



Projects & Infrastructure

Power Guide:
Uganda

ONE REGION
ONE VISION
ONE ALN

Introduction

This Power Guide has been prepared by ALN Uganda | MMAKS Advocates (**ALN Uganda**) and provides an overview of Uganda's power sector. The aim of this

guide is to provide useful information to investors and stakeholders on legal aspects of the industry, such as applicable regulatory standards and tariffs.

Governing Law



- The Constitution of Uganda, 1995
- **Statutes:**
 - Electricity Act, 1999 (Cap 145)
 - Public Private Partnerships Act, 2015
 - Public Procurement and Disposal of Public Assets Act, 2003
- **Other laws, regulations, and policies, including:**
 - Land Act, Cap 227
 - Petroleum (Exploration, Development and Production) Act, 2013
 - National Environment Act, 2019
 - Income Tax Act, Cap 340
 - Uganda National Bureau of Standards Act, Cap 327
 - Electricity (Primary Grid Code) Regulations, 2003
- The Electricity (Royalties) Regulations, 2022
- The Electricity (Supply of Electricity in Bulk to Specified Consumers) Regulations
- National Environment (Waste Management) Regulations, 2020
- National Environment (Environmental and Social Assessment) Regulations, 2020
- The Electricity (Safety Code) Regulations, 2020
- The Electricity (Isolated Grid System) Regulations, 2020
- **Policy**
 - The Energy Policy, 2002
 - The Renewable Energy Policy, 2007
 - Rural Electrification Strategy and Plan 2013-2022

Institutional Framework

The Ministry of Energy and Mineral Development (MEMD)



MEMD is responsible for providing policy guidance in the development and exploitation of the energy, mineral, oil & gas resources and creating an enabling environment in order to attract investment in the development, provision and utilisation of energy and mineral resources.

Uganda Electricity Generation Company Limited (UEGCL)



UEGCL is the state-owned company responsible for establishing, acquiring, maintaining and operating electricity generation facilities, and currently manages two of Uganda's largest hydropower plants.

Electricity Regulatory Authority (ERA)



ERA is the regulatory authority responsible for regulating the electricity sector in Uganda. Its duties include; issuing licenses, setting tariffs, developing and enforcing performance standards for the generation, transmission and distribution of electricity and providing procedure for investment programmes by transmission and distribution companies.

Uganda Electricity Transmission Company Limited (UETCL)



UETCL is the government entity responsible for the transmission and bulk power supply in Uganda, and purchases power from all power generators for onward transmission. With the amendment of the Electricity Act in 2022 and the enactment of the Electricity (Supply of Electricity in Bulk to Specified Consumers) Regulations, 2022, it is anticipated that there will be

more players in the transmission space.

Rural Electrification Agency (REA)



REA is a semi-autonomous body which implements the government's rural electrification program under the Ministry of Energy and Mineral Development.

Electricity Disputes Tribunal (EDT)



The EDT is an independent statutory tribunal set up under the Electricity Act with jurisdiction to hear and determine disputes referred to it relating to the electricity sector. The judgements and orders of the EDT are executed and enforced in the same manner as judgments and orders of the High Court of Uganda.



Power Purchase Agreement (PPA) Between the Independent Power Producer (IPP) and the Off-taker (UETCL)

- The term of a PPA is typically 20 years.
- The tariff structures are based on the cost of service and affordability which can vary depending on the source of energy.
- Tariffs are set by ERA and will typically fall within 4 categories i.e., commercial, domestic, heavy industrial and medium industrial.
- Small scale renewable energy projects of prescribed technologies up to a maximum installed project capacity of 20 MW and greater than 0.5 MW may benefit from the REFIT (Renewable Energy Feed-In Tariff) program which offers pre-determined tariffs for different technologies. The PPAs and tariff structures for projects of an installed capacity of more than 20 MW are subject to negotiation with UETCL.
- PPAs entered into are standardised and must be approved by ERA.
- The PPAs between IPPs and the Offtaker typically adopt the *take or pay* structure with deemed generated energy payments being made during curtailment by the off-taker.
- Payments under a PPA are typically made within 60 days of receipt of the invoice by UETCL.
- The currency for payments under the PPA is subject to negotiation between the parties.

Local Shareholding and Local Content Requirement

- There is currently no requirement for local shareholding in power projects in Uganda, however, under the Investment Code Act 2019 for an investor to qualify for incentives under the Act, they need to, among other things, source 70% of their raw materials locally, directly employ a minimum of 60% of citizens and introduce advanced technology or upgrade indigenous technology.
- It is worth noting, however, that there are restrictions relating to land ownership by foreigners in Uganda which have an impact on the land ownership arrangements for power project companies that qualify as foreigners within the meaning set out under the Land Act.

