

# Impact Economy Digital Edition 2021



# Kenya

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Bowmans

## LEGAL AND POLICY FRAMEWORK

### Legislation

- 1 | Has your jurisdiction enacted any primary or secondary legislation addressing environmental, social and governance (ESG) factors in banking, finance and corporate law, or legislation addressing the pursuit of other non-financial objectives by companies and investors?

The Code of Corporate Governance Practices for Issuers of Securities to the Public (the Code), issued by the Capital Markets Authority (the Authority), includes guidance on ESG in responsibilities and reporting. The Code emphasises the need for issuers to adopt an ESG approach in guiding performance, thereby promoting sustainable practices.

Under the Code, boards of directors issuers are obligated to promote sustainability by ensuring that the company's strategies promote the sustainability of the company. The board is required to have formal strategies to promote sustainability. The issuer is required to give attention to ESG aspects of the business, which underpin sustainability.

In addition to the Code, the Authority issued the Stewardship Code for Institutional Investors 2017 for application by institutional investors investing in capital markets. The Code applies to institutional asset owners and asset managers investing in the debt and equity of companies listed on a licensed securities exchange with primary focus on domestic investors domiciled in Kenya. Overseas institutional investors in Kenyan equities are encouraged to become signatories to the Stewardship Code. Institutional investors are required to act responsibly in promoting sustainable markets and societies, and should consider environmental, social, and ethical issues in their investment process.

### Policy guidance and development

- 2 | How would you describe the general level of policy guidance and development regarding ESG, impact investing and purpose-driven companies in your jurisdiction?

The general level of policy guidance and development regarding ESG, impact investing and purpose-driven companies in Kenya is well developed. The guidelines contain elaborate provisions on formal strategies to promote sustainability, ESG performance reporting, the triple bottom line approach, integrated reporting and ESG policies.

From a development point of view, in 2018, the Authority published the first Report on the State of Corporate Governance of issuers of Securities to the Public in Kenya: a publication on the status of corporate governance in Kenya. In this report, the Authority stated that it would conduct a survey among issuers and institutional investors on their capacity, appetite and opinions regarding increased disclosures on ESG reporting and the costs of compliance before the end of financial year 2018/2019.

In 2019, the Authority duly published the second edition of the report, which contained a detailed section on ESG reporting. The report gave a snapshot on ESG performance. The Authority noted that on the integration of sustainability and ESG in business strategies, issuers improved from a fair rating in 2017/2018 to a good rating in 2018/2019. Further, introduction of integrated reporting improved from a 'needs improvement' rating in 2017/2018 to a 'fair' rating in 2018/2019.

The Authority has also entered into institutional partnerships aimed at enhancing cooperation in sustainable finance through exchange of information and strengthening legislative, regulatory and institutional frameworks for the market to share experiences while leveraging on international best practices.

## INVESTMENT

### Regulatory and fiduciary duties

- 3 | Are institutional investors and financial intermediaries legally required to consider ESG factors when making investment decisions? Must any additional non-financial principles and objectives be considered?

Under the jurisdiction of the Capital Markets Authority (the Authority), institutional investors are required to have transparent, honest and fair practices in their dealings with the companies in which they invest. Institutional investors are further obligated take up the role of stewardship as the representatives of their clients or investors in listed companies and other approved products through their organisations. To effect this, they are particularly encouraged to make direct contact with the company's management and board to discuss performance and corporate governance matters as well as vote during the annual general meetings of the company.

In making investment decisions, institutional investors are required to commit themselves to complying with principles of the Code of Corporate Governance Practices for Issuers of Securities to the Public (the Code) that governs the roles and responsibilities of institutional investors operating under the jurisdiction of the Authority.

The principles of the Code governing institutional investors should include:

- public disclosure on discharge of stewardship responsibilities;
- a policy on conflict of interest in relation to stewardship, which should be publicly disclosed;
- monitoring and evaluation of their client's investments;
- guidelines on when and how they will escalate their stewardship activities;
- a policy on voting at Annual General Meetings and disclosure of voting activity; and
- a policy on periodic reporting to their clients.

