

Kenya

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Table of Contents

- I. [Summary](#)
 - A. [Types of Organizations](#)
 - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
 - A. [General Legal Forms](#)
 - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities](#)
 - E. [Political Activities](#)
 - F. [Discrimination](#)
 - G. [Control of Organization](#)
- V. [Tax Laws](#)
 - A. [Tax Exemptions](#)
 - B. [Deductibility of Charitable Contributions](#)
 - C. [Value Added Taxes](#)
 - D. [Import Duties](#)
 - E. [Excise Duties](#)
 - F. [Double Tax Treaties](#)
- VI. [Finance Act No. 4 of 2012](#)
- VII. [Knowledgeable Contacts](#)

I. Summary

A. Types of Organizations

Kenya is a Commonwealth country with a common law system. There are various types of not-for-profit organizations (“NPOs”), including:

- Non-Governmental Organisations (NGOs) (soon to be Public Benefit Organisations (PBOs)).
- Companies Limited by Guarantee;
- Societies; and
- Trusts.

Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include churches, political parties, and trade unions.

B. Tax Laws

Kenya exempts from corporate income tax the income of certain NPOs that carry out specific types of activities. Unrelated business income is subject to tax under certain circumstances. Kenya also subjects certain sales of goods and services to VAT, with a fairly broad range of exempt activities. The tax laws confer only limited tax benefits on corporate donors and on individual donors.

II. Applicable Laws

- [The Constitution of Kenya](#) [2010]
- Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules [2006] (The status of these rules is yet to be determined in the light of the 2010 Constitution)
- [The Non-Governmental Organisations Coordination Act, Act No. 19](#) [1990] [2]
- [The Non-Governmental Organisations Coordination Regulations](#) [1992]
- [The Non-Governmental Organisations Council Code of Conduct](#) [1995]
- [The Public Benefit Organisations Act](#) [2013] (not officially commenced as of June 2014)
- The Companies Act, Chapter 486 of the Laws of Kenya [1959]
- [The Societies Act, Chapter 108 of the Laws of Kenya](#) [1998]
- [The Trustees \(Perpetual Succession\) Act, Chapter 164 of the Laws of Kenya](#) [1981]
- [The Trustee Act, Chapter 167 of the Laws of Kenya](#) [1982]
- The Value Added Tax Act, Chapter 476 of the Laws of Kenya [2013]
- VAT (Remission) (Charitable Organizations) Order [1999]
- [The Customs and Excise Act, Chapter 472 of the Laws of Kenya](#) [2000]
- [The Income Tax Act, Chapter 470 of the Laws of Kenya](#) [1989]
- The Employment Act of 2007, Act No. 11 [2007]
- The Education Act, Chapter 211 of the Laws of Kenya [1980]
- The HIV and AIDS Prevention and Control Act, Act No. 14 [2006]
- The Political Parties Act, Act No. 11 [2011]
- [Finance Act, No. 4](#) [2012]
- The Universities Act [2012]

III. Relevant Legal Forms

A. General Legal Forms

Kenyan law provides for five primary types of NPOs: public benefit organizations (PBOs), non-governmental organizations (NGOs), companies limited by guarantee, societies, and trusts.

PBOs

The Public Benefit Organisations Act 2013 (“PBO Act”) seeks to regulate NPOs, including NGOs registered under the Non-Governmental Organisations Coordination Act (“NGO Act”). The PBO Act will repeal the NGO Act once a commencement date for the PBO Act is introduced (PBO Act Section 61). [\[3\]](#)

Under Section 5(1) and 5(2) of the PBO Act, a “PBO” is defined as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit, and which is locally, nationally or internationally organized and operated to engage in public benefit activities. [\[4\]](#) The PBO must also be registered with the Public Benefit Organizations Regulatory Authority, once such authority is established. [\[5\]](#) At the same time, the PBO category does not include several types of organizational forms, such as:

- a trade union within the meaning of the Labour Relations Act 2007;
- a public body established by or under any written law;
- a political party within the meaning of the Political Parties Act, 2007;
- a religious organization which is primarily devoted to religious teaching or worship.
- a society within the meaning of the Societies Act;
- a co-operative society within the meaning of the Co-operative Societies Act;
- a Sacco society within the meaning of the Sacco Societies Act;
- a micro-finance institution within the meaning of the Micro-Finance Institutions Act, 2006; or
- a community based organization whose objectives include the direct benefit of its members.

