b) reviewed the following relevant documents;

- (i) The Constitution of the Republic of Uganda, 1995;
- (ii) The Trustees Incorporation Act, Cap. 165;
- (iii) Written submission by the Attorney General; and
- (iv) Written submission by the Financial Intelligence Authority (FIA).

## **5.0. ANALYSIS OF THE TRUSTEES INCORPORATION (AMENDMENT) BILL, 2022**

This part of the report analyses the proposals made in the Bill, considering each clause and identify legal and practical issues that may affect its implementation.

### **5.1. Introduction of definition of beneficial owner**

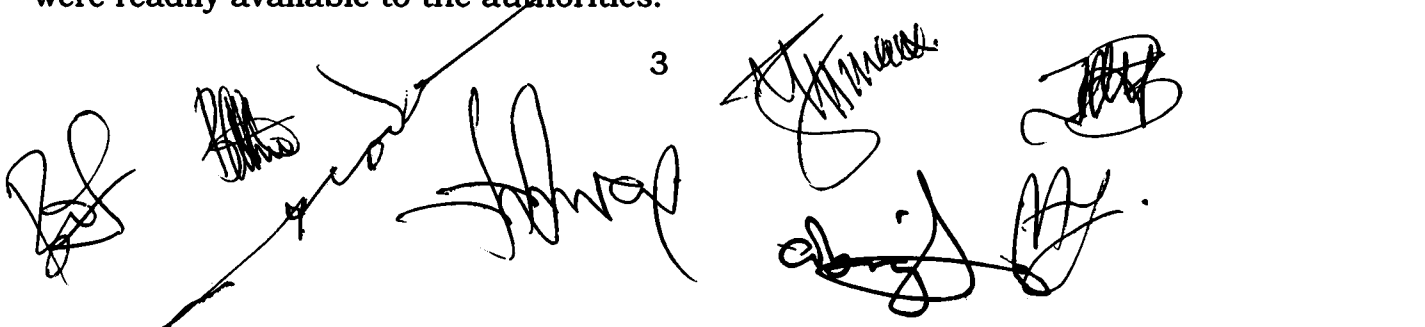
Clause 2 of the Bill proposes to amend the Trustees Incorporation Act to introduce definitions of beneficial owner and currency points. The Bill proposes that a "beneficial owner" means a natural person who ultimately owns or controls trustees or a trustee or the natural person on whose behalf a transaction is conducted by trustees or a trustee, and includes a natural person who exercises ultimate control over a trustees or a trustee.

The Committee has examined the proposal in the Bill and supports it since it will enhance transparency and make the identification of a beneficial owner in trusts easy.

The Committee notes that trusts and other types of legal entities and arrangements are being used, in some cases for, illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other illegal activities. These legal entities are used by criminals to circumvent anti-money laundering (AML) and counter-terrorist financing (CFT) measures by disguising and converting the proceeds of crime before introducing them into the financial system.

The Committee observes that the misuse of corporate entities could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of the corporate entity's assets, and its activities were readily available to the authorities.

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The Committee notes that legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation. This allows the authorities to trace the money in financial investigations involving suspect accounts/assets held by corporate entities. In particular, beneficial ownership information can also help trace a given person's assets within a jurisdiction and prevent criminality where a person is not in good standing with the law.

The Committee therefore recommends that the definition of a beneficial owner is included in the Trustees Incorporation Act since it will enhance transparency in determining who the beneficial owner of any trust is.

The Committee however note with concern that whereas the Trustees Incorporation Act is implemented by the Minister responsible for lands, nothing in the Act provides as such. The Act merely referred to the "Minister" without defining who the Minister being referred to is. The lack of clarity as to the responsible Minister creates confusion amongst the users of the law since they do not know, with certainty, who the line Minister mentioned in the Act is.

The Committee is aware that the Minister is granted discretion to issue certificates on applications for incorporation of trusts and the Minister, on being satisfied with the appropriateness of the application, issues a certificate to the trustees or trustee.

The Committee is of the considered opinion that the Act ought to, like all other Acts of Parliament, prescribe with certainty, who the Minister in charge of the processes prescribed in the Act is in order to ensure that the responsibilities bestowed onto that Minister can be effectively executed and ensure an uptake in the services provided for in the law.