## Voluntary standards and best practices

### 4 | What voluntary standards and best practices are commonly followed in your jurisdiction with regard to integrating ESG factors and other non-financial principles into investment decisions?

The following voluntary sustainability standards provide additional guidelines for sustainable business practices in Kenya:

- international governance agreements and guidelines: the OECD Guidelines for Multinational Enterprises, the UN Global Compact and OHCHR Guiding Principles on Business and Human Rights;
- international multi-stakeholder initiatives providing standards for the social and environmental practices of firms, such as the ISO 26000 standard Guidance on Social Responsibility 2010;
- private voluntary sustainability standards between players covering different sustainability metrics;
- industry association codes covering major areas of commercial activity; and
- company codes with specific policies on social and environmental issues.

## Measurement, reporting and disclosure

### 5 | What voluntary and statutory measurement, reporting and disclosure frameworks are followed in your jurisdiction with regard to ESG and other non-financial factors?

Boards are required to work continually towards the introduction of integrated reporting. 'Integrated reporting' is defined as a process that brings together the material information about an organisation's strategy, governance, performance and prospects in such a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how an organisation demonstrates stewardship and how it creates value, now and in the future. Integrated reporting combines the most material elements of information currently reported in separate reporting strands (financial, management guidelines, governance and remuneration, and sustainability) into a coherent whole.

Adoption of integrated reporting is intended to lead to disclosure that is more effective. From the company's point of view, it means that more issues and areas have to be taken into account in running the business, including suppliers, customers, regulators, government, creditors, debtors, investors and even the community where this business is located. Taking care of the interests of varied stakeholders can only lead to better management and control of the company.

Boards are required to consider not only the financial performance but also the impact of the company's operations on society and the environment. The board is not just responsible for the company's financial bottom line, but for the company's performance in respect of its triple bottom line. 'Triple bottom line' means the accounting system that expands on the traditional reporting framework to take into account social and environmental performance in addition to financial or economic performance. This implies that the board reports to its shareholders and other stakeholders on the company's economic, social and environmental performance.

Furthermore, the board is required to protect, enhance and invest in the well-being of the economy, society and the environment. Although the company is an economic institution, it remains a corporate citizen and therefore has to balance economic, social and environmental value. The triple bottom line approach enhances the potential of a company to create economic value. By looking beyond immediate financial gain, the company ensures that its reputation, one of its most significant assets, is protected. Besides, there is growing understanding in business that social and environmental issues have financial consequences.

Finally, the board is required to ensure that the company discloses its environmental, social and governance policies and implementation thereof in its annual report and website.

## Ratings, indices and guidelines

### 6 | What ratings, indices and guidelines are used to benchmark adherence to ESG principles and other non-financial factors in your jurisdiction?

In collaboration with the International Finance Corporation and issuers, the Authority developed offsite tools including the Corporate Governance Reporting Template and the Corporate Governance Scorecard for reporting, measuring and monitoring the application of the Code. The Reporting Template, completed and submitted by issuers, serves to enhance adherence to governance requirements as well as disclosing the status of application of each requirement.

The Corporate Governance Scorecard is assessed internally by the Authority to assess the level of implementation of the Code.

The Scorecard covers the following seven areas of the Code:

- introduction to the Code (focus on commitment to good governance);
- board operations and control;
- rights of shareholders;
- stakeholder relations;
- ethical and social responsibility;
- accountability, risk management and internal control; and
- transparency and disclosure.

## Incentives, benefits and financial support

### 7 | Are any fiscal incentives or other benefits available in your jurisdiction to encourage institutional investors and financial intermediaries to integrate ESG and other non-financial factors into their investment decision-making?

At present, there is no fiscal incentive mechanism for ESG performance in Kenya, other than donations made to entities specifically exempted from Kenyan income tax are tax deductible in the hands of the donor.

