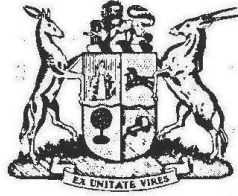


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

**PRICE + 1c GST 20c PRYS + 1c AVB
ABROAD 30c BUITELANDS
POST FREE · POSVRY**

Vol. 179]

CAPE TOWN, 23 MAY 1980

[No. 7013

KAAPSTAD, 23 MEI 1980

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 991.

23 May 1980.

No. 991.

23 Mei 1980.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 59 of 1980: Share Blocks Control Act, 1980.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 59 van 1980: Wet op die Beheer van Aandeleblokke, 1980.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To control the operation of share block schemes; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 5 May 1980.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates— Definitions.
- 5 (i) "bank" means a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965); (v)
- (ii) "building society" means a permanent building society registered under the Building Societies Act, 1965 (Act No. 24 of 1965); (vi)
- 10 (iii) "Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973); (xvii)
- (iv) "contract" includes a contract subject to a suspensive or resolute condition; (xiv)
- 15 (v) "court" means a court of the provincial or local division of the Supreme Court of South Africa in whose area of jurisdiction any property in question is situated; (xiii)
- (vi) "development scheme" means a scheme contemplated in section 4 of the Sectional Titles Act; (xix)
- 20 (vii) "estate agent" means an estate agent as defined in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976); (x)
- (viii) "immovable property", in relation to a share block company, means land, and includes any building erected or to be erected; (xxi)
- 25 (ix) "loan obligation", in relation to a share block company, means the total amount owing from time to time by the company, excluding any amount owing by the company in respect of—
- 30 (a) its share capital;
- (b) the aggregate of the amounts transferred in terms of the Companies Act to the reserves and provisions of the company;
- (c) any debt to be discharged from moneys in the levy fund established in terms of section 13 by the company; (xvi)
- 35 (x) "Minister" means the Minister of Commerce and Consumer Affairs; (xviii)
- (xi) "practitioner" means a practitioner as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); (xx)
- 40 (xii) "prescribed" means prescribed by or under this Act; (xxiii)
- (xiii) "property" means any land of which a share block company is the registered owner and on which a building has or any buildings have been erected; (ix)
- 45

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

- (xiv) "purchaser" means the person who, in terms of a contract, acquired a right to the transfer of a share to him; (xv)
- 5 (xv) "Sectional Titles Act" means the Sectional Titles Act, 1971 (Act No. 66 of 1971); (xxiv)
- (xvi) "sectional title register" means a sectional title register contemplated in section 8 (1) (b) of the Sectional Titles Act; (vii)
- 10 (xvii) "seller" means the person who, in terms of a contract, is obliged to transfer a share to a purchaser; (xxii)
- (xviii) "share"—
- (a) means a share as defined in section 1 (1) of the Companies Act in relation to a company, and includes a debenture of a company and a right to or an interest in any such share or debenture;
- 15 (b) includes any other interest in a company;
- (c) does not include a right to or an interest in the assets of a company derived from a lease in respect of such assets; (i)
- 20 (xix) "share block company" means a company the activities of which comprise or include the operation of a share block scheme; (ii)
- (xx) "share block developer" means any person by whom, on whose behalf or for whose benefit more than 50 per cent of the shares of a share block company are held or controlled and, where two or more persons by whom, on whose behalf or for whose benefit more than 50 per cent of the shares of such a company are jointly held or controlled, act in concert in relation to or are jointly connected with the business of the company, each of such persons; (iii)
- 25 (xxi) "share block scheme" means any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property; (iv)
- 30 (xxii) "this Act" includes a regulation made thereunder; (xii)
- (xxiii) "unit" means a unit as defined in section 1 of the Sectional Titles Act; (viii)
- 35 (xxiv) "use agreement" means any agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated; (xi)

and any other word or expression defined in the Companies Act, has the same meaning as in that Act.

45 2. (1) The Registrar may on application, in the prescribed manner, by a company which at the commencement of this Act operates a share block scheme, exempt for reasons advanced in the application and considered by the Registrar to be adequate, such company from any provision of this Act for such period and

50 on such conditions as the Registrar may deem fit.

Exemption from provisions of Act and from payment of fees in terms of Companies Act.

(2) If a company alters its memorandum or articles to comply with any provision of this Act, no fees shall be payable to the Registrar in respect of such alteration.

55 3. (1) Notwithstanding anything to the contrary contained in any law—

Application of certain laws in respect of share block company.

- (a) (i) a member of a share block company shall not be liable for the debts of the company; and
- (ii) a share block company shall not be wound up, merely by reason of the fact that the number of its members has fallen below seven or any other number;
- 60 (b) any share of a share block company must confer a right to vote at any meeting of the company;
- (c) any share block company may provide in its articles for compulsory loans by its members to the company.

65 (2) The provisions of the Companies Act shall apply to a share block company in so far as those provisions are not in conflict with the provisions of this Act.

4. For the purposes of this Act a company shall be presumed to operate a share block scheme if any share of the company confers a right to or an interest in the use of immovable property or any part of immovable property.

