



**PUBLIC BENEFIT ORGANIZATIONS  
REGULATORY AUTHORITY**

# **PUBLIC BENEFIT ORGANIZATIONS ACT, 2013**

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**ABRIDGED VERSION**

**MAY, 2025**

## INTRODUCTION

On 14th January 2013, Kenya's President signed a new law into existence: The Public Benefit Organizations Act, 2013. This law aims to support the setting up, running and growth of Public Benefit Organizations (PBOs) in Kenya.

### **Defining Public Benefit Organizations and Public Benefit Activity**

The PBO Act introduces a number of words and phrases that require interpretation, since they are unique to the law and frequently repeated in its text. These words include among others Public Benefit Activity and Public Benefit Organization.

The under section 5, the words "Public Benefit Organization (PBO)" is defined in as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is organized and operated locally, nationally or internationally to engage in Public Benefit Activities and is registered as such by the Public Benefit Organizations Regulatory Authority formerly the NGOs Coordination Board.

### **The definition outlines several key elements that make a PBO. A PBO must be:**

**Voluntary:** Participation in or contribution to the PBO's activities or affairs is on a willing, non-compulsory, unpaid basis and without any duress

**Autonomous:** PBOs should and are free to come up with their own terms of operation and interaction, therefore, they are able to control their own activities and to come up with and apply their own procedures. They are not and cannot controlled by external entities.

**Non-partisan:** PBOs are independent from political groups; this means that the PBOs will be expected to be neutral in any and all political interference and be independent from political parties and groupings.

**Not for profit making or distributing:** PBOs are not expected to do business and thus do not exist to make profits for their founders or members and any profits must be reinvested back into the PBO for the realization of its mission;

**Organized to support or promote public benefit activities:** PBOs are set up to perform publicly services, this service from their missions should be for the benefit of the community or acts should advance theypublic interest. Registered by the Public Benefit Organizations Regulatory Authority.

The definition also clearly states what entities cannot be a PBO, for example, a trade union and a political party and limited liability companies or chamaas.

According to section 2(1), a Public Benefit Activity means "any lawful activity that supports or promotes public benefit by enhancing or promoting the legitimate 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 group of individuals or organizations."

The Sixth Schedule of the Act provides a list of public benefit activities. The list is not exclusive but when read together with the definition in the section 2(1), its provides a useful guide to PBOs and the PBO Authority on what constitutes a public benefit activity.

**Authority:** The Act gives formal recognition to entities that are registered by the Authority, which is an institution that is set up under section 34 to register and regulate PBOs. This institution, commonly referred to as Public Benefit Organizations Regulatory Authority, is what was previously known as NGOs Coordination Board under the repealed NGOs Act.

## **OBJECTIVES OF THE PBO ACT, 2013**

The Act is primarily meant to support the setting up, running and growth of PBOs, by providing structures, laws and guidelines to help PBOs carry on with their affairs.

The key aims and purposes of the PBO Act are to:

- 1. Facilitate the organization of public benefit organizations by creating a conducive environment in which PBOs can thrive and carry on their affairs freely without interference.*
- 2. Set up institutions and give clear procedures and bodies that support the autonomy and independence of PBO such as registration of PBOs, disputes resolution, capacity building, training opportunities, , and provision of information on PBOs.*
- 3. Encourage PBOs to set up effective self-regulation mechanisms enhancing cohesion while keeping and improving high standards of good governance within their individual organizations.*
- 4. To facilitate to access information on registered PBOs by the public and stakeholders. The Act being future focused and keeping up with technological advancement, the Act provides that the Registration body (the PBO Regulatory Authority) should use technology (e.g. its website) to access any and all services that is as one of the platforms for enabling the public to access the register of PBOs.*
- 5. Promote beneficial, ethical and inclusive partnerships between PBOs and its stakeholders actors in development including the government and donors.*
- 6. Assist and facilitate the PBOs comply with their legal obligations.*
- 7. Ensure that the freedoms of association, of expression and peaceful assembly are fully protected.*

