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KENYA'S NEW PBO FRAMEWORK: MUST COMPANIES LIMITED BY GUARANTEE, CHARITABLE TRUSTS AND FOREIGN-COMPANY BRANCHES ALSO REGISTER AS PUBLIC BENEFIT ORGANIZATIONS?

Understanding PBO registration, bestowment of PBO status, international PBO registration and the treatment of entities already incorporated under other Kenyan laws

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Kenya's implementation of the Public Benefits Organizations Act, 2013 (the "PBO Act"), together with the Public Benefits Organizations Regulations, 2026 (the "PBO Regulations"), raises an important structural question for charities, foundations, international NGOs ("INGOs"), companies limited by guarantee ("CLGs"), charitable trusts and other not-for-profit organisations already operating through legal structures established under other Kenyan laws.

The question is particularly relevant following the commencement of the Trust Administration Act, 2026 on 25 September 2026, which replaced the repealed statutory framework governing trusts.

Must an organisation already incorporated under the Companies Act or the repealed Trustees (Perpetual Succession) Act or the Trust Administration Act separately register as a Public Benefit Organization ("PBO")? What happens where a foreign foundation or foreign CLG has registered a branch under the Companies Act? Does PBO registration create a separate legal entity? And can an existing Kenyan charitable entity obtain PBO status without surrendering its existing legal personality?

The answer depends upon the organisation's existing legal form, place of incorporation, activities and the particular route through which PBO status is sought.

The critical starting point is that incorporation or registration under the Companies Act or the Trust Administration Act, 2026 or historical incorporation under the repealed Trustees (Perpetual Succession) Act does not, by itself, confer PBO status. Equally, however, the PBO framework does not necessarily require an organisation that already possesses Kenyan legal personality to abandon that structure and incorporate afresh under the PBO Act.

The legislation instead creates distinct routes for direct PBO registration, bestowment of PBO status upon qualifying entities incorporated under other Kenyan laws, registration of international PBOs and permits for qualifying exempt international PBOs.

This distinction is fundamental for organisations reviewing their structures under Kenya's new PBO regime.

1. INCORPORATION AND PBO STATUS ARE DIFFERENT LEGAL CONCEPTS

A company, trust or other organisation may have valid legal personality under Kenyan law without necessarily having PBO status.

Section 5 of the PBO Act defines a PBO by reference to, among other matters, its non-profit and public-benefit character and its registration as such by the Public Benefit Organizations Regulatory Authority ("PBORA" or the "Authority"). Section 6 then provides that a PBO must be registered under the Act to enjoy the benefits accruing under the Act.

Consequently, incorporation as a CLG, incorporation of a trust or incorporation of another not-for-profit company does not automatically convert the organisation into a PBO.

This distinction is particularly important because many organisations historically adopted Companies Act or trust structures for perfectly legitimate reasons, including corporate personality, perpetual succession, property ownership, governance, donor requirements or institutional continuity.

The new PBO framework does not necessarily invalidate those structures. Rather, it requires organisations to determine whether they also require formal PBO status, and, if so, the appropriate statutory route through which that status should be obtained.

2. AN EXISTING KENYAN ENTITY SHOULD NOT ORDINARILY SEEK DUPLICATIVE PBO REGISTRATION

Section 6 of the PBO Act contains an important restriction. An organisation registered under another Kenyan law cannot simultaneously be registered under the PBO Act while the other registration subsists. Registration under the PBO Act supersedes prior registration under another Kenyan law.

Accordingly, an existing Kenyan CLG or incorporated trust should not ordinarily make a conventional application for full registration under the PBO Act while intending simultaneously to retain its existing incorporation unchanged.

The legislation instead provides an important alternative: bestowment of PBO status.

Section 7 of the PBO Act, read with regulations 9 and 10 of the PBO Regulations, enables PBORA to bestow PBO status upon an eligible organisation already incorporated under another relevant Kenyan law.

This is the principal mechanism through which an existing Kenyan legal entity may potentially acquire PBO status without being reincorporated as another entity.

3. WHAT IS "BESTOWMENT" OF PBO STATUS?

Bestowment is materially different from ordinary registration under the PBO Act.

Regulation 9 permits PBORA to bestow PBO status upon an entity undertaking public benefit activities where, among other requirements, the entity is incorporated under another relevant law in Kenya, remains in good standing with its

existing registering authority, has operated in or from Kenya and undertaken public benefit activities for at least three years, falls within the prescribed public-benefit categories and satisfies the applicable governance requirements.