Presumption as to operation of share block scheme by company.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

5. (1) No share block scheme shall be operated in respect of immovable property upon which, after the commencement of this Act, a building is, according to any law, erected in conflict with an approved or a proposed town planning scheme. Restriction on operation of share block scheme.
- 5 (2) The provisions of subsection (1) shall not apply in respect of a building in respect of which, prior to the date upon which the share block scheme is put into operation, there has been lodged with the Registrar the prescribed form on which an architect as defined in section 1 of the Architects' Act, 1970 (Act No. 35 of 10 1970), or a person registered as a land surveyor under section 10 of the Land Surveyors' Registration Act, 1950 (Act No. 14 of 1950), has certified that building plans in respect thereof have been approved under the laws relating to the erection of buildings upon the immovable property in question, and that the building 15 has been erected in accordance with those plans.
6. The Registrar shall be responsible for the administration of this Act. Registrar responsible for administration of Act.
7. (1) The main object and business of any share block company shall be to operate a share block scheme in respect of 20 immovable property owned or leased by it. Main object of share block company and use agreement.
- (2) The articles of a share block company shall provide that a member shall be entitled to the use of a specified part of the immovable property in respect of which the company operates the share block scheme, on the terms and conditions contained in a 25 use agreement entered into between the company and such member.
- (3) A copy of every signed use agreement and any amendment thereof shall be kept by the company at the immovable property in respect of which it operates the share block scheme or at the place 30 of which the Registrar was notified in terms of section 110 (4) of the Companies Act.
- (4) The provisions of section 113 of the Companies Act relating to inspection and copies of and extracts from the register referred to in section 110 of that Act, shall *mutatis mutandis* apply to any 35 copy of a use agreement kept under subsection (3).
- (5) A copy of the use agreement to be used by a company in connection with any share block scheme to be operated by it, shall before any such agreement is entered into, be lodged by the company with the Registrar in the prescribed manner.
- 40 8. (1) Notwithstanding anything to the contrary contained in any law— Capacity and powers of share block company.
- (a) the capacity of a share block company shall be determined by its main object referred to in section 7 (1) and shall include objects ancillary to that main object;
- 45 (b) a share block company shall have only such powers as may be necessary to enable it to realize, subject to the provisions of this Act, its main object and the said ancillary objects;
- 50 (c) a share block company shall not have the power, save with the approval by special resolution of a general meeting of the share block company, to alienate or cede, as the case may be, any immovable property of which it is the owner or any of its rights to immovable property of which it is not the owner and in respect of which it operates a share block scheme;
- 55 (d) any act of a share block company in excess of its capacity or powers shall be void: Provided that—
- (i) in the case of any such void act, the person who performed or is purported to have performed that act on behalf of the company, shall be personally liable to any third party who was prejudiced by reason of the fact that no obligation resulted for the company from that act and who in relation to the performance of that act acted in good faith and reasonably; and
- 60
- 65

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

(ii) the provisions of section 248 of the Companies Act shall *mutatis mutandis* apply in respect of any judicial proceedings or claim arising out of any such act against the person who performed or purported to have performed that act on behalf of the company.

(2) The provisions of this section shall not be so construed that any share block company is prohibited from performing any act or incurring any expenditure to effect the opening in terms of section 105 of the Sectional Titles Act of a sectional title register in relation to any immovable property in respect of which it operates a share block scheme.

(3) A share block company shall not, save in accordance with the provisions of Schedule 1—

- 15 (a) apply for the approval of a development scheme;
 (b) apply for the opening of a sectional title register in relation to any immovable property in respect of which it operates a share block scheme;
 20 (c) transfer any unit to a member of the share block company.

9. (1) No share block scheme shall be operated by any company, unless the expression "share block" or "aandeleblok" is included in or forms part of the name of that company. Provisions as to name of share block company.

(2) If any company changes its name to comply with the provisions of subsection (1), no fees shall be payable to the Registrar in respect of such change of name.

(3) A company which operates a share block scheme shall not carry on business under any name, title or description other than the name under which it is incorporated or registered, being a name which complies with the provisions of subsection (1): Provided that this subsection shall not be so construed that the provisions thereof apply in respect of the name of any building on immovable property in respect of which the company operates a share block scheme.

35 10. Any share of a company which after the commencement of this Act— Rights attaching to shares of share block company.

- (a) brings a share block scheme into operation, shall confer the same vote as every other share of the company; or
 40 (b) operates a share block scheme, shall confer a right to or an interest in the use of immovable property.

11. Notwithstanding anything to the contrary contained in any law— Offer of shares for sale.

- (a) any person may offer shares of a share block company for sale to the public if, in lieu of compliance with any other requirements, such offer is accompanied by a statement that any proposed purchaser of any such shares is required to enter into a contract referred to in section 17 in respect of such shares and that a copy of the contract required to be entered into is available for inspection free of charge at an address indicated in the statement; and
 45
 50 (b) no rule of law relating to a prospectus of a company shall apply to a newspaper or other advertisement offering any shares of a share block company for sale to the public or calling attention to any such offer or
 55 any intended offer of such shares, if the statement contemplated in paragraph (a) is contained in the advertisement.

12. (1) Notwithstanding anything to the contrary contained in the memorandum or articles of a company operating a share block scheme or in any agreement or arrangement affecting or concerning such company or the share block scheme operated by it, the members of the company other than the share block developer shall, if they— Directors of share block company.

- 65 (a) do not exceed ten in number, have the right to appoint at least one of the directors of the share block company; and

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

(b) exceed ten in number, have the right to appoint at least two of the directors of the share block company.

(2) A company shall not fail to take steps to ensure the appointment of the director or directors referred to in subsection 5 (1), and, notwithstanding anything to the contrary contained in any law, a share block developer shall not be entitled to vote on a proposed resolution to remove, under the provisions of section 220 of the Companies Act, any director so appointed.

(3) A provision of the memorandum or articles of a company or 10 of an agreement entered into by any person at any time before or after the commencement of this Act entitling or purporting to entitle that person to appoint a majority of the directors of a share block company shall be of no force or effect, unless that person or his representative in fact guarantees compliance with any 15 obligation of the company specified in the memorandum or articles or the agreement and confirmed by the Registrar in the prescribed manner.