## **GOVERNMENT OBLIGATIONS**

The preamble of the PBO Act recognizes the important role that public benefit organizations play. It also emphasizes the complementary role that PBOs, the private and public sectors play in meeting Kenya's development goals and fostering unity as well as achieving the goals on article 10 of the our constitution. The Preamble creates an obligation for the Government has a duty to create, respect and promote a favorable or enabling environment for PBOs to operate as envision in section 4. It does this through various ways, which are captured in the PBO Act:

### **1. Providing Laws and Regulations that Support the Growth and Operation of the PBO Sector**

In providing a favorable environment for PBOs, the government will set up institutions (the PBO Regulatory Authority and the PBO Disputes Tribunal). And to aide the above bodies in reaching their goals a regulatory framework (the PBO Act and its regulations) that will enable PBOs to conduct their work (Section 3(a) (ii)). The institutions and rules provide the operational and regulatory support that PBOs need to register and carry out their operations.

In line with its obligation to provide an enabling environment, the government will also provide "mechanisms to support PBOs, such as funding of PBOs activities" (Section 3(g)).

In order to enhance their contribution (Section 6(1)), the Government is to avail benefits to PBOs registered under the Act. These benefits include tax incentives, government grants and trainings (Second Schedule). In addition, the Government shall promote and foster a spirit of cooperation and shared responsibility within government and various actors in their dealings with PBOs (Section 3 (a) (v)). The drafters of the Act provided a framework for collaboration to guide Government – PBO partnerships at every level.

**This framework includes:**

Principles for effective collaboration (in Schedule 1). The Government through the PBO-RA has a duty to observe the principles (Section 4(2)).

A structural framework for collaboration: Every Ministry is to select officers who are to act a liaison and point of contact with matters relating to PBOs. The officers will work closely with each other and with the PBO Regulatory Authority (Section. 67).

**2. Respecting the freedoms of expression, association and peaceful assembly of individuals and groups as provided under our Constitution.**

the Government must:

- a) Not interfere with or hinder PBOs from:
  - Expressing themselves freely through advocacy, education and publication (Section 66(1) (2), PBO Act and Article 33, Constitution of Kenya).
  - Forming, joining and participating in PBO groups and PBO forums (section 20, PBO Act and Constitution of Kenya, Article 36).
- b) Protect individuals and groups against human rights abuses.
- c) Create a favorable environment for individuals and PBOs to enjoy the freedoms of expression and peaceful association and assembly.

**3. Consultation in Policy Making**

- The PBOs have the right and duty to participate actively in governmental process PBOs at the national and local levels in policy making processes (Section 67 and Section 66(4)) without any hindrance from the government apparatus.
- The Cabinet Secretary for the Ministry in charge of PBOs has power to make rules to help in carrying out the Act’s provisions (Section 69(1)). However, he or she is to give notice in at least two daily newspapers of national circulation of the Government’s intention to make the Rules and Regulations.  
In addition, the Cabinet Secretary is to give time for interested parties to comment on the draft Regulations and consider the comments before making the Regulations (Section 69(4)).

**Is it illegal to form or join or operate an association for the benefit of the public without registering it as a PBO?**

The freedom of association is a guaranteed constitutional right which gives all Kenyans the right to get together and form associations of any kind, including formal or informal groups, without necessarily registering them.

However, registered organizations receive the benefit of formal recognition as well as being a vessels for channeling and engagement between the individuals and the authority .

The PBO Act does not recognize PBOs that are not registered under it, as PBOs. While associations are encouraged to register, they are not required to do so.

#### **4.Coordinating and Applying Policies in a Supportive manner**

- For the ease service delivery and in the spirit of public participation, Every State organ has a duty to identify and manage the way its policies and other transactions are carried out, so as to promote, support and provide a favorable environment for PBOs (Section 4(1)).

Can a unregistered entity claim the benefits of a registered PBO?

Which protecting the freedom of association?

#### **REGISTRATION OF PBOs**

The PBO Act does not permit an organization that is not registered under the PBO Act to claim that it is a PBO (Section 7(a)).

