



REUTERS/ Thomas Mukoya

NON-PROFIT STRUCTURING GUIDE FOR KENYA

November 2024



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Table of contents

Acknowledgement.....	4
About TrustLaw.....	4
Disclaimer.....	5
Part 1: INTRODUCTION	8
Part 2: NON-GOVERNMENTAL ORGANISATIONS	9
1. What is an NGO?.....	13
2. Establishment Process, Documentation and Costs.....	16
3. Organisational Structure.....	15
4. Ongoing Governance and Regulatory Obligations.....	19
5. Taxation.....	21
6. Conversion to Other Form of Non-Profit Entity.....	23
7. Advantages and Disadvantages.....	24
Part 3: PUBLIC BENEFIT ORGANISATIONS	26
1. What is a PBO?.....	28
2. Establishment Process, Documentation and Costs.....	30

3. Organisational Structure	33
4. Ongoing governance and regulatory obligations.....	33
5. Taxation	35
6. Conversion to Other Form of Non-Profit Entity.....	36
7. Advantages and Disadvantages.....	37
Part 4: SOCIETIES	39
1. What is a Society?.....	41
2. Establishment Process, Documentation and Costs.....	43
3. Organisational Structure	44
4. Ongoing governance and regulatory obligations.....	46
5. Taxation	47
6. Conversion to Other Form of Non-Profit Entity.....	48
7. Advantages and Disadvantages of Societies.....	49
Part 5: COMPANIES LIMITED BY GUARANTEE	50
1. What is a Company Limited by Guarantee?.....	52
2. Establishment Process, Documentation and Costs.....	53
3. Organisation Structure.....	54
4. Ongoing Governance and Regulatory Obligations.....	55
5. Tax Exemptions for CLGs in Kenya	57
6. Conversion to Other Form of Non-Profit Entity.....	58
7. Advantages And Disadvantages Of Companies Limited By Guarantee.....	58
Part 6: TRUSTS	60
1. What is a Trust?.....	62
2. Establishment Process, Documentation and Costs.....	64
3. Powers of a Trustee.....	66
4. Ongoing Governance Requirements and Obligations for Trusts	67
5. Tax Treatment of Trusts.....	68
6. Conversion to Other Form of Non-Profit Entity.....	69
7. Advantages and Disadvantages.....	69

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Our team of lawyers in Kenya have been involved in market-leading transactions including advising on banking and finance matters, corporate and commercial transactions, employment law, capital markets, project finance, environmental law and energy, tax & exchange control, and intellectual property in a wide range of sectors. Our overarching goal is to provide seamless legal services in East Africa through this office to enable our worldwide clients to harness the vast opportunities for sustainable investment that lie within this region of the continent and beyond.

We pride ourselves in offering a range of free legal services to both individuals and non-profit organisations (NPOs) as well as other entities engaged in human rights or public interest work.

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This guide is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances.

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Cliffe Dekker Hofmeyr (incorporating Kieti Law LLP) generously provided pro bono research in connection with the preparation of this guide. However, the contents of this guide should not be taken to reflect the views of Cliffe Dekker Hofmeyr or the lawyers who contributed.

The content in this guide reflects the law in force in the Kenya as of 27 June 2024.

Foreword

In an era of unprecedented global challenges, we are pleased to present this comprehensive guide on non-profit structuring in Kenya. As the regulatory landscape for non-profit organizations continues to evolve, reflecting complex political, economic, and social factors, legal compliance has become more crucial than ever. This guide serves as a cornerstone for organizational resilience, enabling non-profits to navigate complex legal terrains effectively. By adhering to regulatory requirements and maintaining robust governance structures, non-profit organizations can mitigate risks, build credibility, and ensure continued impact in the face of regulatory pressures. We have crafted this resource to provide a clear and thorough understanding of the various legal structures available to non-profit entities in Kenya, including Non-Governmental Organisations (NGOs), Public Benefit Organisations (PBOs), Societies, Companies Limited by Guarantee (CLGs), and Trusts.

Of particular significance is the recent enactment of the Public Benefit Organizations Act 2013, operationalized in May 2024, which marks a new era for non-profits in Kenya. This guide sets out the salient features of the new compliance landscape, exploring how it affects registration processes, governance structures, and operational practices of non-profit entities in Kenya. We aim to equip you with the requisite knowledge to adapt to these changes effectively, ensuring you can continue your vital work with confidence and in full compliance with the new legal framework. We extend our heartfelt gratitude to the legal team at Cliffe Dekker Hofmeyr (incorporating Kieti Law LLP) for their exceptional pro bono efforts in developing this guide, making it an indispensable tool for Kenya's non-profit sector.

This guide is an integral component of TrustLaw's initiative to support non-profit entities, in addition to connecting leading law firms and corporate legal teams with non-profits in need of pro bono legal assistance. Through this resource, we aim to establish benchmarks for legal compliance and foster support for the non-profit sector in Kenya and beyond. Whether you are establishing a new organization or seeking to enhance an existing one, our goal is to simplify the legal landscape, allowing you to focus on what truly matters: making a meaningful impact on society.

We invite you to explore the contents of this guide and leverage the insights provided to further your mission. Together, let's continue to build a robust and vibrant non-profit sector in Kenya, dedicated to the betterment of our communities and the world at large.

Carolina Henriquez-Schmitz
Director, TrustLaw

Comparative Summary of Key Features

	NGO	PBO	SOCIETY	CLG	UNIN-CORPORATED TRUST	INCORPORATED TRUST
GENERAL						
Separate legal personality	✓	✓	✗	✓	✗	✓
TAXATION						
Income tax exemption	✓	✓	✓	✓	✓	✓
VAT exemption	✓	✗	✗	✗	✗	✗
MANAGEMENT						
Establishment of management board	✓	✓	✓	✓	✗	✗
Kenyan representation on management board	✓	✓	✗	✗	✗	✗
Payment of remuneration to members of management board	✗	✗	✓	✓	✓	✓
COMPLIANCE						
Conducting annual general meetings	✓	✓	✓	✓	✗	✗
Requirement for a physical office in Kenya	✓	✓	✓	✓	✗	✗
Filing annual returns/reports	✓	✓	✓	✓	✗	✓
Filing of annual financial statements	✓	✓	✓	✓	✗	✗
Maintaining books of accounts	✓	✓	✓	✓	✗	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR						
Making changes to the board of the organisation	✓	✓	✓	✓	✗	✓
Making changes to the constitutional documents of the organisation	✓	✓	✓	✓	✗	✓
Employing foreign nationals	✓	✓	✗	✗	✗	✗
Opening bank accounts	✓	✗	✗	✗	✗	✗



REUTERS/Thomas Mukoya

1. Introduction

Navigating the legal landscape of non-profit entities in Kenya requires a comprehensive understanding of the diverse structures available to organisations committed to societal well-being and development.

This legal guide aims to illuminate the regulatory framework surrounding various entities, each playing a unique role in contributing to the public good. In Kenya, these entities primarily fall into the categories of Non-Governmental Organisations (NGOs), Public Benefit Organisations (PBOs), Societies, Companies Limited by Guarantee (CLGs), and Trusts.

NON-GOVERNMENTAL ORGANISATIONS (NGOS)

NGOs are voluntary associations driven by a collective commitment to societal advancement. Whether engaged in health, relief efforts, agriculture, education, industry, or service provision, the overarching objective is to contribute to the public welfare. This section of the guide will delve into the legal considerations and regulatory requirements specific to NGOs, ensuring a comprehensive understanding of their role in Kenya's non-profit landscape.

PUBLIC BENEFIT ORGANISATIONS (PBOS)

Public Benefit Organisations (PBOs) are intended to replace NGOs and form a distinctive category characterised by their voluntary nature, autonomy, and commitment to public benefit activities. These organisations, whether operating locally, nationally, or internationally, play a vital role in economic, environmental, social, or cultural development. The guide will provide insights into the legal framework governing PBOs, shedding light on their non-partisan and non-profit nature as well as the key concept of 'public benefit activities'.

SOCIETIES

Societies encompass a broad spectrum of entities, including clubs, partnerships, or associations with ten or more individuals. Examples of organisations that are typically registered as societies include private members clubs, religious groups, welfare associations, professional associations, and sports clubs. This section will explore the legal intricacies governing societies, ensuring clarity for those considering this organisational structure for their non-profit endeavours.

COMPANIES LIMITED BY GUARANTEE (CLGS)

Companies Limited by Guarantee (CLGs) emerge as a suitable vehicle for charitable and non-profit activities, limiting members' liability to their contributions in the event of winding up. This guide will dissect the legal aspects of CLGs, elucidating how their 'non-profit' status directs income and property exclusively towards the company's objectives. A deeper understanding of CLGs will empower organisations to make informed decisions in alignment with their charitable goals.

TRUSTS

The legal landscape for non-profit entities in Kenya also includes trusts, which are intricate arrangements established by settlers for the benefit of third parties or specific purposes. This section of the guide will explore the legal intricacies surrounding trusts, shedding light on the roles of settlers, trustees, and beneficiaries and providing clarity on how trusts can serve as vehicles for philanthropy and societal betterment.

CONCLUSION

As you embark on your non-profit journey in Kenya, remember that each of these legal structures serves a unique purpose. The choice of structure should align with your mission and long-term goals. This guide aims to simplify the complex legal aspects and empower you to make informed decisions.

By the end of this guide, you will have the knowledge and confidence to navigate the legal landscape of non-profit entities in Kenya, allowing you to focus on what truly matters: positively impacting society. Whether you're starting a new organisation or seeking to enhance an existing one, this guide is your companion on the path to creating meaningful change in Kenya.



REUTERS/ Baz Ratner

2. Non-Governmental Organisations

Key Features of NGOs

GENERAL	
Separate legal personality	✓
TAXATION	
Income tax exemption	✓
VAT exemption	✓
MANAGEMENT	
Establishment of management board	✓
Kenyan representation on management board	✓
Payment of remuneration to members of management board	✗
COMPLIANCE	
Conducting annual general meetings	✓
Requirement for a physical office in Kenya	✓
Filing annual returns/reports	✓
Filing of annual financial statements	✓
Maintaining books of accounts	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR	
Making changes to the board of the organisation	✓
Making changes to the constitutional documents of the organisation	✓
Employing foreign nationals	✓
Opening bank accounts	✓

1. WHAT IS AN NGO?

1.1 Definition of an NGO

Non-governmental Organisations (“NGOs”) are groups of people or associations that come together voluntarily, with the primary goal of providing benefit to the society at large through promoting social well-being, development, charitable work, or research.

1.2 Key Characteristics:

- a. **Non-governmental:** An NGO operates independently from the government, both in terms of structure and decision-making.
- b. **Voluntary:** Participation and membership in an NGO is based on the free choice of individuals.
- c. **Non-profit:** NGOs do not primarily aim to generate profits. Any surpluses from economic activities that align with their mission and objectives are typically reinvested to further the NGO’s goals.
- d. **Public Benefit:** The core purpose of an NGO is to serve the broader interests of society through positive social, developmental, charitable, or research-focused contributions.

1.3 Scope of Activities

Kenyan NGOs engage in a diverse array of sectors to address a wide range of societal needs. Common areas of operation include:

HEALTH	Promoting public health, providing healthcare services, and raising awareness.
RELIEF EFFORTS	Delivering humanitarian aid, disaster response, and refugee assistance.
AGRICULTURE	Supporting sustainable farming practices and improving food security.
EDUCATION	Providing formal and informal education, and literacy initiatives.
INDUSTRY	Fostering economic development, entrepreneurship, and employment.
AMENITIES AND SERVICES	Supplying essential community infrastructure, and advocacy for human rights.

1.4 Regulatory Framework

1.4.1 Governing Legislation:

The primary laws regulating NGOs in Kenya are the Non-Governmental Organisations Co-ordination Act, No. 19 of 1990 (“**NGO Act**”)¹ and its supplementary Non-Governmental Organisations Co-ordination Regulations, 1992 (“**NGO Regulations**”). Together, these establish the foundational framework for NGO registration, operations, and coordination within the country.

