

**THE SECTIONAL TITLE INDUSTRY IN SOUTH AFRICA:
ENHANCING ACCOUNTING AND AUDITING PRACTICES**

by

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Declaration

I declare that the thesis hereby handed in for the qualification Philosophiae Doctor at the University of the Free State is my own independent work and that I have not previously submitted the same work for a qualification at/in another university/faculty. I hereby cede copyright of this product in favour of the University of the Free State.



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Abstract

South Africa has a long and complex history of land and housing problems, and from the late 1800s the South African government administrations spent considerable time and energy on adopting and implementing numerous pieces of land-related legislation in order to address these problems. Sectional title property plays a vital role in addressing this high-priority problem, and can assist in providing much needed residential accommodation for households of all income levels, within commuting distance of employment centres. Close to one million households in South Africa reside in sectional title property schemes.

The new so-called third generation sectional title legislation became effective in the second half of 2016. The amendments effected by the new legislation not only remove a substantial number of obsolete provisions, extend consumer protection, and propose to eliminate various problems, but also bring about a number of entirely new requirements, such as the establishment and maintaining of reserve funds. Many of these new legislative changes will have far-reaching implications for the governance, budgeting and financial management of sectional title schemes. Also, many legislative aspects relating to governance, accounting and auditing of sectional title schemes remain contradictory and confusing. Role players in the South African sectional title industry face a number of unique challenges.

In the problem statement of this study it is argued that governance-, accounting- and auditing-related research on the sectional title industry is relevant, topical and imperative if current governance, accounting and auditing practises is to be enhanced. Following this argument, this thesis aimed to give in-depth overviews of three aspects; firstly, an in-depth overview of risks associated with sectional title for various stakeholders (i.e. owners, trustees, managing agents, auditors and accountants and EAAB-appointed inspectors) from an accounting, governance and auditing perspective; secondly, an in-depth overview of auditing- and governance-specific problems relating to sectional title; and thirdly an in-depth overview of accounting-specific problems relating to sectional title. More specifically, the research objectives were threefold; firstly, to find possible solutions to the above-mentioned problems and to make recommendations in this regard; secondly, to set benchmarks from the analysis of the annual financial statements of respondents over a three-year period that can be of

assistance as an industry standard for owners, trustees, managing agents, auditors and accountants rendering a professional service, and so enhance accounting and auditing practices; and thirdly, to identify future research opportunities that falls outside the scope of the study.

The literature review of this study covered various legislative aspects relating to the functioning of bodies corporate, boards of trustees, trustee chairpersons, managing agents, sectional title governance, and accounting and auditing of bodies corporate. The literature review paved the way for a detailed analysis of the governance, auditing and accounting aspects relating to a sample of body corporate financial statements. An empirical study was also performed on the sectional title industry in South Africa by way of interviewing a sample of role players in the industry, namely body corporate trustee chairpersons, managing agents of bodies corporate, sectional title accounting and auditing practitioners and EAAB-appointed inspectors.

The results of the empirical study and data analysis revealed a great number of risks, practical problems, contradictory and confusing legal aspects as well as uncertainties in the industry. Various solutions to the identified problems and concerns were suggested and practical recommendations were made of which the industry should take note. The empirical findings can also be used as a valuable basis for further research.

Key words: sectional title, third generation sectional title legislation, sectional title management, sectional title accounting, sectional title auditing, sectional titles act, participation quota, financial statements of sectional title schemes, audit reports of sectional title schemes, sectional title budgets, auditing profession, accounting profession.

Opsomming

Suid-Afrika het 'n lang en ingewikkelde geskiedenis van grond- en behuisingsprobleme, en sedert die laat 1800s het die Suid-Afrikaanse regeringsadministrasies aansienlike hoeveelhede tyd en energie spandeer aan die daarstelling en inwerkingstelling van verskeie stelle grond-verwante wetgewing met die doel om hierdie probleme aan te spreek. Deeltiteleiendom speel 'n wesenlike rol in die aanspreek van hierdie hoë-prioriteit probleem, en dit kan ook 'n rol speel in die voorsiening van noodsaaklike residensiële behuising vir huishoudings in alle inkomstegroepe binne pendel-afstand van werksentra. Nagenoeg een miljoen Suid-Afrikaanse huishoudings woon in deeltiteleiendomskemas.

Die sogenaamde derde-geslag deeltitelwetgewing is gedurende die tweede helfte van 2016 in werking gestel. Die wysigings wat deur die nuwe wetgewing teweeggebring word verwyder nie slegs 'n aantal verouderde bepalings nie, maar brei ook verbruikersbeskerming uit, poog om verskeie probleme te elimineer, en bewerkstellig ook 'n aantal nuwe vereistes, soos die vestiging en handhawing van reserwefondse. Verskeie van die nuwe wetsbepalings gaan verreikende gevolge inhou vir die beheer, begroting en finansiële bestuur van deeltitelkemas. Verder bly heelparty aspekte rakende die beheer, rekeningkundige hantering en ouditering van deeltitelkemas egter teenstrydig en verwarrend. Rolspelers in die Suid-Afrikaanse deeltitelindustrie staar verskeie unieke uitdagings in die gesig.

In die probleemstelling van hierdie studie word daar geargumenteer dat navorsing rakende die beheer, rekeningkundige hantering en ouditering in die deeltitelindustrie noodsaaklik is in die lig van die verbetering van huidige beheer- rekeningkundige- en auditpraktyke. Gevolglik poog hierdie verhandeling om in-diepte oorsigte te gee van drie aspekte; eerstens, 'n in-diepte oorsig van die risiko's geassosieer met deeltitel vir verskeie belanghebbendes (m.a.w. eienaars, trustees, bestuursagente, ouditeure en rekenmeesters, asook inspekteurs aangestel deur die EAAB) vanuit 'n rekeningkundige-, beheer, en ouditeringsperspektief; tweedens, 'n in-diepte oorsig van ouditering- en beheer-spesifieke probleme rakende deeltitel; en derdens 'n in-diepte oorsig van rekeningkunde-spesifieke probleme rakende deeltitel. Die doelstellings van die navorsing is drievoudig; eerstens, om moontlike oplossings vir die voorafgenoemde probleme te identifiseer en aanbevelings te maak in hierdie verband;

tweedens, om maatstawwe daar te stel uit die ontleding van die finansiële jaarstate van respondente oor 'n drie-jaar tydperk, wat gebruik kan word as 'n industrie-standaard vir eienaars, trustees, bestuursagente, ouditeure en rekenmeesters wat 'n professionele diens lewer, om sodoende huidige rekenkundige- en ouditeringspraktyke te verbeter; en derdens, om toekomstige navorsingsgeleenthede wat buite die omvang van hierdie studie val te identifiseer.

Die literatuurstudie van hierdie verhandeling het verskeie aspekte gedek wat verband hou met wetgewing wat die funksionering van beheerliggame, rade van trustees, trustee-voorsitters, bestuursagente, deeltitelbeheer en die rekeningkunde en ouditering van beheerliggame reguleer. Die literatuurstudie het die weg gebaan vir 'n gedetailleerde ontleding van die beheer-, rekeningkundige- en ouditeringsaspekte rakende 'n steekproef van beheerliggaam finansiële state. 'n Empiriese studie is ook uitgevoer op die deeltitelindustrie in Suid-Afrika deur middel van onderhoude wat gevoer is met 'n steekproef van rolspelers in die industrie, wat trustee-voorsitters, bestuursagente van beheerliggame, deeltitel rekeningkundige- en auditpraktisyns asook inspekteurs aangestel deur die EAAB ingesluit het.

Die bevindinge van die empiriese studie en data-ontleding onthul 'n groot aantal risiko's, praktiese probleme, teenstrydige en verwarrende regsaspekte, sowel as onsekerhede in die industrie. Verskeie oplossings vir die geïdentifiseerde probleme is voorgestel, en praktiese aanbevelings is gemaak waarvan die industrie behoort kennis te neem. Die empiriese bevindinge kan ook gebruik word as 'n waardevolle platform vir verdere navorsing.

Sleutelwoorde: deeltitel, derde-geslag deeltitelwetgewing, deeltitelbestuur, deeltitel rekeningkunde, deeltitel ouditering, deeltitelwet, deelnemingskwota, finansiële state van deeltitleskemas, auditverslae van deeltitleskemas, deeltitelbegrotings, auditprofessie, rekeningkunde professie.

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National and international research during candidature

The following research projects were undertaken by the candidate and produced during the candidature:

- The candidate co-authored a series of three articles with N. Lubbe, published in the newsletter of the National Association of Managing Agents (NAMA) as follows:
 - *Control over petty cash: some reflections for trustees and management of sectional title property* (April 2016)
 - *Audit reports: some thoughts for trustees and managing agents* (May 2016)
 - *Trust funds: Thoughts for trustees and management of sectional title property* (June 2016)
- A paper titled *Bodies corporate in Mangaung and Matjhabeng – an accountancy comparison in South Africa* was delivered at the Biennial Central Regional Conference of the Southern African Accounting Association (SAAA). The paper was delivered in the non-refereed category and received the conference award for best overall paper.
- An above-mentioned paper was converted into an article and submitted for publication as follows:
 - Steenkamp, L. 2016. Accounting and auditing of sectional title property: an overview from the governance perspective in South Africa. *Risk Governance and Control: Financial Markets & Institutions*, to be published in Volume 7 (2017). (ISSN: 2077-4303)
- A paper titled *The Readiness of Bodies Corporate in South Africa for Third Generation Sectional Title Legislation: An Accountancy Perspective* was accepted for oral presentation as well as inclusion in the conference proceedings of the ICAFM 2017 International Conference on Accounting, Finance and Management. The conference is to be held by the World Academy of Science, Engineering and Technology (WASET) in Durban, South Africa, during January 2017. (PISSN: 2010-376X, EISSN:2010-3778)
- A paper titled *Risk in the South African Sectional Title Industry – An Assurance Perspective* was accepted for oral presentation as well as inclusion in the conference proceedings of the ICAAF 2017 International Conference on Accounting, Auditing and Finance. The conference is to be held by the World Academy of Science, Engineering and Technology (WASET) in Barcelona, Spain, during February 2017. (PISSN: 2010-376X, EISSN:2010-3778)

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List of abbreviations, symbols and acronyms

AG	: Auditor General
AGSA	: Auditor General of South Africa
APB	: Accounting Practices Board
AVG	: Average (in statistics)
CA(SA)	: Chartered Accountant (South Africa)
CBD	: Central Business District
CC	: Close Corporation
CGT	: Capital Gains Tax
CSOS	: Community Schemes Ombud Service
CSOSA	: Community Schemes Ombud Service Act
EAAB	: Estate Agency Affairs Board
FRSC	: Financial Reporting Standards Council
GAAP	: Statements of Generally Accepted Accounting Practice
IASB	: International Accounting Standards Board
IASC	: International Accounting Standards Committee
IASCF	: International Accounting Standards Committee Foundation
ICPS	: Inner City Property Scheme
IEASA	: Institute of Estate Agents of South Africa
IFAC	: International Federation of Accountants
IFRIC	: International Financial Reporting Interpretations Committee
IFRS	: International Financial Reporting Standards
IFRS for SMEs	: IFRS for Small and Medium-sized Entities
IoD	: Institute of Directors in Southern Africa
IRBA	: Independent Regulatory Board for Auditors
ISA	: International Standard on Auditing

ISAs	: International Standards on Auditing
NAMA	: National Association of Managing Agents
NCA	: National Credit Act
PMR	: Prescribed Management Rule
RDP	: Reconstruction and Development Programme
SA GAAP	: South African Generally Accepted Accounting Practice
SAICA	: South African Institute of Chartered Accountants
SAIPA	: South African Institute of Professional Accountants
SARS	: South African Revenue Services
SMEs	: Small and Medium-sized Entities
STA	: Sectional Titles Act
STSMA	: Sectional Titles Schemes Management Act

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Remarks to the reader

It should be noted that the legislation consulted in this study refers solely to the masculine form. The usage of the masculine form throughout this study is for purposes of convenience and consistency, and should be interpreted to refer to men and women alike.

The electronic reference managing tool Mendeley was used to prepare the citations and bibliography in this dissertation. The style selected in Mendeley was the American Psychological Association 6th edition.

Whenever there are two or more authors with the same surname cited in the study, the Mendeley referencing tool automatically puts the authors' initials in the in-text citation in order to avoid confusion. For example, authors Lochner Marais and Hendrik Marais were cited throughout the study. Therefore, all the in-text citations concerning Lochner Marais are automatically displayed as "(L. Marais & Cloete, 2015, p. 263)", adding the author's initial to the surname. The first example of such a reference can be found on page 3.

The Mendeley reference managing tool automatically uses the Oxford comma in cases where three or more authors are cited. A final comma is placed immediately before the coordinating conjunction, in the case of Mendeley, the final "&". An example can be found on page 13 with the citing of "Sole, Timse, & Brummer, 2014, p.1".

Some sources quoted in this study have somewhat unconventional page numbering systems.

- The publication by Van der Merwe is a loose leaf publication by the publishing house LexisNexis. All the pages in the publication are numbered by firstly referring to the chapter number, followed by the page number. For example, chapter one starts on page 1-1, chapter two starts on page 2-1 and chapter three on page 3-1. A reference of "p.1-34" therefore means page 34 of chapter one, and not pages 1 through 34 of the publication. Occasionally, due to changes in legislation, an additional loose leaf is added to the publication. In such cases a reference of, for example, "p.1-6(1)", means

that an extra new page was added to page six of chapter one. The first example of such a reference can be found on page 7.

- The publication by Sonnekus is also a loose leaf publication by the same publisher, and uses the same page numbering system. (See page 36 for the first example.)
- During 2014 a special issue of the journal *Urbani izziv* was published. The numbering of the journal uses the capital letter “S” in front of all page numbers to indicate that it was a special edition of the journal. Therefore, page 105 is referenced as “p.S105” The first example of such a reference can be found on page 3.
- The book *Auditing Notes for South African Students*, published by LexisNexis also uses a chapter-based page numbering system. All the pages in the book are numbered by firstly referring to the chapter number, followed by the page number. For example, chapter one starts on page 1/1, chapter two starts on page 2/1 and chapter three on page 3/1. A reference of “p.2/35” therefore means page 35 of chapter two, and not pages 2 and/or 35 of the publication. The first example of such a reference can be found on page 135.
- The *Manual of Information*, published by the Independent Regulatory Board for Auditors (IRBA) also uses a chapter-based page numbering system. All the pages in the manual are numbered by firstly referring to the chapter number, followed by the page number. For example, chapter one starts on page 1-1, chapter two starts on page 2-1 and chapter three on page 3-1. A reference of “p.1-6” therefore means page 6 of chapter one, and not pages 1 to 6 of the publication. The first example of such a reference can be found on page 128.
- The book *Dinamiese Ouditkunde*, published by LexisNexis also uses a chapter-based page numbering system. All the pages in the book are numbered by firstly referring to the chapter number, followed by the page number. For example, chapter one starts on page 1-1, chapter two starts on page 2-1 and chapter three on page 3-1. A reference of “p.1-6” therefore means page 6 of chapter one, and not pages 1 to 6 of the publication. The first example of such a reference can be found on page 135.

Chapter 1

Introduction to the study

“People who own their own homes do not burn them down.” – Denis Cowen

1.1 Introduction and background to this study

The ‘ownership’ of land and consequently also the ownership of buildings and property thereon erected is a matter over which many great wars have been fought between countries and groups over the centuries. The fall of the Berlin wall (Uys, 2007, pp. 207–208) marks a recent historic event through which a divided Germany was once again united. In the history of Christianity, Israel’s conquest of the biblical ‘promised land’ Canaan is probably one of the most well-known takeovers of land through battles fought (New International Version, 1984, p. Genesis 12:7; Deuteronomy 7:1; Joshua 1:10). After northern Israel had been conquered Assyria and southern Israel conquered by Babylon, the Israelites were exiled and eventually dispersed over almost the entire continent. Shortly after the end of World War II in 1948, Israeli Jews once again re-established their national home in Palestine, to be known as the State of Israel (Bureau of Public Affairs, 2015, p. 1), resulting in a mass immigration of Jews from Europe and Arab countries. Israel has since fought several wars with neighbouring Arab states (Encyclopaedia Britannica, 2015, p. 1). Decades of international efforts to resolve the Israeli-Palestinian conflict have not resulted in peace. Israel’s occupation of Gaza, the West Bank and East Jerusalem is the world’s longest military occupation in modern times. The region remains in political turmoil with regular military conflicts between Israel and the Palestinians (BBC, 2015, p. 1).

Over the centuries, property battles were not only fought on the battlefield itself, but also in the political arena. More than 2 000 years ago, during the era of the Roman Republic, the matter of land ownership and the question whether agricultural land should be allocated to small farmers or large commercial farmers were also burning issues (Uys, 2007, pp. 229–230). It is told that one day Tiberius Gracchus, a Roman politician from the Italian capital was making his way through the Italian countryside. He saw the contrast between the vast farms

of capitalist land barons interspersed with the ruins of tiny houses that once belonged to small farmers. It dawned on Tiberius that most of the land in fact belonged to the state, but over the years the residents eventually viewed the property as their own. Some of the properties were traded, resulting in small farmers selling their land in order to survive and large capitalist farmers being established. Tiberius considered the immense poverty in Italy at the time and wondered whether the state could reclaim the property and hand it back to the poor landless citizens (Malherbe, 2015, p. 70). Using his political influence, he eventually succeeded in passing land reform legislation that would redistribute the major aristocratic landholdings among the urban poor land veterans, in addition to other reform measures. His continued efforts made Tiberius popular among the poor citizens of the time. However, he was not a popular man in senate. When Tiberius stood for re-election, a group of enraged senators and their armed supporters charged into his campaign rally to break it up. In the ordeal Tiberius and some 300 of his supporters were clubbed to death. This was the first open bloodshed in Roman politics for nearly four centuries (Rodgers, 2005, p. 24). Tiberius's land reform commission continued distributing lands, albeit much slower than Tiberius had envisaged, and ten years later, his brother Gaius Gracchus took the same office as his brother, also negotiating many benefits for the poor. The senatorial class considered Gaius even more dangerous than his brother, since he was more practically minded than Tiberius. Due to his increasing popularity, the senate wanted to get rid of Gaius, and eventually turned the poor against him through Livius Drusus who promised the poor that he would do better than Gaius (Malherbe, 2015, p. 70). A mob was raised to assassinate Gaius, and it was announced that anyone who brought the head of Gaius would receive the weight of the head in gold. Knowing his death was imminent, Gaius committed suicide on the Aventine hill in 121 BC. An old friend of Gaius filled the head with molten lead, but forfeited the reward when the fraud was discovered (Plutarch, 2004, p. 6.17). Shortly afterwards, the senate stopped the distribution of land to the poor, and most of the poor who already received land sold their property to the rich for money for survival. Hence the rich capitalists once again became land barons, and the saga came full circle (Malherbe, 2015, p. 70). These events show certain similarities with land reform issues currently experienced in South Africa (as discussed in section 1.2.1 below).

For most people, their home will be the largest and most important asset they will ever own. Sadly, many South Africans are not fortunate enough to own their own home, as South Africa has a vast shortage of housing. Even though the South African government has made good progress in this regard over the past twenty years since the dawn of the 'new' democracy in 1994, it may still take decades to fully address the shortage, and in the meantime, the housing

backlog remains immense. According to L. Marais, Ntema, Cloete & Venter (2014, pp. S105–S110) (refer to *Remarks to the reader* for clarification of the referencing) housing also goes hand in hand with land issues which, in the South African context, come with a unique set of difficulties. Violent service delivery protests are a regular occurrence and, together with the land reform controversy and current debates surrounding farm land, these matters create a great deal of tension between politicians and role players in the agricultural sector. (See section 1.2 below for more detail.)

As discussed in sections 1.2.7 and 1.4 below, sectional title property has an important role to play in providing housing solutions for the 'general public'. According a recent general household survey issued by Statistics South Africa, there are currently around 714 000 households living in flats or apartments and roughly a further 233 000 households living in town house complexes, adding up to approximately 947 000 South African households living in sectional title schemes (Statistics South Africa, 2015a, p. 122;125). Since it is such a popular form of housing, a number of websites and online discussion forums are dedicated to the topic. Some examples include www.sto.co.za, www.sectionaltitlecentre.co.za, www.sectionaltitlesa.co.za, www.paddocks.co.za and www.sectionalforum.co.za. Articles with legislative updates and recommendations for sectional title residents are also regularly published in the media. However, from an academic perspective, very limited research has so far been done on the sectional title industry in South Africa. Currently available published academic research consists mostly of postgraduate research in the fields of law, cost accounting, taxation and regional planning. Therefore, very little academic research has been done specifically from an accounting and auditing perspective to date on the sectional title industry in South Africa. As far as is known, the first research study of its kind was completed in 2013 (L. Lubbe, 2013, p. 228). From this Master's Degree dissertation, a series of three internationally accredited journal articles were published (Steenkamp & Lubbe, 2015a, 2015b, 2015c).

The literature review from the above-mentioned dissertation covered three main aspects in respect of sectional title schemes, namely legal aspects relating to accounting and auditing matters of sectional title schemes, auditing and assurance aspects and accounting and reporting aspects. The literature review revealed that there is much uncertainty, ambiguity and confusion on what is expected regarding the financial, accounting and auditing-related matters of bodies corporate in South Africa (L. Lubbe, 2013, pp. 95–96). It was noted that, in many

cases, the sectional title legislation contained wording that is not true to the acknowledged subject terminology (L. Lubbe, 2013, p. 53;107;184;225). A further conclusion that was drawn from the literature review was that most of the auditing-related issues probably stem from the so-called expectation gap (L. Lubbe, 2013, pp. 87–88). In short, the auditing expectation gap refers to the difference between what the public and other financial statement users perceive auditors' responsibilities to be and what auditors believe their responsibilities entail (Curtis, Humphrey, & Turley, 2016, pp. 75–98; Knechel, 2007, pp. 383–408; McEnroe & Maartens, 2001, pp. 345–346; Ruhnke & Schmidt, 2014, pp. 572–573; Salehi, 2016, pp. 25–44; Sikka, Puxty, Willmott, & Cooper, 1998, p. 299). (See also L. Lubbe (2013, p. 209;225).) As part of the literature review, concern was also raised as to the applicability of currently available accounting standards, and the aspect of a possible tailor-made accounting standard for sectional titles was addressed (L. Lubbe, 2013, p. 185). Many users of body corporate financial statements are probably 'unsophisticated' and have no knowledge of International Financial Reporting Standards. Furthermore, it remains an open question whether applying full International Financial Reporting Standards (IFRS) is useful, especially for small and medium schemes.

The literature review from the above-mentioned study paved the way for a qualitative empirical study performed on the sectional title industry in Bloemfontein in South Africa by way of interviewing a sample of role players in the industry. From the results of the interviews with the industry role players, namely accounting and auditing practitioners, managing agents and chairmen of bodies corporate, various concerns were identified. The main concerns were uninvolved and uninformed owners, difficulties with municipalities and developers, financial pressures, staff continuity at managing agents and problems with debt collection (L. Lubbe, 2013, p. 225).

The accounting and auditing practitioners also had serious concerns about the use of one bank account, held in the name of the managing agent, for the cash transactions of a number of bodies corporate. According to the practitioners interviewed, some managing agents refuse to issue the auditors with bank statements of the large ('only') bank account. The managing agents claimed that due to the fact that their bank statement contains 'confidential' information of other bodies corporate, they cannot issue it to auditors of individual schemes. These managing agents are only willing to provide the auditors with their own summary of the bank

account and transactions of the body corporate under audit (Steenkamp & Lubbe, 2015a, pp. 556–557).

A further finding was that many unallocated deposits relating to specific bodies corporate which were deposited into the managing agent's 'pool' bank account remained unnoticed and unallocated for long periods due to the fact that the information is not made available to the auditors. The audit practitioners expressed concern that it is virtually impossible to reconcile the bank balances with the little information that is provided to them. They also mentioned that the interest accrued on this large bank or trust account is never allocated to the individual bodies corporate, and that the managing agent is the sole beneficiary thereof. All of the practitioners interviewed stated that they do not feel comfortable with this practice, and they would rather see managing agents open a separate bank account for each body corporate (Steenkamp & Lubbe, 2015a, p. 557). This problem was not only mentioned by the auditing practitioners, but it was also a concern of one of the body corporate chairmen (L. Lubbe, 2013, p. 214).

The practitioners also had various accounting-related questions on which they need clarity from their professional bodies. It was identified that there is a distinct difference between what the audit profession perceives their objectives to be, and what the sectional title role players, and even the legislator, expects from an audit, or 'thinks' that the auditor does (Steenkamp & Lubbe, 2015a, p. 558). It was found that managing agents encounter various practical challenges involving municipal accounts, debt collection, a high staff turnover, and pressures on management fees and obtaining budget approval created further problems for managing agents. Some problems with timely receipt of financial statements and audit reports were mentioned (Steenkamp & Lubbe, 2015c, p. 564).

The practitioners interviewed had differing perceptions regarding the risk involved in doing an audit or assurance engagement for bodies corporate varying from very low risk to high risk. Some practitioners regarded the risk of auditing sectional title schemes as very low, seeing it as very easy and not complex. Others viewed the risk of auditing sectional title schemes as relatively low to moderate, compared to auditing clients in other industries. The practitioners who regarded the risk of auditing sectional title schemes as high stated a number of reasons for their perceptions. Some said that certain sectional title clients, such as combined

residential and commercial schemes have complex structures and challenging tax calculations. It was also mentioned that due to the fact that there are large amounts of trust money involved, great care has to be taken during the audit of bodies corporate (L. Lubbe, 2013, p. 212). According to some, cost pressures and resulting time constraints make it difficult to perform all the procedures required by the auditing standards, which increases the risk. It was also mentioned that segregation of duties is a big problem in sectional title schemes, and creates opportunity for fraud. Time constraints and a lack of clear audit trails to provide evidence of transactions further complicated the work of auditors. Cut-off of debtors and creditors were mentioned as a great risk, as practitioners do not always find it easy to determine correct balances at year-end. The collectability of debtors was also a great concern for the practitioners. In many cases it is very difficult for auditors to determine provisions for doubtful debt and in some cases it raises red flags regarding going concern (Steenkamp & Lubbe, 2015a, p. 556).

For the chairmen of bodies corporate, the main concerns were rule enforcement, uninvolved and uninformed owners, difficulties with municipalities and poor meeting attendance. The fact that trustees usually receive little or no remuneration, financial pressures, debt collection and difficulties in getting budgets approved were also raised as concerns (Steenkamp & Lubbe, 2015b, p. 569). In the study it was also found that owners of sectional title units tend to put impossible cost restrictions on audit fees and management fees; a viewpoint that is shared by accounting and auditing practitioners as well as managing agents (L. Lubbe, 2013, p. 203).

A quantitative study was also performed as part of the research, and from the analysis of the sample of annual financial statements it was evident that auditing and accounting practitioners are not always acting consistently and that they are also not consistent in their application of the Sectional Titles Act. Possible benchmarks for industry standards were also identified (L. Lubbe, 2013, p. 96;185).

Even though the 2013 study laid a solid foundation for research in this field, there are a number of significant differences between this study and the previous one, being legislation, coverage and role players. Since the mentioned study was undertaken in 2011 and completed in 2013, the sectional title industry in South Africa went through a number of significant changes which will be discussed briefly below.

Firstly, regarding legislation, the Sectional Titles Amendment Act No. 11 of 2010 (the legislation in place during completion of the above-mentioned study) contained the last amendments to the Sectional Titles Act before the split thereof into three separate statutes (Van der Merwe, 2012, pp. 611–612, 2014, pp. 1–35). (Refer to *Remarks to the reader* for clarification of the referencing.) In legal terms, the three new pieces of legislation is referred to as third generation sectional titles legislation (Durham, 2015, p. 1; Van der Merwe, 2014, pp. 1–34). Henceforth, the new Sectional Titles Schemes Management Act No. 8 of 2011 (also referred to as the STSMA), incorporates all the governance and management provisions regarding sectional title. This leaves the technical registrations and survey provision in a now much 'leaner' Sectional Titles Act No. 95 of 1986 (STA), as amended by the Sectional Titles Amendment Act No. 33 of 2013. The Community Schemes Ombud Service Act No. 9 of 2011 (also referred to as the CSOSA) further provides a dispute resolution mechanism for sectional title and other community schemes. The Community Schemes Ombud Service provided for in the CSOSA enables residents of sectional title schemes and other community schemes to take their disputes to a statutory dispute-resolution service instead of a private arbitrator or the courts. The amendments effected by the third generation sectional titles legislation addresses gender equality, sheds lights on unclear aspects of the 1986 Act, removes a substantial number of obsolete provisions, extends consumer protection, and proposes to eliminate various problems with the practical application of the Act (Van der Merwe, 2014, pp. 1–36). A very important development in the STSMA is that the body corporate must establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister of Human Settlements (Durham, 2015, p. 1). (See Chapter 3 for more detail.) This new development will probably have a significant impact on the calculation of levies in future. President Jacob Zuma signed both the CSOSA and the STSMA into law during June 2011. The presidential proclamation as well as the regulations were published in the Government Gazette on 7 October 2016 and will be effective from the date of publication (Department of Human Settlements, 2016a, 2016b, Parliament of the Republic of South Africa, 2011, 2015). The Acts work as a unit, meaning that the STSMA assumes that the CSOSA is operational (Bechard, 2015c, p. 1). Third generation sectional titles legislation did not form part of the previous study. Consideration will be given throughout this study, as indicated, to current and new legislation. (See Chapter 3 for further detail)

Secondly, the Independent Regulatory Board for Auditors (IRBA) has approved for adoption, issue and prescription by Registered Auditors in South Africa a number of new and revised Auditor Reporting Standards that will be effective for audits of financial statements for periods ending on or after 15 December 2016. It was also announced that the Estate Agency Affairs Board (EAAB) has, in consultation with the IRBA, introduced a revised auditor's report, which auditors of estate agents are required to submit to the EAAB annually, within four months of an estate agent's financial year-end, in order to be granted their licence to practice. The EAAB specifies that all monies received or expended, including monies deposited into trust accounts or invested in savings or other interest-bearing accounts, all assets and liabilities and all financial transactions and the financial position of estate agents must be audited (Estate Agency Affairs Board, 2012, p. 5, 2014b, pp. 26–30). These developments took place after the completion of the previous study. (See Chapter 4 for further detail.)

Thirdly, the Guide for Micro-sized Entities Applying the IFRS for SMEs (2009) was officially issued in 2013 (IFRS Foundation, 2013). This guidance is of great importance in this study, since it may address and directly impact on the recommendations made by accounting and auditing practitioners in the previous study. The South African Institute of Chartered Accountants (SAICA) indicated that they are currently in the process of developing a guide for financial reporting specifically for the sectional title industry. However, it is uncertain when the process will be finalised. (See also section 1.5 and Chapter 5 for a more detailed discussion.)

All of the developments mentioned above have a noteworthy impact on the sectional title industry in the country, and will form an integral part of this study. The empirical research done in the previous study focused on role players in the sectional title industry in the Bloemfontein area in South Africa. One of the recommendations from the study was that further studies could be undertaken amongst the role players in other parts of South Africa, covering a larger geographical area. Comparative studies were also suggested between role players in different provinces in the country. This recommendation will be addressed in this study, by including three additional cities to the study. Therefore, the main difference is that, where the first study was conducted in the Bloemfontein area in the Free State Province, this study will be conducted in the Mangaung Metropolitan Municipality (Free State Province), Matjhabeng Local Municipality (Free State Province), City of Matlosana Municipality (North-West Province) and Tlokwe Local Municipality (North-West Province). Another addition in this study is the adding of additional role players in the qualitative study. The study will once again include

interviews with accounting and auditing practitioners, managing agents and trustee chairmen. Since the first study did not include any interviews with EAAB-appointed inspectors (as the inspections programme was not yet formally rolled out in the various provinces), this study will include interviews with EAAB-appointed inspectors of estate agents. In addition, inputs from various sectional title legal experts and role players from the National Association of Managing Agents (NAMA) will also be included in the study. (See Chapter 2 for additional detail.)

A further recommendation from the previous study was that an internationally comparative study should be undertaken, comparing sectional title accounting and auditing aspects in South Africa with practices of similar entities around the globe. This study addresses this recommendation specifically in section 1.4.3 and throughout the rest of the study where applicable. The previous study briefly highlighted possible irregularities regarding the holding of 'trust' money and the resulting handling of interest by managing agents. A more in-depth investigation into the matter was suggested, which will be dealt with in Chapter 6.

The rest of this chapter will include a discussion of the housing problem in South Africa. Against this background, an overview of the history of private and fragmented ownership of land will be given, after which the development and current status of sectional title property in South Africa will be sketched. A brief overview will be given of similar property forms in selected other parts of the world. An outline will be given of financial reporting and auditing in South Africa. The chapter will be concluded with the problem statement, research objectives and scope of the study.

1.2 The housing problem in South Africa

1.2.1 Land reform

Gibson (2009, p. 11) recounts that one of the central aims of both the English and Afrikaans governments in the twentieth century was to secure the exclusive use of the majority of valuable land in the country for white South Africans. Millions of black South Africans were

removed from areas designated for whites, evicted from land and farms, and relocated and sent back to the homelands demarcated for black South Africans. The government considered this 'ethnic cleansing' of vast proportions of rural and urban land to be very successful. During the height of apartheid in South Africa various activists, academics and legal authors started raising their voices in attempts to demonstrate a growing awareness of the social, economic and political importance of landownership and aiming to influence the thinking of the time (Cowen, 2008, pp. 22–34; Lewis, 1985, pp. 241–266; Van der Walt, 1991, p. 3).

The preoccupation of the South African administrations with this land issue and the considerable time and energy spent on it, is evidenced by the adoption and implementation of more than twenty pieces of land legislation from 1874 to the fall of apartheid in 1994 (Gibson, 2009, pp. 12–16; C. O'Regan, 1989, p. 361). Even though the first steps in land reform began under the apartheid government, contemporary public policy is founded in the new constitution and the new pieces of legislation enacted by the post-apartheid government, dealing with historical dispossessions. In post-apartheid South Africa, asset generation only started featuring as part of housing policy from the 2000s when buzz terms such as 'housing assets', 'climbing the housing ladder' and 'a secondary housing market' were introduced in government's revised housing strategy. To put this into context, L. Marais & Cloete (2015, pp. 263–265) give a brief historical overview of housing finance to lower income households in especially the former black townships over the course of nearly 30 years of policy designed to get more black households to own their own homes.

Five distinct phases can be identified in the above-mentioned history of housing finance. Phase one took place from the mid-1980s to 1989, creating a housing platform for an emerging black middle class. During this phase, opportunities were opened up for finance-linked housing developments in the former black townships, and the first mortgages were provided to buyers in these areas. By the end of the 1980s, interest rate hikes constrained affordability in many former black townships and the apartheid government came under pressure as some communities resisted mortgage payments and vowed to start repayment only when a democratic government had been established (Tomlinson, 2007, p. 79). By the end of the 1980s, the banks had stopped providing housing finance in former black townships (L. Marais & Cloete, 2015, p. 263). (See *Remarks to the reader* for clarification of referencing.)

Phase two dealt with the crisis and looked into finding policy alternatives regarding how to cope pragmatically with urbanization, especially the growth of informal settlements, and how to provide housing finance in former black suburbs. Phase two took place from 1990 to 1994 (L. Marais & Cloete, 2015, p. 263). L. Marais & Cloete (2015, p. 264) point out that from 1994 to 1999, phase three focused on finding a new policy approach to dealing with private-sector finance. The government hoped that private sector finance would help the beneficiaries to expand and improve their starter homes. However, the actual amount eventually linked to private sector finance was less than government had expected and the shortfall further exacerbated the conflict between the banks and government.

The fourth phase (from 2000 to 2008) saw a renewed commitment by government and the private sector to finance low-income housing, together with matured policy response and increased regulation. However, despite there being intent, implementation was still slow (L. Marais & Cloete, 2015, p. 264). Phase five (from 2009 to the present) saw the effects of the global financial crisis and the economic recession in South Africa. The economic recession, ironically, had its origin in the real estate industry (Institute of Directors in Southern Africa, 2015a, p. 6). According to L. Marais & Cloete (2015, p. 265), phase five saw interest rates skyrocketing in mid-2008, and major job losses started occurring from mid-2009 onwards. Banking institutions also started to tighten the extension of credit and property sales started declining.

Of all the new pieces of legislation enacted by the post-apartheid government, the Restitution of Land Rights Act of 1994 is probably the most important, with the three principal elements being land restitution, land redistribution and land tenure reform. During 2014, South Africa's sensitive land reform programme saw the reopening of land claims, bringing new hope for those dispossessed of land, and renewed fears for commercial farmers. The Restitution of Land Rights Amendment Act was signed into law in June 2014, reopening the restitution claims process that closed at the end of 1998. Claimants who missed the earlier deadline will now be given a time frame of five years until 30 June 2019 to lodge further claims (Makinana, 2014, p. 1; Sama Yende, 2015, p. 1).

During the more than twenty years since the demise of apartheid, the South African government has spent millions of rands on land restitution, land compensation and settling

land claims. Nevertheless, the matter of land reform and land reconciliation in South Africa is not without its quota of unique difficulties (K. O'Regan, 2008, pp. 41–44). (See also Gunter (2015, pp. S79–S81).) Gibson (2009, pp. 15–18) explains some these challenges, which will be briefly outlined below.

Firstly, land grabs by urban dwellers are instances where squatters put up shacks on vacant land. It is not phenomenon exclusive to South Africa. L. Marais et al. (2014, p. S107) confirm that so-called 'self-help' housing has long been common practice in the developing world. These incidents have become increasingly common in South Africa, and the government and law enforcement officials are often reluctant to intervene (Whittles, 2015, p. 1; Wicks, 2015, p. 1). The land grab problem is also worsened by large numbers of the rural population relocating to urban areas (Gunter, 2015, p. S87). In recent years, the situation has been intensified by the expropriation of farming land in Zimbabwe — with the resulting influx of immigrants (IMCOSA, 2015, p. 1; Mataboge & Hunter, 2015, p. 1; Mitchell, 2001, pp. 587–603; Steyn, 2015a, p. 1). (See also section 1.2.6 on migration and urbanisation.)

Secondly, rights consciousness among South African farm workers are still relatively low, and many of these workers are not pursuing their legal rights such as the land rights after long periods of occupation, or to bury deceased family members on the land (Gibson, 2009, pp. 15–16).

Thirdly, dealing with the claims of those who have been forcibly removed (for example from the old District 6 in Cape Town) has proved to be a slow and arduous process. (See also O'Regan (1989, pp. 361–394).)

Fourthly, through the efforts of the government's land redistribution program, farm land is purchased from current owners and redistributed through various loans, grants, subsidies etc. However, many complain that black commercial farmers have been the primary beneficiaries of such programs. Furthermore, it was reported that by 2011, black farmers have resold almost 30% of land given to them by government back to white farmers, often selling it back to the previous owners (Bezuidenhout, 2015, p. 1; Editorial, 2011, p. 1; Gardner, 2015, p. 1; Newling, 2011, p. 1). (These incidents bring to mind the historical events around the Gracchus brothers

in section 1.1 above.) Eyebrows have also been raised regarding some government projects supposedly aimed at benefiting small-scale farmers. One of the earliest examples of such a project was the takeover of the Zebediela Citrus Estate in Limpopo. When it was taken over by the now defunct Agricultural and Rural Development Corporation (ARDC) in 1996, it was one of the world's largest citrus estates, producing an estimated 400 million oranges annually (Editorial, 2003, p. 1). By 2001, six years after the takeover, a lack of proper management, corruption, theft and maladministration had brought about Zebediela's ruin. Of the original 2 260 hectares under trees in 1994, only 800 hectares was left in production and later, more than half of the remaining trees had died and been chopped up for firewood. By 2001, the estate was running at a loss of R35 million (Dugmore, 2011, p. 1; Monama, 2006, p. 1). More recently, the National Treasury found that the controversial R570-million Vrede Dairy Project in the Free State is riddled with irregularities. While large benefits were promised to small farmers, the identities of the project beneficiaries remain vague, together with the selection procedures followed. Links to the politically influential and controversial Gupta family appears to be increasingly clear. The project is mired in controversy for maladministration and gross managerial negligence (AmaBhungane Reporters, 2013, p. 1; J. Claassen, 2014, p. 1; Dlodlo, 2015, p. 1; Shabalala, 2016, p. 1; Sole, Timse, & Brummer, 2014, p. 1; Timse, 2014, p. 1).

A fifth challenge is the fact that many black South Africans were dispossessed of their land by means of legal contracts between land purchasers and tribal leaders. South Africa has many powerful tribes, the most well-known probably being the Bafokeng tribe, a Setswana-speaking traditional community in the North-West Province of South Africa, considered to be the richest tribe in Africa. The Royal Bafokeng Nation and its wealthy royal family have regularly been in the news in recent years. The Bafokeng community in villages around Rustenburg in the North-West Province are up in arms and are accusing their chief of attempts to dispose of the community's mineral-rich land in favour of irresponsible mining operations that do not take into account sustainable livelihoods (Evans, 2015, p. 1). (The Rustenburg region holds almost 70% of the world's platinum resources (Myburgh, 2013, p. 1).) Villagers also claim that their problems are compounded by the slow process of land restitution in their area. They argue that the king of the Royal Bafokeng Nation continues to alienate the land that is currently under land claims by the very same community he leads (Biyase, 2013a, p. 1, 2013b, p. 1; Evans, 2015, p. 1). In these types and other similar legal land transfer cases, individuals are up against extremely powerful traditional leaders and their followers who believe that the land belongs to the tribe, not the individual or legal entities. This also raises questions on the compatibility between customary and civil law, especially insofar as it concerns the 'property

rights' over land. Even the controversial Nkandla homestead of South Africa's president Jacob Zuma is situated on communal land owned by the Ingonyama Trust. The trust is headed by the Zulu King Goodwill Zwelithini and the trust manages about 32% of all land in the province on behalf of the state for the benefit of its occupants (De Wet & Bauer, 2012, p. 1; Editorial, 2012a, p. 1; Hans, 2015, p. 1).

Last, but not least, Gibson states that all the above-mentioned land issues are deeply interwoven with questions of gender, the reason being that most South African traditional groupings are dominated by male leaders. Taking the above into consideration, it can be argued that it may still take many years for South Africa to overcome these historical injustices. (See also Van der Walt (1991, p. 22;39-43).)

1.2.2 The BRICS countries

As a developing economy, South Africa is a member of the BRICS countries. BRICS is the acronym for an association of five major emerging national economies: Brazil, Russia, India, China and South Africa (Desai, 2013, p. 1). The grouping was originally known only as 'BRIC', before the inclusion of South Africa in 2010. Witepski (2009, p. 89) and Sathekge (2013, p. 15) report that South Africa stands out as an extremely significant emerging market, offering the same, if not even better, potential in many areas than the other four BRICS countries. Rated against the other BRICS countries, South Africa comes first on global competitiveness rankings in terms of property rights, ethical behaviour of firms, strength of auditing and reporting standards, quality of overall infrastructure, soundness of banks and regulation of securities exchanges (Witepsky, 2009, pp. 90–93). It should also be noted that South Africa currently ranks first in the world when it comes to the strength of auditing and reporting standards, as well as the regulation of securities exchanges. South Africa ranks second in the world in terms of the protection of minority shareholders' interests, and third in the world regarding the efficacy of corporate boards (World Economic Forum, 2014, p. 39). Up one position from the 2013-2014 survey, China currently ranks 28th out of 144 countries in terms of overall global competitiveness. China continues to lead the BRICS economies by a wide margin — well ahead of Russia (53rd), South Africa (56th), Brazil (57th), and India (71st) (World Economic Forum, 2014, p. 27). Figure 1-1 below contains a summary of the rankings.

Figure 1-1: Comparison of BRICS countries on selected Global Competitiveness Index (GCI) Indicators

GCI Indicator		Ranking out of 144 countries				
		Brazil	Russian Federation	India	China	South Africa
	Overall ranking	57	53	71	28	56
1.01	Property rights	77	120	73	50	20
1.12	Transparency of government policymaking	128	68	64	33	35
1.17	Ethical behaviour of firms	107	72	88	55	35
1.18	Strength of auditing and reporting standards	41	106	102	82	1
2.01	Quality of overall infrastructure	120	74	90	64	59
5.03	Quality of the education system	126	84	45	52	140
8.04	Ease of access to loans	85	56	29	21	32
8.06	Soundness of banks	13	118	101	63	6
8.07	Regulation of securities exchanges	17	91	62	58	1
10.01	Domestic market size	6	7	3	2	24
10.02	Foreign market size	24	9	4	1	34

The BRICS countries have many similar challenges and housing is no exception. This is evidenced by the great number of research studies that have been done on the various housing problems in the various BRICS countries. The BRICS countries all have large urban areas with informal settlements, slums and even 'slum cities' (Huchzermeyer, 2011, pp. 30–34; Morris, 2012, p. 10). Major dilemmas in the BRICS countries include housing shortages, affordability of property and housing (Cai & Lu, 2015, pp. 169–175; Niu, 2008, pp. 125–146), accessibility of financing (Rabenhorst & Ignatova, 2008, p. 16), overcrowding (Huchzermeyer, 2011, pp. 6–7), access to essential facilities and services (such as schools, transport facilities,

hospitals, sanitation, water etc.) (Morris, 2012, pp. 10–12) and failed government housing policy strategies.

1.2.3 Government housing policy and housing challenges

Gunter (2015, p. S80) explains that the housing market in South Africa can be broadly divided into three sectors, the formal housing sector, the informal housing sector and the 'backyard' sector. The formal housing sector is characterised by a sophisticated legal framework and financial mechanisms, compared to the informal housing sector that is characterised by a lack of formal framework together with poor quality access to services (Huchzermeyer, 2011, pp. 69–74). The so-called 'backyard' sector consists of informal dwelling in formal housing suburbs, where residents live in informal dwellings but often have access to basic services such as water and electricity (Gunter, 2015, p. S80).

