

ADVISORY BRIEF

Document Name: Advisory Brief on Establishing a Destination Management Organisation in Victoria Falls

Date: 19 March 2022

Focus Area: Tourism, Victoria Falls, Destination Management, Governance, etc.

Prepared By

Document Owner(s)	Project/Organization Role
Eric D Zinyengere & Tino Muskwe	TEAM Consulting

Document Version Control

Version	Date	Author	Change Description
0.9	19 Mar 2022	Eric D Zinyengere	Document Created
0.95	28 Mar 2022	Hermione Nevill	Document Reviewed
1.0	01 April 2022	Eric D Zinyengere	Document Finalised
1.1	05 April 2022	Eric D Zinyengere	Minor refinements after presentation to Steercom.

TABLE OF CONTENTS

1. BACKGROUND	3
2. ASSESSING THE OPTIONS	3
2.1. REGISTERING A FOUNDATION AS PRIVATE VOLUNTARY ORGANISATION	3
ALIGNMENT TO SET CRITERIA	5
2.2. ESTABLISHING AN ASSOCIATION UNDER A TRUST DEED	6
ALIGNMENT TO SET CRITERIA	6
2.3. REGISTERING A SOCIAL ENTERPRISE AS A PRIVATE COMPANY	7
ALIGNMENT TO SET CRITERIA	8
2.4. REGISTERING AN ENTITY AS COMMON LAW UNIVERSITAS	8
ALIGNMENT TO SET CRITERIA	9
2.5. OTHER CONSIDERATIONS	9
3. OVERALL RECOMMENDATION	9
3.1. BACKGROUND TO ZIMTRADE:	10
3.2. PROCESS OF ESTABLISHING A DMO - LEARNING FROM ZIMTRADE	10

1. BACKGROUND

As part of efforts underway in Victoria Falls to improve the image of the Destination and grow the traffic to the resort town, key players in the work have recognised the need for an ongoing and sustainable model to support the promotion and management of the destination through some form of a Destination Management Organisation.

Various options have been considered including an Association, a foundation a Social Enterprise or local government entity

This brief looks at various possible options to identify the pros and cons of each in line with the defined key prerequisites for the organisation to then identify the best option and a possible path forward.

2. ASSESSING THE OPTIONS

2.1. Registering a Foundation as Private Voluntary Organisation

Associations and Foundations are predominantly registered as Private Voluntary Organisations (PVOs). The terms PVO simply means that the organisation, independent of government, aims to further the desired purpose of the organisation. PVOs are regulated by Private Voluntary Organisations (PVO) Act and would have to be registered with the Department of Social Welfare in the Ministry of Public Service, Labour and Social Welfare. Section 2 of the PVO Act defines the scope of functions that an entity would be involved in that qualifies to be considered a PVO namely:

- *“Providing material, mental, physical and social needs to people.”*
- *“Assisting and promoting activities that increase people’s standard of living.”*
- *“Any other functions as may apply.”*
- *“Collecting contributions of any of the above”.*

It should be noted that it is a prerequisite and is mandatory before the commencement of any activities. This is a statutory requirement for any PVO in tending to operate in Zimbabwe to apply for registration in terms of the PVO Act.

The applications are made to Registrar of PVOs and are channelled to district or provincial Labour and Social Offices. This must be done in the area the Head Office of the entity is located. The applications will ultimately be scrutinised by the PVO Board. Local PVOs are not required to sign a Memorandum of Understanding with Ministries or Government, however, they must notify local authorities of their intended activities before registration form operational purposes.

Section 9 of the PVO Act stipulates that the Secretary of the applicant organisation must submits the following:

- Application for registration (forms are purchasable from provincial or district offices of the Ministry of Public Service, Labour and Social Welfare).
- The name of the entity.
- The entity’s objectives.
- Names of between two and twenty people constituting the first members of the Executive Council/Board.

- Curriculum vitae of key board members.
- Details of Directors and Secretary.
- Name and address of the Auditor (if none, the Registrar will allocate the entity with one following approval of the application).
- Address and post office box address of the proposed entity's offices.
- Local Police clearance.
- Principal place of business (the proposed area of geographical coverage).
- The entity's constitution.
- Proof of public notice in national papers (notice must include the proposed entity's name, its purpose, its aims and mandate and should be placed in a newspaper circulating in the area concerned).
- Period of financial year.
- Proof of notification to local authorities of the intention to register.