1.4.2 Oversight Authority:

The Non-Governmental Organisations Co-ordination Board (“**NGO Board**”) is the central regulatory body mandated to oversee NGOs in Kenya. Its key functions include:

REGISTRATION	Registering and maintaining a comprehensive database of all NGOs operating in Kenya, detailing their areas of focus, affiliations, and geographical scope.
MONITORING AND REPORTING	Analysing annual reports submitted by NGOs to assess their activities, impact, and compliance with the NGO Act.
POLICY GUIDANCE	Advising the Kenyan government on matters related to the NGO sector and its role in national development.
COORDINATION	Facilitating collaboration and ensuring proper coordination among NGOs, as well as between NGOs and government entities.

1.4.3 Compliance and Accountability:

The NGO Board plays a vital role in ensuring that NGOs adhere to the established regulatory framework. This promotes transparency, accountability, and maintains public trust in the NGO sector.

1.5 Legal Status

An NGO is a distinct legal entity separate from its individual members. This fundamental principle, known as separate legal personality, bestows upon an NGO an independent legal existence. Key implications of this status include:

- **Capacity to Sue and Be Sued:** An NGO can initiate legal proceedings to protect its interests or defend itself against claims in its name. This separates it from unincorporated structures where individual members must participate in legal actions.

¹ [Non-Governmental Organizations Co-ordination Act - Kenya Law](#)

- **Ownership of Property:** An NGO can hold, purchase, sell, or otherwise manage assets under its name. This includes both movable (e.g., equipment, vehicles) and immovable (e.g., land, buildings) property. This ensures the protection and continuity of an NGO's resources as separate from members' personal assets.
- **Authority to Enter Contracts:** An NGO has the power to form legally binding agreements, such as employment contracts, leases, or service agreements. This enables the NGO to operate formally and engage with other entities.
- **Agency to Perform Necessary Actions:** An NGO possesses broad authority to undertake any actions deemed essential to fulfil its mission and objectives outlined in the NGO Act. This provides the necessary legal flexibility to function effectively.

1.5.1 Other Essential Considerations:

- **Limited Liability:** Under separate legal personality, the liability of NGO members is generally limited to the amount prescribed in the constitution of the NGO. This offers members protection from the NGO's debts and obligations.
- **Continuity:** The existence of the NGO is not tied to its members. Changes in membership, such as the death or resignation of individuals, does not dissolve the NGO.

1.6 Types of NGOs

1.6.1 There are two main categories of NGOs that can be registered under the NGO Act:

- a. **International NGOs:** These are organisations originally formed or registered outside Kenya but are permitted to operate within Kenya once they obtain a registration certificate.
- b. **National NGOs:** These are NGOs registered exclusively within Kenya and are authorized to conduct their activities solely within the country.

2. ESTABLISHMENT PROCESS, DOCUMENTATION AND COSTS

2.1 Obligation to Register an NGO

2.1.1 Before an NGO can begin its activities in Kenya, it is required to complete the registration process. Operating an unregistered NGO in Kenya is a criminal offense. If convicted, those responsible could face:

- a. *Substantial Fines*: Up to KES 50,000.
- b. *Imprisonment*: A maximum prison term of 18 months.
- c. *Both Fine and Imprisonment*: The court may impose both penalties.
- d. Individuals convicted of operating an unregistered NGO will be barred from holding any leadership or governing position within any NGO for ten years.

2.2 Method of Registration

Step 1: Name Search and Approval

- The first step to register an NGO is to get approval for its name from the NGO Board. To do this, one needs to fill out a specific form, where one can suggest three potential names for the NGO.
- After completing the form, it must be submitted to the NGO Board along with a KES 1,000 application fee.
- The NGO Board will then check if the proposed names are already in use by registered organisations listed in the index of the registered organisations (“Register”).
- After the check, the NGO Board will inform the applicant whether the chosen name is approved or not, providing reasons for any rejections.

REASONS FOR REJECTION OF PROPOSED NAME

- if it is too similar to an existing registered organisation’s name, except in cases where it is a sponsored chapter or branch.
- if it goes against any laws or is considered objectionable by the NGO Board.
- if it shares the first three words with an existing name.
- if it resembles a name of a government department or a legally registered NGO.
- if it implies an intent to evangelize or promote a particular faith.
- if its acronym is similar to an existing name in the Register.
- if its meaning is unclear, except for organisations registered outside Kenya to carry out the work of an NGO.

- Once a name has been approved, it is entered in the register of reserved names on behalf of the applicant for a period of 30 - 60 days.

Step 2: Application

- With an approved name, one can proceed with the NGO registration application.
- The application involves filling out a designated form, which must be signed by the NGO's chief officer and submitted to the NGO Board accompanied by the following documents:

DOCUMENTS	<ul style="list-style-type: none"> • three copies of the constitution signed by the top three officials. • two current colour passport-sized photos of these officials. • copies of IDs for Kenyan officials or passports for foreigners. • a notarized certificate of registration (for International NGOs). • minutes of the proposed NGO authorizing the application. • details about NGO's office location and postal address
APPLICATION FEE	<ul style="list-style-type: none"> • KES 16,000 - National NGOs • KES 30,000 - International NGOs

Step 3: Registration

- The registration of an NGO is subject to the approval/vetting of the officials by the National Intelligence Service. Once the vetting process is completed, the NGO Board will proceed to either approve or reject the application for registration.
- If the NGO Board approves the application for registration, it will record the NGO's name, address, and sector of operation in the Register and issue the NGO with a certificate of registration.
- The certificate serves as conclusive evidence that your NGO has the authority to operate in Kenya, or in specific regions as specified in the certificate.
- However, it is important to note that the NGO Board can deny registration under certain circumstances, such as:
 - a. when they believe the proposed activities or procedures are not in the national interest,
 - b. if false information was provided during the registration process, or
 - c. upon the recommendation of the Non-Governmental Organisations Council (a self-regulatory organisation established for all NGOs registered under the NGO Act).

2.3 Appeal

If the application for registration is declined by the NGO Board, the NGO has the option to appeal this decision to the Cabinet Secretary for the Ministry of Interior and Co-ordination of National Government (“**Cabinet Secretary**”) within 60 days. The Cabinet Secretary will then have 30 days to make a decision on the appeal.

If the NGO remains dissatisfied with the Cabinet Secretary’s decision, it can further appeal to the High Court. In such an appeal:

- a. The High Court may issue appropriate directions and orders as it deems necessary; and
- b. The decision made by the High Court is considered final.

2.4 Exemption from Registration

An NGO can also be exempted from the registration requirements outlined in the NGO Act. This exemption is granted by the Cabinet Secretary, based on the recommendation of the NGO Board, and announced in the official Gazette.

To secure this exemption, an NGO must apply for it using a designated form, signed by its chief official. This application should include the following documents:

- a. a copy of the organisation’s meeting minutes, endorsing the submission of the exemption request;
- b. a certified copy of the organisation’s constitution, verified by the NGO’s chief officer and secretary;
- c. a statement, signed by the NGO’s chief officer, providing the location of the registered office and postal address; and
- d. a recommendation letter from the NGO Board.

If the exemption application is approved, the NGO Board will issue a certificate confirming the exemption and be permitted to operate in Kenya.

3. ORGANISATIONAL STRUCTURE

To comply with the requirements of the NGO Board, NGOs must maintain a distinct separation between their governance and management functions. This structure typically includes the following components:

3.1 General Meeting

This is a meeting of the members of the NGO, in which the members are entitled to make decisions concerning the NGO. Some of the actions that require the approval of the members in a general meeting include:

- regulations on the operations of the management secretariat;
- changes to the constitution of the NGO;
- changes to the board of directors;
- appointment of auditor; and
- dissolution of the NGO.

3.2 Board of Directors

The Board of Directors is to be the policy organ and is typically responsible for the governance function of an NGO.

It is not a requirement for an NGO to establish a board at the date of its registration, however, there is a condition in the certificate of registration in which an NGO is required to establish a substantive board within one (1) year of its registration.

The number of board members is typically prescribed in the constitution and typically includes the chairperson, secretary and treasurer of the NGO. These officials are appointed in the application forms of the NGO.

At least one-third (1/3) of the officials on the board must be Kenyan citizens and residents. This requirement is not set out in the NGO Act or Regulations, but the NGO Board insists on this requirement as part of the conditions set out in the certificate of registration.

Any changes to the board of the NGO must be reported to the NGO Board within fourteen working days.

Please note that the board of directors are not entitled to remuneration other than reimbursement of out-of-pocket expenses incurred in attending and returning from meetings of the board of directors or General Meeting or otherwise in the execution of their duties as directors.

3.3 Management

The day-to-day management of the NGO is to be undertaken by a chief executive officer and a secretariat made up of employees of the NGO.

The powers and duties of management secretariat are typically set out in the constitution of the NGO and are typically aimed at achieving the objectives of the NGO.

4. ONGOING GOVERNANCE AND REGULATORY OBLIGATIONS

NGOs operating in Kenya are subject to various governance and regulatory obligations that ensure their compliance with the law and maintain transparency and accountability in their operations. These obligations are critical for NGOs to maintain their legal status and continue their activities in Kenya.

Below are the key aspects of ongoing governance and regulatory obligations for NGOs in Kenya:

4.1 Maintenance of Records:

- a. **Register of Members:** NGOs are required to maintain a register of its members, capturing the details of the member such as the full name of the member and date of admission.
- b. **Financial Records:** NGO are required to maintain proper books of accounts and financial records, which must be audited by a registered auditor on an annual basis.

4.2 Areas of Operation:

- a. **Geographical Limitation:** NGOs are obligated to operate only in the counties listed in their application forms.
- b. **Approval for County Changes:** NGOs must seek approval from the NGO Board before changing their counties of operation.
- c. **Notification of Projects:** NGOs are required to notify county commissioners and county development officers before implementing any projects in the counties where they operate.

4.3 Approval for Changes:

NGOs must seek approval from the NGO Board before making changes to their name, constitution, officers or titles of officers, financial year, banks, signatories, or physical/postal address.

4.4 Reporting to NGO Board:

- a. **Submission of Reports:** NGOs must submit an annual report within 3 months of the end of their financial year.
- b. **Financial Transparency:** For receipts/expenditure exceeding one million Kenyan shillings (KES 1,000,000), NGOs must provide audited accounts that state all income and expenditure in KES.

4.5 Employment of Foreign Nationals:

- a. **Work Permit Application:** Registered NGOs can apply for work permits under the Kenya Citizenship and Immigration Act, 2011 and seek letters of recommendation from the NGO Board.
- b. **Limitation on Work Permits:** NGOs are allowed to have a maximum of three employees on work permits at any given time.

4.6 Bank Account:

- a. **Letter of Authorization:** NGOs must seek a letter of authorization from the NGO Board before opening a bank account.
- b. **Kenyan Bank Signatory:** At least one (1) bank signatory on the NGO's account must be a Kenyan citizen and resident at any given time.

Compliance with these ongoing governance and regulatory obligations is essential for NGOs in Kenya to operate legally and maintain their status. Failing to adhere to these requirements can result in legal consequences and the potential suspension or revocation of their certificate of registration.