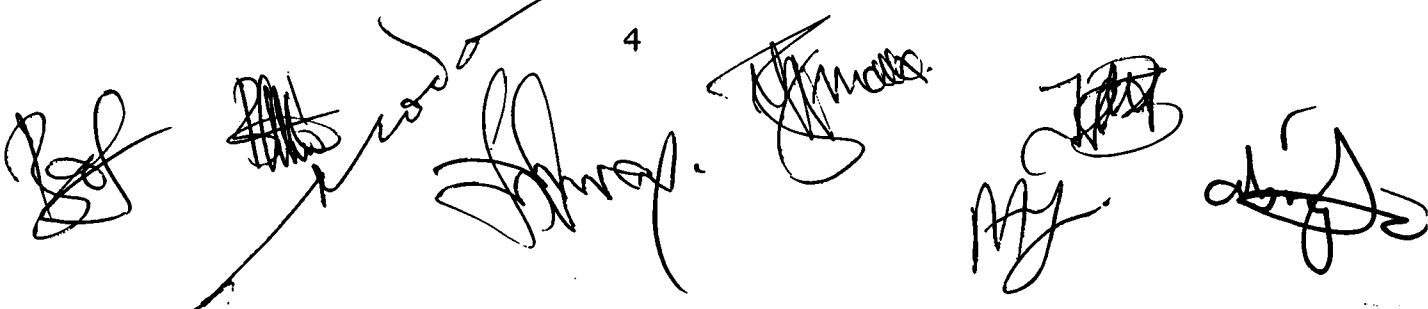
### **Recommendation**

***The Committee recommends that clause 2 be adopted with an amendment to define the Minister responsible for implementing the Act.***

### **5.2. Appointment of trustees or a trustee**

Clause 3 of the Bill proposes to amend Section 2 of the Trustees Incorporation Act to broaden the category of trustees required to register with the Minister. The provision requires that trustees or a trustee may be appointed by anybody or association of persons established for any religious, educational, literacy, scientific, social, athletic, charitable or other lawful purposes, or any persons

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who have constituted themselves for any such purpose, may apply, in the manner provided in this Act, to the Minister for a certificate of registration of the trustees or a trustee of such body or association of persons as a corporate body. The provision further requires that upon the appointment of the trustees or a trustee, the trustees or trustee shall apply for a certificate of registration in accordance with this Act.

The Committee has examined the provision and agrees with the principle to expand the categories of the trustees or a trustee.

The Committee notes that currently, Section 1 of the Trustees Incorporation Act limits the incorporation or appointment of trustees by anybody or association of persons established for any religious, educational, literary, scientific, social or charitable purpose. The Bill now proposes to allow the incorporation of trusts or appointment of trustees for athletic organisations and other lawful purposes. This will allow the incorporation of trust for any lawful purpose, thereby allowing the benefits of appointing trustees to be enjoyed in all lawful actions in Uganda.

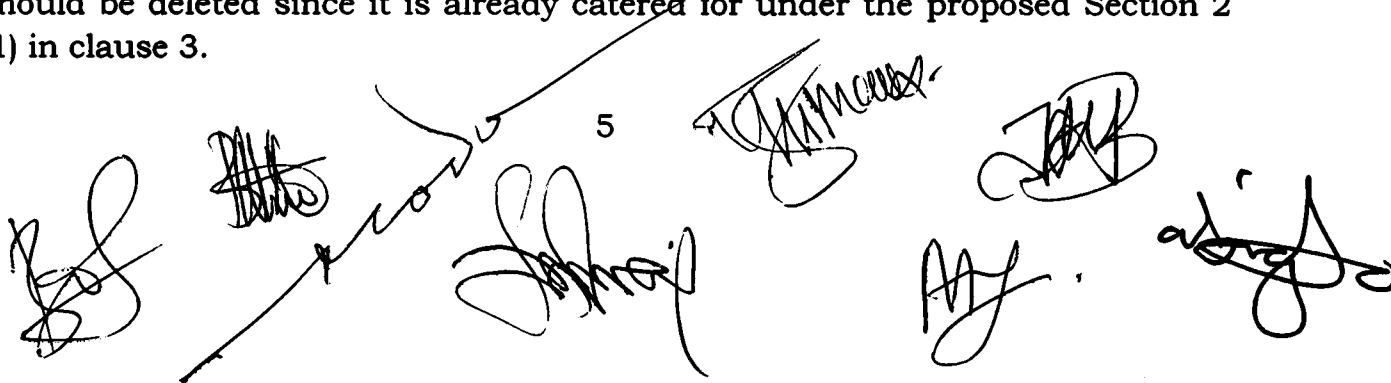
Whereas the Committee agrees and supports the principle contained in the Bill, it is concerned that the provision proposes to amend a Section that does not relate to the appointment of trustees or incorporation of trusts. The Committee notes that whereas the Bill proposes to amend Section 2 of the Trustees Incorporation Act, the relevant Section for amendment should be Section 1 of the Trustees Incorporation Act. The Committee observes that Section 1 of the Trustees Incorporation Act relates to the grant of certificate as a corporate body and allows the appointment of trustees and the incorporation of trusts for any religious, educational, literary, scientific, social or charitable purpose.

