

INSIGHTS INTO THE PUBLIC BENEFITS ORGANIZATIONS (PBOs) ACT, 2013 (Series I)

The Public Benefit Organizations (PBO) Act, enacted back in 2013, comes into effect Tuesday, May 14, 2024 via Legal Notice No. 78.

The new law, whose implementation was frozen for eleven years, is set to revolutionize the landscape of civil societies in Kenya by laying out a comprehensive, consolidated, predictable and transparent framework for the registration and regulation of civil society entities operating within the territory of Kenya.

This new law has repealed the Non-Governmental Organisations Coordination Act (the “NGO Act”) and introduced a number of changes with regard to the operations of Non-Governmental Organisations (“NGOs”) in Kenya. It renames **NGOs** and similar organisations to public benefit organisations.

Among other things, the PBO Act, 2013 provides a comprehensive framework for the governance and operation of non-profit entities in Kenya. It contains provisions with stringent timelines indicating the transition, registration, compliance, and enforcement processes. Each aspect of the Act is intertwined with specific timelines, ensuring accountability, transparency, and adherence to the law.

The PBO Act defines a “**public benefit organization**” (**PBO**) as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is:

- (a) organized and operated locally, nationally or internationally;
- (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and
- (c) is registered as such by the Authority.

It is important to note that the PBO Act provides better policies to the sector as compared to the repealed NGO Act.

In this first part of a running series, [GND Consult](#) discusses some of the highlights of this Act:

Commencement date

This Act came into effect on the 14th of May, 2024 as designated by Legal Notice No. 78. It repealed NGO Act of 1990.

Transition Period for NGOs

Every NGO which was registered under the now repealed NGOs Act is automatically deemed to be registered as a PBO (public benefit organization) under this new Act and has **one year** from the 14th of May, 2024 to seek registration as a public benefit organization under this Act.

Failure to register within the time specified in a notice may result in loss of PBO status unless registration is sought within **thirty days**’ post-notice expiration.

A NGO registered under the repealed Act is deemed registered under this Act and any obligations including duty to submit reports or returns pending or in the process shall be deemed as obligations under this Act in so far as such are consistent with this Act.

Status of NGOs previously exempted from registration

A NGO that was previously exempted from registration under the provisions of the former Act has to apply for registration within **three months** from the 14th of May, 2024.

Registration process of a PBO

i) PBO status

To enjoy the benefits that accrue under the PBO Act, a PBO must be duly registered under it. No organization that is registered under any other law in Kenya shall be registered under this Act while its registration under that other law subsists. The registration of an organization under this Act supersedes any prior registration of that organization under any other law in Kenya.

In the event an organization is registered under the PBO Act and under any other law, that organization shall be deemed registered under the PBO Act and that other registration shall be deemed invalid.

An organization is bestowed PBO status if it is registered under this PBO Act or where it is registered under any other written law in Kenya or not registered under any other written law in Kenya, the Authority has bestowed on that organization the status of a public benefit organization.

ii) Registration requirements

An application for registration of a PBO is made to the Public Benefit Organizations Regulatory Authority (the Authority) and shall be accompanied by—

- a. a copy of the constitution or other constitutive document of the public benefit organization;
- b. names and addresses of the founders of the public benefit organization;
- c. the public benefit purposes for which the public benefit organization is organized and operated and all of the principal activities that the public benefit organization shall engage in;
- d. the postal and physical address of the principal place of doing business of the public benefit organization;
- e. the prescribed fee; and
- f. such other particulars or information as may be required by the Authority in order to assist the Authority to determine whether or not the organization meets the requirements for registration under this Act.

International Organisations (organisations registered outside Kenya) intending to operate in Kenya have to apply to the Authority for a certificate to operate in Kenya. An international organisation registered under the PBO Act must ensure that at least **one-third** of its directors are Kenyan citizens residing in Kenya, as well as maintain an office in Kenya.

The Authority may exempt an international organisation from registration and, instead, issue a permit to operate in Kenya, provided that the international organisation does not intend to (i) engage in direct implementation of any activity or program in Kenya or operate from Kenya to implement any activities or programs in another country; or (ii) raise any subscriptions or engage in any other form of raising

of funds in Kenya.

To register as a PBO, an international non-governmental organization may file the following documentation—

- (a) an application form;
- (b) proof that it is a legal entity in another country;
- (c) the organization's address in Kenya; and
- (d) a written statement from a representative of the organization's headquarters with authority to provide such statement stating—
 - (i) the purposes of the international non-governmental organization;
 - (ii) a general description of the activities that the international non- governmental organization is planning to carry out in Kenya; and
 - (iii) the name, address and other contact information of the authorized agent.

Application for Registration is considered within **sixty days** of receipt.

Under this PBO Act, the Authority, if not satisfied that an application complies with the requirements for registration, has to notify the applicant in writing, giving reasons for the decision and informing the applicant of the duration, which shall be a period **not exceeding thirty days** from the date of the notice, during which to comply with those requirements.

Conclusion:

The enactment and effective implementation of this PBO Act is bound to be a game changer in the regulatory landscape governing not-for-profit organisations in Kenya.

Our next series will delve even deeper into the provisions of this Act and their effects to already existing and yet to be registered charitable entities in Kenya.

Contact us on:

- +254 702 001 770
- info@gndconsultants.com

Your Compliance Partner

GND

CONSULT

Your Compliance Partner