

REPUBLIC OF SOUTH AFRICA

DISESTABLISHMENT OF SOUTH AFRICAN HOUSING TRUST LIMITED BILL

*(As introduced in the National Council of Provinces as a section 76 Bill; explanatory
summary of Bill published in Government Gazette No 22728 of 5 October 2001)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON PUBLIC SERVICES AT THE REQUEST OF THE MINISTER OF HOUSING)

[B 3—2002]

ISBN 0 621 32080 3

No. of copies printed 1 800

BILL

To disestablish the South African Housing Trust Limited; to transfer the rights and assets of the South African Housing Trust Limited to the National Housing Finance Corporation; to vest the obligations and liabilities of the South African Housing Trust Limited in the Government of the Republic of South Africa; and to provide for matters in connection therewith.

PREAMBLE

WHEREAS the South African Housing Trust Limited was incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), as a company having a share capital with its main business being the promotion of the construction of low-cost housing in South Africa;

AND WHEREAS the above company was funded mainly by the Government of the Republic of South Africa and the private sector to carry out its main function;

AND WHEREAS the Government of the Republic of South Africa is currently the sole shareholder in the company;

AND WHEREAS agreement has been reached between the South African Housing Trust Limited and the National Housing Finance Corporation in terms of which the South African Housing Trust Limited is to transfer, for a nominal amount, its rights and assets to the National Housing Finance Corporation;

AND WHEREAS the Government of the Republic of South Africa will assume responsibility for the obligations and liabilities of the South African Housing Trust Limited;

AND WHEREAS it is no longer expedient for the Government of the Republic of South Africa to fund low-cost housing or to obtain funding for low-cost housing from the private sector, through the company;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Company**” means the South African Housing Trust Limited; 5
 - “**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973);
 - “**effective date**” means 1 April 2002;
 - “**financial year**” means the period from 1 April in any year to 31 March in the following year;
 - “**Government**” means the Government of the Republic of South Africa; 10
 - “**Minister**” means the Minister of Housing.

Disestablishment of South African Housing Trust Limited

2. (1) As from the effective date the Company ceases to exist as a company in terms of the Companies Act and must for the purposes of that Act be regarded as having been wound up.

(2) The Registrar of Companies must deregister the Company as a company in terms of the Companies Act with effect from the effective date. 5

Consequences of disestablishment

3. As from the effective date—

- (a) all rights and assets of the Company, including the administrative, financial and other records of the Company, vest in the National Housing Finance Corporation referred to in section 3(6)(b) of the Housing Act, 1997 (Act No. 107 of 1997); 10
- (b) all obligations and liabilities of the Company vest in the Government as part of the national debt, and the Government must meet these obligations and liabilities on the dates stipulated for compliance; and 15
- (c) the directors of the Company retire as directors of the Company in terms of an agreement between the directors and the Government.

Effects on National Revenue Fund

4. (1) Any payment made by the Government after the effective date but during the financial year starting on 1 April 2001 to meet an obligation or a liability contemplated in section 3(b) must be a direct charge against the National Revenue Fund to the extent that such payment cannot be defrayed from funds appropriated under the Housing Vote in the Appropriation Act, 2001 (Act No. 2 of 2001). 20

(2) Any payment made by the Government to meet an obligation or liability in any financial year following the financial year referred to in subsection (1), must be in terms of an appropriation by an Act of Parliament. 25

Short title

5. This Act is called the Disestablishment of South African Housing Trust Limited Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE DISESTABLISHMENT OF SOUTH AFRICAN HOUSING TRUST LIMITED BILL, 2002

1. Formation of company

Following discussions between the Government and the private sector during 1986 it was agreed that a joint venture should be established outside the Government in order to create employment opportunities through the facilitation and funding of housing directed at the lower income segment of the South African population. For this purpose the South African Housing Trust Limited (“the company”) was established as a company in January 1987 with its main business and main purpose stated as follows:

“To promote and facilitate the provision of affordable shelter and security of tenure to the lower income earning communities of South Africa in a way which will maximize job security.”.

2. Background

2.1 Since the establishment of the company, its business has evolved through a number of phases. These phases reflect the impact of, and adjustments made by, the enhancement of the company in relation to changes in the external environment from time to time. Two wholly-owned subsidiaries of the company were established, namely Nu-way Housing Developments (Pty) Limited and Khayaletu Home Loans (Pty) Limited, which catered for the property development business and the home loan business of the company, respectively.

2.2 On incorporation the company issued 10 000 ordinary shares with a par value of R1,00 each to various institutions. Simultaneously therewith the Government provided an interest-free loan of R445 million to the company and undertook to guarantee loans raised in the private sector up to an amount of R890 million. During the 1992/1993 financial year the Government made a non-refundable grant of R40 million to the Company. During the 1993/1994 financial year the Government’s interest-free loan account of R445 million was converted into share capital in order to improve the debt/equity ratio of the company. This capitalisation had the effect of improving the capital structure of the company and geared the company appropriately so as to grow its business substantially.

3. Problem statement

The delay in, and low profitability of, stand sales together with the bond repayment boycotts by home owners severely hampered the growth of the company and the company had substantial accumulated losses for each year from 1995 to 1998. The Government and the directors of the company came to the conclusion that the likelihood of the company successfully trading out of its difficulties was remote and that the company’s operations should be restructured. The Government approved the restructuring during March 1998 and agreed to honour all guarantees which it had issued and also agreed that the subsidiaries (Nu-way and Khayaletu) and businesses of the company be sold as going concerns for the best prices available and that any proceeds therefrom be applied towards settling the liabilities of the group.

4. Recent developments

4.1 During 1999 and 2000 the company sold Nu-way and Khayaletu with the approval of the Cabinet. Cabinet also agreed that steps should be taken to disestablish the company. The winding down process has taken place with the knowledge and consent of the Standing Committee on Public Accounts of the National Assembly. After the sale of the two subsidiaries the liabilities of the company amount to R571 million, which has been transferred to the Government.

4.2 The assets of the company that remain after the sale of the two subsidiaries amount to approximately R70 million, which consist mainly of loans to various housing corporations of the former TBVC states. Government has agreed that the company should transfer its assets of approximately R70 million to the National Housing Finance Corporation (wholly owned by the Government) for a nominal R1,00. National Treasury became responsible for the servicing and payment of the debt obligations after 1 April 2001.

5. Contents of Bill

The Bill seeks to disestablish the company from 1 April 2002 (“the effective date”). The Registrar of Companies must deregister the company in terms of the Companies Act, 1973 (Act No. 61 of 1973), from the effective date. All rights and assets of the company will vest in the National Housing Finance Corporation (wholly owned by the Government) while all obligations and liabilities will vest in the Government as national state debt and the Government becomes bound to meet these obligations and liabilities on the dates stipulated for compliance. The directors of the company retire as directors as from the effective date.

6. Financial implications for state

Payments made by the Government during the 2001/2002 financial year to meet the obligations and liabilities referred to above must be direct charges against the National Revenue Fund to the extent that those payments cannot be defrayed from funds appropriated under the Housing Vote in the Appropriation Act, 2001 (Act No. 2 of 2001). In subsequent years payments made to the Government to meet those obligations and liabilities must be in terms of an appropriation by an Act of Parliament.

7. Consultation

The following entities were consulted:

- * National Treasury
- * Competition Commission
- * Development Bank of South Africa
- * National Housing Finance Corporation

8. Parliamentary procedure

The State Law Advisers and the Department of Housing are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Housing”.