5. TAXATION

5.1 Tax Treatment of NGOs

In Kenya, NGOs enjoy certain tax exemptions outlined in the Income Tax Act, Chapter 470 of the Laws of Kenya ("**Income Tax Act**")² and the Value Added Tax Act, No. 35 of 2015³ ("**VAT Act**"). These exemptions are designed to encourage and support NGOs engaged in activities that benefit the public. Here is a summary of the key provisions:

² [Income Tax Act, Cap. 470, \(Revised Edition, May 2024\)](#)

³ [Value Added Tax Act - Kenya Law](#)

5.1.1 *Income Tax Act*

EXEMPTION CRITERIA	An institution (such as an NGO) established for the relief of poverty or distress of the public, or for the advancement of religion or education, or those with regional headquarters in Kenya, may qualify for income tax exemption.
SCOPE OF EXEMPTION	The income of such entities is exempt from tax if the Commissioner of Domestic Taxes is satisfied that the income will be expended either within Kenya or for the benefit of residents in Kenya.
EXEMPTION LIMITATION	<p>Income derived by an NGO is not exempt from tax unless it is applied solely for the purposes of the NGO, and one of the following conditions is met:</p> <ul style="list-style-type: none"> • the business is directly related to the NGO's primary purposes. • beneficiaries of the NGO's purposes primarily conduct the work related to the business. • the income consists of rents from leasing land or chattels, and it is used for the NGO's purposes.
DURATION AND ISSUANCE	<p>NGOs are required to apply for a tax exemption certificate from the Commissioner of Domestic Taxes ("Commissioner"). Applicants who meet all requirements will receive the exemption within 60 days of application.</p> <p>The exemption certificate is valid for 5 years and can be revoked by the Commissioner for just cause. At the end of the 5-year period, an NGO can apply for a renewal of the exemption certificate.</p>

5.1.2 *Value Added Tax Act:*

EXEMPTION CRITERIA	Charitable organisations registered as NGOs, and whose income is tax-exempt under Paragraph 10 of the Income Tax Act, may provide social welfare services that are exempt from Value Added Tax (VAT).
EXEMPTION LIMITATION	<p>Exemption does not apply when these services are provided as part of a business operation.</p> <p>Exemption is granted for a specific transaction/supply upon application to the Cabinet Secretary for National Treasury through the NGO Board.</p>

5.2 Tax Treatment of Cash Donations to NGOs

Individuals or businesses donating to an income tax-exempt NGO can deduct those donations when calculating their own taxable income so long as the donations are:

- in cash and shall not be refundable or repayable to the donor under any circumstances;
- not confer any direct or indirect benefit to the donor or any person associated to the donor;
- irrevocable under any circumstances once conferred upon the NGO, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

6. CONVERSION TO OTHER FORM OF NON-PROFIT ENTITY

Currently, it is not possible to directly convert an NGO into another non-profit structure in Kenya (such as a society, company limited by guarantee, or trust). If one wishes to do this, one must:

- a. incorporate the desired new non-profit entity;
- b. dissolve the existing NGO;
- c. transfer the NGO's assets to the new entity.

The Public Benefits Organisations Act, No. 18 of 2013 (“**PBO Act**”)⁴, which came into force on 14 May 2024, deems all NGOs registered under the NGO Act to be registered as PBOs and they shall have up to one year from the commencement date of the PBO Act to seek formal registration as a PBOs under the PBO Act. However, there are uncertainties about this, which are outlined in the section 7 below.

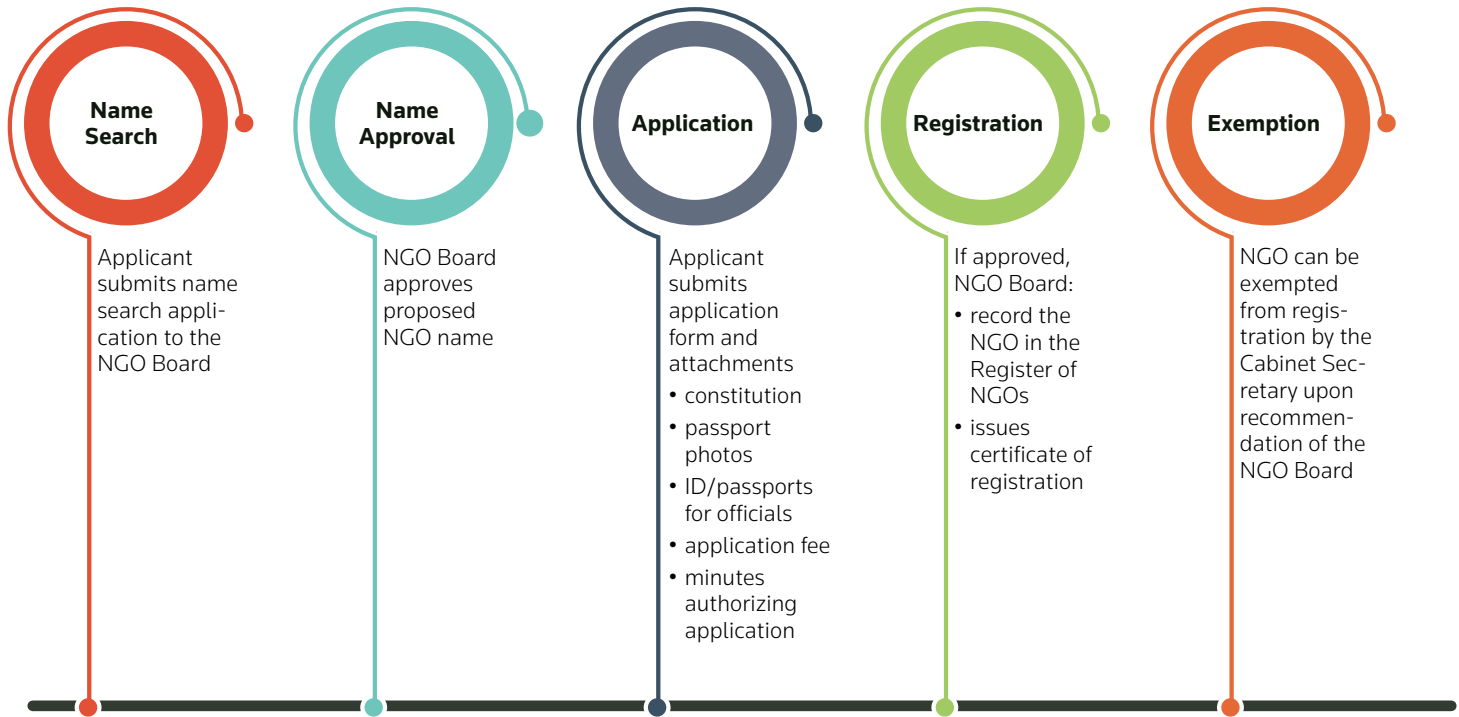
4 The Public Benefits Organisations Act No. 18 of 2013 <http://www.kenyalaw.org/8181/exist/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/P/Public%20Benefit%20Organizations%20Act%20No.%2018%20of%202013/docs/Public%20Benefit%20Organizations%20Act%20No.%2018%20of%202013.pdf>

7. ADVANTAGES AND DISADVANTAGES

There are several advantages and disadvantages to establishing an NGO in Kenya. Some of the advantages and disadvantages are as follows:

ADVANTAGES	<p>Separate Legal Personality</p> <p>An NGO, unlike a society or an unincorporated trust is a separate legal entity from the individuals that make up the entity. In this regard, the liabilities of the NGO are separate from the liabilities of the individuals.</p> <p>In addition, as a separate legal entity, it can, sue and be sued in legal matters, own, buy, or deal with both movable and immovable property and enter into contracts.</p>
	<p>Tax exemptions</p> <p>NGOs qualify for exemptions on their income and from VAT on the provision of social welfare services as set out in the Taxation Section above.</p>
DISADVANTAGES	<p>PBO Act uncertainties</p> <p>There is uncertainty on how the provisions of the PBO Act will be operationalised. These include:</p> <ul style="list-style-type: none"> • clarity on the effects of registration of other forms of non-profit entities as PBOs and the applicable forms for registration of a PBO. • the requirement to register NGOs afresh as it presents the possibility that an application by an existing NGO could be refused. • how the automatic transfer of employees, assets, liabilities and related matters from the existing NGO to the new PBO will be effected as the PBO Act does not have transitional provisions in this regard.
	<p>Compliance Requirements by the NGO Board</p> <p>The NGO Board presently imposes a requirement for an NGO to appoint Kenyan nationals to their board and as members.</p> <p>This requirement is not prescribed in law, but an NGO will be pressed to comply with these unofficial requirements if it is to be incorporated and to remain in compliance after incorporation.</p>
	<p>Transfer of assets by NGO</p> <p>The NGO Act does not envision the transfer of assets by an NGO other than in the case of the dissolution of an NGO.</p> <p>The mechanisms for dissolution of an NGO are typically set out in the constitution of the NGO.</p> <p>The prototype constitution prepared by the NGO Board typically provides that the assets of an NGO, upon satisfaction of all debts and liabilities, should not be paid to or distributed among the members of the NGO but given or transferred to another non-profit making institution or some other institution that has similar objects to the objects of the dissolved NGO and whose constituent documents prohibit the distribution of its income and property amongst its members.</p>

NGO Registration





REUTERS/ Noor Khamis

3. Public Benefit Organisations

Key Features of PBOs

GENERAL	
Separate legal personality	✓
TAXATION	
Income tax exemption	✓
VAT exemption	✗
MANAGEMENT	
Establishment of management board	✓
Kenyan representation on management board	✓
Payment of remuneration to members of management board	✗
COMPLIANCE	
Conducting annual general meetings	✓
Requirement for a physical office in Kenya	✓
Filing annual returns/reports	✓
Filing of annual financial statements	✓
Maintaining books of accounts	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR	
Making changes to the board of the organisation	✓
Making changes to the constitutional documents of the organisation	✓
Employing foreign nationals	✓
Opening bank accounts	✗

1. WHAT IS A PBO?

1.1 Defining a public benefits organisation

A Public Benefit Organisation (“PBO”) is a non-profit, autonomous, and non-partisan organization (whether membership-based or not) that engages in activities aimed at benefiting the public. These activities promote areas like economic, social, cultural, or environmental development, environmental protection, or general public interest advocacy.

1.2 Key Features

- a. **Public Benefit Activity:** PBOs engage in activities that support or promote public benefit by enhancing or promoting 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 organisations.
- b. **Non-profit:** PBOs do not exist for financial gain. All generated income is reinvested towards the organization’s public benefit purpose.
- c. **Autonomous:** PBOs are self-governing, making their own decisions independently.
- d. **Non-partisan:** PBOs do not engage in political campaigning or support for specific parties.

1.3 Entities that are not PBOs

There are entities that undertake ‘public benefit activities’ but which are not considered as PBOs under the PBO Act. These entities are as follows:

<ul style="list-style-type: none"> • a trade union • a political party • a society • a Sacco society • a community-based organisation whose objective include the direct benefit of its members 	<ul style="list-style-type: none"> • a public body established by or under any written law • a religious organisation which is primarily devoted to religious teaching or worship • a co-operative society • a micro-finance institution
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1.4 Regulatory Framework

1.4.1 Governing Law

PBOs are governed by the PBO Act which provides for the establishment and operation of PBOs and establishes an administrative and regulatory framework within which PBOs can conduct their affairs.

The PBO Act was enacted by Parliament in December 2012 and assented to by the President on 14 January 2013, with its date of commencement to be determined by a Gazette notice. In this regard, the Cabinet Secretary for Interior and National Administration published a gazette notice stating that the PBO Act took effect from 14 May 2024.

1.4.2 Oversight Authority

PBOs are subject to oversight by the Public Benefits Organisations Regulatory Authority ("**Authority**"), which is responsible for registering and de-registering PBOs in accordance with the PBO Act.

The Authority is to run by a board comprised of:

- a. the chairperson;
- b. three members who have rendered distinguished service in civil society;
- c. the principal secretaries in the respective ministries responsible for PBOs (finance and foreign affairs);
- d. the Attorney-General;
- e. the chairperson and two members of the governing board of the National Federation of Public Benefit Organisations (Federation); and
- f. one public officer representing the principal secretary responsible for such departments as determined by the Authority.

As part of its role, the Authority maintains a register of PBOs, which includes information on the sectors, affiliations, and locations of their activities. It also interprets the national policy on PBOs to assist in its smooth implementation and observance.

The PBO Act provides for the transition of the NGO Board into the Authority. To ensure a smooth transition, the PBO Act dictates the transfer of all the Board's assets, rights, and responsibilities to the Authority. This includes ongoing legal matters, which will continue seamlessly under the Authority's purview. This provision aims to minimize disruptions and guarantee continuity in the organization's operations.

