Short notes on:

VOLUNTARY ASSOCIATIONS AND NON-PROFIT COMPANIES: WHAT ARE THE DIFFERENCES?

Introduction

What is the difference between a Non-Profit Company and a Voluntary Association? This article will explore what is formally required for both, and when may one be more suitable than the other. While both are not for profit entities, and at face value may appear extremely similar, there are several key distinctions.

Overview

Section 1 of the Companies Act 71 of 2008 (Hereinafter referred to as “The Act”) defines a Non-Profit Company as a Company incorporated for public benefit or another objective as defined in the Act. These objectives can be cultural, religious to name but a few examples. Whilst the Act does not define a Voluntary Association, which is based in Common Law, the closest to a definition can be found in the case of La Lucia Sands Share Block Ltd v Flexi Holiday Club (171/11) [2012] ZASCA 53 in which the Court stated that in terms of Sections 30 and 31 of the old Companies Act 61 of 1973 (Hereinafter referred to “The Old Act”) that any organisation operating for gain could not have a membership which exceeded twenty members. Such an organisation would have had to incorporated as a Company under the Old Act. Despite Sections 30 and 31 of the old Act being replaced by Section 8(3) of the current Act, and the abolition of the 20-member threshold, both Acts intended to place limits on any organisation intent on operating not for gain or profit.

Key differences

As the name implies a Non-profit Company or (“NPC”) is in fact an actual Company incorporated in terms of the Act, as opposed to a Voluntary Association which is not. This means that a NPC will have significantly more formal requirements, such as a Memorandum of Incorporation, registration with the Companies and Intellectual Property Commission (“CIPC”) and various other regulations as opposed to a Voluntary Association. A Voluntary Association by contrast is best described as a group of members with mutual goals or interests-often these are sports or recreational for example. A Voluntary Association has no statutory requirements but must comprise at least three members and has various formal requirements as will be discussed below.
The biggest distinction between a Voluntary Association and a NPC is juristic personality. As an incorporated Company, a NPC exists by default as a separate legal entity capable of owning its own assets and liabilities and exists separately to its members. A Voluntary Association’s property will generally be owned by its members as co-owners. While a Voluntary Association does not normally have juristic personality, it can attain it if certain requirements are met, namely:

1. Perpetual succession; its Constitution specifies that it will continue to exist despite changes to its membership base;
2. Separate property; its Constitution specifies that assets of the association will be held separately from the members;¹

If the above requirements are met the Voluntary Association becomes “incorporated” and is then sometimes known as a *Univeritas*.² The type of Voluntarily Association, its nature and objects are therefore dependent on its Constitution.

Additionally, it is recommended that in addition to a Constitution, a Voluntary Association have various additional documents such as a register of members and meeting minutes.

**Conclusion**

A Voluntary Association is generally quicker and easier to set up as opposed to a Non-Profit Company and has far fewer regulatory requirements, and costs are minimal. However, an incorporated Voluntary Association may have to comply with some regulatory requirements such as registering as a Non-Profit Organisation (“NPO”) or Public Benefit Organisation (“PBO”). The advantage of registering as an NPO is that it allows access to government funded grants and donations. Registration as a PBO on the other hand allows certain exemptions from taxation A NPC is generally more suitable for larger organisations with more complex structures, and assets, especially where there is greater interaction with other large companies. As a NPC has automatic juristic personality, it has the advantage of being able to more easily register as both a NPO as well as a Public Benefit Organisation (“PBO”), where as a Voluntary Association must be incorporated in order to do so. It should be borne in mind that a NPC must operate more strictly within the scope of its set out objectives, which limits its flexibility. In the case of a Voluntary Association it is essential

¹ Emanuel & others v Modikwa Platinum Mine (Pty) Ltd & others [2004] JOL 12762 (T).
² Emanuel & others v Modikwa Platinum Mine (Pty) Ltd & others [2004] JOL 12762 (T).
to have a Constitution to provide clarity on its type nature and objects. Contact an expert at SchoemanLaw for all your legal needs.