However, in the stakeholder feedback section of the 2019 CG report, the Authority noted that it was tasked to incentivise issuers who demonstrate leadership in the application of good corporate governance practices. It was also pointed out that this should be balanced against management of conflict of interest by the regulator. Going forward, subject to stakeholders' concurrence, the Authority will disclose the overall leaders and gradually move on to 'good performers' and eventually to 'fair' and 'needs improvement' based on their assessments.

## Impact investing

### 8 | In addition to ESG factors, what considerations and practices are commonly integrated into impact investment strategies?

The following considerations and practices are commonly integrated into impact investment:

- market-based solutions to poverty alleviation;
- food security to vulnerable populations; and
- provision of services to low-income consumers in rural areas.

## PURPOSE-DRIVEN COMPANIES

### Legal recognition and certification

#### 9 | What legal forms or statuses are used in your jurisdiction to establish purpose-driven companies?

There are various options available for the registering of purpose-driven companies in Kenya:

- a company that is limited by shares. However, such companies are generally seen as vehicles for profit maximisation and not purpose-driven;
- a branch of a foreign purpose-driven company. This is a branch of a parent company that is incorporated in another jurisdiction. It is an extension and part of the parent company. This option is only available to companies that have been incorporated outside Kenya;
- a company limited by guarantee (CLG). A CLG is a company where the members' liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up; and
- a non-governmental organisation (NGO). NGOs are currently registered and regulated by the NGOs' Co-ordination Board under the NGO Act. NGOs are private voluntary groupings, not operated for profit or for other commercial purposes but for the benefit of the public at large and for the promotion of social welfare, development charity or research in community service. However, NGOs may undertake income-generating activities provided that the income and property of the NGO is applied solely towards the promotion of the objects of the NGO. The NGO Act is set to be replaced by the Public Benefits Organisation (PBO) Act which is yet to come into force. Once the PBO Act comes into force, every NGO will automatically be deemed to be a public benefits organisation.

There is no public or private certification for companies that pursue social or environmental purposes, such as for charities regulators found in other jurisdictions. However, multi-country voluntary certification standards are applied mostly in the export agricultural and floricultural sector.

### Purpose and mission

#### 10 | What rules and standard practices govern the establishment of companies' social or environmental purposes and mission?

There are no specific rules and standard practices governing the establishment of companies' social or environmental purposes and mission. Under the Companies Act, unless the articles of a company specifically restrict the objects of the company, its objects are unrestricted. Therefore, companies are able to pursue social or environmental purposes even if they are not in their direct line of trade or a direct source of profit.

There is no statutory obligation to publish a mission statement. Under the Principles for Corporate Governance in Kenya, companies are recommended to have a detailed board manual that inducts and explains to each director his or her collective and individual duties, obligations and responsibilities. The manual is to include the mission statement and vision of the company. The board has the power to amend the manual if deemed necessary; this can also be prompted by shareholders who are the ultimate governing summit of the company.

### Profit distribution, winding up and remuneration

#### 11 | What rules and restrictions govern profit distributions for purpose-driven companies in your jurisdiction?

Purpose-driven companies registered under the Companies Act undertake profit distributions like other companies: through dividends paid out to shareholders from available after-tax profits or through bonus shares issued by a company. Companies are permitted to restrict the distribution of profit to shareholders or members – this is used in companies limited by guarantee and indeed is the very essence of such a company but could also be implemented in trading companies through the shareholder restrictions contained in the articles of association or through a shareholder agreement.

The NGO Act provides for asset locks to ensure that the assets of an NGO are used for its registered public and social objects. Under the NGO Act, an NGO seeking registration is required to provide the following mandatory provisions in its constitution relating to the purpose for which the funds may be used:

- the prohibition of the distribution of funds and assets among members;
- prohibition of clauses in the constitution that may constitute loopholes for the distribution of funds and assets to members or officials except for legitimate reimbursement of expenses in carrying out the objects of the NGO; and
- rules governing the awarding of contracts to members or officials.

