



**Incubation
Hub**

CENTRE FOR CIVIC ENGAGEMENT

LEGAL CLINIC NOTES - PRIVATE VOLUNTARY ORGANISATIONS

**ZIMBABWE
2024**

Introduction

This week the focus is on Private Voluntary Organisations having covered common law organisations and trusts.

Objectives

- To discuss the registration processes, advantages and disadvantages for a PVO, duration and estimated costs involved.
- To discuss the PVO Amendment Bill and the additional requirements that may come should it be enacted.

Private Voluntary Organisation

- A Private Voluntary Organisation (PVO) is registered in terms of the PVO Act [Chapter 17:05].
- This Act was first enacted in 1966 as the Welfare Organisations Act. It has been amended five times, with the last amendment being in 2001, since its enactment.
- Find the current version at jsc.org.zw

Definition

Section 2 defines a PVO as “anybody or association of persons, corporate or unincorporated, or any institution, the objects of which include or are one or more of the following:

- the provision of all or any of the material, mental, physical or social needs of persons or families;
- the rendering of charity to persons or families in distress;
- the prevention of social distress or destitution of persons or families;
- the provision of assistance in, or promotion of, activities aimed at uplifting the standard of living of persons or families;
- the provision of funds for legal aid;
- the prevention of cruelty to, or the promotion of the welfare of, animals;
- such other objects as may be prescribed;
- the collection of contributions for any of the foregoing.”

Certain entities are excluded from the above definition. These include:

- any institution or service maintained and controlled by the State or a local authority;
- any religious body in respect of activities confined to religious work;
- any trust established directly by any enactment or registered with the High Court;
- any educational trust approved by the Minister;
- any body or association of persons, corporate or unincorporated, the benefits from which are exclusively for its own members;
- any health institution registered under the Health Professions Act [Chapter 27:19], in respect of activities for which it is required to be registered under that Act;
- any psychological health premises registered under the Psychological Practices Act [Chapter 27:11] in respect of activities for which it is required to be registered under that Act;
- any body or association in respect of activities carried on for the benefit of a hospital or nursing home which is approved by the Minister;
- any political organization in respect of work confined to political activities;
- the Zimbabwe Red Cross Society established by the Zimbabwe Red Cross Society Act [Chapter 17:08];
- such other bodies, associations or institutions as may be prescribed;

Because of the exclusion, it has not been mandatory to register trusts as PVOs but in recent years some have sought and obtained registration as PVOs. The definition was also such that certain organisations would not squarely fit hence some operated as trusts or common law organisations.

Registration Process

Registration is done through the Department of Social Welfare under the Ministry of Public Service Labour and Social Welfare. The process includes (s9):

1. **Completing and lodging an application** in the prescribed form by the secretary of the organisation .
 - a. The form (Application for Registration of a PVO (Form P.V.O. 1)) can be obtained from Social Welfare – nearest District Office.
 - b. The Form requires, among others, the name of the organisation, area of operation, aims and objectives, names, addresses and occupations of the managing committee (executive committee/board) name and address of the bank and control of branches.
 - c. Certain sections may be completed not applicable – as in the case of an organisation which does not have that information.
2. **Drafting a Constitution** – template available at Social Welfare District
 - a. The contents of that form are outlined below.
3. Doing **police clearances for the Executive Committee members**
 - a. Pay the required fee for clearance –USD10
4. **CVs and interviews for the EXCO members** by the Department
5. **Advertise in the newspaperer** circulating in the area where the organisation wants to operate– (name, place of operation, objectives)
 - a. The advert is in Form P.V.O 2 which is obtainable at the Department
6. **Receiving of objections** (if any)
7. **Preparation of file by the District**, submission to Province and then national office)
 - a. In recent years, the Department has added other requirements to be part of the file such as supporting letters from the District Development Coordinator and Local Authority

The PVO Board then decides on the application.

- If the Board grant the application, the Registrar will publish the registration in the Gazette and issue the certificate.
- The Board may decline the application if it appears that:
 - the organization is not bona fide operating in furtherance of the objects mentioned in its application for registration.
 - the organization does not, in respect of its constitution or management, comply with the provisions of the Act.

If the PVO Board rejects the application, the Registrar shall notify the applicant organization of the rejection, and inform it of the grounds upon which the rejection was based. Where registration is denied, one has a right to appeal to the Minister (s14). The decisions of both the Board and Minister can also be subject to review in the High Court.