NGOs

The NGO Act defines an “NGO” as “a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services” ([NGO Act Section 2, as amended by Legal Notice 11 of 1992](#)).

Under the NGO Act, it is an offence for any person to operate an NGO in Kenya for welfare, research, health relief, agriculture, education, industry, the supply of amenities or any other similar purposes without being duly registered as an NGO. Once an NGO is registered, by virtue of such registration it will be a body corporate with perpetual succession capable in its own name of: suing and being sued; taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property; entering into contracts; and doing or performing all such other things or acts necessary for the proper performance of its functions under the NGO Act, which may

lawfully be done or performed by a body corporate. Designation as an NGO confers certain tax benefits and imposes a series of regulations that are relevant to an equivalency determination.

In July 2006, the Ministry of Home Affairs presented Sessional Paper No. 1 of 2006 to the Kenyan Parliament. [6] The Sessional Paper, which Parliament subsequently passed, among other things seeks to promote interaction between NGOs and the communities where they work in an effort to improve service delivery; integrate government and NGO policies that affect the “social and economic transformation” of Kenya; and involve the individual in NGO and government affairs. [7]

Companies Limited by Guarantee

A number of NPOs are registered as companies whose liability is limited by the guarantee of the members. [8] A company limited by guarantee under the Kenyan Companies Act can be incorporated either with or without share capital. In most cases, however, companies limited by guarantee are incorporated without share capital. A company limited by guarantee may be a private company or a public company.

Under the Companies Act, a group or association of persons can incorporate as a private or public company. For companies limited by shares, a private company requires at least two and no more than 50 shareholders. A public company requires at least seven shareholders.

Societies

Under the Societies Act, a society is "any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya" (Societies Act Section 2). A branch of a society also qualifies as a society. The definition specifically excludes: companies; trade unions and their branches; cooperatives; corporations; firms, associations, or partnerships carrying on business for profit; schools; building societies; banks or international organizations of which Kenya is a member. A society's governing documents are called the Constitution or Rules of the Society (Societies Act Section 2). Societies are registered and regulated by the Registrar of Societies.

Trusts

A trust is an entity created to hold and manage assets for the benefit of others. Trusts can be established under the Trustees (Perpetual Succession) Act (“Trustees Act”) only for religious, educational, literary, scientific, social, athletic, or charitable purposes (Trustees Act Chapter 164, Section 3(1)). Charitable purposes may also be affected by forming a trust by way of a trust deed.

B. Public Benefit Status

“Public Benefit Activity” is defined in Section 2 of the PBO Act as “an activity that supports or promotes 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 individual or organizations.”

An organization that has as its objective the promotion of public benefit in any of the following areas may be registered as a PBO by the Public Benefit Organisations Regulatory Authority:

(a) legal aid; (b) agriculture; (c) children; (d) culture; (e) disability; (f) energy; (g) education; (h) environment and conservation generally; (i) gender; (j) governance; (k) poverty eradication; (l) health; (m) housing and settlement; (n) human rights; (o) HIV/AIDS; (p) information; (q) informal sector; (r) old age; (s) peace building; (t) population and reproductive health; (u) refugees; (v) disaster prevention, preparedness and mitigation; (w) relief; (x) pastoralism and the marginalized communities; (y) sports; (z) water and sanitation; (aa) animal welfare; and (bb) youth (PBO Act Sixth Schedule).