On the other hand, Section 2, which is proposed for amendment relates to vesting of trust estate in body corporate and requires that the certificate of incorporation issued to a trustee after registration vests all the property in the trust so created.

The Committee therefore finds that Section 2 has nothing to do with registration and incorporation of trusts and instead, the relevant Section to be amended should have been Section 1.

The Committee has also examined the proposed subsection (1a) of section 2 under clause 3 of the Bill and is of the considered opinion that this provision should be deleted since it is already catered for under the proposed Section 2 (1) in clause 3.

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The Committee observes that clause 3 proposes to replace subsections (1) of Section 1 broaden the category of trustees required to register with the Minister and once appointed, the trustees are required to apply to the Minister for issuance of a certificate of registration. The proposed subsection (1a) also repeats the same requirement. This means that subsection (1a) is a duplication of subsection (1) and is therefore redundant since subsection (1) is sufficiently drafted to cater for the proposals in subsection (1a).

It is therefore the considered opinion of the Committee that the proposed subsection (1a) be deleted.

### **Recommendation**

***The Committee recommends for the adoption of the principle contained in clause 3 save that clauses 1 and 3 should be merged for clarity and the proposed subsection (1a) be deleted to avoid duplication.***

### **5.3. Introduction of register of beneficial owners**

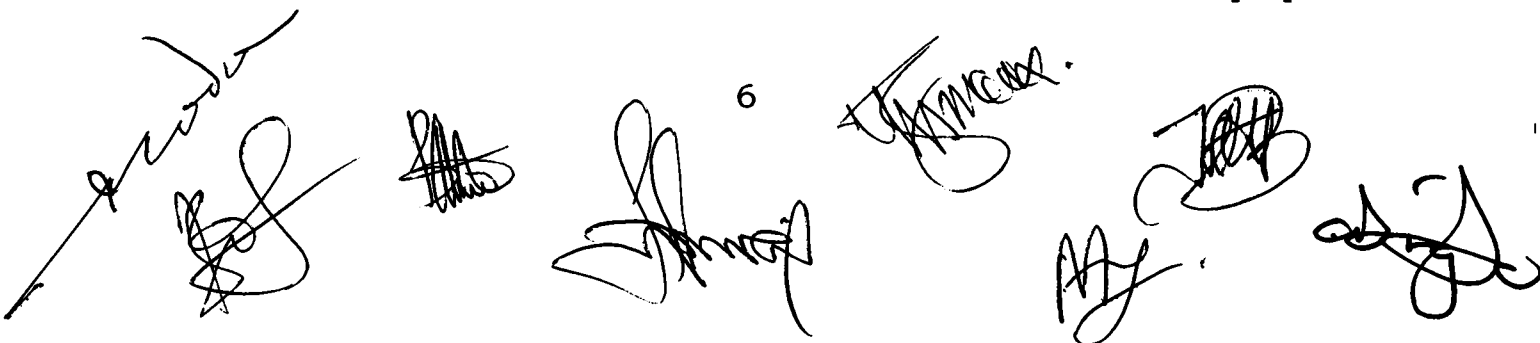
Clause 4 of the Trustees Incorporation (Amendment) Bill 2022, seeks to amend the Trustees Incorporation Act, Cap. 165 to insert a new Section 3A to provide for a register of beneficial owners which shall contain particulars of beneficial owners and other related matters including, where the register is to be kept and giving notice to the registrar of the place where the register is to be kept.

The provision seeks to empower the Minister to make regulations to prescribe additional reporting requirements to be complied with by a trustee or trustees with beneficial owners and provides for a fine for failure to comply with the provisions on beneficial ownership.