1.5 Legal Status

A PBO is a distinct legal entity separate from its individual members. Key implications of this status include:

- **Capacity to Sue and Be Sued:** A PBO can initiate legal proceedings to protect its interests or defend itself against claims in its own name.
- **Ownership of Property:** A PBO can hold, purchase, sell, or otherwise manage assets under its own name. This includes both movable (e.g., equipment, vehicles) and immovable (e.g., land, buildings) property.
- **Authority to Enter Contracts:** A PBO has the power to form legally binding agreements, such as employment contracts, leases, or service agreements.
- **Agency to Perform Necessary Actions:** A PBO possesses broad authority to undertake any actions deemed essential to fulfil its mission and objectives outlined in the PBO Act.

Other Essential Considerations:

- **Limited Liability:** Under separate legal personality, the liability of PBO members is generally limited to amount prescribed in the constitution of the PBO. This offers members protection from the PBO's debts and obligations.
- **Continuity:** An existence of the PBO is not tied to its members. Changes in membership, such as the death or resignation of individuals, does not dissolve the PBO.

2. ESTABLISHMENT PROCESS, DOCUMENTATION AND COSTS

2.1 Obligation to register as a PBO

For an organisation to enjoy the benefits and privileges of the PBO Act, the organisation needs to register as a PBO with the Authority.

It is important to note that the entities registered under alternative legal frameworks (e.g., NGOs, societies, trusts) that undertake public benefit activities will have to apply for PBO registration. Upon successful PBO registration, their previous registration would become invalid.

Engaging in the activities of a PBO without registering with the Authority is a criminal offense. If convicted, those responsible could face:

- a. **Substantial Fines:** Up to KES 300,000.
- b. **Imprisonment:** A maximum prison term of 2 years.
- c. **Both Fine and Imprisonment:** The court may impose both penalties.

2.2 Registration of Kenyan non-profit entity as a PBO

Step 1: Application Submission

The initial step in the process of registering a Kenyan non-profit entity as PBO involves the submission of an application to the Authority. The application is to be accompanied by the following documents:

- a duplicate of the PBO's constitution or any other document that adheres to the prescribed requirements;
- the names and addresses of the founders of the PBO;
- a clear statement of the public benefit purposes for which the PBO is established and operates, along with a detailed list of the primary activities that the PBO will engage in;
- the postal and physical address of the primary place where the PBO conducts its business;
- the required fee, which is currently pending determination;
- any additional particulars or information that the Authority may request to assess whether the organisation meets the registration criteria outlined in the PBO Act.

In addition, applicants need to ensure that the governing document of a potential PBO should contain (i) PBOs' name, (ii) internal structures and governance protocols and (iii) meeting and decision-making procedures.

The registration of an PBO is subject to the approval/vetting of the officials by the National Intelligence Service. Once the vetting process is completed, the Authority will proceed to either approve or reject the application for registration.

Step 2: Review by the Authority

Upon application receipt, the Authority has a 60-day review period to determine if the PBO fulfils the requirements outlined in the PBO Act.

Step 3 (Outcome 1): Approval

If approved, the Authority issues a registration certificate. This document officially authorizes the PBO's operation within Kenya.

Should the application be denied, the Authority must present reasons in writing and provide a time period (likely 30 days) for the applicant to address concerns. Once concerns are addressed, the Authority has 14 days to register the PBO.

Step 3 (Outcome 2): Refusal of registration

The Authority may refuse to register a PBO where in its opinion:

- a. the application for registration does not comply with the requirements of the PBO Act;
- b. the objectives of the proposed PBO contravenes any written law;
- c. the applicant organisation has committed a serious violation or repeated violation of the PBO Act, other laws or regulations;
- d. the applicant has given false or misleading information; and
- e. the name of the proposed PBO is similar to the name of another institution and is likely to mislead the public as to its true identity.

2.3 Appeal

Where a PBO disagrees with the Authority's decision, it can appeal to the PBO Disputes Tribunal within 30 days. If still unsatisfied, it may appeal to the High Court, which holds the final authority.

2.4 Presumption of Registration

Should this 60-day window for registration expire without a response, the applicant has the right to petition the PBO Disputes Tribunal. The PBO Disputes Tribunal can then order the Authority to either issue a registration certificate or formally communicate a denial with justifiable reasons.

2.5 Registration of international organisation as a PBO

2.5.1 Registration vs. Permit

International organisations, such as international NGOs, planning to work in Kenya must first approach the Authority. Two potential outcomes exist:

PERMIT TO OPERATE	Issued when the organization does not intend to directly manage activities or programs within Kenya or use Kenya as a base for operations elsewhere. These organisations are exempt from formal registration.
REGISTRATION AS AN INTERNATIONAL ORGANIZATION	Required when the organization engages in activities directly within Kenya or uses Kenya as a base for operations in other nations.

A permit will likely be denied, forcing registration, if the international organisation plans to:

- Directly implement Kenyan programs or projects.
- Fundraise within Kenya.

2.5.2 *Registration Process for International Organisations*

Registered international Organisations follow the same application procedures and meet the same requirements as other PBOs under the PBO Act (with regulations likely providing details).

3. ORGANISATIONAL STRUCTURE

The PBO Act does not prescribe the organisation structure of a PBO, with the organisational structure set out under the laws applicable to entities being adopted under the PBO Act.

In addition, there are no regulations issued under the PBO Act and it is likely that any organisation structures that may be imposed on PBOs would be captured in the regulations once issued.

4. ONGOING GOVERNANCE REQUIREMENTS AND OBLIGATIONS

As part of the wider corporate governance requirements, PBOs are required to adhere to certain rules and obligations. While PBOs are mostly self-governing based on their constitutions, the PBO Act outlines some general governance requirements.

Below are the key aspects of ongoing governance and regulatory obligations for PBOs in Kenya:

4.1 Governance

- Kenyan Representation:*** international organisations seeking to be registered in Kenya as PBOs have to have at least one-third of their directors as Kenyan citizens and residents.
- Distinct Governing Body:*** the governing body of a PBO must be distinct and separate from the administrative and day-to-day management body of the organisation.
- Guidelines for Conduct and Operations:*** the governing body of a PBO is required to establish clear guidelines for the conduct and operations of the PBO, ensuring that personal interests of members, staff, and volunteers do not conflict with the organisation's interests or affect their duties.
- Voluntary Service:*** individuals serving on the governing body of a PBO must do so on a voluntary basis and are only eligible for reimbursement of costs and expenses incurred in the service of the organisation.

- e. **Reporting to Regulatory Authority:** every registered PBO must provide the PBO Regulatory Authority with the names and addresses of its governing body members within one month after any appointment or election.
- f. **Kenyan Office:** international organisations seeking to be registered in Kenya as PBOs must have a physical office in Kenya.

4.2 Changes to the PBO

Notification of changes: PBOs are required to notify the Authority of any changes in the particulars submitted during the application process within 60 days of the occurrence.

4.3 Finance and Annual Report

- a. **Fiscal Transparency:** all registered PBOs are required to implement internal accounting procedures to ensure transparent and proper use of financial resources, utilizing them for the attainment of the organisation's aims, objects, and purposes.
- b. **Accounting Standards:** every registered PBO is required to keep proper books of accounts and records conforming to generally accepted accounting practice applicable to non-profit organisations.
- c. **Submission of Reports:** PBOs must submit the following documents to the Authority within 6 months of the end of their financial year:
 - a statement of its audited accounts;
 - a certified copy of its financial statements; and
 - a report dealing generally with the programme of activities of the PBO during that financial year.

5. TAXATION

5.1 Income Tax Exemption

Upon registration, a PBO would enjoy the tax exemptions under the Income Tax Act.

EXEMPTION CRITERIA	An institution (such as an PBO) established for the relief of poverty or distress of the public, or for the advancement of religion or education, or those with regional headquarters in Kenya, may qualify for income tax exemption.
SCOPE OF EXEMPTION	The income of such entities is exempt from tax if the Commissioner of Domestic Taxes is satisfied that the income will be expended either within Kenya or for the benefit of residents in Kenya.
EXEMPTION LIMITATION	<p>Income derived by an PBO is not exempt from tax unless it is applied solely for the purposes of the PBO, and one of the following conditions is met:</p> <ul style="list-style-type: none"> • the business is directly related to the PBO's primary purposes. • beneficiaries of the PBO's purposes primarily conduct the work related to the business. • the income consists of rents from leasing land or chattels, and it is used for the PBO's purposes.
DURATION AND ISSUANCE	<p>A PBO would need to apply for a tax exemption certificate from the Commissioner. Applicants who meet all requirements will receive the exemption within 60 days of application.</p> <p>The exemption certificate is valid for 5 years and can be revoked by the Commissioner for just cause. At the end of the 5-year period, an PBO can apply for a renewal of the certificate.</p>

In addition to these exemptions, a PBO is also entitled to the exemption from income tax with respect to the following forms of income:

- income received from membership subscriptions and any donations or grants;
- income acquired from the active conduct of income-producing activities if the income is wholly used to support the public benefit purposes for which the organisation was established; and
- interest and dividends on investments and gains earned on assets or the sale of assets.

5.2 Tax Treatment of Cash Donations to PBOs

Individuals or businesses donating to an income tax-exempt PBO can deduct those donations when calculating their own taxable income so long as the donations are:

- in cash and shall not be refundable or repayable to the donor under any circumstances;
- not confer any direct or indirect benefit to the donor or any person associated to the donor;
- irrevocable under any circumstances once conferred upon the PBO, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

6. CONVERSION TO OTHER FORM OF NON-PROFIT ENTITY

The PBO Act does not allow a PBO to directly convert into another non-profit structure in Kenya (such as a society, company limited by guarantee, or trust). If one wishes to do this, one must:

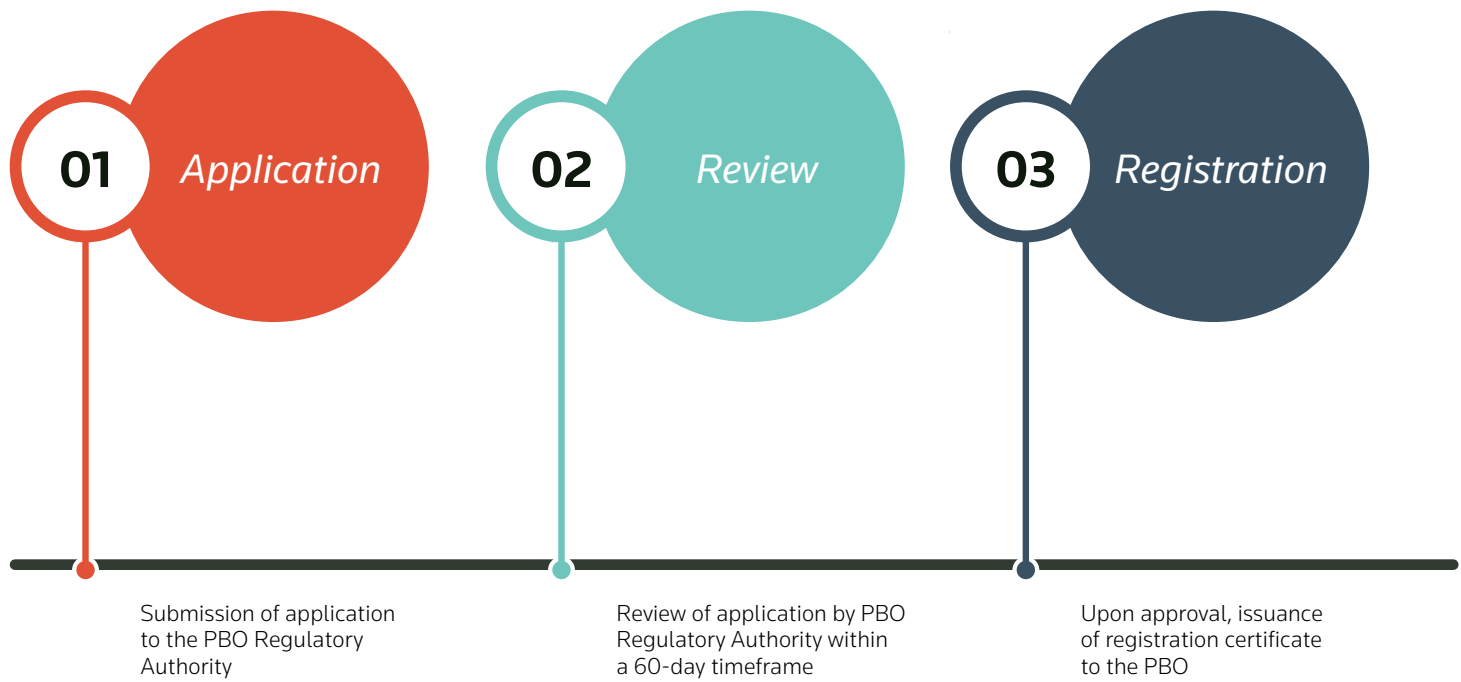
- a. incorporate the desired new non-profit entity;
- b. dissolve the existing PBO;
- c. transfer the PBO's assets to the new entity.