The PBO Act permits an organization to register under any of a variety of legal forms, but if an organization registers as a “Public Benefit Organisation” in order to receive tax exemptions and other benefits derived from this status, it will cease to be registered under any other law (PBO Act Section 6; See also PBO Act Second Schedule, setting forth in detail some of the “Benefits of Registration” as a PBO).

IV. Specific Questions Regarding Local Law

The regulatory scheme for NPOs in Kenya is complex, combining substantive and procedural statutes, common law rules embodied in case law, and administrative practices. [9] In addition, Kenyan legislation substantially regulates an organization through enforcement of the organization's founding documents. Within this context, the Note examines issues of local law relevant to equivalency determinations.

A. Inurement

PBOs

The definition of “public benefit organization” includes the term “non-profit making.” Strictly speaking, the PBO Act permits organizations to raise “profits” (earnings, less expenses) through donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property; and income generated from any lawful activities undertaken by the public benefit organization with its property and resources which must be used solely for the public benefit purposes of the organization (PBO Act Section 65).

NGOs

An NGO's constitution must prohibit the organization from distributing funds to members other than for legitimate reimbursement of expenses incurred in carrying out the organization's objectives (NGO Coordination Regulations Second Schedule, Section 4(a) and 4(b)). The documents must also stipulate rules for awarding contracts to members or

officials ([NGO Coordination Regulations Second Schedule](#), Section 4(c)). However, the law does not specify particular language for these clauses.

Other NPOs

The Rules of a Society must stipulate the purpose for which funds can be used, and must prohibit distribution of funds to members (Societies Act First Schedule, Para. 11). However, Kenyan law does not specify particular language for these clauses.

Kenyan law does not require trusts or companies to prohibit inurement.

B. Proprietary Interest

PBOs

A PBO's constitution must state that "the organization's income and property are not distributable to any person, except as reimbursement of reasonable expenses or payment of reasonable compensation for services rendered" (PBO Act Section 8(4)(a)(iv)).

NGOs

An NGO's constitution must prohibit distribution of assets to members and officials ([NGO Coordination Regulations 1992 Second Schedule](#), Paras. 4(a) and 4(b)). However, the law does not otherwise address whether donors can retain a proprietary interest in their donations.

Other NPOs

Kenyan law does not explicitly require companies, societies, or trusts to prohibit proprietary interest.

C. Dissolution

PBOs

Under the PBO Act, when an organization is deregistered, wound up, or dissolved, any assets remaining after all its liabilities have been met shall be transferred to another PBO having similar objectives, which shall be identified through a resolution of the governing body of the organization being deregistered, wound up, or dissolved; otherwise the PBO Regulatory Authority shall determine the recipient PBO (PBO Act Section 8(4)(m)).

NGOs

In the event of dissolution, whether voluntary or involuntary, the NGO constitution must provide for the manner of dissolution of the NGO and disposal of its property upon dissolution (NGO Coordination Regulations 1992 Second Schedule, Point 12).

Companies Limited by Guarantee

When a company dissolves, its assets are applied first to statutory preferential payments, such as any outstanding taxes; second, to liabilities; and third, to members, distributed according to their rights and interests in the company, unless the company's articles of association provide otherwise ([Companies Act Section 296](#)).

Societies

Under the Societies Act, a receiver is appointed to handle the dissolution of a society (Societies Act Section 33(a)). According to the society's constitution, the receiver proposes a scheme for distributing any surplus assets, which must be approved by the Cabinet Secretary (Societies Act Section 34(1)). The Societies Act does not explicitly prohibit distribution of assets to members upon the society's dissolution. Section 35(2) of the Societies Act states that Section 309-317 of the Companies Act applies to the dissolution of a society. The priority in which debts are to be paid is the same as the priority of payment of debts for companies being dissolved, as provided under Section 311 of the Companies Act.