An organization that is registered under another law has to have that registration cancelled before it can register under the PBO Act (Section 6(2)). In cases where an organization is registered under the PBO Act and another law, it will be considered to be registered under the PBO Act and the other registration shall be of no effect (Section 6(4)).

However, in certain circumstances, the PBO Authority can give an organization that is registered under another law, Public Benefit Status (Section 7(b)). This means that the organization will be “recognized” by the Public Benefit Organizations Regulatory Authority as an organization that provides services for the public’s benefit or that acts in the public interest. The Rules and Regulations of the PBO Act will specify how the Authority will go about giving public benefit status.

For example: entities registered under other regulatory frameworks such as companies limited by guarantee, CBOs, Trusts, Foundations etc. and wish to carry out programs and activities for the public benefit can seek registration with the PBOs Authority under section 7 (b) for the purposes of complying with the PBO Act and enjoying the accompanying benefits.

#### **If a PBO wants to receive the benefits under the PBO Act, should it register as a PBO?**

Yes. The Act provides that any organization wishing to receive benefits that are set aside for PBOs under the Act must register as a PBO (Section 6(1)). It aims to give PBOs that are operated for the benefit of the public, and registered under it, certain privileges, which are not available to other entities operating under different regulatory framework. These incentives will distinguish public benefit organizations from other legal entities and encourage those that carry out activities for the public benefit to register themselves under the PBO Act. PBOs enjoying the incentives will be keen to abide by the law in order to retain the benefits.

PBOs that register under the PBO Act will qualify to enjoy certain benefits. The benefits will be diverse including tax incentives, government grants, preferential treatment in public procurement and training. The benefits will be available specifically to organizations that receive a public benefit status, from the PBO Regulatory Authority.

## What are the requirements for the registration of a PBO?

### Registration Requirements

Section 8 of the PBO Act provides clear criteria for registration of PBOs.

An application for registration requires the following:

- 1. A copy of the founding document or constitution of the PBO;*
- 2. Names and addresses of the founders;*
- 3. The public benefit purposes and the principal activities of the PBO;*
- 4. The main office and the postal address of the PBO;*
- 5. The application fee;*

According to Section 8(4), the founding document or constitution of a PBO must include information such as: -

- a) State the organization's name;*
- b) State the organization's objectives;*
- c) State that participation in the organization is to be voluntary;*
- d) State that the organization's income and property are not to be distributed to its members or governing body, except as a refund for expenses incurred or as reasonable payment for services provided;*
- e) Provide that the PBO is a body corporate, which means it has an identity and existence separate from its members or governing body;*
- f) Ensure that the members or governing body have no rights in the financial resources or other property of the organization just because they are members or the governing body;*
- g) Specify the organizational structures and governing system;*
- h) Set out the rules for calling and running meetings, including quorums required and the minutes to be kept of those meetings;*
- i) Agree on the manner in which decisions are to be made;*
- j) Provide that the organization's financial transactions must be carried out by means of a banking account;*
- k) Set out a procedure for changing the Constitution;*
- l) Set out a procedure by which the organization can cease to exist;*
- m) Provide that when the organization is being shut down, the governing body of the PBO is to identify another public benefit organization with similar objectives as the recipient of any resources, which remain after it meets its financial legal responsibilities.*

When the PBO makes changes to any of the fundamental details required in its constitution, it must alert the Authority within sixty days of the change (section 8(8)).

The law permits the membership of a PBO to include additional clauses that are related to the functions of the PBO (section 8(5)) in the Constitution.

## **What are the Registration Requirements for International PBOs?**

An international non-governmental organization (INGO) wishing to be registered as a PBO is to present the following to the Regulatory Authority:

- 1. A filled in application form;*
- 2. The organization's address in Kenya;*
- 3. A statement in writing specifying the purposes of the INGO, a general description of its activities and the name, address and other contact information of the person who will be able to receive official orders, notices and inquiries on its behalf (Section 8(3)).*

## **What is the proposed registration process?**

### **The Registration Process**

Once the Authority has received an application for registration, it has a duty to consider the application and register the PBO, in accordance with provisions of (Section 9(1)).