Advantages and Disadvantages

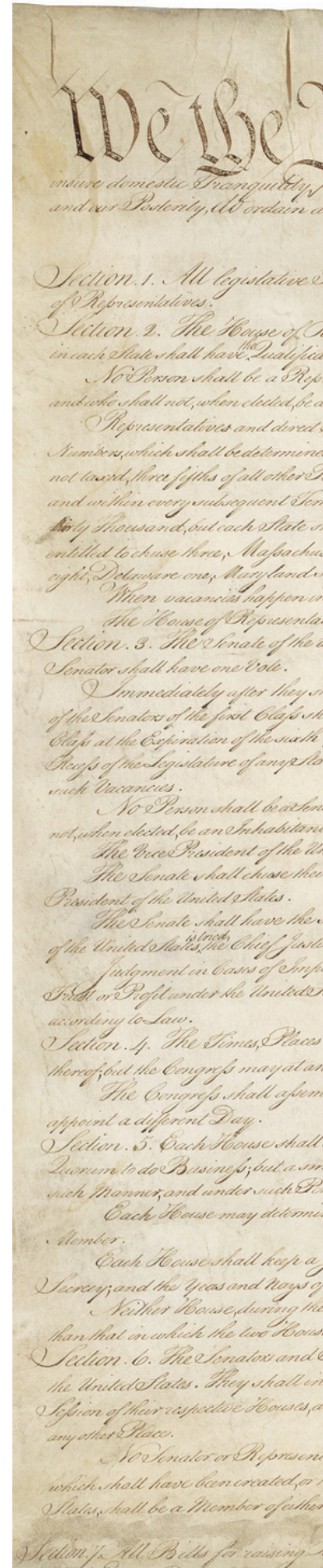
- It is not mandatory to have a lawyer in registering a PVO hence this can be cheaper than registering a Trust.
- Some funding, for example from UN agencies, may be channelled through the government or to organisations working with the government. The government usually works with PVOs.
- PVOs are not usually affected by the bans which the government sometimes impose on non-governmental organisations.
- It however takes longer to register a PVO compared to a Trust.
 - Some have taken years to register while others take less than a year.
 - Factors which influence the time may include whether the organisation is already operating with the support and/or involvement of government departments, the objectives of the organisation and the frequency of the sitting of the Board – should convene quarterly
- Registering as a PVO exposes itself more to government scrutiny:
 - Provide prescribed reports and returns and any other prescribed information to the government/Registrar (s15)
 - Audit its annual financial accounts by a registered public auditor subject to the provision that the Board can also authorise another auditor to audit where the financial position of the organisation does not justify an auditor by a public auditor. (s19)
 - The Minister can send inspectors at any time to examine the accounts and any documents of any PVO. Once a notice has been delivered to the PVO, the PVO is expected to comply by providing all required information. Documents can be seized and kept for a “reasonable period”. (s20)
 - Minister can suspend members of the EXCO by notice in the Government Gazette if he believes that a PVO has failed to comply with its objectives or constitution, has been subject to maladministration, or has engaged in illegal activities, or that “it is necessary or desirable to do so in the public interest,” (s21). The Minister can also appoint a trustee to manage the organisation after suspending the ECXO (s22).

Compliance

- Compliance with its own Constitution;
- Compliance with the law, including the PVO Act which requires, inter alia, submission of annual programs and financial reports to the Ministry. Usually, organisations submit audited financial statements.

Contents of the Constitution of a PVO

1. Name of the organisation
2. Head Office and Address
3. Area of operation
4. Aim
5. Objectives
6. Membership (types, eligibility, assumption, rights and obligations, termination)
7. The Executive Committee (chairman, vice chairman, secretary, vice secretary, treasurer, and two other committee members)
8. Roles of Executive Committee
9. Executive Committee meetings
10. Duties of Executive Committee Members (chairman, vice, secretary, vice, treasurer and committee members)
11. Annual General Meetings (convening, place, quorum, business)
12. Disciplinary Committee (procedure and penalties)
13. Funding and Accounts (how it is funded, books of accounts, financial year, auditors)
14. Amendment of Constitution
15. Dissolution of the Organisation
16. Execution and Adoption of the Constitution



PRIVATE VOLUNTARY ORGANISATION (PVO) AMENDMENT BILL 2024

Was gazetted on 1 March 2024. This followed the lapse of the PVO Amendment Bill of 2021 which the President had refused to sign. The Bill can be accessed at jsc.org.zw

The purpose is said to

- Deal with the abuse of charities for the financing of criminal and terrorist activities
- Streamline administrative procedures for PVOs to allow for efficient regulation and registration of charities
- Safeguard against abuse of charitable giving for political or social undesirable ends.

Parliament is currently consulting on the Bill. Critical public views include:

- threaten the rights to freedom of expression, peaceful assembly and association.
- threaten the continued existence and operations of non-governmental organisations.
- affect foreign currency inflows into the country and the livelihoods of many citizens.

If enacted, this Bill will affect the registration process and operations of NGOs.

- The definition of a PVO will be amended to include any legal person or legal arrangement and to empower the Registrar of PVOs to require a trust registered under the Registrar of Deeds or with the High Court to register as a PVO (s2). The Bill will insert a new section 6 in the Act which will:
 - require **any trust or association** that collects funds for charitable purposes to register under the Act,
 - prohibit anyone from collecting funds from the public except in accordance with the Act – which means that only registered PVOs will be allowed to do so,
 - debar unregistered PVOs from receiving funds from the State, and
 - permit the Registrar to require any trust to get itself registered as a PVO, and
 - make trustees and their trusts jointly liable to criminal penalties for failure to comply with the new section.

- Organisations operating as trusts and associations have limited time to apply for registration (30 days)
 - Pending decision they will be allowed to operate but this may affect their funding as there will be uncertainty as to their future status.
- The Bill will abolish the PVO Board and replace it with the Registrar who will register and deregister PVOs
 - The requirements such as application in a prescribed form, constitution, adverts, and objections will remain in place.
 - The Registrar will be empowered to ask for information relating to the beneficial owner/ controller of any PVO to be registered
 - The Board has representatives from PVOs compared to an individual under the Minister making decisions
- The current appeal provision is wide compared to those proposed under the Bill. Appeals will be made to the Minister on specified grounds which are more procedural in nature, e.g. taking into account irrelevant information, failing to take into account relevant information, mistake of fact or law, bias, gross irregularity.
- The Bill will still provide for the suspension of the executive committee and appointment of a trustee to manage the organisation by the Minister.
 - Unlike under the current Act where the Minister just suspend by publishing in the Gazette, the suspension and appointment have to be approved by the High Court.
- The Bill will also introduce provisions which allow the government to assess the risk of organisations being abused through, for example, money laundering, and terrorist financing
- The current Act has criminal penalties for breaching certain provisions such as operating without registration. The Bill will add to these, civil penalties.

Because of all the above, it is recommended that organisations not yet registered as PVOs make efforts to start the process and those already registered enhance their compliance with the Act.