(4) If any director has or any directors have been appointed in terms of the provisions of subsection (1), the number of directors 20 required for a quorum at any meeting of the directors of the company, shall include that director or at least one of those directors, as the case may be: Provided that if such director or directors (if any) is or are not present within half an hour after the time appointed for such a meeting, the meeting shall stand 25 adjourned to a day not earlier than five days and not later than fourteen days after the date of the meeting, according as may be decided, and if at such adjourned meeting such director or directors is or are not present within half an hour after the time appointed for the meeting, the directors present shall be a quorum.

30 13. (1) A share block company shall in respect of the share block scheme it operates establish and maintain a levy fund sufficient, in the opinion of its directors, for the repair, upkeep, control, management and administration of the company and of the immovable property in respect of which it operates the share 35 block scheme, for the payment of rates and taxes and other local authority charges on the said immovable property, any charges for the supply of electric current, gas, water, fuel and sanitary and any other services to the said immovable property, and services required by the company, for the covering of any losses suffered 40 by the company, for the payment of any premiums of insurance and of all expenses incurred or to be incurred to effect the opening under section 5 of the Sectional Titles Act of a sectional title register in relation to the said immovable property, and for the discharge of any other obligation of the company.

Establishment
of levy fund by
share block
company.

45 (2) Save as otherwise provided in the memorandum or articles of a share block company or in any agreement or arrangement between the company and its members, every member of the company shall contribute monthly to the levy fund in the proportion of the number of his shares to the total number of 50 issued shares of the company or, if the company does not have a share capital, all its members shall so contribute equally.

(3) All contributions received in terms of subsection (2) shall forthwith—

(a) be deposited in a separate account which the company 55 shall open and keep with a bank or building society; or
(b) be entrusted to a practitioner or to an estate agent, in his capacity as such.

(4) The moneys in the levy fund shall be utilized to defray the expenses referred to in subsection (1).

60 (5) The directors of the share block company shall ensure that such accounting records as are necessary fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the company in respect of the share block scheme operated by the company, are kept in one of the 65 official languages.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

14. (1) A share block company shall not increase its loan obligation or encumber any of its assets unless the increase or encumbrance has been approved by a resolution of at least 75 per cent in number of the members of the company, excluding 5 from such members the share block developer, having the right to vote at the relevant meeting and holding in the aggregate at least 75 per cent of the total number of votes of all those members, but excluding from such number of votes the votes held by the share block developer.
- 10 (2) The loan obligation of a share block company existing on the date of commencement of this Act or arising after that date shall be allocated to all members of the company, in accordance with the provisions of the memorandum or articles of the company or any agreement or arrangement relating to the loan obligation 15 between the company and its members or, in the absence thereof, in the proportion of each member's share to the total number of issued shares of the company or, if the company does not have a share capital, equally between all members of the company.
- 20 (3) Any member of a share block company shall be liable to the company in respect of its loan obligation for an amount equal to that portion of the loan obligation, if any, for which he is, at the commencement of this Act, liable in respect of that loan obligation and such portion thereof as may, after that commencement, be allocated to him in terms of subsection (2).
- 25 (4) Subject to the provisions of section 15, no moneys paid to a share block company in reduction or in settlement of an amount referred to in subsection (3) shall be applied—
- 30 (a) if the loan obligation was incurred before the commencement of this Act, otherwise than in accordance with the memorandum or articles of the company or any agreement or arrangement relating to the repayment of that amount between the company and its members; or
- 35 (b) if the loan obligation was incurred after the commencement of this Act or if the repayment of that amount is not governed by the memorandum or articles of the company or any agreement or arrangement referred to in paragraph (a), otherwise than in accordance with a resolution passed as contemplated in subsection (1).
- 40 (5) The provisions of the Companies Act relating to notice and registration of a special resolution shall *mutatis mutandis* apply in respect of a resolution referred to in subsection (1), as if such resolution were a special resolution.
- (6) The provisions of subsection (1) shall not apply in respect of—
- 45 (a) an increase or encumbrance contemplated in that subsection if at the time when the shares of the company were offered for subscription or sale, it was disclosed to all the members of the company and to the persons to whom those shares were offered that the company 50 contemplated increasing its loan obligation or encumbering its assets on stated terms and conditions and the company has acted in accordance with such disclosure;
- 55 (b) an encumbrance contemplated in that subsection if such encumbrance secures an existing liability comprised in the company's loan obligation.
- (7) The provisions of subsection (1) shall not be so construed that the replacement of an obligation, or part of an obligation, included in the loan obligation by another is prohibited.
15. (1) All moneys paid in respect of the amount referred to in 60 section 14 (3) shall forthwith—
- (a) be deposited in a separate trust account which the share block company shall open and keep with a bank or building society; or
- 65 (b) be entrusted to a practitioner or to an estate agent, in his capacity as such.
- (2) If any moneys referred to in subsection (1) are not immediately required for any purpose, those moneys shall, notwithstanding the provisions of that subsection, be invested in a

Loan obligation
of share block
company.

Trust account of
and investment of
trust moneys by
share block
company.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