Trusts

The Cabinet Secretary can order an incorporated trust to be dissolved if it has ceased to exist or if its objectives have become incapable of fulfillment. Upon dissolution and where land was vested in it, the trust's land shall be transferred to the county council in the jurisdiction where the land is situated; if the land is not the trust's land, it shall be transferred to the government. The law does not provide for distribution of other assets ([Trustees Act Section 16\(2\)](#)).

Trusts not incorporated under the Trustees Act are dissolved in accordance with the law of equity.

D. Activities

1. General Activities

Generally, a legal entity, upon its establishment and (where required) registration, can undertake any legal activity.

2. Economic Activities

A PBO may engage in lawful economic activities as long as the income is used solely to support the public benefit purposes for which the organization was established. Further, PBOs can engage in economic activities directly or through subsidiary entities (PBO Act Section 65(1)).

The income of a PBO may include donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property; and income generated from any lawful activities undertaken by the public benefit organization with its property and resources (PBO Act Section 65(2)(a-g)). A PBO may own and manage property and assets for the accomplishment of its not-for-profit purposes (PBO Act Section 65(3)).

NGOs by definition are “not operated for profit or other commercial purposes” ([NGO Act Section 2](#)). However, the regulations do not bar an NGO from undertaking substantial economic activities in pursuit of its purposes.

Other NPOs can engage in economic activities consistent with their governing documents.

E. Political Activities

PBOs

A PBO may not engage in fundraising or campaigning to support or oppose any political party or candidate for appointed or elected public office, nor may it propose or register candidates for elected public office (PBO Act Section 66(3)).

NGOs

An NGO cannot become a branch of, or affiliated with, or connected to any organization or group of a political nature established outside Kenya and shall not dissolve itself except with the prior consent in writing of the board obtained upon written application addressed to the director and signed by three officers of the organization ([NGO Coordination Regulations \(1992\) Paras. 21\(1\)\(b\)](#) and (c)). An NGO can affiliate with a political organization *inside* Kenya, though the Government discourages this practice.

Companies Limited by Guarantee

According to Kenyan common law, companies are free to engage in political or legislative activities if their governing documents permit it.

Societies

Most political parties are registered as societies. Other types of societies can engage in political activities if their governing documents permit it. However, a society cannot function as a political party until it is registered in accordance with the provisions of the Political Parties Act and meets the requirements set out under Article 91 of the Constitution (Political Parties Act 2011 Section 4). [\[10\]](#)

Trusts

The trust deed stipulates the activities that the trust can engage in.

F. Discrimination

Kenya’s Constitution guarantees freedom of expression, association, assembly, and movement, and bars discrimination on the grounds of gender, race, sex, pregnancy, marital status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth (The Constitution of Kenya Articles 26-51). Furthermore, an NGO's activities must "ensure equality of opportunity for all regardless of nationality, ethnic background, gender, religion or creed" (NGO Council Code of Conduct Section 10(c)). [\[11\]](#)

In February 2006, the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006 were enacted by the Chief Justice. Where contravention of any fundamental rights and freedoms of an individual under Articles 26-51 of the Constitution is alleged or is apprehended, an application may now be made directly to the High Court. These rules strengthen the ability of individuals to enforce fundamental rights and freedoms by clarifying the procedure to apply to the High Court under Article 22 of the Constitution ([Constitution of Kenya \(Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual\) High Court Practice and Procedure Rules, 2006](#)). [12] However, the Constitution notes that the absence of rules does not limit the right of any person to commence court proceedings to enforce the Bill of Rights and to have the matter heard and determined (Constitution of Kenya 2010 Article 22(4)).

With regard to institutions of higher education, Kenya has seven public universities established by Acts of Parliament, and 19 private chartered universities. Discrimination on the grounds of ethnicity, sect, or creed is barred by virtue of Section 3(2)(f) of the Universities Act 2012. [13] Discrimination on the basis of religion when admitting students is also prohibited (Constitution of Kenya 2012 Article 32(3)).