Rogerson (2014, p. 157) as well as Rogerson & Letsie (2013, pp. 487–488) explain that the most vulnerable of the urban poor find themselves in the South African informal housing sector and this sector provides the least support and poorest legal framework in which transactions take place (see also Gunter (2015, p. S80)). Since the late 1990's, the views of Peruvian economist Hernando de Soto captured the imagination of many housing experts and governments in developing countries, including South African policy-makers and planners. According to many authors, elements of his thinking are clearly discernible in the South African government's housing plan (McKinney et al., 2007, p. 7). De Soto wrote about the concept of 'dead capital' within the informal housing sector. He proposes that the formalisation of land tenure can bridge the gap between the informal and the formal economy by bringing 'dead capital' to life. In short, he argues that without formal ownership property, no matter how many assets the disadvantaged accumulate or how hard they work, most people will not be able to prosper in a capitalist society. He argues that the poor and disadvantaged will continue to operate beyond the range of policymakers and the reach of official records, in effect remaining economically invisible (De Soto, 2000, p. 233; 207; 216; 59). The practical reality, however, remains different from his views and many authors consider De Soto's arguments and views to be simplistic (Huchzermeyer, 2011, p. 60). L. Marais, Sefika, Ntema, Venter & Cloete (2014, p. 60) argue that De Soto's ideas have been criticised because he singles out one factor (being land titling) as the key recipe for development, while disregarding multiple other factors. At a

research colloquium on de Soto's views, Tomlinson (2007, pp. 17–26) as well as Rust (2007, pp. 44–50) draws attention to disagreements between formal banking institutions and the government over access to finance for the poor. On the one hand, the government believes that the poor should have access to mortgage loans, which would help them move up the 'housing ladder' and empower themselves economically. On the other hand, the banks say they cannot extend mortgage finance to the poor because they earn too little to sustain repayments (Kloppers, 2010, p. 16). (See also L. Marais et al. (2014, pp. S107–S108).) Moreover, most of the poor are informally employed, whereas formal employment is a prerequisite to mortgage lending. The authors also imply that, contrary to De Soto's arguments, the fact that many of South Africa's poor now have title deeds to homes has not resulted in them accessing formal credit, or these homes turning into 'valuable assets' (Editorial, 2013i, p. 75; Huchzermeyer, 2011, p. 60; Masilela, 2013a, p. 6; Nkosi, 2014, p. 6).

Badenhorst et al. (2006, p. 3) believes that property law is the battleground on which difficult socio-economic and political issues have to be resolved. In 1994, the newly elected South African government were confronted by the reality of the spatial landscape inherited from the previous regime; a landscape of vast informal settlements, housing millions of disadvantaged and dispossessed people. Housing was put at the forefront of the government's agenda and plans included challenges such as extensive backlogs in land and housing, as well as rectifying past injustices through the restitution of land rights to those who had previously been forcibly dispossessed (Hemson & O'Donovan, 2005, p. 17; Knoetze, 2013, p. 6; McKinney et al., 2007, p. 8). Apartheid also left a legacy of urban division, resulting in a great number of South Africans living far from their places of work, and having to spend a large portion of their income on transport (Editorial, 2013f, p. 10; Government Communication and Information System, 2014, pp. 240–242; September, 2014, p. 10). (See also Claassen (2012, p. 1), Lemanski (2011, p. 57) and Gunter (2015, p. S80).) According to the latest census data, 1.3 million of the 14.5 million households in South Africa still live in informal housing (shacks) in backyards and squatter camps. (See also Gunter (2015, p. S80).) This is, however, an improvement from the 1.9 million households who lived in similar conditions in 2001 (Editorial, 2012e, p. 6).

The National Development Plan is a plan for the country to eliminate poverty and reduce inequality by 2030 through uniting South Africans. The South African government considers the provision of housing a constitutional obligation (September, 2014, p. 10). One of the critical

actions mentioned in the National Development Plan of the South African Government is the creation of new spatial norms and standards (The Department of Cooperative Government, 2014, p. 1). According to the South Africa Yearbook 2013/14, approximately 5.6 million formal homes have been built since the country's first democratic election. This is an overall 50% growth in formal housing in twenty years. The Department of Human Settlements (DHS) also plans on increasing the rate of affordable rental housing to at least 35 000 units per annum (Department of Human Settlements, 2014, p. 34). During 2007, the African National Congress (ANC) made a pledge to eradicate all shacks by 2014 (Benjamin, 2007, p. 3; Huchzermeyer, 2011, pp. 112–140). However, the government faces a moving target (Huchzermeyer, 2011, pp. 169–171). The proposed deadline has passed, and the DHS is still facing a backlog of more than 2.3 million housing units, which translates to housing for more than 12.5 million people (Kloppers, 2012a, p. 12; Presence, 2014, p. 1; Stone, 2014, p. 3). In an attempt to ease the financial burden on already strained working and middle class income earners, the South African Minister of Finance recently announced that, in future, no transfer duty will be charged for properties acquired for less than R750 000 (SARS, 2015b, p. 1). The DHS also continues to play an important role in the property market. According to government statistics, 1.44 million of the six million registered residential properties in South Africa were government subsidised houses. If the current backlog in issuing deeds is overcome, this number can increase from a quarter to at least 35% of residential properties in South Africa being government subsidised houses (Government Communication and Information System, 2014, p. 241).

The privatisation of state-owned housing portfolios has been a worldwide occurrence over the past few decades, and South Africa is no exception. Almost all of South Africa's more than 500 000 state-owned housing units, mainly constructed during the apartheid era in former black townships, were privatised by 2012. The privatisation of housing is commonly understood in political economic terms. There are two distinct viewpoints regarding housing privatisation, namely the neoliberal view and the neo-Marxist view. L. Marais et al. (2014, p. 58) explain that, on the one hand, advocates of privatisation (holding the neoliberal view) believe that the provision of ownership enables households to have security of tenure, which in turn leads to increased housing investment. The proponents also reckon that privatisation leads to the release of dead capital, together with the development of a secondary housing market, which in turn creates a source of income for local authorities by means of land taxes. Ownership is believed to be a prerequisite for housing transformation. On the other hand, critics of privatisation (holding the neo-Marxist view) suggest that the process leads to

landlordism and an ever-increasing dependence on mortgage finance. L. Marais et al. (2014, pp. 65–66) further state that, according to neo-Marxist theorists, housing privatisation increases the financial strain on households when dealing with fluctuating mortgage payments, and gives rise to housing speculation. Financial constraints may also cause these households to experience increasingly poorer housing conditions, as they will probably not have the capital for maintaining their houses. Gunter (2015, p. S89) explains that the South African informal housing sector functions in a classical neoliberal market.

Based on the figures alone, one cannot argue that the government has indeed made progress in the provision of housing during the past twenty years. It is important to note that even though a considerable amount of information is available on the housing challenges facing South Africa, the data are at times contradictory. There are often differences between data produced by the government and data from independent surveys on the same topic. The Housing Development Agency explains that by its nature, the number of residents of informal settlements can be difficult to track and interpret. Many informal settlements do not have formal 'streets', and there is often no indication whether ownership of dwellings is formal (The Housing Development Agency, 2013, p. 40,46). In addition, there is no alignment across data sources with regard to the demarcation of settlement areas, many residents come and go depending on availability of job opportunities in an area, and the on-going influx of illegal immigrants also adds to the challenge (Mbovu, 2015, p. 1; The Housing Development Agency, 2013, pp. 54–55). More than twenty years after the demise of apartheid, its legacy and the system of segregation before it, is still evident (Gunter, 2015, p. S80; McKinney et al., 2007, pp. 6–8). Housing is regularly at the centre of violent service delivery protests by unhappy and dissatisfied township residents (Editorial, 2007, p. 8; Gwala, 2010, p. 5; Hweshe & Beddow, 2009, p. 4; Marrian, 2014, p. 7; Moroe, 2014, p. 18; Ndamase & Mphande, 2014, p. 1). Many informal settlements have a high fire and flood risk, have lower service levels than urban social settings, and are poorly maintained. (See also Dlamini (2013, p. 8) and Hendler (2014, p. 13).) Townships keep on expanding and shack houses continue to be built. There are currently 2 200 ever-increasing informal settlements around South Africa (Stone, 2014, p. 3). (See also Luphahla (2013, p. 25).) People in informal settlements still live far from work and leisure opportunities (Editorial, 2013f, p. 10).

Despite the fact that a significant portion of informal settlement dwellers live in rented accommodation, government has thus far placed very little emphasis on tenure and rental

property within the informal sector (Maas, 2011, p. 759). Rental agreements in the informal housing market are also largely informal, with mostly cash payments taking place, no receipts being given for payments received and oral agreements without any formal record being the norm (Gunter, 2015, p. S81). These factors place tenants in a vulnerable situation where rents can be increased without notice, agreements cancelled and safety regulations and basic maintenance ignored with little recourse. As a result of the lack of formal housing in this segment of the market, tenants have little choice but to accept the conditions. (See also Housing Development Agency (2013, p. 46).) Gunter (2015, p. S86) adds that while it is clear that tenants are in a delicate situation, landlords rely on the income from rental units, also leaves the group exposed to risks. The risks include having to collect rent from a group of individuals who have irregular incomes and the risk of tenants defaulting. Formalised rental stock in the lower end of the informal housing sector remains fairly rare, and the government rather has its focus on developing formal social housing. However, the current situation regarding the housing backlog will probably continue forcing more and more rent seekers into the informal housing sector. (See also Huchzermeyer (2011, p. 60).

Adding to the herculean task of eradicating the housing backlog, the South African government also plans to eradicate the backlog in issuing title deeds to existing housing beneficiaries (Donnelly, 2014, p. 1). However, in 2013 it was reported that only half of the owners of Reconstruction and Development Programme (RDP) houses actually have the title deeds to their homes (Department of Human Settlements, 2014, p. 40; Editorial, 2013f, p. 10). Donnelly (2014, p. 1) reports that this leaves more than one million RDP homeowners without title deeds for their properties. There is a substantial amount of 'wealth' potentially available to these housing beneficiaries that cannot be accessed without title deeds. Even though RDP houses cannot be sold for eight years, where sales have taken place informally without title deeds there is often no record of the owner or the transfer. This creates additional problems when housing beneficiaries die and their homes are left to family members. Furthermore, additional financing for renovations and home improvements cannot be obtained without formal title deeds due to banks being reluctant to issue loans against these homes. (See also Cokayne (2014, p. 17), P. Dlamini (2014, p. 4), Editorial (2013e, p. 16) and James (2014, p. 27).)

The problem with title deeds is not the only issue concerning RDP housing. In an interview in May 2015, Human Settlements Minister Lindiwe Sisulu stated that the government spends in the vicinity of R2 billion per year to fix and rebuild poorly built RDP houses. In the same

interview she claimed that the 1.5 million housing target for 2019 was, in fact, attainable, and attributed the slow pace in the delivery of houses in the past four years to a number of factors, including high building costs and flawed procurement procedures (Mkhwanazi, 2015, p. 1). However, the media regularly report on matters such as the department's crucial spending failures and inferior quality RDP houses. According to former Human Settlements Minister, Tokyo Sexwale, the total cost to repair (and in some cases even demolish and rebuild) all these inferior structures can add up to a total of R5 billion (Madikizela, 2013, p. 13). Reports from various state agencies, including the National Home Builders Registration Council (NHBRC), the Construction Industry Development Board (CIDB) and the Public Protector indicated that dissatisfied beneficiaries of RDP houses have legitimate complaints about sub-standard material, cracks, leaking roofs and even houses that collapse during rainy weather (Barbeau, 2013, p. 3; Hartley, 2009, p. 5; Mkhwanazi, 2013b, p. 4; Parliament of the Republic of South Africa, 2014, p. 32).

Even though the delivery of housing remains one of the most sought-after services by the majority of South Africans, the Department of Human Settlements regularly fails to spend its allocated budgets for various housing programmes. In the 2013 fiscal year, the Department of Human Settlements failed to spend more than R600 million of its allocated budget. A total of R330 million had to be returned to National Treasury, who in turn refused to roll it over to the next financial year. The Department claims that underspending is a result of unnecessarily long procurements processes, a shortage of suitable land for the development of human settlements and a lack of bulk infrastructure (Magome, 2013, p. 9). Furthermore, despite a cabinet intervention in 2011, contractors often do work for government on housing projects, but do not get paid for the work on time, or not at all, resulting in expensive court procedures in attempts to collect often millions in outstanding fees (Rawoot, 2009, p. 5; Slabbert, 2009, p. 12; Timm, 2013, p. 1). According to the Auditor-General of South Africa, some municipalities take up to 190 days to pay their creditors (Auditor-General of South Africa, 2014, p. 8).

It sometimes happens that government's attempts at providing housing for the poor are not successful. The Gauteng government spent close to R19 million on the maintenance of several apartment buildings in Soweto that still stand empty two years after completion. The 900 brand new apartments were built at a cost of R143 million and 22 months after completion, an allocation plan has yet to be developed. The problem facing the government is that many of the intended tenants (most of them currently housed in old hostels for migrant workers)

simply cannot afford to pay the proposed rent of R750 per month for a two-bedroom unit with a stove and geyser (Mahlangu, 2014, p. 11). Coetzee (2014, p. 5) adds that, to complicate matters even further, the government often struggles to collect rent from tenants in existing state social housing units. In some administrations, the rental collection rate is as low as 30%.

During the past few years, the media have regularly reported on fraud and corruption occurring with government housing projects (Matlala, 2012, p. 10) and especially circumvention of waiting lists (also called 'indigent lists' or 'beneficiary lists') for RDP and low-cost housing (Mkhwanazi, 2015, p. 1). Lack of controls in the compilation of waiting lists, and fraudulent distribution of houses adds to the challenge (Editorial, 2014b, p. 18; Mokati, 2014, p. 2). During the past few years, the media also regularly reported on incidents where RDP houses have two registered owners (De Kock, 2014, p. 4; Seekoei & Fekisi, 2014, p. 1). Various cases were reported to the office of the Public Protector, where houses were approved and paid for, but not actually built (Parliament of the Republic of South Africa, 2014, p. 32). These incidents contribute to the housing backlog in South Africa. (See also (Marrian, 2014, p. 7).) In a recent parliamentary budget vote speech (2014, p. 27), Minister of Human Settlements, Lindiwe Sisulu, mentioned that a further problem facing the Department is the fact that many beneficiaries of RDP houses sell their houses. (See also Peyper (2008, p. 7).) Some owners of RDP houses also rent out their homes to foreigners to use as taverns or spaza shops. (See also Nkosi (De Kock, 2014, p. 4; 2014, p. 6).) Media reporters who investigated the matters were offered to buy RDP houses for as little as R10 000 (Linden, 2014, p. 2). Sisulu also believes that there is a culture of entitlement among South Africans, indicated by the fact that there are large numbers of 18-year-olds putting their names on the departmental waiting lists for RDP houses. (See also Ka Plaatjie (2014, p. 22).)

Over and above the challenges already mentioned, many of South Africa's urban spaces are also impacted by studentification. Studentification is the process where students begin inhabiting certain parts of a suburb, town or city in the vicinity of a tertiary institution and the original residents are gradually displaced due to this in-migration (Donaldson, Benn, Campbell, & De Jager, 2014, p. S133). The restructuring of the higher education system in South Africa began in 2000, with the purpose of widening access to tertiary education and resetting the priorities of the old apartheid-based education system. Smaller universities and the old technikons were incorporated into larger institutions to form comprehensive universities. Today, there are 25 universities in the country — with the two most recent

additions in Kimberley and Mbombela (Kleinsmith & Horn, 2015, pp. 494–510). Despite its prevalence, very little academic research has so far been done on the impact of student accommodation on urban spaces in South African cities. Donaldson et al. (2014, p. S142) argue that dramatic increases in student enrolment numbers in recent years, combined with insufficient on-campus accommodation contributed to a fundamental spatial transformation of various suburbs in cities and towns with tertiary institutions. Neither universities nor the municipalities have kept up with the growing numbers of students and resulting influx. Economic consequences of studentification include an impact on supply and demand of accommodation, above average house price inflation, deterioration of housing structures and a seasonal economic growth (Donaldson et al., 2014, p. S142; Swilling, Sebitosi, & Loots, 2012, p. 61). Furthermore, many negative social, physical and cultural consequences are experienced in studentified neighbourhoods — such as noise pollution, high residential density, traffic congestion and the loss of the neighbourhood character. As a result of the process, studentification has inflated the property market, and many low-to-middle- and middle-income earners are excluded from an opportunity to purchase property in the affected cities and towns.

1.2.4 ‘Gap housing’

As mentioned in the above section, government is attempting to take care of the housing needs of poor households. Many higher income households own property, or qualify for housing loans, which assists them with entry into the property market. Nevertheless, in-between these two extremes there remains a large, ever-growing market sector to which the National Development Plan was thus far unable to respond (Editorial, 2013f, p. 10). ‘Gap housing’ is a term used to describe the shortfall, or ‘gap’ in the market between residential units supplied by government and houses delivered by the private sector (Government Communication and Information System, 2014, p. 241). According to the Department of Human Settlements, the gap housing market comprises people who typically earn between R3 500 and R15 000 per month. Therefore, they earn too much to qualify for RDP houses, yet and do not earn enough to obtain home loans and participate in the private property market. Typical examples include people occupied in nursing, teaching, firefighting, or the armed forces.

At the very low end of this 'gap' market sector is a great number low-income households in South Africa earning only up to R5 000 per month, that do not qualify for RDP houses, as these houses are meant for the extremely poor. Earning only up to R5 000 per month, these low-income households do not qualify for housing loans and their level of income make it impossible to afford even the cheapest house in the 'affordable housing' market segment (Nkalane, 2010, p. 6). Research done in 2012 indicates that 83% of the 14.5 million households in South Africa earns too little to qualify for a housing loan (Kloppers, 2012a, p. 12). Witepski (2009, pp. 89–91) explains that at the upper end of the mentioned 'gap' market sector are the potential middle-end homeowners. It adds up to an estimated 3.7 million households that can afford a house between R130 000 and R500 000 – households that do not qualify for government subsidies, nor are they able to afford high-end residential property. Due to rapid urbanisation (see section 1.2.6 for more detail) the number of households in the 'gap' market category is set to keep expanding rapidly in future. It is, therefore, clear that in future South Africa will require thousands of affordable housing units near urban employment sites (Editorial, 2013f, p. 10; Scholtz, 2014, p. 20).

1.2.5 Building hijacking

Another problematic issue linked to the housing problem in South Africa is the increasing occurrence of building hijacking during the past few years. In some cases buildings are taken over by hundreds of illegal squatters (Comins & Anthony, 2013, p. 1; Davids, 2013, p. 6; Madlala & Barbeau, 2013, p. 3; SAPA-AFP, 2012, p. 7). During what is formally known as building hijacking, syndicates illegally take over buildings and rooms are then rented out to desperate tenants, often at exorbitant prices (Cox, 2012a, p. 9, 2012b, p. 5, 2013, p. 11; Mvubu, 2012, p. 20). In some instances, the hijackers hire a security company to intimidate and assault residents who do not want to pay them (Steyn, 2015b, p. 1; Thakali, 2010a, p. 5). The living conditions are usually unhygienic and the buildings quickly turn into drug nests and crime-ridden slums (Dolley, 2012, p. 1; Ozynski, 2007, p. 18). Many of these buildings are derelict and do not have running water, electricity or basic sanitation. The living conditions in these unsightly properties pose many dangers to the occupants (Germaner, 2014, p. 2), impact prices of surrounding property, and can be a nuisance to neighbours (Evans, 2012, p. 3; Masilela, 2013c, p. 6; Thakali, 2014, p. 11). Evicting illegal occupants from hijacked buildings involves a lengthy, expensive and complicated legal process that can sometimes take anything from four to ten years to execute (Cox, 2014a, p. 2; Editorial, 2012b, p. 10;

Mashamaite-Noyce, 2010, p. 28; Ngcobo & Motumi, 2013, p. 6; SAPA-AFP, 2012, p. 7). The buildings also cost cities millions in arrear utilities, declining property values and lost service revenues (Serumula, 2014, p. 9). Sources vary on the exact number of hijacked buildings in South Africa, but during 2014 it was reported that about fifty per cent of the buildings in and around the Johannesburg central business district (CBD) are hijacked (Cox, 2014a, p. 2, 2014b, p. 2). (See also Cox (2014c, p. 7) and Mlambo & Mbanjwa (2013, p. 11).) Van Zyl (2015, p. 1) explains that the government, communities, the police and investors have engaged in a number of initiatives to combat building hijackings. (See also Cokayne (2010, p. 20), Cox (2010a, p. 2), Molosankwe (2010, p. 2), Muller (2010, p. 19), Ndaba (2010, p. 3).) One such an initiative is the Johannesburg-based Inner City Property Scheme (ICPS). The central focus of the ICPS is the acquisition by investors and developers of dilapidated, abandoned and illegally occupied or hijacked buildings. A special investigation unit of the Johannesburg City Council reports that there are a total of 2 700 hijacked properties in Johannesburg's inner city region (Hartdegen, 2010, p. 1). (See also M&G TV (2015, p. 1).) According to the ICPS, the number of inner city hijacked apartment blocks are close to 400 and in recent months, despite various mentioned initiatives, the number of incidents have been increasing (M&G TV, 2015, p. 1; Steyn, 2015b, p. 1; S. Van Zyl, 2015, p. 1). (See also Damons (2010b, p. 6), Cox (2010b, p. 3), Moeng (2010, p. 7), Damons (2010a, p. 10), (2010, p. 19) and Bradlow (2010, p. 13).) The next section will explain the concept of population growth and urbanisation, which adds to the current housing shortage in South Africa.

1.2.6 Population growth, urbanisation and immigration

According to the 2011 census data, South Africa's population was just under 52 million at the time of the survey (Wilkinson, 2015b, p. 1). Statistics indicate that the number of households in South Africa has increased by 44% or almost 5 million units from 2002 to 2015, and that the population growth for the same time period was just over 17% (an increase from 45 809 000 to 53 701 000) (Statistics South Africa, 2015a, p. 16). The number of households in the country is therefore increasing, and as a result, the number of individuals per household is decreasing. It is, therefore, not surprising that the average number of people in one household dropped from 4.2 in 2002 to 3.4 in 2012. The rapid increase in the number of households in South Africa can put further pressure on the existing housing backlog in the country.

Regarding urbanisation, it is estimated the world's urban population has more than quadrupled since 1950, with cities just keeping on growing (Editorial, 2012d, p. 1). About 75% of the world's population is expected to be urbanised by 2050 (Heese & Allan, 2012, p. 9). It seems that many sections of the population want to be part of economic growth, and cities and towns are where it is happening. Furthermore, the lack of education and job opportunities are driving people from rural areas to urban environments with a prospect of a better life (A. Van Zyl, 2014, p. 20). Cities will draw younger, middle-class residents, while the growing number of older citizens will probably move to satellite cities and rural areas. According to Ilse French, head of PwC Asset Management and Property Sector in Africa, the world's urban population will increase by 75% to 6.5 billion by 2020 (A. Van Zyl, 2014, p. 20). The urban population of Africa is likely to treble in size by 2015, from 400 million to 1.3 billion, by far the fastest urban growth rate globally (Turok, 2012, p. 13). Interestingly, in Europe the increase in urbanisation from 15% to 50% took approximately 200 years, whereas it is expected that the same increase will take place in Africa in only 80 years (F. Le Roux, 2012, p. 10). The annual urbanisation rate for sub-Saharan Africa is 3.6%, almost double the global average (Palitza, 2013, p. 6).

Concerning urbanisation in South Africa, a study by the Institute of Race Relations found that 62% of South Africans currently live in urban areas (Mkhwanazi, 2013a, p. 4). South Africa is among the most urbanized countries in Africa and has an urban population that is growing rapidly (J. M. Rogerson, Kotze, & Rogerson, 2014, p. S2). More than a million people flowed into the Gauteng Province between 2001 and 2011, and more than 300 000 people migrated to the Western Cape during the same time period (Hazelhurst, 2012, p. 14). It is expected that by 2030, up to 70% of South Africa's population will be living in urban areas and some researchers estimate that the population of South Africa's Gauteng Province (rural and urban) will increase from 11 million to 22 million (A. Van Zyl, 2014, p. 20). Some projections estimate that there could be 3.6 million more people moving specifically to urban areas by 2030 (Naidoo, 2012, p. 6).

Adding to the natural growth in population and rural-urban migration mentioned above, South Africa also faces a largely uncontrolled influx of immigrants into the country, especially from Zimbabwe, Tanzania and Mozambique (Chikanga, 2012, p. 4; M&G Online Reporter, 2015, p. 1; Stegeman, 2015, p. 1). During 2008, South Africa saw several incidents of violent xenophobic attacks throughout the country (Mboya, 2010, p. 20; Shoba, 2008, p. 5). Over the next few years veteran activist Bishop Paul Verryn and the Central Methodist Church in central

Johannesburg featured in the news regularly (Parker, 2010, p. 8; Reuters & AFP, 2015, p. 1). The church opened its doors to immigrants who were desperate for housing after xenophobic attacks. Many argue that it would not have been necessary for the church to go such extreme lengths, if the South Africa government had had a clear, humane and workable national policy towards migrants and refugees (Editorial, 2010b, p. 6). In an interview, Verryn stated: "You can either put razor wire around the church or you can open the doors" (Kuljian, 2010, p. 31). At one stage, more than 3 000 refugees were housed in the church (Thakali, 2010b, p. 2) and over the years thousands more found shelter there, including vulnerable women and children (Lieberum, 2010, p. 6). The living conditions are often challenging, with constant water and sanitation problems (Sapa, 2010, p. 7). Many of the refugees are professionals, including nurses, teachers, university lecturers and artisans. The church and refugees took it upon themselves to uplift the refugee community and even started organising activities and programmes such as adult education, computer training, a crèche, a sewing club, a book club, karate classes and a soccer club, all without government aid or assistance (Kuljian, 2010, p. 31). (See also N. Jackson (2010, p. 2), Cilliers (2010, p. 6) and Rabkin (2010, p. 2).) In 2015, the issue of immigration received renewed attention in the media, due to renewed violent xenophobic attacks (M&G Online Reporter, 2015, p. 1; Mbovu, 2015, p. 1; Wilkinson, 2015a, p. 1).

The 2011 census found that there were 2.2 million people living in South Africa who were born outside the country (Wilkinson, 2015b, p. 1); and in 2013, the estimate was more than 2.4 million (Mwiti, 2015, p. 1). It is believed that many undocumented migrants may have avoided the census workers for fear of their personal data being passed onto the authorities. As a result, there are still no accurate figures of the number of undocumented and illegal immigrants living and working in South Africa (Wilkinson, 2015b, p. 1). Statistics South Africa's official estimate is now of between 500 000 to one million undocumented migrants (Mwiti, 2015, p. 1). Most of the illegal immigrants entering South Africa are desperate for housing, and take shelter in run-down buildings in cities throughout South Africa (Bega, 2010, p. 2; A. Le Roux, 2010, p. 13). (See also Huchzermeyer (2011, p. 24), Thakali (2010c, p. 3) and Tshetlo (2010, p. 3).)

The inevitable, yet important process of urbanisation poses great economic, social and environmental challenges (Turok & Borel-Saladin, 2014, p. 687). Some examples of the difficulties brought about by population growth and urbanisation are shortages of food

supplies, overloaded services, social unrest, demands on infrastructure and public health issues (Mavuso, 2012, p. 9; Turok, 2012, p. 13). It also poses an additional challenge to the existing housing shortage in the vicinity of employment hubs in South Africa. Mohapi (2012, p. 31) states that the town house complex has a major role to play regarding social relations and norms in post-apartheid South Africa. (See also Hazelhurst (2012, p. 14) and Crotty (2012, p. 16).) As a result, sectional title schemes can greatly assist in providing much needed urban accommodation. The next section will focus on the concept of private ownership of land.

1.2.7 Exploring possibilities

South Africa's urban challenges are often considered to be different than those of the rest of Africa because of apartheid leaving a legacy of a fragmented and racially splintered urban landscape. However, Rogerson, Kotze & Rogerson (2014, p. S2) explain that 20 years after the transition into democracy, the sustainability challenges that confront South Africa's cities are increasingly similar to the problems of many other fast-growing African urban areas. According to Gunter (2015, p. S89) the South African informal housing sector functions in a classical neoliberal market, where supply is weak, demand is constantly high, and privatisation, deregulation and withdrawal of the state from many area of social provision is promoted. According to Huchzermeyer (2011, pp. 30–34), global capitalist neoliberal societies have long destined the poor to inhabit city margins. Without concerted effort, little more can be expected from neoliberalism than poverty and despair. The current housing backlog, together with urbanisation and immigration forces many poor individuals into the informal rental market, where they are vulnerable to exploitation. (See also Bond (2010, p. 17,21).) Embling (2013, p. 12) argues that government should start taking its cue from countries like Hong Kong and the United Kingdom in dealing with South Africa's 'sprawling townships'. In an example, the author mentions that even though England has a population of 53 million people (just larger than the South African population of 51.7 million), living in a space nine times smaller than the size of South Africa, it does not seem overcrowded. This is attributable to the fact that many citizens are housed in council housing flats, generally developed close to parks and recreation areas. Embling (2013, p. 12) further argues that the priority of government spending on housing should be to combat overcrowding and inhumane living conditions in townships, stop wasting money on substandard and space-wasting RDP housing. The suggestion is that the building of flats would open up large spaces for recreation areas, sports fields, and parks. According to Nedbank's Affordable Housing Department,

South Africa has an ever-increasing middle class seeking to buy homes priced at under R600 000. (See also Ed. (2012c, p. 10), Ka Plaatjie (2014, p. 22) and Van Zyl (2014, p. 20).)

Rogerson, Kotze & Rogerson (2014, p. S3) explain that for the majority of inhabitants of urban areas in Africa (and South Africa for that matter), the 'informal city' with informal settlements represents the 'real' African city. In facing this challenge, together with the immense housing backlog in South Africa, all possibilities must be explored (Masilela, 2013b, p. 6; Schaug, 2007, p. 9). Sectional title property, either as owner occupied or rental property, can address this problem to a great extent, especially in the middle-income market. Huchzermeyer (2011, pp. 60–61) argues that an increasing growth in rental tenure is probably the only option for the poor and the slightly better-off in order to access and inhabit cities. Van der Merwe (2014, pp. 1–14), Pienaar (2010, pp. 9–10) and Nel (1999, p. V) all agree that sectional title property can assist in providing much needed residential accommodation for households of all income levels, within commuting distance of employment centres. The next section will put the concept of sectional title property into perspective by explaining private and fragmented ownership of land.

1.3 Private ownership of land

1.3.1 A brief history and overview

Throughout history, individualised home ownership has been considered to be one of the building blocks of a sound economy and stable society (Mostert, 2002, pp. 185–188; Pienaar, 2010, p. 3). (See also L. Marais & Cloete (2015, p. 261).) Denis Cowen (2008, p. 280) remarks that the concept is so familiar to Western civilisation that it tends to be taken for granted. Birks (1985, p. 23) notes that at different times and places, different arrangements are made for locating the selfish drive for wealth and material security in the context of society as a whole.

Van der Merwe (1987, pp. 3–9, 1989, pp. 2–9) recounts that property rights have developed with the social organisation of mankind and that private property has been observed as a legal

institution in the most primitive societies, tribes, clans and other groups. Early man was dependent on activities such as hunting, fishing and gathering to acquire things necessary for survival, or items valuable to enhance their societal status. As a result of demand, 'things' became scarce. Subsequently, primitive organised society used physical violence, and later enforced elementary legal rules to control competition, protect individuals' rights to what was killed, caught or gathered, and to ensure enjoyment of them. Cowen (2008, p. 301) explains that individual ownership of movables (things) existed before individual ownership of land. It could be argued that it is unlikely that primitive nomadic communities had a need for landownership. However, as civilisation progressed, it became necessary for primitively organised society to enforce legal rules to ensure that protection was given to the product of man's labour, such as weapons, housing, farming implements and produce. After individual rights to these 'things' were recognised, rules were later developed to govern the exchange thereof. (See also Badenhorst et al. (2006, pp. 3–4).)

Property law is a highly abstract discipline, based on classical principles, tested by time and adapted where necessary (Badenhorst et al., 2006, p. 3). Birks (1985, p. 1) mentions that the social function of the law of property precipitates that the acquisition and enjoyment of things (or wealth) does not occur in isolation, but in a context in which a number of people with competing interests have to live in physical proximity. According to Cowen (2008, pp. 281–302) the legal rules established for individualising portions of the Earth as object of private ownership by means of boundaries are not self-evident and globally the rules differ greatly from system to system. On the one hand, the Native American Indians regarded the notion that land could be privately owned as odd. They complained to George Washington that they could not understand how the white man could regard land as the object of private ownership (Cowen, 2008, p. 280). Some of these views have also been incorporated in socialist-orientated countries (Cowen, 2008, p. 230). On the other hand, long before Christ, as early as the drawing up of the Twelve Tables (the *Leges Duodecim Tabularum*, the ancient legislation that stood at the foundation of Roman law), individual ownership of land had become well-recognised among the Romans (Cowen, 2008, p. 284).

1.3.2 Fragmented ownership of land

Many authors agree (Bennett, 2011, pp. 250–251; Van der Merwe, 2014, pp. 1-3-1–4), that the concept of fragmented landownership has been recognised by a number of civilisations over many centuries. The sale of part of a building was recorded in ancient Babylon nearly two centuries before the birth of Christ. There is evidence of such transactions among the Greeks, Egyptians and in ancient Oriental legal systems. During the Middle Ages, many European cities were enclosed by walls for security purposes, which led to building space becoming scarce.

Due to these space restrictions, individual ‘ownership’ of floors of houses, and even rooms, in the hand of different persons was common in some parts of Europe (See also Van der Merwe (1989, p. 396).) Van der Merwe (2014, pp. 1-3-1–4) explains that during the Germanic period in Germany, the Southern Netherlands, Switzerland and France, storeys of buildings were often acquired in individual ownership. These were used mainly as accommodation, whereas separately owned rooms were used as business premises, such as butcheries. Van der Merwe (2014, pp. 1–4) and Bennett (2011, p. 250) hold the view that, during these early years, the regulation of sectional ownership was in fact more by tradition and usage than by formal legal rules. The main reason why these systems eventually failed to work in practice was due to the fact that matters regarding the management and maintenance of the buildings were left to individual apartment owners. The lack of clear rules and central administrative bodies to deal with management and maintenance functions of the building, led to endless disputes among owners.

Even though fragmented ownership was recognised in ancient Oriental legal systems more than a thousand years before the Christian era, as well as ‘informally’ among some of the Germanic peoples, it was unknown in Roman law (Van der Merwe, 2014, pp. 1–3). In classical Roman legal theory, the only way in which land could be designated as the object of ownership was two-dimensionally on the surface of the earth or, in other words, vertically. The Romans were very conservative in the manner in which they individualised pieces of the Earth as possible objects of ownership and was, therefore, undefined and unlimited in respect of the third, or horizontal, dimension of a piece of land (Badenhorst et al., 2006, pp. 445–446; Pienaar, 2010, pp. 25–26). This concept did not allow one person to be the owner of ground

lying beneath that of another owner. Cowen (2008, p. 304) explains that the reasoning behind this was purely practical. Classical Roman lawyers were reluctant to recognise that certain sections of the earth could be divided into vertical dimensions, mainly because they wished to avoid difficulties of access, and wanted to prevent the complex servitudes which this type of ownership could involve.

The Roman technique of defining land boundaries only vertically and not horizontally was applied to buildings erected on the land. The owner of land in essence owned the piece of land upward into the skies and downwards to the core of the earth – the vertical dimensions above and below the earth's surface were, in theory, undefined and unlimited. The maxim of *superficies solo cedit* according to Roman Dutch legal principles held that a land owner was also considered to be owner of any building erected on the land. One person could not be the owner of the land, and yet another person the owner of the building or parts thereof (Cowen, 2008, p. 306). Furthermore, a building was always seen as a single unit (Pienaar, 2010, p. 22) and ownership consisted of an entire building. For many years many legal systems globally did not allow for sections or pieces of buildings to be bought in separate parts, nor did the law recognise separate ownership in a building or sections of that building apart from the ownership of the land on which the building was built (Shrand, 1972, p. 1; Woudberg, 1999, p. 3). Nineteenth century German legal principles, for instance, argued that once a building has been erected on land it actually adheres to the land, creating a new composite called an 'indivisible whole'. The reasoning behind the argument was that "one cannot divide a building without destroying it" (Cowen, 2008, p. 209).

The Great Depression of the 1930's caused world-wide changes in socio-economic conditions, and the concept of inflation became a harsh reality. The situation was worsened by the extensive destruction of housing during the two World Wars, resulting in a desperate shortage in housing. People started flocking from rural areas to towns and cities, in search of employment. Many countries faced an increase in immigration as well as a growth in population. Rising inflation caused an increase in the cost of land, labour and construction materials. These factors led to shortages in accommodation close to employment hubs. As a result of job shortages and inflation, the average household found it increasingly difficult to afford a freestanding property. Many households could only afford to purchase a component of a building, such as an apartment, but as discussed in the previous paragraph, it was legally

impossible to obtain full ownership of only a section of property such as a flat or apartment (Van der Merwe, 2014, pp. 1–4; Woudberg, 1999, p. 3).

These factors compelled legal systems globally to reconsider the institution of fragmented property ownership. Van der Merwe (2014, pp. 1-4-1–8) gives a detailed overview of the development world-wide. (See also Pienaar (2010, p. 18).) Legislation governing fragmented property ownership was promulgated in various European countries between 1920 and 1970, for example Belgium, Greece, Italy, France, Spain, Austria, Germany, the Netherlands, Portugal, Switzerland, Denmark and Turkey. In the United States of America (USA), Puerto Rico promulgated a statute on condominium in 1958, with other individual states rapidly following. More than 30 states in the USA had enacted condominium legislation and by 1969, all 50 states had passed the legislation (Van der Merwe, 2014, pp. 1–5). As is the case in Europe and North America, fragmented property ownership is also popular in Latin America and the Caribbean. Special legislation has been promulgated in most states from the late 1920's to the mid 1950's, for example Brazil, Chile, Uruguay, Argentina, Colombia, Cuba and Mexico to name but a few. Even some former Socialist European countries (Hungary, Poland, Bulgaria Romania and Yugoslavia) adopted forms of leasehold rights to land and buildings, albeit in a very limited context, between 1920 and 1960 (Van der Merwe, 2014, pp. 1–6). In the Middle East, Far East and Africa countries such as Singapore, Malaysia, Sri Lanka, Japan, Korea, Dubai, Zambia, Tanzania and Namibia all promulgated some form of fragmented property legislation. (A further discussion on international legislation will be done in section 1.4.3 below.)

From the above it is clear how widely fragmented property ownership have been recognised globally for almost a hundred years. Eventually, South Africa also followed suit, and the Sectional Titles Act came into being in 1971. The next section will give a brief introduction on sectional title property in South Africa.

1.4 Sectional title property in South Africa

1.4.1 History and background

Van der Walt (1991, p. 1) explains that when Denis Cowen delivered his now well-known lecture on “New patterns of landownership” at the University of the Witwatersrand in 1984, he was giving the first steps into the unknown in terms of South African legal theory. He also mentions that Van der Merwe, in the 1979 edition of his text book *Sakereg*, was the first author on law to accommodate the ‘modern’ concept of sectional title ownership. According to Van der Walt there was little if any attention given by South African authors to the theoretical developments regarding fragmented ownership that were already taking place globally. A great part of this new way of thinking about property ownership was aimed at a fundamental reevaluation of the definition, characteristics, perception and social functions of ownership.

The South African law of property has mixed origins, with Roman-Dutch law forming the backbone of the South African common law pertaining to property (Pienaar, 2010, p. 5). Badenhorst et al. (2006, pp. 5–7), Mostert et al. (2010, p. 11) and Van der Merwe (1989, p. 3) identify the principles of the Roman law of property as prevalent in most aspects of modern South African private law pertaining to property, being supplemented and reinforced by various aspects of Germanic customary law. In 1971, the Sectional Titles Act ushered in a new era in home-ownership in South Africa. The Sectional Titles Act was assented to on 19 June 1971 and promulgated on 30 June 1971. The Act was finally proclaimed to come into operation almost two years later on 30 March 1973. For the first time in the history of South African law, home owners were able to purchase a section of a building, such as an apartment, with full ownership rights on that section (Nel, 1999, p. 1; G. Paddock, 2008, pp. 1–3; Shrand, 1972, p. 1; Van der Merwe, 2014, pp. 1–9; Woudberg, 1999, p. 3).

Van der Merwe (2014, pp. 1-7-1–8) points out that the South African Sectional Titles Act was influenced by three sets of international legislative enactments, namely the New South Wales Conveyancing (Strata Titles) Act 17 of 1961, the German *Wohnungseigentumsgesetz* and the Israeli *condominium* statute (which influenced the manner of calculating the participation

quota). (See also section 1.4.3.) The original Sectional Titles Act 66 of 1971 was later completely overhauled, improved and replaced by the Sectional Titles Act No. 95 of 1986. The Sectional Titles Act No. 95 of 1986 has been amended by Act No. 11 of 2010, which was published in the Government Gazette on 7 December 2010.

As mentioned in section 1.1 above, the Sectional Titles Amendment Act No. 11 of 2010 contained the final amendments to the 1986 Sectional Titles Act before the split thereof into three separate statutes (Van der Merwe, 2012, pp. 611–612, 2014, pp. 1–35). T. Maree (2015e, p. 1) explains that the original 1986 Act contained a number of problems regarding the examination, approval and filing of scheme rules and dispute resolution. Durham (2015, p. 1) and Van der Merwe (2012, p. 611) refer to the three new pieces of legislation as third generation sectional titles legislation. The Sectional Titles Schemes Management Act No. 8 of 2011 (also referred to as the STSMA), incorporates all governance and management provisions regarding sectional titles. These sections were taken out of the 1986 Act and amended and adapted to create the STSMA. The remainder of the Sectional Titles Act No. 95 of 1986 (STA) was amended by the Sectional Titles Amendment Act No. 33 of 2013. The 1986 Act now contains only technical registrations and survey provisions. The Community Schemes Ombud Service Act No. 9 of 2011 (also referred to as the CSOSA) henceforth provides a dispute resolution mechanism for sectional title and other community schemes. As mentioned in section 1.1, in October 2015 the Department of Human Settlements published in the Government Gazette draft regulations that flesh out how the STSMA and the CSOSA will be applied. The amended management rules as per the old Annexure 8 of the STA were extensively revised and published for comment in the Regulations to the STSMA as Annexure 1 during October 2015 (T. Maree, 2015a, p. 1, 2015f, p. 1). The final revised Regulations were published on 7 October 2016.

During 2010, it was estimated that the South African sectional title industry consists of almost 60 000 schemes (also known as complexes), comprising over 800 000 individual units (Editorial, 2010a, p. 1; Muller, 2009, p. 42; Van der Merwe, 2014, p. 1–30(17)). (See also Editorial (2008, p. 2).) According a recent general household survey issued by Statistics South Africa, there are currently around 714 000 households living in flats or apartments and roughly a further 233 000 households living in town house complexes, adding up to approximately 947 000 households living in sectional title schemes (Statistics South Africa, 2015a, p. 122;125).

Long before the introduction of sectional title ownership in South Africa, the only way in which a person could own a section of a building (fragmented ownership) was by way of share block ownership (Constas & Bleijs, 2009, p. 209). The concept was also popular in other parts of the world, with the first scheme of its kind being formed in New York City in 1882 (Sonnekus, 2015, pp. 1–5). (Refer to *Remarks to the reader* for clarification of the referencing.) South African share block schemes are regulated by the Companies Act of 1973 and the Share Block Control Act of 1980. Sonnekus (2015, pp. 1–3) clarifies that as a consequence of the introduction of the new Companies Act No. 71 of 2008, all references to the Companies Act No. 61 of 1973 in the Share Block Control Act should be read in conjunction with the new Act. Badenhorst et al. (2006, p. 495) explain that buying into a share block scheme involves purchasing ‘shares in a company’ and not an actual apartment. Mostert et al. (2010, p. 103) make it clear that the company owns the building, and the purchased share only entitles the share owner to the use and occupation of a specified portion of the property that is owned by the share block company. The main difference between sectional title ownership and ownership in a share block scheme lies in the nature of the right acquired. The nature of use is real in sectional title ownership, whereas in share block ownership the nature of use is personal. Share block ownership is not considered to be as secure as owning sectional title or free-standing property (Constas & Bleijs, 2009, p. 211; Pienaar, 2010, p. 336; Woudberg, 1999, p. 3). Should a share block company be declared insolvent, the shareholder would only have a concurrent claim against the loan account of the company, and could lose most of his investment. (See also Moodley-Isaacs (2009, p. 3).) Sonnekus (2015, p. 1–6–1–6(1)) suggests that the introduction of various forms of condominium legislation globally, few co-operative housing schemes will be created in future. (See also section 1.4.3 below.) The author explains that even though share block schemes are still in use in the South African environment, the emphasis of share block schemes has shifted to sectional title schemes. Most share block schemes are now mainly used for typical holiday, retirement, golf course and second residential accommodation. A detailed discussion of share block and retirement schemes fall outside of the scope of this study.

Another property concept that has gained popularity in South Africa, especially in the holiday and tourism market over the last 30 years, is time-sharing. Pienaar (2010, p. 9–10; 411) states that time-sharing can be defined as any right to, or interest in the exclusive use or occupation of property, whereby a number of persons can successively occupy property during specified

or determined or determinable recurrent periods in any year. A practical example of time-sharing is where it is used by a time-share holder for sharing the use of accommodation for holiday purposes (e.g. a unit in a seaside block of flats) during a certain period every year. Time-sharing is regulated by the Property Time-sharing Control Act (Badenhorst et al., 2006, pp. 513–515; Mostert et al., 2010, p. 104). Time-sharing in South Africa is a lucrative industry, with more than 740 000 time-share owners countrywide (Crouth, 2015, p. 1). However, the industry is currently being investigated by the National Consumer Commission (NCC). The NCC is preparing cases to take to the National Consumer Tribunal (NCT) due to a host of time-share contracts that last in perpetuity. These contracts are sold by means of deceptive marketing practices, and do not have any cancellation clauses, which is considered to be in breach of the South African Consumer Protection Act (CPA) (Crouth, 2015, p. 1; Editorial, 2014a, p. 1). Sonnekus (2015, pp. 7–3) explains that, in recent years, the development of time-share resorts has come to a virtual standstill due to rising development costs, availability of suitable land and a perception that the ‘time-share bubble’ in South Africa had burst. A detailed discussion of time-sharing schemes falls outside the scope of this study. The next section will deal with the specific aims and benefits of sectional title property.

1.4.2 The aims and benefits of sectional title property

Globally, the reasons for introducing fragmented ownership of property into a legal system are basically similar. Even though there are many differences in geographical, economic and social environments, societies mostly have similar needs, face similar problems, and there are similar solutions available in terms of social, economic and psychological needs (Van der Merwe, 2014, pp. 1–19).

