

No. 7, 1951.]

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.

PRIVATE ACT

To provide that "Die Afrikaanse Verbond Begrafnis-Onderneming Beperk", Bloemfontein, in the Province of the Orange Free State, shall become and be incorporated as a mutual insurance society, and further to provide for the constitution, rights, powers, privileges and duties of that society, and for matters incidental to the said reconstitution.

*(Afrikaans text signed by the Governor-General.)
(Assented to 14th March, 1951.)*

Preamble.

WHEREAS there was formed on the nineteenth day of January, 1922, in the Province of the Orange Free State, a company registered with limited liability entitled "Die Afrikaanse Verbond Begrafnis-Onderneming Beperk" hereinafter referred to as the company and this company still exists:

AND WHEREAS the company has since its incorporation conducted the business of funeral insurance and now conducts such business and is duly registered to carry on such business in terms of the Insurance Act, 1943 (Act No. 27 of 1943):

AND WHEREAS substantial profits have been earned and may in the future be earned in the said funeral insurance business:

AND WHEREAS it is desirable that such profits should in future accrue to policyholders:

AND WHEREAS the great majority of shareholders of the company have, on the proposal of the directors, resolved that the company shall be re-constituted a mutual assurance society:

AND WHEREAS no law exists whereby effect can be given to such resolution:

AND WHEREAS it is desirable to provide machinery for the re-constitution of the company as a mutual assurance society under the name of AVBOB Mutual Assurance Society hereinafter referred to as the society:

AND WHEREAS for the purpose of such re-constitution it is desirable that all the shares in the company shall be purchased from the shareholders for and on behalf of the aforementioned policyholders and the share capital of the company thereafter cancelled:

AND WHEREAS the constitution of the company cannot in law provide for the purchase of the said shares with funds lent by the company and for the cancellation of the said share capital:

AND WHEREAS it is desirable that provision should be made so that the company may lend to trustees such sums of money as may be necessary to effect such purchase:

AND WHEREAS the sum of three pounds eleven shillings and sixpence per share is a just and equitable purchase price:

AND WHEREAS it is desirable to make provision for the appointment of trustees to purchase all the shares in the company and to define the powers, rights and duties of the said trustees:

AND WHEREAS it is desirable to provide for the acquisition by the trustees of the balance of the shares in the company when not less than nine-tenths of the total issued shares have been purchased by the trustees:

AND WHEREAS it is desirable to provide the terms on which the shares shall be held by the trustees:

AND WHEREAS it is desirable to place certain limitations on the powers of the company in respect of the increase of share capital, the issue of unissued shares and the alteration of the articles pending the reconstitution of the company as a mutual assurance society:

AND WHEREAS it is desirable to provide that when all the shares have been transferred to the trustees the court shall have the power to determine a date upon which the paid-up share capital in the company shall be paid off and the shares cancelled and the company shall be reconstituted a mutual assurance society:

AND WHEREAS it is desirable to provide for the incorporation, constitution, membership and internal management and for a head office of the society:

AND WHEREAS it is desirable to provide for payment to the trustees out of the surplus of the society of such amounts as may be owing by the trustees in respect of the acquisition of the shares:

AND WHEREAS it is desirable to define the powers and objects of the society and make provision for the alteration or addition to such powers and objects as the occasion may arise:

AND WHEREAS it is desirable to provide for the limitation of liability of all members of the society and for the transfer of all assets and liabilities, rights and duties of the company to the society:

AND WHEREAS it is desirable to provide that all directors, officers and servants, auditors and actuaries of the company shall initially remain in office as directors, officers and servants, auditors and actuaries of the society:

AND WHEREAS it is desirable to provide that certain costs, charges and expenses incurred in the promotion and passing of this Act and in the reconstitution of the company as a society shall be borne by the company:

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

CHAPTER I.

DEFINITIONS.

Definitions.