If the Authority is not satisfied that the application meets the requirements, it must alert the applicant in writing and give reasons for the decision. Further, the Authority must inform the applicant that it has not more than 30 days from the date of the notice, to submit the required information (Section 9(2)).

If the applicant meets the requirements within the time period given in the notice, the Authority must register the PBO within 14 days. When an applicant fails to meet the registration requirements, the Authority will refuse to register the PBO and shall provide the applicant with its reasons for the refusal in writing (Section 9 (5)).

Section 8(4) lists the content that a PBO applicant should include in its constitution. The contents are related to basic requirements concerning protection of assets, good governance and accountability. The registration process is therefore designed in such a way as to assist PBOs to comply better with standards of good governance, as well as with laws and regulations.

### **Presumption of Registration and Time limits**

The PBO Act provides that the PBO Authority must act within a maximum time of 60 days after it receives an application for registration (Section 9(1)). If the Authority has not communicated its decision within 60 days of receiving a registration application, a PBO can appeal to the PBOs Disputes Tribunal.

The Tribunal can upon review of the circumstance intervening, order the Authority to:

- a) Give the applicant a certificate of registration or*
- b) Inform the applicant that it refused to register and give the reasons for the refusal.*

The reasons for refusal must be in line with the grounds laid out under the PBO Act (Section 16).

## **Grounds for Refusal to Register a PBO**

The Authority can refuse to register any organization as a PBO for the following reasons (Section 16):

- a) The applicant has failed to meet the requirements for registration;*
- b) The proposed objectives of the PBO will break any written law;*
- c) The applicant has breached the PBO Act and other laws several times or committed a serious offence;*
- d) The applicant has given wrong or misleading information;*
- e) The name of the proposed PBO is likely to mislead the public as it is similar to another organization.*

## **Reconsideration and Appeal of the Authority's Refusal to Register**

An applicant who is not satisfied with the decision of the Authority, refuses to register it, can request the Authority to reconsider its decision for refusal to register. The applicant must do so within 30 days of receiving the notice of refusal from the Authority.

The applicant can as well choose to file an appeal directly to the PBOs Disputes Tribunal against the decision of the Authority. The Tribunal has 60 days from the date it receives the appeal documents to reach a decision.

## **At the end of a succession application process, what should and PBO and IPBO expect from the PBO-Regulatory Authority**

### **The Regulatory Authority will give the applicant:**

1. A Permit for Operation - Where the applicant organization does not plan to directly carry out activities or programs in Kenya.
2. A Certificate of Registration where the applicant organization:
  - a) Is itself involved in or plans to carry out any activities or programs in Kenya;*
  - b) Plans to operate from Kenya in order to carry out activities or programs in another country;*
  - c) Raises funds in Kenya. (Section 11)*

### **An international organization that receives a certificate of registration will be expected to:**

1. Show the Authority that one third of the members of its governing board of directors are Kenyan citizens and have lived in Kenya for several years.
2. Maintain an office in Kenya.
3. Comply with the Laws of Kenya, the PBO Act, PBO Regulations, its governance structures and the general policy guidelines provided by the Authority from time to time

## **Certificate of Registration and Effect of Registration**

Once a PBO is registered, it should receive a certificate of registration from the Authority. {Registration under PBO Act can be through incorporation, bestowment of public status or issuance of a permit to operate} A registered PBO is recognized as a legal body that is capable of suing or being sued in court under its own

name; buying, handling or selling property; entering contracts or taking on any activities that a legal person can, as long as the activities are lawful (Section 10).

A PBO will remain registered until it chooses to bring its operations to a close (wind up or dissolve as per the meaning of section 61). It can also have its registration cancelled by the Authority as per the meaning of section 19 of PBO Act.