Van der Merwe (1989, p. 397, 2014, pp. 1–19) considers the most important aim of sectional ownership to provide urgently needed residential accommodation for people with various income levels within commuting distance of employment centres. There are a number of factors that contribute to an acute shortage of housing in the vicinity of city centres. The most important of these are the natural population growth, immigration, urbanisation, and the decline in the number of individuals per household, all of which were discussed in detail section 1.2.6 above. Due to inflation, the cost of building materials and land in the proximity of city centres keep on increasing. As was pointed out above, according to Rogerson et al. (2014,

p. S2), South Africa is among the most urbanised countries in Africa. Pienaar (2010, pp. 8–9) explains that although South Africa is a relatively spacious country, mass urbanisation after the demise of apartheid, and the repeal of the Group Areas Act No. 36 of 1966 adds to the massive urban housing shortage. (See also Cowen (2008, p. 285).)

Pienaar (2010, pp. 9–10) and Van der Merwe (1989, p. 397) both agree that the modern city dweller needs less garden space and more built-up space. In the early 1900's, the average housing space per individual per household was 28 square metres, and has since then increased to almost three times as much. Cowen (2008, p. 289) adds that sectional title property encourages more efficient utilisation of land resources and more creative ways of construction in urban areas. If a piece of land is used for a high-rise residential development, the density can be far greater than for a single-storey development.

As the population density in the developments are much higher, the cost is therefore much lower than when using the land for single-family housing. Buyers into sectional title property can possibly acquire convenient urban accommodation at attractive prices. The selling price of such a unit would generally be lower than the price of conventional housing with similar dimensions. Woudberg (1999, p. 5) explains that the lower cost can be attributed to various factors such as sharing of walls, floor, corridors, and driveways (so-called common property) as well as a more efficient utilisation of land, to name but a few. This can bring home ownership within reach of households who cannot afford a conventional single-housing unit.

A further aim of sectional title legislation is to satisfy the psychological need for home ownership to which society in general aspires (Cowen, 2008, p. 289). Van der Merwe (1989, p. 397) states that sectional title property has created an additional possibility besides the traditional options of buying a house or renting an apartment, namely the possibility of buying a town house or apartment, in effect thus availing the social status associated with home ownership to a larger segment of the population. (See also Cowen (2008, p. 286).) Van der Merwe (2014, pp. 1–11) further explains that globally, legislation on fragmented property ownership was designed to achieve not only sociological and industrial, but also political stability. He comments that fragmented ownership played a particularly significant role in Western Europe (especially Germany) after World War 2 when thousands of homeless families had to be resettled. The same argument can be used in the South African context,

seeing sectional ownership as combating great housing shortages after the demise of apartheid, and the repeal of the Group Areas Act No. 36 of 1966.

Van der Merwe (1989, p. 397, 2014, pp. 1–11) and Cowen (2008, pp. 290–291) state that owning property instead of having to rent, not only enhances social status, but provides home owners with a necessary hedge against inflation. Rather than paying a monthly rent, in effect assisting a landlord to pay off a home loan, and having nothing to show for it at the end of the year, the sectional owner pays his monthly mortgage instalments. As a result, the sectional owner's asset base normally grows, and a unit can even be sold at a later stage at a profit. Ownership of property usually has an important investment potential (Kloppers, 2013b, p. 6). (See also Smith (2009, p. 2), Wilson (2006, p. 22) and I-Net Bridge (2009, p. 15).) Pienaar (2010, p. 15) also adds that sectional property ownership frees an owner of potential whims and restrictions imposed by a landlord.

Pienaar (2010, p. 11), Woudberg (1999, p. 5), Cowen (2008, pp. 292–293) and Van der Merwe (2014, pp. 1–12) explain that sectional title living also makes sense from a safety perspective. Due to the fact that in a sectional title complex, households generally live in relative close proximity to each other, security is usually tighter than in free-standing houses. Crime is a harsh reality in South Africa (South African Police Service, 2015, p. 1), and many people prefer living in closer proximity to their neighbours simply because it is perceived to be safer (Greyvensteins Attorneys, 2015, p. 1). Sectional title complexes with good security provide residents the benefit of 'lock-up-and-go' without having to worry about the safety of their property.

Another advantage of sectional title living includes a lower maintenance burden on the owner. Owners in sectional title schemes can share common utilities such as gardens, swimming pools, tennis courts, laundry facilities and even recreational facilities, which few of them might be able to afford individually. Sharing the cost of these resources among the owners makes it much more affordable, and the responsibility of managing them is also shared among owners by way of an estimated monthly maintenance levy – on average not more than approximately one-half of the running costs of a conventional house with comparable amenities (Van der Merwe, 2014, pp. 1–12).

Over and above the important security features, sectional ownership also has the potential of providing a closer social life, without complete loss of privacy. Even though conventional home ownership may be exclusive, individualistic and offer maximum privacy, many young professionals, unmarried persons, childless or elderly couples prefer the sense of community to be offered in a sectional title community (Muller, 2008, p. 47; Pienaar, 2010, p. 11; Van der Merwe, 2014, pp. 1–12). Cowen (2008, pp. 292–293) believes that within a properly structured sectional title framework, it is possible for a community to live together happily and harmoniously.

Apart from providing housing accommodation for residential purposes, sectional ownership is also intended to benefit the small businessman and professional people. Considering that the Sectional Titles Act governs not only residential property and places no restriction on the type of building that can be utilised, units can even include factories, offices, retail space and warehouses. In commercial or mixed-use buildings, units can be used for medical practices, offices, guest houses, small factories, dry cleaning businesses and retail spaces. Van der Merwe refers to this as the ‘many faces of condominiums’ (2015, p. 55). Van der Merwe (2014, pp. 1-13-1–14) states that, as is the case on the residential side, there are various advantages of industrial or commercial sectional ownership. Sectional ownership allows start-up businesses, entrepreneurs and small enterprises an opportunity to purchase suitable premises under sectional ownership, instead of renting. Sectional title schemes also offer a number of possibilities for the development of holiday resorts in South Africa.

Cowen (2008, p. 296) and Van der Merwe (2014, pp. 1–21) emphasise the important role the institution can play in urban replanning and redevelopment of run-down sections of cities and thereby restoring some of the lost lustre of city living. Over the past few years there have been a great number of successful overhaul and facelift projects, especially in the Johannesburg and Cape Town city centres (Bauer, 2012, p. 16; Buthelezi, 2012, p. 8; Kloppers, 2012b, p. 12, 2013b, p. 6; Muller, 2013, p. 1; C. Smith, 2012, p. 20). Entire sections of cities can be renewed and modernised with sectional title developments and upgrades to the advantage of all concerned. (See also Bradlow (2010, p. 13), May (2010, p. 19) and SAPA-AFP (2012, p. 7).) Probably the best example of an inner-city revamping project is the turnaround of the Ponte Towers Building. Once considered to be one of the most elite dwellings in the city, the

54-storey skyscraper turned into the most notorious building in Johannesburg, derelict and run by drug dealers, prostitution networks and thugs over the course of two decades. In 2001, the East London based property group that owns the building embarked on a turnaround project. The building is now restored, and once again safe to live in.

In the following section, a brief overview will be given of fragmented property forms similar to sectional titles in other parts of the world.

1.4.3 International comparison of similar property forms

Van der Merwe (2014, p. 1–10(1)) points out that the reasons for introducing sectional ownership into legal systems are more or less similar all over the world. Concepts similar to sectional title schemes are recognised and in place across the globe, where a specified piece of property is individually owed either for residential or non-residential purposes. Van der Merwe (2014, p. 1–30(15)) further mentions that although it was first treated with suspicion, fragmented ownership schemes are today the most important form of housing in Europe. Globally, various legal terms and naming conventions are used for these schemes, such as condominium, apartment, flat, divided co-property and strata title, to name but a few. There is little difference between the appearance and operation of schemes globally, except for the forms of ownership and other purely legal concepts. As a rule, owners are usually allowed to modify the interiors of their units to their liking, provided it does not impact the common areas. These common areas and the rights to other common utilities are usually governed by some form of owners' association. Schemes vary between clusters of detached single units, maisonettes, blocks of flats, duplexes, town house complexes, gated communities, planned neighbourhoods, high-rise buildings and more (Van der Merwe, 2014, pp. 1–14).

As mentioned in section 1.4.1, the South African Sectional Title legislation has been modelled largely on the Conveyancing (Strata Titles) Act, 1961 (Act No.17 of 1961) of New South Wales, which served as a guidepost. The South African legislation was also supplemented by some principles of the German *Wohnungseigentumsgesetz* of 1951 (Pienaar, 2010, p. 18) and the Israeli *condominium* statute which largely shaped the manner of calculating the participation quota. Other countries with legislation influenced by the Australian system include, among

others, Canada, Indonesia, Singapore, Malaysia, New Zealand, Abu Dhabi, Dubai, Macau, Fiji, the Philippines and India (Andreone, 2011, p. 1).

In discussing the practical significance of condominiums, Van der Merwe (2015, pp. 65–66) points out that it is estimated that ninety per cent of condominiums in Spain, Norway, South Africa, Slovenia and the Netherlands are residential or mixed use schemes and sixty per cent of condominiums in France are mixed use schemes. In South Africa, five per cent of condominiums are used as offices or industries, while a further five per cent are resort condominiums. In Spain, one per cent of condominiums are used for industries, two per cent for resorts, and five per cent for offices. In Sweden, just over ninety-eight per cent of real estate cooperatives are used for residential purposes, with the rest being used for non-residential purposes. In Germany and Catalonia, most condominiums are either entirely residential or primarily residential, with a small number of commercial units, which are usually on the ground floor of buildings. Van der Merwe (2015, p. 66) comments that pure commercial condominiums are scarce throughout Europe, but a few exist as hotel condominiums. Although condominiums are primarily intended for residential purposes, Van der Merwe (2015, p. 55) points out that, globally, the institution is also utilised for parking garages, motels, cemeteries, hotels, shopping centres, street markets, etc. The concept of non-residential uses for condominiums is more developed in the United States, Brazil and Canada, than in Europe.

A full global comparative study of similar international property forms falls outside the scope of this study. Throughout the rest of the study, some international comparisons will be discussed where applicable. The next section will briefly explain how selected property schemes similar to sectional titles operate in other parts of the world. The specific countries that will be discussed are the United Kingdom, the United States of America, Canada, Australia, New Zealand, Germany, Spain, India, Scandinavian countries, Singapore and Japan.

1.4.3.1 The United Kingdom

In England and Wales, property ownership can take one of two forms, being either freehold or leasehold (HomeOwners Alliance Ltd., 2013, p. 1). A freehold interest in land, on the one

hand, is the most complete right or interest in property possible, as all land is technically held subject to the Crown. In practice it means the outright ownership of land or property for an unlimited period and applies to the majority of houses in England and Wales. A leasehold interest is, on the other hand, a temporary right to occupy land or property. A person who owns the freehold interest in a property may also grant a lease on it to another person, creating a landlord-tenant relationship. Most flats in England and Wales are held on leases, as are many houses. Leaseholders can sell their properties at any point during the lifetime of the lease, which means that property can change hands several times during the life of a lease (Department for Communities and Local Government, 2015, p. 9) and when the lease expires, the property reverts to the original owner (the freeholder). As a tenant under a long lease, an individual buys the temporary right to live in a property for a fixed number of years.

According to an article in *The Guardian* (Lunn, 2013, p. 1) approximately three million people in the United Kingdom – many of whom are first-time buyers – own leasehold flats, and this is set to rise as most newly built flats are sold leasehold. Historically, most flat leases were for 99 years, although more recent leases may be for 125 years. Some lease terms are as short as 21 years, while some even extend to 999 years (Price, 2015, p. 1).

Even though flat ownership had for a long time been recognised in England and Wales, the system similar to 'sectional titles' was only recently promulgated (Department for Communities and Local Government, 2009, p. 10). Commonhold is a variant of freehold, created by the Commonhold and Leasehold Reform Act of 2002 (Parliament of the United Kingdom, 2002), whereby a multi-occupancy building is divided into a number of freehold units in such a way that every individual flat owns its own freehold. The common parts, such as hallways and staircases are owned and managed by a Commonhold Association, a company that is itself owned by the freeholders of the flats.

These schemes do not operate on the same level of sophistication as South African Sectional Title Schemes. In some of these schemes, the common property is maintained by the developer for which the lessees are required to pay a service charge. In other instances, the lessee will be responsible for paying all the costs in connection with the maintenance and repair of the flat and will have also paid a considerable sum to purchase the lease in the first place. There are also some alternative methods available for common property maintenance.

One example is an arrangement in terms of which the lessees enter into a co-operative scheme where each lessee contributes to a pool of funds established specifically for the maintenance and upkeep of the common property. Furthermore, the Commonhold and Leasehold Reform Act 2002 can give certain long leaseholders of flats a right to force the transfer of the landlord's management functions to a company run by them (Rant, 2011, p. 1). Another method is the formation of a separate service company, usually administered by an agent (Lunn, 2013, p. 1), which undertakes the maintenance and upkeep of the common property, financed by the lessees' contributions based on a prescribed formula. (See also Department for Communities and Local Government (2015, p. 10).)

Multi-unit developments in Ireland are based on long leases of units in the scheme building being granted by a developer to initial unit buyers. The Irish law of long leases is based on the common law, and was recently streamlined after a detailed review (Van der Merwe, 2015, p. 43). The Multi-Unit Developments Act 2011 came into effect in Ireland on 1 April 2011, and seeks to address problems relating to the ownership and management of the common areas of both existing and new multi-unit developments. The Law also aims to facilitate the fair and effective management of bodies responsible for the management of such areas.

Tenement buildings have been in existence in Scotland since medieval times. However, over the years, Scottish tenement law and conveyancing practices became fraught with difficulties and disputes (Van der Merwe, 2015, pp. 44–45). The first tenement statute in more than 400 years was introduced in 2004. The Tenements (Scotland) Act 2004 was promulgated with the aim of codifying and clarifying the previously disputed common law, and to put in place a statutory Tenement Management Scheme. In 2009, a new form of tenement structure was also made possible, namely the Development Management Scheme (DMS) under the Title Conditions (Scotland) Act 2003 (Van der Merwe, 2015, pp. 45–46).

1.4.3.2 The United States of America

Following President John F. Kennedy's signing of the National Housing Act of 1961 on 30 June 1961, the law of condominium developed rapidly in the United States of America (USA). In the USA, all the various states have their own piece of legislation governing

condominium. The statutes on condominium law for many of the states were based on the Puerto Rican Horizontal Property Act (Bennett, 2011, p. 253). Even though some detail differs from state to state, the main operations remain the same. The states of Arkansas and Hawaii were the first states to pass condominium-enabling statutes in 1961, followed by Arizona, Kentucky, South Carolina and Virginia. By 1969, Vermont became the final state in the United States of America to enact legislation (Van der Merwe, 2014, pp. 1–5).

A condominium, or condo as it is sometimes informally referred to, is a type of property ownership under which an individual owns a particular unit in a multi-unit development. Lasner (2007, p. 531) as well as Bennett (2011, p. 256) explains that an owner of a condominium has exclusive individual ownership of the interior of the unit or apartment. Furthermore, ownership of a condominium includes a partial ownership of all areas of the property outside the individual apartment spaces such as pathway, parking, gardens and recreational areas. These common facilities are also known as the common elements. The expenses for common areas and facilities, such as the maintenance of grounds and buildings, swimming pools, clubhouses, and other amenities are shared by the individual owners.

At the time of purchase, the owner of a unit automatically becomes a member of the 'community association', which governs the community and ensures that the common elements are properly cared for and maintained. In many cases, the community association elects a board of directors from among the unit owners to assist practically with these functions on a day-to-day basis (Smith-Alvis, 2007, p. 89). The board basically functions as the 'government' of the complex, and can set guidelines, enforce rules, and even change by-laws as they see fit, within legal parameters. (See also Bennett (2011, pp. 272–274).)

1.4.3.3 Canada

The Canada Mortgage and Housing Corporation (2013, p. 1) states that 'condominium' refers to a form of legal ownership, as opposed to a style of construction. Condominiums are most often thought of as units in high-rise residential buildings, but can also take the form of low-rise residential buildings (fewer than four storeys), town house or row house complexes, duplexes, triplexes, single-detached houses, or even vacant land upon which owners may

build. Canadian condominiums can also take a mixed-use form, which can be partly residential and partly commercial.

According to the Canada Mortgage and Housing Corporation, approximately one million Canadian households own a condominium (2013, p. iii). The provinces in Canada all have separate pieces of legislation in place to govern the ownership of individual units in multi-unit buildings (D’Orazio, 2015, p. 1). However, the legal term ‘condominium’ is used for most sectional type housing in Canada. In the province of British Columbia, it is referred to (similar to the Australian term discussed in 1.4.3.4) as ‘strata title’, governed by the British Columbia Stratus Act. In the province of Quebec, the property is informally referred to as ‘divided co-property’ (*copropriété divisée* in French), under authority of the Quebec Condominium Act. The provinces of Ontario, Alberta, Manitoba, New Brunswick, Newfoundland, Labrador, Nova Scotia, Prince Edward Island, Saskatchewan and Yukon each have their own individual Condominium Act (Condo Owners Association COA, 2015, p. 1).

Besides paying their own mortgages, taxes and utilities, condominium owners pay a monthly fee that contributes to the condominium’s reserve fund and to operating and maintenance costs. The reserve fund is money set aside for future, major repairs. The maintenance fee pays the collective cost of operating costs such as property taxes, property maintenance, ordinary repairs, replacements and insurance (Canada Mortgage and Housing Corporation, 2007, p. 33).

1.4.3.4 Australia

According to Andreone (2011, p. 1) the first apartments in Australia were built in the early twentieth century. These early ownership structures were via company title. In the post-war period, many more low-rise apartments were built and rented mainly to younger occupants who were saving for a home of their own. In the 1950s, Australia saw increasing income, and the resulting wealth levels led to a strong need to own apartments. Innovators explored the possibility of apartment titling options and strata title laws were initiated in New South Wales. The Australian Strata Titles Act was modelled on the Conveyancing (Strata Titles) Act 1961 (NSW). The Strata Titles Act was enacted in 1985 in response to the growing demand in

Western Australia for occupation of individual units in a single building on an ownership basis and the generally unsatisfactory methods of dealing with that demand (Law Reform Commission of Western Australia, 2002, p. 159). Residential strata schemes provide for grouped housing with a community atmosphere with the added benefit of the use of common facilities, such as bore holes and swimming pools. Strata schemes are also practical for industrial and commercial developments (Western Australian Land Information Authority, 2012, p. 1). Van der Merwe (2014, p. 1–30(15)) points out that in 2011 there were at least 300 000 strata title corporations in Australia, comprising close to 3 million strata title units.

Similar to the South African benefits, the cost of buying into and living in strata schemes in Australia is usually comparatively less than the cost of buying into non-strata freehold title properties. Due to the fact that all the buildings are part of a single scheme and the planning requirements are relaxed, costs are significantly reduced by allowing larger buildings on smaller lots and shared services such as electricity, gas, sewerage and water (Western Australian Land Information Authority, 2012, p. 1). Andreone (2011, p. 1) mentions that during the 1970's, the ground-breaking Australian strata title legislation was copied in Canada, New Zealand, Singapore, South Africa, Indonesia, Malaysia, Cayman Islands, India and Hong Kong. The Australian legislation therefore remains important for many scholars, lawyers, professionals and academics worldwide (Van der Merwe, 2014, pp. 1–5).

1.4.3.5 New Zealand

As mentioned above, the New Zealand legislation was directly influenced by Australian law, and is in many aspects similar to South African sectional titles. Unit titles in New Zealand are governed by the Unit Titles Act 2010 (which replaced the Unit Titles Act of 1972). According to the New Zealand Department of Building and Housing, unit titles are the most widely used form of multi-unit property ownership. Unit titles allow owners to privately own an area of land or part of a building and share common property with other unit owners (Department of Building and Housing, 2011, p. 3). Similar to South African sectional titles, all the unit owners in a unit title development make up the body corporate. Every new unit owner automatically becomes a member of the body corporate. The responsibilities of a body corporate include a range of management, financial and administrative matters relating to the common property and the unit title development as a whole (Department of Building and Housing, 2011, p. 9).

Unit title developments also have a body corporate management structure to ensure that decisions affecting the development can be made jointly by the unit owners. A body corporate of nine or fewer units can elect not to form a body corporate committee (Lundon, Kelleher, Von Dadelszen, Whittington, & Buchan, 2011, p. 4).

1.4.3.6 Germany

During World War II, many buildings in Germany were destroyed and millions of refugees from the East migrated to West Germany. Van der Merwe (2015, p. 32) explains that the German Law on Apartment Ownership was introduced in 1951, with the main purpose of solving the severe housing shortage in West Germany after World War II. The introduction of the legislation was based on the view that the establishment of private ownership of individual units in a subdivided building was the only way to release private equity of future owners and their potential loan capital for the construction of more buildings. As mentioned in 1.4.1 and 1.4.3 above, the German *Wohnungseigentumsgesetz* had a great influence on the South African sectional title legislation. The German Law of 1951 was significantly amended in 2007.

1.4.3.7 Spain

According to the website of Ocean Ridge Property (2012, p. 1), approximately 90% of the population of Spain live in community property. This property form is called horizontal property, and is governed by the Horizontal Property Act 49/1960. According to this system of ownership, the owner of each unit has absolute ownership of his own unit, as well as co-ownership of common elements, belongings and facilities along with other unit owners. Each unit is allocated a percentage assessment quota, which determines the unit's share in the community expenses and benefits (Traductores, 2003, p. 2).

According to Horizontal Property Law (*Ley de propiedad horizontal*) every unit owner belongs to the community of owners (*comunidad de propietarios*). The community of owners is obliged to properly maintain and ensure that the property remains in good repair. They are also responsible for the habitability and structural integrity of the buildings and common areas

under their responsibility. The owners of a community can choose to elect a governing body to assist in the day-to-day running of the property. The maintenance and administration is funded by the community of owners using the participation quota applied to the budget as prepared by the administrator of the governing body (Velasco, 2011, p. 1). (See also Nesbitt (2012, p. 1).)

1.4.3.8 India

In India, the Maharashtra Apartment Ownership Act, 1970, provides for the formation of a condominium (Editorial, 2013a, p. 1). The buyers of premises in a condominium are called apartment owners who form an association known as an 'association of apartment owners'. Apartment ownership can be applied to residential as well as non-residential premises. A condominium can be formed, even if one person owns the entire building, provided that there are at least five apartments in the building. In an Indian condominium, every apartment owner has a voting right in proportion to the value of his premises — which is generally as per the area of the apartment owned by him and which is defined while forming the Condominium (Shah, 2014, p. 1). In an apartment, the builder retains the ownership of the open spaces (common areas) which are not included in the saleable area.

1.4.3.9 Scandinavian countries

Condominiums are not very prevalent throughout the countries of Scandinavia. According to Van der Merwe (2015, pp. 47–51) a form of apartment ownership in multi-apartment residential buildings has been recognised in Iceland since 1959, and Denmark introduced laws on apartment ownership in 1966. Existing buildings in Denmark could be converted into condominiums, but shortly thereafter, restrictions were introduced prohibiting the conversion of buildings built before 1966 into residential condominiums. In 1983, Norway introduced a very elementary form of condominium, and privately owned apartments were only introduced in Sweden in 2009. In Sweden as well as Finland, privately owned apartments have gained very little popularity in practice, mainly because housing cooperatives (closely resembling American real estate cooperatives) continue to be widely used instead of condominiums.

1.4.3.10 Singapore

In the densely populated compact city-state of Singapore, many people live in strata-titled properties like apartments and condominiums. The Building Maintenance and Strata Management Act (BMSMA), which was greatly influenced by the Australian legislation mentioned in 1.4.3.4, governs all strata-title property in Singapore (Building and Construction Authority of Singapore, 2005, p. 1). Strata property can be either residential, commercial or mixed-use (Vijayan, 2015, p. 1). Strata communities own, enjoy and share the responsibility for the upkeep of common facilities like lifts, parking areas and recreational facilities such as swimming pools, tennis courts and gyms. The strata developer allocates a share value to all units in the development. The share value of an owner's strata lot determines his contributions towards maintenance, voting rights and share in the common property (Building and Construction Authority of Singapore, 2005, p. 3). Strata property is managed by the so-called 'management corporation' (MC) (Vijayan, 2015, p. 1). The BMSMA empowers the management corporation (MC) of each development to control and manage the common property (Building and Construction Authority of Singapore, 2005, p. 6;11). A management corporation may employ the services of a managing agent to help the MC in the day-to-day running of the strata scheme. A managing agent can be appointed for a term of up to three years, but the managing agent's performance must be reviewed at every annual general meeting (Building and Construction Authority of Singapore, 2005, p. 21).

1.4.3.11 Japan

Kamano (2012, p. 1) points out that roughly 6 million condominium units exist in Japan, housing about 14 million people. Condominiums for the masses first appeared in Japan in the mid-1950s, initially as a means of alleviating the urban housing shortage after World War II (Brasor & Tsubuku, 2014, p. 1). The basic Japanese legislation regarding buildings with unit ownership was established with reference to legislation in Germany in 1962 when condominiums in Japan were becoming increasingly common. Kamano (2012, p. 1) explains that the basics of the Act on Unit Ownership is very similar to legislation in European and American countries. The owners of the condominium units form the Association of Unit Owners for the purpose of managing the condominium units. A significant difference in legislation of countries in Europe and America is the feature based on Japanese civil legislation that does not deem a building and the grounds thereof as unified real estate, but

separate and independent real estate. Japan also faces many unique construction and reconstruction challenges due to the fact that seismic changes and earthquakes regularly cause great damage to condominium buildings. The Act allows for a number of alternatives for recovering from natural disasters, such as the demolishing and reconstruction of condominium buildings (Brasor & Tsubuku, 2014, p. 1).

1.4.4 Some recent property and sectional title fraud scandals in South Africa

The property industry in general, including the sectional title industry in South Africa, has been hit by a number of large fraud scandals in the past few years. Therefore, a few recent incidents will be discussed briefly, in order to sketch the background for the importance of good management and governance. According to the head of residential property management company, Trafalgar, sectional title owners are increasingly taking trustees to court over negligence, poor performance and fraud. There has never been a greater need for good governance in the sectional title industry in South Africa (Editorial, 2006, p. 2).

Wessels (2011, pp. 14–18) gives an overview of some large property fraud incidents. In 2008, the Theodosiou brothers were liquidated for developing malls in Gauteng without the proper council and planning permission. In the case of King Financial Services in 2009, it came to light that the three brothers King from Wellington defrauded more than 100 000 individuals with promises of returns of more than 30% per month. The Ponzi scheme Sharemax Investments has been in the media since 2010 and the case still drags on in 2016. About 40 000 people invested a total of around R4.5 billion in the various schemes promoted and marketed by Sharemax, which included large property portfolios.

Since 2011, the high-profile case of the flamboyant ‘property queen’ Wendy Machanik has been reported on in the media regularly. At its peak, her company, Wendy Machanik Property, had an annual turnover of just under R1 billion (Salomon, 2012, p. 48). The company was put under liquidation in 2011. She allegedly made R28 million in irregular transfers from Wendy

Machanik property Holdings to a fictitious account in an attempt to keep her company and lifestyle afloat. The criminal case still continues in 2016.

One of the largest scandals was the case of Constantia Sectional Title Management (CSTM). The cover feature of Finweek magazine of 18 August 2011 stated that the sectional title industry was 'in the crossfire'. CSTM was a sectional title managing agent, responsible for management of about 450 bodies corporate (more than 20 000 flats and town houses) in and around Gauteng, the owners of which consistently paid over money towards municipal bills and other expenses. CSTM collected millions of rand in fees from its clients and that was then deposited into a single trust account. The CEO, Quentin Brown, was a signatory of the account and suggestions are that he allegedly misappropriated around R80 million from the account (Serrao, 2011, p. 1). During 2011, top forensic investigator Lawrence Moepi was appointed as the curator on the CSTM fraud case. In an unfortunate turn of events, Moepi was shot dead in the parking lot of the auditing firm SizweNtsalubaGobodo in October 2013 (Editorial, 2013b, p. 1). This was a big setback in the CSTM case, and the forensic investigation still drags on in 2016.

During March 2008, the Cape Town sectional title managing agent, Sectional Title Administrators (STA), was liquidated amid charges of fraud and misappropriation of funds totalling around R6.8 million. The company collected levies from individual owners on behalf of the more than 70 bodies corporate that it managed on Cape Town's Atlantic seaboard. Levies were deposited into current accounts held in the names of the individual bodies corporate, and all expenses paid. In most cases, the owners of STA had sole signing powers on the current accounts. Over the course of 10 years, STA made agreements with the bodies corporate that it would transfer any surplus money into interest-bearing accounts held in the names of the individual bodies corporate. However, all surplus monies were deposited into one single non-interest bearing current account in the name of STA. In December each year, or when otherwise requested, STA would issue the bodies corporate with handwritten statements of their 'investment accounts' including balances and interest earned. The owners of STA used the money for their own private expenses. During an audit, it was confirmed that the balance of the current account should have been over R6 million, but only R32 000 of the funds remained (Moodley-Isaacs, 2008, p. 1). The final outcome of the investigation and proceedings was not covered by the media.

Early in 2012, Auction Alliance was ordered to pay more than R2 million to a client, plus legal fees, after being found guilty of attempting to sell 71 luxury sectional title units in a large Hartenbos development that did not match its advertising. Almost a third of the units were incomplete, many still needed major building work, the property was not surrounded by boundary walls, the property was not a 'security resort' as advertised and 62 additional vacant stands had no service as claimed (Solomons, 2012, p. 6). During 2012, the EAAB attempted to conduct a search of Auction Alliance's premises following receipt of information by the EAAB which suggested serious wrongdoing within Auction Alliance together with disturbing breaches of both the Estate Agency Affairs Act and the Financial Intelligence Centre Act. Auction Alliance and former CEO, Rael Levitt, attempted to prevent the EAAB inspection of an alleged paper trail of years of financial misconduct and other serious wrongdoings involving rigging auctions. They challenged the validity of search warrants and the constitutionality of the statutory provisions under which the EAAB sought to inspect them (Rabkin, 2013, p. 5). (See also Samodien (2013, p. 6).) In March 2015, a withering judgement was handed down by the constitutional court. As a result of the ruling, Levitt has lost his battle to prevent the Hawks from investigating allegations of fraud, corruption and money laundering against himself and the company he founded. Forde (2015, p. 1) reports that the ruling now paves the way for the Hawks to access evidence that is sitting in more than 100 bags and scores of boxes which they seized in August 2012. The investigation still drags on in 2016.

Spitskop Village Properties and Bluezone Property Investments operated as a property syndication development in Limpopo. The property syndicate has fraudulently earned more than R416 million from 1 216 investors since 2003. Despite costs being incurred and contractors appointed, the promised development in Mpumalanga never materialised, and it also came to light that there was a land claim registered on the property. The companies were liquidated in 2009. In 2011, the Financial Services Ombud referred Bluezone's attorneys to the Law Society as well as the National Prosecuting Authority (Hartdegen, 2011, p. 1). In 2013, the Spitskop Village Property Limited scheme was identified as an illegal scheme by the Supreme Court of Appeal in Bloemfontein after the matter was argued in front of a full bench, consisting of five judges (Van Rooyen, 2013, p. 2).

Adprop Property Management, a managing agency for about 70 schemes in Johannesburg, was placed under curatorship in January 2013 after the EAAB applied for an interdict to stop them from trading due to serious financial irregularities, including operating without a Fidelity Fund Certificate for more than five years (Mbanjwa, 2013, pp. 3–4). Ardé (2013, p. 1) reported that one single body corporate administered by Adprop found out that they owed the City of Johannesburg more than R200 000 in electricity fees which Adprop was supposed to pay over to the council on its behalf. To date, further developments regarding the investigation into Adprop have not been covered by the media.

The Estate Agency Affairs Board (EAAB) has been investigating Deston Property Management since 2014 for misappropriating funds belonging to a number of bodies corporate that it managed. One of the bodies corporate reported to the police that funds in excess of R400 000 were misappropriated. The Cape Town-based agent is repaying all misappropriated funds to the bodies corporate in terms of a settlement reached in the Cape Town High Court (Ardé, 2014, p. 1). The EAAB is also taking disciplinary action against Deston for trading without a valid fidelity fund certificate and for failing to submit audit reports to the board (Ardé, 2014, p. 2). The final outcome of the investigation and proceedings has not yet been covered by the media.

During 2011, it was reported that for some time the property syndication group, initially known as PIC Syndications (later Picvest Investments), has been selling units to investors with the assurance that their income and capital were 'guaranteed'. Picvest promoted 22 different property syndication schemes known as Highveld Syndications (HS), which were placed under business rescue (Barry, 2014, p. 1). Investors bought units (a mixture of shares and loan accounts) in any one of the HS companies, in return for which they would receive property. The seller of the buildings, property giant Nic Georgiou, undertook to rent them from investors for five years (Cobbett, 2012, p. 1). Georgiou also promised to buy the buildings back from investors after five years at the price at which they were originally sold (Barry, 2015a, p. 1). This arrangement was supposed to provide certainty to investors, meaning they could expect a predetermined monthly income and a return on their money after five years, making Picvest's products popular among those who required a stable income. Investors entered into these buy-back agreements with a company called Zelpy, now Zephan Pty (Ltd), which belongs to Georgiou. Many have questioned the supposed guarantee, which were backed by Georgiou and his associated entities. While Georgiou appeared to be a wealthy

businessman, his financial affairs were not open to public scrutiny, and investor and financial advisers found it impossible to determine his net wealth (Cobbett, 2011, p. 1). Georgiou had a head lease agreement to rent buildings from the investors, but the actual tenants in the buildings (including some large supermarket chains) were forced to conclude their deals with Georgiou himself. The amounts of the actual rental income have never been open to public scrutiny. Investigators started asking uncomfortable questions, such as whether Georgiou was not perhaps paying an inflated rent for the buildings, which would make them appear more valuable than they actually were. This would be to Georgiou's advantage, considering that he sells buildings to PIC investors. In fact, at one stage Georgiou bought two buildings, Glen Gables and Highveld Centurion, from Sharemax investors and attempted to sell them to PIC investors at more than twice the buying price (Cobbett, 2011, p. 1). At a certain point, the rental income from the portfolios could not keep up with the interest payments, because the income from the portfolios was considerably lower than the interest paid to investors. Questions were also being raised about R3.5 billion worth of syndications sold to the investors — for which properties were never actually transferred into their names. Initially however, investors were mostly placid because they indeed received the monthly income that was promised to them. The return offered to investors varied, depending on the syndication. For example, Highveld 19 offered an initial return of 8%, increasing by 8.5% each year; Highveld 20 offered 10%, increasing at 4.2% each year and Highveld 21 offered 12.5% fixed for five years (Barry, 2015b, p. 1). The final outcome of the investigation and proceedings was not yet covered by the media.

It was only in April 2011, when their income was sharply reduced, that most investors started demanding answers of Picvest. Investors were shocked when it was announced that there would be drastic reduction in their monthly income payments and that Georgiou had 'cancelled' his guarantees. PIC came under scrutiny from the Financial Services Board, Securities Regulation Panel, the Competition Board and the South African Reserve Bank. Cobbett (2012, p. 1) reports that a rescue plan was put in place and that Georgiou had to repay R4.6 billion to about 18 000 investors. In early 2015, a judgement served in the Pretoria High Court ordered Georgiou and his company to honour claims, amounting to nearly R30 million, of 46 investors in his Picvest-promoted property syndication companies, Highveld Syndications (HS) 21 and 22. He has to cover the legal costs and pay the claims of the 46 investors with interest at 9% per annum, from December 2014 to date of payment. Georgiou was granted leave to appeal in November 2015 (Barry, 2015a, p. 1). Attorneys hoping to bring a class action, meanwhile, are pleased with the verdict. The Highveld Syndication Action

Group has confirmed that 10 000 of the investors have pledged their support for a class action against the Picvest-promoted property schemes (Barry, 2014, p. 1, 2015b, p. 1). The class action seeks relief for a much larger group of investors from a wider group of defendants – 22 respondents in total, including Georgiou, members of his family, former directors of the Highveld Companies, and others (Barry, 2015a, p. 1).

1.4.4.1 The Estate Agency Affairs Board (EAAB) on sectional title fraud

Ardé (2014, p. 2) interviewed Advocate Debbie Vial, the legal officer for the Estate Agency Affairs Board (EAAB), regarding the large number of sectional title fraud scandals in South Africa. Vial stated that the misappropriation of body corporate funds by managing agents is an enormous problem, and the EAAB investigates a great number of cases annually. This has serious cost implications for the EAAB, since the courts usually have to be approached for an order appointing a curator to take possession of whatever trust monies can be salvaged and pay them out to the rightful owners. She states that the growing number of fraud cases puts the EAAB's fidelity fund at risk, and since there is no cap to their present liability under the Act, the exposure is substantial.

Misappropriation is made easy by the fact that bodies corporate are often run by lay-people with little idea of the legal or commercial implications of their position, their exposure to risk or their decisions. The challenge regarding the lack of knowledge of trustees was also emphasised in an article by Steenkamp & Lubbe (2015a, p. 553). In the interview (Ardé, 2014, p. 2), Vial states that many trustees find it too difficult and time-consuming to understand and comply with the requirements of the Sectional Titles Act, and are only too pleased to appoint a managing agent who promises to take care of everything, with no financial oversight. Trustees often do not even verify if the managing agent has a fidelity fund certificate. Marco de Oliveira, the Chairman of the National Association of Managing Agents (NAMA) in Gauteng, was also interviewed by Ardé. According to him, the EAAB covers a body corporate for fraud by a managing agent only, and not fraud where trustees steal money from the body corporate's bank account. In such cases, the body corporate will not be covered unless it has sufficient fidelity insurance. (See also Editorial (2013h, p. 18) and Bechard (2015c, p. 1).) Vial explained that jurisdiction of the EAAB over managing agents relates only to trust monies and conduct, and that bodies corporate do not fall within the EAAB's jurisdiction in terms of statutory

oversight. Vial also remarks that there are many trustees who are conscientious in their duties, but are let down by their auditors or deceived by creative and fraudulent paperwork. She believes that awareness of this risk should improve once the long-awaited office of the Community Schemes Ombud Service is fully up and running.

Although the spokespersons of the EAAB have strong opinions on matters regarding sectional title fraud and regularly drives initial probes into such cases, the board itself has not been without blame either (Swart, 2012, p. 10). From 2011 to 2012, the entity went through a somewhat chaotic period, operating without a chairman. A number of CEOs came and went, and an audit report found that the EAAB had wasted more than R10 million as a result of poor administration. A R1 million loss was incurred after abandoning plans to buy new headquarters – quite ironic for a body responsible for overseeing the work of property professionals. Red flags were also raised regarding fruitless and wasteful expenditure relating to a R3 million payment to a former EAAB CEO who was fired in 2011 after allegations of mismanagement. A further R1.9 million for board remuneration payments were found to not have been authorised and linked to administrative procedures not being followed. The then Minister of Human Settlements, Tokyo Sexwale, placed the EAAB under administration and dissolved its board of directors in July 2012 (Rees, 2013, p. 19). The Chairperson, Ina Wilken, also resigned during this period, and the company secretary was suspended. After the appointment of a new board and the implementation of a turn-around strategy, the agency has been put back on track and in 2014 and 2015 the EAAB issued comprehensive Annual Reports (Estate Agency Affairs Board, 2014a, 2015).

1.4.4.2 The Community Schemes Ombud Service

The Community Schemes Ombud Service (CSOS) was established in terms of the Community Scheme Ombud Service Act, 2011 [Act 9 of 2011) to regulate the conduct of parties within community schemes and to ensure their good governance. The CSOS is classified as a Schedule 3A public entity in terms of the Public Finance Management Act (PFMA). The executive authority of the CSOS is vested in the Minister of Human Settlements. Section 38 of the CSOS Act stipulates that any person living in a community scheme may make an application to the CSOS, if such a person is a party to, or is materially affected by a dispute, for mediation and adjudication (CSOS, 2015, p. 1). The term 'community scheme' means any

scheme or arrangement in terms in which there is shared use of, and responsibility for parts of land and buildings. Therefore, sectional title development schemes, share block companies, home owners associations, housing schemes for retired persons and housing co-operatives all fall under the jurisdiction of the Act and are entitled to an alternative and affordable dispute resolution service by the CSOS. The CSOS can specifically assist sectional title schemes with alternative dispute resolution, the monitoring, approval and safeguarding of rules and regulations, as well as collection of arrears levies (T. Maree, 2012, p. 3). In its first ever annual report (Community Scheme Ombud Service, 2014, pp. 7–8), the chairman explains that the CSOS operates in a very complex environment. The 2013/2014 financial year was its first year of operation, and the entity faced an absence of funds due to the late transfer of the grant from government. According to the CSOS Chief Financial Officer, the government grant was only paid over on the very last day of the financial year (Community Scheme Ombud Service, 2014, p. 9). Since the CSOS was non-operational during the 2013/201 financial year, no strategic objectives and goals could be achieved (Community Scheme Ombud Service, 2014, p. 17). The 2015 and 2016 Annual Reports of the CSOS are not available yet.

1.4.5 Corporate governance and King III – a brief overview

Section 1.4.2 above detailed a number of aims and positive aspects relating to sectional title property. However, sectional title property does not come without challenges, as seen in section 1.4.4 above. Although a detailed discussion of the global development and history of corporate governance falls outside the scope of this study, this section aims to give a brief introductory overview on corporate governance with the King Report as focus point. In the sections of the study dealing with the literature review regarding, for example, legal aspects as well as the sections dealing with the empirical findings, further reference will be made, where applicable, to the relevant aspects of corporate governance.

In literature on corporate governance, agency theory is often used as a starting point. Buccholtz & Carroll (2009, pp. 124–126) point out that most social and ethical issues stem from the separation of ownership from control in business. According to the authors (2009, p. 125) owners were typically the managers of businesses in the so-called precorporate period, and therefore the system worked the way it was intended. Duska (2007, p. 151) explains that the ‘principal-agent’ relationship arose in business because modern commercial relations

needed people who could act on behalf of others. Therefore, as public corporations grew in size and shareholding became more widespread, a separation of ownership from control became the prevalent condition. The most effective control that business owners could exercise was the election of a board of directors to serve as their representative and watch over management (Buchholtz & Carroll, 2009, p. 125). When the interests of the shareholders (owners) were not aligned with the interest of the managers, the managers (the hired agents) began to pursue self-interest instead of the owners' best interests. This problem is known as the agency problem (Buchholtz & Carroll, 2009, p. 126). Duska (2007, pp. 152–153) comments that as early as 1776, economist Adam Smith discussed the agency problem in his book *The Wealth of Nations*, stating:

“The directors of such (joint-stock) companies, however, being the managers rather of other people’s money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master’s honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.”

Corporate governance excellence continues to be an important element of business, both in South Africa and globally. Stakeholder expectations have never been higher and the scrutiny by regulators and investors never more stringent (KPMG & Institute of Directors in Southern Africa, 2015, p. 1). Good corporate governance is advantageous to all types of enterprises, small as well as large (KPMG, 2012, p. 8). The demise of Enron (once the seventh-largest company in the United States), and the fall of corporate giants such as WorldCom, Parmalat and Global Crossing sent shock waves through the corporate world, and the twenty-first century saw corporate governance taking centre stage globally. (See also Coetzee (2010, pp. 12–19).) However, corporate governance was institutionalised in South Africa long before then. The King III Report on Governance for South Africa (2009) as well as its two preceding publications (King I (1994); King II (2002)) is recognised as arguably the best and most well-known publications on governance in the world (Institute of Directors in Southern Africa, 2009, pp. 5–6; Rossouw, Prozesky, Prinsloo, & Kretzschmar, 2012, pp. 168–170). (See also Ghillyer (2008, pp. 81–82) and Rossouw & Van Vuuren (2010, pp. 211–212).) This is evidenced by the fact that the World Economic Forum has once again ranked South Africa’s Auditing and Reporting Standards number one in the world. This is the fifth consecutive top ranking South

Africa has achieved in the Global Competitiveness Index (World Economic Forum, 2014, p. 341), a testament to the country's consistent commitment to quality governance and auditing. It is also a strong signal to investors that South Africa is a sound investment destination from a corporate governance and audit perspective.

King I, II and III all consist of both a report and a code. The code is essentially an executive summary of the comprehensive report. The King Reports are also held in such high regard in South Africa that the courts have started to use them as a basis for judging the reasonableness of directors' decisions and actions (The South African Institute of Chartered Accountants, 2012, p. 238). The evolution of corporate governance in South Africa took place in an orderly and controlled fashion under the banner of the so-called King Committee, contrary to many other jurisdictions where corporate governance has evolved in a fragmented fashion (The South African Institute of Chartered Accountants, 2012, p. 234).

The first King Report was published in 1994 by the Institute of Directors in Southern Africa (IoD) following the publication of the Cadbury Code in the United Kingdom that dealt mainly with the financial aspects of corporate governance (The South African Institute of Chartered Accountants, 2012, p. 233). Fisher & Lovell (2006, p. 307) explain that the King Committee, under the chairmanship of Professor Mervyn King, successfully formalised the need for companies and other entities to recognise that they no longer act independently from the societies and environments in which they operate. Eight years later, in 2002, the King II Report was one of the first codes of corporate governance to consider the concept of 'triple bottom line' reporting, as opposed to the traditional focus on protecting investors' interest and a single bottom line of profitability (The South African Institute of Chartered Accountants, 2012, p. 233). King II recognised that stakeholders required forward-looking information, considering the economic, environmental and social reality of an entity's activities. As mentioned by Ghillyer (2008, p. 80) and Rossouw, Du Plessis, Prinsloo & Prozesky (2009, p. 156), the Report also placed great emphasis on risk management and the importance of ethics. South African listed companies are regarded by foreign institutional investors as being among the best governed in the world's emerging economies (World Economic Forum, 2014, p. 39). The IoD is of the opinion that South Africa has benefited greatly from its listed companies following good governance principles and practices, as was evidenced by the significant capital inflows into South Africa before the global financial crisis of 2008 (Institute of Directors in Southern Africa, 2009, p. 6).

In 2009, King III was compiled by the King Committee assisted by the King subcommittees. The Committee was carefully chosen to include topical experts and stakeholders with experience and knowledge in a wide variety of fields (The South African Institute of Chartered Accountants, 2012, p. 234). The initial process was intended as a mere revision of King II, and therefore King III was not intended at the outset. It quickly became clear that there needed to be an extensive response to changes in international governance trends and the new Companies Act no. 71 of 2008, emphasizing the importance of conducting annual business reporting in an integrated manner (Institute of Directors in Southern Africa, 2009, p. 5). The concept of integrated business reporting is one of the main themes of King III, along with stakeholder inclusivity, sustainability, corporate citizenship and the board as a focal point of governance (The South African Institute of Chartered Accountants, 2012, pp. 239–244). King III emphasises the importance of putting financial results in perspective by also reporting on the positive and negative impact of entities on the economic life of the community in which it operates, as well as intentions to enhance or eradicate such impact.

