

DRAFT

PLD
LCS

To
JOINT MEMORANDUM THE CABINET COMMITTEE ON LEGISLATION BY
THE MINISTER OF JUSTICE AND LEGAL AFFAIRS AND THE MINISTER
OF LABOUR AND SOCIAL SERVICES

RE: AMENDMENT TO THE PRIVATE VOLUNTARY ORGANISATIONS ACT
[CHAPTER 17:05] (Whose administration is assigned to Minister of Labour and
Social Services) AND
THE DEEDS REGISTRIES ACT [CHAPTER 20:05] (Whose administration is
assigned to the Minister of Justice and Legal Affairs)

1. Definition of Private Voluntary Organisation

The Private Voluntary Organisations Act [Chapter 17:05] requires a private voluntary organisation (PVO) to register before it can "commence or continue to carry on its activities" or "seek financial assistance from any source". A PVO is, amongst other requirements, mandated to keep proper books of accounts which are subject to inspection.

A PVO is defined in the Act as any body the objects of which include the provision of material, physical or social needs of persons, rendering of charity to persons in distress, provision of assistance at uplifting standard of living, provision of funds for legal aid and the promotion of the welfare of animals.

In short, a private voluntary organisation can be said to be a non-governmental organisation (NGO) that promotes the welfare of animals or that provides legal aid or welfare or relief to persons in need.

The Act excludes the Zimbabwe Red Cross Society and the following bodies from its definition of a PVO:

- a) a religious body in respect of religious work,

- b) an educational trust established by the Minister or a trust established directly by an enactment or registered with the High Court,
- c) a body the benefits of which are exclusively for its own members,
- d) registered health institutions and supporting bodies,
- e) a political party in work confined to political activities.

Since these bodies are excluded from the definition of a PVO, they can provide for the welfare of persons or animals in the manner contemplated but are not required to register.

2. Statement of the problem

There appears to be uncertainty whether a trust whose objects include those of a PVO can avoid registration as a PVO by registering the deed of trust with the Deeds Registry. The Ministry of Labour and Social Services has received applications for registration as PVOs from NGOs which are registered as trusts with the Deeds Registry. These NGOs had previously opted to register as trusts in the belief that a trust was not required to register as a PVO. They now wish to register as PVOs so that they can operate freely with the cooperation of Government departments within the country.

The only trusts engaged in welfare work which are exempted from registering as PVOs are those which are excluded from the definition of "private voluntary organisation" as referred to in paragraph 1 above. However, for the avoidance of doubt, it is felt that the Act should be amended to make it clear that a trust which falls within the definition of a PVO is obliged to register as a PVO before it can commence its activities.

It is however emphasised that there is no legal impediment to the registration of these NGOs as PVOs and that therefore the Ministry does not have to await the enactment of these amendments before it can register them.

3. Desired outcome

Any NGO which is involved in the provision of welfare and relief from distress must register itself as a PVO. In future, registration as a trust by such an NGO must be preceded by registration as a PVO in terms of the Act. NGOs involved in welfare and

relief work which are already registered as trusts but have not been registered as PVOs must regularize their position by registering as PVOs.

4. Amendments to legislation

To achieve this limited outcome, the Private Voluntary Organisations Act should be amended in the definition of "private voluntary organisation" by the inclusion of a trust in the list of bodies which are identified in the definition of a PVO so that it reads (additional words underlined)

"private voluntary organisation" means any body or association of persons, corporate or unincorporate, or any institution or trust, the objects of which include....."

Section 6 (Private voluntary organisations to be registered) should be amended by the insertion of a new subsection (1a) which reads:

"A notarial deed of a donation to be held in trust the objects of which include those of a private voluntary organisation shall not be registered in terms of the Deeds Registry Act [Chapter 20:05] unless the trust has first been registered as a private voluntary organisation in terms of this Act."

Subsection (m) of section 5 (Duties of registrars) of the Deeds Registry Act [Chapter 20:05] should be amended to insert the words underlined.

(m) register antenuptial contracts, such notarial deeds of donation, including, subject to section 6(1a) of the Private Voluntary Organisations Act [Chapter 17:05], a donation to be held in trust, and such other deeds having reference to persons and property within the area served by the deeds registry in question as are required or permitted by law to be registered.

We submit these principles for the Committee's consideration and approval.

Hon. P.A. Chinamasa (M.P)
Minister of Justice and Legal Affairs

Hon. P. Mpariwa (M.P)
Minister of Labour and
Social Services