- separate savings or other interest-bearing account opened by or on behalf of the company with any bank or building society or any other institution or kind of institution designated by the Minister by regulation with the concurrence of the Minister of Finance.
- 5 (3) Any trust, savings or other interest-bearing account referred to in subsection (1) or (2) shall contain a reference to this section.
- (4) The amount entrusted to a practitioner or an estate agent in terms of subsection (1) or standing to the credit of the trust account referred to in that subsection or of any savings or other
- 10 interest-bearing account referred to in subsection (2), of any share block company—
- (a) shall, subject to the provisions of section 14 (4), be applied by the company from time to time as and when required, for the sole purpose of the redemption of its
- 15 loan obligation;
- (b) may not be attached by virtue of any writ of execution;
- (c) shall, if the company is wound up, be paid to the members of the company in accordance with the provisions of the memorandum or articles of the
- 20 company or any agreement or arrangement relating to the loan obligation between the company and its members or, in the absence thereof, in the proportion of the share of each member to all the issued shares of the company or, if the company does not have any share
- 25 capital, in equal amounts.
- (5) Without derogating from the provisions of Chapter XI of the Companies Act any share block company shall—
- (a) keep in one of the official languages at its registered office such separate accounting records and financial statements as are necessary to account for, and fairly to reflect and explain the state of affairs in respect of, all
- 30 moneys—
- (i) paid in respect of the amount referred to in section 14 (3);
- 35 (ii) entrusted to a practitioner or an estate agent or deposited by the company in its trust account referred to in subsection (1) or invested in any savings or other interest-bearing account referred to in subsection (2);
- 40 (b) balance its books and records relating to any payment or any account referred to in paragraph (a) at intervals of not more than six months and cause such books and records and the financial statements in respect thereof to be audited at least once annually by the auditor
- 45 appointed under Chapter X of the Companies Act.
- (6) Any auditor who has carried out an audit contemplated in subsection (5) (b), shall within six months from the end of the relevant financial year of the company transmit a report, in the prescribed form, in respect of his findings to the Registrar and a
- 50 copy thereof to the company.
- (7) Notwithstanding the provisions of subsection (6), the Registrar may at any time order any share block company by notice in writing to submit to him within a period stated in such notice, which shall not be less than thirty days, an audited
- 55 statement fully setting out the state of affairs of its trust account referred to in subsection (1) or of any savings or other interest-bearing account referred to in subsection (2).
- (8) The Registrar may, upon application in writing by any interested party, prohibit any share block company from operating
- 60 in any way on its trust account referred to in subsection (1) or any savings or other interest-bearing account referred to in subsection (2) and may appoint any person to control and administer such trust, savings or other interest-bearing account, with such rights, duties and powers as the Registrar may deem fit.
- 65 (9) Any bank, building society or institution referred to in subsection (2) at which a share block company keeps a trust or savings or other interest-bearing account shall not by reason only of the name or style by which such account is known, be deemed

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

to have knowledge that such share block company is not entitled to all moneys deposited in or credited to any such account.

(10) The provisions of subsection (9) shall not relieve any bank, building society or institution referred to in subsection (2) from any liability or obligation to which, but for the provisions of this Act, it would have been subject.

(11) Notwithstanding the provisions of subsection (9), any bank, building society, or institution referred to in subsection (2) at which a share block company keeps a trust or savings or other interest-bearing account shall not, in respect of any liability of the share block company to such bank, building society or institution, not being a liability arising out of or in connection with such account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or other method, in respect of or to moneys standing to the credit of any such account.

(12) This section shall not be construed so as to deprive any bank, building society or institution referred to in subsection (2) of any right existing at the commencement of this Act.

16. A contract for the acquisition of a share and a use agreement entered into, and any amendment or cession of any such contract or agreement, after the commencement of this Act, shall be reduced to writing and signed by the parties thereto or by their representatives acting on their written authority, failing which the contract, agreement, amendment or cession, as the case may be, shall, subject to the provisions of section 18, be of no force or effect.

Formalities in respect of contract relating to a share and a use agreement.

17. (1) A contract for the acquisition of a share shall state the matters required by Schedule 2 and be accompanied by the documents referred to in that Schedule.

Contents of contract relating to share.

(2) Any *rouwkoop* stipulation in a contract for the acquisition of a share in terms of which the purchaser is deemed to have terminated the contract on account of any act or omission on his part and he, in consequence thereof, is liable to any forfeiture or for the payment of a penalty or damages, or any other stipulation of like import relating to a share, shall be subject to the Conventional Penalties Act, 1962 (Act No. 15 of 1962), as if that stipulation were a penalty stipulation contemplated in that Act.

(3) A copy of a contract contemplated in subsection (1), together with the documents referred to in Schedule 2, shall, within fourteen days of the date of the conclusion thereof, be handed over, or sent by prepaid registered post to his address stated in the agreement, to the purchaser by the seller.

(4) A share block company shall, at the written request of any of its members, furnish such member, within fourteen days of the receipt of such request, with such information as in terms of this section is required to be stated in a contract for the acquisition of a share and as is requested by such member.

18. (1) Subject to the provisions of subsection (2), any purchaser or seller who has performed partially or fully under a contract for the acquisition of a share which does not comply with the provisions of section 16 or 17, shall be entitled to reclaim from the other party what he has performed under the contract, and—

Consequences of non-compliance with formalities.

(a) the purchaser may in addition claim from the seller—

(i) interest at 12 per cent per annum or at the rate prescribed from time to time by the Minister by regulation for the purposes of this section, on any payment made under the contract, from the date of the payment to the date of recovery thereof; and

(ii) reasonable compensation for any expenses incurred by him, with or without the authority of the company, for the preservation of the immovable property in respect of which the share block scheme is operated, or in respect of any improvements which enhance the market value of that immovable property and which were effected by

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

him with the express or implied consent of the company; and

(b) the seller may in addition claim from the purchaser—

- 5 (i) reasonable compensation for the use that the purchaser may have had of the immovable property in respect of which the share block scheme is operated; and
- 10 (ii) compensation for any damage caused in respect of such immovable property by the purchaser or any person for whose acts or omissions the purchaser is delictually liable.

(2) The provisions of subsection (1) shall not apply in respect of a contract for the acquisition of a share which substantially complies with the provisions of sections 16 and 17, and a contract for the acquisition of a share which does not comply with the provisions of section 16 or 17, whether or not in a substantial respect, shall not be affected by such defect if the purchaser has discharged his obligations in terms of the contract and the seller has transferred the relevant share to the purchaser, and shall in such case be deemed from the conclusion thereof not to be affected by the defect.