7. ADVANTAGES AND DISADVANTAGES

There exist various advantages and disadvantages associated with the establishment of PBOs. They include:

ADVANTAGES	<p>Separate Legal Personality</p> <p>PBOs will enjoy a separate legal personality from that of its members or its founders. Over and above the direct benefit that the PBO's liabilities may not be transferred to its members, the PBO may act like any other corporate entity.</p> <p>In this regard, PBOs may sue and be sued in legal matters, own, buy, or deal with both movable and immovable property and enter into contracts.</p>
	<p>Tax Incentives</p> <p>PBOs qualify for exemptions on their income as set out in paragraph 5 above.</p>
	<p>Government Incentives</p> <p>The PBO Act sets out a number of incentives that would apply to PBOs upon the implementation of the PBO Act. In this regard, a PBO would be entitled to the following incentives:</p> <ul style="list-style-type: none"> • preferential treatment under value added tax (VAT), and customs duties in relation to imported goods or services that are used to further their public benefit purposes; • incentives for donations by legal and natural persons; • employment tax preferences; • special tax incentives for donations to form endowments, prudent investment policies; • direct government financing for PBOs that partner with the government, via budget subsidies, grants for specific purposes, and contracts to perform certain work; • preferential treatment in public procurement procedures and bidding for contracts; and • access to training courses that are relevant to PBOs and offered by government institutions.
DISADVANTAGES	<p>Clarification on Transition</p> <p>There is a lack of clarity on the transition between the NGO Act and the PBO Act even with the operationalisation of the PBO Act such as (i) clarity on the effects of registration of other forms of non-profit entities as PBOs and the applicable forms for registration of a PBO and (ii) how the automatic transfer of employees, assets, liabilities and related matters from the existing NGO to the new PBO as the PBO Act does not have transitional provisions in this regard.</p> <p>Clarity on these matters would be set out in regulations to the PBO Act. The Cabinet Secretary is required to formulate draft regulations (with input from the Authority) to govern the activities of PBOs. It will be necessary for the draft regulations to be issued to understand how the Authority will address the transition gaps.</p>

PBO Registration





REUTERS/Thomas Mukoya

4. Societies

Key Features of Societies

GENERAL	
Separate legal personality	✗
TAXATION	
Income tax exemption	✓
VAT exemption	✗
MANAGEMENT	
Establishment of management board	✓
Kenyan representation on management board	✗
Payment of remuneration to members of management board	✓
COMPLIANCE	
Conducting annual general meetings	✓
Requirement for a physical office in Kenya	✓
Filing annual returns/reports	✓
Filing of annual financial statements	✓
Maintaining books of accounts	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR	
Making changes to the board of the organisation	✓
Making changes to the constitutional documents of the organisation	✓
Employing foreign nationals	✗
Opening bank accounts	✗

1. WHAT IS A SOCIETY?

1.1 Defining a Society

A society is a club, company, partnership, or association of ten or more individuals, established in Kenya or with its headquarters/chief place of business in Kenya. This also includes any branch of a society, regardless of its nature or purpose.

Societies provide a legal framework for various organisations in Kenya, including private members' clubs, religious groups, welfare associations, professional bodies and sports clubs.

A society from another country may be considered established in Kenya if it has leadership/members residing in Kenya or receives support/funds from within Kenya. However, this would not apply if the society:

- a. operates solely outside Kenya;
- b. lacks a Kenyan office, meeting place, or member records; and
- c. does not solicit subscriptions within Kenya.

1.2 Entities that are not societies

The following entities are not considered as societies under the Societies Act:

<ul style="list-style-type: none"> • a registered company or foreign company; • a company, firm, association or partnership formed and maintained with a view to carrying on business for profit; • a school or similar organisation established under and in accordance with the provisions of any written law relating to education; • any combination or association which the Cabinet Secretary may, by order, declare not to be a society for the purposes of the Societies Act. 	<ul style="list-style-type: none"> • a registered trade union or its branches; • a co-operative society; • a building society; • a bank; • any international organisation of which Kenya is a member, or any branch, section or organ of any such organisation; or
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1.3 Regulatory Framework

1.3.1 Governing Law

Societies are regulated by the Societies Act, Chapter 108⁵ of the Laws of Kenya (“**Societies Act**”) which provides for the registration and control of societies in Kenya.

1.3.2 Oversight Authority

The Registrar of Societies oversees the general regulation of societies and carries out several functions, which include:

- a. registering societies;
- b. confirming registered officials (in the absence of disputes);
- c. handling applications to amend a society’s constitution; and
- d. managing requests to change the name of a society, addressing changes in officers or titles of office.

1.4 Legal Status

Societies are not separate legal entity from its individual members and this has several important implications:

- a. **Limited Liability:** While members generally enjoy limited liability, they could potentially be held personally responsible for the society’s debts or legal actions in certain circumstances.
- b. **Legal Actions:** A society cannot directly sue or be sued in its own name. Legal proceedings would involve individual members or trustees acting on the society’s behalf.
- c. **Property Ownership:** Societies cannot directly own property (movable or immovable).

To address the limitation on property ownership, societies utilize trustees. Trustees are individuals or legal entities who hold and manage assets on behalf of the society’s members. This allows the trustees to effectively own and transact with property while protecting the interests of its members.

2. ESTABLISHMENT PROCESS, DOCUMENTATION AND COSTS

2.1 Obligation to register a Society

Every society in Kenya must apply for registration or exemption from registration with the Registrar of Societies within 28 days of its formation.

2.2 Registration of Society

Step 1: Application

The first step is to make an application to the Registrar to reserve the name of the proposed society. This application is made by way of a letter to the Registrar of Societies and applicants can suggest a maximum of three (3) names.

The Registrar of Societies will refuse to reserve a name that is:

- is identical to an existing society;
- so nearly resembles the name of any other society as to be likely to deceive the public or the members of either society as to its nature or identity;
- is repugnant to or inconsistent with any law or otherwise undesirable.

Once the proposed name is reserved, the next step is to submit an application form to the Registrar of Societies, signed by three (3) officials of the society and accompanied by a KES 5,000 registration fee.

The application form should also be accompanied by two copies of the society's constitution or rules and completed Form B (notification of registered office and postal address), signed by three officers.

The Registrar of Societies may request additional documents to be submitted with the other registration documents, depending on the nature and objects of the society and at their discretion.

The registration of a society is subject to the approval/vetting of the officials by the National Intelligence Service. Once the vetting process is completed, the Registrar will proceed to either approve or reject the application for registration.

Step 2: Approval

If the application approved, the Registrar of Societies issues a certificate as official proof of the society's legal status.

Appeal

Should the application be denied, the society can appeal the decision to the Cabinet Secretary within 30 days of refusal. The Cabinet Secretary must issue a decision within 90 days.

If still dissatisfied, the society can appeal to the High Court within 30 days of the Cabinet Secretary's decision.

2.3 Exemption from Registration of a Society

With the approval of the Attorney General, the Registrar of Societies may exempt a society from the registration requirement. Applications for exemption are made directly to the Registrar.

If an exemption is not granted, the Registrar of Societies automatically treats the application as one for registration and proceeds accordingly.

Exempt societies enjoy less strict supervision from the Registrar of Societies. For example, they may not have the same stringent requirements for filing annual returns, accounts, and other documents as registered societies.

It is important to note that the exemption privilege is not absolute. It can be withdrawn if society engages in activities that are no longer considered honorable, such as internal disputes or other undesirable actions.

Common examples of exempt societies include charitable organisations and their affiliates and certain religious institutions, such as the Catholic Church, its convents, and monasteries.

3. ORGANISATIONAL STRUCTURE

The structure of a society typically includes the following components:

3.1 Office Bearers

A society typically has six (6) office bearers: chairman, vice-chairman, secretary, assistant secretary, treasurer, and assistant treasurer.

All office bearers are elected at the annual general meeting of the society and hold office until the following annual general meeting. To be appointed as an office bearer, one must be a member of a society.

The duties of the office bearers are as follows:

CHAIRMAN	presides over all meetings of the committee and general meetings
VICE-CHAIRMAN	performs the duties of the chairman in his absence
SECRETARY	deals with all correspondence of the society, keeps minutes of meetings, and preserves records
ASSISTANT SECRETARY	assists the secretary and performs other duties assigned by the secretary or committee
TREASURER	receives and disburses funds, issues receipts, and maintains books of account
ASSISTANT TREASURER	assists the treasurer and performs other duties assigned by the treasurer or committee

3.2 Committee

The committee is responsible for managing the society and consists of all office bearers and other members elected at the annual general meeting.

The committee may give directions to the office bearers as to the manner in which, within the law, they shall perform their duties.

3.3 General Meeting

This is a meeting of the members of the society, in which the members are entitled to make decisions in relation to the society. Some of the actions that require the approval of the members in a general meeting include:

- changes to the constitution of the society;
- changes to the office bearers;
- appointment of trustees;
- appointment of an auditor; and
- dissolution of the society.

3.4 Trustees

The trustees are responsible for managing all land, buildings and other immovable property and all investments and securities acquired by the society.

Typically, several members of a society would be appointed at a general meeting to act as trustees. The trustees serve for a specified period of time and would be eligible for re-appointment at the end of the term.

4. ONGOING GOVERNANCE AND REGULATORY OBLIGATIONS

To maintain transparency and accountability in operations, societies are subject to several key governance and regulatory requirements outlined below:

4.1 Notification of Changes

Registered or exempted societies are responsible for notifying the Registrar of the following changes:

- a. **Change of Office or Postal Address:** Societies are required to notify the Registrar of any changes to its registered office or postal address within 14 days of the change.
- b. **Change of Officers or Titles:** Societies are required to notify the Registrar of any changes to its officials or titles of its officials within 14 days of the change.
- c. **Amendments and Affiliations:** Societies seeking changes such as amendments to name, constitution, or rules, becoming a branch or affiliating with political organisations outside Kenya, or dissolution, require prior written consent from the Registrar.
- d. **Exempted Society Changes:** Exempted societies must notify the Registrar within 14 days of any amendments to their name or objects, becoming a branch or affiliating with political organisations outside Kenya, or dissolving itself.

4.2 Maintenance of Records

- a. **Register of Members:** Societies are required to maintain a register of its members, capturing the details of the member such as the full name of the member and date of admission.
- b. **Financial Records:** Societies are required to maintain proper books of accounts and financial records, which must be audited by a registered auditor on an annual basis.

4.3 Returns

Registered societies must annually furnish the Registrar of Societies, on or before the 31st day of March, with prescribed returns, accounts, and other documents.

5. TAXATION

Upon registration, a society would enjoy tax exemptions under the Income Tax Act and Value Added Tax.

5.1 Income Tax Act

EXEMPTION CRITERIA	A body of persons (such as a society) established for the relief of poverty or distress of the public, or for the advancement of religion or education, or those with regional headquarters in Kenya, may qualify for income tax exemption.
SCOPE OF EXEMPTION	The income of such entities is exempt from tax if the Commissioner of Domestic Taxes is satisfied that the income will be expended either within Kenya or for the benefit of residents in Kenya.
EXEMPTION LIMITATION	Income derived by a society is not exempt from tax unless it is applied solely for the purposes of the society, and one of the following conditions is met: <ul style="list-style-type: none"> • the business is directly related to the society's primary purposes. • beneficiaries of the society's purposes primarily conduct the work related to the business. • the income consists of rents from leasing land or chattels, and it is used for the society's purposes.
DURATION AND ISSUANCE	A society would need to apply for a tax exemption certificate from the Commissioner. Applicants who meet all requirements will receive the exemption within 60 days of application. The exemption certificate is valid for 5 years and can be revoked by the Commissioner for just cause. At the end of the 5 year period, the society can apply for a renewal of the certificate.