Unlike King I and II, King III makes recommendations about best practices in corporate governance aimed at all entities, regardless of the manner and form of incorporation or establishment and whether in the public, private or non-profit sector (Institute of Directors in Southern Africa, 2009, p. 17; KPMG, 2012, p. 8;38; Rossouw & Van Vuuren, 2010, p. 211; The South African Institute of Chartered Accountants, 2012, p. 236). It is therefore evident that the fundamental principles of corporate governance are not only applicable to companies and directors of companies (Ed, 2006, p. 2). Since King III was issued in 2009, there have been significant corporate governance and regulatory developments, locally as well as internationally. The King Committee decided on 5 May 2014 to embark on the drafting of an updated King report on governance, also known as King IV (Institute of Directors in Southern Africa, 2015c, p. 1). D. Jackson (2015, pp. 18–19) explains that, even though it was intended, not all organisations implemented and benefited from King III. The non-profit sector, as well as many small and medium-sized enterprises deemed King III wholly unachievable due to a lack of resources necessary for compliance. King IV will equip those charged with governance even better, and broaden the appeal of good governance. King IV will further incorporate local and international developments on the governance front, and a number of enhancements will aim to make King IV more accessible to all types of entities across sectors (Institute of Directors in Southern Africa, 2015b, p. 1). Due to the consultative process to be followed, the IoD had envisaged that King IV would not be completed before the second half of 2016

(Institute of Directors in Southern Africa, 2015, p. 2; D. Jackson, 2015, p. 18). Initially, a two-year period was expected for the completion of the drafting process and consideration of stakeholder comments, with another year grace period for allowing organisations to implement the code, with the expected effective date being middle 2019 (Institute of Directors in Southern Africa, 2015b, p. 2). However, all the processes were completed faster than was initially expected, and King IV was released on 1 November 2016. It will be effective for financial years commencing from 1 April 2017 (KPMG, 2017, p. 5; PwC, 2016, p. 4). In the meantime, King III still remains the authoritative reference on corporate governance.

The Institute of Directors in Southern Africa (2015a, p. 13) state that good governance make good business sense. According to their research, an overwhelming majority of investors are prepared to pay a premium for companies exercising high governance standards. Some examples, among others, of the value of corporate governance include that it increases the value of an entity and improves share and credit ratings. Good governance also improves operational performance and lowers the risk of corporate scandals. Proper corporate governance improves decision-making in business and leads to greater boardroom effectiveness. It also assists in avoiding a concentration of power and strengthens transparency. (See also Buccholtz & Carroll (2009, pp. 122–126).)

In the King III Code, the IoD states explicitly that although the terms ‘company’, ‘boards’ and ‘directors’ are used, King III refers and applies to the functional responsibility of those charged with governance in any entity, even if different terminology is used in other entities, sectors and industries. It is also clarified that the use of the term ‘corporate’ (e.g. corporate governance, corporate citizenship, corporate ethics etc.) applies to all entities (Institute of Directors in Southern Africa, 2009, p. 16). L. Lubbe (2013, p. 17) explains that entities such as sectional title schemes, together with its bodies corporate and trustees, should also apply the principles in the Code and consider the best practice recommendations in the Report. Terms such as ‘directors’ and ‘management’ used in the King III Report can therefore be substituted with ‘trustees’ and ‘body corporate’. In the next section, the applicability of King III and good governance principles will be discussed with specific reference to the sectional title industry in South Africa.

1.4.6 Governance of sectional title property

In a 1964 article that was published in the Boston University Law Review, William Schwartz hinted at some of the challenges of managing a sectional title scheme (from an American perspective), stating that condominium living is in reality a type of social experiment, bringing together a group of individuals with diverse personalities and attitudes, imposing upon them the 'task' of living harmoniously in close proximity one to another (Schwartz, 1964, p. 144). In sectional title community living, provision has to be made for restrictions and the necessary discipline in order to ensure that the participants live together as a harmonious community. The aim is to strike a balance between the privacy of individuals and communal responsibility (Cowen, 2008, p. 293).

Section 1.4.5 above started by giving a brief overview of agency theory and the agency problem in business. As is the case with most corporate governance principles (see also section 1.4.6.5 below), agency theory can also be applied in sectional title property. Individual unit owners, who make up the body corporate, elect a board of trustees to act on their behalf in dealing with the day-to-day affairs of the body corporate. In turn, the trustees often appoint a managing agent to assist them with their tasks. When the trustees or managing agents (as agents of the body corporate) do not act in the best interest of the body corporate, the agency problem arises. A number of examples of these instances were discussed in section 1.4.4 above, which illustrated the severity of the problem in the context of the broader property industry in South Africa.

South African sectional title legislation is based on the principle that the regular owner of a sectional title unit knows and understands the law, and that he can (and in fact does) protect his own interest. Therefore, the legislator merely created a management framework for sectional title schemes, and left it to owners to manage their schemes within the boundaries of the framework, according to their individual needs. However, T. Maree (2005, p. 1) argues that these historical assumptions were far too optimistic. It is pointed out that governance problems already start with developers who, apart from construction shortcomings, fail to put in place workable frameworks for proper management. The author adds that the problems are

multiplied by the ignorance of owners who suddenly have to deal with the complexity of property and management systems. (See also De Groot (2009, p. 6) and L. Lubbe (2013, pp. 16–22).)

The agency problem and the matter of owner ignorance, as mentioned above, probably represent the greatest causes of governance concerns in bodies corporate. The following four sections will give a brief overview of other governance matters in sectional title schemes, such as the concept of trust, fiduciary responsibilities, a variety of risks, potential areas of concern and specific duties and philosophies as per the King III Code.

1.4.6.1 The concept of trust

In terms of governance of sectional title property, it is very important to take note of the concept of trust. In the previous sections of this study, numerous problems regarding the various role players in sectional title property was discussed. Certain ‘problems’ that can occur between role players such as owners, managing agents and residents were also pointed out. One such an example is that owners of sectional title property may not always have the necessary management knowledge and skills to manage a scheme, and therefore they are largely dependent on managing agents to deliver these services (Steenkamp & Lubbe, 2016a, p. 1, 2016c, pp. 1–2). Against this background it is important that there should be a relationship of ‘trust’ between these role players. The concept of trust will be dealt with in greater detail in section 4.4.1.

1.4.6.2 Fiduciary duties and responsibilities

Apart from protecting the freedom of property, the law also presumes that ownership of property entails certain responsibilities (Badenhorst et al., 2006, p. 4). Even though the Sectional Titles Act indemnifies trustees for all costs, losses, expenses and claims which they may incur or become liable to, the indemnity does not cover acts of gross negligence or dishonesty (Constas & Bleijs, 2009, p. 35; Pienaar, 2010, p. 175). The trustees as

management and executive organ of the body corporate, therefore, stand in a fiduciary relationship to the body corporate, and must always act honestly and in good faith, and manage their functions in the best interest of the body corporate (Pienaar, 2010, p. 177). (See also section 3.3.1 for a more detailed discussion.) Constas & Bleijs (2009, p. 34) perceive the fiduciary duty in a body corporate situation to be even more important than that of a company. The authors believe a person's investment in his home is one of the biggest and most important transactions that he is likely to enter into in his entire life, and this must be borne in mind by trustees at all times. (See also sections 1.4.6.1 and 4.4.1 on the concept of trust.) A different way of looking at it is to account for the responsibility in terms of the rand value of a scheme. It is not just the value of their own individual units that the trustees are managing and protecting; they are, in fact, responsible for the value of the whole scheme (Sectional Title South Africa, 2012, p. 1).

1.4.6.3 The risks trustees face

Coetzee (2010, pp. 32–33) explains that risk management is a cornerstone of corporate governance, and summarises risk as an uncertainty whether something negative or a loss of something positive that could prevent an organisation from achieving its objectives would happen or not. In many smaller types of entities, especially sectional title schemes, those charged with governance do not always grasp the risks associated with occupying a specific position. For trustees, these risks include difficulties interpreting financial statements, the holding of trust money, not being familiar with budgeting concepts, cash flow problems, difficult legislation, lack of training, time constraints and owner apathy, to name but a few. De Groot (2009, p. 2) argues that, in some cases, a body corporate or trustees may be unwilling, unable, or even incapable of properly controlling, managing and administering a scheme. All risks should be assessed in terms of potential impact and likelihood of occurrence (KPMG & Institute of Directors in Southern Africa, 2015, p. 105).

The body corporate of a sectional title scheme is entrusted with trust money in the form of levy contributions from all owners to establish a fund that should be sufficient to pay for all expenses of the scheme (Constas & Bleijs, 2009, pp. 107–108; Pienaar, 2010, p. 157; Steenkamp & Lubbe, 2016c, pp. 1–2). The levy trust money that the trustees are entrusted with to run a scheme, can add up to significant amounts. As a result, the risk is major and the

fiduciary duty of the trustees is of vital importance. Trustees should ensure that the managing agent has a valid fidelity fund certificate, issued by the Estate Agency Affairs Board (EAAB) (Estate Agency Affairs Board, 2014b, pp. 26–27). If the managing agent operates on one or more trust accounts, they must contribute to the EAAB's fidelity fund (based on the interest earned on the trust account balances). This aim of the fund is to protect the body corporate against theft and/or fraud resulting in a monetary loss of funds held in trust by a managing agency.

It is also advisable that the managing agency should have professional indemnity (PI) cover. Professional indemnity cover protects the managing agency against errors, omissions or wrongful acts that result in financial loss (Editorial, 2013c, p. 1). Should the body corporate suffer a loss due to the managing agency's error, the body corporate may have recourse to the managing agency. It is advisable for the trustees to ascertain and ensure that such cover is in place and that the managing agency is capable of dealing with such claims. Trustees should bear in mind that the managing agency has more than one client - any of whom could lodge such a claim (Estate Agency Affairs Board, 2014b, p. 3).

A further recommended cover is for the managing agency to have its own fidelity guarantee. This cover should be in place to protect the managing agency against theft or fraud by any of its own employees, resulting in a financial loss for the managing agency. Trustees are advised to insist on this cover to be assured that the company has the resources to continue operating and providing the essential services that it does in the event of such a loss. Bodies corporate should also consider having fidelity cover in its own policy to cover the loss of any monies whilst outside of the managing agency's control, such as petty cash, cash recoveries and/or monies held by trustees or employees of the body corporate (Editorial, 2013c, p. 1; Steenkamp & Lubbe, 2016b, pp. 1–2).

Van Noort (2007, p. 10) believes that the success or failure of any sectional title scheme lies with the ability of the trustees to budget accurately and timeously collect levies. Trustees should be aware of the fact that non-payment of levies is a widespread problem under sectional title schemes, especially in periods of economic downturn (Khoza, 2012, p. 8; Kloppers, 2013a, p. 6). The reality is that many owners fend against increasing levies and, as a result, the levy income of bodies corporate may be put under immense pressure (Muller,

2009, p. 42; Pienaar, 2010, p. 158). Even though payment of the monthly levy is an obligation by law and failing to pay can result in legal action against the owner (Jay, 2015, p. 45), it is estimated that approximately 20% of individual sectional title unit owners are behind on their levy payments at any given time (Editorial, 2010a, p. 1). The whole sectional title scheme can lose value if some of the owners do not pay their levies (Jay, 2015, p. 45). Cash flow problems pose a great risk for trustees, in the light of the fiduciary relationship between the trustees and the members of the body corporate. However, this is not the only risk trustees are faced with. (See also section 3.2.1.3 on the new requirements regarding reserve funds which will put additional pressure on cash reserves of bodies corporate in future.)

Members of bodies corporate are reluctant to be appointed as trustees and become involved in the leadership and management of schemes, since being a trustee is often seen as a 'thankless job' which is usually done for little or no remuneration (Constas & Bleijs, 2009, p. 34;37; G. Paddock, 2008, pp. 10–4). As Ozynsky (2007, p. 18) explains, very few people are willing to do the work of a trustee; the work is usually done for free; and at the annual general meeting, a handful of trustees are elected — usually by the bare minimum of owners who went to the trouble to attend the meeting. The responsibilities involved with being a trustee are onerous, and for a layman the interpretation of the Act and understanding what the duties involve can be a daunting task. There is also very little training available to guide trustees in their duties to assist owners in understanding vital issues in the industry. Van Noort (2007, p. 10) mentions that even though sectional title is the fastest growing form of home ownership in South Africa, the Act itself is complicated and the management of schemes is often fraught with confusion and conflict.

Trustees are often faced with difficult decisions for which they do not necessarily have sufficient time available to give it the proper attention required. As a result, trustees regularly appoint managing agents to execute the administration and fulfil certain management functions on behalf of the trustees and body corporate of the sectional title scheme. In terms of the Sectional Titles Act, the members of the body corporate hand over an enormous responsibility to the trustees of a sectional title scheme (Constas & Bleijs, 2009, pp. 34, 42; Woudberg, 1999, p. 45; Pienaar, 2010, pp. 184-185). Managing agents are usually professional persons or firms with the necessary skills and knowledge to perform the management and administration of a scheme, but staff continuity can often be of concern (L. Lubbe, 2013, p. 197). Furthermore, in some cases a whole complex is owned by a number of

investors, who do not live in the complex, and do not want to get involved in the 'problems' of the residents. Owner apathy with regard to scheme management also increases the risk of being a trustee (L. Lubbe, 2013, p. 26). However great the responsibility and difficult the tasks may seem, trustees should bear in mind that they are ultimately responsible for determining the risks that the body corporate face, and for ensuring that the significant risks faced by an entity are properly identified, evaluated and managed (KPMG & Institute of Directors in Southern Africa, 2015, pp. 91–92).

1.4.6.4 Areas of potential concern

In the absence of an internal audit function, management needs to apply other monitoring processes to provide assurance to itself and the stakeholders that the system of internal control is functioning as intended (KPMG & Institute of Directors in Southern Africa, 2015, p. 144). As mentioned in sections 1.4.5 and 1.4.6, bodies corporate usually do not have the luxury of delegating tasks to committees, such as audit committee, and therefore the board of trustees should fulfil the duties of these governance functions. In large entities, the audit committee must remain alert to inappropriate earning management (KPMG & Institute of Directors in Southern Africa, 2015, p. 83). The application of accounting standards can produce a range of possible answers for the preparation of financial statements. Applying accounting standards often involves a certain extent of judgement, valuations and estimates. In their Audit Committee Toolkit, KPMG and the IoD explain that audit committees (and in the case of bodies corporate, the board of trustees) should give special attention to specific areas of accounting that warrant special attention. The trustees should, amongst others, enquire into changes in estimates, the possible recognition of levies before they are due, and abuse of the materiality concepts (KPMG & Institute of Directors in Southern Africa, 2015, p. 83). Especially in cases where trustees delegate some of their responsibilities to outside parties such as managing agents or bookkeepers, the trustees need to consider information received with some scepticism. The trustees should also look to the external auditor of the body corporate for support, using the external auditor's insights to assist in identifying potential issues early (KPMG & Institute of Directors in Southern Africa, 2015, p. 86). Matters regarding the accounting and auditing of bodies corporate will be dealt with in detail in Chapters 4 and 5 of this study.

1.4.6.5 King III and moral duties in sectional title schemes

From the above it is clear that trustees have an indispensable fiduciary responsibility, involving a significant number of risks. Trustees should display leadership in terms of good corporate governance, and take responsibility for managing these risks. The King III Report mentions five moral duties that directors (or trustees for purposes of this study) have, namely conscience, inclusivity, competence, commitment and courage (KPMG, 2012, p. 8). The Greek philosopher, Aristotle, argued that courage activates an individual's moral framework, and that without courage, a person would either be too fearful or too rash to act morally (The South African Institute of Chartered Accountants, 2012, pp. 80–81). Oosthuizen (2015, p. 4) is of the opinion that courage is probably the foundational characteristic of effective organisational leaders, enabling them to ask difficult questions, raise different, and often unpopular viewpoints, admit when one is on unfamiliar ground and stand firm by individual values. (See also Maggs (2015, p. 5).)

Trustees should always keep in mind that they act as the managing organ or the body corporate, and that there should be a balance of power in the governance structure. While there are benefits to owners being actively involved, care should be taken to avoid situations where owners override trustee decisions and have so much say that the balance of power tips (Weideman, 2015, p. 7). With regards to the moral duties, Van den Heever (2015, pp. 10–11) remarks that people around the table who have the right competencies and skills, as well as the personal qualities of tenacity and courage, are essential to create governance structures that can take important decisions. The role of a trustee is complex and multi-faceted, comprising a number of skills and responsibilities, such as ensuring that sound financial and management practices are in place, and looking after the interests of the body corporate. Therefore, even though trustees face the complexity of property management systems and the sectional title law, it is a fundamental obligation and duty of each trustee to ensure that he has a good understanding of these (Main, 2015, pp. 12–13).

The core philosophy of the King III Report revolves around three main principles, namely leadership, sustainability and corporate citizenship (Institute of Directors in Southern Africa, 2009, p. 10; PriceWaterhouseCoopers, 2009, p. 2). Good governance of a sectional title scheme will then essentially be about effective leadership. As leaders, the trustees should

display ethical values of amongst others, responsibility, accountability, fairness and transparency. Responsible trustees will direct the operations of a body corporate with a view to achieving sustainable economic, social and environmental performance. As stewards of the body corporate, the trustees must demonstrate the moral duty of competence (Rossouw & Van Vuuren, 2010, p. 213), ensuring that they have the knowledge and skills necessary for governing a sectional title scheme effectively (Institute of Directors in Southern Africa, 2009, p. 22). From a practical perspective trustees, as responsible leaders, have to remain up to date with the amendments to the Act and equip themselves with the necessary skills and knowledge to be able to make informed decisions (T. Maree, 2011, p. 3). Unfortunately, many trustees are not fulfilling the mentioned duties and obligations (Constas & Bleijs, 2009, p. 26; Nel, 1999, pp. IV–VI). This lack of proper leadership results in many schemes not being managed in a sustainable manner.

Sustainability is now the primary moral and economic imperative and one of the most important sources of both opportunities and risks for businesses. Those charged with governance should understand that nature, society, and business are interconnected in complex ways (PriceWaterhouseCoopers, 2009, p. 2). From a practical perspective, this means that the trustees of a sectional title scheme should take responsibility for ensuring that the body corporate remains a going concern and be willing to take corrective action to ensure that it thrives in a sustainable manner (Institute of Directors in Southern Africa, 2009, p. 20; KPMG, 2012, p. 48). (See also the discussion on reserves in section 3.2.1.3.) The concept of corporate citizenship is not new, but received renewed attention in King III. In essence, responsible corporate citizenship implies an ethical relationship between the company and the society in which it operates (PriceWaterhouseCoopers, 2009, p. 5).

To further emphasise the increasing importance of sound corporate governance, King III makes a clear link between corporate governance and the law in the following statement:

“In addition to compliance with legislation, the criteria of good governance, governance codes and guidelines will be relevant to determine what is regarded as an appropriate standard of conduct for directors. The more established certain governance practices become, the more likely a court would regard conduct that conforms with these practices as meeting the required standard of care. Corporate governance practices, codes and guidelines therefore lift the bar of what are regarded as appropriate

standards of conduct. Consequently, any failure to meet a recognised standard of governance, albeit not legislated, may render a board or individual director liable at law." (Institute of Directors in Southern Africa, 2009, p. 7)

Vandayar (2015, p. 15) illustrates a ten-point self-assessment that directors can use as a general guide to consider in the course of their duties. These questions can assist directors in determining whether they are displaying some of the core competencies and being effective in their role. These questions can, to a certain extent, be adapted into a short self-evaluation for trustees in the form of the following 10 questions. (Emphasis as per the original author's text, adapted to reflect the context of sectional titles.)

- Do I demonstrate an **understanding of the body corporate**, as well as the sectional title industry?
- Do I understand and fulfil my **role and responsibilities** as a trustee, such as acting in the best interest of the body corporate?
- Do I have the necessary **knowledge and skills** in order to fulfil my role as a trustee and contribute to the body corporate?
- Do I display adequate **commitment** to good governance?
- Do I keep up to date with **key developments** that affect the body corporate and the sectional title industry? Have I undergone **training** in areas where I need development?
- Have I dedicated sufficient **time** to perform my duties? Do I prepare adequately for meetings?
- Do I attend sufficient meetings and do I **participate and contribute** actively to meeting agenda even if I am not in attendance?
- Do I follow through on my commitment timeously, i.e. am I **reliable** and trustworthy?
- Do my **communication** and interpersonal skills contribute toward a positive dynamic in the board of trustees?
- Am I truly **independent**? Do I display courage and constructively challenge management?

The questions above are similar to the '10 questions' developed by Judge Mervyn King to assist directors in taking decisions and making business judgements (Du Plessis, Hargovan, Bagaric, & Harris, 2015, pp. 103–104; M. E. King, 2006, pp. 57–60). Similar to the questions by Vandayar, the questions by Mervyn King can also, to a certain extent, be adapted to a set of questions that trustees can ask themselves when faced with making decisions that affect the body corporate. The ten questions below are the questions formulated by Mervyn King (2006, pp. 57–60), adapted to reflect the context of sectional titles (with own emphasis added).

- Do I as a trustee of this body corporate have any **conflict** in regard to the issue before the board of trustees?
- Do I have **all the facts** to enable me to make a decision on the issue?
- Is the decision being made a **rational** business one based on all the facts available at the time of the trustee meeting?
- Is the decision in the **best interest** of the body corporate?
- Is the **communication** of the decision to the members of the body corporate **transparent** with substance over form and does it contain all the negative and positive features bound up in that decision?
- Will the body corporate be seen as a **good corporate citizen** as a result of this decision?
- Am I acting as a **good steward** of the body corporate's assets in making this decision?
- Have I exercised the concepts of **intellectual honesty and intellectual naivety** in acting on behalf of this incapacitated body corporate?
- Have I **understood** the material in the meeting pack and the discussion at the meeting table?
- Will the trustees be **embarrassed** if its decision and the process employed in arriving at its decision were to appear on the front page of a national newspaper?

In conclusion, it is important to keep in mind that a simple attempt at applying a number of 'steps' does not constitute good governance. In its white paper, the Business Roundtable of the United States of America caution against the universal application of rigid formal requirements and seeing corporate governance as a purely abstract goal, stating:

“The substance of good corporate governance is more important than its form. Adoption of a rigid set of rules or of any particular practice is not a substitute for good corporate governance” (Kochan & Lipsky, 2003, p. 206).

Further reference will be made, where applicable, to the relevant aspects of corporate governance throughout the rest of the study.

1.5 Financial reporting – a sectional title perspective

The financial reporting landscape in South Africa has undergone considerable changes in recent years. This section will highlight the most recent developments that have an impact on the South African sectional title industry, and in Chapter 5 a more comprehensive overview of the history and development of financial reporting in South Africa will be given.

The Accounting Practices Board (APB) was formed in 1973 to consider what should be generally accepted accounting practice and to issue South African Statements of Generally Accepted Accounting Practice (SA GAAP) (Financial Reporting Standards Council, 2012, p. 1). In 2003, the APB took the decision to harmonise SA GAAP with International Financial Reporting Standards (IFRS), and since then, the APB has issued the IFRS standards as SA GAAP without amendment. Statements of GAAP are the exact replicas of relevant IFRSs approved by the Accounting Practices Board (APB). To indicate this, every Statement of GAAP has a dual numbering system to refer to both the IFRS and the Statement of GAAP numbers (SAICA, 2014, p. 1). The Companies Act No. 71 of 2008 imposed an obligation on the Minister of Trade & Industry (Minister) to establish a body known as the Financial Reporting Standards Council (FRSC). A body known as the Financial Reporting Standards Council (FRSC) was established as the legally constituted standard-setter and its function is to advise the Minister on matters relating to financial reporting standards. In order to reduce the burden of issuing each individual IFRS standard as SA GAAP, the FRSC in consultation with the APB then decided to withdraw SA GAAP. Accordingly, SA GAAP will no longer apply

in respect of financial years commencing on or after 1 December 2012 (Financial Reporting Standards Council, 2012, p. 1; SAICA, 2012a, p. 1, 2014, p. 1) .

After South African GAAP became fully convergent with IFRS, many small and medium-sized entities (SMEs) were struggling to comply with those standards, simply because of the sheer magnitude and complexity of IFRS. As a result, the International Accounting Standards Board (IASB) recognised the need for a separate standard applicable to the needs of SMEs that often produce financial statements only for the use of owner-managers or tax authorities, and do not necessarily constitute general purpose financial statements (Coetsee et al., 2010, p. i). Consequently, the IASB developed and published International Financial Reporting Standards for Small and Medium-sized Entities (IFRS for SMEs). South Africa became the first country in the world to adopt IFRS for SMEs in 2007, while it was still in its exposure draft form (Van Wyk & Rossouw, 2009, p. 100). The IFRS for SMEs, as issued by the IASB in July 2009, consists of 230 pages and is less than 10% in volume of full IFRS. It is also less complex than full IFRS in a number of ways. For example, in a guide book on IFRS for SMEs (2012, p. 4), the IASB explains that IFRS for SMEs requires roughly 300 disclosures, compared to the 3 000 disclosures required by IFRS, and where full IFRS allows for a variety of accounting policy choices, IFRS for SMEs allow only the easier option.

Despite the fact that the APB issued IFRS for SMEs, which was simpler than full IFRS, there still existed a demand for an even less complex framework for micro entities, as it was believed by some that IFRS for SMEs was too complex for micro entities (SAICA, 2012a, p. 1). Van Wyk & Rossouw (2009, p. 113) published an article in which they argue that IFRS for SMEs follow a 'one-size-fits-all' principle and does not distinguish between micro-, small- and medium-sized entities. Their research also revealed that despite the good intentions of the IFRS for SMEs, there is scepticism among accounting practitioners about whether the standard actually reduces the burden of financial reporting for SMEs. Many requirements of IFRS for SMEs will not be relevant to micro-sized entities as they generally only encounter a narrow range of simple transactions (IFRS Foundation, 2013, p. 4). In some jurisdictions IFRS for SMEs were being used by very small companies with just a few employees. The IASB was asked and agreed to develop guidance suitable for micro-sized entities currently applying the IFRS for SMEs and also those considering doing so in the future. Taking note of these challenges, the International Accounting Standards Board (IASB) has developed guidance to help micro-sized entities apply the IFRS for Small and Medium-sized Entities (SMEs). The

guide was published by the IFRS Foundation in 2013 (IFRS Foundation, 2013). The guidance extracts from the IFRS for SMEs only those requirements that are likely to be necessary for a typical micro-sized entity, without modifying any of the basic accounting principles for recognising and measuring assets, liabilities, income and expenses. In a few areas, it also contains further guidance and illustrative examples to help a micro-sized entity to apply the principles in the IFRS for SMEs. The guidance contains cross-references to the IFRS for SMEs for matters not covered by the guidance. Consequently, if an entity applied the guidance, the notes to the financial statements and resulting auditor's report could refer to conformity with the IFRS for SMEs because this guidance does not modify the requirements of the IFRS for SMEs. (IFRS Foundation, 2012, p. 1; South African Institute of Professional Accountants, 2013, p. 1). The guide does not define a micro entity in quantitative terms. Instead, it provides examples of typical characteristics of micro entities (Deloitte, 2013, p. 1). These characteristics and the applicability thereof on sectional title schemes will be discussed in Chapter 4.

Seeing that these developments took place very recently, no academic research has been done on the newly developed guidelines for micro entities and the applicability thereof for South African sectional title schemes. L Lubbe (2013, pp. 185–186) identified that sections in the Sectional Titles Act relating to accounting and reporting aspects of sectional title were quite vague and ambiguous, and in many cases, the legislation contains wording that is not true to the acknowledged subject terminology of, for example, IFRS. Parts of the legislation also make use of outdated terminology. The study identified that many users of body corporate financial statements have no knowledge of International Financial Reporting Standards. Concern was specifically raised as to the applicability of currently available accounting standards at the time, and the prospect of a possible tailor-made accounting standard for sectional titles was addressed. The practitioners interviewed in the study also had various accounting-related questions on which they need clarity from their professional bodies (L. Lubbe, 2013, p. 219). Since the official guideline on accounting for micro entities was published so recently, very little research has been done on appropriate and cost-effective ways of performing assurance engagements on these entities. A detailed discussion of financial reporting aspects will be done in Chapter 4 of this study.

1.6 Research problem, research questions, research aim and objectives

From the above it follows that sectional title property plays a vital role in the property industry in South Africa. There are various risks involved in being a trustee of a body corporate, and the risks are being aggravated by owner apathy with regard to scheme management. Furthermore, managing agents face numerous practical problems in the day-to-day management of sectional title schemes, and various incidents of fraud occurred in the industry in recent years. There are a large number of contradictory and confusing legal aspects in the current sectional title legislation. Accounting and auditing practitioners also encounter various practical challenges when performing accounting and assurance services for sectional title clients. Very few members of bodies corporate have knowledge of accounting standards, and this raises questions regarding an appropriate and cost-effective framework to use in the financial reporting of sectional title entities. The size of the entities and the cost constraints they face also raises questions on how to perform proper assurance engagements in the most cost-effective way. Even though these challenges and uncertainties have been in existence for many years, very little research has so far been done on the South African sectional title industry from an accounting and auditing perspective.

In short the research problem is that the sectional title industry in South Africa currently faces numerous challenges and uncertainties from governance, accounting and auditing perspectives.

Against the background information, the overall aim of the study is to give an in-depth overview of:

- Risks associated with sectional title for various stakeholders (i.e. owners, trustees, managing agents, auditors and accountants and EAAB-appointed inspectors) from an accounting, governance and auditing perspective;
- Auditing- and governance-specific problems relating to sectional title; and
- Accounting-specific problems relating to sectional title.

More specifically, the research objectives are:

- To find possible solutions to the above-mentioned problems and to make recommendations in this regard;
- To set benchmarks from the analysis of the annual financial statements of respondents over a three-year period. These benchmarks can be of assistance as an industry standard for owners, trustees, managing agents, auditors and accountants rendering a professional service, and so enhance accounting and auditing practices;
- To identify future research opportunities that falls outside the scope of the study.

Flowing from this, the following research questions apply:

- What are the risks associated with sectional title for various stakeholders (i.e. owners, trustees, managing agents, auditors and accountants, and EAAB-appointed inspectors) from an auditing, governance and accounting perspective?
- What are the current auditing- and governance-specific problems relating to sectional title?
- What are the current accounting-specific problems relating to sectional title?
- What are the possible solutions to the current problems in the sectional title industry?
- What are the current benchmarks and industry standards in terms of sectional title financial reporting?
- What are the future research opportunities that fall outside the scope of this study?

The layout of the study and how the research problem and objectives will be addressed will be discussed in Chapter 2.

1.7 Conclusion

This chapter commenced with an overview of the challenges faced by South Africa to provide for the housing needs of the country. It was highlighted that sectional title property plays a vital role in the South African property industry - especially in providing housing to a growing number of lower-income households. There are clear indicators that it will continue to play an increasingly important role in future. It is, however, evident that there are various challenges facing the sectional title industry, especially from a governance and management perspective, and accounting and auditing practitioners involved in the industry are confronted with various practical issues. These matters sketched the background to the problem statement and the research objectives of the study. In the next chapter, the research methodology will be discussed, together with the layout of the study.

Chapter 2

Research methodology and layout of the study

“By seeking and blundering we learn” – Johann Wolfgang von Goethe

2.1 Introduction

In the first chapter, an introduction and context of the study was given, and the problem statement and research objectives stated. This chapter will focus on the research methodology and layout of the study.

2.2 Research overview

Brynard, Hanekom & Brynard (2014, p. 3) regard research, or scientific enquiry, as a procedure by means of which an endeavour is made to solve identified problems and obtain answers to questions in a systematic manner with the support of verifiable facts. Narrowing down the definition, Saunders, Lewis & Thornhill (2007, pp. 5–7) define business and management research as a systematically undertaking to find out things about business and management. The authors agree with Easterby-Smith, Thorpe & P. Jackson (2012, pp. 11–12) that management research is often transdisciplinary in nature, using knowledge from various disciplines, thereby enabling management researchers to gain fresh insights that cannot be obtained through any one of the disciplines separately. Business and management research needs to be both theoretically and methodologically rigorous, and at the same time practically relevant (Bryman et al., 2014, pp. 4–6). The research should advance the current body of knowledge and understanding, and must address business issues and practical management problems. Furthermore, the research can also satisfy the researcher’s intellectual curiosity. Moreover, the findings of business research may even have societal impact far broader than initially envisaged. (See also Leedy & Ormrod (2015, pp. 2–4), Smidt (2014, p. 14).)

2.3 Research design and method

Mouton (2001, p. 55) and Blumberg, Cooper & Schindler (2008, p. 69) define the research design as the blueprint for fulfilling the research aims and objectives and answering the research questions. Research designs can differ significantly in terms of detail (Mouton, 1996, p. 108). Coldwell & Herbst (2004, p. 36) explain research design as the strategy for the study and the plan by which the strategy is to be carried out. (See also Saunders, Lewis & Thornhill (2007, p. 131).) To achieve the research objectives of this study, as stated in section 1.6, a comprehensive literature review and two empirical studies (one qualitative and one quantitative) were conducted. The overall research design and method followed in this study is discussed below.

2.3.1 Literature review

An extensive literature review emphasizes the importance of the research problem as the foundation on which to build an empirical study. It can either be a study on its own (i.e. a literature study) or the first phase of an empirical study. Mouton (2001, p. 86) views the literature review as an essential component of any study and states that every research project should begin with a review of existing literature available. (See also De Vos, Strydom, Fouché & Delpont (2002, p. 67).) Pellissier (2007, p. 55) and Mouton (2001, p. 87) state that the literature review entails deeply reviewing the current status of the research in the traditional field you are planning to use, presenting the current state of major ideas right up to, but not including, the researcher's own study. A thorough background is also considered to be of importance, especially if the research spans two or more traditional fields. (See also Anderson & Poole (2009, p. 21).) Henning, Van Rensburg and Smit (2004, p. 27) is of the opinion that the main purpose of a literature review is to contextualise the study, to synthesise the available literature and to engage critically with the literature. It is also used to identify a niche to be occupied by the research. Coldwell & Herbst (2004, p. 31) view the purpose of a literature review as conveying what knowledge and ideas have been established on a topic together with the strengths and weaknesses thereof. (See also Creswell et al. (2014, p. 26) and Olivier (Olivier, 2009, pp. 41–44).)

Coldwell & Herbst (2004, pp. 35–35), Welman, Kruger & Mitchell (2005, pp. 39–40), and Mouton (1996, pp. 119–120) provide criteria for a good literature review. It is agreed that the literature review should cover a wide range of resources; the sources should be current and relevant; and the sources should fall within the parameters of the study. Since the literature review can be a time-consuming process, the authors advise researchers to budget enough time for it and they also suggest that the literature review should be well-organised from the onset.

The literature study in this text commenced with detailed searches by research specialists at the academic libraries at the University of the Free State and Central University of Technology, Free State as well as the Archive for Contemporary Affairs at the University of the Free State. In-depth searches were also done at the libraries of local auditing and accounting professional bodies such as SAICA and SAIPA, as well as international professional bodies such as AICPA and IRBA and FASB. There were also a vast number of resources in the libraries of the so-called ‘big 4’ audit firms and large legal firms and the Institute of Directors in Southern Africa (IoD) which were utilised in the process. These searches identified various possible literature sources, including books, articles, theses, dissertations, internet sources and professional and institutional publications.

The literature review of this study is discursive prose which proceeds to a conclusion by reason and argument, and not merely summarising and listing various sources. The literature review covers the main themes of the research, namely the context and historical background of the housing problem in South Africa, the background and current status and latest legislative developments of the sectional title industry in South Africa, a brief overview of international trends in fragmented ownership, as well as the most recent developments in accounting and auditing of micro-entities in South Africa. The results of the literature study provided the basis for the aspects that were empirically tested, as discussed below.

2.3.2 Empirical study

Some authors classify a research strategy based on the goal or purpose of the study. Coldwell & Herbst (2004, pp. 9–13) explain that, in business research, there are three broad types of research strategies, namely descriptive research, exploratory research and causal research. Firstly, the authors describe the major purpose of descriptive research as to describe the characteristics of a population or phenomenon, and that descriptive studies aim to answer the ‘who, what, when and where’ questions. Descriptive research can have a basic or applied research goal, and can be either qualitative or quantitative in nature. Secondly, exploratory research differs from descriptive research in that it does not start with a specific problem, and the purpose thereof is to develop a hypothesis or a problem to be tested further. Exploratory research is especially useful when researchers do not have a clear idea of the problems that will be encountered during the study. Exploratory research is conducted to gain insight into a situation, phenomenon, community, etc. Thirdly, causal research (also sometimes referred to as explanatory research) aims at demonstrating that a change in one variable causes some predictable change in another variable, and implies that there is only one single cause of an event. Such a study builds on exploratory and descriptive research, but goes on to identify the reason why a specific phenomenon occurs. (See also De Vos et al. (2002, pp. 95–96).)

Blumberg, Cooper & Schindler (2008, pp. 10–13) also affirm the existence of different types of research methods. They differentiate between four types; namely reporting, descriptive, explanatory and predictive types. The first method, a reporting study, can be used to simply provide an account or summary of some data or to generate statistics. These types of studies typically use little inference or drawing of conclusions and are similar to what Coldwell & Herbst refer to as exploratory research. The second method, a descriptive study, is explained in more or less the same way as by Coldwell & Herbst. With a descriptive study, the researched attempts to describe a subject and tries to discover answers to the ‘who, what, where, when and how’ questions. Descriptive studies are considered to be popular in business research due to it being versatile across disciplines. The third method, an explanatory study, is rooted in theory and explanation. This type of study goes beyond description and attempts to explain the reasons for a phenomenon. Fourthly, a predictive study is also rooted in theory and explanation, but attempts to predict when and in what situations events may occur. This type of study usually calls for a high level of inference and is similar to the causal type of research discussed by Coldwell & Herbst.

There are a number of variations on the naming conventions for research types, strategies and designs. Henning (2004, p. 39) explains that methodologists often come up with new types, and even hybrid types. However, for the purposes of this study, a descriptive research strategy was chosen.

The concept of qualitative and quantitative studies is a widely used distinction for research study. Welman, Kruger & Mitchell (2005, pp. 6–9) explain that a quantitative research approach falls within the positivist philosophical paradigm, which hold that research must be limited to what can be observed and measured objectively and exist independently of the opinions and feelings of people. The authors add that the qualitative approach to research falls within the anti-positivist (or interpretivist) philosophical paradigm. Anti-positivism or interpretivism considers it inappropriate to follow strict natural-scientific methods when collecting and interpreting data.

Anderson and Poole (2009, pp. 24–25) state that qualitative research stresses meanings in context, instead of using numerically measured data. Coldwell & Herbst (2004, p. 13) describe qualitative research as research for which the findings are not subjected to a formal quantitative analysis or quantification. According to Pellissier (2007, pp. 20–22) qualitative research attempts to delve deeper, beyond historical facts and typically involves methods such as face-to-face interviewing, either with individuals or groups of respondents. (See also Blumberg, Cooper & Schindler (2008, pp. 191–194).) Pellissier (2007, p. 19) explains quantitative research as appropriate for examining data from large samples of a target population. The results thereof can be statistically analysed with great accuracy. Coldwell & Herbst (2004, p. 15) have a similar definition, stating that quantitative research generally involves primary data collection from large numbers of individual units. In quantitative research, strong emphasis is placed on the collection of numerical data, the summary thereof, and the drawing of inferences from the data.

A mixed research methodology, consisting of both quantitative and qualitative methods of collecting data, is increasingly being used in the field of business research. It is argued by Anderson and Poole (2009, p. 27) that, in order to maximise the theoretical implications of

research findings, it is often advisable to combine qualitative and quantitative research strategies. This approach can prove valuable in certain projects. Pellissier (2007, p. 22) is of the opinion that qualitative and quantitative strategies should be viewed as mutually supportive, as both approaches have specific benefits for solving research problems. In defence of mixed methodologies, Mengshoel (2012, p. 373) claims that researchers conducting mixed-method research can manage various paradigmatic issues by drawing from the strengths of both data collection methods to mitigate their individual weaknesses.

In this study, both a qualitative as well as a quantitative research strategy was followed. According to H. Marais (2012, p. 65) this means that the research was not conducted exclusively in either the positivist or interpretivist paradigm, but rather in the pragmatic paradigm. Pragmatism holds that the most important determinant of a research philosophy should be the research questions. The two different approaches may be used in combination, the one being more suitable for answering a specific question than the other (Saunders et al., 2007, p. 110). The pragmatic paradigm allows for some amount of objective measurement and quantitative analysis, usually associated with the positivist paradigm by applying a process of deductive reasoning. In addition, context consideration and deeper delving is possible, which typically relates to the interpretivist paradigm, by applying a process of inductive reasoning.

H. Marais (2012, p. 66) argues that researchers are increasingly challenged to address complex socially relevant problems, and that these problems regularly require a multidisciplinary research design. He adds that traditional caution against using different methodological approaches in the same study should not inhibit researchers in business and management fields from venturing into the territory of multiple methodologies in order to find more comprehensive solutions and answers. Thus, a mixed methodology was followed by applying the two methods consecutively. This allowed the results of the one method to inform the other, which Pellissier (2007, p. 22) views as being mutually supportive.

2.3.3 Population

In section 1.1 it was mentioned that the first study focusing on accounting and auditing in the South African sectional title industry was completed in 2013. One of the limitations of this research study was that the qualitative and quantitative empirical studies focused only on the Free State Province in South Africa and only in the city of Bloemfontein. As mentioned, one of the recommendations from the study was that further studies could be undertaken amongst the role players in other parts of South Africa, covering a larger geographical area. Comparative studies were also suggested between role players in different provinces in the country. (See also L. Lubbe (2013, p. 30;186;223).) This recommendation will be addressed in this study, by including three additional cities to the study. Taking into consideration the recommendations, two provinces in South Africa were selected for field visits, namely the Free State Province (FS) and the North-West Province (NW). The two provinces are quite similar in nature in that the provinces all have large rural areas and significant agriculture and mining operations. Apart from the Northern Cape Province (NC), the Free State Province and North-West Province are the two least densely populated provinces in the country (NC: 1 173 000, FS: 2 758 000, NW: 3 650 000) (Statistics South Africa, 2015a, p. 16). The two provinces have a comparable percentage of households living in flats, apartment blocks and town houses. In the Free State approximately 23 000 of the 883 000 households (2.60%) live in flats, apartments and town houses, and in the North-West the percentage is 3.67%, being around 41 000 of the estimated 1 117 000 households (Statistics South Africa, 2015a, p. 125). Apart from the Northern Cape, the two provinces are the two smallest contributors to the South African economy (NC: R71 142 million, contributing of 2% to GDP, FS: R179 996 million, contributing of 5.1% to GDP, NW: R239 020 million, contributing of 6.8% to GDP) (Statistics South Africa, 2015b, p. 11;46).

Two large municipalities from each of the two provinces were selected for field visits, namely Mangaung Metropolitan Municipality (the 'larger' Bloemfontein) and Matjhabeng Local Municipality (the 'larger' Welkom) in the Free State Province, and City of Matlosana Municipality (the 'larger' Klerksdorp) and Tlokwe Local Municipality (the 'larger' Potchefstroom) in the North-West Province. Mangaung Metropolitan Municipality has a diverse population and is home to two universities. The economy is strongly driven by the government sector and very active estate and construction activities (Statistics South Africa, 2011b, p. 1). The economy of Matjhabeng Local Municipality is largely driven by the mining

sector, a sector which has seen a steady decline since the publication of the 2013 study (PwC, 2014a, p. 7). According to Statistics South Africa, more than a third of the Matjhabeng Local Municipality population is unemployed, discouraged work seekers (Statistics South Africa, 2011c, p. 1). Similar to Matjhabeng, the City of Matlosana Municipality is largely influenced by the struggling mining sector, and almost 8% of the population have no formal schooling and unemployment is very high. Similar to Mangaung, Tlokwe Local Municipality has a diverse and more economically active population and the city houses a university. The economy of Tlokwe Local Municipality is also strongly driven by the government and agricultural sectors (Statistics South Africa, 2011d, p. 1).

The latest available statistics indicate that the Mangaung Metropolitan Municipality includes the cities of Bloemfontein, Mangaung and Thaba Nchu. The municipality has a total population of 747 431, with 231 921 households, an average household size of 3.1 people per household, and a population density of 119 persons per square kilometre. The municipality had a population growth rate of 1.47% between 2001 and 2011 (Statistics South Africa, 2011b, p. 1). The major cities in Matjhabeng Local Municipality are Allanridge, Hennenman, Odendaalsrus, Ventersburg, Virginia and Welkom. The municipality has a total population of 406 461, with 123 195 households, an average household size of 3.1 people per household, and a population density of 79 persons per square kilometre. The municipality had a population growth rate of -0.04% between 2001 and 2011 (Statistics South Africa, 2011c, p. 1). The City of Matlosana Municipality includes the cities of Hartbeesfontein, Klerksdorp, Orkney and Stilfontein. The municipality has a total population of 398 676, with 120 442 households, an average household size of 3.2 people per household and a population density of 112 persons per square kilometre. The municipality had a population growth rate of 1.04% between 2001 and 2011 (Statistics South Africa, 2011a, p. 1). The Tlokwe Local Municipality was formerly known as Potchefstroom and also include, amongst others, Lindequesdrif, Boskop, Matlwang and Promosa. It has a total population of 162 762, with 52 537 households, an average household size of 2.9 people per household and a population density of 61 persons per square kilometre. The municipality had a population growth rate of 2.38% between 2001 and 2011 (Statistics South Africa, 2011d, p. 1).

According to the Department of Rural Development and Land Reform, there were 3 207 sectional title schemes registered in Mangaung Metropolitan Municipality, 134 sectional title

schemes in Matjhabeng Local Municipality, 233 sectional title schemes in the City of Matlosana Municipality, and 447 sectional title schemes in Tlokwe Local Municipality.