19. (1) The directors of a share block company shall ensure that the immovable property of the company is insured against damage in accordance with any relevant resolutions passed by its members at general meetings of the company. Insurance of immovable property of share block company.

(2) If the company or any member thereof suffers any damage as a result of a failure to comply with the provisions of subsection (1), the persons who at the time of the failure were share block developers or directors or officers of the company, shall be jointly and severally liable to compensate the company or member, as the case may be, for the damage it or he suffered.

(3) A person shall not be liable in terms of the provisions of subsection (2) if it is proved that he was unaware of the failure to comply with the provisions of subsection (1) and he was unable to prevent that failure.

20. The Minister may make regulations—

Regulations.

- (a) prescribing the form and contents of any form or return provided for by this Act;
- 40 (b) after consultation with the Minister of Finance, prescribing the matters in respect of which fees shall be payable and the tariff of such fees;
- (c) prescribing the manner in which fees payable to the Registrar shall be paid; and
- 45 (d) as to any matter required or permitted by this Act to be prescribed by regulation.

21. Any person who contravenes or fails to comply with the provisions of this Act shall be guilty of an offence and upon conviction liable, in the case of the provisions of— Offences and penalties.

- 50 (a) section 5 (1), 7, 10, 11 (a) or 17, the proviso to section 23 (2), or the provisions of item 4 (1) of Schedule 1, to a fine not exceeding 500 rand or imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- 55 (b) section 8 (3), 9, 12 or 13, or the provisions of item 2 or 5 of Schedule 1, to a fine not exceeding 1 000 rand or imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- 60 (c) any other section of this Act, to a fine not exceeding 2 000 rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

22. The waiver by a member of a share block company of any right conferred upon him by this Act, shall be null and void. Waiver of rights.

23. (1) Subject to the provisions of subsection (2), the Sectional Titles Act is hereby amended to the extent set out in Schedule 3. Amendment of Act 66 of 1971.

65 Schedule 3.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

(2) If any share block company has taken the steps referred to in section 23 of the Sectional Titles Act for the purpose of transferring to any of its members ownership of immovable property in respect of which it operates a share block scheme, and the development scheme lodged by it in accordance with the provisions of that section was, before the commencement of this Act, approved in terms of any provision of that section, it may complete the taking of those steps as if that section, notwithstanding the repeal thereof, had remained in force: 5

10 Provided that, if the said ownership is or has been transferred to any such member who holds a share, that member shall forthwith deliver the certificate in respect of such share to the trustees of the body corporate established in terms of the provisions of the Sectional Titles Act, to deal therewith in accordance with the 15 provisions of Schedule 1.

24. This Act shall be called the Share Blocks Control Act, 1980, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

Schedule 1

(Section 8 (3))

APPROVAL OF DEVELOPMENT SCHEME AND OPENING OF SECTIONAL TITLE REGISTER IN TERMS OF THE SECTIONAL TITLES ACT

PREPARATION OF PARTICULARS RELATING TO DEVELOPMENT SCHEME FOR PURPOSES OF THE SECTIONAL TITLES ACT

1. When not less than 30 per cent in number of the members of a share block company require the company to apply for the opening, under section 5 of the Sectional Titles Act, of a sectional title register in relation to the property in respect of which it operates a share block scheme, or the directors of the company decide to make such an application, the company shall, notwithstanding anything to the contrary contained in its memorandum or articles—

- (a) if the property is mortgaged, apply to the mortgagee concerned for his consent contemplated in section 5 (3) (b) of the Sectional Titles Act;
- (b) ensure the preparation of such particulars pertaining to a proposed development scheme for purposes of the application, including sketch and other plans pertaining to that proposed scheme, and such rules, if desired, which are to replace the rules contained in Schedules 1 and 2 to the Sectional Titles Act, as the directors of the company may deem necessary for consideration by the members of the company at a general meeting of the company and, if the property is mortgaged, by the mortgagee concerned; and
- (c) when the reply of the mortgagee to the application referred to in paragraph (a) has been received and after the particulars and the rules referred to in paragraph (b) have been prepared, cause notice to be given of a meeting of the company at which, with a view to a special resolution contemplated in section 199 of the Companies Act, it will be proposed that a sectional title register be opened under section 5 of the Sectional Titles Act in relation to the property in respect of which the company operates a share block scheme.

RESOLUTION FOR THE OPENING OF SECTIONAL TITLE REGISTER AND NOTICE OF SUCH RESOLUTION

2. (1) A resolution referred to in item 1 (c) shall, notwithstanding anything to the contrary contained in any law, be registered in terms of the Companies Act as a special resolution of the company if—

- (a) the notice of the meeting, in addition to the particulars to be specified therein in terms of section 199 of the Companies Act, states that the particulars and rules referred to in item 1 (b) are available for inspection free of charge during normal business hours at the property in respect of which the company operates the share block scheme or at a place of which the Registrar was notified in terms of section 110 (4) of the said Act; and
- (b) the resolution was passed at the relevant meeting as a special resolution or by not less than 50 per cent in number of the members of the company having the right to attend and vote at any meeting of the company, and the said 50 per cent of the members together hold not less than 30 per cent of the total votes held by all the members of the company.

(2) When registered in terms of the Companies Act, a resolution referred to in subitem (1) shall be sufficient authority to the directors of the company to take such steps as may be necessary under any law to effect the opening of the sectional title register referred to in item 1.

(3) Any share block company shall, within 21 days of the date of the registration of a resolution referred to in subitem (1), cause notice in writing of the resolution to be dispatched to all members of the company and, in so far as the company may have the necessary information at its disposal, to—

- (a) every person who, on that date, is, upon payment of the necessary amount, entitled to a share of the company;
- (b) every person who has on that date a right to a share of the company by virtue of a pledge;

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

- (c) every creditor of the company who has on that date a claim of not less than 500 rand against the company;

Provided that the provisions of this subitem shall not apply in respect of any person who has by written notice to the company indicated that he has no objection to the opening of the sectional title register referred to in item 1.

