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**PBO ACT 2013,
REGULATIONS,
AMENDMENTS AND UPDATES**

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INTRODUCTION

- “ Kenya enacted a new law for Public Benefit Organisations, the Public Benefit Organisations Act, 2013.
- “ The Act repeals the NGOs Coordination Act, 1990.
- “ The Act establishes the Public Benefits Regulatory Authority to take over from the current regulatory body, the NGOs Coordination Board.
- “ The Act is, however, yet to get a date of commencement



REGISTRATION

“Four categories of PBOs:

“International PBOs

“Exempt PBOs

“National NGOs

“PBOs Conferred with public benefit status



Interpretations

- “ **Direct Implementation:**

- “ Execution of programmes directly other than through another entity and in which the organisation in question provides funding for the activity or the programmes in question

- “ **Raising Funds Locally:**

- “ Soliciting and acceptance of funds that are specifically meant for activities or organisations situated in Kenya

Conferment of Public Benefit

“ The regulator to issue guidelines on conferment of public benefit



Regulation of Exempt organisations

- “ NGOs domiciled in Kenya with branches to provide constitutions of branches
- “ Guidelines for registration of International NGOs seeking to be exempted provided
- “ Exemption may be rescinded and organisations required to seek registration



Statutory responsibilities of Governance Body

Sec 8(7):

- “ Protect assets and finances and approve programmes of the organisation
- “ Perpetuate/renew itself
- “ Protect its constitution- responsible for amendments
- “ Dissolution/winding up



Key governance requirements

- “ Separation of management and governance
- “ Transparency and accountability in relations with with the Government, , beneficiaries, donors, other public benefit organizations and stakeholders.
- “ Safeguard against conflict of interest-staff and governors
- “ Non discriminatory in service provision

Duties and liabilities of directors and employees

- “ For the first time duties and responsibilities of directors and employees spelt out:
- “ Regulation 25 requires directors to exercise care, diligence, prudence
- “ Organisations required to obey the law and its own constitution
- “ Staff may also be held liable



Key governance requirements

- “ Open up activities for scrutiny by stakeholders
- “ Voluntary service by governance body

Apply principles of:

- “ high standards of governance and management
- “ sharing of resources, information, expertise and experiences



Key governance requirements

- “ maintenance of a high standard of professionalism
- “ rejection of research efforts, programmes projects that subvert human rights
- “ identifying and reporting any breach or violation of the provisions of the Act
- “ respect for the autonomy, independence and diversity of public benefit organizations.

“



GOVERNANCE STRUCTURE

- “ Minimum of 5 Board members 3 of whom may not be connected persons
- “ 1/3 of Boards of International organisations have to be Kenyans



Conduct of Directors

- “ Regulation 27- Prohibition on personal benefit by directors
- “ Regulation 28- Conflict of interest-General guidelines on dealing with conflict of interest
- “ Regulation 24 . Directors who cause the deregistration of an organisation may be blacklisted for 10 years



Application of resources

- “ Section 29- PBOs to implement internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources;
- “ Utilise financial and other resources for the attainment of its aims, objects and purposes.



Self Regulation

- “ Section 20 of the PBO Act affirms the right of PBOs to associate with others by forming a self regulatory forum and to participate in its activities.
- “ PBOs are free to form and join a self regulatory body of their choice.
- “ Section 21 creates an institution known as the National Federation of Public Benefit Organisations to be an umbrella organisation of all PBOs and their self regulation forums.



Self Regulation

- “ Federation to come up with instruments specifying rules, structure and procedures within 90 days
- “ Federation to provide a draft code of conduct for approval within 6 months
- “ Failure by the Federation to address the above within the specified period would lead to the Cabinet Secretary acting



SUBMISSION OF ANNUAL REPORTS

- “ The PBO Act provides that all PBOs will be required to submit financial statements that meet the standards expected of not for profit accounts.
- “ However, what is remarkable is the requirement that all PBOs submit an independent audit



Reporting

- “ Annual Returns . Penalty of KES 25,000 retained for non compliance
- “ Returns to be submitted 3 months after the anniversary of its registration
- “ Reports to meet IFRS
- “ Regulator to prescribe format for financial reporting



Powers of the Regulator

- “ Section 18 provides that the regulator can issue default notices seeking compliance and prescribes that the regulator can punish non compliance with suspension, a fine or even deregistration.
- “ Section 62 gives the regulator powers to protect assets
- “ Section 63 provides for powers of the regulator to institute enquiries

