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CORPORATE & COMMERCIAL ALERT

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COMMUNITY SCHEMES OMBUD SERVICE ACT: A YEAR ON

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It has been more than a year since the Community Schemes Ombud Service Act, No 9 of 2011 (Act) was brought into force.

The Act was drafted with a three-fold purpose, namely:

- (i) to provide a dispute resolution mechanism in respect of "community schemes" – that is, housing schemes where the use of and responsibility for land and buildings is shared;
- (ii) to promote good governance of community schemes and monitoring that governance; and
- (iii) to provide education, information, documentation and services to raise awareness of persons who have rights and obligations in community schemes.

Typical examples of community schemes include sectional title development schemes, share block companies, home or property owners' associations and life right development schemes for retired persons. Shared responsibility for land and buildings

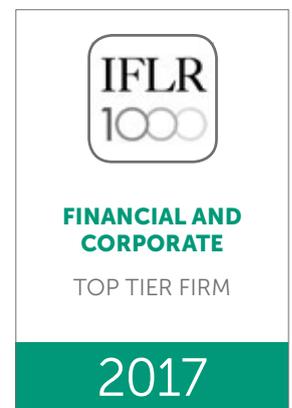
can sometimes be fraught with conflict, and the Community Schemes Ombud Service (CSOS) aims to resolve disputes efficiently and cost-effectively.

Under the framework of the Act, new community schemes are required to formally register with the CSOS within 30 days of the date the date on which they are incorporated. Pre-existing schemes were required to have registered by 7 November 2016.

Payment of Monthly Levies

A number of questions have arisen since the promulgation of the Act. The most common questions relate to the payment of monthly levies, out of which the CSOS is funded.

In terms of s29(1)(b) of the Act, certain levies are payable by schemes to the CSOS. Regulation 2(1) provides that schemes must collect the prescribed monthly levy from every unit within a community scheme and



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If a monthly levy between R0 and R500 is payable in respect of a unit in a scheme, then no monthly CSOS levy is payable.



pay these levies to the CSOS on a quarterly basis. Although not defined, a sensible interpretation of the Act is that units include, amongst others, a section in a sectional title scheme, a house in a housing development or a unit in a life right scheme.

The Regulations set out a table and methodology (based on the levies charged by the relevant schemes) for the calculation of monthly CSOS levies, as follows:

0 to R500.00	Nil
R600.00	R2
R700.00	R4
R800.00	R6
R900.00	R8
R1,000.00	R10
R1,250.00	R15
R1,500.00	R20
R1,750.00	R25
R2,000.00	R30
R2,250.00	R35
R2,500.00 and above	R40

So, for example, if a monthly levy between R0 and R500 is payable in respect of a unit in a scheme, then no monthly CSOS levy is payable. If a monthly levy of R2,500 and above is payable, a monthly CSOS levy of R40 is payable. There is, therefore, a prescribed minimum of R0 and a maximum of R40 per unit, per month, with amounts ranging in between.

Although these amounts are collected monthly from each unit by the scheme, they are payable quarterly by the scheme to the CSOS at the end of March, June, September and December each year. The CSOS Practice Directive: No 1 of 2017 which the CSOS issued on 24 March 2017 provides guidance as to the nature of the existing monthly levy

on which the monthly CSOS levy is based, namely, the amounts paid towards the administrative fund. The administrative fund is made up of the monies budgeted for by the scheme for that specific financial year for the maintenance of the common property, sewer and effluent, insurance, the salaries of the scheme's employees, security and other conceivable expenses related to the running and management of the scheme. Any special levies and payments related to the maintenance of the exclusive use areas are excluded from the calculation of the CSOS levy. It, therefore, appears that any amounts payable in respect of meals (if applicable) and other monthly items are excluded.

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Non-compliance with the provisions of the Act bears the risk of incurring significant penalties.



The Regulations do, however, provide for certain discounts and waivers:

1. As stated, individual units within a scheme for which the monthly levies do not exceed R500 are effectively granted a 100% waiver of the CSOS levies.
2. Any person whose monthly net household (gross income less PAYE) income is below R5,500 is entitled to a 100% waiver of application and adjudication fees in respect of any dispute before the CSOS.
3. Any person who may not qualify in terms of the above criteria may lodge an application for discount and/or waiver for consideration by the Chief Ombud.

Offences and Penalties

Non-compliance with the provisions of the Act bears the risk of incurring significant penalties. Non-payment of levies on the due date will attract interest at a rate of 2% per month. In terms of s34 of the Act, any person who fails to comply with the Act is liable, on conviction, to a fine or imprisonment for a period not exceeding 5 years or to both a fine and such imprisonment. Where a person is convicted

for a second or subsequent conviction for an offence, he or she is liable to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment. Schemes will use normal debt collection mechanisms to collect outstanding levies from owners.

Conclusion

As the Act is a relatively new piece of legislation, it has not had the benefit of legal interpretation by either the CSOS or the courts. It is therefore likely that issues will arise in relation to the nature and extent of a scheme's obligation to collect and pay CSOS levies and we will continue to monitor developments in that regard.

It will also be interesting to see whether the documents required for transfer of ownership of units in schemes change to require written proof from the CSOS that the levies are fully paid and up-to-date (similar to a tax clearance certificate). This may be the only means to ensure that schemes formally register and pay their quarterly levies.