The entity must not fall within the institutions excluded under section 5(2) of the PBO Act.

The three-year requirement is particularly significant. It means that a newly incorporated CLG cannot necessarily incorporate today and immediately obtain PBO status through bestowment.

Regulation 10 requires the applicant to submit, among other things, its existing constituting document and certificate of registration, a resolution seeking PBO status, particulars of its directors or officials and audited accounts for the preceding three years.

Upon approval, PBORA issues a Certificate of Bestowment of Public Benefit Organization Status.

Bestowment should therefore be understood as the conferral of an additional PBO regulatory status upon an existing Kenyan legal person, rather than incorporation of a second entity.

4. DOES BESTOWMENT CREATE A SEPARATE LEGAL ENTITY?

On the better reading of the statutory framework, no.

Where PBORA bestows PBO status upon an existing Kenyan company, CLG or incorporated trust, the underlying entity already possesses legal personality under its incorporating statute.

The bestowment process does not appear to incorporate another company, trust or PBO alongside that entity. Instead, PBORA recognises the existing legal person and confers PBO status upon it.

This interpretation is reinforced by regulation 10, under which the applicant supplies its existing certificate of registration and constituting documents, and PBORA thereafter issues a

Certificate of Bestowment of PBO Status, rather than an ordinary certificate incorporating another organisation.

Accordingly, where PBO status is bestowed upon a CLG, the legal person remains the company incorporated under the Companies Act. Where status is bestowed upon an incorporated trust, the underlying legal personality remains that constituted under the applicable trust legislation.

Bestowment therefore confers PBO status without, on the apparent statutory scheme, incorporating a second entity.

This distinction has practical consequences for property ownership, contracts, employment relationships, banking arrangements, licences, tax registrations and existing liabilities because these ordinarily remain vested in the underlying legal person.

5. KENYAN COMPANIES LIMITED BY GUARANTEE

The distinction is particularly important for companies limited by guarantee, which are widely used by charitable, philanthropic, religious, educational, membership and development organisations.

A CLG provides corporate personality and a governance framework without share capital. However, a CLG does not automatically become a PBO merely because its constitution contains charitable objects or prohibits distribution of profits.

Where an existing CLG wishes to obtain PBO status and the associated statutory benefits, the appropriate route should ordinarily be an assessment of its eligibility for bestowment under section 7 and regulations 9 and 10, rather than creating another PBO alongside the company.

6. FOREIGN FOUNDATIONS AND INGOS IN KENYA: BRANCHES AND LOCALLY INCORPORATED AFFILIATES

Foreign foundations, international charities and international non-governmental organisations

(INGOs) may establish a presence in Kenya through different legal structures, including operating directly through a branch or representative office or establishing a separately incorporated Kenyan entity. The distinction is important in determining the appropriate route to PBO status.

Where a foreign organisation operates through a branch or representative office, the branch does not ordinarily constitute a separate legal person from the foreign organisation. Accordingly, the foreign organisation itself remains the operating entity and should assess the applicable requirements for registration or exemption as an international PBO under the PBO Act and Regulations. Registration of a branch under the Companies Act does not, in itself, confer PBO status.

Conversely, where a foreign organisation establishes a separate Kenyan entity, such as a company limited by guarantee under the Companies Act, 2015, that entity has its own legal personality. If the Kenyan entity subsequently seeks formal recognition as a PBO while retaining its existing corporate registration, it may pursue bestowment of PBO status, subject to satisfying the prescribed eligibility requirements.

The distinction may be illustrated as follows:

Foreign Foundation / INGO › Kenyan Branch or Representative Office › Assessment of International PBO Registration or Exemption Requirements

Foreign Foundation / INGO › Separately Incorporated Kenyan CLG › Application for Bestowment of PBO Status (where eligible)

In the latter structure, bestowment does not create an additional legal entity. Rather, the existing Kenyan entity retains its legal personality while acquiring PBO status upon approval.

Alternatively, a separately governed Kenyan organisation may pursue direct registration as a PBO under the applicable statutory framework, without first incorporating as a company limited by guarantee.

Accordingly, the choice of structure should be informed by the foreign organisation's operating history, intended activities, governance arrangements, regulatory obligations and proposed timeline for obtaining PBO status.