Private universities are authorized to offer degrees, post graduate diplomas and certificates under the Universities Act 2012 and the Universities Rules of 1989. [14] While the Universities Rules may not expressly bar acts of discrimination in private universities or public universities established other than by an Act of Parliament, protection from discrimination is extended by virtue of the Constitution.

Likewise, the Education Act (Cap 211 Laws of Kenya) does not expressly prohibit discriminatory practices in primary and secondary educational institutions.

The Employment Act of 2007 seeks to address discrimination in employment by espousing (i) the promotion of equality of opportunity in employment; (ii) the elimination of discrimination in any employment policy or practice – (including against prospective employees: race, color, sex, ethnic origin, HIV status, disability, pregnancy); and (iii) the payment of equal remuneration for work of equal value (Employment Act 2007 Section 5).

The HIV and AIDS Prevention and Control Act prohibits discrimination on the grounds of actual, perceived or suspected HIV status of a person in the workplace or in schools or accessibility to loans and credit facilities (HIV and AIDS Prevention and Control Act Section 31-32).

G. Control of Organization

Kenyan law does not restrict other organizations or persons from controlling a Kenyan not-for-profit organization beyond stating that an NGO must be private and voluntary. Accordingly, a for-profit entity might establish an NPO and continue to control it. Likewise, a Kenyan NPO could be controlled or owned by an American grantor charity, which would have to be disclosed in the affidavit.

V. Tax Laws

A. Tax Exemptions

PBOs

PBOs are exempt from “income tax on income received from membership subscriptions and any donations or grants;” tax on “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 organization was established;” tax on interest and dividends on investments and gains earned on assets or the sale of assets; and stamp duty (Income Tax Act Second Schedule (1)(a)(i) and (1)(a)(ii)).

Other NPOs

For its income to be exempt from income tax, an organization must have been established solely to relieve poverty or distress of the public, or to advance religion or education. In addition, the Commissioner of Income Tax must conclude that the income is expended either wholly within Kenya or in ways that benefit the residents of Kenya ([Income Tax Act First Schedule, Cap 470, Para. 10 as amended by Legal Notice No. 6 of 2001](#)).

Income consisting of profits from a business is subject to an additional restriction: Such income is exempt from tax only if it meets the criteria in the previous paragraph *and* if one of the following is true:

- (a) the business is carried on in the course of advancing the organization's stipulated purposes; or
- (b) the business is conducted mainly by beneficiaries of those purposes; or
- (c) the gains or profits consist of rents (including premiums or similar consideration in the nature of rent) received from leasing land and attendant chattels ([Income Tax Act First Schedule, Cap 470, Para. 10](#)).

B. Deductibility of Charitable Contributions

As of January 2007, individuals and corporations generally can deduct any cash donations from their income tax to a charitable organization, provided that:

- a. the charitable organization is registered or exempt from registration under the Societies Act or the NGO Act 1990 or the PBO Act; and
- b. its income is exempt from tax under the provisions of Para. 10 of the First Schedule ([Income Tax Act Section 15\(2\)\(w\)](#)).

The same applies to any project approved by the Cabinet Secretary of Finance ([Income Tax Act Section 15\(2\)\(w\)](#)). Expenditures of a capital nature by a person on the construction of a public school, hospital, road, or any similar kind of social infrastructure can be deducted as well, with prior approval of the Cabinet Secretary ([Income Tax Act Section 15\(2\)\(x\)](#)).

Furthermore, deductibility is permitted for expenditures on scientific research to advance the donor's business, including sums paid to approved scientific research institutes or universities, provided that certain conditions are satisfied ([Income Tax Act Section 15\(2\)\(n\)](#)).

C. Value Added Taxes

Under the PBO Act, there shall be preferential treatment under VAT and customs duties for imported goods or services that are used to further an organization's public benefit purposes (PBO Act Second Schedule Para. (1)(b)).