The registration procedure of a PVO is as follows:

- Upon submission of the above documents, any person may, within the prescribed time period, can lodge with Registrar an objection to the grant of the application setting out the grounds on which such objection is made.
- The aim of the public notice in the newspaper previously mentioned is to call for persons with objections to submit them with the Registrar of PVOs within the prescribed time limit of twenty-one days after the publication.
- The Registrar shall submit any such objections to the PVO for consideration.
- If all documentation is in order, the Registrar will submit them to the PVO Board which will determine whether the application is accepted or rejected.

The registration process takes anything from three– twelve months.

Once a PVO is registered under the PVO Act, the entity will be mandated by law to conduct the activities that provide material, mental, physical and social needs of the community it operates in, assist and promote activities that increase the standard of living of the community as well as any other functions that may apply to the entity. Penalties can be laid on the entity if it engages in activities prior to registration.

The major disadvantage of a PVO is the potential of considerable government interference. If the Minister 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*" or any other ground in terms of section 21 of the PVO, the Minister, through notice in the Government Gazette, may suspend all or any of the members of the Executive Committee of the PVO. The Minister may also amend or revoke any suspension. In section 20 of the PVO Act, the Minister has the authority to send inspectors at any time to examine the accounts and any documents of the PVO. Once a notice has been delivered to the PVO, the PVO is expected to comply by providing all the required information. The documents that are effectively seized by virtue of the notice can be kept for a "reasonable period". It is difficult to say how much it will cost to establish a PVO as the price is determined by the size and nature of the operations of the entity ultimately decided on by the Ministry of Public Service, Labour and Social Welfare.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> The entity will be legal complaint, avoiding legal sanctions of non-compliance which can be anything from a hefty or imprisonment or both. 	<ul style="list-style-type: none"> Interference by the Minister of Public Service, Labour and Welfare. If the Minister believes that a PVO has failed to comply with 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,” or any other ground in terms of Section 21 of the Act, the Minister through notice in a government gazette may suspend all or any of the members of the Executive Committee of the PVO. The Minister may also amend or revoke any suspension. The Minister is authorised by Section 20 to 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. The documents that are effectively seized by virtue of the notice can be kept for a “reasonable period”. The length of time to register (between 3 – 12 months).

Alignment to Set Criteria

Criteria	Met / Not Met
Structure that includes public and private sector (Board /Management Level)	✓
Able to claim to be a channel of both private and government	✓
Permitted to receive funds from various sources (including public funds, donations, levies, donor funding).	✓
Able to generate revenue (i.e. events, membership fees).	✓
High level of autonomy at jurisdictional level.	✓
Has the influence to persuade key authorities to act in favour of the entity.	✓
Permitted to carry out functions such as data collection, research, marketing.	✓

2.2. Establishing an Association Under a Trust Deed

The Registrar of Deeds is allowed by its Deed Registries Act to register notarial deeds in donation or in trust. Registering under a trust deed is an alternative to the PVO option as it can be cumbersome and time consuming. With a trust deed, the registration process begins by approaching a registered Notary Public. A Notary Public’s key role is in drafting and preparing the trust deed along with any other necessary documentation. The Notary Public will also register the deed with the Registrar of Deeds at the Companies Office.

Trusts can have unlimited objectives intended to benefit an identifiable constituency. A trust has limited liability and may enter into contracts and agreements in its own name if the trust deed so allows. Most Associations, Foundations and Social Enterprises are founded as Trust Deeds. In terms of membership there are no restrictions as to who can be a member except as may be stipulated in the trust document itself, meaning both private and public individuals or entities can be trustees.

The requirements for registering a trust are:

- Trust name.
- Trust objectives.
- Trust’s general address.
- Beneficiaries of a trust.
- Details of between one – four of the Founders (i.e. full names, dates of birth, ID numbers).
- Details of at least four trustees (i.e. full names, dates of birth, ID Numbers).
- Registration fee.
- Trustees must maintain up-to-date records of information relating the identities and addresses of the parties to the Trust, as well as on every financial institution and every designated non-financial business or profession which is a service provider.
- Trustees must notify the Registrar of Deeds of any changes to the particulars of directors or trustees, in writing within one month after the change has occurred.

