

FREQUENTLY ASKED QUESTIONS

1. What is a Public Benefit Organization (PBO)?

The PBO Act defines a 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:

- i. Organized and operated locally, nationally or internationally;
- ii. Engages in public benefit activities as set out in the Sixth Schedule; and
- iii. Is registered as such by the Authority.

2. What does PBO Act (2013) commencement mean for local organizations and those registered under other legal regimes such as Trusts, Company Limited by Guarantee, Associations?

The PBO Act requires that no entity shall purport or hold out to be a PBO unless it is registered under the Act.

For clarity the Act envisages registration in the following ways:

- a) Registration through incorporation – applies for new entities that have not been incorporated in any registration regime within Kenya. It also applies for entities that have been registered in a different registration regime and wish to be registered under the PBO Act with a view of closing their registration status in other existing registries i.e companies limited by guarantee, trusts and societies
- b) Registration through conferment of the public benefit status certificate - applies for entities that wish to maintain their incorporation status in other regimes (under companies limited by guarantee for example) but whose characteristics are those of a PBO. Evidently the certificate of public benefit status will be issued to ALL PBOs for purposes of ascertaining compliance with the law and accessing the benefits on tax exemptions.
- c) Issuance of permits- For INGOs that do not implement in Kenya.

For an entity to be referred to as a PBO, it must have the following characteristics:

- i. It must confer charity as per the provisions of Schedule 6 of the Act.
- ii. There must be public benefit in entirety and no private benefit to directors /members.
- iii. There must be an identifiable target group who can be counted, seen, visited and actually confirmed to be beneficiaries.

- iv. The entity carries out social economic enterprise or income generating activities whose proceeds are ploughed back for purposes of sustainability.
- v. There is a clear governance structure whereby the board and the management are separated. The board makes the decisions and the management implements the decisions.
- vi. It may have members who form the apex in the governance structure and who do not benefit from the entity or work for the entity.

3. What does the Act say about International NGOs?

The Act recognizes that there are INGOs who implement in Kenya and those that implement in the region.

INGOs that implement projects in Kenya are required to seek registration through incorporation so that they submit themselves to regulation by the Authority. INGOs that do not implement in Kenya but implement in the East Africa Region for example, will be issued with a permit in order to operate in that manner.

4. Are INGOs that have a Host Country Agreement also required to register?

Host Country Agreements are issued under the Privileges and Immunities Act for purposes of outlining the bilateral agreement between the host country (Kenya) and an INGO. This agreement however, does not negate the responsibility of accountability and good governance that is vested on NGOs/PBOs as required by law. Therefore, for purposes of regulation, accountability and ensuring good governance INGOs that enjoy the Host Country Agreements MUST still be regulated by the Authority.

5. Why does the PBO Act matter for NGOs/INGOs in Kenya?

It is the legal framework

The government recognizes the role played by NGOs/PBOs in complementing the government; involvement in development projects, employment opportunities, targeted beneficiaries and the funding received in the country.

1. The Act accommodates all the charitable entities with a view of facilitating them under one regulatory framework. This is through the provision of various tax exemption recommendations, recommendation for work permits and broad stakeholder engagement.
2. Sustainability measures within the sector are also factored in by allowing PBOs to engage in income generating activities (IGA) through the establishment of social economic enterprises. This is a new development in the regulatory space with the government being keen on how sustainability of the organizations is guaranteed.

3. PBOs will also benefit from a robust self-regulation framework through their membership in forums and the National Federation of PBOs which in the spirit of Article 36 of the Constitution of Kenya on freedom of association.
4. Additionally, there is provision for access to training courses that are relevant to public benefit organizations.
5. Of course, rogue organizations can be sanctioned after an inquiry for the sector to regain its glory of improved public confidence. The sector should be the face of integrity.

6. What are the implications for NGOs/INGOs? How does alignment with the PBO Act impact funding, governance, and operational efficiency?