Under Regulation 30 of the NGO Coordination Regulations 1992, if an organization requires exemption from VAT on goods and services required to meet its objectives and on income-generating activities (or income for expatriate employees), an application must be made through the NGO's Board to the Cabinet Secretary of Finance.

"Social welfare services" provided by a charitable organization are exempt from VAT, provided that the organization satisfies two criteria:

- (a) It must be registered under the Societies Act or NGO Act, or exempted from registration by the Registrar of Societies or the NGO Coordination Board; and
- (b) Its income must be exempt from tax under the Income Tax Act and approved by the Commissioner of Social Services.

Such services are not treated as taxable supplies, and no VAT is charged on them (VAT Act First Schedule, Part 2 Para. 11).

The VAT Act also exempts services to members performed by trade, professional, and labor associations, as well as educational, political, religious, welfare, and other philanthropic associations, provided that this shall not apply where any such services are rendered by way of business (VAT Act First Schedule, Para. 11). Certain foods are also VAT exempt (VAT Act First Schedule Part 1).

Zero-rated supplies include gifts to registered societies or NGOs (or societies or NGOs exempt from registration) whose income is exempt from income tax if they meet certain criteria (VAT Act Section 7(2) and Second Schedule). [\[15\]](#)

The grant of all of the above exemptions is purely discretionary on the part of the Cabinet Secretary for National Treasury, based on recommendations by the commissioner of Domestic Taxes and the NGO Board.

D. Import Duties

NGOs are not automatically entitled to exemptions on import custom duties. To obtain such exemptions, an application must be made to the Cabinet Secretary for National Treasury through the NGO Board.

Gifts to charitable institutions are exempt from customs duties under the following circumstances:

- (a) Goods donated or purchased for donation to a non-profit organization or government-approved institution for: their official use; free distribution to the poor and needy; use in

medical treatment, education, religious, or rehabilitation work; or other purposes approved by the government (Customs and Excise Act Third Schedule, Para. 12 (1)(b)).

(b) Certain goods, including some passenger motor vehicles, and office, audio and visual electronic equipment, are excluded from the custom duties exemptions. Textiles, new and used clothing, footwear, and certain foods also are excluded from the customs duties exemption; however, a remission of the duty may be granted if the goods are donated or purchased for donation to registered homes for poor and needy persons. The remission is subject to Cabinet Secretary approval. Remissions also may be granted when the goods are imported during periods of civil strife, national calamity, or disaster as declared by law or where intended for use in officially recognized refugee camps in Kenya (The Customs and Excise (Remission) (Charitable Organisations) Order 1999 as amended by Legal Notice 46 of 2004).

(c) The Treasury must approve any duty exemption that exceeds Kshs. 500,000 (approximately USD 5,700) (Customs and Excise Act Third Schedule, Para. 12(1)(a)).

E. Excise Duties

The Excise duty rates that were proposed in the Finance Bill 2011 have now been enacted.

F. Double Tax Treaties

There are no double tax treaties between the United States and Kenya.

VI. Finance Act No. 4 of 2012

The Finance Act 2012 limits the validity period of income tax exemption certificates. A tax exemption certificate shall be renewed where an application is made to the Cabinet Secretary of Finance, through the Commissioner, at least six months before the expiry period. The Cabinet Secretary may also revoke an exemption on the basis of any just cause (Finance Act 2012 First Schedule, Para. 10).

This affects trusts, NGOs, churches and other charitable organizations involved in relief, education, and religious activities. [\[16\]](#)

VII. Knowledgeable Contacts

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Footnotes

[1] As of June 2014, there were several pending bills which are not reflected in this Note. We recommend that readers check the status of these bills to determine if there are any relevant changes in the current legal framework for not-for-profit organisations in Kenya.

[2] The Non-Governmental Organisations Coordination Act 1990 will be repealed by the Public Benefits Organisation Act once the commencement date for the Public Benefits Organisation Act is set.