The significant disadvantage with this form of registration is expensive because of the legal fees associated with it and the costs required by the Notary Public to prepare the deed. As per the General Tariff of the Law Society April 2021, the cost of establishing a Trust Deed would be USD 500.00 or ZWL 42 500.00.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Separate legal entity. • Limited liability. • Asset protection. • Continuity. • Tax Benefits. 	<ul style="list-style-type: none"> • Establishment costs and ongoing regulatory and filing requirements. • Disclosure and Reporting requirements.

Alignment to Set Criteria

Criteria	Met / Not Met

Structure that includes public and private sector (Board /Management Level)	✓	
Able to claim to be a channel of both private and government	✓	
Permitted to receive funds from various sources (including public funds, donations, levies, donor funding).	✓	The funds would be under the category of extra-budgetary funds (EBF).
Able to generate revenue (i.e. events, membership fees).	✓	
High level of autonomy at jurisdictional level.	✓	
Has the influence to persuade key authorities to act in favour of the entity.	✓	
Permitted to carry out functions such as data collection, research, marketing.	✓	

2.3. Registering a Social Enterprise as a Private Company

Typically in Zimbabwe, social enterprises are organisations that are structured as a traditional business in that they aim to make a profit, however, it is what they choose to do with that profit sets them apart, for example reinvesting or donating them to create positive change. In short, they applies commercial strategies to maximise improvements in social and economic well-being of a community while simultaneously maximising profits for external shareholders.

According to Section 85 of the Companies and Other Business Entities (COBE) Act defines a “private company” as an entity that restricts the right to transfer its shares, that limits the number of its members to 50, and that prohibits any invitation to the public to subscribe for any shares or debentures. The Section states that where two or more people jointly hold one or more shares, they are treated as one member.

Section 278 of the COBE Act deals with the contract or agreement which establishes an entity. The Section states that an authorised representative of an entity may, upon payment of the prescribed fee and the prescribed manner, register a copy of the constitutive document relating to the entity in question, permitting the document to be entered into the Registry. It shall be deemed as the authentic record of the document for all intents and purposes. The Section also states that any changes to a registered constitutive document must be made to the Registrar within the prescribed time and manner. Any default will result in the entity being responsible for the registration shall be liable to a Category 2 civil penalty.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Separate legal entity. • Limited liability. • Asset protection. • Continuity. • Tax Benefits. 	<ul style="list-style-type: none"> • Non-compliance with COBE Act will result in civil penalty. • Regular disclosure and reporting requirements

Alignment to Set Criteria

Criteria	Met / Not Met	
Structure that includes public and private sector (Board /Management Level)	✓	
Able to claim to be a channel of both private and government	✓	
Permitted to receive funds from various sources (including public funds, donations, levies, donor funding).	✓	The funds would be under the category of extra-budgetary funds (EBF).
Able to generate revenue (i.e. events, membership fees).	✓	
High level of autonomy at jurisdictional level.	✓	
Has the influence to persuade key authorities to act in favour of the entity.	✓	
Permitted to carry out functions such as data collection, research, marketing.	✓	

2.4. Registering an entity as Common Law Universitas

The first option to consider is making the entity a common law *universitas*. *Universitas* are organisations that have common law qualities but are not regulated by any enacted laws. Essentially, there is no requirement to register the entity in any way. It would operate on custom and judicial precedent rather than statutes. This option would be ideal for championing and prioritising the Victoria Falls cause. It should be noted that operating as a Common Law *Universitas* is the most hassle free to take due to the lack of registration. Although not officially registered, it is lawfully acceptable to operate as this type of body in Zimbabwe. This, however, does not mean the entity will have no structure. There will need to be a constitution to guide to it as well as documentation of the activities that are envisioned for the entity. This will be vital for accountability purposes if the authorities or donor partners would like to verify something specific. Members of the entity must agree to strive toward a common purpose that is entirely to the benefit of its members.

A possible disadvantage is the possibility of encountering difficulties when opening a bank account. An *Universitas* would have the ability to include both private and public sector at board or managerial level. It is also permitted to receive funding from a variety of sources. It is also allowed to generate revenue through whatever means it deems fit. *Universitas'* are what most churches and faith-based organisations are established as in Zimbabwe. This is because some banks might shy away from the entity that do not have a trust deed or operating license. The only real cost of establishing a *universitas* is the bill paid to the lawyer who would have drafted the constitution which is depended on his or her hourly rate.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Relatively low establishment costs. • Separate legal personality from members. • Can hold and dispose property. • Benefits of being a registered legal entity without actually being one. 	<ul style="list-style-type: none"> • May face difficulties in operating accounts (Bank, supplier, etc) due to the lack of a registered document.