#### 12 | What rules and restrictions govern the winding up of purpose-driven companies?

There are no specific rules and restrictions that govern the winding up of purpose-driven companies. Winding up of purpose-driven companies is governed by Insolvency Act No. 18 of 2015, the overarching statute governing the insolvency of natural persons, incorporated and unincorporated bodies. For purpose-driven companies registered as NGOs, the NGO coordination regulations provide that organisations being de-registered are required to tender their assets or operations to other organisations with similar objectives within 60 days of the date of notification.

#### 13 | What rules and restrictions govern the remuneration of directors, officers, employees and third parties?

There are no specific rules and restrictions governing the remuneration of directors, officers, employees and third parties of purpose-driven companies. Companies generally fix the remuneration of directors in their contracts of service commonly through salary and meeting sitting allowances, subject to their articles of association. Under the Companies Act, listed companies are subject to additional reporting and approval requirements for directors' remuneration. Remuneration of officers, employees and third parties is determined by contract.

For purpose-driven companies registered as NGOs, the distribution of funds and assets of an NGO to members or officials is only permitted for legitimate reimbursement of expenses in carrying out the objectives of the NGO.

### Measurement, benchmarking and reporting

#### 14 | Are purpose-driven companies legally required to measure, benchmark and report the social and environmental impact of their business?

There are no statutory requirements for purpose-driven companies to measure, benchmark and report the social and environmental impact of their business. However, purpose-driven companies that fall within the regulatory ambit of the Capital Markets Authority as licensed issuers of securities to the public are regulated by the Authority.

#### 15 | What statutory and voluntary standards, guidelines and best practices are followed by purpose-driven companies in your jurisdiction with regard to the measurement and reporting of ESG and other non-financial factors?

There are no statutory and voluntary standards set out to be followed by purpose-driven companies in Kenya with regard to the measurement and reporting of ESG and other non-financial factors. However, purpose-driven companies that fall within the regulatory ambit of the Capital Markets Authority as licensed issuers of securities to the public are bound by the standards set out in the Corporate Governance Code.

On the one hand, the Capital Market Authority has developed a Corporate Governance Reporting Template and Corporate Governance Scorecard for reporting, measuring and monitoring the application of the Corporate Governance Code. On the other hand, there is no specific format for integrated reporting and environmental social and governance reporting. However, in the stakeholder feedback section of the 2019 Corporate Governance report, the Authority noted that it was working with relevant local and global stakeholders, including the Integrated Reporting Council, the Global Reporting Initiative, G4 Sustainability Guidelines and the Sustainability Accounting Standards Board.

### Director liability and private enforcement

**16** What rules govern the liability of directors of purpose-driven companies for compliance with social and environmental standards and principles? In addition to shareholders, are stakeholders entitled to hold directors accountable through private enforcement action?

There is no statutory provision governing the liability of directors of purpose-driven companies in relation to compliance with social and environmental standards and principles in Kenya. However, under the Principles for Corporate Governance in Kenya, such provision has been made.

The Principles are neither prescriptive nor mandatory but are designed as a basis to assist individual companies in formulating their own specific and detailed codes of best practice. Under the Principles, the board is required to recognise that it is in the enlightened self-interest of the corporation to operate within the mandate entrusted to it by society, and to shoulder its social responsibility.

The board is required to monitor the social responsibilities of the company and promulgate policies consistent with the company's legitimate interests and good business practices. In particular, the board of directors should:

- promote fair, just and equitable employment policies;
- promote and be sensitive to the preservation and protection of the natural environment;
- be sensitive to and conscious of gender interests and concerns;
- promote and protect the rights of children and other vulnerable groups; and
- enhance and promote the rights and participation of host communities.

