

Enactment of the Public Benefit Organizations Act, 2013

Legal Alert



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The Cabinet Secretary for Interior and National Administration appointed 14 May 2024, as the date the Public Benefit Organizations Act, 2013 (PBO Act) shall come into operation. This Act will in essence replace the Non-Governmental Organizations Coordination Act, 1990 (NGO Act). Entities under the former NGO Act will have up to one year from the operation date, 14 May 2024, that is, 13 May 2025 to seek registration as a public benefit organization under the PBO Act.

The PBO Act describes “public benefit activity” as an activity that supports or promotes public benefit by enhancing or promoting the economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organizations. It further describes public benefit organization as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, Non-partisan, Non-profit making and which is organized and operated locally, nationally, or internationally, engages in public benefit activities and is registered as such by the Public Benefit Organizations Regulatory Authority.

The PBO Act excludes certain Non-Profit-Making Organisations (NPOs) including community-based organizations whose objective includes the direct benefit of its members, societies under the Societies Act and cooperative societies and unions. There is no specific guidance on other forms of NPOs such as those registered under the Kenyan Companies Act as Companies limited by guarantee and Trusts under the Trustees (Perpetual Succession) Act.

However, Section 7 of the PBO Act prescribes that no organization shall purport to be a public benefit organization, unless the organization is registered under the PBO Act. If an organisation is either registered or not registered under any other written law in Kenya, the Authority can bestow on that organization the status of a public benefit organization on application to the Public Benefit Organizations Regulatory Authority to bestow such status.

International NGOs that don't intend to directly implement any activities or programmes in Kenya are issued with a permit to operate in Kenya. Those involved in direct implementation will be required to be registered as a public benefit organization. An international organization registered as a PBO will be required to have at least one-third of its directors who are Kenyan citizens and who are resident in Kenya; and maintain an office in Kenya.

Each PBO will be required to keep proper books of accounts and other records in relation to its operations and activities and shall maintain a statement of accounts in a form that conforms to the standards of the Generally Acceptable Accounting Practice applicable to non-profit organizations. The financial statements shall include a signed auditor's report and be submitted within six months after the end of each financial year together with a report dealing generally with the programme of activities of the public benefit organization during that financial year. The NGO Act through Form 14 (annual report form request) required financial statements to be prepared as per International Financial Reporting Standards.

Due to lack of International Financial Reporting Standards specifically for PBOs, there is need for specific guidance in this respect from The Institute of Certified Public Accountants of Kenya (ICPAK), which is the statutory body, established by the Accountants Act No.15 in 2008 to develop and regulate the Accountancy Profession in Kenya. There is however also a global initiative to develop the world's first internationally applicable financial reporting guidelines for not-for-profit organisations which in time to come may be the relevant applicable framework in Kenya.

The PBO status comes with PBO indirect government support in the form of tax exemptions. The Act provides income tax exemption on:

- income acquired from activities of the PBO where such income is ploughed back to support the public benefit purposes;
- interest and dividends on investments and gains earned on assets or sale of assets;
- income received from membership subscriptions, donations or grants

Further, PBOs will be granted preferential treatment under VAT and customs duties in relation to imported goods or Services that are used to further their public benefit purposes. The Act also provides other incentives such as government subsidies, preferential treatment on public procurement and access to training and public information for contribution to public process.

Whilst the PBO Act provides tax exemptions on various income of the PBOs, these exemptions must be anchored in the governing legislation for taxation in Kenya.

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