Powers of regulator to institute enquiries

- “ Regulation 26: The regulations affirm powers to conduct enquiry either on its own or through an agent and to demand and receive relevant information



Powers of the Regulator to Inspect Premises

- “ Regulator mandated to enter premises to enforce compliance
- “ Organisations to provide access to premises and documents
- “ An offence to obstruct the regulator or refuse to implement the Regulators recommendations



APPEAL MECHANISM FOR PBOs

- “ The Act creates a Public Benefit Organisations Tribunal as an avenue for aggrieved PBOs to appeal the regulator's decisions.
- “ It protects PBOs against arbitrary exercise of power by the regulator and has the powers of subordinate court of the first class.
- “ It provides an efficient and cheaper appeal mechanisms for organisations dissatisfied

Income Generation

- “ Regulator to issue guidelines on acceptable income and economic activity by NGOs



Deregistration and liquidation

- “ Provides that assets tendered to another PBO under supervision of the regulator



Mergers

“ Regulator to issue guidelines on mergers



Protection of assets at dissolution/deregistration

- “ Guidelines issued on deregistration/dissolution . Regulation 29
- “ Directors required to submit inventory of assets and liabilities within 14 days
- “ Distribution of assets to be conducted on the basis of a plan approved by the regulator
- “ Regulation 30 provides the regulator with powers to appoint a Caretaker manager for an organisation to protect its assets

CHARITABLE OBJECTS

- “ 28 public benefit activities provided for under the Sixth Schedule
- “ Sect 66. Provision that NGOs may address public policy and engage advocacy on issues of public interest as well as criticise activities of the state
- “ Prohibition on engagement supporting in political parties or candidates .



THE STATUTE LAW(MISCELLENEOUS AMENMENTS) BILL 2014

- “ Contentious provisions on capping on funding from external sources excluded
- “ Authority provided with power to impose terms and conditions to certificates
- “ Correction on the interchangeable use of deregistration and dissolution
- “ Reporting period revised from 6 to 3 months
- “ Sec 33. Indemnity of directors not extended to civil wrongs

Transitional Provisions

- “ The Act requires that all PBOs currently in the register of the NGOs Coordination Board seek registration to comply with the PBO Act within one year after the commencement of the PBO Act.



Transition

- “ The regulator to issue guidelines for transition of NGOs previously registered under the NGOs Act to the new law.



Amendments to the Act

Under the Security Laws(Amendment)Act 2014 Sec. 96

Section 6 of the PBO Act amended amended by inserting the following subsections:

- “ immediately after subsection (4)-
- “ (4A) A public benefit organization registered under
- “ subsection (1) shall be classified by the Authority in the
- “ prescribed manner.
- “ (4B) The Authority upon consultation with the
- “ Cabinet Secretary, may from time to time review the
- “ classification of public benefit organizations.
- “ (4C) The Cabinet Secretary shall, upon consultation
- “ with the Authority, make regulations to provide for the
- “ manner, conduct and criteria for classification of public
- “ benefit organizations.

Updates

- “ Task Force Appointed by the Minister has concluded public hearings
- “ Findings of the Task Force in dispute.
- “ According to representatives of the Civil Society on the task force the overwhelming view was that the PBO Act be implemented immediately as is



Updates

According to the Chair of the Task Force and presumably the Government and as per the report to the Government it was proposed that:

- 1.A concrete definition of PBOs be developed
- 2.PBOs be registered under one legal regime
- 3.Appointments to the Authority be subjected to the State Corporation Act
- 4.Sufficient powers be given to the PBO Authority to ensure full disclosure by PBOs
- 5.Transparency by donors, stakeholders and beneficiaries as per IFRS specifically disclosure of sources and application of funds

Updates

6. A percentage of donations received by PBOs be given to the Authority to ensure effective regulation
7. National interests and security be addressed during registration; cultural and religious values be considered PBOs promoting indecent acts as per the penal code sec, 162-165, promoting interests of foreign states involved in terrorist activities etc
8. A representative of the Ministry of National Security be a member of the Board of the Authority
9. Proposed amendments safeguard and ensure an enabling environment to enhance complementarity between state and none-state actors
10. Strengthen collaboration between National Government, Counties and PBOS



Possible Scenarios

- “ Amendments be presented in the House
- “ PBO Act be commenced as is.
- “ Status Quo be maintained



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THANK YOU FOR LISTENING

