



NGO-TO-PBO READINESS ASSESSMENTS: WHY EXISTING NGOS SHOULD CONDUCT IMMEDIATE GOVERNANCE, COMPLIANCE, RISK & INSTITUTIONAL TRANSITION REVIEWS UNDER KENYA'S NEW PBO FRAMEWORK

Kenya's New Public Benefit Organizations Regime Signals a Fundamental Shift Toward Governance Accountability, Regulatory Transparency, Institutional Oversight and Enterprise-Wide Compliance

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INTRODUCTION

Kenya's nonprofit and charitable sector has now entered one of the most significant legal and regulatory transition periods in its history following the coming into operation of the Public Benefits Organizations Act, 2013 ("PBO Act") and the enactment of the Public Benefits Organizations Regulations, 2026.

For more than three decades, nonprofit organizations in Kenya operated under the legal architecture established by the Non-Governmental Organisations Co-ordination Act, 1990, a framework that was largely administrative and registration-focused. While the former regime provided the legal basis for

registration and oversight of NGOs, it did not create the type of governance-intensive and institutionally accountable framework now contemplated under the PBO regime.

The publication of the Public Benefits Organizations Regulations, 2026 under Legal Notice No. 43 in the Kenya Gazette Supplement No. 67 dated 18 March 2026 operationalizes the new regulatory architecture and introduces extensive obligations affecting governance, institutional accountability, financial stewardship, donor compliance, operational transparency and enterprise-wide risk management.

The Regulations expressly state that their object is to establish:



- a framework for the management and oversight of public benefit organizations;
- criteria for registration, suspension, cancellation and reinstatement; and
- coordination mechanisms for forums and federations.

This language is significant because it confirms that the new framework is not merely intended to facilitate registration of nonprofit entities. Instead, the law seeks to fundamentally regulate how public benefit organizations are governed, supervised, managed, financed and held accountable.

As a result, organizations operating under the previous NGO framework should no longer approach the transition to PBO status as a simple administrative conversion exercise. The transition represents a broader institutional governance and compliance transformation that may materially affect governance structures, operational systems, donor relationships, immigration arrangements, staffing models and institutional sustainability.

Against this backdrop, NGO-to-PBO readiness assessments have become critically important for both local and international organizations operating in Kenya.

THE PBO TRANSITION REPRESENTS A FUNDAMENTAL GOVERNANCE SHIFT

Historically, many nonprofit organizations in Kenya evolved organically over time, often operating through informal governance systems with limited institutional controls and fragmented compliance structures. In many cases, governance oversight remained heavily founder-driven, internal policies were outdated, risk management systems were underdeveloped and regulatory compliance was approached primarily as a filing obligation rather than an enterprise-wide governance responsibility.

The new PBO framework significantly changes this regulatory philosophy.

The Regulations now create a compliance environment that increasingly resembles governance expectations ordinarily associated with regulated institutions, international charities

and globally accountable nonprofit organizations. The framework emphasizes governance integrity, transparency, operational accountability, stewardship of assets, public benefit compliance, financial oversight and institutional sustainability.

This means organizations must increasingly demonstrate that they possess:

- functioning governance systems;
- independent oversight structures;
- documented compliance procedures;
- transparent operational controls;
- effective financial management systems; and
- enterprise-wide risk management frameworks.

Organizations that fail to modernize governance and operational systems may increasingly face heightened exposure to regulatory scrutiny, donor concerns, governance disputes, operational disruption and institutional instability.

Accordingly, the transition to the PBO regime should be viewed as a strategic institutional transformation process rather than merely a registration exercise.

WHY NGO-TO-PBO READINESS ASSESSMENTS HAVE BECOME CRITICAL

An NGO-to-PBO readiness assessment is essentially a comprehensive institutional review designed to evaluate whether an organization's governance architecture, operational systems and compliance structures are sufficiently aligned with the legal and practical realities of the new PBO environment.

The assessment typically identifies:

- governance weaknesses;
- constitutional deficiencies;
- operational vulnerabilities;
- donor compliance concerns;
- immigration exposure;
- financial governance risks;
- regulatory gaps; and
- institutional sustainability challenges.



In practice, the assessment enables organizations to proactively identify institutional vulnerabilities before they escalate into regulatory, operational or reputational crises.

This is particularly important because the new Regulations impose continuing obligations rather than one-time compliance requirements. Organizations are therefore expected to maintain ongoing governance readiness and continuous institutional compliance.

The readiness assessment process has also become increasingly relevant because regulators, donors, development partners and stakeholders are placing greater emphasis on institutional legitimacy, governance quality and operational accountability when evaluating nonprofit organizations.