(4) The notice referred to in subitem (3) shall state that—

- (a) it is the intention of the company to apply in terms of section 4 of the Sectional Titles Act for the approval of a development scheme and, if such scheme is approved, for the opening of the sectional title register referred to in item 1;
- (b) the person concerned may consent to the said applications or, within one month of the date of the notice, lodge a written objection with the company and, unless he withdraws his objection, within two months from the date thereof or such extended period as the company may allow apply to the court in terms of the provisions of item 3 for an order under that item;
- (c) the particulars and rules referred to in item 1 (b) are available for inspection as contemplated in subitem (1) (a) of this item.

(5) A notice referred to in subitem (3) shall be handed over to the person to whom it is to be dispatched, or shall be sent by prepaid registered post to that person at his last known business or residential address or, in the case of a member of the company, if that address of his is not known, at his address as reflected in the share register of the company.

OBJECTION TO OPENING OF SECTIONAL TITLE REGISTER IN RELATION TO PROPERTY

3. (1) Any person who, within one month as contemplated in item 2 (4) (b), lodges a written objection with the company, shall set out fully in that objection the reasons for his objection to the opening of the sectional title register referred to in item 1 or to any aspect of the particulars or rules referred to in item 1 (b).

(2) When a company receives a written objection referred to in subitem (1), it shall not take any further steps to effect the opening of the said sectional title register, until it has complied with the provisions of item 5.

(3) A person referred to in subitem (1) may, within two months from the date of his objection or such extended period as the company may allow, withdraw such objection or apply to the court for an order in terms of which the company is directed to modify the particulars or rules referred to in item 1 (b) or is prohibited from taking such steps as the court may determine to effect the opening of the sectional title register referred to in item 1.

(4) The written objection by a person referred to in subitem (1) shall be deemed to have been removed if that person, within two months from the date of his objection or such extended period as the company may allow—

- (a) withdraws his objection in writing; or
- (b) fails to withdraw his objection and also fails to apply to court, with notice to the company and to the Registrar, for an order contemplated in subitem (3).

(5) In an application to the court in terms of this item, the court may—

- (a) direct that the company shall not take any steps or, for such period as the court may determine, not take any steps to effect the opening of the sectional title register referred to in item 1; or
- (b) refuse the application and impose such conditions in regard to the opening of the sectional title register as it may deem fit; or
- (c) make such order as it deems appropriate in the circumstances; and
- (d) make such order as to costs as it deems fit.

CONSENT OF MORTGAGEE AND DISCHARGE OF LOANS SECURED BY MORTGAGE BOND

4. (1) Any mortgagee who receives an application contemplated in item 1 (a) shall, within 30 days of the receipt of such application, notify the company of his decision in respect thereof.

(2) A company shall not take any steps to effect the opening of the sectional title register referred to in item 1, unless the mortgagee has undertaken in writing to grant the consent contemplated in section 5 (3) (b) of the Sectional Titles Act, or the company has made arrangements to the satisfaction of the mortgagee for the redemption, simultaneously with or prior to the opening of the said sectional title register, of the outstanding amount of the loan secured by the relevant mortgage bond.

REGISTRAR TO BE FURNISHED WITH PROOF OF CERTAIN MATTERS

5. A company shall not, pursuant to any resolution contemplated in item 2 (1)—

- (a) apply for the approval of a development scheme in relation to any property in respect of which it operates a share block scheme; or
- (b) take any steps to effect the opening of the sectional title register referred to in item 1,

unless it has in the prescribed manner lodged with the Registrar proof, in so far as it may be appropriate, that—

- (i) the notices contemplated in item 2 (3) have been dispatched;
- (ii) no valid objection was, pursuant to such notices, lodged with the company in terms of the provisions of item 3;
- (iii) all valid objections so lodged are under the provisions of item 3 (4) deemed to be removed;
- (iv) the court has, in terms of item 3 (5) (b), refused all applications under item 3 (3);
- (v) the company has complied with the provisions of any order under item 3 (5) (b) or (c);
- (vi) no proceedings pursuant to any such application are pending in any court;
- (vii) the mortgagee has undertaken in writing to grant the consent contemplated in section 5 (3) (b) of the Sectional Titles Act, or the company has made arrangements as contemplated in item 4 (2).

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

SECTIONAL PLAN RELATING TO PROPERTY IN RESPECT OF WHICH SHARE BLOCK SCHEME IS OPERATED

6. (1) When a sectional plan is prepared in accordance with the provisions of section 6 of the Sectional Titles Act in relation to property in respect of which a share block scheme is operated, every part of the building or buildings in question to the use of which a member of the company is entitled, shall, in so far as may be practicable, be shown or defined on that sectional plan as a section in accordance with the provisions of that Act.

(2) The value of the vote of any person who by virtue of the provisions of item 8 (1) becomes the owner of a section referred to in subitem (1) of this item and his liability under section 24 (2) (c) of the Sectional Titles Act to make contributions for the purposes of sections 30 and 35 of that Act shall, notwithstanding anything to the contrary contained in any law, be determined in accordance with the memorandum or articles of the company concerned or any agreement or arrangement between that company and its members relating to the property in question, unless such value or liability is otherwise determined by virtue of a resolution referred to in item 2 (1) or in terms of the provisions of section 24 (3) of the said Act.

(3) To defray the costs incurred by the company to effect the opening of the sectional title register referred to in item 1 the company may raise a loan and encumber its assets.