5.2 Value Added Tax Act

EXEMPTION CRITERIA	Charitable organisations registered as societies, and whose income is tax-exempt under Paragraph 10 of the Income Tax Act, may provide social welfare services that are exempt from VAT.
EXEMPTION LIMITATION	Exemption does not apply when these services are provided as part of a business operation. Exemption is granted for a specific transaction/supply upon application to the Cabinet Secretary for National Treasury through the Registrar.

5.3 Tax Treatment of Cash Donations to Societies

Individuals or businesses donating to an income tax-exempt society can deduct those donations when calculating their own taxable income so long as the donations are:

- in cash and shall not be refundable or repayable to the donor under any circumstances;
- not confer any direct or indirect benefit to the donor or any person associated to the donor;
- irrevocable under any circumstances once conferred upon the society, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

6. CONVERSION TO OTHER FORM OF NON-PROFIT ENTITY

Currently, it is not possible to directly convert a society into another non-profit structure in Kenya (such as a NGO, company limited by guarantee, or trust). If one wishes to do this, one must:

- a. incorporate the desired new non-profit entity;
- b. dissolve the existing society;
- c. transfer the society's assets to the new entity.

The PBO Act allows entities that engage in public benefit activities to register as PBO. As such, a society can apply to be registered as a PBO society would supersede its registration under the Societies Act. It is unclear whether the society will only be required to meet compliance obligations of the PBO Act or if it will be required to meet obligations under both the PBO Act and the Societies Act.

7. ADVANTAGES AND DISADVANTAGES OF SOCIETIES

ADVANTAGES	<p>Simple Registration Process</p> <p>The registration process of a society does not involve a significant amount of documentation and thus the preparation and finalisation of an application can be undertaken fairly quickly.</p>
	<p>Tax exemptions</p> <p>Societies are amenable to exemptions on income tax and VAT as set out in paragraph 5 and would need to apply for the exemptions from the Commissioner.</p>
DISADVANTAGES	<p>Lack of Separate Legal Personality</p> <p>Societies lack separate legal entity from the individuals that make up the entity. In this regard, the liabilities of the society are not separate from the liabilities of the individuals. In addition, it cannot sue and be sued in legal matters, own, buy, or deal with both movable and immovable property and enter into contracts.</p>
	<p>Registration timelines</p> <p>It may take a relatively long period to register as the mandatory vetting by the National Intelligence Service can take up to 6 months.</p>

Societies





REUTERS/ Noor Khamis

5. Companies Limited By Guarantee

Key Features of CLGs

GENERAL	
Separate legal personality	✓
TAXATION	
Income tax exemption	✓
VAT exemption	✗
MANAGEMENT	
Establishment of management board	✓
Kenyan representation on management board	✗
Payment of remuneration to members of management board	✓
COMPLIANCE	
Conducting annual general meetings	✓
Requirement for a physical office in Kenya	✓
Filing annual returns/reports	✓
Filing of annual financial statements	✓
Maintaining books of accounts	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR	
Making changes to the board of the organisation	✓
Making changes to the constitutional documents of the organisation	✓
Employing foreign nationals	✗
Opening bank accounts	✗

1. WHAT IS A COMPANY LIMITED BY GUARANTEE?

1.1 Defining a Company Limited by Guarantee

A company limited by guarantee (“CLG”) is a type of company structure where the liability of its members is limited to a fixed amount they agree to contribute if the company becomes insolvent (unable to pay debts) or is wound up (closed down).

1.2 Key Characteristics

- a. **Members as guarantors:** Instead of shareholders in a company limited by shares, CLGs have members who act as guarantors. The guarantee is a predetermined amount, that members pledge to pay in the event of the company’s insolvency.
- b. **Non-profit focus:** The income and property of the company howsoever derived is to be applied solely towards the promotion of the objects of the company. No portion is to be paid or transferred directly or indirectly by way of dividend, gift, bonus or otherwise by way of profit to the members of the company. This restriction is provided for within the company’s articles of association.

1.3 Regulatory Framework

1.3.1 Governing Law

The main legislation governing CLGs in Kenya is the Companies Act No. 17 of 2015⁶ (the “Companies Act”). The Companies Act spells out the rules governing the registration and operation of the various types of companies, including CLGs.

1.3.2 Oversight Authority

CLGs are subject to the Registrar of Companies (“the Registrar”) who oversees their registration and is the custodian of all the records filed in their respect.

1.4 Legal Status

A CLG is a distinct legal entity separate from its individual members. Key implications of this status include:

- a. **Capacity to Sue and Be Sued:** A CLG can initiate legal proceedings to protect its interests or defend itself against claims in its own name.

6 [Companies Act - Kenya Law](#)

- b. **Ownership of Property:** A CLG can hold, purchase, sell, or otherwise manage assets under its own name. This includes both movable (e.g., equipment, vehicles) and immovable (e.g., land, buildings) property.
- c. **Authority to Enter Contracts:** A CLG has the power to form legally binding agreements, such as employment contracts, leases, or service agreements.
- d. **Agency to Perform Necessary Actions:** A CLG possesses broad authority to undertake any actions deemed essential to fulfil its mission and objectives outlined in the PBO Act.

Other Essential Considerations:

- a. **Limited Liability:** Under separate legal personality, the liability of the members is generally limited to amount prescribed in memorandum of association of the CLG. This offers members protection from the CLG's debts and obligations.
- b. **Continuity:** An existence of the CLG is not tied to its members. Changes in membership, such as the death or resignation of individuals, does not dissolve the CLG.

2. ESTABLISHMENT PROCESS, DOCUMENTATION AND COSTS

2.1 Registration

The CLG incorporation process in Kenya has been digitalized and is a one step process which is carried out online via the e-Citizen portal (the “**Platform**”).

An applicant seeking to incorporate a CLG in Kenya is required to provide and complete all the requested information and documentation prior to submission of the application on the Platform, including its proposed name. It is important to note that a proposed company name will not be accepted for registration if:

- a. it is the same as the name appearing in the Registrar's Index of company names, business names, limited liability partnerships or partnerships;
- b. it is similar to an already reserved name by the Registrar for a proposed company;
- c. its use involves the commission of a criminal offence; and
- d. it is offensive or undesirable or contrary to public interest in the opinion of the Registrar.

Once all the information on the Platform has been completed and submitted, the Platform autogenerates statutory forms.

In addition, every CLG in Kenya is required to have the following:

- a. **Memorandum of association:** a document that sets out the objectives of the CLG. The memorandum of association should be in the prescribed form (Form CR2). It should state the names of the subscriber(s) and their intention to form a CLG.
- b. **Articles of association:** this is the CLG's charter. The members of the CLG are free to determine their own articles but may also elect to adopt standard model articles as set out in the Companies Act (General Regulations) 2015.

The applicants' representatives, directors and members will be required to sign the statutory forms and upload them onto the Platform by paying the requisite company registration fees being KES 10,500.

Once the documents have been uploaded onto the Platform and the registration fees paid, the Registrar confirms that the applicant has correctly completed and signed all incorporation forms. If the applicant has not correctly completed or signed the incorporation forms, the Registrar sends a notification via the Platform to the applicant to have the errors rectified.

Where the applicant has correctly completed and signed the incorporation forms, the application proceeds to the approval stage which is the final stage. Once the Registrar approves the application, a certificate of registration and an initial official search confirming the details of the CLG, and its officers is issued concluding the company registration process.

When it comes to the duration of incorporation, the incorporation of a CLG is subject to the approval/ vetting of the members/guarantors by the NIS. As such, the registration process takes about 6 - 12 months.

3. ORGANISATION STRUCTURE

The structure of a CLG typically includes the following components:

3.1 Board of Directors

The board of directors is an appointed group for the day-to-day management and strategic direction of the CLG. Their duties and powers are usually outlined in the Companies Act and the CLG's articles of association.

Some of their key duties include acting within their powers, promoting the success of the company, exercising independent judgment, reasonable care, skill and diligence and avoiding conflicts of interest.

Directors are typically involved in:

- decision-making: making management decisions aligned with the CLG's mission and objectives; and
- oversight and strategy: supervising operations, managing resources, and developing long-term plans.

3.2 General Meeting

This is a meeting of the members of the CLG, in which the members are entitled to make decisions in relation to the CLG. Some of the actions that require the approval of the members in a general meeting include:

- changes to the articles of association of the CLG;
- changes to the directors; and
- dissolution of the CLG.

4. ONGOING GOVERNANCE AND REGULATORY OBLIGATIONS

CLGs carrying out operations in Kenya are required to comply with a range of governance and regulatory obligations. This not only maintains compliance, transparency, and accountability, but also ensures that CLGs maintain their legal status and continue with their operations in Kenya. The main aspects of ongoing governance and regulatory obligations for CLGs in Kenya are as follows:

4.1 Governance

- Board of Directors:** CLGs are governed by a Board of Directors whose duties and powers are prescribed by the articles of association and the Companies Act.
- Annual General Meetings:** Every company is required to convene a general meeting once a year.
- Statutory registers:** CLGs are obligated to keep statutory registers outlined as follows:
 - *Register of members:* Every company is required to keep a register of members which includes information relating to the company's beneficial owners if any.
 - *Register of beneficial owners:* Companies are also required to prepare and lodge with the Registrar a register of beneficial owners within 30 days of such preparation.

- *Register of directors:* Every company is required to keep a register of directors' residential addresses that contain the usual residential address of each of the company's directors.
 - *Register of secretaries:* Companies are further required to keep a register of their secretaries.
- d. **Accounting records:** CLGs are required to keep proper accounting records, showing and explaining transactions.
- e. **Financial statements:** Directors of every CLG are required to prepare or cause to be prepared financial statements for the CLG for each financial year of the company.
- f. **Director's reports:** Directors are also required to prepare a director's report for each financial year of the CLG.

4.2 Changes

Companies are required to notify the Registrar of each of the following changes on the company:

- a. **Amendment of the articles of association:** a CLG is supposed to lodge with the Registrar a copy of the articles as amended not later than 14 days after the resolution containing the amendment is passed;
- b. **Change of name:** Within 14 days after a change of name has been agreed to by a CLG, a CLG is required to lodge for registration a notice of the change, together with a copy of the resolution/ a statement that the change has been made in accordance with the article of association;
- c. **Amendment of the register of members:** A copy of any amendment to the register of members is lodged within 14 days after making the amendment.
- d. **Any changes in directorship:** Any changes including appointments, resignations, or alterations in director information or residential addresses, must be reported to the Registrar of Companies within 14 days of the occurrence, along with the specific date of the change.

4.3 Annual Returns

Companies including CLGs must submit to the Registrar successive annual returns each of which is made up to a date not later than the company's return date. The company's return date is the anniversary of the company's incorporation; or if the company's last return was made up to a different

date – the anniversary of that date.

5. TAX EXEMPTIONS FOR CLGS IN KENYA

5.1 Income Tax Exemption

Upon registration, a CLG would enjoy the tax exemptions under the Income Tax Act.