The Committee has examined this provision and notes that such information is currently not held, making the determination of who the beneficial owner of trustees or a trustee impossible. The requirement to hold a register of beneficial owners will be an effective mechanism in ensuring transparency and afford the public an opportunity to access such information from a single source, in a timely manner.

However, whereas the Committee agrees with the principle for amending the provision, the Committee is of the considered opinion that there is need to further enhance transparency by requiring Trustees to send a copy of their beneficial owners to the Minister. The Committee notes that the proposed

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Section 3A only obligates the trustees to keep a register of their beneficial owners at the registered office of the Trustees.

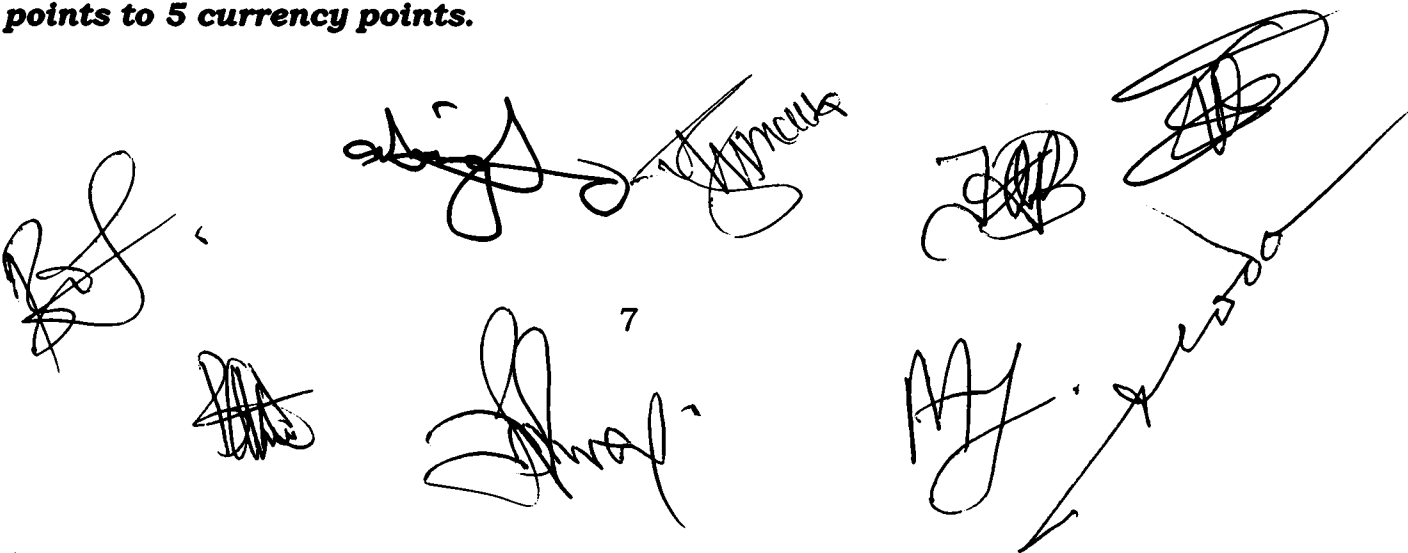
The Committee observes that whereas this is good and should be supported, it is concerned that if a person is interested in getting information relating to the beneficial owners of trustees, there is no central location such a person can acquire that information since information relating to beneficial owners is held at every Trustee. This means that a person has to approach each Trustee for information, making the process tedious and expensive. The Committee therefore recommends that an obligation be imposed on trustees or a trustee to send a copy of their beneficial owners to the Minister, thereby making the process of acquiring such information easy.

The Committee has also considered the penalty proposed for infringing the provisions of the proposed Section 3A and it finds that the proposed daily fine of 25 currency points, equivalent to Five Hundred Shillings (UGX 500,000) is excessive compared to the gravity of the offences committed. The Committee notes that the penalty is excessive and needs to be revised downwards to avert a possible miscarriage of justice.

