



Incubation Hub

CENTRE FOR CIVIC ENGAGEMENT

LEGAL CLINIC NOTES - LEGAL FORMS OF NOT FOR PROFIT ORGANISATIONS IN ZIMBABWE

ZIMBABWE
2024

Introduction

We are going to be sharing on non-profit organisations (non-governmental organisations) in Zimbabwe. We want to empower the participants on the legal requirements for starting and operating such an organisation in Zimbabwe.

Objectives

- To discuss the legal forms of nonprofit organizations in Zimbabwe (including PVO, Trust, and Common Law Universitas).
- To discuss the registration processes, advantages and disadvantages for each form, duration and estimated costs involved.
- To discuss the PVO Amendment Bill and the additional requirements that may come should it be enacted.



COMMON LAW ORGANISATION (UNIVERSITAS)

Definition

Under common law, an organization can be lawfully constituted without any registration where members agree to pursue and achieve common objectives and adopt a constitution to govern them. Such an organization is called a universitas.

In *Webb & Co Ltd v Northern Rifles* 1908 TS 462 at 464:

- “An universitas personarum in Roman-Dutch law is a legal fiction, an aggregation of individuals forming a persona or entity, having the capacity of acquiring rights and incurring obligations to a great extent as a human being. An universitas is distinguished from a mere association of individuals by the fact that it is an entity distinct from the individuals forming it, that its capacity to acquire rights or incur obligations is distinct from that of its members, which are acquired or incurred for the body as a whole, and not for the individual members.”

The legal nature of an association, and whether it is an universitas, is determined by its constitution. Ex-TRTC United Workers Front v Premier, Eastern Cape Province 2010 (2) SA 114 (ECB) at 127E para [19], a universitas

- **“will come into being if the individuals who propose forming it have the serious intention to associate and are in agreement on the essential characteristics and objectives of the universitas or unincorporated association. The latter aspect is usually manifested by the approval and adoption of a constitution.”**

In Wilken v Brebner 1935 AD 175 at 184 the court said: “The intention is that the association shall continue forever and that it shall carry out the purposes of its founder or founders.” An universitas, being a legal persona in its own right, has the capacity to own property in its own name, enter into contracts in its own name, and can sue or be sued in its own name, and will continue in existence, notwithstanding changes in its membership, as members join or leave the organisation.

Process

This requires just the drafting and adoption of a Constitution by members. There is no requirement for registration. That adopted constitution is the proof of existence and can be used to operate and function as a person. For example, the organisation can open bank accounts using that constitution.

Contents of the Constitution of a CLO

1. Name of the organisation
2. Legal Status (a clause emphasising the separate legal status of the organisation created and what it can do)
3. Address and Area of operation
4. Aim and Objectives
5. Membership (types, eligibility, assumption, rights and obligations, termination)
6. Structure and Organs (General Assembly of Members, Executive Committee, Management)
7. Powers and Duties of the Executive Committee (and members such as chairperson, secretary, treasurer)
8. Meetings (Executive Committee meetings, Annual General Meetings, Notice, Quorum, Voting and Resolutions)
9. Finances and Accounts (books of accounts, financial year, auditors)

10. Discipline
11. Amendment of Constitution
12. Dissolution of the Organisation
13. Execution and Adoption of the Constitution

Compliance

Compliance with its own Constitution, e.g. on term limits, appointment and removal of office bearers, and holding of meetings such as the AGM.

Compliance with the law- issues such as ZIMRA, NSSA etc

Advantages and Disadvantages

- This is the easiest and fastest way to form a nonprofit making organization. It just requires the adoption of a constitution by members. It is therefore cheap as members can draft their own Constitution.
- The government sometimes interferes with the work of organisations operating as universitas.
- Many funding partners are not keen to support such organisations hence many of them remain small and community-based.
- Such organisations are threatened by the pending PVO Amendment Bill as they will have to register under the amended Act to become PVOs.