EXEMPTION CRITERIA	A body of persons (such as a CLG) established for the relief of poverty or distress of the public, or for the advancement of religion or education, or those with regional headquarters in Kenya, may qualify for income tax exemption.
SCOPE OF EXEMPTION	The income of such entities is exempt from tax if the Commissioner of Domestic Taxes is satisfied that the income will be expended either within Kenya or for the benefit of residents in Kenya.
EXEMPTION LIMITATION	<p>Income derived by a CLG is not exempt from tax unless it is applied solely for the purposes of the society, and one of the following conditions is met:</p> <ul style="list-style-type: none"> • the business is directly related to the CLG’s primary purposes. • beneficiaries of the CLG’s purposes primarily conduct the work related to the business. • the income consists of rents from leasing land or chattels, and it is used for the CLG’s purposes.
DURATION AND ISSUANCE	<p>A CLG would need to apply for a tax exemption certificate from the Commissioner. Applicants who meet all requirements will receive the exemption within 60 days of application.</p> <p>The exemption certificate is valid for 5 years and can be revoked by the Commissioner for just cause. At the end of the 5-year period, the society can apply for a renewal of the certificate.</p>

5.2 Tax Treatment of Cash Donations to CLGs

Individuals or businesses donating to an income tax-exempt CLG can deduct those donations when calculating their own taxable income so long as the donations are:

- in cash and shall not be refundable or repayable to the donor under any circumstances;
- not confer any direct or indirect benefit to the donor or any person associated to the donor;

- irrevocable under any circumstances once conferred upon the CLG, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

6. CONVERSION TO OTHER FORM OF NON-PROFIT ENTITY

Currently, it is not possible to directly convert a CLG into another non-profit structure in Kenya (such as a NGO, society, or trust). If one wishes to do this, one must:

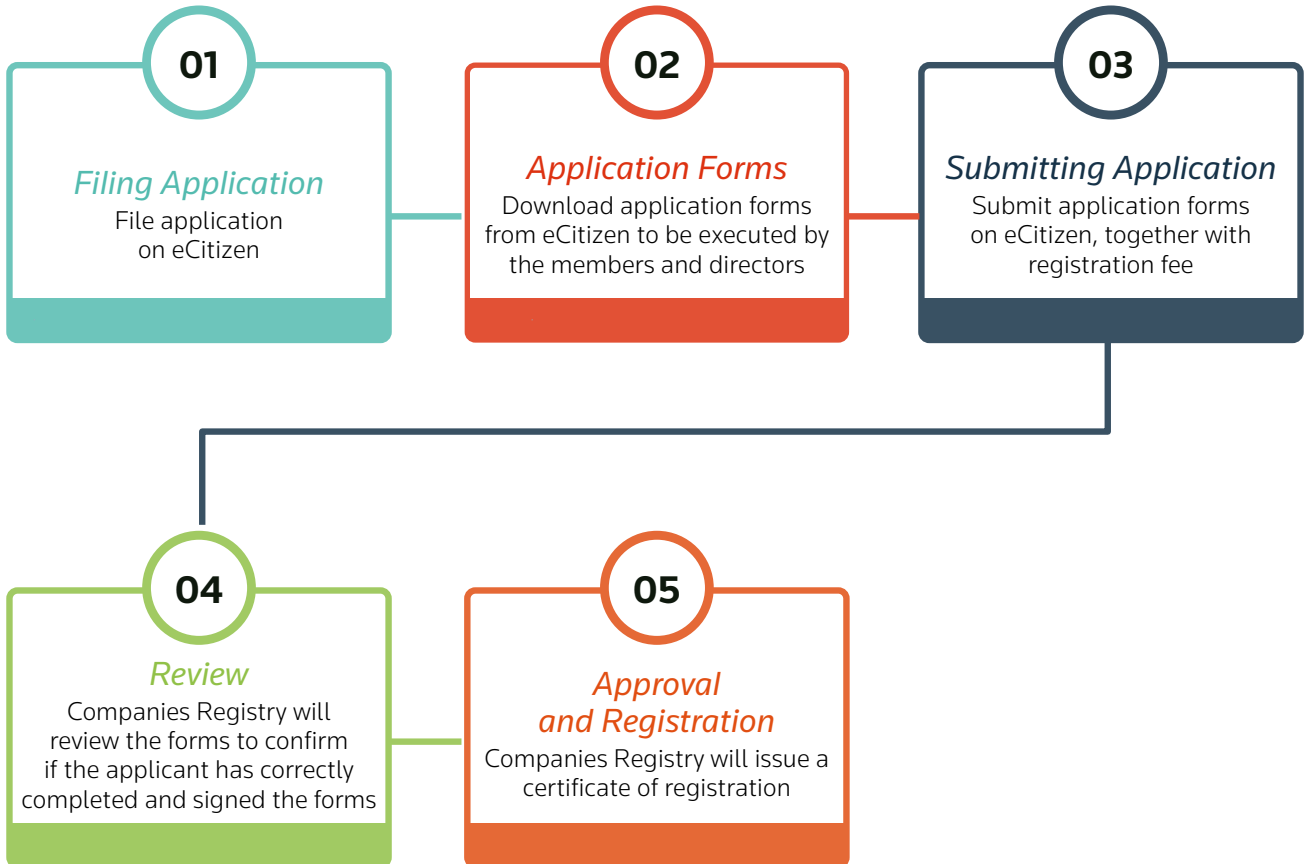
- incorporate the desired new non-profit entity;
- dissolve the existing CLG;
- transfer the CLG's assets to the new entity.

The PBO Act allows entities that engage in public benefit activities to register as PBOs. As such, a CLG can apply to be registered as a PBO which would supersede its registration under the Companies Act. It is unclear whether the CLG will only be required to meet compliance obligations of the PBO Act or if it will be required to meet obligations under both the PBO Act and the Companies Act.

7. ADVANTAGES AND DISADVANTAGES OF COMPANIES LIMITED BY GUARANTEE

ADVANTAGES	<p>Tax exemptions</p> <p>CLGs enjoy tax privileges where the requirements and conditions of paragraph 10 of the first schedule to the Income Tax Act are met. The CLG would need to apply for the tax exemption from the Commissioner.</p>
	<p>Separate legal personality</p> <p>A CLG is a separate legal entity from its members. As a separate legal entity from the founders, it can, among others, transact in its own name.</p>
	<p>Limited Liability</p> <p>Members' liability is limited to the extent of the guarantee provided by them; meaning that they may not be personally held liable for the debts and liabilities of the CLG.</p>
DISADVANTAGES	<p>Registration timelines</p> <p>It may take a relatively long period to register as the mandatory vetting by the National Intelligence Service can take up to 6 months.</p>
	<p>Compliance Obligations</p> <p>Operating as a CLG entails navigating through a plethora of compliance requirements outlined in the Companies Act. These obligations contribute to increased administrative costs associated with the day-to-day functioning of the CLG.</p>

Company Limited by Guarantee Registration





REUTERS-PSCU-Handout via Reuters

6. Trusts

Key Features of Trusts

	UNINCORPORATED TRUST	INCORPORATED TRUST
GENERAL		
Separate legal personality	✗	✓
TAXATION		
Income tax exemption	✓	✓
VAT exemption	✗	✗
MANAGEMENT		
Establishment of management board	✗	✗
Kenyan representation on management board	✗	✗
Payment of remuneration to members of management board	✓	✓
COMPLIANCE		
Conducting annual general meetings	✗	✗
Requirement for a physical office in Kenya	✗	✗
Filing annual returns/reports	✗	✓
Filing of annual financial statements	✗	✗
Maintaining books of accounts	✗	✓
REQUIREMENT FOR NOTIFICATION OF ACTIONS TO REGULATOR		
Making changes to the board of the organisation	✗	✓
Making changes to the constitutional documents of the organisation	✗	✓
Employing foreign nationals	✗	✗
Opening bank accounts	✗	✗

1. WHAT IS A TRUST?

1.1 Defining a trust

A trust is a legal arrangement established by an individual, known as the “settlor”, either during their lifetime or upon their death. The settlor transfers his/her/its assets under the control of another individual or entity, referred to as the “trustee”. The trustee is then obligated to hold and manage these assets for the benefit of a third party, the “beneficiary”, or for a specific purpose.

For ease of reference:

- i. the **settlor** is the individual or entity that initiates the trust by settling or transferring property to the trustees. This role can be fulfilled by any entity with a distinct legal identity, including companies and non-profit organisations.
- ii. the **trustee** is appointed to hold and manage the trust’s property on behalf of the beneficiaries. While the trustees are considered the legal owners of the trust property in relation to third parties, they are obligated to manage the property for the benefit of the beneficiaries.
- iii. the **beneficiary** is a legal person designated to benefit from the trust property and any income it generates.

1.2 Key Characteristic

Ownership of assets: Once assets are transferred to the trust, they cease to be the property of the settlor and become the property of the trust itself. The trustee holds the property subject to personal obligations to manage and apply it in accordance with the terms of the trust deed for the benefit of the beneficiaries or in the manner prescribed.

1.3 Types of Trusts

Trusts in Kenya typically take one of two forms: an unincorporated trust and an incorporated trust. The key distinction between these two types of trust, is the element of separate legal personality.

An **incorporated trust** is a trust in which the trustees have applied, for a certificate of incorporation of the trustees as a corporate body, whereas an unincorporated trust is a simple trust, created out of the provisions of the trust deed.

An **unincorporated trust** cannot own property, enter into contracts or do any other thing in its own name and can only do so in the name of the trustees. As such, all the trustees shall be individually liable for the activities of the trust.

1.4 Regulatory Framework

Trusts in Kenya are created under the Trustees Act, Chapter 167⁷ of the Laws of Kenya (“**Trustees Act**”) and the Trustees (Perpetual Succession) Act, Chapter 164 of the Laws of Kenya (“**Perpetual Succession Act**”). The institutional framework for the registration of trusts in Kenya is by application to the Principal Registrar who is an appointee of the Cabinet Secretary.

The Perpetual Succession Act provides for different types of trusts recognised in Kenya and they include:

a. *Charitable Trusts:*

These are trusts formed for the exclusive purpose of the relief of poverty, the advancement of education, religion or human rights and fundamental freedoms, or the protection of the environment or any other purpose beneficial to the general public. A trust is considered to be charitable if it meets the following criteria:

- the charitable objects may be pursued in Kenya or elsewhere;
- the objects are beneficial to the general public or a section of the public;
- the trust is discretionary (i.e., a trust where the beneficiaries or the benefits of the trust become ascertainable once the trust deed sets-out the criteria or at the discretion of the trustees); and
- the trustee has power to defer distribution of the assets of the trust to any charity or other beneficiary of the trust for a period not exceeding the duration of the trust.

b. *Non-charitable Purpose Trust:*

This is a trust that has no beneficiaries but instead exists for advancing some non-charitable purpose. Examples of such trusts include trusts in favour of non-human beneficiaries e.g., trusts for taking care of certain specific animals and trusts for the maintenance of monuments and tombs.

c. *Family Trusts:*

Individuals establish family trusts, either alone or jointly with others, to plan and manage their estate. The primary objective of a family trust is to create or preserve wealth for future generations, rather than operating as a trading entity.

2. ESTABLISHMENT PROCESS, DOCUMENTATION AND COSTS

2.1 Registration

2.1.1 *Preparation of the trust deed:*

A trust is established by way of a trust deed. The trust deed, amongst other things, contains (i) the name of the trust; (ii) the founding trustees; (iii) the nature of the trust; (iv) the objectives of the trust; and (v) the powers of the trustees. Besides the trust deed, the trust will require by-laws which would set out the manner in which the trustees would relate and operate the trust.

The deed must be signed by all the trustees. An odd number of trustees is preferable for purposes of decision-making. There is no prescribed minimum or maximum number of trustees required and a corporation can also be a trustee. In addition, the trustees do not have to be Kenyan citizens.

2.1.2 *Payment of Stamp duty:*

The trust deed once duly signed by trustees is then submitted to the Collector of Stamp Duty for stamp duty assessment.

Once the duty is assessed, the applicants would need to make payment of the stamp duty and thereafter the Collector of Stamp Duty will place an official mark on the trust deed to indicate that the stamp duty has been paid.

2.1.3 *Registration under the Registration of Documents Act (“RDA”):*

The stamped trust deed is submitted for registration at the Lands Registry, under the RDA. Upon registration of the trust deed, the trust can begin its operations as a simple, unincorporated trust.

This initial process does not require any statutory or government approvals and can be completed in a short time depending on the time it takes to agree on the trust deed. In addition, there are no additional compliance requirements that would need to be fulfilled after registration of the trust deed, such as filing of returns.