It is often virtually impossible for a researcher to include an entire population in a study, owing to time and cost restraints (K. Maree, 2014, p. 172). For example, a specific phenomenon may be present only at a certain point in time, and the cost of studies involving global populations is usually exorbitant. Therefore, it is often very difficult and sometimes even impossible to include the entire population in a study. As mentioned in section 1.4.1, it was estimated that the South African sectional title industry consists of almost 60 000 schemes (also known as complexes), comprising over 800 000 individual units (Editorial, 2010a, p. 1; Muller, 2009, p. 42). (See also Van der Merwe (2014, p. 1–30(17)) and Editorial (2008, p. 2).) According a recent general household survey issued by Statistics South Africa, there are currently around 714 000 households living in flats or apartments and roughly a further 233 000 households living in town house complexes, adding up to approximately 947 000 households living in sectional title schemes (Statistics South Africa, 2015a, p. 122;125). Exact data on the number of registered schemes is not available. However, adding additional new developments since 2010, it can be assumed that there are just over 60 000 registered schemes in the country. These include residential, non-residential and mixed-use schemes.

2.3.4 Sampling

Qualitative as well as quantitative researchers should be clear as to the selected sampling approach. Howard & Sharp (1983, p. 126) explain that, especially when performing quantitative research, the results of the research depend largely on the sample data. For both qualitative and quantitative studies, it is important that samples are drawn in a scientific and well-managed manner. However, there is always a certain level of professional judgement involved when a researcher selects samples (Pellissier, 2007, pp. 16–18). (See also Smidt (2014, pp. 102–104). Authors such as Bryman et al. (2014, pp. 172–181), K. Maree (2014, pp. 172–180), Pellissier (2007, pp. 32–34), De Vos et al. (2002, p. 228;231), Saunders et al. (2007, p. 208;226), as well as Coldwell & Herbst (2004, pp. 79–81) differentiate between probability sampling and non-probability sampling methods.

When using probability sampling techniques, every element in the population usually stands an equal chance of being selected. It is used where the researcher needs to make inferences from the sample about a population in order to answer the research questions and meet objectives. The elements may also be selected at random, or the population may even be stratified according to some characteristic. Probability sampling ensures that there is no room for bias or favouritism. Saunders et al. (2007, p. 210) explain that the final sample size selected is almost always a matter of judgement as well as of calculation. The choice of the sample size will be governed by the confidence the researcher needs to have in the data, the margin of error that can be tolerated, the types of analysis being undertaken and, to a lesser extent, the size of the total population from which the sample is being drawn. Pellissier (2007, p. 32) states that probability sampling techniques are statistically meaningful, since all elements in the sample have a known probability to be selected. After choosing the required sample size, the researcher should select the most appropriate sampling technique and then select the sample. There are five main techniques that can be used to select a probability sample, namely, simple random sampling, systematic sampling, stratified random sampling, cluster sampling and multi-stage sampling (Bryman et al., 2014, pp. 172–175; Saunders et al., 2007, p. 217).

In terms of non-probability sampling, Coldwell & Herbst (2004, p. 79) state that the researcher uses his expertise or judgement in the selection of non-probability samples. It is also stated that this technique makes it impossible to assess sampling errors or to determine whether a sample is representative of the population or not. Saunders et al. (2007, p. 226) and Blumberg et al. (2008, pp. 250–251) explain that in many types of business research, probability sampling techniques may either be impossible to carry out, or not appropriate to answering the research questions, meaning that samples must be selected in another way. Blumberg et al. (2008, p. 252) remark that carefully controlled non-probability sampling often seem to give acceptable results to such an extent that the researcher need not do probability sampling. They also mention that non-probability sampling may be the only feasible alternative in cases where the relevant population is vague and difficult to determine or in cases where the entire population may not be available for study. Some practical advantages of non-probability sampling include cost and time savings. Non-probability sampling allows for a range of different techniques to select samples based on the researcher's subjective judgement. The range of non-probability sampling techniques includes quota sampling, purposive (sometimes referred to as judgement) sampling, snowball sampling, theoretical sampling, accidental sampling, and convenience sampling (Blumberg et al., 2008, p. 250; Bryman et al., 2014, pp.

178–181; De Vos et al., 2002, p. 231; Henning et al., 2004, p. 71; Saunders et al., 2007, p. 228). (See also Pellissier (2007, p. 32).)

Quota sampling is explained as being as close to a replica of the population as possible and representative of the population as such (De Vos et al., 2002, p. 232). Purposive or judgement sampling occurs when the researcher selects a sample to conform to some criterion and the judgement of the researcher is a prominent factor in this type of sample. Judgement sampling is considered to be appropriate in the early stages of an exploratory study (Blumberg et al., 2008, p. 253). K. Maree (2014, p. 178) adds that purposive sampling can also be appropriate where the researcher needs to verify that the respondents fall within a specific category, e.g. age group or marital status. When using snowball sampling, there is usually limited access to appropriate participants for the intended study. The researcher makes initial contact with a small group of people relevant to the research topic, and then these people are used to establish contact with others (Bryman et al., 2014, p. 179). Theoretical sampling looks for participants who can help to build the substantive theory further – a theoretical population (Henning et al., 2004, p. 71). Accidental sampling is an availability or haphazard method of sample selection, in which the respondents are those who are nearest and most easily available (De Vos et al., 2002, p. 232). Convenience sampling is a widely used technique, available to the researcher by virtue of its accessibility. Convenience sampling has no controls to ensure precision, but it may be useful, especially in qualitative studies (Blumberg et al., 2008, p. 252; Bryman et al., 2014, p. 178; Saunders et al., 2007, p. 234).

There can also be a degree of ‘interaction’ between different sampling methods used by a researcher. Henning et al. (2004, p. 71) explain that purposive sampling contains elements of theoretical sampling, both looking towards the people who fit the criteria of ‘desirable participants’. Theoretical and purposive sampling may be adjusted and expanded to accommodate snowball sampling. The authors are of the opinion that these three forms of sampling are all related, with the common denominator being the selecting of the people most suitable to the research journey at the time that they are needed. The specific sampling methods selected for the two empirical studies will be discussed in 2.3.5 and 2.3.6 below.

2.3.5 Qualitative study

As mentioned in section 2.3.2 above, for purposes of the empirical study, both a qualitative as well as a quantitative research strategy was followed, and the research was conducted in the pragmatic paradigm. In considering the scope of qualitative research, several approaches are available for exploring research questions. These include, amongst others participant observation, role-playing, case studies, document analysis and various types of interviewing (Blumberg et al., 2008, pp. 201–202; Saunders et al., 2007, pp. 310–311). For the purposes of this study, the approach of interviewing was chosen for collecting data.

Clough and Nutbrown (2002, p. 103) state that interviewing is one of the most common and powerful ways in which researchers try to understand their fellow human beings. Henning, Van Rensburg & Smit (2004, p. 53) explain that an interviewee gives his or her responses with the help of questions and prompts in an atmosphere of trust and accountability. According to Welman, Kruger & Mitchell (2005, pp. 165–167) as well as Bryman et al. (2014, pp. 224–225) there are three types of interviews, namely structured, semi-structured, and unstructured.

In a structured interview, the interviewer works from a pre-compiled questionnaire (the interview schedule), and is restricted to the questions, the wording and the order they appear on the schedule, with little room for deviation (Henning et al., 2004, p. 53). Questions are usually read by the interviewer and the interviewee's responses are recorded on a standardised schedule, usually with pre-coded answers. Unstructured interviews are informal in nature and are used to explore a general area of interest in depth, without a pre-determined list of questions and the interviewee can talk freely about the topic (De Vos et al., 2002, pp. 347–348). Between highly structured interviews on the one hand and unstructured interviews on the other, various degrees of structure are possible, usually referred to as semi-structured interviews. Semi-structured interviews make use of an interview guide instead of an interview schedule (Bryman et al., 2014, p. 225). The interview guide includes a list of topics and aspects (not always necessarily specific questions) to be explored during the course of the interview. This means that the order of the questions may be varied depending on the way the interview develops, and, if necessary, additional questions may be asked to further explore the research objectives. The interviewer may also adapt the formulation and terminology in the questions to fit the background of the respondents. In semi-structured interviews, the interviewer may

also use probes to clarify vague answers and may request respondents to elaborate on certain answers (Coldwell & Herbst, 2004, p. 55).

Interviews in qualitative research tend to be less structured than in quantitative studies. Interviewees are encouraged to elaborate on answers; the interview process is more flexible; some departures from the interview guide are allowed; and the interviewer can follow up on replies. The aforementioned factors can provide the researcher with rich, detailed answers (Bryman et al., 2014, pp. 224–225). According to Brynard et al. (2014, p. 24) the primary goal of the qualitative researcher is to be honest in reporting the views and expressions of the respondents. Henning, Van Rensburg and Smit argue that if many interviews are conducted with different people, there may be more reliability of data and an understanding of different subjects may be thereby achieved (Henning et al., 2004, p. 54).

Various authors give advice on how to develop interview guides and conduct interviews (Bryman et al., 2014, pp. 228–230; Brynard et al., 2014, pp. 42–48; Clough & Nutbrown, 2002, p. 122; Coldwell & Herbst, 2004, pp. 54–57; De Vos et al., 2002, pp. 190–204; Henning et al., 2004, pp. 53–55; Mouton, 1996, pp. 151-152-158). Guidelines from available literature were combined and taken into account in developing the interview guides and conducting the interviews. Especially the following aspects were taken into account:

- Making interview appointments well in advance and supplying the interviewee with written credentials beforehand;
- Explaining the purpose and format of the interview beforehand and asking the interviewees for permission to document the interview by way of taking notes or by making a voice recording;
- Addressing the terms of confidentiality;
- Ensuring that the contents of the questionnaires fit the concepts of the study and the research problems;
- Keeping all questions as neutral as possible;
- Ensuring that only one question is asked at a time;

- Paying attention to the clarity, length, language and formulation of questions, leaving no room for ambiguity;
- Ensuring that the order of the questions allow for a logical flow of thought;
- Avoiding leading and biased questions;
- Including a variety of questions – closed as well as open-ended and using Likert scales where applicable; and
- Leaving enough room for comments and motivations of answers, and encouraging additional responses.

Flowing from the literature review, a qualitative research strategy was followed by way of a range of semi-structured one-to-one, face-to-face and telephonic interviews with role players in the sectional title industry. For the purposes of the qualitative study, the population of interviewees were divided into four main groups of stakeholders in each of the selected municipal areas (as discussed in section 2.3.3 above). The first group or interviewees were chairmen of bodies corporate of sectional title schemes, the second group managing agents of sectional title schemes, the third group accounting and auditing professionals involved in the sectional title industry and the fourth group the provincial EAAB appointed auditors of estate agents. The reason for splitting interviewees into four groups is that the groups play different roles in the industry and have varying perspectives on practical issues, problems and challenges in the industry. As mentioned in section 2.3.4 above Henning, Van Rensburg and Smit (2004, p. 71) emphasise the importance of selecting interviewees who can shed optimal light on the issue being investigated and add that 'desirable participants' are an integral part of the purposive sampling procedure. (See also Pellissier (2007, pp. 24–25).) The above-mentioned four groups of stakeholders comply with this requirement.

The exact populations of the accounting and auditing practitioners, the managing agents and the trustee chairmen were difficult to determine, due to various factors. As mentioned in section 2.3.3 above, the Department of Rural Development and Land Reform has statistics available on the number of registered sectional title units in each of the municipal areas in South Africa that are included in the study. However, many sectional title schemes in the selected municipal areas exist without an operational body corporate and board of trustees. Furthermore, there are many sectional title schemes in operation not making use of the

services of a managing agent. In addition, not all the entities acting as sectional title managing agents are registered with the Estate Agency Affairs Board (EAAB) and the National Association of Managing Agents (NAMA). Furthermore, not all sectional title schemes are using the services of professional accounting and auditing practitioners. There are also various auditing and accounting practitioners who are not involved or prefer not to be involved in assurance services for sectional title schemes. The reasons why they prefer not to be involved differ from firm to firm. Some practitioners, for instance, do not want to get involved in this type of work because they perceive the risk to be too high. Others claim that the audit and/or accounting fees attached to the work are so low that it does not make financial sense to accept sectional title clients. Many of the larger accounting and auditing firms state that it is firm policy not to get involved in work of such a small scale (L. Lubbe, 2013, p. 31;206-218).

Due to the above-mentioned reasons, it was not practically possible to determine the exact populations of the functioning bodies corporate and managing agents in the three municipal areas in the three provinces. The fact that a large number of accounting and auditing practitioners are not involved in service delivery in the sectional title industry makes the mentioned practical challenge also applicable to these firms to a large extent. In order to address these practical problems, extensive consultation was undertaken by the candidate as well as the study leader among the three target groups in the identified municipal areas, namely chairmen of bodies corporate of sectional title schemes, managing agents of sectional title schemes, and accounting and auditing practitioners involved in the sectional title industry. After the consultation process, a joint decision was made to include five respondents from each of the three groups. It was also jointly decided which five respondents were to be chosen from each group. Factors such as knowledge of and experience in the industry as well as the number of clients of the managing agents, accounting and auditing practitioners played a role in the choice of the five respondents that were eventually chosen. The sample selection and the response rate will be discussed in detail as part of the empirical results in Chapter 6.

In order to address the research problem of the study, four different research questionnaires were developed as a measurement instrument in order to structure the interviews, one for each main group of interviewees (see Annexures A to G). Some of the respondents were Afrikaans-speaking, and Afrikaans questionnaires were used in these instances (see Annexures B, D, F and H). Questionnaires used in the study by L. Lubbe (2013, pp. 246–289) were used as the starting point for developing the questionnaires for the first three groups of

respondents, and adjustments were made taking into account the results of the previous study, as well as recent developments in legislation. The EAAB appointed auditors of estate agents did not form part of the previous study, and therefore a new questionnaire was designed for that specific purpose. The questionnaires were designed to structure the interview process, and ensure consistency of the coverage of questions between the three groups and individual interviewees. A formal cover letter from the supervisor (see Annexure J) explaining the purpose of the interviews and addressing the terms of confidentiality was sent to all interviewees before the interviews.

The results of the qualitative research study are discussed in detail in Chapter 6 of this study.

2.3.6 Quantitative study

Flowing from the literature study, a quantitative research strategy was followed, by way of an analysis of the annual financial statements and audit reports thereto of bodies corporate over a period of two years. Due to the difficulty of gathering a sample of annual financial statements and audit reports of bodies corporate stretching over an uninterrupted period of at least three years, a non-probability sampling technique was chosen, and the sample was selected by way of convenience sampling.

A sample of annual financial statements including audit reports thereto was selected at random, covering a period of two years for bodies corporate in each of the four identified municipal areas in South Africa. The financial statements and accompanying audit reports are for the financial years ending 2014 and 2015. Since the 2014 financial statements also have figures for the comparative financial year (2013), the data of three financial years were available for analysis. These annual financial statements with the accompanying audit reports were obtained from several of the managing agents and audit firms who participated in the qualitative study. All the bodies corporate in the sample made use of the services of a managing agent and no self-managed schemes were incorporated into the study. The sample of the annual financial statements selected covered residential schemes only (no commercial or combined schemes) and a variety of bodies corporate and includes:

- Residential bodies corporate;
- Small (fewer than 10 units) town house complexes;
- Medium (between 10 and 50 units) town house complexes;
- Large (more than 50 units) town house complexes;
- Small (fewer than 10 units) blocks of flats;
- Medium (between 10 and 50 units) blocks of flats;
- Large (more than 50 units) blocks of flats.

Furthermore, the sample was selected so as to include financial statements and audit reports drawn up and audited by a number of different accounting and auditing practitioners. All the financial statements obtained were captured in Excel spreadsheets. The financial statements were summarised according to the main income and expense categories as well as important sections in the accompanying notes to the financial statements. Certain components of the audit reports were also analysed. The sample selection and response rate will be discussed in detail in Chapters 4 and 5. Various forms of analysis were conducted on the selected annual financial statements and accompanying audit reports, the purpose of which is to identify, amongst others, trends, deficiencies in reporting and possible norms for the sectional title industry. These findings are also discussed in detail in Chapters 4 and 5 of the study.

2.4 Chapter layout

The content of the study consists of the following:

Chapter 1 – In the first chapter, the background to the housing problem in South Africa was introduced. The concept of private ownership was discussed and a brief introduction into the sectional title industry in South Africa was given. The chapter then briefly discussed financial reporting in South Africa, from a sectional title perspective. The chapter concluded with the research problem, research aim and objectives and the research questions.

Chapter 2 – This chapter dealt with the research design and method. The background to the literature review was given. The chapter also explained the population of the study and the sampling methods used. The chapter gave an overview of the qualitative and quantitative empirical studies, and concludes with the chapter layout.

Chapter 3 – The third chapter deals with the legal aspects surrounding the sectional title industry in South Africa. Specific consideration is given to the most recent legislative developments, comparisons between the old and new legislation, as well as legal aspects relating to accounting and auditing matters of sectional title schemes. This chapter provides, amongst others, a theoretical underpinning for the study and specifically for the empirical section in Chapters 4, 5 and 6.

Chapter 4 – In the fourth chapter, the auditing and assurance aspects of sectional title schemes are examined. Findings based on an analysis of a sample of body corporate annual financial statements, with specific reference to the audit reports thereto, are also discussed in this chapter.

Chapter 5 – The fifth chapter deals with accounting and reporting of sectional title schemes. This chapter examines the legal requirements for financial reporting by bodies corporate and examines reporting frameworks currently available in South Africa. The chapter also addresses the possibility of a sectional title-specific reporting framework. Findings based on an analysis of a sample of body corporate financial statements over a period of three years are also discussed in this chapter.

Chapter 6 – In the sixth chapter, an empirical study of the sectional title industry in South Africa will be undertaken. The study is based on interviews held with stakeholders in the sectional title industry. The chapter is divided into five parts. The first part deals with interviews held with chairmen of boards of trustees of bodies corporate. Part two deals with interviews held with managing agents of sectional title schemes, while part three deals with interviews held with accountants and auditors of sectional title schemes. The fourth part deals with interviews held with EAAB appointed auditors of estate agencies. The final part of this chapter summarises the findings from the interviews held with the various stakeholders.

Chapter 7 – The seventh chapter indicates the researcher's reflections and conclusions of the study, suggests possible solutions for auditing, governance and accounting problems identified during the research as recommendations in this regard. It also presents recommendations for future research.

2.5 Conclusion

This chapter dealt with the research design and method of the study. The background to the literature review was given. The chapter also explained the population of the study and the sampling methods used. The chapter gave an overview of the qualitative and quantitative empirical studies, and concludes with the chapter layout. In the next chapter, legal aspects surrounding the sectional title industry in South Africa will be discussed and specific consideration will be given to legal aspects relating to accounting and auditing matters of sectional title schemes. The next chapter will lay the foundation for the empirical section of the study.

Chapter 3

Legislative aspects relating to accounting and auditing of sectional title schemes

“Life shrinks or expands in proportion to one’s courage” – Anaïs Nin

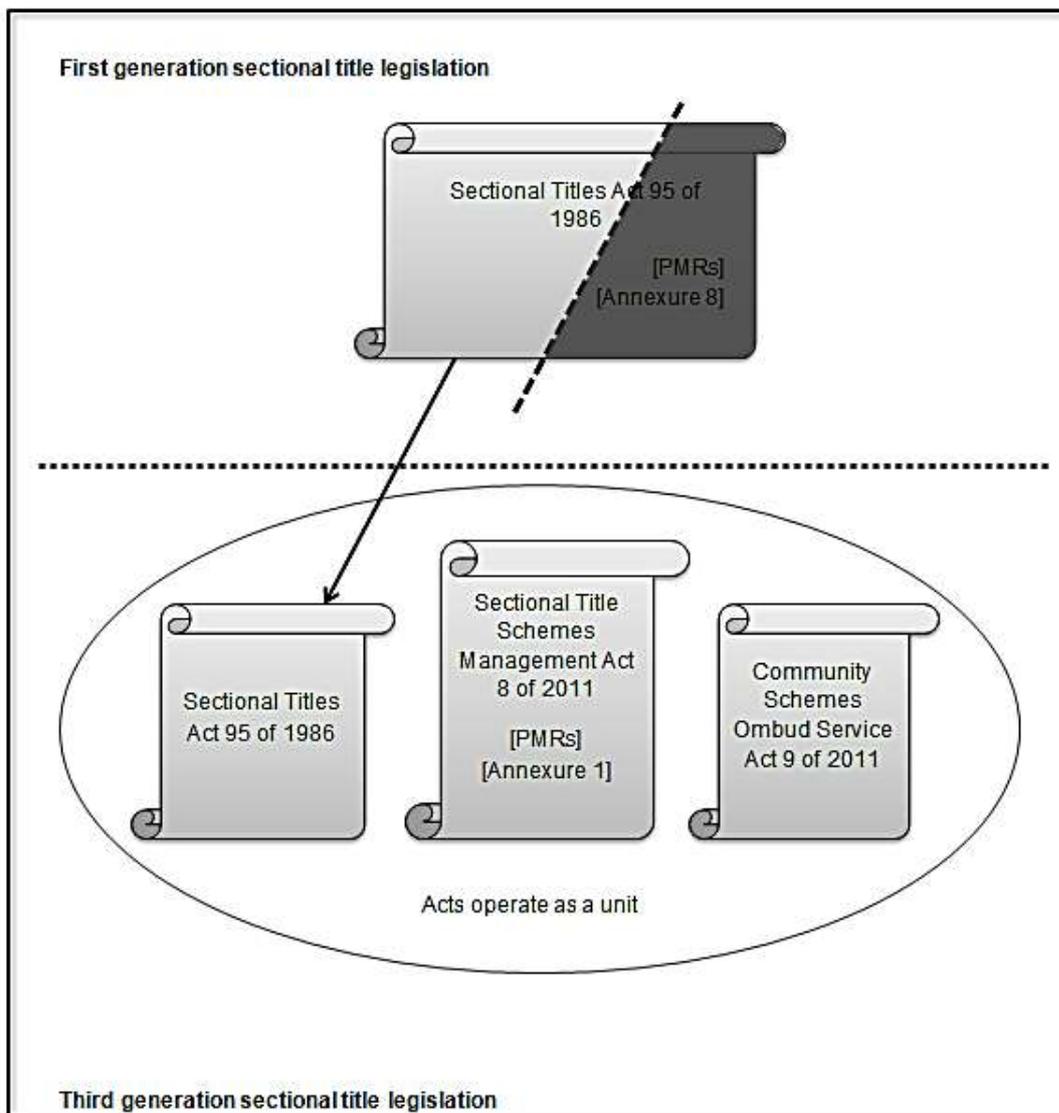
3.1 Introduction

This chapter provides, amongst others, a theoretical underpinning for the study and specifically for the empirical section in Chapters 4, 5 and 6. In section 1.1 and 1.4.1 the historical development of sectional titles legislation in South Africa was discussed. The so-called third generation sectional titles legislation consists firstly of the new Sectional Titles Schemes Management Act No. 8 of 2011 (also referred to as the STSMA), containing all governance and management provisions regarding sectional titles. Secondly, technical registrations and survey provision are contained in the remainder of the Sectional Titles Act No. 95 of 1986 (abbreviated as STA), as amended by the Sectional Titles Amendment Act No. 33 of 2013. Thirdly, the Community Schemes Ombud Service Act No. 9 of 2011 (also referred to as the CSOSA) provides a dispute resolution mechanism for sectional title and other community schemes.

Paddock (2011, p. 1) explains that some of the changes effected by the new legislation are simply ‘technical adjustments’, such as updated descriptions, removing superfluous provisions and adding cross-references. Van der Merwe (2011, p. 134, 2014, pp. 1–43), T. Maree (2015c, p. 1) and Bechard (2015a, p. 1) concur that the three new sets of legislation have gone a long way to tidy up loose ends and clarify points of uncertainty. However, the authors point out that there are still numerous shortcomings in the legislation and that many of the new amendments are ambiguous. According to Van der Merwe (2013, p. 707) some of the most interesting and controversial changes were the amendments to Annexure 8 of the Regulations, better known as the prescribed management rules (PMR) of a sectional titles scheme. Bechard (2015a, p. 1) points out that many of the provisions of the STSMA replicate those of the Sectional Titles Act. However, the STSMA does introduce some significant changes. Furthermore, in October

2015 the Department of Human Settlements published in the Government Gazette draft regulations that flesh out how the STSMA and the CSOSA will be applied. The amended management rules as per the old Annexure 8 of the STA were extensively revised and published for comment in the Regulations to the STSMA as Annexure 1 during October 2015 (T. Maree, 2015a, p. 1, 2015f, p. 1). The final revised Regulations were published on 7 October 2016. Figure 3-1 below illustrates the changes to the legislation from first to third generation sectional title legislation.

Figure 3-1: First generation versus third generation sectional title legislation



(Own diagram)

A detailed analysis of all sectional titles legislative provisions fall outside of the scope of this study. This chapter deals with the legal aspect surrounding the sectional title industry in South Africa, mainly from a management, accounting, auditing and financial perspective. The purpose of the chapter is not to undertake a legal study, and consideration will accordingly only be given to matters relating to management, accounting, auditing and financial aspects relating to sectional title schemes. The chapter will be structured according to the responsibilities and functions of different role players in sectional title schemes being the body corporate, trustees, managing agents, accounting and auditing practitioners.

Throughout the chapter, specific consideration will be given to the changes effected by the third generation sectional titles legislation. Regulations, sections and rules pertaining to the 'old' Sectional Titles Act will be specifically indicated as such. Except where otherwise stated, all regulations, sections and rules mentioned in this chapter refer to regulations, sections and rules as per the third generation sectional titles legislation (the Sectional Titles Schemes Management Act No. 8 of 2011 [STSMA], the Sectional Titles Act No. 95 of 1986 [STA], as amended by the Sectional Titles Amendment Act No. 33 of 2013 and the Community Schemes Ombud Service Act No. 9 of 2011 [CSOSA]).

3.2 The body corporate

In terms of section 2(1) of the STSMA, a body corporate is deemed to be established from the date on which any person, other than the developer, becomes an owner of a unit in the scheme. The body corporate members are then the developer, the owner and any person who thereafter becomes an owner of a unit (Van der Merwe, 2014, pp. 1-52–6). Van der Merwe (2014, pp. 2-22-2–23) explains that a body corporate under the Sectional Titles Act is a legal *persona* and *universitas* meaning that it has perpetual succession and is capable of holding property apart from its members. The body corporate is also capable of suing other entities and being sued in its own name. Van der Merwe (2014, pp. 2–25) also remarks that the fact that the legislature chose to designate the members' association as a body corporate (*regspersoon* in Afrikaans) in itself indicates corporate status. The author adds that even

though bodies corporate enjoy corporate status, the provisions of the Companies Act 71 of 2008 do not apply to bodies corporate. (See also Pienaar (2010, p. 179).)

3.2.1 Functions of bodies corporate

Van der Merwe (2014, pp. 14–5) writes that the effective management of a sectional title scheme is vitally important, especially to unit owners and the financial institutions with an interest in the scheme. Therefore, as Pienaar (2010, p. 150) points out, the functions of the body corporate as prescribed by the Acts (STA, STSMA and CSOSA) are not voluntary, but compulsory, as indicated by the wording in the new Annexure 1 of the STSMA “*the body corporate must...*”. In the original STA, before amendment, the wording was “*the body corporate shall...*”. Both the word ‘shall’ and the word ‘must’ mean ‘has a duty to’, but the use of the word ‘must’ is the clearest way to indicate that the functions are mandatory. The change in wording can be seen as an improvement in the legislation. Failure to perform the functions as prescribed constitutes a breach of the Act (Van der Merwe, 2014, pp. 14–14). The most important functions of the body corporate are set out in sections 2 and 3 of the STSMA (previously section 37 of the STA), with additional management and conduct rules contained in Annexures 1 and 2 of the STSMA. The main functions can be broadly categorised as the establishment of funds, levying contributions, the operating of accounts, procuring insurance, and maintaining the common property (Pienaar, 2010, pp. 152–162; Van der Merwe, 2014, pp. 14-15-14–16). These functions will be discussed below.

3.2.1.1 Funds and reserves

The term ‘fund’ is referred to several times in the STSMA and STSMA Regulations. However, despite the numerous references to the term, as well as the fact that the STSMA now specifically requires two different funds to be maintained, the term ‘fund’ is not defined in the definitions section of either the STSMA or the STSMA Regulations. Moreover, regarding accounting, International Financial Reporting Standards (IFRS) also has no distinct definition of the term ‘fund’. Neither the *Conceptual Framework for Financial Reporting*, nor IAS 1 *Presentation of Financial Statements* make mention of or define the term ‘fund’ (Koppeschaar

et al., 2014, pp. 7–54; Service, 2015, pp. 38–101). IFRS 9 *Financial Instruments* is the only standard which makes mention of the term ‘funds’, stating items such as mutual funds and investment funds. These items are, however, not applicable to the sectional title industry.

PwC (2014b, p. 1) points out that according to International Accounting Standard (IAS) 1, reserves, together with equity share capital and other own equity instruments, make up the shareholders’ equity section of an entity’s balance sheet (currently called the statement of financial position). It is added that the term ‘reserves’ are not specifically defined in IFRS and are frequently referred to as components of equity. Reserves may include reserves such as fair value reserves, cash flow hedge reserves, asset revaluation reserve and foreign currency translation reserve and other statutory reserves. Most reserves result from accounting requirements to reflect certain measurement changes in equity rather than profit or loss (currently the statement of comprehensive income). Of all the types of reserves mentioned, statutory reserves are probably the most relevant to the sectional titles act requirements. Statutory reserves are defined as reserves that are created based on the requirements of the law or the statute under which the company is incorporated (Mackenzie et al., 2014, p. 85; Service, 2015, p. 78). For instance, many corporate statutes in Middle Eastern countries require that companies set aside 10% of their net income for the year as a ‘statutory reserve’, with such appropriations to continue until the balance in this reserve account equals 50% of the company’s equity capital. The intent is to provide an extra ‘cushion’ of protection to creditors, such that even significant losses incurred in later periods will not reduce the entity’s actual net worth below zero, which would, if it occurred, threaten creditors’ ability for repayment of liabilities (Editorial, 2013d, p. 1). IAS 1 requires that movements in reserves during the reporting period be disclosed, along with the nature and purpose of each reserve presented within owners’ equity. Since bodies corporate are now required by law (the STSMA and STSMA Regulations) to maintain a reserve fund, these funds can be seen as statutory reserves in terms of IFRS.

The definition of the terms ‘funds’ and ‘reserves’, specifically in the context of the sectional title industry is perhaps one of the matters that should be considered when developing industry-specific guidelines. (See also Chapter 5.) The STSMA differentiates between two types of funds, namely the administrative fund and the reserve fund. The two funds will be discussed below.

3.2.1.2 Administrative fund

Section 3(1)(a) of the STSMA and rule 24(1) of the STSMA Regulations state that a body corporate must establish and maintain an administrative fund, reasonably sufficient for covering the estimated annual operating costs of the body corporate. These operating costs include items such as repair and maintenance of the common property, payment of municipal charges and insurance premiums (See also Van der Merwe (2014, pp. 14–15) and Pienaar (2010, pp. 155–156).) In other words, the reserve fund should be maintained according to the body corporate budget, and enough money should be contributed (through levies) to cover the operations of the body corporate for the ensuing year. Rule 24(1) should be read together with rule 9(c), which deals with the duties of the trustees; rule 17(6)(j)(iv), which deals with matters to be discussed at the AGM; rule 25, which deals with contributions and charges; as well as rule 26(1)(e), which deals with budgets. (See also section 3.2.1.4, 3.3.5.1 and 3.5 below.) Rule 24(4) further stipulates that money may be paid out of the administrative fund in accordance with trustee resolutions and the approved budget for the administrative fund.

The new rule 24 in the STSMA Regulations is similar to the old prescribed management rule (PMR) 37(1)(a) which stated that the body corporate should establish a fund for administrative expenses sufficient for the repair, upkeep, control, management and administration of the common property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other local authority charges for the supply of electric current, gas, water, fuel and sanitary and other services to the building or buildings and land, and any premiums of insurance, and for the discharge of any duty or fulfilment of any other obligation of the body corporate. There has, therefore, been no significant change in the legislation regarding administrative funds.

3.2.1.3 Reserve fund

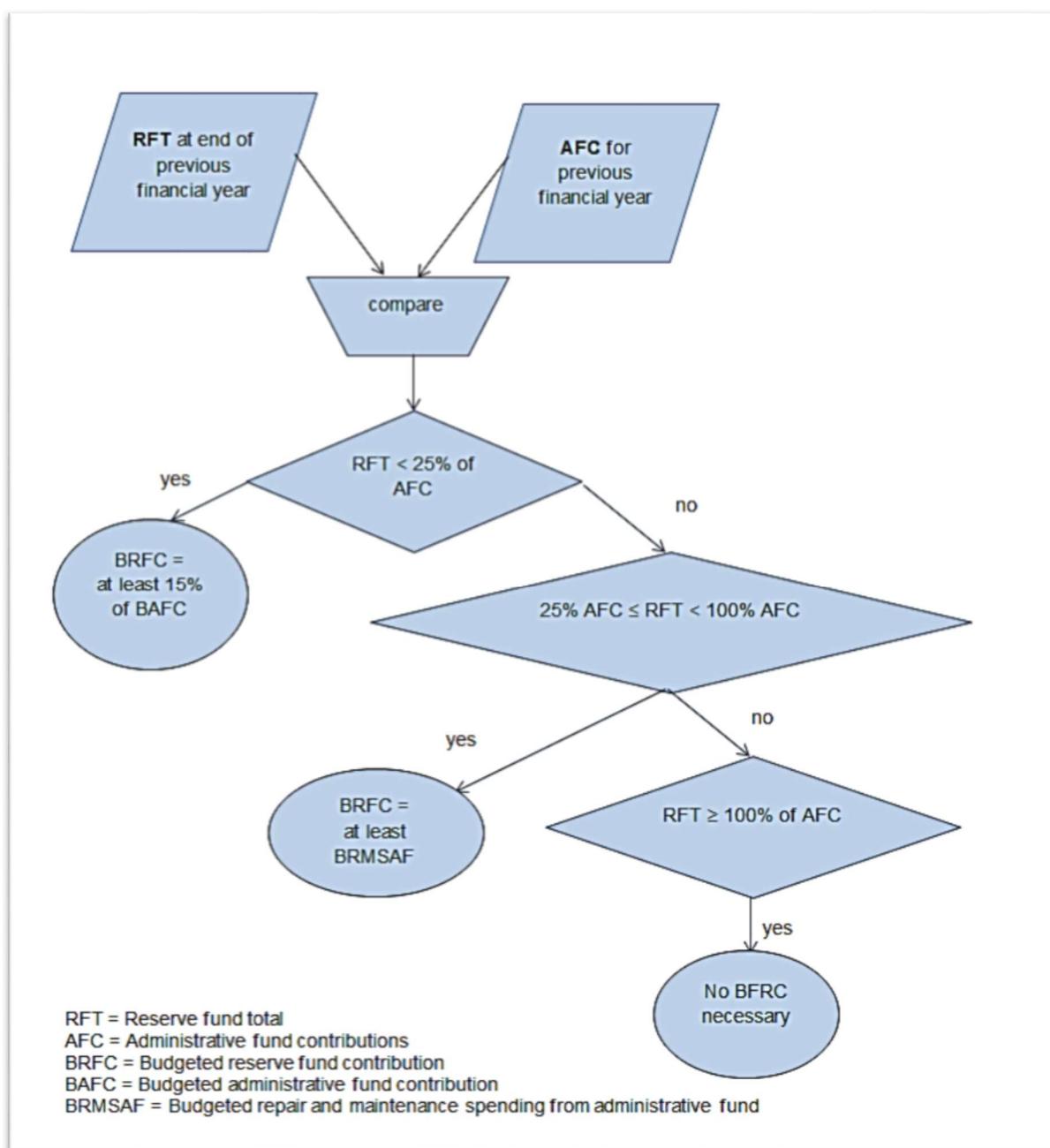
Probably the most significant and most controversial change brought about by the third generation sectional title legislation is the requirement by section 3(1)(b) of the STSMA to establish and maintain a reserve fund. Section 3(1)(b) of the STSMA requires the fund to be reasonably sufficient to cover the cost of future maintenance and repair of common property, but not less than such amounts as may be prescribed by the Minister. It is widely believed that bodies corporate that do not currently have a reserve fund in place will be granted a period of two years from enactment of the new STSMA Regulations (Prince, 2015a, p. 1, 2015b, p. 1).

Rule 2 of the STSMA Regulations prescribes a formula for calculating the minimum amount of the annual contribution to the reserve fund for a financial year being budgeted for. The formula is based on the amount in the reserve fund at the end of a financial year and the total contributions collected in that year. In simple terms, the formula works as follows:

- If, at the end of the financial year, the money in the reserve fund is less than 25% of the total contributions to the administrative fund for that year, then, in the following financial year the minimum allocation to the reserve must be 15% of the total contributions to the administrative fund.
- If, at the end of the financial year, the money in the reserve fund is equal to, or more than 100% of the total contributions to the administrative fund for that year, the body corporate does not have to top up its reserve fund.
- If, at the end of the financial year, the money in the reserve fund is more than 25% but less than 100% of the total contributions to the administrative fund for that year, the contribution to the reserve fund must at least equal the amount the body corporate budgeted to be spent from the administrative fund on repairs and maintenance in the following year.

Figure 3-2 below illustrates on a basic level how a body corporate should go about determining its contribution to the reserve fund for a financial year being budgeted for.

Figure 3-2: Calculation of budgeted reserve fund contribution



(Own diagram)

Bechard (2015c, p. 1) emphasises that although the original Sectional Titles Act required all bodies corporate to take account of future expenditure when budgeting, the first generation legislation did not prescribe a minimum amount that must be set aside specifically to pay for future maintenance and repairs. In order to keep levies low, many schemes made no or little provision in their annual budgets for future expenditure (J. Paddock, 2014, p. 1). Instead,

schemes raised special levies whenever they were faced with a major expense. Sectional title legal specialist T. Maree (2015a, p. 1, 2015d, p. 1) is of the opinion that provision for sectional title reserve funds are crucial and even goes as far as stating that “*special levies is a symptom of poor management*”. Even though reactions to the prescribed reserve fund contributions were largely positive, Prince (2015a, p. 1, 2015b, p. 1) warns that numerous sectional title specialists are concerned that many sectional title owners will not be able to contribute to the reserve funds of their schemes. In the study done by L. Lubbe (2013, p. 22;193;219;226), it was pointed out that one of the biggest problems for bodies corporate is the approval of budgets. Many trustee chairpersons reported that increases in budgets and the resulting levies are always met with negativity. Prince (2015a, p. 1, 2015b, p. 1) states that in certain lower income sectional title schemes, the current owners can hardly afford to pay their regular levies; hence, the concern over the affordability of an additional 25% contribution spread only over a two year period. It is argued that due to the new regulation, it may become increasingly difficult for the lower to middle income group to gain entry into the sectional title market.

Bechard (2015c, p. 1) remarks that owners in schemes that have not built up reserves or ‘savings’ will probably experience financial hardship in the short term, because levies will have to be increased sharply to meet the required reserves. However, it is believed that the new rule will combat current practices where owners are regularly hit by special levies whenever major repairs must be undertaken (Jay, 2015, p. 44). Furthermore, it often happens that an owner who knows that a special levy is about to be imposed, sell his or her unit — passing the liability onto the purchaser. The reserve fund and maintenance plan proposed in the new Regulations are intended to ensure that members pay while they derive the benefits of a common property that is properly maintained (Bechard, 2015b, p. 1, 2015c, p. 1).

STSMA Regulation rule 24(2) stipulates that a body corporate’s reserve fund must be used specifically for the implementation of the maintenance, repair and replacement plan of the body corporate. (See section 3.2.1.7 below for more detail on the written ten-year maintenance plan.) According to rule 24(5), money may be paid out of the body corporate’s reserve fund at any time in accordance with trustee resolutions and the aforementioned approved maintenance, repair and replacement plan. Money may also be paid out of the reserve fund if the trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense. There are also a number of sub-rules set out in rule 24(5)(b)(i) to 5(b)(iv) setting out the purposes and circumstances that constitute ‘urgency’.

All urgent payments made under sub-rule 5(b) from the body corporate reserve fund should fall within the limits and restrictions imposed by the body corporate members and must not exceed the amount necessary for the purpose for which it is expended.

The STSMA Regulation rule 26(5) deals with the audit of the financial statements of bodies corporate. Sub-section (c) brings about a significant change to the scope of work to be performed by auditors. Rule 26(5)(c)(ii) places a very specific burden on the auditor, stipulating that the audit of a body corporate's financial statements "*must include opinions as to whether or not the body corporate has complied with the accounting requirements set out in rules 21, 24 and section 26, with a specific description of any failure to comply with such requirements*". Since rule 24 deals with administrative and reserve funds, the new regulations regarding reserve funds will probably have a significant impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work. (See also section 3.5 below for further discussions.)

3.2.1.4 Contributions and charges

Most sectional title residents want to stay in a well-maintained complex, but very few want to contribute financially. In many cases, levy increase discussions at annual general meetings are met with negativity (L. Lubbe, 2013, p. 193) and owners want to put impossible cost restrictions on budgeted expenses (L. Lubbe, 2013, p. 203). This leaves trustees and managing agents in a very difficult situation. As a result, reactions to changes in legislation relating to levies and contributions will vary greatly among sectional title stakeholders.

Rule 25(1) of the STSMA Regulations deals with contributions and charges, also known as levies. The rule contains a number of new prescriptions regarding notifications, specific charges, interest on arrear accounts and how non-payment should be dealt with. T. Maree (2015f, p. 1) warns that not adhering to the prescriptions of rule 25(1) may lead to levies becoming unrecoverable.

Rule 25(1) sets out a number of requirements regarding communication to members regarding amounts payable. The rule states the body corporate must give each member written notice of the contributions and charges due and payable by that member to the body corporate. This should be done as soon as possible but not later than 14 days after the approval of the body corporate budget by a general meeting. The written notice should state that the member has an obligation to pay the specified levy. The notice should also specify the due date for each payment and, if applicable, state that interest at a rate specified in the notice will be payable on any overdue levies. Furthermore, the notice must include details of the dispute resolution process that applies in respect of disputed contributions and charges.

Rule 25(2) stipulates that if money owing is not paid on the dates specified in the above-mentioned notice, a final notice must be sent to the member. This notice must state that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately. The final notice should also state that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within 14 days after the date the final notice is given.

According to rule 25(3), members automatically become liable for contributions in respect of the next financial year in the same amounts and payable in the same instalments as were due and payable by them during the past financial year. In addition, rule 21(3)(b) stipulates that the body corporate may, on the authority of a written trustee resolution, increase the contributions due by the members by a maximum of 10% at the end of a financial year to take account of the anticipated increased liabilities of the body corporate. This allowed 10% increase will then remain effective until members receive notice of the contributions due by them for the next financial year; provided that it is done in terms of rule 25.

In the past, there was no part of the STA or any prescribed management rule that set the rate of interest the trustees could charge on such overdue amounts (G. Paddock, 2014, p. 1). In Annexure 8 of the original STA (before the amendments as discussed in section 3.1 above), prescribed management rule (PMR) 31(6) simply stated that the trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine. The new STSMA stipulates in rule 21(3)(c) of the Regulations that the body corporate may, on the authority of a written trustee resolution, charge interest on any overdue amount payable by a

member to the body corporate. However, the provision is that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) (Act No 34 of 2005) (also referred to as the NCA) compounded monthly in arrears. The Regulations of the National Credit Act, Chapter 5, Regulation 42(1) stipulates the maximum prescribed interest rates for a number of sub-sectors. The National Association of Managing Agents (NAMA) indicated in October 2016 via email correspondence, that it is still to be determined under which sub-sector sectional title schemes will fall in terms of the NCA.

Although interest rate limits in rule 21(3)(c) will protect debtors and other members of the body corporate in future, many sectional title experts expressed their concern regarding the new restrictions (T. Maree, 2015f, p. 1; Prince, 2015a, p. 1, 2015b, p. 1). Levy collection is currently one of the greatest problems in bodies corporate (Kloppers, 2013a, p. 6; L. Lubbe, 2013, p. 219;226; Prince, 2015a, p. 1). Bechard (2015c, p. 1) highlights that, currently, about 20% of owners of sectional title property do not pay their levies on time. The only way for a body corporate to recover money from persistent non-payers is to obtain a sequestration order; a process that can take up to four years. A high interest rate generally acts as a deterrent to defaulters, and cash-strapped individuals would in all likelihood pay an account with the higher interest rate first (such as clothing accounts, short term loans, furniture accounts, bank overdrafts, etc.). It is, therefore, believed that an interest rate cap will make it more affordable for defaulting owners to remain in arrears with levies than to borrow money to pay their debt (Prince, 2015b, p. 1). The paying members of the body corporate will, in all likelihood, end up financing shortfalls, making it harder to maintain common property (Bechard, 2015c, p. 1).

From the above it is evident that the new regulations regarding the capping of interest on arrear accounts can have a serious impact on the cash flow and debt collection of bodies corporate. As mentioned in section 3.2.1.1 above, accounting and auditing practitioners will in future have to take many of the new regulations (specifically rules 21, 24 and 26, among others) into account in their future engagements and include opinions on it in future audit reports. The aspects mentioned in this section is likely to have a significant impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work. (See also section 3.5 below for further discussions.)

3.2.1.5 Bank accounts

According to STSMA Regulation rule 21(4)(a), the body corporate must ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account held in the name of the body corporate. Alternatively, rule 21(4)(b) allows for money being deposited in a trust account opened in terms of either the Estate Agency Affairs Act No. 112 of 1976, or the Attorneys Act No. 53 of 1979.

A further requirement is stipulated in rule 26(1)(b) requiring the body corporate to keep separate books of account as well as separate bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Act. (See also section 3.5.3 below as well as T. Maree (2015b, p. 1).)

Rule 21(3)(d) states that the body corporate *may*, on the authority of a written trustee resolution, invest any moneys in the reserve fund referred to in sections 3(1)(b) of the STSMA in a secure investment. This secure investment may be made with any institution referred to in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990). L. Lubbe (2013, pp. 213–214) found that, in practice, quite a number of irregularities occur regarding body corporate bank accounts, especially where managing agents are involved. (See also 1.1 above.) These matters will be discussed in detail as part of the empirical results in Chapter 6.

3.2.1.6 Insurance

Van der Merwe (2014, pp. 14–15) explains that one of the functions of a body corporate is to procure adequate insurance for the scheme and to perform all functions incidental thereto. All buildings and improvements to the common property should be insured against fire and other possible risks to the replacement value thereof. The insurance of a sectional title scheme can be quite a complex task, involving obtaining quotations, completing large amounts of

paperwork, paying over premiums and handling claims. Due to its time-consuming nature and relative complexity, the task is often handled by managing agents on behalf of bodies corporate and trustees. Some larger managing agents even have a specific division or department that specialises in insurance-related matters of bodies corporate. Rule 23 of the STSMA Regulations set out all the technical and legal requirements regarding body corporate insurance.

