

**TRUST INSURANCE BROKER (PVT) LTD**

**Versus**

**THE MINISTER OF FINANCE**

**And**

**THE COMMISSIONER OF INSURANCE**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 23 JANUARY & 1 FEBRUARY 2007

*D M Campbell*, for applicant  
*C Dube*, for respondents

Opposed Application

**KAMOCHA J:** On 28 September 2005 the applicant sought and was granted a provisional order which it now seeks to have confirmed. The final order being sought is as follows:-

- “(1) That section 14 of the Insurance (Amendment) Regulations 2005 (No. 6) (Statutory Instrument 59/05) be and is hereby declared to be null and void and of no force and effect.  
2) That the respondents are to pay the costs of this application jointly and severally the one paying the other to be absolved.”

The Minister of Finance, in terms of section 89 of the Insurance Act [Chapter 24:07], the Act, issued the Insurance (Amendment) Regulations, 2005 (No. 6) published in Statutory Instrument 59 of 2005. The relevant provisions in terms of which the Minister acted are couched in the following terms:-

“89. Regulations

- 1) The Minister may make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.” (Emphasis added)

In the Insurance (Amendment) Regulations the Minister lays down the minimum equity capital of insurers and additional requirements relating to equity capital of insurers and insurance brokers. An insurer or insurance broker or applicant for registration as an insurer or insurance broker is now compelled to meet the following additional requirements for registration with respect to its equity capital.

- (a) every insurer or insurance broker must have at least three shareholders;
- (b) no individual or individual and his or her close relatives may own or control, directly or indirectly, more than forty per centum of the voting shares of the insurer, insurance broker or applicant;
- (c) no part of –
  - (i) the minimum paid up equity capital of the insurer or applicant insurer shall consist of borrowed funds.

The regulations also enumerate items that should accompany an application for registration as an insurer or mutual society or insurance broker. For instance in the case of an application for registration as an insurance broker made in terms of section 35(2) of the Act the application must be accompanied, *inter alia*, by a declaration by each director that he or she is a fit and proper person to be director of the applicant, that is to say that he or she-

- i) has not, within the period of 10 years immediately preceding the date of the application been convicted of any offence involving theft, fraud or dishonesty; and
- (ii) has not been prohibited, whether for a period or indefinitely, from carrying on business as an insurance broker or from practising as a stock broker, public accountant, public auditor, legal practitioner or other profession for the practice of which provision is made

under any enactment; and

- (iii) has not, in any application, return or other document required to be furnished to the Commissioner under the Act, furnished the Commissioner with information that is materially false, inaccurate or misleading; and
- (iv) is not unrehabilitated insolvent.

The applicant must also attach his business plan and tax clearance certificate issued to him or her and each director. Another new requirement introduced by the regulations is that insurance brokers are to keep trust accounts at a bank into which they should deposit all premiums within 6 days of receiving them.

The Minister's contention was that it became necessary to promulgate the regulations because all was not well in the insurance industry to the detriment of the general public. In his opinion it became necessary for him to bring sanity to the industry by issuing these regulations. In order to ensure that all registered insurers, mutual societies and insurance brokers comply with all the new requirements they all had to register. Section 14 of the regulations requires that:

“(14) Every registered insurer, mutual society and insurance broker shall, no later than the 1<sup>st</sup> October 2005, apply to be registered under the principal regulations as amended by these regulations, and every such insurer, mutual society and insurance broker as fails to do so shall, with effect from that date, be deemed not be registered.”

Out of 53 insurance brokers that operate in Zimbabwe, the applicant is the only one which failed to comply with the above provisions. It opted to challenge the Minister's powers and argued that he had exceeded his powers in purporting under section 14 of the regulations to require registered brokers to re-register while their names remain on the register.

The applicant contended that the legislature prescribed its requirements for the registration of insurance brokers in section 35(3) of the Act. If the Commissioner is satisfied that an applicant

meets those requirements he is obliged to register the applicant and he remains registered until his registration is cancelled under the provisions of section 38 of the Act.

It went on to assert that the legislature itself had also prescribed the circumstances in which the registration of an insurance broker can be cancelled. In section 89 the legislature had given the Minister only limited administrative powers to enable him to carry out its wishes but these powers did not include the power to override, alter, add to or subtract from the express wishes of Parliament as set forth in the Act; neither do the penalties permitted for breaches of the regulations include the “de-registration” of offenders. Reliance was placed on the case of *Trust Insurance Brokers (Private) Limited v Minister of Finance and Another* 2000(2) ZLR 462 (S) at 466C.

In that case the insurance broker had got into financial difficulties, but was allowed to trade itself out of debt, which it did successfully, over a period of a few years. Subsequently, however, the Commissioner of Insurance cancelled the brokers registration as broker on the grounds that it had been conducting its business in a manner that warranted concern. The Commissioner relied on the provisions of section 35(4) of the Act which allowed him to refuse to register a broker if it was not in the public interest to do so.

It should be observed that these are the same parties but this time around they are in court for different reasons. In my view the cases are distinguishable. In the previous case the Commissioner had cancelled the broker’s certificate for the financial difficulties which it was allowed to trade out of and had successfully done so within a short space of time thereby rehabilitating itself commendably. And yet the Commissioner still purported to cancel its certificate for those financial difficulties. Quite clearly the Commissioner’s decision was grossly unreasonable to the extent that no sensible person who applied his mind to the issue to be decided could have arrived at such a decision.

In the present matter the Minister's aim was to bring to an end the host of problems bedevilling the insurance industry. He wanted to bring sanity and order to the industry. He therefore, decided to pass the said regulations in terms of section 89 of the Act. In order to ensure that every insurer, mutual society and insurance broker complied with the regulations it was necessary and convenient to have them re-registered.

In my view the provisions of section 89 enjoins the Minister with every wide powers. He may make regulations prescribing anything which needs to be prescribed under the Act or which in his opinion, is necessary or convenient to be prescribed for carrying out or giving effect to the Act. Although what the Minister did was not one of the things listed in section 89(2) I do not believe that that list is exhaustive otherwise the legislature would not have reposed on him the power to prescribe anything which in his opinion was necessary to prescribe.

It was also necessary, in my view, in the public interest to ensure all players in the insurance industry comply with the regulations that govern them. Additional requirements were promulgated which every player had to comply with. To ensure compliance re-registration of all insurers, mutual societies and insurance brokers was necessary , in my view.

Since the Minister is enjoined with wide powers and discretion to prescribe anything which in his opinion is necessary or convenient to be prescribed it was within his powers, in my view, to act as he did.

In the result I hold that section 14 of the regulations is *intra vires* and I would dismiss the application thereby discharging the provisional order with costs.

*Calderwood, Bryce Hendrie & Partners*, applicant's legal practitioners  
*Civil Division of the Attorney General's Office*, respondents' legal practitioners