Generally, the board of directors, conscious of its responsibilities to investors, suppliers, creditors, employees and society should:

- issue a certificate at the end of every year confirming that it has complied with the law, conducted its affairs in accordance with the best principles and practices of corporate governance and that, to the best knowledge of the board and management, no related person acting on behalf of the company with the knowledge or authority of the board or management committed an offence under the Prevention of Corruption Act or indulged in any unethical behaviour in the conduct of the company's business, or has been involved in money laundering or any practice contrary to national laws or international conventions; and
- publish a social responsibility report every year, indicating how it has dealt with its social and environmental responsibilities.

### State supervision

**17** Is there any form of state supervision of purpose-driven companies in relation to their social and environmental purposes?

There is no form of state supervision of purpose-driven companies in relation to their social and environmental purposes. However,

purpose-driven companies that fall within the regulatory remit of the Capital Markets Authority as licensed issuers of securities to the public are regulated by the Authority. The scope of regulation entails exercise of powers to enforce the Authority's mandate of promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya, including the issuing securities' industry licences, rule-making and investigative and enforcement powers.

### Incentives and benefits

**18** Are any fiscal incentives or other benefits available for purpose-driven companies in your jurisdiction? What is the scope of these benefits and what requirements apply?

Pursuant to the provisions of the First Schedule to the Income Tax Act, exemption from income tax is available in relation to the income of an institution, body of persons or irrevocable trust, or to a public character established solely for the purposes of the relief of poverty or distress of the public, or the advancement of religion or education established in Kenya. It is also available to an institution whose regional headquarters is situated in Kenya, in so far as the Commissioner is satisfied that the income is to be expended either in Kenya, or in circumstances in which the expenditure of that income is for purposes that benefit residents of Kenya.

Theoretically, any purpose-driven entity should be able to apply for tax exemption status if it is able to establish that it was formed for the benefit of the society and its income is solely used for this purpose. However, in reality, the Kenya Revenue Authority (KRA) is more accustomed to accepting applications by NGOs, companies limited by guarantee, branches of charitable companies, societies and incorporated trusts. It would be much harder to convince the tax authority that a company limited by shares is purpose driven.

Pursuant to the provisions of the Income Tax Act, where any such income consists of gains or profits from a business, it shall not be exempt from tax unless such gains or profits are applied solely for the relief of poverty or distress to the public or for the advancement of religion or education.

- the business must be carried on in the course of the actual execution of those charitable purposes;
- the work in connection with the business must mainly be carried on by beneficiaries under those purposes; or
- the gains or profits must consist of rents (including premiums of similar consideration in the nature of rent) received from the leasing or letting of land and chattels leased or let therewith.

Such income tax exemption is not automatic and is typically obtained by making an application to the KRA. Upon approval of such application, the taxpayer is issued with a tax exemption certificate that is valid for five years, subject to renewal.

In the event that a purpose-driven entity obtains a tax exemption certificate, it will not be subject to corporate income tax in Kenya but would still be required to file nil tax returns. There are no tax benefits that are unique to an NGO or CLG that would make a purpose-driven company registered as such preferable from a tax perspective.

### Public procurement

**19** Do the public procurement rules and policies in your jurisdiction confer any advantages on companies for pursuing social or environmental purposes? If so, what conditions apply?

The preference and reservations regulations in public procurement and disposal only apply to procurements by public entities when soliciting tenders from the following target groups: small and micro enterprises;

disadvantaged groups; citizen contractors; local contractors; or citizen contractors in joint-venture or subcontracting arrangements with foreign suppliers. Inasmuch as companies pursuing social or environmental purposes are not expressly named as a specific category, companies may qualify for categorisation if they meet the definition of a target group within the specified threshold or regions.

### Economic sustainability and market competition

20 | How would you describe the level of economic sustainability and market competition of purpose-driven companies?

Measurement of the level of economic sustainability and market competition of purpose-driven companies is not advanced in Kenya, and we are not aware of any metrics that consider limits to the distribution of profits, tax benefits, measurement and reporting costs.