In addition to the insurance matters already mentioned, rule 23(6) requires a body corporate to take out public liability insurance. This type of insurance is taken out to cover a body corporate's liability if it must pay compensation because of injury, death, damage to, or loss of property sustained in connection with the common property of the body corporate (Bechard, 2015c, p. 1).

In addition to the insurance aspects mentioned above, rule 23(7) stipulates that insurance should also be taken out to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate. This type of insurance is called fidelity cover. The detail of what should be included in the fidelity cover is set out in regulation 15 of the CSOSA Regulations. Bechard (2015c, p. 1) explains that the regulations prescribe a minimum amount of fidelity insurance that must be taken out, and state that such policy must pay out without the scheme having to pursue criminal or civil proceedings to recover the stolen money. However, schemes will not have to take out fidelity insurance for an insurable person if such a person (a managing agent, for example) can prove that he or she has taken out cover that complies with the regulations. Currently, it is compulsory only for trustees of bodies corporate to give members the option of deciding, at a general meeting, whether or not they want to take out any fidelity insurance. In future, fidelity insurance will be compulsory, and also be a compulsory item on the agendas of body corporate annual general meetings. (See also Editorial (2015, p. 1).) Ardé (2013, p. 1) remarks that most home owners would not dream of going without insurance against fire, but few have fidelity insurance that covers losses arising from fraudulent actions by trustees or managing agents. The author adds that probably less than one per cent of bodies corporate currently have any type of fidelity cover and that the new regulation has been positively received by sectional title industry role players. It will probably give trustees great peace of mind knowing that the scheme is covered in the case of mismanagement of funds by managing agents or fellow trustees. However, in

section 3.2.1.3 and 3.2.1.4 above it was mentioned that sectional title owners are already putting levies under immense pressure. It is, therefore, uncertain how owners will react to the additional cost of fidelity insurance.

In terms of accounting, rule 26(c)(v) of the STSMA Regulations stipulates that the financial statements of a body corporate should include information on the premiums and other amounts paid, and payments received by the body corporate and any member, in terms of the insurance policies of the body corporate. The financial statements should also show the expiry date of each insurance policy. As mentioned in sections 3.2.1.3 and 3.2.1.4 above, the new legislative regulations will probably have a significant impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work.

3.2.1.7 Common property maintenance

Bechard (2015c, p. 1) points out that although trustees will in future still be allowed to raise special levies, it is clear from the wording of the new management rules in the STSMA Regulations that the reserve fund is intended to cover expenditure that many bodies corporate are currently funding by way of special levies. As mentioned in section 3.2.1.3 above, rule 22 in the STSMA Regulations requires all bodies corporate to prepare a written ten-year maintenance, repair and replacement plan for the common property and major 'capital items' of the scheme. Bechard explains that the new regulation attempts to combat the problems of overly conservative budgeting practices and schemes using 'revolving' special levies to finance maintenance and repairs. (See also Eybers (2015, p. 1).) (See also the empirical findings in Chapter 6 regarding reserve funds.)

According to the definitions in the Regulations, 'major capital items' include wiring, lighting and electrical systems, plumbing, drainage and storm-water systems, heating and cooling systems, lifts, carpeting and furnishings, roofing, interior as well as exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways, paved areas, security systems, and community and recreational facilities. The maintenance, repair and replacement plan must set out the major capital items expected to require maintenance,

repair and replacement within the next ten years and the present condition of those items. The plan should stipulate the time when each of those items or components will need to be maintained, repaired or replaced together with the estimated cost of the maintenance, repairs and replacement of those items or components. The expected life of those items or components once maintained, repaired or replaced should be set out, as well as any other information the body corporate considers relevant. (See also Bechard (2015c, p. 1) and T. Maree (2015b, p. 1).)

Rule 22(2) prescribes a formula according to which the annual contribution to the reserve fund for the maintenance, repair or replacement of **each of the major capital items** must be determined. The formula is based on the estimated cost of maintaining, repairing or replacing the item, less any previous contributions made for that purpose, divided by the item's expected life-span as follows:

$$\text{Reserve fund contribution} = [(\text{estimated cost} - \text{past contribution}) \div \text{expected life}]$$

The rule does not give any further guidance on the calculation, such as whether present values or future values should be used. Furthermore, it is theoretically possible that there may be a discrepancy between the calculated reserve fund contribution (as per rule 2 of the STSMA Regulations, discussed in section 3.2.1.3) and the sum of the reserve fund contributions of all the capital items of the scheme's repair and maintenance plan (as per rule 22 of the STSMA Regulations). The Regulations do not give any form of guidance on what to do in such a situation.

Bechard (2015c, p. 1) remarks that many sectional title experts are of the opinion that the requirements for drawing up a maintenance plan are quite onerous and most trustees will need expert help. The new requirement is likely to create opportunities for people with experience or qualifications in construction and property maintenance to provide services in drafting maintenance plans and advising trustees.

According to rule 22(3), a body corporate's maintenance, repair and replacement plan takes effect on approval thereof by the members in a general meeting. On approval of such a plan, members may lay down conditions for the payment of money from the reserve fund. These conditions should be read together with rules 24(2) and 24(5), as mentioned in section 3.2.1.3

above. Furthermore, rule 22(4) adds that the trustees must report on the extent to which the approved maintenance, repair and replacement plan has been implemented at each annual general meeting. It was stated in section 3.2.1 above that any failure on the part of the body corporate or trustees to perform the functions as prescribed constitutes a breach of the Act (Van der Merwe, 2014, pp. 14–14). However, it is unclear what the exact consequences will be if the trustees fail to implement a repair and maintenance plan. As mentioned in sections 3.2.1.3, 3.2.1.4 and 3.2.1.7 above, the new legislative regulations will probably have a notable impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work. Furthermore, the mentioned aspects will probably have a significant impact on the levies of sectional title schemes. It can also entail that even fewer owners will in future be willing to avail themselves as trustees, due to the higher risk that the mentioned changes will bring about.

3.2.1.8 Other

Other major functions that bodies corporate are responsible for include keeping books of account, preparing annual financial statements, retaining records, and ensuring that the financial statements are audited. These functions are stipulated in rule 26 of the STSMA Regulations. In practice, these functions are often performed by accounting and auditing practitioners on behalf of the body corporate. (See also L. Lubbe (2013, p. 204) and empirical results in Chapters 4, 5 and 6.) These functions will be discussed in section 3.5 below, under the heading *Accounting and auditing practitioners*.

3.2.2 Owner meetings

Part 4 (rules 15 to 20) of the STSMA Regulations govern owner meetings. The most important aspects regarding notice, first general meetings, annual general meetings, special meetings, chairpersons, quorums, voting and representatives will be discussed below.

3.2.2.1 Notice

Rule 15 of the STSMA Regulations stipulate that at least 14 days' written notice should be given of a general meeting. The notice should be accompanied by an agenda, a copy or summary of documents to be considered at the meeting and a proxy appointment form.

3.2.2.2 The first general meeting

According to rule 16(1) of the STSMA Regulations, the developer of a sectional title scheme is responsible for calling the first general meeting (see also section 3.2 and 3.3.2.4). In terms of rule 16(2) the agenda of this meeting must include matters such as insurance, financial statements from the date of establishment, a budget for the coming year, appointing an auditor, and electing trustees. Building plans and other relevant documents as per rule 16(4) should also be submitted to the members before the first general meeting.

3.2.2.3 Annual and special general meetings

Rules 17(1) and 17(2) of the STSMA Regulations specify that the body corporate must hold an annual general meeting (AGM) within four months of the end of each financial year, unless before or within one month of the end of a financial year, all members in writing waive the right to the meeting. In such instances, all members should also consent in writing to motions that deal with all the items of business that must be transacted at the annual general meeting. The new time frame as prescribed in the STSMA Regulations is the same as before. In the old STA, PMR 51 stipulated that an annual general meeting shall be held within four months of the end of each financial year. (See also the discussions and empirical findings in sections 3.5.1, 6.2.5, 6.3.8, 6.4.2 and 6.4.5 regarding bottle-neck situations that sometimes occur during the audits of bodies corporate with 28 February financial year ends.)

According to rule 17(3), all general meetings other than the annual general meeting are special general meetings. Special general meetings may be called by trustees whenever they think fit, and whenever requested to do so by the members, provided that the requirements as per rule 17(4) are adhered to. Rule 17(6) stipulates the order of business at general meetings. The trustees determine the agenda for an annual or special general meeting. The order of business includes items such as determining if a quorum is present, receiving trustee reports, approving insurance schedules, approving budgets, considering the annual financial statements, appointing an auditor and electing trustees. (See also Pienaar (2010, p. 169).) Rule 17(10) also makes provision for members to attend an annual general meeting or special general meeting by telephone or other method.

3.2.2.4 Chairperson

The trustee chairperson is also the chairperson at every general meeting as per rule 18(1). (See also section 3.3.2.4 below.) Rule 18(3) stipulates a number of duties of a chairperson at a general meeting, such as maintaining order, giving opportunity for stakeholders to speak, making decisions on points of procedure and settling disputes. (See also Pienaar (2010, p. 168).)

3.2.2.5 Quorum

For business to be transacted at any general meeting, rule 19 of the STSMA Regulations require a quorum to be present. A quorum is established by one third of the members entitled to vote. For a scheme with less than four primary sections or a body corporate with less than four members, a quorum is established by members entitled to vote and holding two thirds of the total votes of members in value. Should a quorum not be established within 30 minutes from the time appointed for the meeting, the meeting stands adjourned to the same day in the next week at the same place and time; provided that if on the day to which the meeting is adjourned a quorum is not present within 30 minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum. (See also Van der Merwe (2014, pp. 14-91-14-92).)

3.2.2.6 Voting

Rule 20(2) of the STSMA Regulations stipulate that, except for special and unanimous resolutions, a member is not entitled to vote if a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or if a member persists in the breach of any of the conduct rules of the scheme after a court or an adjudicator has ordered that member to refrain from breaching such rule.

The STA defines a unanimous resolution as a resolution passed unanimously by all the members of the body corporate at a meeting at which at least 80% of all the members of a body corporate are present or represented; and all the members who cast their votes do so in favour of the resolution. A unanimous resolution can also be passed if a matter is agreed to in writing by all the members of the body corporate. A 'special resolution' means a resolution passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting; or agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.

3.2.2.7 Representatives

A member may appoint a proxy to vote on his behalf at a meeting. Rule 20(6) stipulates that a proxy need not be a member, but must not be the managing agent or an employee of the managing agent or the body corporate. (See also Van der Merwe (2014, pp. 14-107-14–111).)

3.3 Trustees

Van der Merwe (2014, pp. 14–6) explains that the body corporate is a juristic person without an intellect, voice or other human attributes. Therefore, the body corporate has to perform its functions through its principal organs, being its members in general meeting (see also point 3.2.2 above) and the board of trustees appointed by them. According to Van der Merwe (2014, pp. 14–144) the trustees “*are not the rulers of the body corporate, but rather its servants*”.

Sections 7 and 8 of the STSMA and rules 5 to 12 of the STSMA Regulations deal with the requirements, nomination, election, replacement, payment, general powers and duties and meetings of trustees. The matters dealing with trustees that fall within the scope of this study will be discussed below.

3.3.1 Fiduciary position

Section 8(1) of the STSMA stipulates that each trustee of the body corporate stands in a fiduciary relationship to the body corporate. (See also section 1.4.6.2 above.) In section 8(2) it is explained that the expression “fiduciary relationship”, implies that a trustee must act honestly and in good faith in relation to the body corporate, exercise his or her powers in terms of the relevant legislation in the interest and for the benefit of the body corporate, and avoid any material conflict between his or her own interests and those of the body corporate. In particular, a trustee should not receive any personal economic benefit from the body corporate and should notify every other trustee should he or she have an interest in any contract of the body corporate (Pienaar, 2010, p. 177). Van der Merwe (2014, pp. 14-118-14–119) adds that this fiduciary relationship is in accordance with the common law principle which implies that a person who controls the assets of another, or holds the power to act on behalf of another, owes a fiduciary duty towards that person. According to common law principles, a person in a fiduciary relationship has two duties, namely a duty of trust (not acting in one’s own interest) and a duty of care and skill. However, trustees in a sectional title scheme will only incur liability if they commit *mala fide* (grossly negligent) acts in the exercise of their powers or the performance of their functions and duties (Pienaar, 2010, pp. 177–178). Van der Merwe (2014,

pp. 14–121) explains that the main reason for this leniency towards trustees is to encourage sectional owners to make themselves available to serve as trustees in a sectional title scheme. The author comments that the legislator tried to strike a balance between making the office of trustee more attractive and at the same time ensuring the efficient functioning of the scheme. L. Lubbe (2013, p. 19) specifically mentions that members are reluctant to be appointed as trustees and become involved in the leadership and management of schemes. Van der Merwe (2014, pp. 14–121) is of the opinion that the legislator's leniency towards trustees is indeed appropriate where sectional owners serve as trustees without receiving remuneration. He adds that trustees who do receive remuneration for managing the scheme should, however, be held liable if they do not exercise ordinary care and skill in conducting the affairs of the body corporate.

Rule 8(4) of the STSMA Regulations stipulates that the body corporate must indemnify a trustee (who is not acting as the managing agent) against all costs, losses and expenses arising as a result of any official act that is not in breach of the trustee's fiduciary obligations to the body corporate. According to section 8(3) of the STSMA a trustee who acts in breach of his fiduciary relationship, is liable to the body corporate for any loss suffered as a result thereof by the body corporate, or any economic benefit received by the trustee by reason thereof. In subsection (2)(a)(i) of section 8(4) it is added that conduct of a trustee does not constitute a breach of a duty arising if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were cognisant of all the material facts.

3.3.2 Holding office as a trustee

In view of the important managing function performed by the trustees of a body corporate, the STSMA stipulates a number of requirements for office, nomination, election, replacement and disqualification, which will be discussed below.

3.3.2.1 General

Rule 5 of the STSMA Regulations stipulate that all the members of a body corporate are deemed to be trustees from the establishment of the body corporate until the end of the first general meeting. Rule 5(2) is an entirely new development in the STSMA Regulations. The rule determines that should a body corporate consist of fewer than four members who are section owners; each member is considered by law to be a trustee without it being necessary for election to office. If a body corporate has more than 4 members, rule 5(3) prescribes that the body corporate members must from time to time determine the number of trustees to be elected. Previously the Act did not have any requirements regarding the number of trustees for smaller bodies corporate, and only stated that bodies corporate should have at least two or more trustees. Even though the new STSMA Regulations do not explicitly require a body corporate to have at least two or more trustees in rule 5(3), it is implied by rule 10(1) and 12(1) that deals with voting and signing of documents.

3.3.2.2 Requirements for office and disqualification

As stated in rule 6 of the STSMA Regulations, a trustee need not be a member of the body corporate. However, if a person is also acting as the managing agent of the body corporate, he may only be a trustee if he is also a member of the body corporate. Rule 6(4) further indicates a number of events and circumstances which result in a trustee ceasing to hold office. This includes, amongst others, being declared by a court to be of unsound mind, being convicted of theft or fraud, being sentenced to imprisonment or becoming disqualified to act as a director of a company in terms of the Companies Act No. 71 of 2008. (See also Pienaar (2010, pp. 172–173).)

3.3.2.3 Nomination, election and replacement

According to rules 7(1) and 7(2), trustees may be nominated for office in writing by a member at least 48 hours before the AGM. Rules 7(4) and 7(6) stipulate that trustees must be elected

at the first general meeting and at every subsequent AGM. Trustees hold office until the end of the next AGM, and may be re-elected if properly nominated. (See also Pienaar (2010, p. 172) and Van der Merwe (2014, pp. 14-121-14–130).)

3.3.2.4 Chairperson

For new bodies corporate, rule 12(2) stipulates that the developer or the developer's nominee is the chairperson of the trustees. Van der Merwe (2014, pp. 14-121-14–122) explains that the developer or his nominee shall act as chairperson until the first general meeting. At this meeting he has to retire as trustee and as chairperson, but shall be eligible for re-election. According to rule 12(1) of the STSMA Regulations stipulates that if a body corporate consists of only two members, the provisions of the regulations regarding the election and functioning of a chairperson do not apply. At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected (and whenever else necessary), the trustees must, by majority vote, elect a chairperson from among their number as per rule 12(3). (See also Pienaar (2010, p. 176) and Van der Merwe (2014, pp. 14-137-14–138).) Rule 12(4) stipulates that the chairman of a body corporate will hold office as such until the end of the next annual general meeting. (See also section 3.2.2.4 above.)

3.3.3 Meetings

Rule 11 of the STSMA Regulations governs the calling of and attendance at trustee meetings. Trustee meetings may be called at any time with at least seven days' notice. Other stakeholders such as members, bondholders and managing agents, may attend trustee meetings and speak on any matter on the agenda. However, these stakeholders are not allowed to vote. According to rule 13(1) fifty per cent of the trustees by number, but no less than two, constitute a quorum.

According to rule 26(f) of the STSMA Regulations, the body corporate should prepare a report adopted by the trustees reviewing the affairs of the body corporate during the financial year

for presentation at the annual general meeting. In practice, this report is also referred to as the trustees report.

3.3.4 Remuneration and reimbursements

Rule 8(1) of the STSMA Regulations indicates that the body corporate must reimburse trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers. Remuneration is governed by rules 8(2) and 8(3). It is stipulated that, unless so determined by special resolution, trustees who are members are not entitled to any reward, whether monetary or otherwise, for their services as such. However, trustees who are not members may be rewarded for their services as such. These rewards, whether monetary or otherwise, must be approved by a resolution of the body corporate as part of the budget for the scheme's administrative fund. (See also Van der Merwe (2014, pp. 14-132-14–133).)

3.3.5 Functions, powers and duties

Section 7(1) of the STSMA stipulates that the functions and powers of the body corporate must be performed and exercised by the trustees of the body corporate. Rule 9(a) of the STSMA Regulations stipulates that the trustees must meet to carry out the business of the body corporate as they see fit. Pienaar (2010, p. 181) and Van der Merwe (2014, pp. 14–140) explain that the Act allows for a number of additional powers such as the appointment of agents and employees (rule 9(1)(d)), exercise and delegation of duties (rule 9(1)(b)). These will be discussed in section 3.4 below. Another additional power entrusted to trustees is financial management, which will be discussed below.

3.3.5.1 Financial management

Rule 9(1)(c) stipulates that the trustees must apply the body corporate's funds in accordance with the budgets approved by the members in the general meeting. This rule is the only one under the general powers and duties of trustees dealing with financial management. Regarding other financial functions, the new STSMA Regulations contains quite a significant change in wording. Previously, Prescribed Management Rules 35, 36 and 37 of the original STA put the onus of preparing accounting records, financial statements, budgets, etc., on the trustees with the wording "*the trustees shall...*" The new STSMA Regulations rule 26 however contains the wording "*the body corporate must...*"

It can perhaps be argued that the new wording is more accurate, since preparing accounting records, financial statements, budgets, etc., ultimately remains the responsibility of the body corporate. It can also be argued that since it is already a difficult task to attract trustees (see section 3.3.1 above), the 'toned-down' wording might just make the responsibility seem less daunting to prospective trustees. The trustees should carry out these financial functions on behalf of the body corporate as they see fit, and they have the authority to appoint an accounting or auditing practitioner to assist with these functions. As mentioned in section 3.2.1.8 above, in practice these functions are often performed by accounting and auditing practitioners and will therefore be discussed in section 3.5 below.

3.4 Managing agents

Van der Merwe (2014, pp. 15–3) explains that in jurisdictions such as France and Germany, a professional manager must be appointed to perform the executive functions of a body corporate. However, the South African statute places the executive power in the hands of the trustees who, in turn, are empowered to appoint a managing agent to whom all or some of the executive functions of trustees may be delegated, not by virtue of an office as such but in terms of his contract of appointment. In practice, a managing agent is normally appointed to perform the administrative, secretarial and financial tasks entrusted to trustees. (See also Pienaar (2010, p. 180;190;192).) Van der Merwe (2014, pp. 14–141) adds that the following

are illustrations of powers that are capable of being delegated to a managing agent: to sign applications and other documents in respect of services to the body corporate; to conclude contracts with employees; to sign documents relating to bank accounts; to issue instructions to attorneys and to complete and sign documents relating to insurance and insurance claims. Ultimately the scope of powers and functions that may be delegated are only restricted by the scope of the actual delegation to the managing agent; powers and functions specifically reserved for the trustees or the body corporate in the Act and the rules and powers that fall outside the capacity of the trustees.

3.4.1 Qualifications and professional membership

Rule 2(1)(j) in Annexure 1 of the STSMA Regulations defines a managing agent as “*any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services*”. Van der Merwe (2014, pp. 15–5) expresses the opinion that a major problem in South Africa is that no qualifications are required to enable a person to be appointed as a managing agent. He adds that, as a result, most agents lack the high level of expertise and specialisation required to do an efficient job. (See also L. Lubbe (2013, p. 217).) In addition, as discussed in section 1.4.4 of the study, the sectional title industry has seen a great number of fraud scandals relating to managing agents in the past few years. Trustees, therefore, have a difficult task finding a suitably qualified managing agent with a proven track record of experience in sectional title management. If a suitable person is found, the high cost of his services often forces trustees to follow the less expensive alternative of appointing a less qualified agent (Van der Merwe, 2014, pp. 15–5). (See also Pienaar (2010, p. 189) and L. Lubbe (2013, pp. 217–218).)

The Estate Agency Affairs Board (EAAB) is the official regulating authority for the estate agency profession in South Africa, and every estate agent must, by law, be registered with it. The Institute of Estate Agents of South Africa (IEASA) is a voluntary membership organisation for estate agents only. However, not all managing agents are registered as estate agents. (See also section 2.3.5 above.) Managing agents can also voluntarily become a member of the National Association of Managing Agents (NAMA) (Editorial, 2013g, p. 18). In the light of

the above, it can be argued that there is a lacuna in the law regarding the qualifications and professional membership of managing agents which should be addressed in future.

3.4.2 Appointment

Rule 28(1) of the STSMA Regulations specifies that the body corporate may, by special resolution appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees. According to rule 28(3) a managing agent is subject to all the duties and obligations of a trustee under the Act and the rules of the scheme.

3.4.3 Termination

Rule 28(7) of the STSMA Regulation stipulates that a managing agreement may not endure for a period longer than three years. The contract with a managing agent may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary by the body corporate on two months' notice. Rule 28(8) adds that the body corporate may by ordinary resolution cancel the management agreement in accordance with its terms, or refuse to renew the management agreement when it expires.

3.4.4 Functions and powers

According to rule 28(3), a managing agent is obliged to manage the scheme with the required professional level of skill and care; is liable for any loss suffered by the body corporate as a result of not applying such skill and care; and has a fiduciary obligation to every member of the body corporate.

A new requirement per rule 28(3)(f) is that the managing agent must report at least every four months to every member of the body corporate on the administration of the scheme. This report should include, amongst others, the following items: proposed repairs to and maintenance of the common property and assets of the body corporate within the next four months; the balance of each of the administrative and reserve funds of the body corporate on the date of the report and a reconciliation statement for the expenses of the body corporate, including repair, maintenance and replacement costs.

Until a 2009 landmark ruling by the Council for Debt Collectors, there was a practice under many estate agents and managing agents to recover payments for overdue rentals and levies. The Council ruled that if estate agents and managing agents collect these arrear amounts on behalf of others, they are not performing the duties of an estate agent, but rather performing a legal collection function, and in doing so, venturing into the territory of attorneys and debt collectors. In the ruling it was ordered that if sectional title managing agents and estate agents wanted to perform debt-collecting functions, they had to formally register as debt collectors. The chairman also emphasised that there should still be a clear distinction between the receipt of normal rentals and levies, as stipulated in lease agreements, and arrear levies and rentals. A managing agent or estate agent who simply receives amounts payable in terms of normal lease agreements, do not fall within the definition of a debt collector (Venter, 2009, p. 4).

3.5 Accounting and auditing practitioners

As mentioned in section 3.2.1.8 and 3.3.5.1, the trustees of bodies corporate often appoint accounting and auditing practitioners to assist with certain functions, which will be discussed below.

3.5.1 Financial year end

Rule 21(1) in the STSMA Regulation brings about an interesting change to the legislation. The rule stipulates that the financial year of a body corporate established after the new Act comes

into operation must run from the first day of October of each year to the last day of September of the following year unless otherwise resolved by the body corporate in a general meeting. Prescribed Management Rule 51(2) in the original STA stipulated that unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of March in each year to the least day of February in the following year (Riddin, 2011, p. 1). As a result, many bodies corporate have February financial year-ends. This is usually a very busy time for accounting practitioners and, as the fiscal year-end of the government is also 28 February, bottle-neck situations sometimes occur during audit engagements (L. Lubbe, 2013, p. 122; Van der Merwe, 2014, pp. 14–81). Although the financial year-ends of existing bodies corporate will not be altered by the change in legislation, the fact that new bodies corporate will by default have October year-ends may bring about future relief in terms of time pressures regarding drafting of financial statements and the audit thereof. (See also sections 3.5.1, 6.2.5, 6.3.8, 6.4.2 and 6.4.5 in this regard.)

3.5.2 Definitions

The rules as contained in the new STSMA Regulations bring about a number of changes to definitions regarding accounting and auditing practitioners.

3.5.2.1 Accounting officer

In the original STA, Prescribed Management Rule (PMR) 40 allowed, bodies corporate with fewer than 10 units to appoint what was called an ‘accounting officer’ to review the financial statements. L. Lubbe (2013, pp. 75–76) pointed out that Prescribed Management Rule 50 in the old STA Regulations defined an ‘accounting officer’ by referring to the definition in the Close Corporations Act No.69 of 1984. This definition as per the Close Corporations Act is quite wide, and includes members of professional bodies such as The South African Institute of Business Accountants (SAIBA), The South African Institute of Chartered Accountants (SAICA), the Chartered Institute of Management Accountants (CIMA) and The South African Institute of Professional Accountants (SAIPA). In practice, it was found that small bodies corporate of fewer than 10 units did not make extensive use of the services of accounting

officers, but rather used the services of auditors (L. Lubbe, 2013, pp. 78–79). (See also section 3.5 for more detail.)

In the updated STA, the new STSMA and Regulations thereto, the option for small bodies corporate to appoint accounting officers were scrapped from the legislation. Therefore, the legislation does not contain any definition of or reference to ‘accounting officers’ anymore. Rule 17(6)(j)(vi) stipulates that an auditor should be appointed to audit the financial statements, unless all sections in the scheme are registered in the name of one person. Therefore, in future, this change in the legislation may negatively impact on the practices of some members of the above-mentioned professional bodies who used to act as accounting officers for bodies corporate. It may also have an effect on the accounting and auditing fees paid by smaller bodies corporate. (See also sections 3.5.6.5 and 4.5.2.)

3.5.2.2 Auditor

In PMR 2(c) of the old STA, an ‘auditor’ was defined as an auditor qualified to act as such under the Public Accountants’ and Auditors’ Act No. 1951. As pointed out by L. Lubbe (2013, pp. 66–67) this definition referred to obsolete and outdated legislation.

The new STSMA Regulations defines an auditor in rule 2(1)(c) of the section dealing with interpretations. An auditor is now defined as “*a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No.26 of 2005)*” (sic). The Auditing Profession Act (APA) defines a registered auditor as an individual or firm registered as an auditor with the Independent Regulatory Board for Auditors (IRBA) (Parliament of the Republic of South Africa, 2005, pp. 1–7). In turn, IRBA prescribes the minimum qualifications and competency standards of auditors. IRBA also performs various functions with regard to the education, training and professional development of auditors (IRBA, 2015, pp. 1-16-6-9), and regulates the registration of individuals and firms as registered auditors (IRBA, 2015, pp. 1–32). The change from the outdated reference to ‘auditor’ in the old STA to the current definition in the STSMA Regulations is a positive improvement in the new legislation.

3.5.3 Books of account

Regarding the requirements for the books of account, the content of the new STSMA Regulations is similar to the old STA Prescribed Management Rules. However, as mentioned in section 3.3.5.1, the wording now puts the onus on the body corporate (previously on the trustees) to prepare accounting records, financial statements, budgets, etc. Rule 26(1)(a) explains what a body corporate should do in terms of its books of account. Bodies corporate must keep proper books of account that record all its income, expenditure, assets and liabilities (rule 26(1)(a)(i)). Furthermore, all amounts recovered from members by the body corporate or any managing agent or other service provider acting on its behalf should be disclosed (rule 26(1)(a)(ii)). The books of account should include individual accounts for each member (rule 26(1)(a)(iii)). From the information contained in the books of account, members should be able to assess the body corporate's financial situation and their financial situation in regard to the body corporate. As mentioned in section 3.2.1, separate books of account and bank accounts must be kept for the body corporate's administrative and reserve funds.

Rule 26(2) stipulates that on the application of any member, registered bondholder or of the managing agent, the body corporate must make all or any of the books of account and records available for inspection and copying. Furthermore, as per rule 26(3), the body corporate must ensure that all its books of account and financial records are retained for a period of six years after completion of the transactions, acts or operations to which they relate. (See also Van der Merwe (2014, pp. 14–145).)

3.5.4 Annual financial statements

According to rule 26(c) of the STSMA Regulations, the body corporate should prepare annual financial statements for presentation at the annual general meeting. It is stipulated that the financial statements should include an analysis of:

- (i) ***“amounts due to the body corporate in respect of contributions, special contributions and other charges, classified by member and the periods for which such amounts were owed...”*** (Own emphasis.)

In the original STA, prescribed management rule (PMR) 37(2)(a) required the trustees to prepare an “*age analysis of debts in respect of levies, special levies and other contributions...*”. (See also Van der Merwe (2014, pp. 14-146-14–147). Regarding the wording in the original STA, L. Lubbe (2013, p. 132) commented that the Act did not specify the format, content or level of detail of the age analysis of debts. The Act also did not indicate whether the age analysis should include all debtors, or perhaps just those over 30 days. In the past, many owners of sectional title units did not want amounts outstanding by them to be disclosed on an individual basis in the financial statements, claiming that the information was of a private and confidential nature. Van der Merwe (2014, pp. 14-148-14–149), however, clarifies that section 32 of the Bill of Rights (as incorporated into the Constitution of the Republic of South Africa) and supplemented by the Publication of Information Act guarantee the making available of information. The author explains that the principle is that a person is entitled to be furnished with all available information which affects his interest whether from the state, private persons or organisations. So-called ‘sensitive information’ may not be excluded. He adds that not only owners, but also prospective owners need bona fide information regarding all aspects of the scheme in which they live or into which they want to purchase. It is therefore evident that the concerns of L. Lubbe and Van der Merwe were addressed in the new STSMA Regulations. Even though it may create an additional disclosure obligation, the new wording is more advantageous to body corporate stakeholders, and also clearer than in the original Act.

As per rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (ii) “**amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed...**” (Own emphasis.)

Prescribed management rule (PMR) 37(2)(b) of the original STA required the trustees to prepare an “*age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal...*”. As was the case with the age analysis of debt, L. Lubbe (2013, p. 133) commented that the Act did not specify the format, content or level of detail of the age analysis

of amounts owing, whether the age analysis should include all creditors, or perhaps just those over 30 days. Once again Lubbe's concern was addressed in the new STSMA Regulations with the wording now being less vague.

Rule 26(c) of the STSMA Regulations states that the body corporate financial statements should include an analysis of:

- (iii) ***“amounts advanced to the body corporate by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the body corporate and the amounts paid by the body corporate and by any member in terms of such arrangement...”*** (Own emphasis.)

This is an entirely new requirement that will have to be disclosed as part of the financial statements of bodies corporate. One can possibly argue that the above will, as a rule, form part of the disclosure of liabilities in the statement of financial position and accompanying notes to the financial statements.

According to rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (iv) ***“amounts in the reserve fund showing the amount available for maintenance, repair and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall...”*** (Own emphasis.)

As mentioned in section 3.2.1.1, the new STSMA requires all bodies corporate to establish and maintain a reserve fund. The disclosure requirement mentioned above will entail identification of individual capital items together with estimates and calculations of varying complexity depending on the body corporate. Furthermore, as mentioned in sections 3.2.1.1, 3.2.1.3 and 3.2.1.7 above, the reserve fund contribution calculation also entails using a prescribed formula as per the Act. Since it is a new requirement, it is still uncertain whether trustees will feel capable and comfortable doing these estimates and calculations themselves. L. Lubbe (2013, p. 204) pointed out that a great number of bodies corporate do not even prepare 'normal' financial statements themselves. It can therefore in all likelihood be expected that this requirement will bring about a significant amount of additional work for accounting practitioners and preparers of financial statements.

As per rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (v) “*premiums and other amounts **paid** and payments **received** by the body corporate and any member in terms of the **insurance policies** of the body corporate and the **expiry date of each policy**...*” (Own emphasis.)

In the original STA, prescribed management rule (PMR) 37(2)(c) only required the trustees to indicate “*the expiry dates of all insurance policies*”. L. Lubbe (2013, p. 134) commented that including the expiry dates of insurance policies is an important aspect to include in the financial statements, so that the members of the body corporate can know that their property is properly insured against possible damage for the foreseeable future. Sectional title legal experts have not yet commented on the above additions to the insurance disclosure. However, it is possible that the new STSMA requirements will provide stakeholders with a clearer picture of the state of a body corporate’s insurance, whether payments are actually being made, as well as the extent to which claims have been paid out. This may also enable stakeholders to ask informed questions relating to insurance at the body corporate’s AGM.

From the above it is clear that in addition to the standard content of annual financial statements, the new STSMA Regulations commands quite a considerable amount of additional disclosure requirements from bodies corporate. These aspects will not be alluded to further in this chapter, since accounting, reporting and disclosure aspects of bodies corporate will be discussed in more detail in Chapter 5.

Under the section in the STSMA Regulations dealing with financial records, budgets, reports and audit (rule 26), it is also stated that the body corporate must prepare the following:

Subsection (d) “*...prepare a **maintenance, repair and replacement plan** in accordance with rule 22 for presentation at the annual general meeting...*” (Own emphasis.)

This requirement was discussed in sections 3.2.1.1, 3.2.1.3 and 3.2.1.7 above. It was noted that this task may prove to be quite onerous and most trustees will probably need expert help

from people with experience or qualifications in construction and property maintenance to provide services in drafting maintenance plans and advising trustees on the matter.

Subsection (e) “...prepare **budgets for the administrative and reserve funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include discounts not exceeding 10 per cent of members’ annual contributions applicable if all those contributions are paid on or before the due dates...**” (Own emphasis.)

Prescribed management rule (PMR) 36 of the original STA only required the trustees to prepare “an itemized estimate of the anticipated income and expenses of the body corporate during the ensuing financial year”. No mention was made of any discounts allowed to members. The possibility of discounts may in future prove to act as an incentive to members to pay their annual contributions upfront.

Subsection (f) “...prepare a **report adopted by the trustees reviewing the affairs of the body corporate during the financial year for presentation at the annual general meeting...**” (Own emphasis.)

As mentioned in section 3.3.3 above, in practice this report is often referred to as the trustees report. (See also Chapter 5 for further detail.)

3.5.5 Schemes with only one owner

According to rule 26(4), unless all the sections in the scheme are registered in the name of one person, the body corporate must present audited financial statements to a general meeting for consideration within four months after the end of the financial year.

3.5.6 Audit

Rule 26(5) of the STSMA Regulations introduces a number of new developments regarding what is required during an audit of a body corporate's annual financial statements. These include matters such as segregation of duties, frameworks, opinions and time frames.

3.5.6.1 Segregation of duties

Probably the most profound change regarding auditing in the new STSMA Regulations is contained in rule 26(5)(a) which reads as follows:

*"...the **audit** of a body corporate's annual financial statements must be carried out by an independent auditor who has **not** participated in the **preparation of the annual financial statements** or **advised on any aspect of the accounts** of the body corporate during the period being reported on..."* (Own emphasis.)

In practice, the majority of audit practitioners currently involved in sectional title audits prepare the annual financial statements for the body corporate, as well as carry out the audit work. Some practitioners also complete tax returns, prepare budgets and provide business advice for their sectional title clients (L. Lubbe, 2013, p. 194;206; Steenkamp & Lubbe, 2015a, p. 554).

Auditors of sectional title schemes should read this change in legislation in conjunction with section 290.167 of the Code of Professional Conduct for Registered Auditors, which deals with auditor independence regarding the preparation of accounting records and financial statements (International Federation of Accountants, 2009, p. 78). The Code stipulates that management (in the case of sectional title, the body corporate) is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include preparing source documents, originating or changing journal entries, etc. Should the auditor assume responsibility for these activities, a self-review threat may arise, and consequently safeguards should be put in place

(R. D. C. Jackson & Stent, 2014, p. 2/35; Marx, Van der Watt, & Bourne, 2011, pp. 3–39). (Refer to *Remarks to the reader* for clarification of the referencing.)

There are three possible safeguards that an auditor can put in place to address this self-review threat. Firstly, it can be arranged that the accounting services be performed by an individual who is not on the audit team. If such services are performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the work performed. Secondly, the audit team should be notified that they may not make any management decisions. Thirdly, it should be made perfectly clear for management (the body corporate) that they are responsible for the source data, transaction approval, journal entries etc., and clarify what the audit team is permitted to do (R. D. C. Jackson & Stent, 2014, p. 2/35; Marx et al., 2011, pp. 3–39; The South African Institute of Chartered Accountants, 2015c, p. 1). According to SAICA (2015c, p. 1), tax return preparation services are generally based on historical information and tax returns are subject to whatever review or approval process the tax authority deems appropriate. Accordingly, providing such services do not generally create a threat to independence if management takes responsibility for the returns including any significant judgments made.

3.5.6.2 Recognised framework

The legislator made a number of profound errors in the wording of STSMA Regulation rule 26(5)(b), which states the following:

*“...the **audit** of a body corporate’s annual financial statements **need not be carried out** in accordance with **any recognised financial reporting framework of guidelines for financial accounting**...”* (Own emphasis.)

R.D.C. Jackson & Stent (2014, p. 1/4) explains that in the context of the auditing and accounting profession, the term audit is defined in the Auditing Profession Act No. 26 of 2005 (APA). The term ‘audit’ means “...*the examination of ... financial statements, financial and other information ... in accordance with prescribed or applicable **auditing standards**.*” (Own emphasis.) The authority to conduct an audit of financial statements or financial information is

restricted to auditors registered with the Independent Regulatory Board for Auditors (IRBA), who must, according to law, perform their work as prescribed by the APA. It is indeed strange that the legislator refers to the APA when defining an ‘auditor’ (see section 3.5.2.2 above), but attempts to bypass the requirements of the APA when addressing how the work should be carried out.

The ‘applicable auditing standards’ as prescribed by the APA is the International Audit Standards (ISAs). The ISAs provide the standards to which the auditor must attain and provide guidance on how this should be done, covering the entire audit process (R. D. C. Jackson & Stent, 2014, p. 1/17). It is therefore not up to the Department of Human Settlements to prescribe that the audit “...**need not be carried out in accordance with any recognised framework of guidelines for financial accounting...**” (Own emphasis.) In practice, not performing an audit according to the ISAs will constitute a legal offence for which an audit practitioner may face disciplinary action, suspension or removal from the register of auditors (The South African Institute of Chartered Accountants, 2015a, p. 1).

The wording “*in accordance with any recognised framework of guidelines for **financial accounting...***” (own emphasis) used to describe how an **audit** should be performed is very ambiguous and confusing. As mentioned above, an audit is performed in accordance with audit (not accounting) standards.

3.5.6.3 Opinions

STSMA Regulation rule 26(5)(c) states the following:

*“...the **audit** of a body corporate’s annual financial statements must include **opinions** as to whether or not*

*(i) the annual **financial statements accurately reflect the financial position** of the body corporate for the financial year under review, with such **qualifications and reservations** as the auditor considers necessary;*

*(ii) the body corporate has **complied with the accounting requirements set out in rules 21, 24 and this rule 26**, with a specific **description of any failure to comply with such requirements**;*

*(iii) the **books of account of the body corporate have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud**; and*

*(iv) the **financial affairs of the body corporate appear to be effectively managed...**" (Own emphasis)*

As was the case in the previous section, it seems as though the legislator is finding himself in somewhat unfamiliar territory, attempting to prescribe to auditing practitioners how they should go about conducting their audits and what they should give opinions on.

Firstly, the auditor is required by the STSMA rule to give an opinion as to whether the financial statements **accurately** reflect the **financial position** of the body corporate. Regarding this requirement, it should be noted that the objective of financial statements, according to International Financial Reporting Standards (IFRS), is to provide information on the financial position, financial performance as well as the cash flows of an entity (Koppeschaar et al., 2014, p. 26), and not just the financial position of an entity. Furthermore, an auditor forms an opinion on **fair presentation** (not accurate reflection) (R. D. C. Jackson & Stent, 2014, p. 1/7-1/8). It is important to note that an audit engagement provides **reasonable assurance** (not absolute assurance). ISA200 dealing with overall objectives of the Independent Auditor, defines reasonable assurance as a 'high but not absolute' assurance. The practitioner will reduce engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the practitioner's conclusion (R. D. C. Jackson & Stent, 2014, p. 1/8; The South African Institute of Chartered Accountants, 2015b, p. 75). Moreover, the drafting and issuing of the audit report is the final stage in the audit process, in terms of ISA700. R.D.C Jackson & Stent (2014, p. 18/2) explains that, to be in a position to form the opinion, the auditor must draw his conclusion taking into consideration a great number of factors. The auditor will, based on his opinion, issue either an unmodified or a modified audit report and may add information to the report for the benefit of users, in terms of South African Auditing Practice Statement 3 (SAAPS3) (Revised) (R. D. C. Jackson & Stent, 2014, p. 18/2-18/14; The South African Institute of Chartered Accountants, 2015b, p. SAAPS3(REVISED)-1). It is therefore

not simply a case of adding “*qualifications and reservations as the auditor considers necessary*” as the wording in the STSMA suggests.

Secondly, there is a requirement for an **opinion** on whether the body corporate has **complied** with the **accounting requirements** set out in **rule 21** (dealing with financial management, financial year, functions and powers), **rule 24** (dealing with administrative and reserve funds) and **rule 26** (dealing with financial records, budgets, reports and audits) with a specific **description of any failure** to comply with such requirements. The wording is not clear as to what exactly is expected when the auditor should test for this “*compliance with accounting requirements*” in the mentioned rules and sections. Many of the mentioned rules were discussed in the above sections of this chapter. These rules include matters such as special levies, contribution increases, interest calculations, investment requirements and restrictions, fund contributions and formulas, expenditure restrictions, budgets and allowable discounts, to name but a few. It is therefore evident that this new requirement will add a substantial amount of additional work to auditing practitioners. L. Lubbe (2013, p. 212) pointed out that that cost pressures and resulting time constraints already make it difficult for audit practitioners to perform all the procedures required by the auditing standards. Furthermore, Steenkamp & Lubbe (2015a, p. 551) remarked that many sectional title auditors claim that the audit and/or accounting fees attached to sectional title work are so low that it does not make financial sense to accept sectional title clients. This observation was made before the STSMA was enacted. Therefore, it can be argued that audit practitioners may perhaps in future become even more reluctant to take on assurance engagements of sectional title clients.

Thirdly, an opinion is required as to whether the **books of account** of the body corporate have been **kept** and its **funds** have been **managed** so as to provide a **reasonable level of protection against theft or fraud**. ISA240 deals with the auditor’s responsibilities relating to fraud in an audit of financial statements (International Auditing and Assurance Standards Board, 2013, p. 157). R.D.C. Jackson & Stent (2014, p. 7/32) comment that in terms of ISA240, the objectives of the auditor are to:

- identify and **assess the risk** of material misstatement of the financial statements **due to fraud**;
- **obtain** sufficient, appropriate **audit evidence** regarding the **assessed risk** of material misstatement through designing and implementing appropriate responses; and

- **respond** appropriately to fraud or suspected fraud identified during the audit. (Own emphasis.)

The authors also make it clear that the responsibility for the prevention as well as detection of fraud and error lies with management and those charged with governance, not with the auditors (R. D. C. Jackson & Stent, 2014, p. 7/34; Marx et al., 2011, pp. 6–4). ISA240 stipulates that there are five requirements of the auditor in respect of fraud. Firstly, the auditor should maintain an attitude of professional scepticism throughout the audit. Secondly, the audit team should be made aware of ‘what to look out for’ during the audit. Thirdly, the auditor should conduct relevant risk assessment procedures and related activities. Fourthly, the risk of material misstatement due to fraud should be identified and assessed at both the financial statement level and at the assertion level. Finally, an overall audit response should be determined to address the risk of material misstatement at the two mentioned levels (Marx et al., 2011, pp. 6-4-6–7; SAICA & IAASB, 2016, pp. 169–171).

SAAPS3, which contains illustrative audit reports, also addresses the auditor’s responsibility clearly. The wording of a standard Independent Auditor’s Report is as follows:

*“...An audit involves performing **procedures** to obtain audit **evidence** about the **amounts and disclosures in the financial statements**. The procedures selected depend on the auditor’s judgement, including the **assessment of the risks of material misstatement** of the financial statements, whether due to fraud or error. In making those risk assessments, **the auditor considers internal control** relevant to the entity’s **preparation of the financial statements** in order to design audit procedures that are appropriate in the circumstances, but **not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control**. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements...”* (Own emphasis.)

In light of ISA240 and SAAPS3 it is therefore clear that the auditor cannot be expected to express an opinion as to whether the body corporate is protected against theft or fraud.

Fourthly, an opinion is expected as to whether the “**financial affairs of the body corporate appear to be effectively managed...**” As was mentioned above, in performing the audit, the auditor will **consider internal control** relevant to the entity’s preparation of the financial statements in order to design audit procedures that are appropriate in the circumstances, **but not for the purpose of expressing an opinion** on the effectiveness of the entity’s internal control (R. D. C. Jackson & Stent, 2014, p. 7/34).

3.5.6.4 Time frame

STSMA Regulation rule 26(5)(d) stipulates that the audit of the body corporate’s annual financial statements must be completed within four months of the end of the body corporate’s financial year. In section 3.2.2.3 above it was stated that rules 17(1) and 17(2) of the STSMA Regulations specify that the body corporate must hold an annual general meeting (AGM) within two months of the end of each financial year. Since the audited annual financial statements must be presented at the AGM, it is quite strange that the auditors are given a time frame of four months, while the AGM should be held within two months.

