

## THE DIFFERENT WAYS OF REGISTERING A NOT-FOR-PROFIT ORGANISATION IN KENYA AND THE ADVANTAGES AND DISADVANTAGES OF EACH

### Introduction:

Not-for-profit organization (“NPOs”) have an important role to play in Kenya’s development and in addressing the country’s social, economic, and environmental issues.

There are two main ways in which to register a NPO in Kenya:

1. As a Non-Governmental Organization (NGO); and
2. As a Company Limited by Guarantee (CLG);

### Similarities

Both of these entities serve the same functions and are similar in the following ways:

- The objective of NGOs and CLGs is for a charitable cause and promotion of social agenda or religious group.
- They do not have a profit sharing formula neither do they distribute profit to the members.
- Upon winding up of both there is a requirement to transfer the objectives and assets to a similar organization or company with similar objectives.
- Upon the winding up of both, assets of the organization or company are not distributed to members.
- Both company limited by guarantee and non-governmental organization are exempted from tax.

### Differences

In as much as both NPOs are not allowed to trade for profit, **the main difference** between an NGO and a Company limited by guarantee is that CLGs are **allowed to venture into business or profit making agenda but cannot share the profit among members.**

It is imperative to understand how these two bodies are registered, and the advantages and disadvantages associated with each before settling on the most suitable one.

#### 1. NGO Registration Process:

In Kenya, NGOs must be registered with the Non-Governmental Organizations Coordination Board (NGO Board) to operate legally. The registration of an NGO in Kenya generally begins with a name search. The Applicant makes a request to the NGO Board proposing three (3) names by which the organization could be named. A name search is then conducted at a fee to be stipulated by the board. A name is then reserved. Once this has been done, the Applicant can then file a formal application for registration.

The requirements to accompany the application form for registration include;

1. A copy of a valid police clearance (certificate of Good Conduct including the fingerprints and receipts) for Kenyans, and equivalent notarized clearance certificates for foreigners from their countries of origin which are not more than six (6) months Old.

2. A draft constitution of the proposed NGO, which must be signed by the proposed three (3) top officials and the two (2) board members. Two (2) copies should be signed by all the proposed board members on the execution page, and by at least one of the proposed officials on each page.
3. A list of other board members.
4. Contact details of the proposed organization and Information stating the organization's contact person.
5. Copies of IDs/Passports and KRA PIN Certificates for the proposed officials and Board members. Please note that at least one third (1/3) of all the board members should be Kenyan for all foreign-based NGOs.
6. Minutes authorizing the filing of the application with a specific agenda and resolution.
7. Proposed one-year budget.
8. The charitable objectives of the organization.
9. Two coloured passport-size photographs, on a white background, of the proposed 3 top officials and two other board members.

Registration fees for the NGO may vary depending on the nature of the organization whether it is national or international. An organization (mostly international) with an existing registration certificate is required to produce a notarized copy of the certificate accompanied by a letter from its board of directors authorizing its registration. Finally, if the organization had been registered under any other law in Kenya, a certificate of dissolution from the registering Authority MUST be presented to the board or the board must be notified of the same registration for its acceptance.

#### **Advantages of NGO Registration:**

1. **Legal Recognition and Credibility:** Registered NGOs gain legal recognition, enhancing their credibility and legitimacy in the eyes of donors, partners, and the communities they serve.
2. **Access to Funding:** Many international and local donors prefer to support registered NGOs, making it easier for these organizations to access funding for their projects and initiatives.
3. **Government support and Tax Exemptions:** Registered NGOs enjoy indirect government support, including tax exemptions on income, donations, and grants. They are also exempt from VAT on relief goods supplied for emergency use.
4. **Structured Governance:** The registration process requires NGOs to establish clear governance structures, promoting transparency and accountability within the organization.
5. **Collaboration Opportunities:** Registered NGOs often have increased opportunities for collaboration with government agencies, other NGOs, and international organizations, fostering a more comprehensive and effective approach to addressing societal issues. NGOs can form partnerships with the government, potentially leading to financial support.
6. **Policy Participation:** NGOs have the opportunity to provide valuable input in policy formation for public benefit, contributing to shaping societal and governmental initiatives.