(4) A loan contemplated in subitem (3), interest thereon and the costs thereof may be defrayed out of the levy fund established under section 13 of this Act or may be repaid by the members of the company to the company, according as the company may decide.

ESTABLISHMENT OF BODY CORPORATE IN RELATION TO PROPERTY

7. As from the establishment of the body corporate contemplated in section 28 of the Sectional Titles Act in relation to property in respect of which a company operates a share block scheme, and notwithstanding anything to the contrary contained in any law—

- (a) a person to whom a unit comprised in that property has been transferred shall no longer have any rights against or liabilities to the company in relation to that unit arising out of the memorandum or articles of the company or any agreement or arrangement referred to in paragraph (f) (iii);
- (b) the rights and liabilities of any member of the company in relation to the company shall remain unaltered until such time as such a unit is transferred to that member;
- (c) there shall be included in the liabilities of the body corporate any liability of the company for the expenses contemplated in section 30 (1) (a) of that Act which was incurred by the company but not discharged by it before the establishment of the body corporate;
- (d) the company shall be liable to the body corporate to make the contributions contemplated in section 24 (2) (c) of that Act in respect of any such unit which has not been transferred by the company to any of its members, and such contributions shall be defrayed out of the levy fund established under section 13 of this Act;
- (e) the body corporate shall reimburse the company out of the fund referred to in section 30 (1) (a) of that Act for the expenses which the company actually incurs in respect of—
 - (i) any fees or duties payable under the Companies Act;
 - (ii) the audit and secretarial fees payable in connection with the main business of the company;
 - (iii) its winding-up; and
 - (iv) any matter agreed upon between the company and the corporate body;
- (f) the rules contemplated in section 27 of that Act in force from time to time in respect of the property controlled and managed by the body corporate shall, in the case of conflict with the provisions of—
 - (i) the memorandum or articles of the company; or
 - (ii) any use agreement; or
 - (iii) any agreement or arrangement in force between the company and any of its members or any other person entitled, by reason of the acquisition of any share of the company or any right thereto, to the use of any portion of a building comprised in the development scheme which applies in respect of the said property, prevail and shall be deemed to be incorporated in the said memorandum or articles or such agreement or arrangement, as the case may be.

TRANSFER OF UNITS BY A COMPANY TO ITS MEMBERS OR OTHER PERSONS

8. (1) Any company which operates a share block scheme in relation to property in respect of which a sectional title register has been opened, shall transfer each unit comprised in such property in the name of the person who has a right to the use of such unit by virtue of an agreement between the company and that person, if—

- (a) that person has discharged all his obligations to the company and any other person, if any, from whom he has acquired a share in terms of a contract contemplated in section 17, or has made arrangements to the satisfaction of the company and that other person, if any, to ensure the discharge of such obligations;
- (b) that person in writing requests the company to transfer the said unit in his name;
- (c) arrangements have been made to the satisfaction of the company for payment of all costs and the signing of all documents required in connection with the transfer;
- (d) in any case where the said unit is, together with other units comprised in the property, mortgaged, the mortgagee has agreed to release the said unit from the mortgage bond; and
- (e) that person has complied with the provisions of subitem (2).

(2) The person contemplated in subitem (1) shall, at the time he lodges the written request referred to in subitem (1) (b) with the company, deliver to the trustees contemplated in section 31 of the Sectional Titles Act of the body corporate referred to in item 7 or, if the body corporate has at that time not been established, to the company, to be held by it on behalf of the said trustees until the body corporate has been established—

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

- (a) the certificate in respect of the share of the company which he holds and which relates to the unit referred to in subitem (1), together with share transfer forms signed by him in blank; and
 - (b) a document in which he waives, with effect from the date on which the said unit is transferred to him, any rights which he may have against the company relating to the use of that portion of the property in respect of which the company operates the share block scheme, which relates to that unit.
- (3) The conveyancer's certificate under section 11 (4) of the Sectional Titles Act shall, in addition to containing the certificate referred to therein, certify that—
- (a) according to a sworn declaration furnished by the company concerned, the levies contemplated in section 13 of this Act to be paid to the company by the person referred to in subitem (1), have been paid or payment thereof has been secured to the satisfaction of the company; and
 - (b) the documents referred to in subitem (2) have been delivered according to the provisions of that subitem.
- (4) Notwithstanding anything to the contrary contained in any other law—
- (a) any share of a company which operates a share block scheme in relation to property in respect of which the sectional title register referred to in item 1 has been opened, shall, if the certificate in respect of such share has been delivered to the trustees as contemplated in subitem (2) of this item, be transferred by the company in the name of those trustees, who shall hold that share as the nominees of the person who is then the owner of the unit in question transferred under subitem (1) of this item;
 - (b) any share transferred in terms of paragraph (a) in the name of the trustees, shall not confer upon those trustees any rights against the company, save when all the issued shares of the company have been registered in the name of those trustees, in which event, if the majority in number of the owners as defined in section 1 of the Sectional Titles Act, of the units transferred under subitem (1), so decide, the trustees in question shall procure the winding-up or deregistration of the company under the provisions of the Companies Act, and in the absence of such a decision within a reasonable time, each such share shall be registered in the name of the person who is then the owner of the unit in question transferred under subitem (1).

Schedule 2

(Section 17)

MATTERS TO BE STATED IN A CONTRACT FOR THE ACQUISITION OF A SHARE**NAME, ADDRESS AND INCORPORATION**

1. (a) The name, address of the registered office and of the transfer office, postal address and date of incorporation of the company which operates the share block scheme, and the address at which its financial records are kept.
- (b) If appropriate, the name and address of its holding company.