GOVERNANCE AND BOARD STRUCTURES UNDER THE NEW REGIME

One of the most important transformations introduced by the PBO framework concerns governance accountability and board oversight.

The Regulations place substantial emphasis on governance composition, director eligibility, board independence, institutional integrity and organizational accountability. The registration forms contained in the Regulations require disclosure of directors, governance structures and relationships among board members.

Importantly, the Regulations further require that:

- organizations maintain a minimum number of directors;
- at least one-third of directors be Kenyan nationals resident in Kenya; and
- governance structures be formally disclosed and documented.

The application forms also expressly state that:

- organizations must maintain a minimum of five directors; and
- at least three out of five directors cannot be related to one another.

These provisions have major implications for organizations that historically operated:

- through founder-controlled governance structures;
- using family-linked boards;
- without independent governance mechanisms; or
- with informal governance systems lacking proper documentation and oversight.

Organizations may therefore need to comprehensively reassess:

- board composition;
- governance independence;
- committee structures;
- succession planning;
- governance charters;
- conflict-of-interest systems;
- fiduciary oversight mechanisms; and
- director accountability frameworks.

Boards and senior leadership teams should also appreciate that governance failures may increasingly affect donor confidence, regulatory standing, immigration approvals and institutional credibility.

THE PUBLIC BENEFIT TEST AND CONSTITUTIONAL ALIGNMENT

Another major feature of the new framework is the requirement that organizations satisfy the statutory “public benefit test.”

The Regulations provide that public benefit activities must:

- fall within recognized public benefit categories;
- benefit identifiable beneficiaries;
- provide direct public benefit; and
- avoid conferring private benefit upon directors or related parties.

Organizations are additionally required to demonstrate:

- public benefit purposes;
- identifiable beneficiaries;
- non-distribution of profits for private benefit; and



- constitutional alignment with public benefit objectives.

Many historical NGO constitutions were drafted under older regulatory assumptions and may not align with the more rigorous public benefit and governance expectations under the PBO regime.

Organizations should therefore review:

- constitutions;
- trust deeds;
- governance instruments;
- charitable purpose clauses;
- dissolution provisions;
- membership structures;
- governance powers; and
- asset distribution clauses.

Failure to align constitutions with the public benefit framework may create future regulatory vulnerability.

CONTINUOUS COMPLIANCE AND REGULATORY NOTIFICATION OBLIGATIONS

The PBO framework introduces significantly enhanced ongoing compliance obligations.

Organizations are now required to notify the Authority regarding material changes involving:

- constitutions;
- directors and officials;
- governance bodies;
- banking arrangements;
- addresses; and
- authorized representatives.

The Regulations prescribe strict timelines for notification, including:

- thirty-day notification periods for certain governance changes; and
- sixty-day notification periods for other organizational changes.

This fundamentally changes the compliance culture expected of nonprofit organizations. Governance and operational changes can no longer be treated as purely internal matters because many such changes now constitute

regulatory events requiring formal disclosure and documentation.

Organizations should therefore establish:

- compliance calendars;
- governance reporting systems;
- board resolution procedures;
- institutional registers;
- internal approval frameworks; and
- regulatory filing controls.

The readiness assessment process should evaluate whether such systems exist and whether they are sufficiently robust under the new regulatory environment.

FINANCIAL ACCOUNTABILITY, AUDIT EXPOSURE AND INSTITUTIONAL TRANSPARENCY

The Regulations significantly strengthen obligations relating to financial accountability and institutional transparency.

Organizations are now required to maintain:

- audited accounts;
- annual financial statements;
- detailed asset inventories; and
- annual activity reports.

The annual reporting framework further requires organizations to disclose information concerning:

- staffing structures;
- donor funding;
- operational activities;
- banking arrangements;
- grants;
- international collaborations; and
- project operations.

The Authority is also empowered to conduct inquiries concerning:

- non-compliance;
- irregular conduct; and
- operational affairs of organizations.

This reflects a major shift toward enhanced institutional transparency and financial scrutiny.



Organizations should therefore assess whether they maintain sufficiently robust:

- accounting systems;
- procurement controls;
- anti-fraud systems;
- internal audit mechanisms;
- grant management frameworks;
- whistleblowing procedures; and
- financial governance controls.

Organizations receiving substantial foreign donor funding may face particularly heightened scrutiny concerning source-of-funds transparency, anti-money laundering compliance and expenditure accountability.

HEIGHTENED ENFORCEMENT, SUSPENSION AND DEREGISTRATION RISKS

The PBO framework also substantially strengthens enforcement mechanisms available to regulators.