7. INCORPORATED TRUSTEES AND CHARITABLE TRUSTS

Charitable trusts must now be considered under the Trust Administration Act, 2026, which repealed the Trustees (Perpetual Succession) Act and the Trustees Act. Incorporated trustees already possess statutory corporate personality. It is important to note that existing trusts must comply with the new Act within twenty-four months of its commencement, or such other period as the Registrar may direct. A charitable trust may therefore own property, contract and operate through its incorporated trustees without needing another incorporation merely because its purposes are charitable.

However, charitable status under trust law and PBO status under the PBO Act are distinct concepts.

Where incorporated trustees undertake qualifying public benefit activities and wish to obtain formal PBO status, the bestowment route should therefore be considered, provided the requirements of regulation 9 including the three-year operating history and applicable governance requirements are satisfied.

This potentially allows an established charitable trust to preserve its trust structure, asset-holding arrangements and institutional continuity while obtaining PBO status.

8. DOES DIRECT PBO REGISTRATION CREATE A SEPARATE LEGAL ENTITY?

The answer differs where an organisation is directly registered under the PBO Act, rather than merely receiving bestowment.

Section 13 of the PBO Act gives a registered PBO statutory corporate capacity. A registered PBO is therefore capable in its corporate name of owning property, contracting and suing or being sued.

This is particularly important for international organisations.

The PBO Regulations permit an international organisation already incorporated abroad to apply for registration in Kenya. The application relies upon the organisation's foreign constituting documents, foreign certificate of registration and evidence of good standing.

However, once full registration is granted under the PBO Act, the statutory consequences of registration should not simply be equated with conventional foreign-company branch registration.

On the better reading of the legislation, full registration as an IPBO confers Kenyan statutory corporate personality upon the registered PBO.

Full registration as an international PBO carries the statutory corporate consequences prescribed under section 13 of the PBO Act. However, the precise relationship between the foreign organisation and its registered Kenyan presence should be assessed by reference to the applicable statutory provisions, constituting documents and registration arrangements.

9. EXEMPT INTERNATIONAL PBOS ARE DIFFERENT

The position is materially different where a foreign organisation qualifies for exemption from registration.

An eligible international organisation which does not intend to directly implement activities in Kenya or operate from Kenya to implement programmes in another country may apply for a permit to operate as an exempt International PBO.

Unlike full registration, PBORA issues a permit to operate, rather than an ordinary certificate of PBO registration.

Accordingly, an exempt-IPBO permit should not automatically be treated as incorporating a separate Kenyan legal person. The underlying foreign organisation remains central to the structure, while the permit authorises its qualifying activities in Kenya.

This distinction may materially affect leases, employment contracts, banking arrangements, asset ownership, litigation and other transactions.

10. WHAT IS THE APPROPRIATE PBO REGISTRATION ROUTE FOR FOREIGN-COMPANY BRANCHES?

Foreign foundations, charities and international non-governmental organisations operating in Kenya through registered branches must consider the applicable requirements under the PBO framework.

Under the Companies Act, 2015, a foreign-company branch remains legally connected to its foreign parent and does not constitute a separately incorporated Kenyan entity. Registration of the branch under the Companies Act does not, in itself, confer PBO status.

The PBO Act and regulations 11 and 12 of the PBO Regulations, 2026 provide a specific registration framework for international organisations intending to undertake public-benefit activities in or from Kenya. Accordingly, foreign organisations operating through Kenyan branches should ordinarily assess their eligibility for registration as international PBOs.

The availability of bestowment also requires consideration. Although regulation 9 provides for bestowment upon qualifying entities incorporated under another relevant Kenyan law, a foreign-company branch is registered in Kenya while its parent organisation is incorporated abroad. Whether such a structure qualifies for bestowment therefore requires careful interpretation of the statutory eligibility requirements.

Accordingly, foreign organisations operating through registered Kenyan branches should assess the international PBO registration and exemption provisions as the primary regulatory routes. The availability of bestowment should be considered separately, having regard to the statutory eligibility requirements and the legal relationship between the branch and its foreign parent.

11. DOES EVERY KENYAN CHARITABLE COMPANY OR TRUST HAVE TO BECOME A PBO?

Not necessarily.

The PBO Act recognises that organisations may exist under other Kenyan legislation. Section 6 provides that PBO registration is necessary for an organisation to enjoy the benefits accruing under the PBO Act.

The critical distinction is therefore between legal existence and PBO status.

A CLG does not cease to be a valid company merely because it has not obtained PBO status. Similarly, incorporated trusts do not cease to exist merely because PBO status has not been bestowed upon them.