## Disadvantages of NGO Registration:

1. **Registration Challenges:** The registration process can be lengthy and bureaucratic, deterring potential organizations from pursuing legal status and hindering the quick implementation of projects.
2. **Compliance Burden:** Registered NGOs are obligated to comply with various regulations and reporting requirements including filing annual reports every year. This can be burdensome, especially for smaller organizations with limited administrative capacity.
3. **Dependency on Funding:** While registration facilitates access to funding, NGOs may become overly dependent on external sources, making them vulnerable to fluctuations in donor priorities and funding availability.
4. **Risk of Mismanagement:** Some registered NGOs may face challenges related to mismanagement, corruption, or inadequate governance, which can tarnish the reputation of the entire sector.
5. **Bureaucracy:** Once registered an NGO must not amend its name or constitution or become a branch of or affiliated to or connected with any organization of a political nature established outside Kenya without the prior written consent of the NGO's Board.

## 2. CLG registration process

A company limited by guarantee (CLG) is a type of corporation primarily used for non-profit organizations that require legal personality. Examples of organizations limited by guarantee in Kenya include the following; a charity, community project, club, or other organization limited by guarantee.

This type of company does not have a share capital, and its members are guarantors instead of shareholders. The liability of members is limited to the amount they agree to contribute to the company's assets if it is liquidated.

Both Kenyans and Foreign nationals may freely register a company limited by guarantee in Kenya without any restrictions. However, it is important to note that all applications go through a vetting process at the National Intelligence Service which may take some time. A company limited by Guarantee may take between 4 to 12 months to process.

The Applicant lodges the application at the Company Registry and the following requirements must be met:

1. Four Proposed names for name search and reservation
2. Objectives of the Company
3. Articles of Association and statement of guarantee by the directors
4. Address of the proposed company physical location, including LR Number
5. Photocopy of ID card/passports for the directors/members
6. Recent colored passport-sized photographs of directors
7. Particulars of directors, personal information, occupation, postal and physical address, and contacts
8. KRA Pin certificate of directors

### **Advantages:**

1. **Legal Recognition and Credibility:** Registered CLGs gain legal recognition, enhancing their credibility and legitimacy in the eyes of donors, partners, and the communities they serve.
2. **Access to Funding and profits:** Many international and local donors support registered CLGs and they also have the benefit venturing into business or profit making agenda, making it easier for these organizations to access funding for their projects and initiatives. Distribution of profits not allowed. Financial institutions may also be more receptive to lending to CLGs, given their structured nature and clear focus on non-profit objectives.
3. **Tax Exemptions:** Registered CLGs may be eligible for income tax exemptions, providing financial relief that can be redirected towards their mission and programs.
4. **Unparalleled Liability Protection:** The standout advantage of a CLG is the unmatched shield it provides to owners (members) from personal liability. In the event of liquidation, members' liability is limited to the agreed guarantee amount, offering a robust protective barrier for personal finances.
5. **Effortless Share Transferability:** Unlike traditional NGOs, a CLG allows for the ease of sharing, transferring, or selling individual shares. This flexibility in ownership can facilitate organizational changes or adjustments to better align with the non-profit's evolving objectives.
6. **Right of First Refusal for Stability:** Existing shareholders in a CLG have the right of first refusal. When a shareholder intends to sell their shares, they must first offer them to existing shareholders. This ensures continuity and stability within the organization, fostering a sense of ownership and commitment.
7. **Less regulation and supervision:** As opposed to an NGO which is registered and regulated by the NGO Board. A CLG is devoid of strict supervision and regulation.

### **Disadvantages:**

1. **Registration Challenges:** Lengthy delays in the registration process arising from a lengthy vetting process

### **Which way forward?**

While both NGO and CLG registrations offer advantages, the latter may present a distinct set of benefits that places it at a vantage position.

important to carefully consider these advantages and associated factors when making a decision with regard to registration.

### **Important development to note**

It is important to note that the Public Benefit Organizations (PBO) Act, enacted back in 2013, came into effect Tuesday, May 14, 2024 via Legal Notice No. 78.

This new law has repealed the Non-Governmental Organisations Coordination Act (the "NGO Act") and has 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 which are defined as 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.

**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.**

No organization shall purport to be a public benefit organization unless that organization is—

- (a) registered under the PBO Act;
- (b) **where registered under any other written law in Kenya or not registered under any other written law in Kenya, the Authority <sup>1</sup>has bestowed on that organization the status of a public benefit organization.**

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<sup>1</sup> **“Authority”** means the Public Benefit Organizations Regulatory Authority (formerly the Non-Governmental Organizations Co-ordination Board established under the repealed NGOs Act,1990)