The Committee notes that if the proposed daily penalty for breach is converted into a term of imprisonment using the formula in Section 3 of the Law Revision (Fines and Other Financial Amounts in Criminal Matters) Act, 2008, one would find that the equivalent term of imprisonment for breach for the provisions of Section 3A would be one year for every day of contravention. The Committee finds that this penalty is excessive and will not achieve compliance. The Committee therefore recommends that the penalty be reduced from a daily default fine of 25 Currency points (equivalent to five hundred thousand shillings) to 5 currency points which is equivalent to One Hundred Thousand Shillings (UGX 100,000).

### **Recommendation**

***The Committee recommends that clause 4 be adopted albeit with an amendment to require Trustees to send copies of their beneficial owners to the Minister and to reduce the daily default fine from 25 currency points to 5 currency points.***



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**6.0. CONCLUSION**

Rt. Hon. Speaker and Honourable Members, the Committee has examined the Trustees Incorporation (Amendment) Bill, 2022 and recommends that it is passed into law, subject to the proposed amendments.

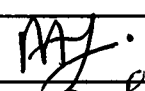



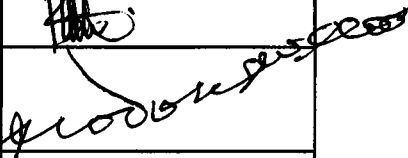


The Committee observes that this Bill, when passed into law will go a long way in enabling the compliance with recommendations 24 and 25 of the Financial Action Task Force (FATF) which requires Uganda to enact provisions to strengthen and implement the system of sanctions for violations of beneficial ownership transparency obligations.

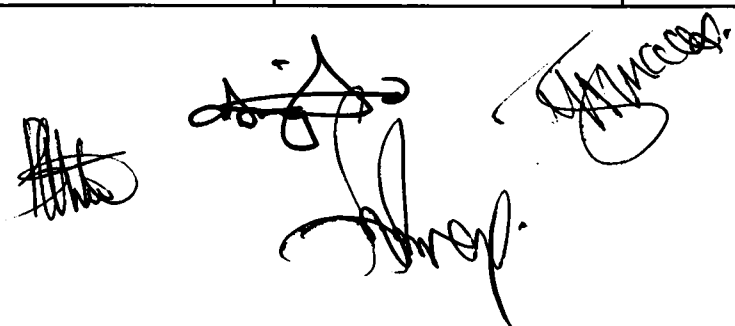
***I beg to report.***

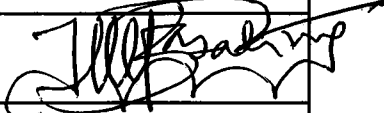
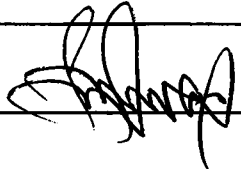
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**SIGNATURES OF MEMBERS ENDORSING THE REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE TRUSTEES INCORPORATION (AMENDMENT) BILL, 2022**

1	Hon. Rwakoojo Robina Gureme	Gomba West County	NRM	
2	Hon. Mutembuli Yusuf	Bunyole East	NRM	
3	Hon. Okiror Bosco	Usuk County	NRM	
4	Hon. Nkwasiibwe Zinkuratire Henry	Ruhaama County	NRM	
5	Hon. Odoi Benard	Youth Eastern	NRM	
6	Hon. Odoi Oywelowo Fox	West Budma North East	NRM	
7	Hon. Oseku Richard Oriebo	Kibale County	NRM	
8	Hon. Baka Stephen Mugabi	Bukooli County North	NRM	
9	Hon. Cherukut Emma Rose	DWR Kween	NRM	
10	Hon. Kajwengye Twinomugisha Wilson	Nyabushozi County	NRM	
11	Hon. Okia Joanne Aniku	DWR Madi Okollo	NRM	
12	Hon. Obigah Rose	DWR Terego	NRM	
13	Hon. Achayo Lodou	Ngora County	NRM	
14	Hon. Kasaija Stephen	Burahya County	NRM	
15	Hon. Teira John	Bugabula North County	NRM	
16	Hon. Silwany Solomon	Bukhooli Central	NRM	
17	Hon. Kwizera Paul	Kisoro Municipality	NRM	
18	Hon. Werikhe Christopher	Bubulo West	NRM	



19	Hon. Malende Shamim	DWR Kampala	NUP	
20	Hon. Lubega Medard Ssegona	Busiro East	NUP	
21	Hon Ssekitoleko Robert	Bamunanika County	NUP	
22	Hon. Ssemujju Ibrahim	Kira Municipality	FDC	
23	Hon. Adeke Ann Ebaju	DWR Soroti	FDC	
24	Hon. Lt. Gen. James Mugira	UPDF		
25	Hon. Asuman Basalirwa	Bugiri Municipality	JEEMA	
26	Hon. Alum Santa Sandra Ogwang	DWR Oyam	UPC	
27	Hon. Shartsi Musherure Nayebare Kutesa	Mawogola North County	INDEP.	
28	Hon. Abdu Katuntu	Bugweri county	INDEP.	
29	Hon. Acrobert Kiiza Moses	Bughendera County	INDEP.	
30	Hon. Niwagaba Wilfred	Ndorwa County	INDEP.	