Renewable Energy Feed-in Tariffs (REFIT) Program

- REFIT program was established by the ERA in 2007 to encourage and support private sector participation in power generation from renewable energy technologies through the establishment of an appropriate regulatory framework.
- ERA established the Uganda REFIT Guidelines in 2007 to provide clarity and guidance to project developers, investors and key institutional stakeholders on the key components and operational structure of the REFIT program.
- The REFIT Guidelines are reviewed every 2 years and currently, the REFIT Guidelines Phase 5.0 (2021) are in place.

- The REFIT program applies to small scale renewable energy systems of prescribed technologies up to a maximum installed project capacity of 20 MW and greater than 0.5 MW.
- The tariffs under the REFIT program are technology-specific and are reviewed at the end of each financial year. These can be adjusted in line with projected levelized costs of production.
- The priority renewable technologies under the REFIT program are:
 - i. small hydro power plants up to 20 MW; and
 - ii. bagasse cogeneration plants.
- The prescribed tariffs for the priority renewable technologies are:
 - i. hydro projects greater than 10 MW and up to 20MW – USD 0.0751/kWh;
 - ii. hydro projects greater than 5 MW and up to 10 MW – a linear tariff applies;
 - iii. hydro projects greater than 500kW and up to 5 MW – USD 0.0792/kWh; and
- iv. bagasse cogeneration plants – USD 0.0620/kWh.
- The tariffs for other technologies (i.e. biogas, waste-to-energy/biomass, landfill gas, wind power and solar are not fixed but a ceiling price and maximum return on equity levels are prescribed in the REFIT Guidelines Phase 5.0 (2021). This is because these technologies are yet to be tested on the national grid. Therefore, bilateral negotiations are allowed while ERA assesses each project on its merit.
- A standardised PPA is used for projects under the REFIT program, and it is a requirement for a project company to demonstrate acceptance of the approved standardized PPA in addition to complying with licensing requirements.
- For larger renewable energy projects that are outside the REFIT program, a standardised PPA is used as a basis of negotiations with the off-taker.

Payment to Off-taker

- Liquidated Damages: Project developers are typically liable to pay liquidated damages to the off-taker where:
 - i. there is failure to achieve the Commercial Operations within the agreed timeframe. The liquidated damages are paid at an agreed rate for each day that the Commercial Operations Date is delayed; or
 - ii. following achievement of the Commercial Operations Date, the project developer fails to satisfy the prescribed plant availability threshold.
- Costs related to disputed invoices: Where invoices are disputed by the Off-taker and such disputes are found to have merit, the project developer is liable to pay all the direct costs, incurred by the Off-taker which may arise as a result of such disputed invoices.
- In instances where the off-taker is a distributor and/or a private sector player, energy payments would apply based on the applicable tariffs.

Credit Enhancements

- The Minister of Finance, Planning and Economic Development has power to issue guarantees for and on behalf of the Government in accordance with the Public Finance Management Act, 2015.
- While government guarantees and support agreements are not uncommon, the terms thereof must be subject to approval by the Parliament of Uganda.
- Partial risk guarantees and political risk insurance have been developed for the Ugandan market by the World Bank, Multilateral Investment Guarantee Agency (MIGA), International Development Association (IDA), Africa Development Bank (AFDB) and African Trade Insurance Agency (ATI).
- The Uganda Energy Credit Capitalisation Company (UECCC) is a Government institution that was operationalised in 2009 primarily to facilitate investments in Uganda's renewable energy sector, with a particular focus on enabling private sector participation. UECCC provides financial, technical and other support for renewable energy projects and programmes and also administers the Uganda Energy Capitalisation Trust which is a framework for pooling resources from the government of Uganda and development partners for the development of renewable energy projects.







Key Approvals/Licenses Required to be Procured.

- Power Purchase Agreements are approved by ERA.
- Electricity Generation Licenses are issued by ERA.
- Support Agreements are approved by the Attorney General and the Parliament of Uganda.
- Environmental Impact Assessment (EIA) approval is from the National Environment Management Authority.
- Land acquisition and necessary consents are obtained from the relevant local authorities.

Governing Law and Dispute Resolution

- PPAs are governed by Ugandan law.
- Uganda is party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965 (the "ICSID Convention") and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York Convention").
- Arbitral awards are enforceable in Uganda upon registration with the High Court of Uganda.