The Authority may suspend or cancel registration where organizations:

- breach the Act;
- violate the Regulations;
- fail to comply with legal obligations; or
- engage in irregular activities.

The implications of suspension are particularly serious because suspended organizations may be prohibited from:

- withdrawing funds;
- undertaking activities;
- disposing assets;
- borrowing or lending; or
- engaging in new investments.

Organizations may additionally face deregistration for:

- prolonged inactivity;
- money laundering concerns;
- economic crimes;
- non-compliance; or
- violations of Kenyan law.

These enforcement provisions significantly increase institutional exposure for organizations lacking mature governance and compliance systems.

The readiness assessment process therefore becomes an important institutional risk mitigation exercise aimed at identifying vulnerabilities before they escalate into regulatory crises.

IMMIGRATION, LOCALIZATION AND WORKFORCE GOVERNANCE

The new governance environment also intersects closely with immigration compliance and workforce governance.

International organizations are required to maintain:

- Kenyan resident directors;
- local authorized representatives;
- formal operational oversight systems; and
- local governance structures.

Organizations employing expatriate personnel should therefore review:

- work permit compliance;
- staffing localization plans;
- payroll systems;
- tax compliance;
- HR governance structures; and
- immigration oversight systems.

This is particularly important in light of increasing scrutiny surrounding:

- Class P and Class Q work permits;
- expatriate staffing models;
- localization obligations; and
- donor expectations regarding workforce structures.

Immigration compliance is increasingly becoming part of broader institutional governance and risk management systems rather than a standalone HR issue.



ASSET PROTECTION, INSTITUTIONAL STEWARDSHIP AND DISSOLUTION RISKS

The Regulations also introduce express obligations concerning institutional asset stewardship and protection.

Organizations are required to:

- hold assets in the organization's registered name;
- maintain detailed asset inventories; and
- ensure assets are used solely for registered public benefit purposes.

The framework additionally prescribes detailed procedures regarding:

- dissolution;
- winding up;
- deregistration; and
- transfer of assets upon closure.

Organizations with:

- donor-funded assets;
- complex property ownership structures;
- vehicle fleets;
- intellectual property portfolios; or
- informal asset holding arrangements

should therefore undertake comprehensive reviews of asset ownership structures and institutional stewardship systems.

DATA PROTECTION AND STAKEHOLDER TRANSPARENCY

The Regulations also integrate constitutional and statutory data protection obligations into the nonprofit governance framework.

The forms contained in the Regulations expressly reference:

- Article 31 of the Constitution;
- data protection obligations; and
- stakeholder access rights.

Organizations handling sensitive information concerning:

- refugees;
- children;
- healthcare beneficiaries;
- donor databases;
- employees; or
- vulnerable communities

should therefore evaluate whether their data governance systems comply with:

- the Data Protection Act;
- confidentiality obligations;
- cybersecurity requirements; and
- institutional privacy standards.

CONCLUSION

The coming into operation of the Public Benefits Organizations framework represents a transformational shift in Kenya's nonprofit regulatory environment.

The new regime introduces a significantly more sophisticated governance and compliance architecture characterized by:

- enhanced institutional accountability;
- continuous regulatory oversight;
- governance integrity expectations;
- financial transparency obligations;
- operational scrutiny; and
- heightened enforcement mechanisms.

Organizations that proactively undertake comprehensive NGO-to-PBO readiness assessments will be significantly better positioned to:

- strengthen institutional resilience;
- preserve donor confidence;
- improve governance systems;
- mitigate regulatory and reputational risks;
- enhance operational sustainability; and
- transition successfully into the new regulatory environment.

Conversely, organizations that fail to modernize governance and compliance systems may increasingly face regulatory intervention, donor concerns, operational disruption and heightened institutional risk.



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The transition to the PBO regime should therefore be viewed not merely as a legal conversion process, but as a broader institutional governance and strategic transformation exercise.

HOW CM ADVOCATES LLP CAN ASSIST

CM Advocates LLP provides integrated advisory services to local and international nonprofit, charitable, humanitarian, donor-funded and development organizations on:

- NGO-to-PBO readiness assessments;
- governance restructuring;
- constitutional reviews;
- board governance advisory;
- PBORA compliance;
- donor compliance systems;
- immigration and expatriate staffing compliance;

- enterprise risk management;
- data protection compliance;
- labour and employment advisory;
- governance audits;
- anti-fraud and compliance systems;
- institutional restructuring; and
- regulatory engagements with PBORA.

Our multidisciplinary approach integrates expertise across:

- nonprofit and charities law;
- governance and risk advisory;
- immigration law;
- labour and employment law;
- regulatory compliance;
- tax advisory;
- data protection advisory; and
- institutional governance consulting.

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