[3] The PBO Act was approved by Parliament and the President in January 2013, but as of June 2014 an official commencement date had not been set. An Act is not considered in force until such a date is set and published in the Kenya Gazette. Accordingly, the PBO Act will repeal the NGO Act once the former's commencement date is published, however until then, the NGO Act stands as the applicable law governing the registration of NGOs.

[4] A “public benefit activity” is an 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 category of individuals or organisations” (PBO Act Section 2(1)).

[5] The NGO Board is continuing to register NGOs under the NGO Act, on the grounds that a commencement date for the PBO Act has not yet been published. If indeed the PBO Act has commenced (even though no commencement date has been announced) and therefore repealed the NGO Act, then the current registration of NGOs under the NGO Act may be subject to challenge. The PBO Act is meant to repeal the NGO Act so that, among other changes, all NGOs which are on the appointed day registered in Kenya under the NGO Act shall be deemed to be registered as a PBO and have up to one year from the appointed date to seek registration as a PBO under the new Act.

[6] The Sessional Paper was drafted by the Ministry in consultation with various stakeholders in the NGO sector. The intention is that the Sessional Paper's contents will be reflected in a bill to be presented to Parliament for formal enactment. Although its contents currently may not be binding, the Sessional Paper serves as a useful indication of the government's future policy in relation to the sector. A summary of the contents of the Paper is briefly outlined in [Appendix A](#).

[7] In the Kenya Gazette dated November 2, 2012, the then-Minister of State for National Heritage and Culture amended the Non-Governmental Organisation Regulations 1992 by deleting the Third Schedule, which governs service charges, and substituting it with newly increased service charges. For example, the application fee for registering international NGOs has been increased from Ksh. 5,000 to Ksh. 30,000 (approximately USD 57 to USD 340), and the fee for national NGOs raised from Ksh. 3,000 to 16,000 (approximately USD 34 to USD 180).

[8] It is also possible in Kenya to establish a company limited by shares; however, this is typically established to carry out for-profit trading activities.

[9] See Sihanya, *The Regulatory Regime Governing NGOs in Kenya* (1996).

[10] However, no society in Kenya can affiliate with any political organization or group outside Kenya (Societies Act Section 11(1)(a)).

[11] This code is written and enforced by a statutorily established council of voluntary agencies (NGO Act Sections 23-24). The council can recommend the suspension or cancellation of an NGO's registration certificate (Code of Conduct Section 20(4)(b); NGO Act Section 16).

[12] The Constitution now provides under Article 22(1) that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. As of March 2012, the status of the above rules has yet to be established; however Article 22 further provides that the Chief Justice shall make rules providing for the above court proceedings (Article 22(3)).

[13] The following section is repeated verbatim in the various public university Acts:

Admission to the University as candidates for degrees, diplomas, certificates or other awards of the University shall be open to all persons accepted as being qualified by the Senate without distinction of ethnic origin, sect or creed and no barrier based on such distinction shall be imposed upon any person as a condition of his becoming or continuing to be, a professor, lecturer, graduate or student of the university or of his holding any office therein, nor shall any preference be given to, or advantage be withheld from, any person on the basis of ethnic origin, sect or creed.

[14] Universities Act (Cap 210B of 1986) has been repealed by Universities Act 2012.

[15] If the Cabinet Secretary concludes that it is in the public interest to do so, he/she has the discretion to remit not more than 25% of the VAT payable in respect of any taxable goods or services. This rebate is then placed before the National Assembly for approval before it can be enforced (VAT Act Section 6).

[16] The Finance Act 2012 appears to anchor in the Income Tax Act as a measure to ensure that Kenya Revenue Authority (KRA) can monitor and review the activities of charitable organizations not only to determine whether they should continue to enjoy exemptions but also to follow up on their compliance with other taxes such as PAYE and withholding tax.