However, where such an organisation wishes to operate or represent itself as a PBO, obtain formal recognition under the PBO regime or access benefits specifically associated with PBO status, it should assess registration or bestowment under the PBO Act.

This distinction may also have broader consequences. PBO status may interact with tax exemption, donor requirements, government collaboration, immigration sponsorship, grants, procurement, fundraising and other regulatory matters. The Act itself identifies a range of potential benefits associated with PBO registration, including specified forms of indirect government support and tax-related benefits, subject to applicable laws and approvals.

Accordingly, organisations should avoid both extremes: not every charitable entity must be reincorporated as a PBO, but neither does charitable incorporation under another statute automatically confer PBO status. Nevertheless, an organisation's existing incorporation does not necessarily exempt it from regulatory obligations arising from its activities. Each organisation should assess whether its operations trigger additional registration, authorisation or compliance requirements under the PBO framework or other applicable legislation.

12. STRUCTURING MATRIX: WHICH ROUTE MAY APPLY?

Existing or proposed structure	Separate Kenyan legal entity?	PBO position to consider
PBO registered directly under the PBO Act	Yes — statutory corporate capacity attaches to registration	Direct PBO registration
Foreign foundation/NGO fully registered as an IPBO	Full PBO registration carries Kenyan statutory corporate consequences	International PBO registration where directly implementing in/from Kenya
Exempt International PBO	Permit should not, without more, be treated as incorporating a new Kenyan entity	Exempt-IPBO permit where statutory conditions are satisfied
Kenyan CLG	Yes	Consider bestowment rather than duplicative full PBO registration



Incorporated trustees (under the repealed Trustees (Perpetual Succession) Act; now the Trust Administration Act	Yes	Consider bestowment where eligibility requirements are satisfied
Foreign foundation/CLG registered as a foreign-company branch	Ordinarily no separate entity merely because the branch is registered	Assess international PBO registration or exemption requirements; consider bestowment subject to the prescribed eligibility requirements.
Newly incorporated Kenyan charitable CLG/- Foundation	Yes	Bestowment may be considered upon satisfaction of the prescribed eligibility requirements, including the three-year public-benefit operating history.
Existing NGO transitioning from the former NGO regime	Subject to the statutory transitional framework	Follow the PBO Regulations' transition mechanism rather than unnecessarily creating another entity

The central distinction is therefore between registration, incorporation and regulatory status. The PBO framework should not be approached as though every charitable organisation must adopt the same legal structure.

13. WHY THE CHOICE OF STRUCTURE MATTERS?

For international foundations and charitable groups, deciding whether to establish a Kenyan entity, CLG, incorporated trust, foreign-company branch, directly registered IPBO or exempt-IPBO presence should be treated as a strategic legal-structuring decision rather than merely a registration exercise.

The choice can affect legal personality and liability, control by the foreign parent, composition of the governing body, ownership of assets, contracting arrangements, banking, employment, immigration sponsorship, taxation,

grant-making, fundraising, donor reporting, regulatory filings, dissolution and the repatriation or transfer of assets.

The three-year qualifying period for bestowment makes pre-entry structuring particularly important. An international organisation should not establish a Kenyan entity on the assumption that PBO status can necessarily be bestowed immediately thereafter.

Similarly, an organisation should not register a foreign-company branch on the assumption that Companies Act registration alone authorises all public-benefit activities in Kenya.

HOW CM ADVOCATES LLP CAN ASSIST

Through our **Charities & Social Impact Organisations (CSIO)** Practice, working alongside our Corporate & Commercial, Tax, Immigration & Global Mobility, Employment, Data Protection and Real Estate teams, CM Advocates LLP advises international foundations, INGOs, charities, philanthropic organisations, faith-based institutions, development organisations and social-impact institutions on establishing and restructuring their operations in Kenya and across the region.

We can undertake a legal-structure and PBO-status assessment to determine whether an existing or proposed Kenyan presence should be structured through direct PBO/IPBO registration,

an exempt-IPBO permit, a Kenyan company limited by guarantee, incorporated trustees, a foreign-company branch or an existing Kenyan entity seeking bestowment of PBO status. We can also review existing structures to determine whether Companies Act, trust, PBO and other registrations are being duplicated unnecessarily or whether additional regulatory approvals are required.

Our support extends to constitutional and governance documentation, PBORA applications and engagements, corporate restructuring, tax-exemption planning, immigration and expatriate sponsorship, employment, banking and funding arrangements, data protection, property holding, regulatory compliance and ongoing governance.

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