**PROPOSED AMENDMENTS TO THE TRUSTEES INCORPORATION  
(AMENDMENT) BILL, 2022**

**CLAUSE 1: AMENDMENT OF SECTION 1 OF CAP. 165**

Substitute for clause 1 the following—

**“Amendment of Section 1 of Cap. 165**

The Trustees Incorporation Act, Cap. 165, hereinafter referred to as the “principal Act” is amended by-

(a) renumbering Section 1 as section 1A; and

(b) substituting for subsection (1), the following—

“(1) Trustees or a trustee may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social, athletic, charitable or other lawful purpose, or any persons who have constituted themselves for any such purpose, may apply, in the manner provided in this Act, to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.”

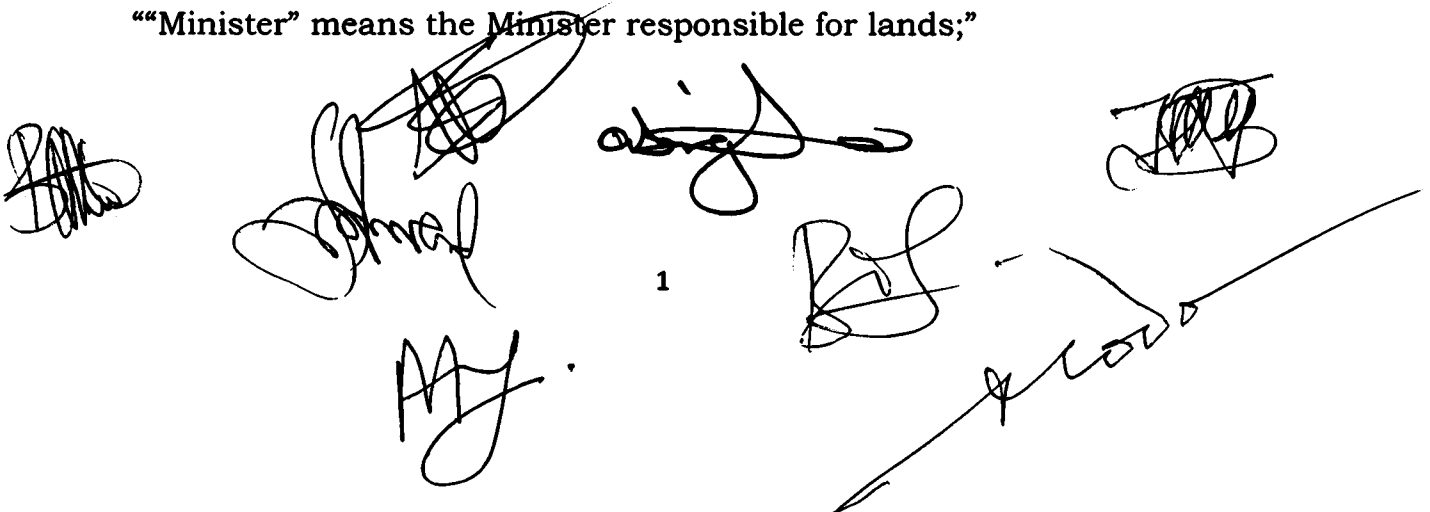
**Justification**

***To appropriately place the intended amendments to Section 1 of the principal Act which are erroneously captured under clause 3.***

**CLAUSE 2: INSERTION OF NEW SECTION 1 IN PRINCIPAL ACT**

Clause 2 is amended in the proposed Section 1 by inserting the following new definition—

““Minister” means the Minister responsible for lands;”



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**Justification**

***To achieve clarity since the neither the Principal Act nor the Bill provides for the definition of Minister.***

**CLAUSE 3: AMENDMENT OF SECTION 2 OF PRINCIPAL ACT**

Delete clause 3.