--	--

Alignment to Set Criteria

Criteria	Met / Not Met	
Structure that includes public and private sector (Board /Management Level)	✓	
Able to claim to be a channel of both private and government	✓	
Permitted to receive funds from various sources (including public funds, donations, levies, donor funding).	✓	The funds would be under the category of extra-budgetary funds (EBF).
Able to generate revenue (i.e. events, membership fees).	✓	
High level of autonomy at jurisdictional level.	✓	
Has the influence to persuade key authorities to act in favour of the entity.	✓	
Permitted to carry out functions such as data collection, research, marketing.	✓	

2.5. Other Considerations

It should be noted that the proposed Private Voluntary Organisations Amendment Bill poses a significant threat to the options have been previously laid out. The Bill amends the definition of “private voluntary organisation” with a much wider which encompasses some of categories that the current PVO is not applicable to such entities as trusts and *universitas*. This means that these organisations will now be subject to re-registration and to the broad control and regulation by the board and the Minister. Under the amendment Bill, registration of an organisation will be no longer free and there have been harsh penalties for non-compliance with the new Bill reading that a designated institution that fails to register as private voluntary organisation shall be guilty of an offence and liable to fine not exceeding level fourteen and each of the members of that organisation or institution shall be liable to the same offence and penalty and additionally and alternatively to the fine, shall be liable to imprisonment for a period not exceeding ten years. The amendment Bill also gives the Minister discretion to impose “additional” or “special” requirements that are applicable retrospectively “to mitigate against such risk or vulnerability”. The definitions of the amendment Bill are both broad and vague hence it is highly problematic as all three of the options mentioned fall in the scope of the amendment Bill

3. OVERALL RECOMMENDATION

Considering the options identified it is quite evident that they can all meet the criteria specified as ideal for the Destination Management Organisation, however with all things considered and aside from the threats that may be posed by the Private Voluntary Organisations Amendment Bill, **setting up the DMO as a Common Law *Universitas (Association)* would provide the least challenges while meeting all requirements.** Our research also shows that that one existing organisation that satisfies many of the requirements of the DMO is ZimTrade which was set up as a Common Law *Universitas*.

3.1. Background to ZimTrade:

ZimTrade is the national development and promotion organisation of the Republic of Zimbabwe. It was established in 1991 as a unique joint-venture partnership between the private and the Government. Working closely with partners, industry experts and development cooperation partners, ZimTrade provides a comprehensive suite of value-added services. The organisation assists Zimbabwean exporters, first time and potential ones, to develop, promote and facilitate the export of their goods and services to the world.

The mandate of the organisation is to energise Zimbabwe's export growth. Its aspiration is to contribute to Zimbabwe's growth and prosperity through developing and catalysing viable and sustainable exports. ZimTrade executes its mandate through market intelligence, export development and promotion as well as advocacy. Its mission is to provide world class services to Zimbabwe's exporting community so as to enhance global competitiveness, mindful of the environmental impact of business operations.

In accordance with the organisation's constitution, ZimTrade is set up a non-registered member organisation or association in which all exporters and traders can become members. The organisation operates through its Board of Directors and Management. The Board is responsible for the overall corporate governance of ZimTrade, including adopting and continually improving the appropriate policies and procedures designed to ensure that ZimTrade is properly managed to protect and enhance the interests of all stakeholders.

In terms of Section 5.2 of the ZimTrade Constitution, four (4) of the Directors to the Board are elected by the ZimTrade members (private sector represented by various BMOs) at the Annual General Meeting (AGMs) and five (5) including the Chairman, are appointed by the responsible Ministry in Government. The Chief Executive Officer is an *ex-officio* member of the Board. Section 5.3 provides for the appointment of a Secretary to the Board.

Section 6 of the ZimTrade Constitution guides the Directors on their duties and responsibilities. The Board is responsible for giving direction to the organisation's overall strategy, key policies and risk parameters. It is also responsible for approving strategic plans and operational budgets as well as acquisitions and disposals. The Board constituted the Audit and Risk, Export Development and Human Resources and Premises Committees to assist it in the discharge of its responsibilities.