TRUST

Introduction

A trust exists when a person, the Founder/Donor/Settler, hands over the property to be administered or disposed of by another (the trustees) for the benefit of another person the beneficiary. A trust is established when the founder/s donates property to others/ trustees to hold it in trust for the benefit of others (founder, trustees and beneficiaries critical). Once created, the Trust is recognised as a person who can sue and be sued and do other things that a natural person can do. A trust can be established for private/family or public/charitable purposes. We are concerned with public or charitable trusts.

Process of setting up a Trust

- A trust is created through a document called a Trust Deed.
- It is not mandatory to have the Trust Deed registered with the Deeds office but a practice has grown over time where the Deed is done by a specialist lawyer called Notary Public and registered with the Deeds Office.
 - One can verify whether a lawyer is a Notary Public or not by engaging the Law Society of Zimbabwe
- Where a trust is to be registered, there is a need for a Notary Public to draft and lodge the Deed of Trust.
- Before a Trust Deed is lodged with the Deeds Office, it is now a requirement to obtain authority from the Chief Registrar of Deeds, Companies and Intellectual Property to register a Trust. An application for such authority is made by providing the following information:
 - Name of the Trust
 - Name of Founder
 - Names of Trustees
 - Main Objectives of Trust
 - Names of Beneficiaries
 - Source of Funds
- Once the authority is granted, the Deed of Trust, the proof of authority to register and proof of payment of the prescribed fee is lodged with the Deeds Office.
- If there are no queries, the Registrar will register it and endorse a registration number on it.
- That Trust Deed is the proof of existence which can be used to do everything provided in it subject to following other relevant laws.
- The process can cost from USD600 depending on the Notary Public involved and the time spent.
- The process used to take less than two weeks but with the new requirements, it can take even three months.



Brief Discussion of New Requirements

As stated above, there is now a need to obtain authority to register a Trust from the Chief Registrar. This requires meeting the following requirements:

- Name of the Trust – this is not a challenge. The Founder can propose any name which is not being used by another organisation and which also aligns with what the organisation will do.
- Name of Founder – there can be some vetting to exclude certain people.
- Names of Trustees - there can be some vetting to exclude certain people.
- Main Objectives of Trust – certain objectives can be excluded. This can be abused to screen organisations which intend to do what the authorities may not want organisations to do.
- Names of Beneficiaries – it is not mandatory to name them. One can describe a group such as children in difficult circumstances, widows etc.
- Source of Funds – this is the main challenge since in many cases, the Founder will not have the funds and need to fundraise from the public. The perception is that organisations are externally funded to undermine authorities and meddle in issues they should not be involved in.

These requirements have resulted in a drastic reduction of organisations being registered as trusts.

Contents of Deed of Trust

- Name of the Trust
- Legal status
- Definitions
- Founder/Settlor/Donor
- Appointment of Trustees
- Beneficiaries
- Donation and Acceptance
- Objectives
- Structure and Organs (Board of Trustees and Management)
- Powers and Duties of the Board of Trustees
- Meetings (proceedings of the Board of Trustees)
- Removal of Trustees
- Liabilities of Trustees
- Finances and Accounts
- Amendment of Deed of Trust
- Dissolution of the Trust
- Execution of the Deed

Compliance

- Compliance with its own Trust Deed.
- Compliance with the law.

Advantages and Disadvantages

- It used to be faster and easy to register a trust compared to a PVO and many organisations in recent years started by registering as trusts.
- Currently, there is no Act of Parliament that regulates the operations of trusts once registered hence there are allegations of abuse by the government.
- For organisations wishing to work closely with and access funding that comes through the government, it is advisable to then register as PVOs. Sometimes the government just put bans on any other organisations save for PVOs.
- Such organisations are threatened by the pending PVO Amendment Bill as they will have to register under the amended Act to become PVOs.
- The government has introduced requirements which make it difficult to register a Trust funded by the public or donors since the talk of the PVO Amendment Bill started.