## **WHAT ARE THE RIGHTS OF PBOS AS PROVIDED UNDER THE ACT?**

### **i. Association: Rights to Form, Join and Take Part in Forums**

The PBO Act provides that every organization has the freedom to willingly get together with other organizations and to take part in creating a forum of PBOs. Every organization also has a right to join a forum of PBOs or leave a forum of PBOs. Further, every PBO that is a member of a forum of PBOs has a right to take part in its activities and to elect its officials or representatives (Section 20 PBO Act, Constitution of Kenya (Article 36))

ii. advocacy: Right to Engage in Advocacy  
In line with the Constitution of Kenya (Article 37) which gives every person the right to peacefully demonstrate, assemble, picket and present petitions to public authorities, section 66 of the PBO Act gives PBOs the right to involve themselves freely in advocacy. The PBO Act (section 2) defines a public benefit activity. It identifies advocacy as one of the definitions of a public benefit activities that PBOs can pursue.

However, a PBO cannot get involved in fundraising or campaigning to support or oppose any political party or candidate for public office. It also cannot recommend or register candidates to be elected for public office (Section 66(3)).

### **iii. To champion for public participation Right to Take Part in Policy Making**

PBOs have a right to take part in policy making especially at the local level (section 66(4) and section 67) in a collaborative mechanism with the Government

## **WHAT ARE THE OBLIGATIONS OF PBOS?**

PBOs must abide by the requirements in the PBO Act. The Act demands good leadership from PBOs. It outlines a list of principles that PBOs must observe in section 27. For example, PBOs must practice transparency and accountability, follow conflict of interest principles and keep high standards of professionalism. They should also promote democracy, human rights, the rule of law, good governance and justice for Kenyans and be committed to peaceful and non-violent ways in all their activities (Section 25(2), (3), 27(1) (a) (b) (j)).

Following registration, PBOs have a duty to:

- a) Ensure that they use financial and other resources for the purposes for which they were set up and uphold fiscal transparency. (section 29)
- b) Keep proper accounting records and other reports and records relating to their activities and operations (section 30(1)).
- c) Prepare financial statements in line with the standards of generally accepted accounting practice, within six months of the end of each financial year (Section 30 and 31)
- d) Plan to engage an independent auditor who is of good standing with the professional body inspect the financial statements and prepare a report for the PBO Regulatory Authority

- confirming that the statements are in order (Section 30 and 31.
- e) Annually present to the PBO Regulatory Authority the audited financial statements as well as reports on the PBO's activities and operations, which were carried out during the financial year (Section 31(b) and (c)).
- f) Provide the Authority with the contact details of members of its governing body within one month after they are appointed or elected to the governing body. These details include their physical, business and residential addresses (Section 32).

### **WHAT ARE THE Primary duties of the PBO Governing Body (Section 8(7))**

The governing body of the PBO is primarily responsible for the following tasks:

- Inspecting the books and records of the PBO and ensuring that the accounting records are kept in line with generally accepted accounting principles;
- Reviewing and approving reports on the activities and finances of the organization to ensure that they are consistent with the purposes that are stated in the PBOs founding documents;
- Selecting members of the governing board;
- Deciding the method of changing the founding document or constitution;
- Deciding to close or shut down the PBO. No governing board member is to be held personally responsible for any act they carried out if they did so in line with their duties and in a responsible and honest manner (Section 33).

### **Effects of Non-Compliance with Obligations**

When a registered PBO fails to act in line with its responsibilities under the PBO Act, it may receive a written notice from the PBO Regulatory Authority, requesting it to abide by the law or to explain its actions of omission or commission. If the PBO fails to meet the requirements of the notice within a certain period, its registration can be cancelled (Section 18 (1-4)).

The PBO Act sets out a procedure for appeals against the cancellation of registration (Section 18 (4), (5)).