Power Sector Experience

	<p>Nederlandse Maatschappij Rinancierings-Voor Ontwikkelingslanden (FMO): Advising FMO in connection with a USD 10.6 million financing for the construction of the 18MW brownfield Mpanga hydropower station and a 9.2 MW greenfield Nyamwamba hydropower station, both under the GETFit programme.</p>		<p>Nederlandse Maatschappij Rinancierings-Voor Ontwikkelingslanden (FMO) and Emerging Africa Infrastructure Fund (EAIF): Advising FMO and EAIF on the financing of two Solar Power Stations in Eastern Uganda, the Tororo Solar Photovoltaic Project of USD 14,665,324 and the Soroti Solar Photovoltaic of USD 10,701,253, both under the GETFit programme.</p>
	<p>Societe Belge d'investissement Pour Les Pays En Developpement (BIO) and Norwegian Investment Fund for Developing Countries (NORFUND): Advising BIO and NORFUND in connection with a USD 16.9 million financing to a local company for the development and construction of a 5.54 MW hydro-power station in southwestern Uganda, under the GETFit programme.</p>		<p>Societe De Promotion Et De Participation Pour La Cooperation Economique S.A (PROPARCO) and Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden (FMO): Advising PROPARCO and FMO in connection with a financing of USD 40 Million to Sugar Corporation of Uganda Limited for the construction of a hydro-power plant.</p>
	<p>SN Power Invest Netherlands BV: Advising SN Power Invest Netherlands BV, a subsidiary of SN Power AS, a Norwegian company that invests in clean renewable energy on a commercial basis, in connection with its acquisition of a 49.75% stake in Bujagali Energy, a Uganda electric energy generating company, which owns and operates</p>		<p>Nordic Environment Finance Corporation (NEFCO): Advising NEFCO in connection with its Beyond the Grid Fund for Africa ("BGFA") Programme in Uganda, a multi-donor programme supporting energy service providers to bring clean and affordable energy access to underserved people in rural and peri-urban areas in Sub-Saharan Africa.</p>

Bujagali power station, the largest hydropower plant in Uganda.



Softbank Group: Advising the Softbank Group in connection with a red flag corporate due diligence on Ituka West Nile Uganda, the developer of the 20 MWac solar power generation complex in the West Nile region of Uganda, and a red flag due diligence on project and finance documentation which included a power purchase agreement and an implementation agreement.

Key Contacts



Apollo N. Makubuya | Partner



Kampala, Uganda



makubuya@ug.africalegalnetwork.com



+256 393 260 017/+256 393 260 330



Fiona N. Magona | Partner



Kampala, Uganda



magona@ug.africalegalnetwork.com



+256 393 260 017/ +256 393 260 330

About ALN Uganda

“[ALN Uganda] is a long-standing full-service firm with a great reputation.”– Chambers Global 2023

ALN Uganda is a leading law firm in Uganda, ranked as Band 1 and Tier 1 by international legal directories such as Chambers Global, IFLR 1000 and PLC Which Lawyer.

The firm was formed by a ground-breaking merger of three prominent law firms in 2005, and today stands as one of Uganda’s largest law firms with a total of 29 proficiently trained legal professionals, many of whom have qualified from international universities, whilst others have worked at leading international law firms. Two of the firm’s senior partners are a Barrister and member of the Honourable Society of the Inner Temple, as well as a qualified solicitor of the Supreme Court of England and Wales.

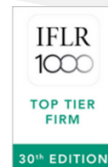
ALN Uganda has a full service offering with teams specializing in strategically carved out practice areas including energy, projects & infrastructure, mergers & acquisitions, private equity, banking and corporate finance, corporate and commercial law, litigation and alternative dispute resolution, debt recovery, real estate, employment and intellectual property.