1. In this Act, unless the context indicates otherwise—

- (i) "the company" means "Die Afrikaanse Verbond Begrafnis-Onderneming Beperk", a company registered with limited liability as No. 659 in terms of Chapter C of the Free State Law Book and the Free State Companies Amendment Ordinance 1904 on the nineteenth day of January, 1922; (vi)
- (ii) "the court" means the Orange Free State Provincial Division of the Supreme Court; (iv)
- (iii) "the determined price" means the sum of three pounds eleven shillings and sixpence per share; (ix)
- (iv) "the effective date" means the date declared by the court under the provisions of section *seven*; (ii)
- (v) "Insurance Act" means the Insurance Act, 1943 (Act No. 27 of 1943) as amended by (i) the Finance Act, 1944 (Act No. 46 of 1944); (ii) the Insurance (Amendment) Act, 1945 (Act No. 19 of 1945); and (iii) the National Finance Corporation Act, 1949 (Act No. 33 of 1949); (x)
- (vi) "policyholder" means the owner (whether described as "subscriber" or otherwise) of a policy of funeral insurance (other than a policy in terms of which only a single premium is payable or in terms of which monthly premiums are payable for a period of twelve months or less) which in terms thereof is of full force and effect and which was issued by the company in accordance with the tables of premium rates introduced by the company after the first day of April, 1944, and excludes all other persons; (vii)
- (vii) "share" means an issued share in the company; (i)
- (viii) "society" means the "AVBOB Mutual Assurance Society" incorporated under the provisions of Chapter III of this Act; (iii)
- (ix) "the surplus" means the amount by which (a) the sum of the value of the assets owned by the society in connection with its insurance business as calculated in accordance with the provisions of section *fourteen* of the Insurance Act exceeds from time to time (b) the sum of the amount of the liabilities in respect of that business as calculated in accordance with the provisions of section *twelve* of the Insurance Act and the sum of such additional reserves in respect of that business as the directors may have made; (viii)
- (x) "trustees" means the trustees appointed under the provisions of section *two*. (v)

CHAPTER II.

RECONSTITUTION OF THE COMPANY INTO A MUTUAL INSURANCE SOCIETY.

Appointment of trustees for the policyholders.

2. (1) The directors of the company for the time being shall be the trustees for the policyholders and shall hold all shares which may be transferred to them upon the trusts set forth in this chapter in order to effectuate the purposes of this chapter.

(2) The trustees shall not be required to furnish security, and the company shall indemnify them against all claims and expenses incurred in the performance of their office except in so far as such claims or expenses arise from their negligence or fraud.

(3) The trustees shall receive no remuneration for the performance of their office other than that ordinarily received by them in their capacity as directors of the company.

Trustees to invite shareholders to offer shares for sale.

3. The trustees shall, within one month after their appointment, by written notice invite each shareholder to offer to sell to them his shares at the determined price.

Acquisition of shares and loans for payment.

4. (1) Upon receipt of an offer made in pursuance of section *three* the trustees shall purchase the shares so offered, and payment for shares so purchased shall be made by them upon transfer of the shares to them.

(2) The company may lend to the trustees such sum or sums of money as may be sufficient to enable them to acquire all the shares whether purchased in terms of sub-section (1) or transferred to them in terms of section *six*.

Transfer of shares to trustees upon certain trusts.

5. All shares so purchased shall be transferred in the books of the company to the trustees, who shall until the effective date hold the legal title thereto upon the following trusts:

- (a) to receive all dividends declared thereon and, within ten days after the receipt thereof, to repay the dividends to the company, which shall hold such dividends for the benefit of the policyholders;
- (b) to receive all other sums paid on or in respect of the shares in any manner or under any contingency, and, within ten days after the receipt thereof, to repay such sums to the company, which shall hold such sums for the benefit of the policyholders;
- (c) to exercise such votes as attach to the shares at any meeting of the company in such manner as will in the judgment of the trustees best promote the interests of the policyholders and the company.

Trustees may apply to court in certain circumstances for order compelling shareholders to transfer shares.

6. (1) Immediately after the trustees have received transfer of not less than nine-tenths of the total number of shares, and at any time thereafter so long as any share has not been transferred to the trustees, the trustees may apply to the court for an order calling on certain or all remaining shareholders to transfer all their shares to the trustees at the determined price: Provided that a period of not less than six months shall elapse between the date of an order made on any such application and the date of the next succeeding application.

(2) On any application under sub-section (1) the Court may—

- (a) grant the application; or
- (b) grant a rule *nisi* calling on all persons concerned to show cause why the application shall not be granted; or
- (c) make such other order as to the Court may seem just.

(3) In granting an order in terms of sub-section (2), the court shall direct the manner in which, the extent to which and the persons to whom notice of such order shall be given, and the court shall appoint a date on or before which such remaining shareholders shall transfer all their shares to the trustees on payment of the determined price.

(4) In exercising its discretion under sub-section (2) or (3), the court shall primarily have regard to the interests of the policyholders.