**Justification**

- ***The proposed subsection (1) under clause 3 has been carried to clause 1 for proper placement.***
- ***The proposed subsection (1a) under clause 3 has been deleted to avoid duplication since it is already covered under subsection (1).***

**CLAUSE 4: INSERTION OF NEW SECTION 3A IN PRINCIPAL ACT**

Clause 4 is amended in the proposed Section 3A—

(a) by inserting immediately after the proposed subsection (3), the following new subsection—

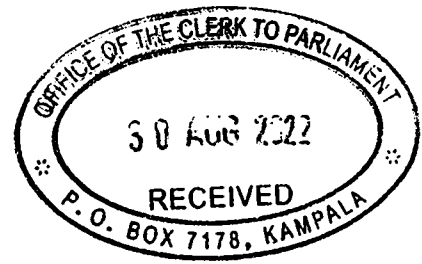
“Notwithstanding subsection (2), trustees or a trustee shall, within fourteen days after creating the register of beneficial owners, transmit a copy of the register to the Minister.”; and

(b) subsection (5), by substituting for the words “twenty five”, the word, “five”.

**Justification**

- ***To require the trustees or trustee to submit a copy of the register of beneficial owners to the Minister for ease of accessibility of the register by the public.***
- ***To reduce the prescribed daily default fine from five hundred thousand shillings to one hundred thousand shillings to make it reasonable.***

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**PARLIAMENT OF UGANDA**

**MINORITY REPORT ON THE REPORTS OF THE  
SECTORAL COMMITTEE ON LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE PARTNERSHIPS  
(AMENDMENT) BILL, 2022, INSOLVENCY (AMENDMENT)  
BILL, 2022 AND TRUSTEES INCORPORATION  
(AMENDMENT) BILL, 2022**

**OFFICE OF THE CLERK TO PARLIAMENT  
PARLIAMENT BUILDING  
KAMPALA-UGANDA**

**AUGUST, 2022**

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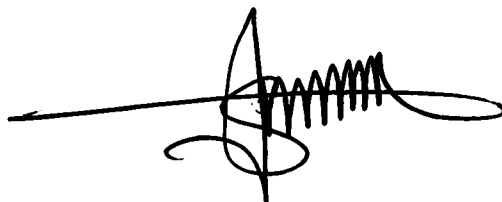
## **1.0. INTRODUCTION**

The Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022 were read for the first time just last week on 23<sup>rd</sup> August, 2022 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda and the same were referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny.

In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee was supposed to examine the Bills in detail and make all such inquiries in relation to them as the Committee considers necessary and report back to the House within stipulated period of 45 (forty five) days from the date the Bills were referred to the Committee.

Following the referral of the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022, the Committee on legal and parliamentary affairs was not given or accorded an opportunity of meeting and receiving memoranda from relevant stakeholders for purposes of soliciting or getting sufficient views on the Bills.

The Committee on Legal and Parliamentary Affairs together with three other Committees namely; Finance, Planning and Economic Development, Trade, Industries and Tourism and Defense and Internal Affairs were summoned on a very short notice to what looked like a seminar to consider the Bills.

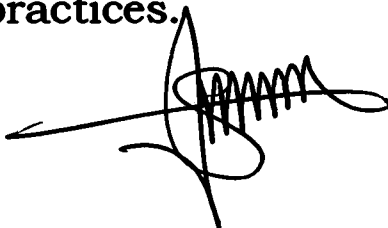
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The seminar in the Conference Hall at Parliament was convened by Deputy Speaker where the Attorney General (AG), Uganda Registration Services Bureau (URSB) and Financial Intelligence Authority (FIA) made brief presentations.

This alien method and instructions to report on the Bills almost immediately after the seminar, didn't afford us enough time to understand the fundamental nature of these Bills and to ask pertinent questions. It was quite unusual to "herd" four committees in one room to consider Bills separately referred to them.

Some of the critical stakeholders namely Uganda Law Reform Commission (ULRC) and Uganda Law Society (ULS) who in the past have made valuable contributions during consideration of Bills were not invited.

The procedure adopted in processing these Bills was foreign to the Rules of Procedure and did not afford the Committee time and opportunity to adequately consult on the Bills. In fact we were asked to Pirouette parliamentary values and practices.

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