Justine Krige

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OUR TEAM

For more information about our Corporate & Commercial practice and services, please contact:



Willem Jacobs
National Practice Head
Director
Corporate and Commercial
T +27 (0)11 562 1555
M +27 (0)83 326 8971
E willem.jacobs@cdhlegal.com



David Thompson
Regional Practice Head
Director
Corporate and Commercial
T +27 (0)21 481 6335
M +27 (0)82 882 5655
E david.thompson@cdhlegal.com

Mmatiki Aphiri
Director
T +27 (0)11 562 1087
M +27 (0)83 497 3718
E mmatiki.aphiri@cdhlegal.com

Chris Baird
Director
T +27 (0)11 562 1556
M +27 (0)82 544 4988
E chris.baird@cdhlegal.com

Roelof Bonnet
Director
T +27 (0)11 562 1226
M +27 (0)83 325 2185
E roelof.bonnet@cdhlegal.com

Tessa Brewis
Director
T +27 (0)21 481 6324
M +27 (0)83 717 9360
E tessa.brewis@cdhlegal.com

Etta Chang
Director
T +27 (0)11 562 1432
M +27 (0)72 879 1281
E etta.chang@cdhlegal.com

Clem Daniel
Director
T +27 (0)11 562 1073
M +27 (0)82 418 5924
E clem.daniel@cdhlegal.com

Jenni Darling
Director
T +27 (0)11 562 1878
M +27 (0)82 826 9055
E jenni.darling@cdhlegal.com

André de Lange
Director
T +27 (0)21 405 6165
M +27 (0)82 781 5858
E andre.delange@cdhlegal.com

Werner de Waal
Director
T +27 (0)21 481 6435
M +27 (0)82 466 4443
E werner.dewaal@cdhlegal.com

Rafael Eliasov
Director
T +27 (0)11 562 1866
M +27 (0)61 268 8797
E rafael.eliasov@cdhlegal.com

Lilía Franca
Director
T +27 (0)11 562 1148
M +27 (0)82 564 1407
E lilia.franca@cdhlegal.com

John Gillmer
Director
T +27 (0)21 405 6004
M +27 (0)82 330 4902
E john.gillmer@cdhlegal.com

Sandra Gore
Director
T +27 (0)11 562 1433
M +27 (0)71 678 9990
E sandra.gore@cdhlegal.com

Johan Green
Director
T +27 (0)21 405 6200
M +27 (0)73 304 6663
E johan.green@cdhlegal.com

Allan Hannie
Director
T +27 (0)21 405 6010
M +27 (0)82 373 2895
E allan.hannie@cdhlegal.com

Peter Hesselting
Director
T +27 (0)21 405 6009
M +27 (0)82 883 3131
E peter.hesselting@cdhlegal.com

Quintin Honey
Director
T +27 (0)11 562 1166
M +27 (0)83 652 0151
E quintin.honey@cdhlegal.com

Roelf Horn
Director
T +27 (0)21 405 6036
M +27 (0)82 458 3293
E roelf.horn@cdhlegal.com

Yaniv Kleitman
Director
T +27 (0)11 562 1219
M +27 (0)72 279 1260
E yaniv.kleitman@cdhlegal.com

Justine Krige
Director
T +27 (0)21 481 6379
M +27 (0)82 479 8552
E justine.krige@cdhlegal.com

Johan Latsky
Director
T +27 (0)11 562 1149
M +27 (0)82 554 1003
E johan.latsky@cdhlegal.com

Badian Maasdorp
Director
T +27 (0)11 562 1777
M +27 (0)82 924 8429
E badian.maasdorp@cdhlegal.com

Banzi Malinga
Director
T +27 (0)11 562 1100
M +27 (0)82 469 5758
E banzi.malinga@cdhlegal.com

Giada Masina
Director
T +27 (0)11 562 1221
M +27 (0)72 573 1909
E giada.masina@cdhlegal.com

Nonhla Mchunu
Director
T +27 (0)11 562 1228
M +27 (0)82 314 4297
E nonhla.mchunu@cdhlegal.com

William Midgley
Director
T +27 (0)11 562 1390
M +27 (0)82 904 1772
E william.midgley@cdhlegal.com

Anita Moolman
Director
T +27 (0)11 562 1376
M +27 (0)72 252 1079
E anita.moolman@cdhlegal.com

Jo Nesor
Director
T +27 (0)21 481 6329
M +27 (0)82 577 3199
E jo.nesor@cdhlegal.com

Francis Newham
Director
T +27 (0)21 481 6326
M +27 (0)82 458 7728
E francis.newham@cdhlegal.com

Gasant Orrie
Cape Managing Partner
Director
T +27 (0)21 405 6044
M +27 (0)83 282 4550
E gasant.orrie@cdhlegal.com

Verushca Pillay
Director
T +27 (0)11 562 1800
M +27 (0)82 579 5678
E verushca.pillay@cdhlegal.com

David Pinnock
Director
T +27 (0)11 562 1400
M +27 (0)83 675 2110
E david.pinnock@cdhlegal.com

Allan Reid
Director
T +27 (0)11 562 1222
M +27 (0)82 854 9687
E allan.reid@cdhlegal.com

Ludwig Smith
Director
T +27 (0)11 562 1500
M +27 (0)79 877 2891
E ludwig.smith@cdhlegal.com

Ben Strauss
Director
T +27 (0)21 405 6063
M +27 (0)72 190 9071
E ben.strauss@cdhlegal.com

Deepa Vallabh
Head: Cross-border M&A,
Africa and Asia
Director
Corporate and Commercial
T +27 (0)11 562 1188
M +27 (0)82 571 0707
E deepa.vallabh@cdhlegal.com

Roux van der Merwe
Director
T +27 (0)11 562 1199
M +27 (0)82 559 6406
E roux.vandermerwe@cdhlegal.com

Charl Williams
Director
T +27 (0)21 405 6037
M +27 (0)82 829 4175
E charl.williams@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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