

THE PUBLIC BENEFITS ORGANIZATION ACT 2013

The Public Benefits Organization Act, 2013 (“PBO Act”) which was assented to on 14 January 2013 came into force on 14 May 2024 through Legal Notice No.78 of 2024. The Act has effectively repealed the Non-Governmental Organizations Coordination Act, 1990 (the “NGO Act”).

Despite the PBO Act being assented to law in 2013, it remained non-operational due to the failure of the Cabinet Secretary to Gazette the commencement date even after the High Court issued orders directing its Gazettement.

The coming into force of the PBO Act ushers in a new legal framework for the governance of the non-governmental organisations, Accordingly, we highlight below some of the key provisions to note under the PBO Act.

Registration under the PBO Act

- (i) **Existing NGOs**-Effective from the commencement date, all Non-Governmental Organizations that were registered under the repealed NGO Act shall be deemed registered under the PBO Act and are expected to register as a PBO within one year of the commencement of the Act, failure to which they will cease to have a PBO status.
- (ii) **Exempted NGOs**-All organizations that were exempted from registration under the repealed NGO Act shall have three months to register under the PBO Act.
- (iii) **International organisation**- An international organisation that wishes to operate in Kenya may apply to register as a PBO in Kenya and be issued with either (i) a certificate of registration if they will be directly implementing programmes in Kenya; or (ii) a permit to operate in Kenya in case they will not be directly implementing any programmes in Kenya.
- (iv) **New applications**-The PBO Act provides for sixty days for consideration of a new application for registration. Failure to issue a certificate of registration with sixty days, the applicant may apply to the Public Benefits Organizations Disputes Tribunal (the “Tribunal”) for an order to require the Public Benefits Regulatory Authority (the “Authority”) to issue a certificate of registration or reasons for failure to register the applicant.

The PBO Act requires that an organization which is registered under any other law in Kenya which wishes to register under the PBO Act, must first deregister itself under such other law.

Regulatory Bodies

(i) The Public Benefits Regulatory Authority

The Act establishes the Authority that shall among other functions, be responsible for the registration of PBOs, classification of PBOs and maintenance of a register of PBOs.

Persons that were members of the NGO Coordination Board shall continue to be members of the Authority.

(ii) Public Benefits Organizations Disputes Tribunal

The Act also establishes the Public Benefits Organizations Disputes Tribunal that shall be responsible for hearing and determination of any complaints and appeals arising from the provisions of the PBO Act.

Any party aggrieved by a decision of the Tribunal may appeal to the High Court and the High Court's decision shall be final.

National Federation of Public Benefit Organizations

The PBO Act establishes the Federation that shall be an umbrella body for all PBOs in Kenya and will act as a self-regulation tool of PBOs under the PBO Act.

Every organization registered as a PBO is eligible for membership under the National Federation. Each organization registered under this Act may voluntarily join and maintain membership in a self-regulation forum.

Benefits of Registration under the Act

Some of the benefits of registration under the Act are:

1. Indirect support from the government in terms of income tax exemptions.
2. Preferential treatment under value added tax (VAT), and customs duties in relation to imported goods or services.
3. Incentives for donation by legal and natural persons.
4. employment tax preferences
5. Special tax incentives for donations to form endowments, prudent investment policies, etc.
6. Provision of direct government financing for PBOs.
7. Preferential treatment in public procurement procedures.
8. Provision of information to enable public benefit organizations to contribute effectively to the policy processes.
9. Access to training courses that are relevant to public benefit organizations and offered by government institutions.

It is not clear whether such benefits will apply automatically upon registration or whether subsequent applications must be made with the Ministry of Finance.

The operationalization of the PBO Act has brought about much-needed certainty regarding registration timelines for PBOs. This marks a significant advancement compared to the repealed law, which lacked prescribed timelines, leading to prolonged delays in processing registration applications and discouraging NGOs and interested individuals from pursuing registration. With the

implementation of the PBO Act, it is hoped that NGOs and other stakeholders will be more inclined to choose registration under this framework, thus fostering greater accountability and transparency within the sector.

While many provisions of the PBO Act closely resemble those of the repealed NGO Act, the enhanced governance structure holds promise for increased transparency and certainty.

Further, it is anticipated that the passing of regulations to implement the provisions of the PBO Act will further strengthen its effectiveness and streamline operational procedures. The regulations will provide detailed guidance on various aspects of PBOs registration, operation, and compliance, ensuring smoother implementation and

bolstering confidence in the new regulatory framework.

In case of any queries, please contact:



**Nyakio Manga,
Partner**

NManga@Kapstrat.com



**Claire Mwikwabe,
Associate**

CMwikwabe@kapstrat.com