## GOVERNMENT, NGO AND SUPRANATIONAL SUPPORT

### Government support

21 | Are there any governmental actors in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

The Vision 2030 Delivery Secretariat is a statutory corporation charged with the mandate of spearheading the implementation of the Vision 2030, the country's long-term development blueprint and strategy towards making Kenya a newly industrialised middle-income country. The current and third Medium Term Plan (MTP) 2018–2022 aims to achieve accelerated, high, inclusive, broad-based, sustainable economic growth, social economic transformation and development through mainstreaming the UN Sustainable Development Goals and Africa Union Agenda 2063. It outlines the policies, legal and institutional reforms and the programmes and projects that will be implemented over the five-year period to achieve the goals given above.

### NGO support

22 | Are there any non-governmental organisations (NGOs) operating in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

We are aware that there are organisations that deal with promoting and supporting socially and environmentally responsible investment practices in addition to other courses. We are however not aware of any registered NGO that is specifically dedicated to promoting and supporting socially and environmentally responsible investment practices as well as purpose-driven companies.

### Supranational support

23 | Are there any supranational actors operating in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

The Global Steering Group for Impact Investment (GSG) is an independent multi-sectoral global steering group promoting impact investment and entrepreneurship. GSG currently represents 32 countries plus the EU as members through their National Advisory Board

(NAB), and partners with international institutions to accelerate impact. GSG is in the process of establishing an impact investing NAB in Kenya. NABs are an influential cross-sector coalition of leading national players, focusing on developing a relevant national strategy and implementing actions to develop a sustainable impact investment ecosystem in the country.

The NAB in Kenya will spearhead the building of an impact ecosystem in Kenya. The NAB, and its engagement with the GSG, is expected to accelerate the development of its national impact investing ecosystem, owing to new policies, financial instruments and innovative approaches.

## FINANCIAL TOOLS

### Equity funds and loans

24 | Does your jurisdiction regulate equity funds or other financial tools such as loans designed to scale up companies with social or environmental objectives? Even if not expressly regulated, are there venture funds specifically focused on investing in purpose-driven companies?

Green bonds, are regulated under the Capital Markets Authority Policy Guidance Note on Green bonds, which outlines green guidelines and standards and the operational regulatory environment on green bonds in Kenya. Under the Guidance Note, green bonds are defined as approved listed or unlisted fixed-income instruments, whose proceeds are used to finance or refinance new or existing projects that generate climate or other environmental benefits that conform to green guidelines and standards.

Under the Guidance Note, green guidelines and standards include:

- Green Bond Principles, as may be amended, issued and governed by the International Capital Markets Association;
- Green Bond Standards such as the Climate Bonds Standard, as may be amended, issued and governed by the Climate Bonds Initiative;
- government policies and guidelines such as the Kenya National Policy on Climate Change and Green Economy Strategy, among other government policies; and
- any other standard acceptable to the Capital Markets Authority.

There are several venture funds specifically focused on investing in purpose-driven companies with investment portfolios in Kenya.

### Outcomes funds

25 | Does your jurisdiction regulate 'pay for success' investing models such as outcomes funds? Apart from specific regulation, are any of these mechanisms in force or in progress in your jurisdiction?

There are no specific laws or regulations governing 'pay for success' investing models such as outcomes funds in Kenya. However, few organisations have successfully launched outcome funds. The most widely reported outcome fund was launched in October 2017 in Kenya and Uganda by the United States Agency for International Development and Department for International Development and is an outcomes contract in its contracting arrangement.



## Social and development impact bonds

**26** Does your jurisdiction regulate 'pay for success' investing models such as social impact bonds and development impact bonds? Apart from specific regulation, are any of these mechanisms in force or in progress in your jurisdiction?