ZimTrade is partly funded by public funds generated through a Trade Development Surcharge of 0.1 % of the free on board value of goods paid by organisations who import or export goods into Zimbabwe in the course of trade or business. Initially this was allocated wholly to ZimTrade as per the Trade Development Surcharge Act of 1991[25/91] and Regulations of 1992[SI 130 of 1992]. This was later amended in 2005 to allocate 70% of the surcharge to ZimTrade and 30% to the Competition and Tariff Commission(SI 209 of 2005).

3.2. Process of Establishing a DMO - Learning from ZimTrade

According to the Red Book (Report of the working group on institutional development for Trade promotion of 1989) and the ZimTrade Constitution, the establishment of ZimTrade had various phases which can be translated to the establishment of the DMP.

Stage	Details	ZimTrade Specific	Proposed for DMP
Setting the Scene	Establishing the Body to Set Policy and Work on the Constitution	<p>Establishment of the Zimbabwe Export Council comprising of:</p> <ul style="list-style-type: none"> • Minister of Trade & Commerce • Permanent Secretaries of Ministries of: <ul style="list-style-type: none"> ○ Finance, economic planning and development ○ Industry and technology ○ Lands Agriculture and Rural Resettlement ○ Mines ○ Trade and Commerce ○ Transport • The Governor of the Reserve Bank • CEOs of: <ul style="list-style-type: none"> ○ Agricultural marketing authority ○ Minerals Marketing Corporation ○ Zimbabwe Development Corporation ○ Zimbabwe State Trading Corporation • Presidents of: <ul style="list-style-type: none"> ○ Chamber of Mines ○ Confederation of Zimbabwe Industries ○ Institute of Bankers ○ Joint Presidents Agricultural Committee ○ Tobacco Trade Association ○ Zimbabwe Clothing Council ○ Zimbabwe National Chamber of Commerce ○ Zimbabwe Tobacco association • Two members appointed by the Minister for their expertise in the field <p>All members must be present at all meetings so alternates would be allowed</p>	<p>Utilising the existing Steering Committee comprising of:</p> <ul style="list-style-type: none"> • Ministry of Environment, Climate Change, Tourism and Hospitality Industry • Zimbabwe Investment Development Authority • Zimbabwe National Parks and Wildlife Authority • Airports Company of Zimbabwe • Zimbabwe Tourism Authority • Victoria Falls Local Authority • Tourism Business Council of Zimbabwe • Victoria Falls Residents Association <p>Consider incorporating additional members namely:</p> <ul style="list-style-type: none"> • Ministries of: <ul style="list-style-type: none"> ○ Industry and Commerce ○ Finance and Economic Development ○ Transport and Infrastructure Development ○ Industry Information, Publicity and Broadcasting Services, • Office of the President and Cabinet specifically departments of: <ul style="list-style-type: none"> ○ Public Sector & Modernisation ○ Corporate Governance Unit • <i>Confederation of Zimbabwe Industries</i> • Zimbabwe National Chamber of Commerce
Building the Foundation	Developing the Constitution Board Composition Funding mechanisms Transitional process	<p>The Export Council is mandated to:</p> <ul style="list-style-type: none"> • Approve the draft constitution • Establish the composition and members of the first Board • Help with identifying the appropriate name for the Trade Promotion organisation • Determine best practices for funding the organisation • Set in place the processes to allow for the effective transition to the Trade Promotion Organisation 	<p>The Steering Committee is mandated to:</p> <ul style="list-style-type: none"> • Approve the draft constitution • Determine best practices for funding the partnership • Set in place the processes to allow for the effective transition to the Destination Management Partnership

<p>Framing & Flourishing</p>	<p>Putting the organisation into Motion</p>	<p>The Board is mandated to:</p> <ul style="list-style-type: none"> • Put in place the management of the organisation • With management, <ul style="list-style-type: none"> ○ Open bank accounts and other requirements for effective operations ○ Conduct an Annual General Meeting with all Council and ordinary members present. 	<p>The founding partners are mandated to:</p> <ul style="list-style-type: none"> • Establish the composition and members of the first Board • Help with identifying the appropriate name for the Destination management partnership <p>The Board is mandated to:</p> <ul style="list-style-type: none"> • Put in place the management of the organisation • With management, <ul style="list-style-type: none"> ○ Open bank accounts and other requirements for effective operations ○ Conduct an Annual General Meeting with all steering committee and ordinary members present.
----------------------------------	---	--	---