### **Can the Authority cancel and suspend the registration status of a PBO?**

#### **Suspension or Cancellation of Registration {section 19 of PBO Act}**

Yes. The Authority can only suspend or cancel a certificate of registration if:

- *The PBO has broken the provisions of the PBO Act;*
- *The PBO is carrying out activities contrary to the provisions in its constitution; or*
- *There is considerable and reliable proof that the PBO has ceased to exist (Section 19).*

When cancelling a certificate of registration, the Authority must follow certain procedures. It should send a written notice to the PBO specifying the offence and giving the organization time (15 days) within which to defend itself or correct the situation (Section 18(1)- (3)). Where the organization fails to take the necessary steps, the Authority can fine, suspend or cancel the certificate of registration.

The PBO Regulatory Authority has the power to order cancellation or suspension of a certificate but can only exercise this power within clear limits spelt out by the law

## **Steps to be followed in Suspension or Cancellation of Certificate**

The PBO Act provides the steps that the Authority should take when it cancels or suspends a certificate of registration. It is to:

- Give the PBO written notice within 21 days from the date of cancelling or suspending a certificate of registration;
- Order the PBO to stop operations;
- Remove the PBO's name from the register.

## **The PBO is not excused from its legal responsibilities when its certificate is cancelled.**

Any responsibilities and obligations regarding monies or assets or reporting requirements where those monies or assets are concerned, must be fulfilled (Section 19(4)).

## **Can a party appeal against the decision to suspend and/or cancellation of its Registration status?**

### **Appeals against Suspension or Cancellation of Registration**

Yes. A PBO that is not satisfied with the reasons given by the Authority for fining it, or suspending or cancelling its registration can appeal to the Authority, requesting it to reconsider its decision. The PBO must do so within 60 days of receiving the notice of the decision from the Tribunal.

The applicant can choose to appeal to the Tribunal against the decision of the Authority.

The Tribunal has 60 days from the date it receives the appeal, to reach a decision (Section 18(4) and 18(5)).

## **Are there any offences that a PBO can commit and what are the penalties?**

### **Offences and Penalties**

The PBO Act provides that it is a crime for a person to alter or falsify any document or to make false statements while applying for registration. It is also a crime to falsely make an organization appear to be a PBO, or to make use of a registration number, certificate or other information in a registration certificate to mislead people. These crimes can attract a fine of up to KShs. 300 000 and or imprisonment for not more than two years (Section 64).

## **WINDING UP/DISSOLUTION OF THE PBO**

When an organization freely chooses to shut down or bring its operations to a close (dissolve or wind-up), it must send to the Director /Chief Executive Officer of the PBO Authority a written notice stating that:

- (in case of a membership PBO) two thirds of the members voted to wind-up or dissolve the organization (in case of a membership PBO) or,
- (in case of a non-membership PBO) the governing body willingly decided, in accordance with the organization's constitution, to wind- up or dissolve the organization.

The notice must include the reasons for the decision to wind-up or dissolve and the date when the organization is to cease to exist.

The PBO must also give the Authority copies of all relevant documents confirming the winding up or dissolution, and a copy of the written report, financial statements and an auditor's report for the period running from its previous financial year up to the date of the written notice (section 61 (1-3)).

After receiving the notice, and ascertaining the PBO has met all the set qualifications of the law in accordance with section 61 and 62, the Authority will cancel the organization's certificate of registration and inform the organization in writing about this.

### **Handling the PBOs Assets**

The governing body of the PBO is to identify another public benefit organization with similar objectives that will receive any resources that remain after the PBO has met all its financial responsibilities. The PBO chosen must be approved by, credible and in good standing with the Authority (Section 62(5)). If the governing body is unable to select a PBO to receive the remaining assets, the Authority will do so (section 61(4)).

The Authority can require officials or members of the PBO to provide it with a list of the assets of the organization and their location in order to safeguard them.. It is an offence to fail to provide a list of the assets when requested (Section 62(1)).