1. The Act provides guidance on the reporting requirement by PBOs in as far as donor funding is concerned. In this regard entities are expected to submit their audited accounts within six (6) months after the end of their financial year. This is a change from the 3-month period previously provided for in the repealed NGOs Act.
2. Similarly, all registered entities are expected to submit their audited accounts irrespective of the amount of funding received. This is a change from the previous requirement that required only those that receive KES.1M and above to submit their reports.
3. The above rigorous measures enhance the donor confidence on the PBOs.
4. In the front of operational changes, the Act provides for the conferment of Public Benefit Status to all registered PBOs. This status will enable all the organizations to reap the benefits of the Act as highlighted above. The Authority is exploring the option of issuing annual public benefit status certificates to compliant organizations in order to enhance compliance within the sector.
5. Strict timelines for registration are provided for with the process now taking 60 days up from the 90-day period.
6. The PBO Act mandates the Authority to monitor all the activities of PBOs in Kenya. The Authority shall institute inquiries into the conduct of organizations that are operating contrary to the provisions of the law. Consequently, it shall conduct investigations and liaise with the relevant agencies to ensure enforcement of adverse findings.
7. The governance options for PBOs is now clearer in the Act wherein, some entities are considered as membership and others as non-membership organizations. This has been well elaborated in order to eliminate confusion as was the case in the past in as far as governance of NGOs/PBOs is concerned.
8. International organizations that will have a non-implementing status in Kenya but will be implementing projects in the neighboring countries, will acquire permits from the Authority for this purpose. They will also report directly to their global/international headquarters through their duly appointed agents in Kenya. This will be different from the current practice that ALL registered NGOs/PBOs must have a locally established board. However, they will still be required to report their activities and funding to the Authority.

2. Do the PBOs have clear understanding of self-regulation? What are the opportunities and hurdles?

Self – regulation is one of the benefits that PBOs derive from the Act whereby the freedom of association is guaranteed whilst checking and improving on compliance levels through self-monitoring and self-reinforcements.

In order to reap from this benefit, PBOs are required to organize themselves in forums that are aligned in terms of objective, region, target group or any other interests. The forums must have recognition agreements with the Authority and as such entered into the register of forums.

The forums also take part in the election processes for the leadership of the National Federation of PBOs which is the umbrella body for self-regulation of PBOs in Kenya.

Some challenges that we have seen in the past are as a result of disputes and leadership wrangles with regards to the elected leadership of the NGOs Council. This has seen the emergence of different factions each claiming to be the bonafide elected Council. The Act provides that the IEBC shall oversee the elections of the National Federation of PBOs. The spirit of this provision is to exude confidence in the sector with regards to management of the process.

3. Does the PBO Act guarantee freedom of expression, association and peaceful assembly of individuals and groups?

Freedom of association as espoused in the Constitution is deeply embedded in the PBO Act through the recognition of membership in the PBOs where the organizations are left to choose their own criteria of membership. This provision is also realized in the formation of self-regulation forums where PBOs are free to engage with whoever they are willing to associate with.

Additionally, the Act being a secondary legislation borrows from the Constitution of Kenya in its entirety and thus cannot purport to water down the freedoms as provided.

4. Who will spearhead the development of PBO rules and regulations?

This process shall be initiated and overseen by the Authority which is the primary stakeholder. It shall work closely with the stakeholders; NGOs/PBOs, Government Agencies, Financial Institutions and donors, in order to fulfill the provisions of public participation and stakeholder engagement as provided for in Article 10 of the constitution.

5. What is the current status of the implementation situation on the PBO rules and regulations?

1. The Authority is in possession of two (2) draft Regulations and is gearing up to embark on the process of harmonization of these documents.
2. This will culminate to a PBO Summit on Validation of the harmonized draft regulations after which countrywide public participation shall take place.
3. The Authority has already mapped out the 47 counties ensuring representation from all the regions both the far-flank areas and closely clustered counties.
4. The mode of public participation will include sending of memoranda to the Authority, physical meetings in the counties and online webinars. It is only after public participation that the Authority will initiate the gazzetting of the regulations.
5. The regulations are the gateway for the transition process for the Authority and all the registered NGOs as well as all entities that are operating as PBOs and are vested in other registration regimes.

6. Will the transition of the NGO Coordination Bureau into the PBO Authority guarantee change of behavior on how PBOs will be registered, regulated or deregistered?

The registration categories for PBOs have been expanded in order to accommodate the different kinds of PBOs including entities that were registered in other registration regimes.