DIRECTORS AND MANAGEMENT

2. (a) The names, occupations and addresses of the directors of the company (specifying who the chairman and managing director are, if any) and their nationality, if not South African.
- (b) The term of office for which a director is or has been appointed, and particulars of any right held by any person in respect of the appointment of any director.
- (c) Particulars of the remuneration of directors in their capacity as directors and in any other capacity.
- (d) If the share block scheme is managed by a third party under an agreement or arrangement, the name and address of that third party, and a statement as to whether or not any money relating to the share block scheme is entrusted to him.
- (e) The borrowing powers of the company exercisable by the directors, and the manner in which such borrowing powers may be varied.

AUDITOR

3. The name and address of the auditor of the company.

SECRETARY

4. The name and address and the professional qualifications, if any, of the secretary of the company.

PROPERTY

5. (a) A description and the extent of the immovable property owned or leased by the company.
- (b) A description of the part of the immovable property which will be the subject of the right to use of the purchaser.
- (c) If the company does not own the immovable property—
 - (i) the name and address of the registered owner; and
 - (ii) the terms on which the company leases the immovable property.
- (d) If the immovable property in respect of which the share block scheme is or is to be operated is or is proposed to be mortgaged—

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

- (i) the name and address of the person, or his representative, or in the case of a participation bond, the name and address of the nominee company, or its representative, in favour of whom the mortgage bond over that immovable property is or is to be registered;
- (ii) the registered capital amount and duration of the mortgage bond, and the terms and conditions as to repayment of capital and payment of interest;
- (iii) the annual rate of the interest payable in respect of the loan secured by the mortgage bond.
- (e) The date upon which the purchaser becomes entitled to the use of the part of the immovable property referred to in subitem (b).
- (f) If the seller is aware that a sectional title register cannot be opened under section 5 of the Sectional Titles Act in relation to the immovable property in respect of which the share block scheme is or is to be operated, a statement to that effect.

PARTIES TO THE CONTRACT

6. The names of the parties to the contract and their respective ordinary residential or business addresses in the Republic.

SHARE WHICH IS SUBJECT OF THE CONTRACT

- 7. (a) A description of the share which is the subject of the contract.
- (b) If the share is not registered in the name of the seller when the contract is entered into, the name and address of the person in whose name it is registered.
- (c) If the share is sold by a share block developer, the number of shares held and not held by the share block developer when the contract is entered into.

PURCHASE PRICE UNDER THE CONTRACT

- 8. (a) The amounts included in or payable in addition to the amount of the purchase price to be paid under the contract, specifying the matter in respect of which each such amount is to be paid, but excluding any amount payable as a penalty or damages for breach of contract or by way of interest on arrear payments.
- (b) The annual rate at which interest, if any, is to be paid.
- (c) The amounts in which the purchase price is to be paid.
- (d) The due date or the method of determining the due date of each payment.
- (e) The place where payments are to be made.

CONTRIBUTIONS TO THE LEVY FUND

9. The amount of the contribution which, when the contract is entered into, is to be made in respect of the share which is the subject of the contract, for the benefit of the levy fund established by the company for the purposes of the share block scheme.

LOAN OBLIGATION OF THE COMPANY

- 10. (a) The total amount of the company's loan obligation, as reflected in its financial statements at the end of the accounting period contemplated in section 15 (5) (b) and ended not more than nine months before the date of the contract.
- (b) The amount and terms of redemption of any loan comprised in the company's loan obligation which, at the date contemplated in subparagraph (a), may be redeemed otherwise than in accordance with a resolution contemplated in section 14 (1) or upon the liquidation of the company.
- (c) The annual rate of the interest payable in respect of any such loan.
- (d) If the seller is a member of the company, the rights in relation to the loan obligation of the company ceded by him to the purchaser.
- (e) The balance of the amount which the purchaser is obliged to pay to the company in relation to its loan obligation.
- (f) In so far as the seller is aware, a statement in relation to any resolution which may have been passed by the members of the company to increase its loan obligation.

INSURANCE

11. The name and address of the insurance company which insured the immovable property, the amount of the insurance cover and the nature of the risks covered and, if no such insurance has been effected, a statement to that effect.

DOCUMENTS TO ACCOMPANY THE CONTRACT

- 12. There shall be annexed to the contract—
 - (a) a copy of the relevant use agreement which is to apply between the company and the purchaser, and a statement by the seller as to any material difference between it and any other such agreement between the company and any member thereof having rights and obligations similar to those of the purchaser, of which the seller is aware;
 - (b) a statement setting out the number of shares allocated in respect of each part of the immovable property which is or may be the subject of a use agreement, and the amount each member is obliged to pay to the company in respect of each such part in respect of its loan obligation;
 - (c) a copy of the latest audited annual financial statements of the company and a statement by the seller as to any material changes in the state of affairs of the company since the date of those statements of which the seller is aware or, if such statements are not available, a statement to that effect;
 - (d) if any application in terms of the Sectional Titles Act has been or is to be made for the approval of a sectional plan in respect of any building on the immovable property, a statement as to where and when the relevant sectional plan may be inspected.

SHARE BLOCKS CONTROL ACT, 1980

Act No. 59, 1980

Schedule 3

(Section 23)

AMENDMENT OF ACT NO. 66 OF 1971

- (a) The repeal of section 23;
- (b) the deletion in subsection (2) of section 24 of the words "proviso (ii) to section 23 (1) and to";
- (c) the substitution for section 25 of the following section:

^{"Sale or letting of sections.} **25. [Subject to the provisions of section 23 nothing]** Nothing in this Act or any other law contained shall be construed as preventing a developer from selling certain sections in a building and letting other sections therein or from letting all sections therein."

- (d) the deletion of subsection (7) of section 26;
- (e) the substitution in section 38A for the expression "17, 18 or 23" of the expression "17 or 18";
- (f) the substitution in paragraph (kA) of section 40 (1) for the expression "17, 18 or 23" of the expression "17 or 18".