## **HOW WILL PBOs MANAGE AND CONTROL THEIR AFFAIRS**

### **SELF-REGULATION**

The preamble of the PBO Act declares that satisfactory self-regulation is a must for a successful civil society. One of the key objectives of the PBO Act is “to promote the development of self-regulation among PBOs” (section 3(c)). This object is met in four key ways:

- a) Providing for setting up of PBO self-regulation forums;*
- b) Outlining key principles that can guide PBOs in their work and interactions;*
- c) Providing for a body (the National Federation of PBOs) to promote effective self-regulation;*
- d) Giving support to PBOs.*

## **WHAT IS THE PROCESS OF SETTING UP A SELF-REGULATION**

### **Setting up PBO self-regulation forums**

The PBO Act allows PBOs to form independent self-regulation bodies or forums (section 23(1)) and to organize themselves into a federation of forums in order to boost self-regulation (Section 24(2)). The Act permits the PBO forums to develop their own code of conduct and standards and to ensure that their members apply these (section 24(1), 28(1)).

### **Guiding Principles**

The Act also spells out a long list of principles to guide PBOs in their operations. Further, it gives the governing bodies of PBOs the duty of developing guidelines that will help the employees of PBOs in handling a number of issues including conflict of interest (section 25(2), 27(1)). The principles also provide a useful guide for helping PBO forums to develop self-regulation mechanisms such as Codes of Conduct.

### **The National Federation of PBOS (Section 21)**

The PBO Act sets up an umbrella organization of registered PBOs known as the National PBO Federation. The role of the Federation is primarily to promote effective self-regulation through coordinating self-regulation in the sector, building the capacity of PBOs and representing the sector in public bodies or at various fora.

Every registered PBO has a right to join the Federation as a member. Self-Regulation Forums of PBOs can also become members of the Federation (Section 21(1) and (2)).

Every member of the Federation has a right to vote in the elections of the Federation's governing board. The governing board of the Federation is to select persons who will represent the Federation, where required, in public bodies. During the selection, the board is to observe certain principles, to consult widely and ensure public participation. They must not select themselves (board members) to represent the Federation in public bodies except where the PBO Act specifies that they can do so (Section 22).

### **Support from the Authority**

The Authority will support the PBO sector in its efforts to promote self-regulation. The PBO forums are expected to enter into an agreement with the Regulatory Authority as per section 23(2). The Agreement:

- Enables the Authority to be familiar with the forums and their efforts to improve self-regulation in the sector.
- Encourages collaboration between the forum and the Authority, in support of effective self-regulation.

The Authority will carry out training on self-regulation of PBOs, to improve the knowledge of PBOs and strengthen their ability to self-regulate.

### **Is the National Federation of PBOs going to replace the NGO Council?**

No. The law provides that PBOs and PBO self-regulation forums can set up an umbrella organization, whose membership will be voluntary. The National Federation of PBOs is a new institution set up under the PBO Act.

Members of the Federation will have to set up the rules and procedures for the functioning of the Federation and elect its leaders.

### **REGULATION OF PBOs**

The PBO Act sets up a registration and regulatory Body – The PBO Regulatory Authority (Section 34(1)). The Authority is tasked with monitoring PBOs to ensure that they are complying with their obligations under the PBO Act. It also provides the Government with assistance by registering and cancelling the registration of PBOs; Making the national policy on PBOs clear so as to assist in its smooth application by Government ministries, departments and agencies; Keeping a register of PBOs and providing advice on the activities of PBOs. The PBO Authority assists PBOs in abiding by the PBO Act requirements through availing the necessary forms, instructions and model documents. It also makes it easier for the Government and PBOs to network and share information (Section 42(1)).

The governing body of the PBO Regulatory Authority (the Board of Directors of the Authority), includes representatives from Government ministries dealing with PBOs, Finance and Foreign Affairs, as well as representatives from the National Federation of PBOs, and members of the public who possess experience in civil society (Section 35).

## **Independence of the Regulator**

To guard the independence of the Regulator, the Act outlines a detailed process for selecting board members (Schedule 3) and sets out the qualifications for members of the governing board (Section 36). The Act also provides a procedure that guards against Conflict of Interest in the Board. (Schedule 4, part 3). Further, the Act specifies which persons cannot qualify to be appointed to the board of the Authority. They include members of the National Assembly, members of a local authority, members of the executive body of a political party or those actively involved in the political party's affairs (Section 36(2)).