There are no specific laws or regulations governing 'pay for success' investing models such as social impact bonds and development impact bonds in Kenya. However, several organisations have successfully launched multi-country development impact bonds with Kenya being one of the beneficiaries of the bonds. In late 2019, Capria Network, a leading global network of impact fund managers, set up an office in Nairobi and announced active engagement with fund managers in Kenya with a view to disbursing funds to social impact investments. In late 2019, it was also reported that the government of Kenya is considering issuing a social bond to fund its universal healthcare scheme.

## Crowdfunding

**27** Does your jurisdiction regulate crowdfunding initiatives aimed at scaling up companies with social or environmental objectives?

There are no specific laws or regulations governing any form of crowdfunding in Kenya. However, the laws governing the financial services sector are in many instances broadly drafted and, consequently, crowdfunding may be considered a regulated activity.

Under the Capital Markets Act, Chapter 485A, dealing in securities, offering of securities to the public or a section thereof, and marketing of securities are regulated activities under the Capital Markets Act, Chapter 485A and the subsidiary legislation issued thereunder. Accordingly, crowdfunding with social and environmental objectives would be regulated by the Capital Markets Authority and the dealer should hold a securities industry licence.

## UPDATE AND TRENDS

### Update and trends

**28** What are the key recent developments, hot topics and future trends in your jurisdiction relating to social finance, purpose-driven companies and the impact economy in general? Are there any recent studies and initiatives to identify or quantify these market sectors? Are there any new or proposed regulations or taxonomies in this regard?

Public Benefit Organisation (PBO) Act No. 18 of 2013 was assented to on 14 January 2013 and was set to replace the NGO Act, but is yet to come into force. Once it comes into force, every NGO will automatically be deemed a PBO. However, it is yet to be operationalised as it requires a gazette notice by the Cabinet Secretary responsible for matters relating to planning and national development to make it effective. Under the PBO Act, a PBO is defined as an organisation undertaking public benefit activities that support or promote public benefit by enhancing or promoting the 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.

PBOs will provide an equally viable registration option to purpose-driven companies on succeeding the NGO regime. However, unlike NGOs, whereby an applicant is required to expressly apply for registration, an organisation registered under other laws in Kenya may be bestowed PBO status by the PBO Regulatory Authority. Accordingly, a purpose-driven company registered under the Companies Act may be bestowed PBO status and fall under the PBO regulatory framework.

While several attempts have been made to compel the Cabinet Secretary to gazette the effective date, including court actions, this is yet to happen, thus delaying its official commencement. The commencement is expected to happen any time in the near future. If gazetted, the PBO Act will provide a more enabling environment for purpose-driven companies, with clear criteria regarding PBO registration, enhanced accountability, set timelines for processing applications, as well as tax incentives and benefits for organisations conducting public benefit activities.

The Building Bridges Initiative Taskforce was appointed by the President on 31 May 2018 to evaluate national challenges and make practical recommendations, policy and administrative reform proposals that are expected to culminate in a constitutional referendum. In its report, the Taskforce made several proposals relating to social finance, purpose-driven companies and the impact economy. First, the Taskforce recommended that the government increase charitable giving and volunteering by providing incentives. The taskforce proposed that the government use tax codes to incentivise charitable giving and corporate social responsibility.

Further, the Taskforce recommended that the government encourage the private sector to form a national, non-profit foundation, chaired by the President, that provides mentoring, training and support tools to aspiring business owners aged 18–35. The foundation should match the young entrepreneurs with a business development adviser and a nationwide network of volunteer mentors. All corporate social responsibility programmes should be encouraged to include this component. The foundation should also provide work readiness, entrepreneurship and financial literacy training, using classroom volunteers in schools starting from the age of 12 until graduation.

## Recommendations

**29** Do you have any recommendations for legal models, fiscal treatment and public procurement in your jurisdiction in relation to social finance and purpose-driven companies? Do you see a need for regulatory intervention or is the market capable of self-regulation in these sectors?

We recommend the setup of a supporting legal environment for investment in social impact bonds, development impact bonds and outcome bonds to spur innovation in public benefit service delivery and increase market uptake and the appropriate fiscal incentives offered.

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