(5) If any shareholder has, for whatever reason, failed or refused to transfer all his shares to the trustees on or before the date appointed by the court in terms of sub-section (3), the company shall delete from the share register the name of any

such shareholder and register therein in his stead in respect of such shares the names of the trustees, whereupon the said shares shall be deemed to have been transferred to the trustees and the trustees shall thereupon pay into the Guardians' Fund, for the credit of the account of the persons concerned, the determined price in respect of such shares.

Order of court terminating company and constituting society.

7. Within three months after all the shares have been transferred to the trustees, the trustees shall apply to the court for an order—

- (a) declaring the date on which the existence of the company shall terminate and on which the existence of the society shall be substituted therefor;
- (b) directing the Registrar of Companies to strike the name of the company off the register on such date;
- (c) declaring that all rights and obligations of the company, whether present, future or contingent, and all assets and liabilities of the company shall on such date become rights, obligations, assets or liabilities, as the case may be, of the society;
- (d) directing any registrar of deeds or other officer proper for the registration of deeds or mining titles to make in his registers, without the payment of transfer duty or any other charge, all such alterations as are necessary to substitute the name of the society for the name of the company;
- (e) directing the Registrar of Insurance, the Secretary for Finance and such other officials and persons as it may determine to substitute in their records, without the payment of any charge, the name of the society for the name of the company;
- (f) directing the company to pay off on such date the paid-up share capital and declaring the shares cancelled on such date and all rights of the shareholders arising from their ownership of the shares terminated;
- (g) directing the trustees to publish the order in such manner as the court may determine with a view to giving proper information to the public.

Company not to exercise certain powers without leave of court.

8. The company shall not, except by leave of the court, increase the authorized share capital of the company, or issue any unissued shares in the company, or alter the articles of association of the company.

CHAPTER III.

INCORPORATION OF THE SOCIETY.

Society to be a body corporate and to succeed to rights and obligations of company, and to pay amounts owing by trustees.

9. (1) As from the effective date the society shall until dissolved by its members or by legal process be a body corporate known by the name of the AVBOB Mutual Assurance Society and shall by its corporate name be capable in law of suing and being sued and of acquiring and alienating property and of doing and performing such other acts and things as bodies corporate may by law do and perform and of generally transacting all its business.

(2) All rights, whether present, future or contingent, and all assets held by the company on the effective date shall on that date become rights and assets of the society, provided that the society shall forthwith pay to the trustees out of the surplus such amounts as may be owing by the trustees in respect of the acquisition of the shares.

(3) All obligations and liabilities, whether present, future or contingent, of the company on the effective date shall on that date become obligations and liabilities of the society.

(4) All legal proceedings pending on the effective date by or against the company shall continue as if that date had not arrived, and any judgment or order on such proceedings shall be for the benefit of or be binding upon the society as the case may be.

Head office of society.

10. The head office of the society shall be in the Province of the Orange Free State.

Objects of the society.

11. The objects of the society are the following:

- (a) to carry on in the Union of South Africa or elsewhere the business of insurance in the widest possible sense of the word;
- (b) to obtain or retain registration in terms of the Insurance Act for any or all of the following classes of busi-

ness and to carry on in the Union of South Africa or elsewhere any or all of those classes of business:

- (i) funeral business, industrial business, life business, sinking-fund business;
 - (ii) fire business, personal accident business, marine business, motor business;
 - (iii) any other class of business which may be lawfully carried on under the provisions of the Insurance Act;
- (c) to carry on in the Union of South Africa or elsewhere any class of insurance business which may be lawfully carried on under the provisions of any law other than the Insurance Act;
- (d) to reinsure any risk accepted by the society and to undertake the reinsurance of risks accepted by any other person or body of persons provided that the risk so reinsured be one of those which the society itself could have undertaken under the powers conferred by this Act;
- (e) to carry on or be associated with any kind of business or activity which may conveniently or advantageously be combined with insurance business, and in particular the business of funeral undertaking, coffin manufacturing, wreath manufacturing and memorial building;
- (f) to act as agent, secretary or manager for any company;
- (g) to own, acquire, purchase, sell, alienate, pledge, mortgage, let, hire or in any manner deal with or dispose of movable and immovable property;
- (h) to realise any assets belonging to the society;
- (i) to invest moneys in such manner as the directors in their discretion think fit, including the purchase of shares in subsidiary or other companies;
- (j) to purchase or otherwise acquire all or any part of the business and to undertake the liabilities attendant thereon of any company, person or association of persons carrying on any business which the society is authorized to carry on, and to sell or otherwise dispose of any part thereof;
- (k) to borrow money and secure the repayment thereof;
- (l) to obtain the registration or recognition of the society in any country outside the Union of South Africa;
- (m) to promote and support schemes for the providing of pensions and of guarantee and other funds for and in connection with the employees of the society;
- (n) to do all such other things as are incidental or conducive to the attainment of all or any of its objects.