## **Power to Institute Inquiries section 63**

Where necessary, the Authority can carry out an inquiry to find out if the activities of a PBO are not in line with the PBO Act. The Authority can order a person who is in a position to obtain information relating to the inquiry, to give evidence or bring to it documents for the inquiry. The Authority can refund the person for the costs or expenses borne in appearing to give evidence or to produce documents.

## **THE PBOs DISPUTE TRIBUNAL**

A Tribunal to be known as the Public Benefit Organizations Disputes Tribunal is set up by the PBO Act (Section 50(1)) as an independent mechanism of complaint and redress. The Tribunal is an arm of Judiciary and thus exercising its independent jurisdiction.

## **Power of the Tribunal**

The Tribunal will have power to hear and reach decisions regarding complaints about actions that break the provisions of the PBO Act. PBOs that would like to appeal the decisions of the PBO Regulatory Authority, or members of the public with complaints against PBOs can take their cases to the Tribunal. The decisions of the Tribunal can be reviewed by the High Court (section 52(11)).

The Tribunal does not have power to hear criminal matters (Section 51).

Once the Tribunal has heard a matter, it can agree with, set aside, change or cancel the order or decision in question. It can also order the Authority to adjust or relook at its decision again (Section 52(7)). Anyone who disobeys the decision of the Tribunal shall be breaking the law. The Act provides penalties that parties who disobey the Tribunal will face.

## **Composition of the Tribunal**

The Tribunal will be made up of 5 members, who will be appointed by the Chief Justice and approved by the National Assembly. The members will be advocates and persons with special knowledge or skills for carrying out the functions of the Tribunal (Section 50(1)). The Act provides that no member of the PBO Authority can serve as a member of the Tribunal (Section 50(3)). This will curb against conflict of interest and guard the independence of the Tribunal.

## **TRANSITIONAL CLAUSES**

### **Non- Governmental Organizations and Other Public Benefit Organizations registered under different regimes**

NGOs that were registered under the NGO Coordination Act before the starting (commencement) date of the PBO Act will be considered to be registered as PBOs under the PBO Act (Fifth Schedule, Part 7(1).

If a CSO is not registered by the NGO Coordination Board as an NGO, but is registered under a different registration regime, it is free to seek registration under the new PBO Act.

### **The Public Benefit Organizations Regulatory Authority**

Once the PBO Act comes into force:

- All funds, assets and other property, rights, powers, liabilities and duties of the Non-Governmental Organizations Coordination Board shall belong to the Public Benefit Organizations Regulatory Authority (Fifth Schedule, Clause 2(1).
- Administrative decisions made by the former NGO Board shall have power as if they were issued under the PBO Act (Fifth Schedule, Clause 4).
- A person who was a member, staff or agent of the NGO Coordination Board shall be considered to be a member, staff or agent of the PBO Regulatory Authority for the remainder of their term, unless that person is a public officer (Fifth Schedule, Clause 8).

The Executive Director serving in the NGO Coordination Board shall continue as the Director/CEO of the PBO Regulatory Authority for his/her unexpired term provided that that person is qualified for reappointment as Director (Fifth Schedule, Clause 5(3).

### **Rules and Regulations**

There are some provisions of the PBO Act that require additional details, in the form of rules and regulations, for them to be clearer and easier to put into action. The process of developing Rules and Regulations is ongoing in the manner explained in (Section (69).

### **Will NGOs have to register afresh?**

The law does not require NGOs that were earlier registered under the NGOs Coordination Act 1990 to register afresh. New registration will only be required for CSOs that were registered under other laws and wish to be registered under the PBO Act. PBOs registered under the defunct Act automatically transited and will only require to update of their records to reflect the new status as they shall be guided by the Authority



**PUBLIC BENEFIT ORGANIZATIONS  
REGULATORY AUTHORITY**

**FOR FURTHER INFORMATION,  
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