For clarity the Act envisages registration in the following ways:

1. Registration through incorporation – applies for new entities that have not been incorporated in any registration regime within Kenya. It also applies to entities that have been registered in a different registration regime and wish to be registered under the PBO Act with a view of closing their registration status in other existing registries i.e. companies limited by guarantee, trusts and societies
2. Registration through conferment of the public benefit status certificate- applies for entities that wish to maintain their incorporation status in other regimes (under companies limited by guarantee for example) but whose characteristics are those of a PBO. **Evidently the certificate of public benefit status will be issued to ALL PBOs for purposes of maintaining a single identity for PBOs and ascertaining compliance with the law and accessing the benefits on tax exemptions.**
3. Issuance of permits - For INGOs that do not implement projects in Kenya.

7. What are the benefits of the PBO ACT?

1. Registration processes shall take 60 days down from the 90 days as per the repealed NGOs Act.
2. Sustainability measures within the sector are also factored in by allowing PBOs to engage in income generating activities (IGA) through the establishment of social economic enterprises. This is a new development in the regulatory space with the government being keen on how sustainability of the organizations is guaranteed
3. The Act accommodates all the charitable entities with a view of facilitating them under one regulatory framework. This is through the provision of various tax exemption recommendations, recommendation for work permits and broad stakeholder engagement
4. PBOs will also benefit from a robust self-regulation framework through their membership in forums and the National Federation of PBOs which in the spirit of Article 36 of the Constitution of Kenya on freedom of association.
5. Additionally, there is provision for access to training courses (offered by various government agencies) that are relevant to public benefit organizations.
6. Rogue organizations can be sanctioned after an inquiry for the sector to regain its glory of improved public confidence. The sector should be the face of integrity.
7. PBOs are now expected to submit their audited accounts within 6 months after the end of their financial year. This is a change from the 3-month period previously provided for in the repealed NGOs Act.
8. All registered entities are expected to submit their audited accounts irrespective of the amount of funding received. This is a change from the previous requirement that required only those that receive KES. 1M and above income to submit their report.
9. The act also provides for the conferment of Public Benefit Status to all registered PBOs. This status will enable all the organizations to reap the benefits of the Act.
10. Strict timelines for registration are provided for with the process now taking 60 days up from the 90-day period.
11. The governance options for PBOs is now clearer in the Act wherein some entities are considered as membership and others as non-membership organizations. This has been well elaborated in order to eliminate confusion as was the case in the past in as far as governance of NGOs/PBOs is concerned.
12. The Administrative and Regulatory Framework for PBOs comprises of; the PBOs Dispute Tribunal to address complaints under section 50, PBO Regulatory Authority, National Federation of PBOs and Forums under Sec 20,21 and 47.

6. What will happen to the current Register of NGOs?

The Authority shall maintain the current register of NGOs as per its mandate. It shall also provide for the various categories of NGOs/PBOs as per the registration criteria mentioned above. At the point of transitioning, all already registered NGOs/PBOs shall be transitioned into its criteria of registration as indicated above. This will enable the Authority to easily and

effectively offer services and facilitated them. This means that the spirit of the Act and the government in understanding that not all PBOs are the same in terms of operations must be reflected in the register of PBOs. Cumulatively, all the NGOs/PBOs in the register shall be conferred with the Public Benefit Status.

8. What are the expectations of PBO Act 2013?

The Authority looks forward to:

- i. Provide a favorable environment for the setting up, growth and running of PBOs.
- ii. Put in place useful system of rules, laws and institutions that support functioning of PBOs.
- iii. Promote compliance within the PBO sector by strengthening self-regulation.
- iv. An independent complaint and redress mechanism through The PBO Dispute Tribunal.
- v. Collaborate with and involve PBOs in some of its work.
- vi. Implement policies in a manner that promote and enable PBOs.
- vii. Effectively collaborate with the sector through the establishment of the Joint Committee on the Implementation of the Act.
- viii. Upholding the values for the sector which are:
 - Voluntarism
 - Accountability
 - Complementarity, not competition
 - Enabling legal, regulatory and institutional environment
 - Public disclosure and transparency standards
 - Self-Regulatory Code of Conduct
 - Cooperation and shared responsibility between PBOs and 47 Counties and National Government

Process of reinstatement for deregistered organisations.

The affected organisations are required to

- i. Submit audited accounts and annual returns that were unsubmitted prior to the deregistration.
- ii. Pay the filing fees for each year defaulted
- iii. Pay the penalty for each year defaulted
- iv. Submit board minutes indicating the decision to apply for reinstatement
- v. Submit their original certificate of registration so that a new one is issued.