3.5.6.5 Amendments to rules

Technically, a body corporate can opt not to be audited. This can be done by means of amending the rules of a body corporate. The following is stipulated in Section 35 of the original Sectional Titles Act:

*“(1) A scheme shall as from the date of the establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of **rules***

(2) The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise

(a) management rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for

the opening of a sectional title register, to the extent prescribed by regulation, and which rules may be substituted, added to, amended or repealed from time to time by unanimous resolution of the body corporate as prescribed by regulation..." (Own emphasis.)

J. Paddock (2010, p. 8) explains that the Sectional Titles Act makes provision for rules to be altered, but that the necessary procedures should be followed. The auditing of sectional titles schemes is governed by Prescribed Management Rules (PMR) 2, 40 and 56. As a result, one could interpret Section 35 in such a way that a unanimous resolution may be passed, removing those PMRs from the rules of the scheme. This is especially helpful in cases such as, for example, a self-managed scheme with one owner who does not want to incur the extra expense and administration involved in having the financial statements of the complex audited. It is, however, not advisable in general, due to many banks requiring audited financial statements of a body corporate as one of the prerequisites in granting a home loan to a prospective buyer of a sectional title unit.

The above option is still available for schemes in terms of the amended STA. Section 30 states the following:

*"(4) The management rules set out in Annexure 8 may be **added to, amended or repealed by unanimous resolution of the body corporate**: Provided that no such addition, amendment or repeal shall be made until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme save in the case of a body corporate which is established in a scheme which was approved in terms of the Sectional Titles Act, 1971."* (Own emphasis.)

Since the auditing of sectional title schemes is now governed by Rule 26 of the Regulations to the STSMA, the option is technically still available, but not advisable in cases where the units in the scheme are registered in the name of more than one person. As mentioned above, banks often require audited financial statements of a body corporate as one of the preconditions before granting a home loan to a prospective buyer of a sectional title unit. The intention of the legislator regarding this is quite clear, as stated in Rule 17(6)(j)(vi) of the STSMA Regulations. It stipulates that an auditor should be appointed to audit the financial

statements, unless all sections in the scheme are registered in the name of one person. (See also sections 3.5.2.1, 4.5.2 and 4.5.5.)

3.5.6.6 General

According to Riddin (2011, p. 1) the practitioners who draft financial statements often fail to see that the financial statements must comply with specific requirements of sectional title legislation. He also mentions a few other specific aspects that need to be checked, complied with or reported on, such as

- whether his or her firm's appointment is reflected in the minutes of the annual general meeting;
- that any added, amended or deleted management or conduct rule has been submitted to the Registrar of Deeds for filing;
- that any restrictions imposed on or directions given to trustees at a general meeting have been complied with;
- that all contracts have been properly signed and supported by a resolution formerly and correctly minuted;
- that levies have been determined correctly;
- that all the required minutes have been kept that the minutes record the transactions that form the basis for the accounting entries, for example approval of the budget at the AGM and the raising of levies by the trustees; and
- that the accounting complies with the Act and the rules of the scheme.

Van der Merwe (2014, p. 147) and Riddin (2011, p. 1) point out that these matters must be kept in mind when professionals are appointed to prepare the annual financial statements on behalf of the trustees. Due to the fact that the ultimate responsibility rests with the body corporate, it is vital that the trustees work closely with the appointed professional firms who specialise in sectional title matters.

It is worth noting that Van der Merwe (2014, pp. 14–81) holds the same view as L. Lubbe (2013, p. 31) that body corporate audits are not auditors' most profitable work. Riddin (2011, p. 1) adds that trustees should realise that to meet all accounting, auditing and sectional title needs, higher accounting and auditing fees may have to be expended. (See also the empirical results in Chapter 6 of this study and Van der Merwe (2014, pp. 14–147).)

3.6 Conclusion

The chapter commenced with a brief discussion of third generation sectional title legislation. The chapter was structured according to the responsibilities and functions of different role players in sectional title schemes being the body corporate, trustees, managing agents and accounting and auditing practitioners. Throughout the chapter, consideration was given to matters relating to management, accounting, auditing and financial aspects relating to sectional title schemes with specific reference to the changes effected by the third generation sectional titles legislation. It also laid the foundation for the aspects that will be empirically tested in the study.

T. Maree (2015b, p. 1) makes the bold statement that the implication of the extensive legislative changes is that "*the days of trusteeship without training is over*". Considering the legislative aspects relating to accounting and auditing mentioned in this chapter, the statement can certainly be applied to accounting and auditing practitioners as well.

In Chapter 4, auditing and assurance aspects relating to sectional title schemes will be discussed.

Chapter 4

Auditing and assurance aspects relating to sectional title schemes

“Four things come not back: the spoken word, the sped arrow, the past life, the neglected opportunity.” – Arabian proverb

4.1 Introduction

Chapter 3 gave an overview of the legislative aspects relating to the governance, accounting and auditing of sectional title schemes in South Africa. This chapter will cover auditing- and assurance-related aspects concerning sectional title property in greater detail. In sections 1.1 of Chapter 1 and 3.5 of Chapter 3 it was mentioned that there are numerous aspects concerning auditing and assurance in the Sectional Titles Act and Sectional Title Schemes Management Act which are unclear or has some form of shortcoming, weakness or ambiguity. In this chapter, these aspects will be further alluded to against the background of the study, as set out in Chapter 1. The chapter will commence with an overview of the history and background of auditing and assurance. An overview will also be given of sectional title assurance from an international perspective. Definitions of aspects relating to assurance engagements will be evaluated. Furthermore, this chapter will deal with assurance-related findings and general observations as part of the analysis of a sample of sets of annual financial statements over a period of three years. The financial statements with accompanying audit reports were obtained from a number of managing agents and audit firms of bodies corporate for the financial years ending 2014 and 2015. Since the 2014 financial statements also have figures for the comparative financial year (2013), the data of three financial years is available for analysis. Furthermore, the sample was selected to include financial statements and audit reports drawn up and audited by various accounting and auditing practitioners appointed by the various bodies corporate. Where deemed necessary, a distinction was made between small (consisting of fewer than 10 units), medium (between 10 and 50 units) and large (more than 50 units) schemes and indicated as such. Where deemed necessary, a distinction was also made between the various municipalities included in the sample, being Mangaung Metropolitan Municipality (Mangaung), Matjhabeng Local Municipality (Matjhabeng), City of

Matlosana Municipality (Matlosana) and Tlokwe Local Municipality (Tlokwe). (See also section 2.3.6 in Chapter 2.)

4.2 The history and background of auditing: a brief overview

Matthews (2006, pp. 2–3) comments that there is a general lack of interest in the history of auditing and very limited primary research has been done on the history of auditing among authors of accounting history. (See also Merino & Mayper (1993, pp. 237–238).) (See also the brief discussion of the trust concept in sections 1.4.6.1 and 4.4.1.) Even though relatively little research has been done on the history of auditing, authors such as R. Brown (1962, p. 696) and T.H. Lee & Ali (2008, p. 1) explain that a review of the history of auditing provides a foundation for understanding the changes that took place in the needs and expectations of society, interpreting the changes that took place in the auditing profession and revealing significant trends throughout history. (See also Merino (1998, pp. 603–616).)

R. Brown (1968, p. 74) points out that whenever the advance of civilisation brought about the necessity of one man being entrusted to some extent with the property of another the advisability of some kind of check upon the fidelity of the former would become apparent. Flint (1988, pp. 6–7) argues that auditing is a social phenomenon with the sole purpose of being practically useful, and its existence is wholly utilitarian. According to T.H. Lee & Ali (2008, pp. 1–2), the audit function has evolved in response to a perceived need of individuals or groups in society who seek reassurance about the conduct or performance of others in which they have an acknowledged and legitimate interest. (See also Watts & Zimmerman (1986, pp. 180–182) and (1983, p. 613).) Audit exists because certain individuals or groups are unable (for various reasons) to obtain for themselves the information or reassurance they require. Therefore, an audit can be explained as a means of social control because it serves as a mechanism to monitor conduct and performance, and to secure or enforce accountability. The audit function plays a critical role in maintaining the welfare and stability of the society (T. H. Lee & Ali, 2008, p. 1).

According to T.H. Lee & Ali (2008, p. 1) the word ‘audit’ is derived from the Latin word *audire*, which means ‘to hear’. The concept of auditing can be traced back to ancient times as far as

5000 B.C. (R. G. Brown, 1962, pp. 696–698; Dickinson, 1978, p. 1; Von Wielligh & Prinsloo, 2014, p. 14), There is evidence available of audits being performed in the ancient civilisations of Babylonia, Greece, the Roman Empire, China, Egypt, England and Scotland, all of which developed a detailed system of checks and counterchecks (Ramamoorti, 2003, p. 3). The majority of these audits concerned itself with governmental and family units, and the objective thereof was mostly the detection of fraud and clerical errors (Gordon, 1992, p. 19). Ancient Mesopotamian records dating to 3500 B.C. indicate that a variety of dots, checks and tick marks were used as a system of verification and similar systems were in use during the Zhao Dynasty in China (Ramamoorti, 2003, p. 3). In ancient Greece, checking clerks were used to check the accounts of public officials at the end of their terms in office. The ancient Egyptians also used a system whereby two scribes independently recorded government receipts on separate scrolls, which was later compared and checked for correctness. These governments were concerned about corrupt officials perpetrating fraud, and incompetent officials making bookkeeping errors (Chatfield, 1974, p. 4; Von Wielligh & Prinsloo, 2014, p. 14). The various systems were designed to prevent defalcations within the treasuries of the ancient rulers (R. G. Brown, 1962, p. 696).

Even the Bible contains examples of internal controls such as the dangers of dual custody of assets, the need for competent and honest employees, restricted access to assets and segregation of duties (Ramamoorti, 2003, p. 3). As early as the time of the Republic, the Romans also recognised the distinction between the official who authorises or orders revenue and expenditure, and the official who has the duty of handling cash, and an elaborate system of checks and counter-checks were developed among the various financial officials (R. Brown, 1968, p. 74). When the Royal Wardrobe and the Exchequer of England was established during the reign of Henry I, special audit officers were appointed to ensure that the state revenue and expenditure transactions were properly accounted for and to prevent fraudulent actions (T. H. Lee & Ali, 2008, p. 2). Three rolls were independently kept by the Treasurer, the Chancellor's clerk and a special representative of the king. The rolls had to agree in every respect, and every leaf and page of the one had to correspond to the leaves and pages of the other, thus ensuring a complete check at the close of the year. During the audit, which were performed by independent justices, barons or clerks, every single discrepancy between the rolls was adjusted and settled, and a '*probatum*' or '*pb*' mark added and affixed to every page, indicating that discrepancies between the rolls were adjusted and settled. There are similar references from Scotland and Italy through the centuries (R. Brown, 1968, pp. 75–76). (See also Von

Wielligh & Prinsloo (2014, p. 14.) From the fourteenth century onwards there is ample evidence that the auditing of government accounts was widely recognised.

According to T.H. Lee & Ali (2008, pp. 2–3), prior to the industrial revolution, industries were mainly concerned with cottages and small mills which were individually owned and managed. Hence, there was no need for the business managers to report to owners on their management of resources. As a result, auditing had little commercial application prior to the industrial revolution. (See also Watts & Zimmerman (1983, p. 613).) R. Brown (1968, p. 92) also remarks that although auditing and auditors date from a remote period, the professional auditor only came into being in comparatively modern times, with the establishment and growth of insurance companies, banking companies and other joint-stock concerns. Matthews (2006, p. 6) explains that the industrial revolution created the need for financing which, in turn, created the need for incorporation, companies, outside shareholding, financial reporting and audited information.

The owner of resources (also often referred to as the principal) appoints a manager or managers (agents) to take the responsibility of managing the resources on behalf of the principal (Watts & Zimmerman, 1986, pp. 180–186). This is also referred to as the agency theory. (See also sections 1.4.5 and 1.4.6.) The agents are charged with certain responsibilities, therefore, they are held accountable to the principal regarding their activities and how resources are spent (Buchholtz & Carroll, 2009, pp. 124–126; Duska, 2007, p. 151). The theory is also known as the accountability theory. This split between ownership and management of companies brought about the need for an outside party with an objective point of view to give an independent overview of the management of resources of companies on behalf of the owners. Mautz & Sharaf (1961, pp. 158–161) explain that the cornerstone of modern auditing was an independent, reliable process to verify that funds were used in an efficient manner, and that financial records reflect the actual financial performance and position of an organisation.

Brown (1968, p. 92) remarks that auditing as a subject field and the practical application thereof in practice developed for many decades without proper scientific foundations. The development of auditing came about largely against the background of practical needs of the users of annual financial statements as well as the responsibilities that the audit profession

was willing to accept with regards to the expressing of an audit opinion. Prior to the publication of the monumental work, *The Philosophy of Auditing* by Mautz and Sharaf (1961) (see also Flint (1988, pp. 6–10) and Lubbe (1984, pp. 3–5)), the foundations of auditing were not yet properly worded, and the authors made probably the first and the greatest contribution in pointing out the aforementioned. The following is a brief excerpt of their viewpoint (1961, p. 40):

"Various efforts have been made to state the basic assumptions or postulates of accounting, although to this date there has been no general acceptance of any single such statement, but little effort has been made to list the basic assumptions of auditing".

The American Institute of Certified Public Accountants issued the results of a study in 1961, and in the text Moonitz (1961, p. 1) states the following:

"Terms such as axiom, postulate, principle, standard, procedure, canon, and rule, among others, are widely used, but with no general agreement as to their precise meaning".

Almost twenty years after Mautz & Sharaf and Moonitz, Schandl (1978, p. xiii) supported their view when he wrote:

"... auditing ... seems to be caught in a frustrating and stationary situation. Auditing was 'done' but was never analysed as a scientific activity. The 'art of auditing' was supposed to be acquired by imitation ... there was no theory of auditing; there was not even a proper definition of auditing".

Chatfield (1974, p. 113) maintains that:

"In the absence of an organised accounting profession there was little agreement as to what an audit investigation should consist of or who should make it."

Matthews (2006, p. 23) concurs with the above-mentioned authors, adding:

"The audit function was simply coincident to a greater or lesser extent with the accounting function."

From the above it is clear that, for many years, auditors conducted audits, without the foundations of the work being properly worded. The writings by the above-mentioned authors

were probably the greatest stimulus for academics and professional bodies to develop auditing as a discipline. The development of the discipline eventually led to the development and issuing of auditing standards.

R. Brown (1968, pp. 264–266) recounts that The Institute of Accountants and Auditors in the South African Republic was formed in 1894 with 65 original members. The four provinces in South Africa at the time, namely Natal, Transvaal, Cape and Free State each incorporated their own accounting institute. According to Dickinson (1978, p. 4) and D.S. Lubbe (1984, p. 4), the four provincial institutes were combined in 1945, to form the Joint Council of the Societies of Chartered Accountants of South Africa. Puttick & Van Esch (1998, p. 4) explain that the registration and regulation of South African accountants and auditors were formalised in 1951 with the issuing of the Public Accountants and Auditors Act (Act 51 of 1951) (PAA Act). The name of the Joint Council of the Societies of Chartered Accountants of South Africa changed to the National Council of Chartered Accountants (SA) in 1966 (See also Von Wielligh & Prinsloo (2014, pp. 14–15)).

Chatfield (1974, pp. 113–115) points out that the issuing of legislation always brings about significant changes in the profession. The issuing of the Companies Act in 1973 in South Africa was no exception, requiring all companies to undergo a statutory annual audit. Furthermore, Dickinson (1978, p. 4) explains that statements of generally accepted accounting practice (gaap) had to be issued by the National Council of Chartered Accountants (SA), due to the fact that the Companies Act required auditors to express an opinion on the compliance of companies with gaap. According to D.S. Lubbe (1984, p. 4) the National Council of Chartered Accountants (SA) was dissolved in 1980, and the South African Institute of Chartered Accounts (SAICA) was incorporated. SAICA assisted South African auditors in their duties and played a leading role in the issuing of auditing standards.

Starting in 1994, the auditing profession in South Africa harmonised the South African auditing standards with International Standards on Auditing (ISAs). These standards were called the South African Auditing Standards (SAASs). On 1 January 2005, South Africa fully adopted the entire suite of auditing pronouncements as issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC). (See also Von Wielligh & Prinsloo (2014, p. 15).) All previously issued SAASs were withdrawn from use

as from that date (IRBA, 2004, p. 1; PAAB, 2004, p. 6). Section 5.2 deals with the history of accounting in more detail.

The introduction of audit approaches that place emphasis on the business risks of organisations whose financial statements are being audited, has been documented as a major innovation in audit methodology since the second half of the 1990s (Curtis & Turley 2007, p.439). This innovation has been associated with changes in the scope of the planning and risk assessment processes and in the related evidence gathering procedures used by auditors (Van Buuren et al. 2014, pp.10–108). Knechel (2013, pp.A3–A4) explains that existing audit standards recognize that audit risk can never be zero, nor is it the expectation that audits should be planned with that objective in mind.

ISA 315 (SAICA & IAASB 2016, pp.272–325) deals with the auditor's responsibility to identify and assess the risks of material misstatement in the financial statements through understanding the entity and its environment, including the entity's internal control, thereby providing a basis for designing and implementing responses to the assessed risks of material misstatement. Paragraph A24 to A29 of ISA 315 (SAICA & IAASB 2016, pp.288–289) guides the auditor in obtaining an understanding of the entity and its environment, more specifically the industry, regulatory and other external factors. According to Curtis & Turley (2007, p.445) and Botez (2015, p.70), the approach encourages the auditors to view the client in terms of key business processes, and risks and controls within those processes, as opposed to a framework based on financial statement balances and transaction streams alone. In other words, auditors need to consider client business risk and the related strategic and other controls as a fundamental part of the audit process, rather than focusing more narrowly on financial statement risk (Curtis et al. 2016, p.75). (See also Coetzee & Lubbe (2014, pp.115–117).) The rationale for this approach suggests that if the auditor can identify the sources of business risk and ensure that the client has appropriate systems to monitor and manage that risk, there is little value in extensive substantive testing. It has also been suggested that obtaining such an insight on the business provides auditors with a better basis for generating useful feedback for the client (Curtis & Turley 2007, pp.445–446; Curtis et al. 2016, pp.75–76).

Auditors of small and medium-sized entities often face an audit environment that is very challenging due to the fact that many of their clients often do not have formalized entity-level controls for assessing business risks (Van Buuren et al. 2014, p.106). Sectional title schemes can also be classified into the category of small and medium-sized entities (Lubbe 2013, pp.126–127) and it is therefore important for the auditors of such schemes to fully grasp the various risks relating to the sectional title industry. Specific reference will be made to risk in the discussion of the empirical findings throughout the rest of the study. The following section will give a brief international comparison of the concept of sectional title audit.

4.3 Sectional title audit – a brief international comparison

Section 1.4.3 provided a brief overview of how selected property schemes similar to sectional titles operate in other parts of the world. This section will provide an overview of how property schemes similar to sectional title are handled in other parts of the world specifically from an auditing and assurance perspective. It should be noted that a full global comparative study of similar international property forms falls outside the scope of this study. The specific countries that will be discussed are the United Kingdom, the United States of America, Canada, Australia, New Zealand, India, Singapore and Japan.

4.3.1 United Kingdom

The United Kingdom (UK) Department of Communities and Local Government (Department for Communities and Local Government, 2009, p. 30) put guidelines in place to assist residential long leaseholders in understanding their rights and responsibilities. Regarding audit, the Commonhold and Leasehold Reform Act 2002 state that long leaseholders of flats and houses have the right to arrange for a management audit of all the management functions which the landlord or the landlord's agent undertakes on their property. If the leaseholders arrange for an audit, the leaseholders are responsible for paying the cost of the audit. The right to arrange an audit applies only to qualifying long leaseholders who pay variable service charges. Where there are only two dwellings, either or both leaseholders may exercise the

right. If there are more than two dwellings, the right must be exercised by at least two-thirds of the qualifying leaseholders.

The purpose of the audit is to find out if the landlord is carrying out their management obligations efficiently and effectively. The audit can investigate any aspect of the management, including ascertaining whether service charges are being spent in a cost-effective way. The auditor can scrutinise paperwork and may inspect common sections. The audit can be used to identify and obtain evidence of bad management (Department for Communities and Local Government, 2009, p. 30).

The audit must be undertaken by a qualified surveyor or accountant, who is neither a tenant of any premises in the block or connected with the landlord. The choice of professionals will allow leaseholders to look at both the accounts and at the structure of the building and the auditor may employ any other persons to assist as they see fit. (See also Garner & Frith (2010, pp. 463–464) and The Leasehold Advisory Service (The Leasehold Advisory Service, 2012, p. 1).)

4.3.2 United States of America

As mentioned in section 1.4.3 above, every state in the USA has its own piece of legislation governing condominium. In broad terms, there are many similarities regarding condominium audits of various state; however, a detailed analysis of the various differences between the different states' legislation falls outside the scope of this text.

Tyndall (2014, p. 1) explains that, for example, Florida law requires condominium, cooperative, and homeowners' associations to have audits and that the level of required financial report depends upon the condominium association's annual revenues. Board Members and Community Association Managers (CAMs) are required by Florida Law to issue financial reports timely. The auditors' investigations of financial statement items include looking at the condominium's accounting records, but is not limited to these records. The auditors' examination includes observation of tangible assets, inspection of such documents as

purchase orders and contracts, and the gathering of evidence from outsiders including banks, customers, and suppliers, as well as analysis of the condominium's accounting records. The condominium association's reserve fund is also reviewed during the audit. Supplementary Information of future major repairs and replacements are included in the audit. Audit firm LBA Haynes Strand (2014, p. 1) explains that condominium homeowners association boards are often comprised of individuals from varying professional backgrounds, many of whom may not necessarily be familiar with the audit process. The firm adds that there are several benefits for a homeowners association to have an audit done, including satisfaction of fiduciary responsibilities, adding value to homeowners within the association, and gaining comfort over management duties and funds.

4.3.3 Canada

As mentioned in section 1.4.3.3 the various provinces in Canada all have separate pieces of legislation in place to govern the ownership of condominiums. In broad terms there are many similarities regarding condominium audits in the different provinces; however, a detailed analysis of the various differences between the provincial legislation falls outside the scope of this text.

In Ontario, for example, the Condominium Act stipulates that the auditor shall, every year, make an examination that is necessary in order to make an annual report on the financial statements to the corporation on behalf of the owners (Legislative Counsel Office, 2009, p. 14). The auditor's report shall be prepared in the prescribed manner and in accordance with generally accepted auditing standards as are prescribed in the Handbook of the Canadian Institute of Chartered Accountants. The auditor should include in the report the statements that the auditor considers necessary if the corporation's financial statements are not in accordance with the requirements of this Act and the regulations made under it. Furthermore, the auditor should state in the report whether the statement of reserve fund operations and any other prescribed information relating to the operation of the reserve fund and contained in the financial statements fairly present the information contained in the reserve fund studies that the auditor has received. In the province of Ontario, an audit is required for all condominium corporations with one exemption. If the financial statements include supplementary schedules that are unaudited, they should be clearly marked as such.

Condominiums with less than 25 units can be exempt from the audit requirement provided all owners consent in writing each year (Chartered Professional Accountants of Ontario, 2013, p. 19).

4.3.4 Australia

There is no requirement in the Australian Strata Titles Act 1985 for accounts of any strata company to be audited, because in some small schemes it may not be appropriate (Western Australian Land Information Authority, 2012, p. 27). However, strata managers or any agent who is authorised by the strata corporation to receive and hold money on behalf of the corporation are under strict legal obligations. An audit report of the strata manager's trust account must be lodged with each corporation under their management (Legal Services Commission of South Australia, 2012, p. 8). The requirement to have a strata corporation audited, therefore, depends on whether the strata corporation has appointed a strata manager or agent to receive and hold money on behalf of the corporation. A manager or agent must keep money in a trust account and has a legal obligation to have the trust account audited at regular intervals. The Strata Titles Act does not require a member of the corporation who is the treasurer or holds corporation money to have accounts audited. However, the Legal Services Commission of South Australia is of the opinion that the appointment of an auditor is sensible to make sure that a proper statement of accounts has been prepared and that the cost of an audit should be balanced against the cost of auditing the accounts (2012, pp. 19–20). A small scheme consisting of two lots may exempt themselves from the requirements to have the annual statement of accounts audited (Legal Services Commission of South Australia, 2012, p. 32). A large scheme is considered by law to be one with more than 100 lots. Some special provisions apply to large schemes and one of the provisions is that financial accounts must be audited every year. If owners of two-lot strata schemes choose to have the scheme's accounts audited, the audit is not necessarily required to meet the Australian Auditing Standard (New South Wales Government, 2015, p. 1).

4.3.5 New Zealand

In New Zealand, a unit title body corporate must arrange for the audit of its financial statements at the end of the financial year, unless it decides by special resolution this is not required. The regulations will prescribe a form for financial statements which must be audited by an independent auditor, reviewed by an accountant or verified by an accountant under specific procedures as determined by the body corporate. In any event, the person must be a person qualified to act as an auditor for a company under section 199 of the Companies Act. These financial statements must then accompany the notice of the Annual General Meeting (AGM) (Department of Building and Housing, 2011, p. 14; Ministry of Business Innovation and Employment, 2015, p. 1).

4.3.6 India

In India, there are a number of apartment laws that vary in each state. The Maharashtra Apartment Ownership Act, 1970 was a revolutionary Act that paved the way for many other states to introduce a similar legislation, such as the Karnataka Apartment Ownership Act, 1972, which used the Maharashtra legislation as a model Act. Indian apartment laws empower apartment owners to fully own the apartment, together with their proportional share in the undivided facilities and common area (President of the Republic of India, 1971, pp. 3–4). The legislation further makes apartments transferable and heritable, and enables apartment owners to secure a mortgage on the apartment. An apartment owner's association is usually formed by a volunteer association of the owners of an apartment building. Apartment owners may add additional by-laws relating to a number of matters, including the auditing of the books of the property as they see fit (President of the Republic of India, 1971, pp. 8–9).

4.3.7 Singapore

In Singapore, the books and accounts of the management corporation must be audited for each financial year. A copy of the statement of accounts of the management corporation and a copy of the auditor's report of the account of the management corporation must accompany the notice for the annual general meeting (Building and Construction Authority of Singapore, 2005, pp. 18–21). The audit of the books and accounts of a management corporation shall be carried out only by a person who is a public accountant within the meaning of the Companies Act of Singapore. The auditor shall be appointed by the management corporation at its annual general meeting or by the council of the management corporation, within 90 days after the annual general meeting is concluded, if no auditor is appointed during that annual general meeting. The auditor shall hold office until the conclusion of the next annual general meeting of the management corporation (Singapore Government, 2014, p. 45).

The following section deals briefly with the analysis of the Sectional Titles Act, related acts and regulations (as discussed in section 1.1) as well as other concepts (such as the 'trust' concept) from a governance, auditing and assurance perspective. The rest of the chapter is also structured in such a way that the empirical findings are dealt with together with the relevant analysis of the legislative requirements.

4.4 Analysis of legislative aspects and other concepts from an auditing and assurance perspective

In section 4.2 the historical development of auditing was discussed. In sections 1.4.5, 1.4.6 and 4.2 above, it was mentioned that when owners, investors and others are not directly involved in the day-to-day management of an entity or organisation in which they are stakeholders, some form of external assurance is needed. In the case of sectional title schemes, external assurance is also necessary — not only as a result of the legal requirements of the Sectional Titles Act, but also due to the fact that, in many cases, the owners stand apathetic towards the management of the scheme (refer also to section 1.4.6.3 and 1.6). Furthermore, the body corporate of a sectional title scheme is entrusted with trust

money in the form of levy contributions (refer also to sections 1.1, 1.4.4.1 and 1.4.6.3). In addition, trustees do not necessarily have the skills and experience required to manage a sectional title scheme and its finances on a day-to-day basis (L. Lubbe, 2013, p. 63).

The auditing-related aspects of the so-called third generation sectional titles legislation was briefly introduced in section 3.5. As mentioned in that section, the third generation legislation replaced the original first-generation Sectional Act No.95 of 1986. Third generation sectional title legislation consists firstly of the new Sectional Titles Schemes Management Act No. 8 of 2011 (also referred to as the STSMA), containing all governance and management provisions regarding sectional titles. Secondly, technical registrations and survey provision are contained in the remainder of the Sectional Titles Act No. 95 of 1986 (abbreviated as STA), as amended by the Sectional Titles Amendment Act No. 33 of 2013. Thirdly, the Community Schemes Ombud Service Act No. 9 of 2011 (also referred to as the CSOSA) provides a dispute resolution mechanism for sectional title and other community schemes.

This section provides, amongst others, a more detailed analysis of the above-mentioned Acts, providing the theoretical underpinning for the empirical study in section 4.5 and Chapter 6. Due to the fact that the new STSMA, STA and CSOSA was not in operation at the time that the empirical study was conducted, reference will be made to the original STA where applicable throughout the text.

4.4.1 The concept of trust

In section 1.4.6.1 it was mentioned that numerous problems may arise between the various role players in sectional title property. It was mentioned that owners of sectional title property may not always have the necessary management knowledge and skills to manage a scheme, and therefore they are largely dependent on managing agents to deliver these services. Against this background it is important that there should be a relationship of 'trust' between these role players. Trust is a very wide concept and will therefore only be briefly introduced in terms of the context of this study without going into great detail.

In his *magnum opus* (*The end of Alchemy - Money, Banking and the Future of the Global Economy* (2016)) the legendary Mervyn King (who served as the Governor of the Bank of England during the so-called financial crisis of 2007-2008) discusses, amongst others, the important role of 'trust'. He (2016, p. 10) declares unequivocally that "*trust is the ingredient that makes a market economy work*". He builds on this thought, arguing that "*three things are necessary for government: weapons, food and trust. If a ruler cannot hold on to all three, he should give up weapons first and food next. Trust should be guarded to the end: without trust we cannot stand*" (2016, p. 10). (See also Cherry (2016, pp. 8–10), Burke (2016, pp. 1–7) and Hansen, Dunford, Alge & Jackson (2016, pp. 649–660).)

King (2016, p. 81) declares that trust is not only of cardinal importance for rulers and governments, but that each individual and organisation is dependent upon it. Against the background of the trying times through which King had to take the British economy as Governor of the Bank of England, he makes the following critical claim against fellow economists when he states that "*Economists mistrust trust*". He further emphasises the crucial role that trust plays in the long-term survival of a country's economy when he claims that every young generation hands over a portion of their income to an older, retired generation, with the hope and belief that a new young generation will do the same for them.

N. Lubbe (2013, pp. 38–39) explains that unethical practices in the first years of the twenty-first century by leaders at Enron, WorldCom, Tyco, Parmalat and the United Nations Oil-for-food program, to name but a few high profile cases, led to endemic mistrust in institutions and organizations. (See also Rossouw & Van Vuuren (2010).) Furthermore, in recent years the rise in fraud, nepotism, tenderpreneurship and other related unethical business practises increased the risk for reputational damage to, and loss of public trust in the accounting and auditing profession, considerably. It is evident that the prevalence of unethical business practices (of which numerous examples have already been mentioned) has resulted in a decline in public trust. Many people have lost their confidence in the integrity of leaders, in their capability to handle prevailing economic difficulties and in the economic policy options being followed (J. A. Brown, Buchholtz, & Dunn, 2016, pp. 185–186; Hansen et al., 2016, pp. 649–650; N. Lubbe, 2013, p. 40).

As was mentioned above, the concept of trust is as important within the greater economy as it is between organisations and individuals. For the sectional title industry and its role players this concept is equally valid.

4.4.2 Definitions

This section deals with definitions relating to assurance as per the International Audit Standards with specific reference to the aspects as it appears in the old and new Sectional Titles Act, where applicable, as well as the relevant empirical findings.

4.4.2.1 Auditor

According to SAICA & IAASB (2016, p. 15), the term **auditor** refers to

*“...the person or persons **conducting** the audit, usually the engagement **partner** or other members of the engagement **team**, or, as applicable, the **firm**...”.* (Own emphasis.)

In the original Sectional Titles Act, Prescribed Management Rule (PMR) 2 which deals with “Interpretation” and definitions, PMR 2(c) stated the following:

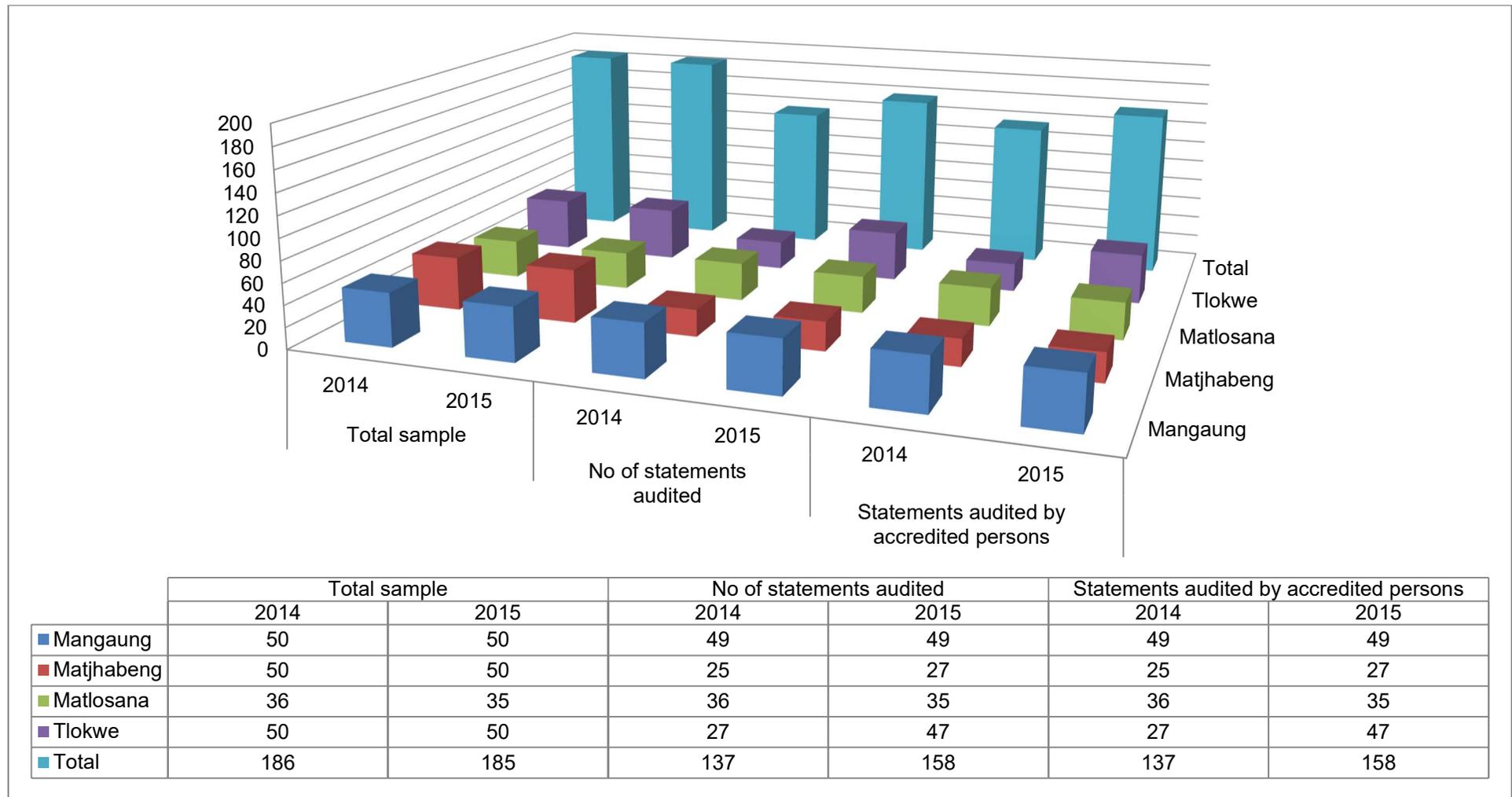
*“...‘**auditor**’ means an auditor qualified to act as such under the Public Accountants’ and Auditors’ Act, 1951 (Act 51 of 1951)...”.* (Own emphasis.)

As mentioned in section 3.5.2.2, L. Lubbe (2013, p. 66) points out that the definition of an ‘auditor’ in the original Sectional Titles Act was outdated, as the auditing profession in South Africa is no longer governed by the Public Accountants’ and Auditors’ Act (PAAA). The new STSMA Regulations defines an auditor in rule 2(1)(c) of the section dealing with interpretations as “...a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No.26 of 2005)...” (sic). The Auditing Profession Act (APA) defines a registered auditor

as an individual or firm registered as an auditor with the Independent Regulatory Board for Auditors (IRBA) (Parliament of the Republic of South Africa, 2005, pp. 1–7). (See also Von Wielligh & Prinsloo (2014, pp. 91–92).) In section 3.5.2.2 it was mentioned that the change from the outdated reference to ‘auditor’ in the old STA to the current definition in the STSMA Regulations is a positive improvement in the new legislation.

The interpretation of the wording of the original Sectional Titles Act was tested for the sampled sets of annual financial statements selected for testing over a period of two years. The audit reports for the bodies corporate were analysed. Figure 4-1 below summarises how many audits were performed by persons accredited in terms of the APA.

Figure 4-1: Audits performed by accredited persons



Out of the sample of 50 annual financial statements for Mangaung for the financial year ending 2014, 49 sets of financial statements were audited (had an audit report attached). All 49 of these audits were performed by accredited persons, being firms of chartered accountants registered with IRBA. For the financial year ending 2015, 49 sets of financial statements were audited (had an audit report attached). All 49 of these audits were performed by accredited persons, being firms of chartered accountants registered with the IRBA. Out of the sample of 50 annual financial statements for Matjhabeng for the financial year ending 2014, 25 sets of financial statements were audited (had an audit report attached), which were all performed by accredited persons, being firms of chartered accountants registered with IRBA. For the financial year ending 2015, 27 sets of financial statements were audited (had an audit report attached) and all of the audits were performed by accredited persons, being firms of chartered accountants registered with the IRBA. Out of the sample of 36 annual financial statements for Matlosana for the financial year ending 2014, all of the financial statements were audited (had an audit report attached) and all the audits were performed by accredited persons, being firms of chartered accountants registered with IRBA. For the financial year ending 2015, the sample consisted of 35 sets of financial statements, which were all audited (had an audit report attached). All the audits were performed by accredited persons, being firms of chartered accountants registered with the IRBA. Out of the sample of 50 annual financial statements for Tlokwe for the financial year ending 2014, 27 sets of financial statements were audited (had an audit report attached), all of which were performed by accredited persons, being firms of chartered accountants registered with IRBA. For the financial year ending 2015, 47 sets of financial statements were audited (had an audit report attached), and all 47 of the audits were performed by accredited persons, being firms of chartered accountants registered with the IRBA. For the total sample, 137 of the 186 (74%) financial statements were audited in 2014 and 158 of the 185 (85%) financial statements were audited in 2015. All of the audits were performed by accredited persons, being firms of chartered accountants registered with IRBA. It therefore seems that, even though the wording of the original act was outdated, in practice the term 'auditor' was interpreted as being a chartered accountant or a firm of chartered accountants as intended by the Auditing Profession Act, 2005 (Act 26 of 2005) and registered with the IRBA. The percentages significantly lower than the findings in the study of L. Lubbe (2013, p. 68), which indicated that 88% (2009) and 92% (2010) of the sample had an audit report.

Regarding the above, it is important to take note of the concept of statutory interpretation. Botha (2005, p. 67) explains that in the legislative process a great number of people from the

legislator is involved, and not all of these people can be fully up to date with highly specialised technical legislation. As a result, the intention of the legislator is regularly used when interpreting the law, especially in cases where ambiguity or vagueness is present (Botha, 2005, p. 1–2,49). Botha (2005, pp. 49–51) makes specific reference of the Section 12 of Interpretation Act 33 of 1957, implying that, according to the principles of legal interpretation, unless later legislation rules clearly otherwise, the wording of an act should be interpreted according to the meaning it had on the day that the legislation was approved.

In the context of the obsolete reference to the “*Public Accountants’ and Auditors’ Act, 1951*” in the original Sectional Titles Act, the assumption can most probably be made that the principles of legal interpretation will be applicable to IRBA. The reference to “*Public Accountants’ and Auditors’ Act, 1951 (Act 51 of 1951)*” should be interpreted as meaning the “*Auditing Profession Act, 2005 (Act 26 of 2005)*”. As mentioned in section 3.5.2.2, the change from the outdated reference to ‘auditor’ in the old STA to the current definition in the STSMA Regulations is a positive improvement in the new legislation.

4.4.2.2 Assurance engagements

In the new STSMA Regulations, rule 26(5)(a) reads as follows:

*“...the **audit** of a body corporate’s annual financial statements must be carried out by an independent auditor...”* (Own emphasis.)

SAICA & IAASB (2016, p. 13) explains **assurance engagements** as follows:

“...An engagement in which a practitioner aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information...”

The wording regarding audit in the new STSMA Regulations is in line with the relevant technical terminology and it is also much clearer than it was in the original Act. L. Lubbe (2013, pp. 70–71) explains that, in the original STA, PMR 40 only mentioned that the body corporate

shall “appoint an auditor to hold office”, but nowhere in the Act was it stated what exactly is expected from the auditor, other than the last part of Section 40 stating that the auditor “must sign the financial statements”. The wording of this section was unclear and is not in line with the standards of the professional bodies governing the audit profession in South Africa. As L. Lubbe (2013, p. 71) points out, an auditor cannot simply be “appointed to hold office” as indicated by the Sectional Titles Act. This is due to the fact that, according to ISA 210 (SAICA & IAASB, 2016, p. 111) the auditor has to specifically “agree the terms of the audit engagement with management or those charged with governance, as appropriate”. Furthermore, L. Lubbe (2013, pp. 82–84) explains that the requirement of PMR 40 to “sign the financials” is also technically incorrect, since it does not imply any communicating or reporting responsibilities in relation to matters arising from the audit as per ISA 200 (SAICA & IAASB, 2016, p. 81). In his book on statutory interpretation, Botha (2005, p. 69) explains that where one encounters technical legislation, applicable to specific trades, industries or professions, the wording of that legislation should be interpreted in its specialised, technical context. The author refers specifically to the court case of *Kommissaris van Doeane en Aksyns v Mincer Motors* 1959 (1) SA 114 (A). As discussed in section 4.2. of this chapter, the auditing profession has very specific guidelines and standards which is issued by the South African Institute of Chartered Accountants (SAICA) and the Independent Regulatory Board for Auditors (IRBA) (Von Wielligh & Prinsloo, 2014, p. 79).

The interpretation of the wording of the original Sectional Titles Act was tested for the sampled sets of annual financial statements selected for testing over a period of two years. The financial statements for the bodies corporate were inspected for signatures as evidence of it being signed. None of the 185 financial statements of 2015 (196 for 2014) had any evidence of being ‘signed’ by auditors or accounting officers. This finding supports the finding of L. Lubbe (2013, pp. 84–89) that auditors and accounting officers do not simply ‘sign’ financial statements. The conclusion can therefore be made that for the 2014 and 2015 financial years, the auditors and accounting officers did not follow the prescriptions of “signing the financial statements” as per the original Sectional Titles Act. The practitioners rather opted for the issuing and signing of the relevant audit and accounting officer reports according to the regulations and standards of the profession itself.

4.4.3 Segregation of duties and independence

In section 3.5.6.1 it was mentioned that the new STSMA Regulations contains very specific guidelines regarding auditor independence and the segregation of duties of auditors. The wording of rule 26(5)(a) reads as follows:

*“...the **audit** of a body corporate’s annual financial statements must be carried out by an independent auditor who has **not** participated in the **preparation of the annual financial statements** or **advised on any aspect** of the **accounts** of the body corporate during the period being reported on...”* (Own emphasis.)

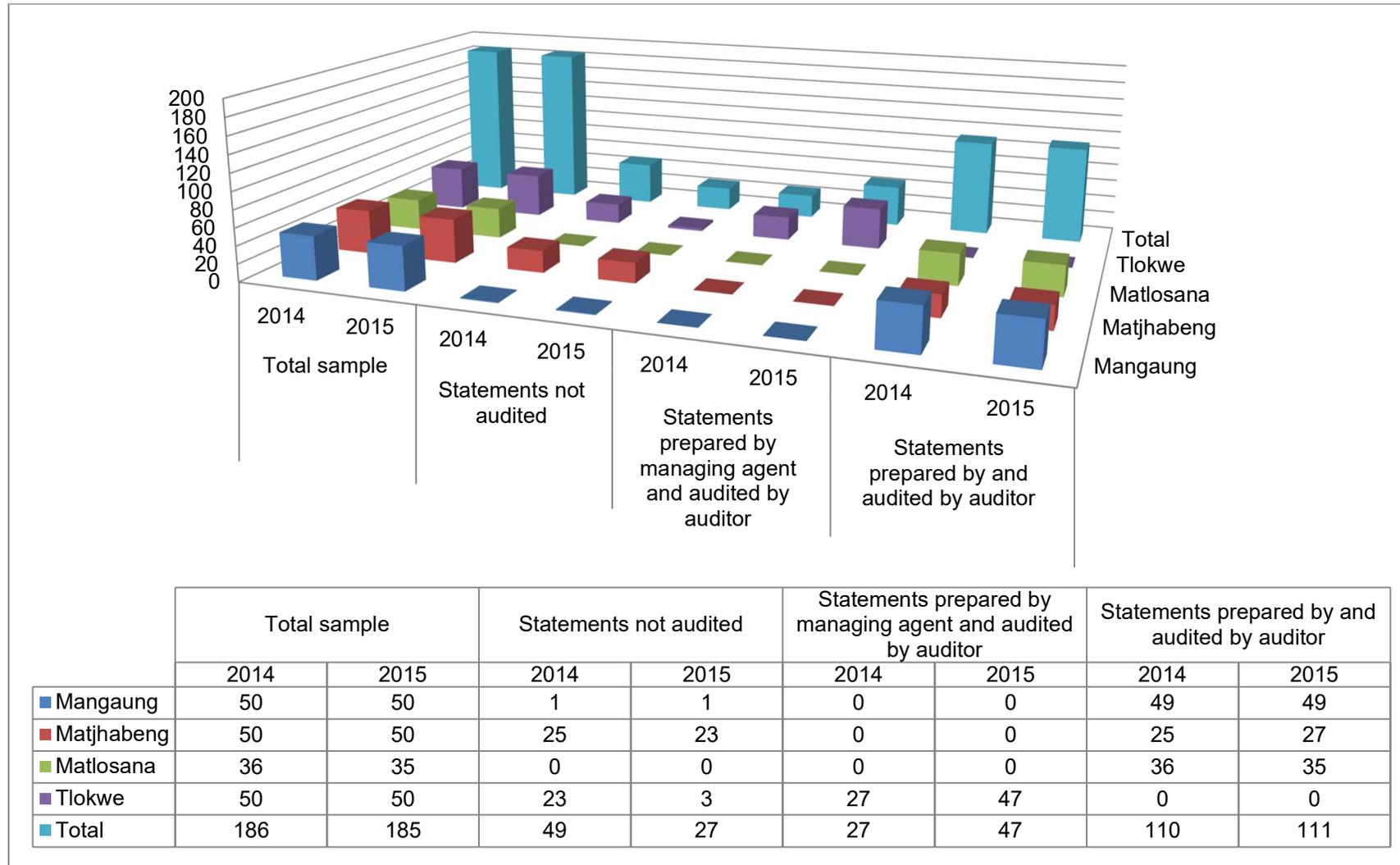
The details of the specific threats and safeguards relating to auditor independence were also discussed in section 3.5.6.1. However, it was also mentioned that currently in practice, the majority of audit practitioners involved in sectional title audits prepare the annual financial statements for the body corporate, as well as carry out the audit work. This is done despite that fact that the preparation of the financial statements is actually the responsibility of the trustees. Section 37(1) of the original STA states specifically:

*“The **trustees** shall cause to be prepared ... a **financial statement** in conformity with generally accepted accounting practice...”* (Own emphasis.)