As it is an unincorporated trust, the trust can only own property, enter into contracts or do any other thing in the name of its trustees but not in its own name. Any action in relation to the fund will have to be taken in the name of the individual trustees and further, all the trustees will be individually liable for the activities of the trust.

2.1.4 *Registration under the Perpetual Succession Act:*

Applications for incorporation of the trust are made to the Principal Registrar by the person or body of persons who have lawfully constituted themselves for the purpose of forming a trust.

Within 60 days of receipt of an application for incorporation of a trust, the Principal Registrar may grant the request by issuing a certificate or reject the application. If an application is refused, the Principal Registrar shall give written notice to the applicant and the notice shall state the reason for rejecting the application.

Notably, an application shall be in writing, signed by the applicant, and should contain the following particulars as may be relevant:

- The objects and trust deed together with the date and parties to every deed, will or other instrument creating or regulating it;
- A statement and short description of the property which is held or intended to be held by the trustees;
- A statement as to whether the trust is a society registered under the Societies Act, or a company incorporated under the Companies Act, alongside the certificate of registration, exemption or incorporation as may be applicable;
- The names and addresses of the trustees;
- The proposed title of the trust;
- The proposed device of the common seal; and
- The regulations for the custody and use of the common seal.

Incorporation of a trust confers on the trust legal personality distinct from that of the trustees and consequently, a trust has perpetual succession, a common seal, enjoys the power to sue and be sued in their corporate name, to enter into contracts and own, buy or deal in both movable and immovable property.

3. POWERS OF A TRUSTEE

The Trustees Act sets out specific powers for trustees as they undertake their obligations. These powers include:

POWER OF SALE	Trustees may sell all or part of the trust property by public auction or private sale. They can set conditions, change sale contracts, repurchase items at auction, or cancel contracts without incurring liability for losses associated with these actions.
RECEIPTS AND COMPOUNDING LIABILITIES	Trustees have the authority to issue written receipts for money, securities, or movable property they receive as part of the trust. This releases payers from further liability. Trustees (or their representatives) may also settle liabilities, accept property, settle debts, or make agreements. They must exercise good faith judgment and won't be held liable for subsequent losses.
RAISING MONEY AND PROTECTION FOR PURCHASERS	If authorized, trustees can raise money by selling, mortgaging, or converting trust property. Purchasers or mortgagees acting within the established trust are not required to investigate the purpose of the transaction or how much money is raised.
POWER TO INSURE AND APPLICATION OF INSURANCE MONEY	Trustees may protect trust property against loss or damage by purchasing insurance. They can pay premiums out of the trust income. Any insurance proceeds are considered capital within the trust and can be applied to repairing, rebuilding, or reinstating property if specific conditions are met.
DEPOSIT OF DOCUMENTS FOR SAFE CUSTODY	Trustees may store trust documents at a bank or with a designated safe-keeping institution. The associated costs for this service can be covered by the trust's income.
REVERSIONARY INTERESTS, VALUATIONS, AND AUDIT	Trustees may reach agreements about or assign a value to trust property. They can accept eligible investments, request audits or property valuations conducted by qualified agents, and are not personally liable for losses unless there is proof of bad faith.
POWER TO DELEGATE	Trustees may appoint agents to carry out specific trust-related tasks, including financial transactions. Trustees will not be held liable for the actions of these agents as long as the selection of the agent was made in good faith.

4. ONGOING GOVERNANCE REQUIREMENTS AND OBLIGATIONS FOR TRUSTS

Trustees have certain ongoing obligations and governance requirements to be adhered to under the Perpetual Succession Act. In addition, trustees have reporting obligations under the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009. These obligations are as follows:

4.1 Compliance

TRUSTEES	<p>For registration to be approved, trusts are required to have trustees who have been effectually appointed or constituted to the satisfaction of the Principal Registrar.</p> <p>The appointment of every new trustee shall be certified by, or by the direction of, the trustees to the Principal Registrar upon the completion of the appointment.</p>
RETURNS	<p>Trustees are obligated to submit a return to the Principal Registrar within one month following the conclusion of each one-year period subsequent to the issuance of the certificate of incorporation.</p> <p>This return should include the names and addresses of the trustees as of the conclusion of each aforementioned one-year period.</p>

4.2 Anti-Money Laundering

Trustees are required to:

- a. monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions, whether completed or not, and shall pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose; and
- b. upon suspicion that any transaction or activity could constitute or be related to money laundering, terrorism financing, proliferation financing or to the proceeds of crime, report the suspicious or unusual transaction or activity to the Financial Reporting Centre in the specified manner within 2 days after the suspicion arose.

5. TAX TREATMENT OF TRUSTS

5.1 Income Tax Exemption

Upon incorporation, an incorporated trust would enjoy the tax exemptions under the Income Tax Act.

EXEMPTION CRITERIA	An irrevocable trust established for the relief of poverty or distress of the public, or for the advancement of religion or education, or those with regional headquarters in Kenya, may qualify for income tax exemption.
SCOPE OF EXEMPTION	The income of such entities is exempt from tax if the Commissioner of Domestic Taxes is satisfied that the income will be expended either within Kenya or for the benefit of residents in Kenya.
EXEMPTION LIMITATION	<p>Income derived by a trust is not exempt from tax unless it is applied solely for the purposes of the society, and one of the following conditions is met:</p> <ul style="list-style-type: none"> • the business is directly related to the trust's primary purposes. • beneficiaries of the trust's purposes primarily conduct the work related to the business. • the income consists of rents from leasing land or chattels, and it is used for the trust's purposes.
DURATION AND ISSUANCE	<p>A trust would need to apply for a tax exemption certificate from the Commissioner. Applicants who meet all requirements will receive the exemption within 60 days of application.</p> <p>The exemption certificate is valid for 5 years and can be revoked by the Commissioner for just cause. At the end of the 5-year period, the society can apply for a renewal of the certificate.</p>

5.2 Tax Treatment of Cash Donations to CLGs

Individuals or businesses donating to an income tax-exempt CLG can deduct those donations when calculating their own taxable income so long as the donations are:

- in **cash** and shall not be refundable or repayable to the donor under any circumstances;
- not confer any direct or indirect benefit to the donor or any person associated to the donor;
- irrevocable under any circumstances once conferred upon the CLG, unless there is approval by the Commissioner in which case the tax arising shall be due and payable

6. CONVERSION TO OTHER FORM OF NON-PROFIT ENTITY

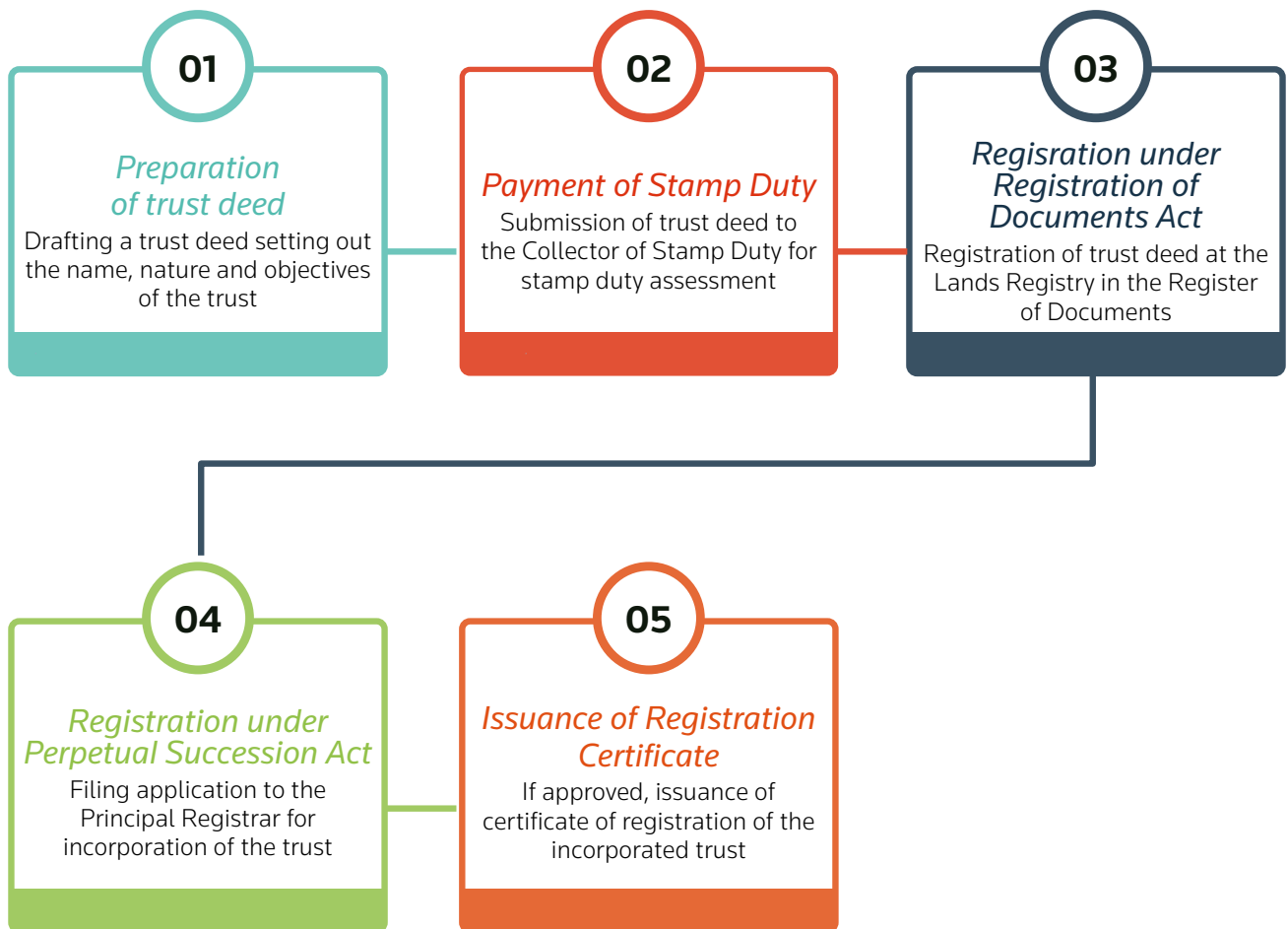
Currently, it is not possible to directly convert a trust into another non-profit structure in Kenya. If one wishes to do this, one must:

- a. incorporate the desired new non-profit entity;
- b. dissolve the existing trust;
- c. transfer the assets to the new entity.

7. ADVANTAGES AND DISADVANTAGES

ADVANTAGES	<p>Tax Exemption</p> <p>Incorporated trusts qualify for exemptions on their income. Like all the other non-profit entities, trusts are required to make applications for tax exemptions to the Commissioner.</p>
	<p>Separate Legal Personality</p> <p>Incorporated trusts enjoy separate legal personality from their settlors and their trustees. In this regard, an incorporated trust has the power to sue and be sued in their corporate name, to enter into contracts and own, buy or deal in both movable and immovable property.</p>
	<p>Timeline for Registration</p> <p>The timeline for registration of an incorporated trust as set out in the Perpetual Succession Act is fairly short (i.e., 60 days) and may facilitate a quicker initiation of trust activities. This is a recent amendment, and it remains to be seen whether the Principal Registrar will adhere to this timeline.</p>
DISADVANTAGES	<p>Freeze on Registration</p> <p>In the recent past, there has been an unwritten moratorium on the registration of incorporated trusts by the Principal Registrar and this has resulted in a freeze of applications for new trusts. This has created uncertainty in the use of incorporated trusts for both profit and non-profit purposes.</p>
	<p>Set Up Costs</p> <p>A trust deed is a fairly complicated document, and it may be necessary to seek advice from various professionals such as lawyers, accountants and tax planners on the suitable structure of the trusts. As such, the costs for set up of a trust are likely to be fairly high.</p>
	<p>Operation and Maintenance Costs</p> <p>The operational and maintenance costs of a trust are typically borne by the trust itself. Given that many trustees offer professional services, their fees for fulfilling their obligations may be substantial. These ongoing costs contribute to the overall financial considerations of maintaining the trust structure.</p>

Trust Registration





REUTERS/ Thomas Mukoya