Our commercial practice has a strong focus on advising local, regional, and international entities with

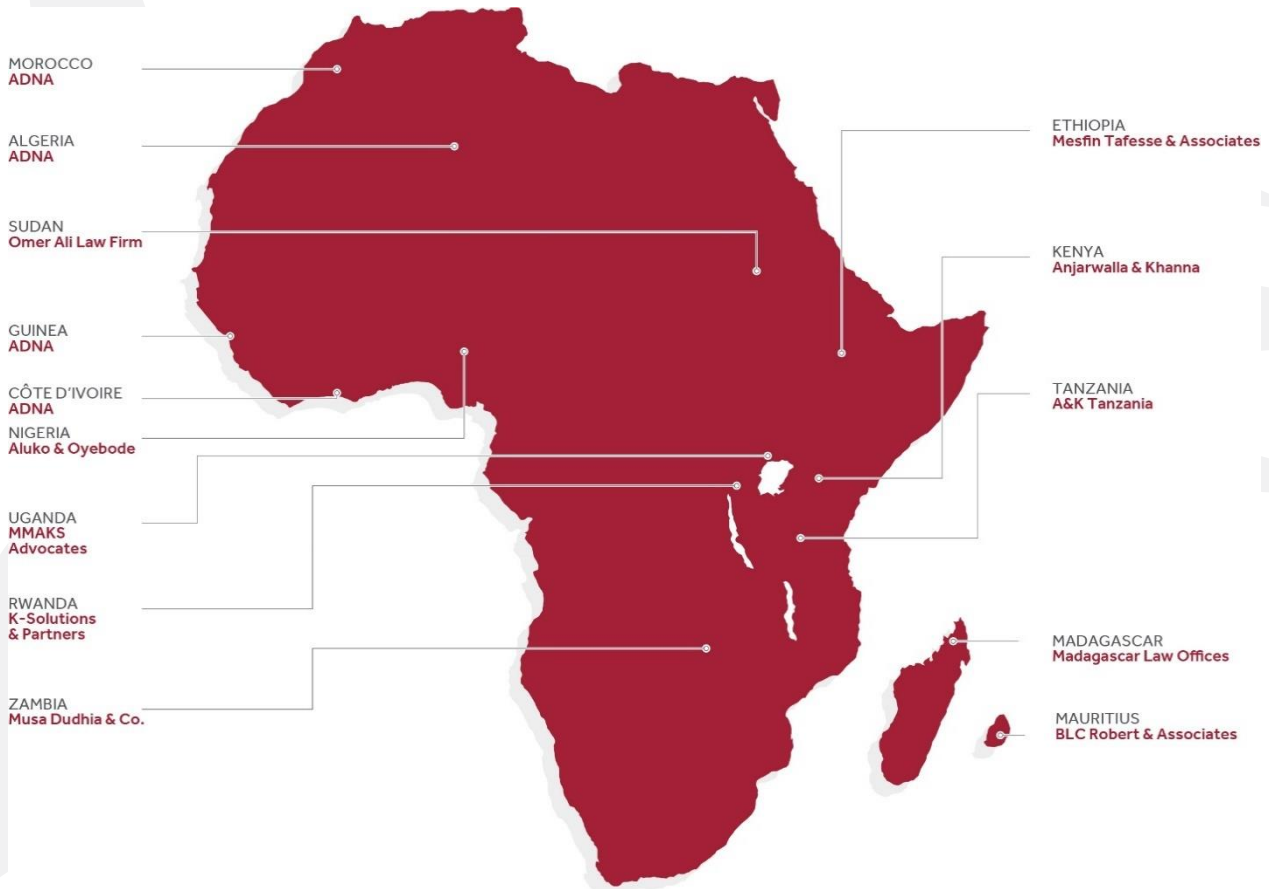
cross border operations, across different business sectors (energy, oil & gas, insurance, ICT, financial institutions, telecommunications, gaming, hospitality, manufacturing, etc.). The commercial practice comprises of the corporate advisory team and the banking and finance team that have unique on-the-ground experience in financing and advisory transactions.

The litigation and dispute resolution team at ALN Uganda has been involved in groundbreaking cases in the courts of law in Uganda particularly in the commercial banking sector and also advised on various landmark cases in tax and the rule of law generally. This team is known for providing strategic and commercially insightful advice to an array of high profile local and international entities.

ALN Uganda is committed to delivering practical and quality legal services with professionalism and integrity. The firm adopts a proactive approach to high quality, timely and efficient legal services, priding itself on open communication, teamwork, and client satisfaction.



About ALN



ALN is an integrated alliance of the preeminent full-service corporate law firms in 14 African countries: Algeria, Côte d’Ivoire, Ethiopia, Guinea, Kenya, Madagascar, Mauritius, Morocco, Nigeria, Rwanda, Sudan, Tanzania, Uganda and Zambia. ALN also has a regional office in Dubai, UAE, which serves as a gateway to the Gulf region and beyond.