Constitution of society.

12. The society shall consist of the directors and the members.

What persons to be members.

13. (1) Every person who is on the effective date a policyholder, and every person who shall thereafter effect and maintain in full force and effect an assurance with the society (other than an assurance in terms of which only a single premium is payable, or in terms of which monthly premiums are payable for a period of twelve months or less), shall be a member of the society.

(2) Subject to any regulations to be made under the authority of this Act, every person registered in the books of the society as the owner of a policy of assurance, as aforesaid, acquired by purchase, cession or otherwise (not being a person by whom any such policy is held in trust for the purposes of family or other settlement) shall be a member of the society so long as he shall have an interest in the assurance.

Duration of membership.

14. Every such member shall be entitled to the rights and privileges of membership until his death, unless all claims against the society in respect of the policy constituting membership are previously satisfied, or such policy shall by reason of the provisions of the policy lapse, be forfeited or assigned, or unless the right to such policy passes by operation of law and the person entitled thereto procures himself to be registered as the owner thereof in the books of the society, or unless such

policy enjoys the privileges prescribed in sub-section (2), (3) or (4) of section *sixty-two* of the Insurance Act.

Liability of members limited.

15. The liability of the members is limited to the amount of contribution actually made by them to the funds of the society.

Alterations of provisions of Act.

16. (1) Subject to the provisions of this section the society may by resolution of its members alter or add to any of the provisions of this chapter other than those contained in sections *nine, twelve, thirteen* and *fifteen*, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the society:

Provided that no such alteration or addition shall make provision for any matter which could not lawfully be included in the memorandum of association or articles of association of a company registered under the Companies Act, 1926 (Act No. 46 of 1926). For the purpose of this sub-section the main purpose of the society shall be deemed to be to carry on insurance business.

(2) Such resolution shall only be effective if it has been passed by not less than three-fourths of such members of the society who have been members for not less than one year and are entitled to vote as are present in person or by proxy at a meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution and the general nature thereof has been given by advertisement in the *Gazette* and in such newspapers as the directors of the society shall determine.

(3) The procedure at such meeting shall be regulated in all respects by the regulations at that time applicable to meetings of the society.

(4) The alteration or addition shall not take effect until and except in so far as it is confirmed on petition by the Court.

(5) The provisions of sub-sections (3) to (7) inclusive of section *eleven* of the Companies Act, 1926 (Act No. 46 of 1926) shall *mutatis mutandis* apply in any proceedings under this section, the society being deemed to be a company for the purposes of the application of such sub-sections.

Regulations.

17. (1) The conduct of the affairs of the society shall be governed by regulations: Provided that such regulations shall not be inconsistent with the provisions of this Act or any other law.

(2) The regulations shall be framed by the directors of the company and shall be submitted by them to the court for approval, and shall, subject to such approval, become of force and effect on the effective date.

(3) The society may, by resolution of its members passed in accordance with the provisions of sub-sections (2) and (3) of section *sixteen*, alter or add to the regulations referred to in sub-section (2) of this section, and any alteration or addition so made shall be as valid as if originally contained in the regulations and be subject in like manner to alteration in the manner set out in this sub-section.

CHAPTER IV.

MISCELLANEOUS.

Continuation in office of directors, officers, auditors and actuaries.

18. (1) The directors of the company who are in office on the effective date shall continue in office as directors of the society until they resign, retire by rotation or become disqualified as provided in the regulations.

(2) All officers and servants of the company who are in office on the effective date shall continue in office as officers and servants of the society under the same terms and conditions as if this Act had not been passed.

(3) The auditors and the actuaries of the company who are in office on the effective date shall continue in office as auditors and actuaries of the society as provided in the regulations.

Insurance Act
to apply to
company and
society.

19. The provisions of the Insurance Act shall apply as if the company and the society were the same person.

Expenses to be
borne by
company.

20. The costs of giving the notice referred to in section *three*, and of the application to the court referred to in sections *six* and *seven*, and of the advertisements referred to in paragraph (g) of section *seven*, shall be paid by the company.

Costs of passing
Act may be paid
by company.

21. The costs, charges and expenses preliminary to and incidental to the promotion and passing of this Act may be paid by the company.

Short title.

22. This Act may be cited as the AVBOB Mutual Assurance Society Incorporation (Private) Act, 1951.