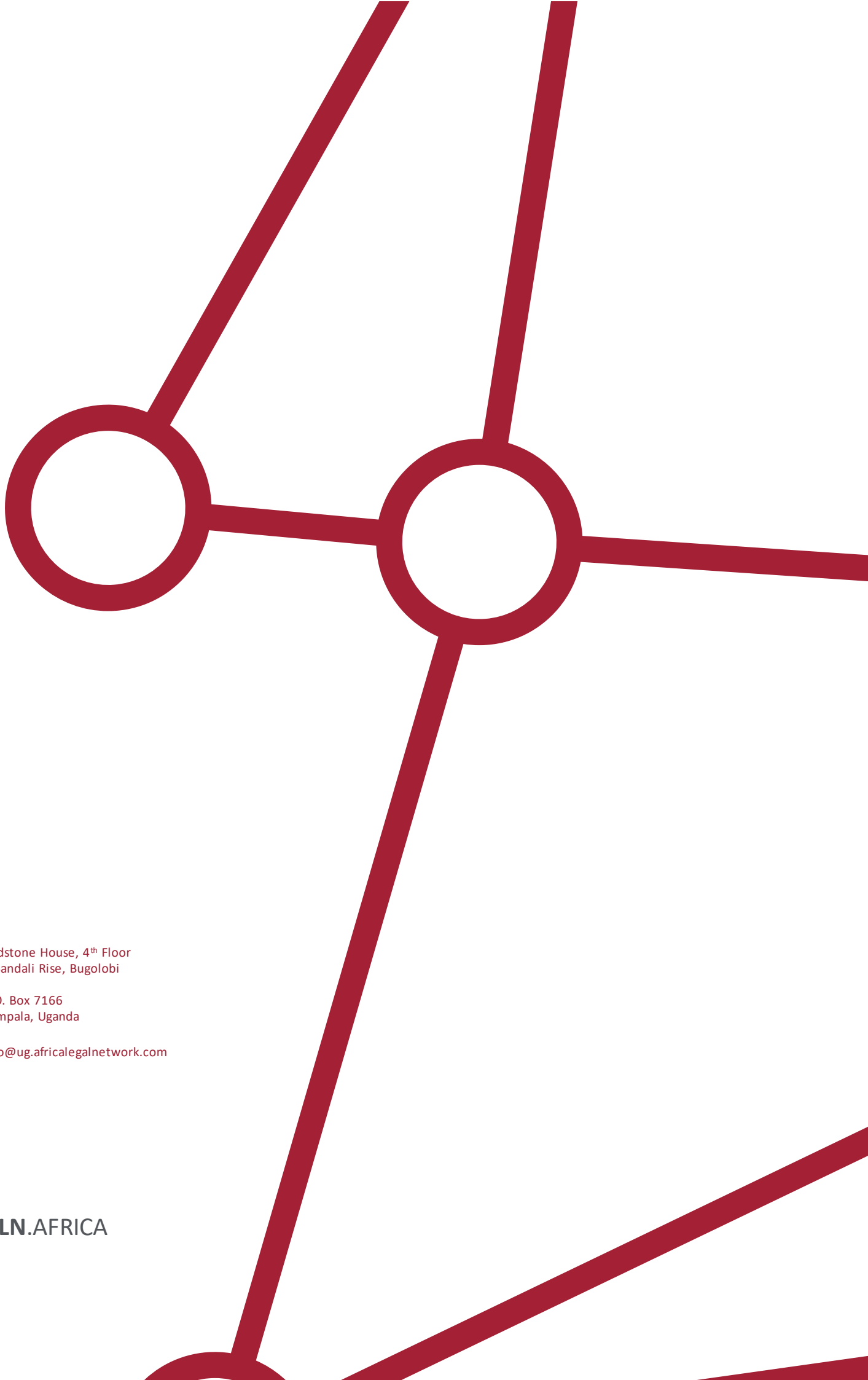
Vision

ALN seamlessly connects the African continent. It brings its global expertise, continental reach and deep local know-how to help its clients navigate the multitude of opportunities and risks in Africa, holistically combining legal, tax, regulatory and commercial advice.

Mission

ALN is dedicated to its clients’ success. ALN achieves this by providing world class legal, tax and regulatory advice in a commercial context. ALN’s lawyers are aware of the trends and events shaping the continent, deeply networked and respected in their communities as thought leaders and opinion shapers. ALN’s lawyers have a Pan African mindset, are down to earth, pragmatic, responsive, innovative and relentlessly determined.





Redstone House, 4th Floor
7 Bandali Rise, Bugolobi

P.O. Box 7166
Kampala, Uganda

info@ug.africalegalnetwork.com

ALN.AFRICA