Some practitioners also complete tax returns, prepare budgets and provide business advice for their sectional title clients (L. Lubbe, 2013, p. 194; 206; Steenkamp & Lubbe, 2015a, p. 554).

The sample of annual financial statements selected for testing over a period of two years were tested to determine whether the preparation of the financial statements and the audit thereof was done by independent parties. This was done by means of enquiry from the managing agents and audit firms where the financial statements were obtained from. Figure 4-2 below summarises the preparation and auditing of financial statements by independent parties.

Figure 4-2: Financial statements preparation and audit independence



Out of the sample of 50 annual financial statements for Mangaung for the financial year ending 2014, 49 (98%) sets of financial statements were prepared and audited by the same auditor. The remaining 1 (2%) financial statement was not audited. For the financial year ending 2015, 49 (98%) sets of financial statements were prepared by and audited by the same auditor, while the remaining 1 (2%) financial statement was not audited. Out of the sample of 50 annual financial statements for Matjhabeng for the financial year ending 2014, 25 (50%) sets of financial statements were prepared by and audited by the same auditor, while the remaining 25 (50%) were not audited. For the financial year ending 2015, 27 (54%) sets of financial statements were prepared by and audited by the same auditor. The other 23 (46%) were not audited. Out of the sample of 36 annual financial statements for Matlosana for the financial year ending 2014, all the financial statements were prepared by and audited by the same auditor. For the financial year ending 2015, the sample consisted of 35 sets of financial statements, which were all prepared by and audited by the same auditor. Out of the sample of 50 annual financial statements for Tlokwe for the financial year ending 2014, 27 (54%) of the financial statements were prepared by the managing agent and audited by an independent auditor, compared to 47 (94%) in 2015. The remaining 23 (46%) financial statements for 2014 and 3 (6%) for 2015 were not audited.

Therefore, from the total sample of 186 statements in 2014 and 185 in 2015, 137 (74%) financial statements were audited in 2014 and 158 (85%) were audited in 2015. Of the 137 financial statements that were audited in 2014, 110 (80%) of the financial statements were prepared by and audited by the same practitioner. In 2015, 111 of the 158 (70%) financial statements were prepared by and audited by the same practitioner. From the above it is clear that currently in practice the majority of audit practitioners (80% in 2014 and 70% in 2015) involved in sectional title audits prepare the annual financial statements for the body corporate, as well as carry out the audit work. In the remaining cases (20% for 2014 and 30% for 2015) the financial statements were prepared by the managing agent and audited by an audit practitioner. This is done despite that fact that the preparation of the financial statements is actually the responsibility of the trustees. However, as mentioned in section 4.3 above, trustees do not necessarily have the skills and experience required to manage a sectional title scheme finances on a day-to-day basis (L. Lubbe, 2013, p. 63) and prepare the financial statements. In light of the segregation of duties requirement, many audit practitioners will have to put safeguards in place to ensure that they comply with rule 26(5)(s) of the STSMA Regulations and section 290.167 of the Code of Professional Conduct for Registered Auditors, which deals with auditor independence regarding the audits and the preparation of accounting

records and financial statements (International Federation of Accountants, 2009, p. 78; Marx et al., 2011, pp. 3–39). The aspect of auditor independence was also addressed in the empirical study and will be further discussed as part of the empirical results in Chapter 6.

4.4.4 Recognised framework

As mentioned in section 3.5.6.2, the new STSMA Regulation rule 26(5)(b), states that:

*“...the **audit** of a body corporate’s annual financial statements **need not be carried out in accordance with any recognised framework of guidelines for financial accounting...**”* (Own emphasis.)

It was also stated that auditors must, according to law, perform their work as prescribed by the APA and that, in practice, not performing an audit according to the ISAs will constitute a legal offence for which an audit practitioner may face disciplinary action, suspension or removal from the register of auditors (The South African Institute of Chartered Accountants, 2015a, p. 1).

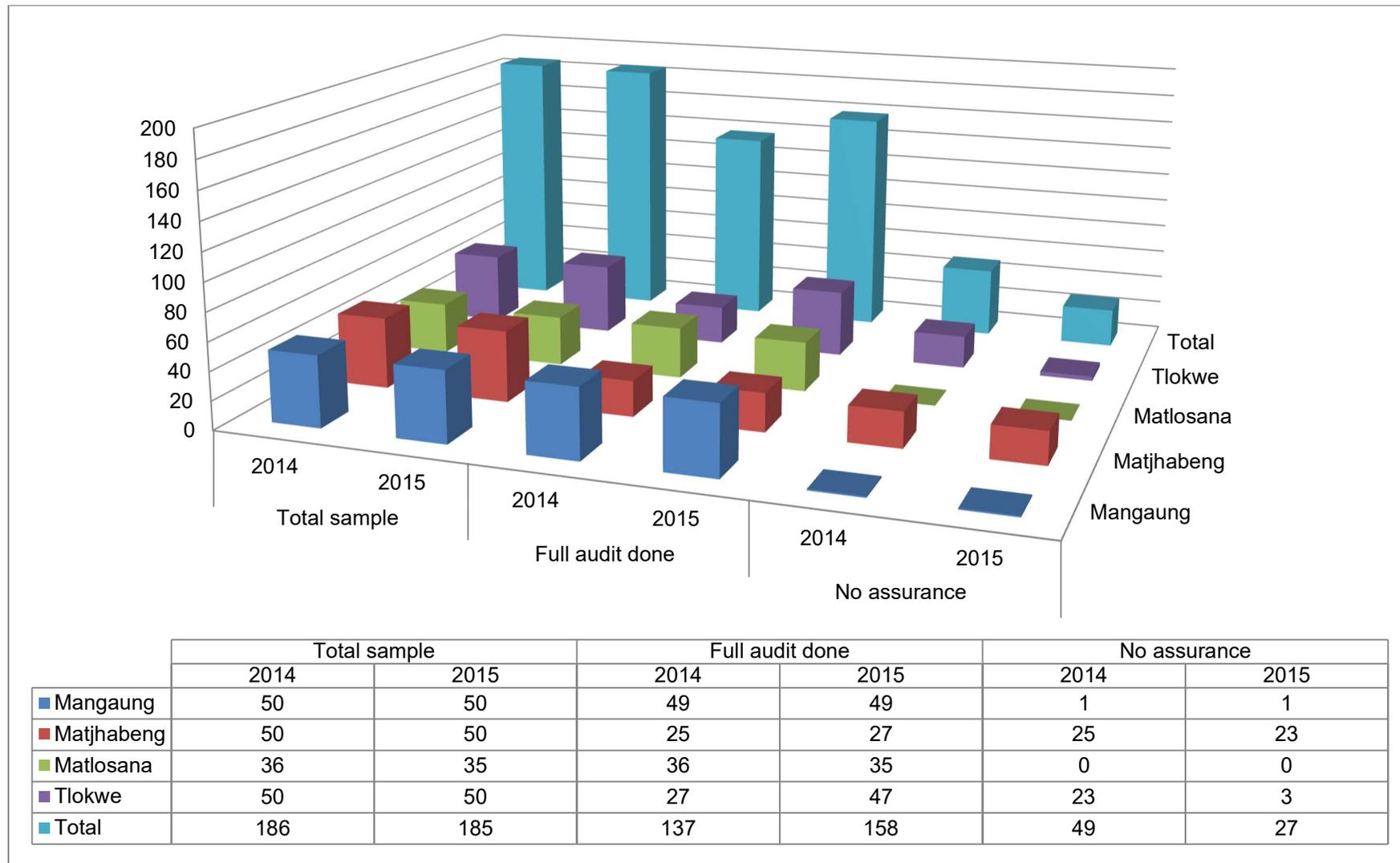
The old STA did not make any prescriptions regarding the framework to be used when carrying out an audit. The sample of annual financial statements selected for testing over a period of two years were tested to determine whether the audits thereof was done in accordance with the International Standards on Auditing (ISAs). This was done by means of inspecting the audit reports for the specific wording. All of the audit reports in the audited financial statements in the sample (160 in 2014 and 161 in 2015) indicated that the audits were performed in accordance with ISAs.

4.5 General empirical results

4.5.1 Type of assurance report

For the sample of annual financial statements selected for testing over a period of two years, the financial statements were inspected to determine whether a 'full audit' was done, or whether another type of assurance was opted for (e.g. compilation or independent review). Figure 4-3 below summarises the type of assurance opted for.

Figure 4-3: Type of assurance opted for



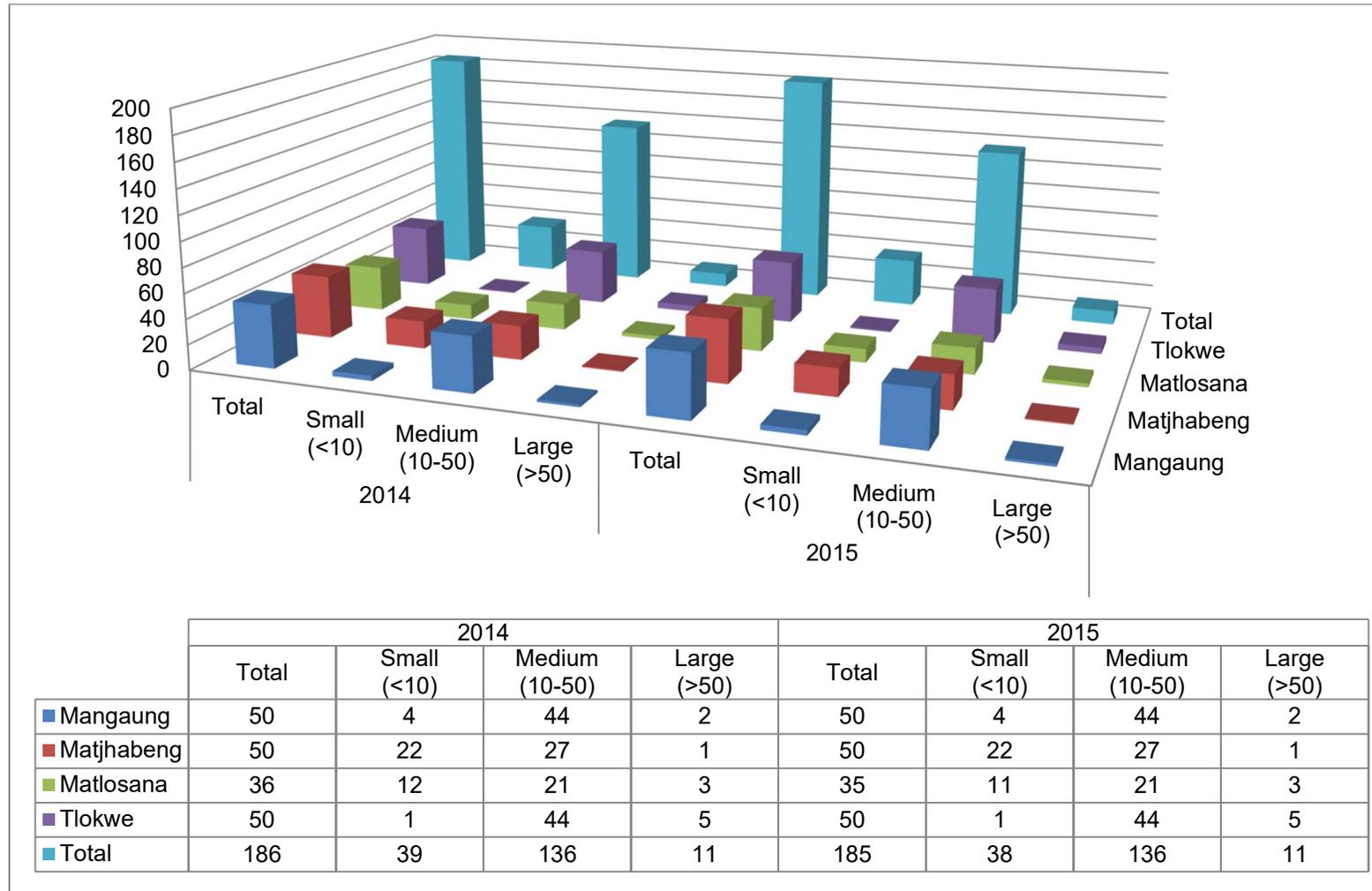
Out of the sample of 50 annual financial statements for Mangaung for both the financial years ending 2014 and 2015, 49 (98%) sets of financial statements were 'fully' audited (contained audit reports), while the remaining 1 (2%) was not audited. None of the bodies corporate opted for another type of assurance. Out of the sample of 50 annual financial statements for Matjhabeng for the financial year ending 2014 and 2015, 25 (50%) sets of financial statements for 2014 and 27 (54%) for 2015 were 'fully' audited (contained audit reports), while the remaining 25 (50%) for 2014 and 23 (46%) for 2015 was not audited. None of the bodies corporate opted for another type of assurance. Out of the sample of 36 annual financial statements for Matlosana for the financial year ending 2014 and 35 for 2015, all of the financial statements (100%) for both the years were 'fully' audited (contained audit reports). None of the bodies corporate opted for another type of assurance. Out of the sample of 50 annual financial statements for Tlokwe for the financial year ending 2014, 27 (54%) sets of financial statements were 'fully' audited (contained audit reports). The remaining 23 (46%) sets of financial statements of 2014 were not audited. For the financial year ending 2015, 47 (94%) sets of financial statements were 'fully' audited (contained audit reports), while the remaining 3 (6%) were not audited. None of the bodies corporate opted for another type of assurance. In summary, from the sample of 186 financial statements for 2014, 137 (74%) were 'fully' audited, while 49 (26%) were not audited. For the 2015 financial year, 158 (85%) financial statements were 'fully' audited and the remaining 27 (15%) were not audited. None of the bodies corporate in the sample opted for any other type of assurance engagements during the two financial years. The findings above suggest that the sectional title schemes either opted for a 'full' audit to be performed, or have no audit performed. In the study by L. Lubbe (2013, p. 78) of the 2009 to 2010 financial years 88% (2009) and 92% (2010) of the financial statements in the sample were 'fully' audited. Therefore, the results for this study were significantly lower in terms of how many statements were 'fully' audited.

4.5.2 Type of assurance for small schemes

As mentioned in section 3.5.2.1, Prescribed Management Rule (PMR) 40 of the original STA allowed bodies corporate with fewer than 10 units to appoint what was called an 'accounting officer' to review the financial statements. Accounting officers can include members of professional bodies such as The South African Institute of Business Accountants (SAIBA), The South African Institute of Chartered Accountants (SAICA), the Chartered Institute of

Management Accountants (CIMA) and The South African Institute of Professional Accountants (SAIPA). Figure 4-4 below summarises the sizes of the schemes in the sample.

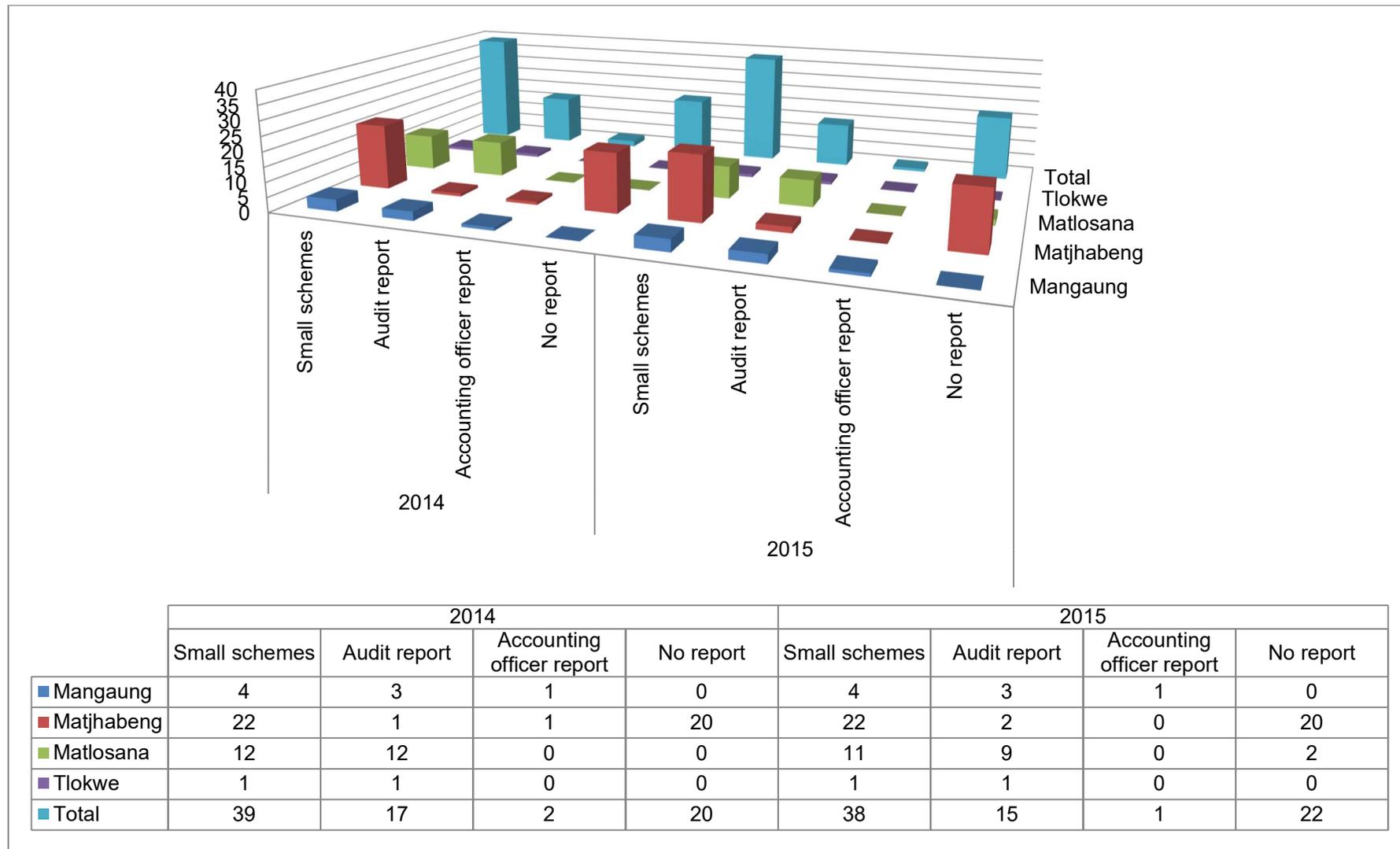
Figure 4-4: Number of units in the sample



In the sample of 186 annual financial statements selected for testing for 2014, 39 bodies corporate were identified as small, having fewer than 10 units (4 in Mangaung, 22 in Matjhabeng, 12 in Matlosana and 1 in Tlokwe.) Altogether 136 bodies corporate for 2014 were identified as medium, with 10 to 50 units (44 in Mangaung, 27 in Matjhabeng, 21 in Matlosana and 44 in Tlokwe). For the 2014 financial year, 11 bodies corporate were identified as large, with more than 50 units (2 in Mangaung, 1 in Matjhabeng, 3 in Matlosana and 5 in Tlokwe). In the sample of 185 annual financial statements selected for testing for 2015, 38 bodies corporate were identified as small, having fewer than 10 units (4 in Mangaung, 22 in Matjhabeng, 11 in Matlosana and 1 in Tlokwe.) Again 136 bodies corporate for 2015 were identified as medium, with 10 to 50 units (44 in Mangaung, 27 in Matjhabeng, 21 in Matlosana and 44 in Tlokwe). For the 2015 financial year, 11 bodies corporate were identified as large, with more than 50 units (2 in Mangaung, 1 in Matjhabeng, 3 in Matlosana and 5 in Tlokwe).

In the sample of annual financial statements selected for testing over a period of two years, the financial statements of the small schemes were inspected to determine whether an audit was done, or an accounting officer review was done. Figure 4-5 below summarises the findings.

Figure 4-5: Small schemes – type of assurance opted for



Out of the sample of 4 small schemes for Mangaung for the financial years ending 2014 as well as 2015, 3 (75%) sets of financial statements were audited (contained audit reports) and 1 (25%) of the financial statements were completed by an accounting officer (contained a formal accounting officer report). Out of the sample of 22 small schemes for Matjhabeng for the financial year ending 2014, 1 (4.5%) set of financial statements was audited (contained an audit report); 1 (4.5%) of the financial statements were completed by an accounting officer (contained a formal accounting officer report) and the remaining 20 (91%) financial statements were only compiled by the managing agent, with no formal report attached. For the financial year ending 2015, 2 (9%) sets of financial statements were audited (contained an audit report), and the remaining 20 (91%) financial statements were compiled only by the managing agent, with no formal report attached. All 12 (100%) of the small schemes in Matlosana were audited for the 2014 financial year. For the 2015 financial year 9 (82%) of the 11 small schemes in the sample were audited (contained audit reports) and 2 (18%) of the financial statements were completed by an accounting officer (contained a formal accounting officer report). The 1 small scheme in the sample for Tlokwe was audited for both the 2014 and the 2015 financial year. Therefore, for the total sample of 39 small schemes for 2014, 17 (44%) were audited (contained audit reports); 2 (5%) of the financial statements were completed by an accounting officer (contained a formal accounting officer report) and the remaining 20 (51%) financial statements were only compiled by the managing agent, with no formal report attached. For the total sample of 38 small schemes for 2014, 15 (39%) were audited (contained audit reports); 1 (3%) of the financial statements was completed by an accounting officer (contained a formal accounting officer report) and the remaining 22 (58%) financial statements were only compiled by the managing agent, with no formal report attached. From the above it is evident that the majority of small schemes either opted for a 'full' audit to be performed or had no assurance done, while the minority had an accounting officer compile the financial statements. It is, however, significantly lower than the findings in the study of L. Lubbe (2013, pp. 77–79), where 73% of small schemes had a full audit done for both the 2009 and 2010 financial years.

In the updated STA, the new STSMA and Regulations thereto, the option for small bodies corporate to appoint accounting officers were scrapped from the legislation. Therefore, the legislation does not contain any definition of or reference to 'accounting officers' anymore. Rule 17(6)(j)(vi) stipulates that an auditor should be appointed to audit the financial statements, unless all sections in the scheme are registered in the name of one person. Therefore, in future, this change in the legislation may negatively impact on the practices of some members of the mentioned professional bodies who used to act as accounting officers

for smaller bodies corporate. Managing agents will also not be able to compile financial statements for their small clients without having an audit performed. (See also sections 3.5.2.1 and 3.5.6.5.)

4.5.3 Audit fees

In light of the empirical findings in sections 6.2.5 and 6.3.8, the question inevitably arises as to whether there is a difference in the fees charged for small, medium and large schemes, and also if audit fees represent a large expense compared to other expenses for bodies corporate. For the sample of annual financial statements selected for testing for 2014 and 2015 (with the figures for 2013 available as comparative figures in the 2014 financial statements), audit fees were analysed firstly as a per unit rand amount in terms of small, medium and large schemes and secondly expressed as a percentage of total expenses. Figures 4-6 and 4-7 below summarise the findings.

Figure 4-6: Analysis of audit fees per unit by scheme size

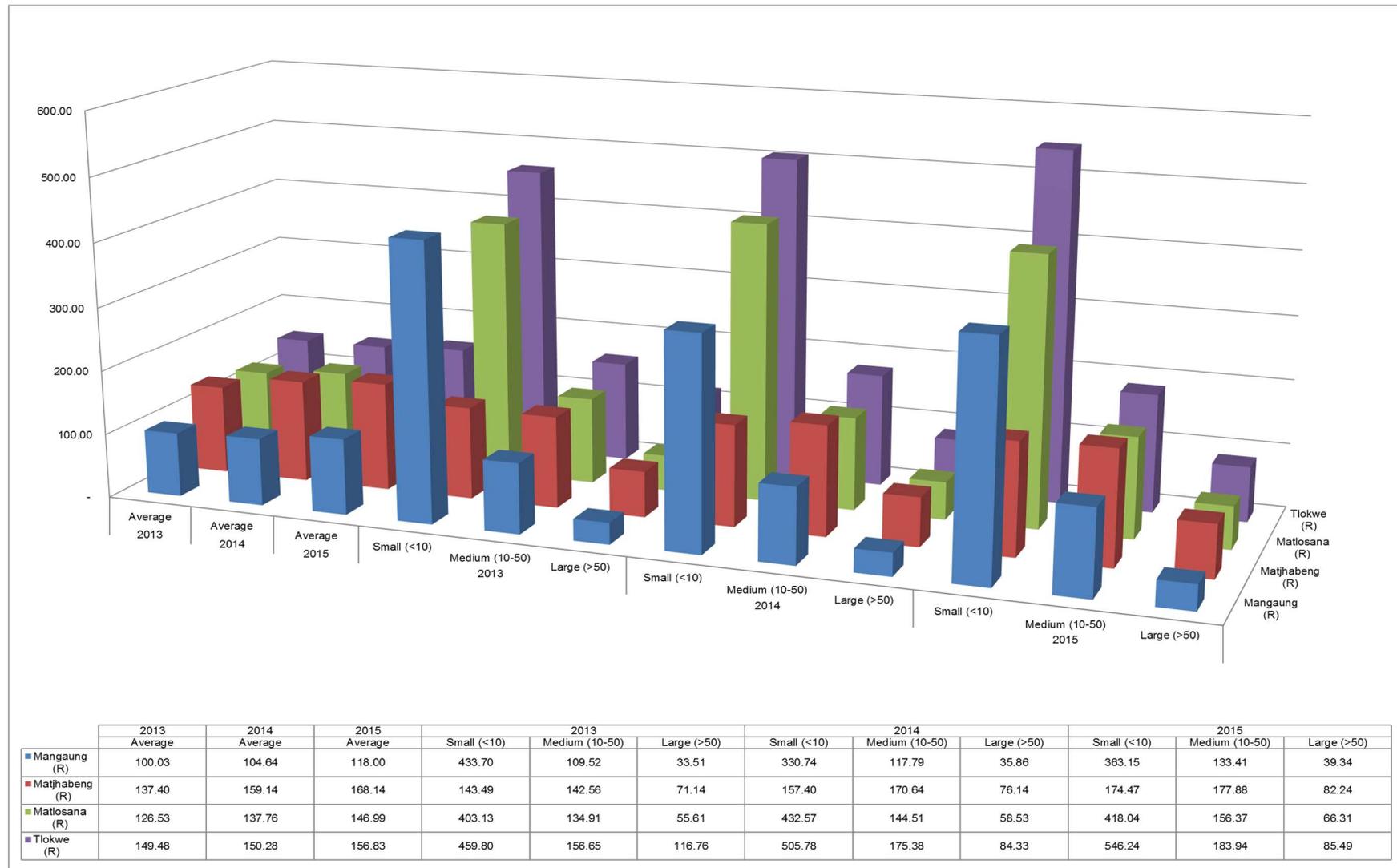
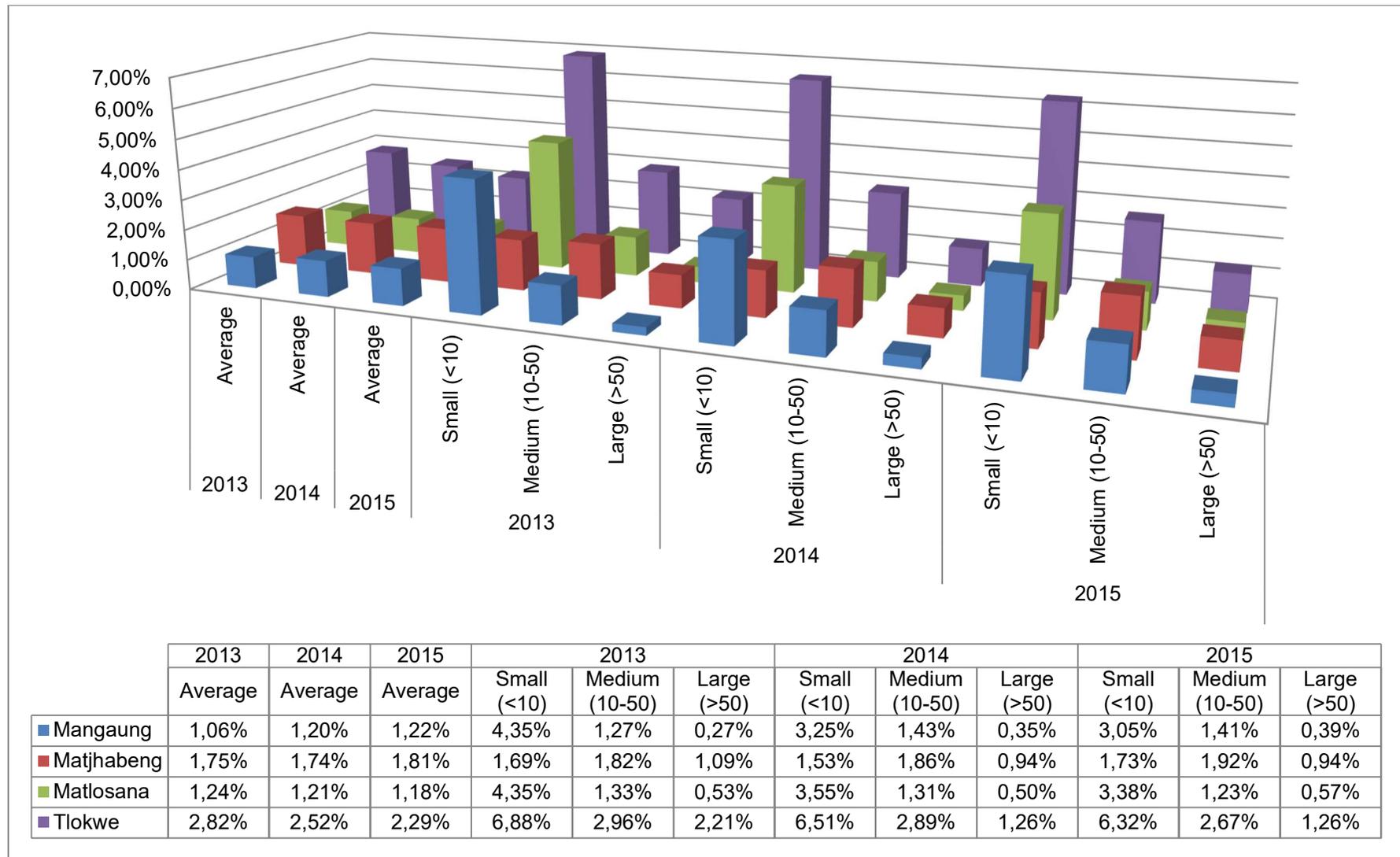


Figure 4-7: Audit fee as percentage of total expenses by scheme size



In figure 4-6 above, the audit fees for the bodies corporate were analysed in terms of actual rand amounts. For Mangaung, the average audit fees per unit expressed in rand terms for the total sample were R100.03 in 2013, R104.64 in 2014 and R118.00 in 2015. Expressed in rand terms, average audit fees per unit for the small entities in the sample were R433.70 in 2013, R330.74 in 2014 and R363.15 in 2015. For the medium entities identified, average audit fees per unit amounted to R109.52 in 2013, R117.79 in 2014 and R133.41 in 2015. For the large entities the average audit fees per unit amounted to R33.51, R35.86 and R39.34 for 2013, 2014 and 2015 respectively. This means that, based on average audit fee per unit expressed in rand terms, a small entity spent 296% more on audit fees than a medium entity and 1194% more than a large entity, and a medium entity spent 227% more on audit fees than a large entity in 2013. In 2014, a small entity spent 181% more than a medium entity and 822% more than a large entity on audit fees, and a medium entity spent 228% more than a large entity. A small entity spent 172% more than a medium entity and 823% more than a large entity in 2015, with medium entities spending 239% more than large entities on audit fees in 2015.

For Matjhabeng, the average audit fees per unit expressed in rand terms for the total sample were R137.40 in 2013, R159.14 in 2014 and R168.14 in 2015. Expressed in rand terms, average audit fees per unit for the small entities in the sample were R143.49 in 2013, R157.40 in 2014 and R174.47 in 2015. For the medium entities identified, average audit fees per unit amounted to R142.56 in 2013, R170.64 in 2014 and R177.88 in 2015. For the large entities the average audit fees per unit amounted to R71.14, R76.14 and R82.24 for 2013, 2014 and 2015 respectively. This means that, based on average audit fee per unit expressed in rand terms, a small entity spent 1% more on audit fees than a medium entity and 102% more than a large entity, and a medium entity spent 100% more on audit fees than a large entity in 2013. In 2014, a small entity spent 8% less than a medium entity and 107% more than a large entity on audit fees, and a medium entity spent 124% more than a large entity. A small entity spent 2% less than a medium entity and 112% more than a large entity in 2015, with medium entities spending 116% more than large entities on audit fees in 2015.

For Matlosana, the average audit fees per unit expressed in rand terms for the total sample were R126.53 in 2013, R137.76 in 2014 and R146.99 in 2015. Expressed in rand terms, average audit fees per unit for the small entities in the sample were R403.13 in 2013, R432.57 in 2014 and R418.04 in 2015. For the medium entities identified, average audit fees per unit amounted to R134.91 in 2013, R144.51 in 2014 and R156.37 in 2015. For the large entities

the average audit fees per unit amounted to R55.61, R58.53 and R66.31 for 2013, 2014 and 2015 respectively. This means that, based on average audit fee per unit expressed in rand terms, a small entity spent 199% more on audit fees than a medium entity and 625% more than a large entity, and a medium entity spent 143% more on audit fees than a large entity in 2013. In 2014, a small entity spent 8% less than a medium entity and 107% more than a large entity on audit fees, and a medium entity spent 124% more than a large entity. A small entity spent 2% less than a medium entity and 122% more than a large entity in 2015, with medium entities spending 136% more than large entities on audit fees in 2015.

For Tlokwe, the average audit fees per unit expressed in rand terms for the total sample were R149.48 in 2013, R150.28 in 2014 and R156.83 in 2015. Expressed in rand terms, average audit fees per unit for the small entities in the sample were R459.80 in 2013, R505.78 in 2014 and R546.24 in 2015. For the medium entities identified, average audit fees per unit amounted to R156.65 in 2013, R175.38 in 2014 and R183.94 in 2015. For the large entities the average audit fees per unit amounted to R116.76, R84.33 and R85.49 for 2013, 2014 and 2015 respectively. This means that, based on average audit fee per unit expressed in rand terms, a small entity spent 194% more on audit fees than a medium entity and 294% more than a large entity, and a medium entity spent 34% more on audit fees than a large entity in 2013. In 2014, a small entity spent 188% more than a medium entity and 500% more than a large entity on audit fees, and a medium entity spent 108% more than a large entity. A small entity spent 197% more than a medium entity and 539% more than a large entity in 2015, with medium entities spending 115% more than large entities on audit fees in 2015.

In figure 4-7 above, audit fees were analysed in terms of a percentage of total expenses. For Mangaung, audit fees amounted to 1.06% of average total expenses in 2013, 1.2% in 2014 and 1.22% in 2015. For the small entities, average audit fees amounted to 4.35% of average total expenses in 2013, 3.25% in 2014 and 3.05% in 2015. For the medium entities, average audit fees amounted to 1.27% of average total expenses in 2013, 1.43% in 2014 and 1.41% in 2015. For the large entities the figures were 0.27%, 0.35% and 0.39% for 2013, 2014 and 2015 respectively.

For Matjhabeng, audit fees amounted to 1.75% of average total expenses in 2013, 1.74% in 2014 and 1.81% in 2015. For the small entities, average audit fees amounted to 1.69% of

average total expenses in 2013, 1.53% in 2014 and 1.73% in 2015. For the medium entities, average audit fees amounted to 1.82% of average total expenses in 2013, 1.86% in 2014 and 1.92% in 2015. For the large entities the figures were 1.09%, 0.94% and 0.94% for 2013, 2014 and 2015 respectively.

For Matlosana, audit fees amounted to 1.24% of average total expenses in 2013, 1.21% in 2014 and 1.18% in 2015. For the small entities, average audit fees amounted to 4.35% of average total expenses in 2013, 3.55% in 2014 and 3.38% in 2015. For the medium entities, average audit fees amounted to 1.33% of average total expenses in 2013, 1.31% in 2014 and 1.23% in 2015. For the large entities the figures were 0.53%, 0.50% and 0.57% for 2013, 2014 and 2015 respectively.

For Tlokwe, audit fees amounted to 2.82% of average total expenses in 2013, 2.52% in 2014 and 2.29% in 2015. For the small entities, average audit fees amounted to 6.88% of average total expenses in 2013, 6.51% in 2014 and 6.32% in 2015. For the medium entities, average audit fees amounted to 2.96% of average total expenses in 2013, 2.89% in 2014 and 2.67% in 2015. For the large entities the figures were 2.21%, 1.26% and 1.26% for 2013, 2014 and 2015 respectively. Audit fees expressed as a percentage of total expenses increased significantly from the time the study by L. Lubbe (2013, p. 79) was conducted. For the total sample in the previous study, audit fees amounted to 1.50% of average total expenses in 2008, 1.03% in 2009 and 1.09% in 2010. For the small entities, average audit fees amounted to 2.41% of average total expenses in 2008, 3.07% in 2009 and 2.79% in 2010. For the medium entities, average audit fees amounted to 1.94% of average total expenses in 2008, 1.32% in 2009 and 1.27% in 2010. For the large entities the figures were 0.48%, 0.19% and 0.47% for 2008, 2009 and 2010 respectively. Therefore, the 2013 to 2015 figures were significantly higher, and in many instances more than double the figures for 2008 to 2010.

Of all the expenses which were analysed as a percentage of average total expenses, audit fees was one of the lowest when expressed as a percentage of average total expenses. Section 5.4.9.5 contains a detailed analysis of these figures. The conclusion that can be drawn from the above analysis is that, when expressed as a percentage of average total expenses, audit fees are relatively low compared to other expenses of the bodies corporate analysed. When analysing audit fees, the percentage seems relatively low as a percentage of average

total expenses for small, medium as well as large entities. However, as evidenced by the findings above, audit fees are as a rule significantly higher for small and medium entities than it is for large entities when expressed in rand terms.

A further question which arises in this regard is whether it is less costly to appoint an accounting officer to review the financial statements than to appoint an auditor to perform an audit. Out of the sample of 39 small schemes for 2014, there were only 2 small schemes that used the services of an accounting officer instead of an auditor. One of the schemes was in Mangaung and the other scheme was in Matjhabeng. For the small scheme in Mangaung, the fee for the accounting officer amounted to R2,850.00. The scheme consisted of 5 units, resulting in an average accounting officer fee of R570.00 per unit. The average audit fee for a small scheme in Mangaung in 2014 was R330.74, meaning that it was in fact more expensive for the scheme to use the accounting officer, compared to the average audit fee. For the small scheme in Matjhabeng, the 2014 fee for the accounting officer amounted to R600.00. The scheme consisted of 6 units, resulting in an average accounting officer fee of R100.00 per unit. The average audit fee for a small scheme in Matjhabeng in 2014 was R157.40, meaning that it was less expensive for the scheme to use the accounting officer, compared to the average audit fee. Out of the sample of 38 small schemes for 2015, there was only 1 small scheme that used the services of an accounting officer instead of an auditor. This small scheme was in Mangaung, and the fee for the accounting officer amounted to R1,980.00. The scheme consisted of 7 units, resulting in an average accounting officer fee of R282.86 per unit. The average audit fee for a small scheme in Mangaung in 2014 was R363.15, meaning that it was less expensive for the scheme to use the accounting officer, compared to the average audit fee.

It should be noted that the sample used in this case was very small and is by no means representative of the entire population of schemes. Various other factors also play a role when an auditor or accounting officer determines his fees for professional work. Furthermore, the option for small schemes to appoint accounting officers was scrapped in the new STSMA, as mentioned in 3.5.2.1 above. In future, the additional work on reserve funds (see section 3.2.1.3) will also have an impact of audit fees. These matters will be discussed in detail as part of the empirical findings in Chapter 5. (See also L. Lubbe (2013, p. 81).)

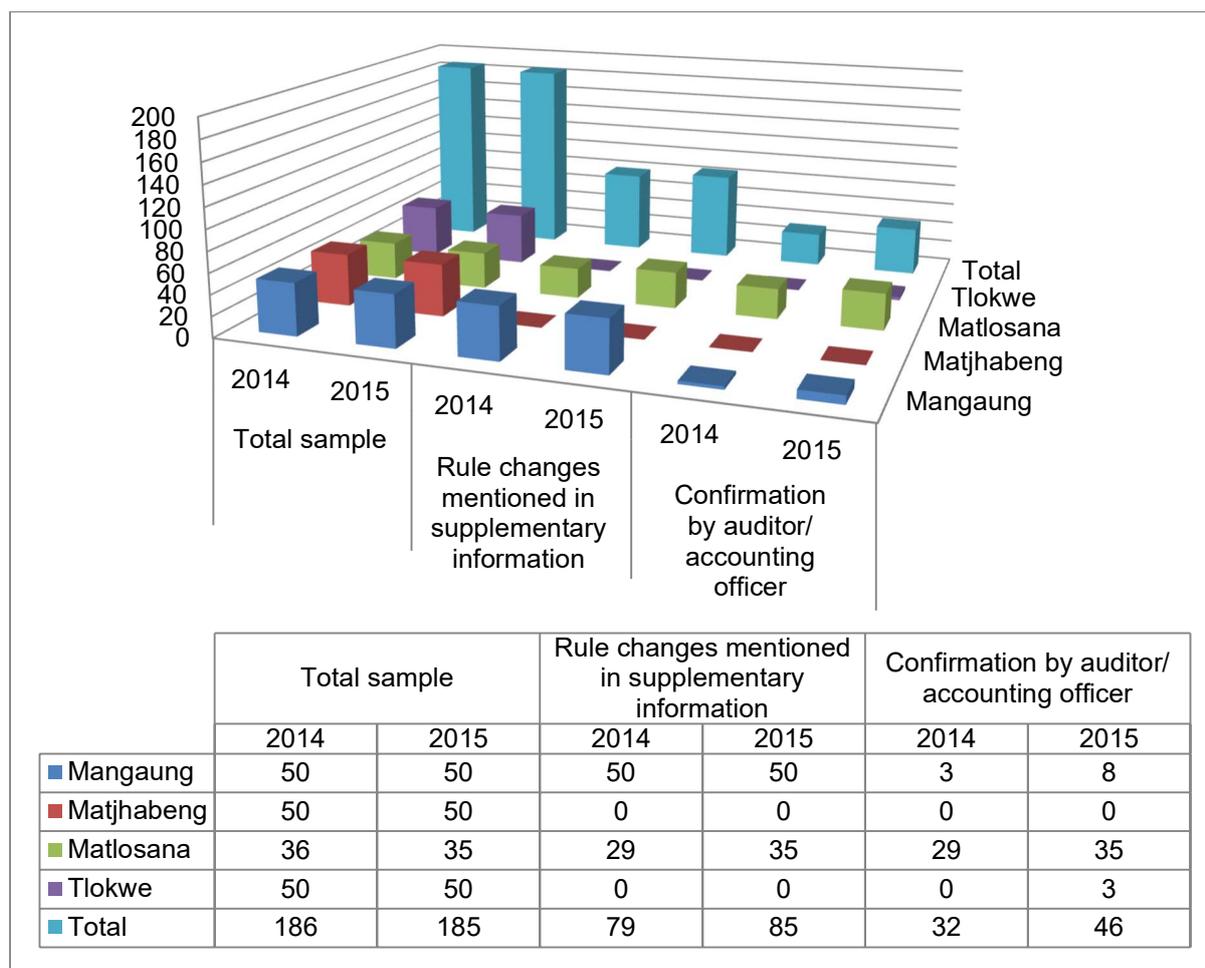
4.5.4 Confirmation of rule changes

In the original STA, Prescribed Management Rule (PMR) 56(i) states the following regarding compulsory items on the AGM agenda:

*“the **confirmation** by the **auditor or accounting officer** that any amendment, substitution, addition or repeal of the **rules** (as contemplated in section 35(5) of the Act) have been submitted to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.”* (Own emphasis.)

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements as well as the audit reports/accounting officer reports were analysed to determine whether the financial statements contained any information regarding rule changes. Figure 4-8 below summarises the findings.

Figure 4-8: Confirmation of rule changes



For the Mangaung sample for the financial year ended 2014 as well as 2015, all (100%) of the financial statements had a sentence in the supplementary information to the financial statements stating that no changes were made to the rules of the complex, or that changes have been submitted to the Registrar, whatever the case may have been. In 47 of the 50 instances (94%) for 2014 where the information was contained in the supplementary information to the financial statements, the supplementary information was not audited. In 42 of the 50 instances (84%) for 2014 where the information was contained in the supplementary information to the financial statements, the supplementary information was not audited. For Matjhabeng as well as for Tlokwe, none of the 2014 or 2015 financial statements had a sentence in the supplementary information to the financial statements regarding changes made to the rules of the complex. For the Matlosana sample for the financial year ended 2014 as well as 2015, all (100%) of the financial statements had a sentence in the supplementary information to the financial statements stating that no changes were made to the rules of the

complex, or that changes have been submitted to the Registrar, whatever the case may have been. In all of the instances, the supplementary information regarding rule changes were audited as well.

The conclusion can be made that 42% of the supplements to the financial statements for 2014 and 46% for 2015 mentioned the fact that there were no changes to the rules or that rules were submitted to the Registrar. However, in the majority of these cases (83% for 2014 and 75% for 2015) the supplementary information was not audited. Therefore, there was very little actual *“confirmation by the auditor or accounting officer”* as prescribed by PMR 56 of the Sectional Titles Act. In the study by L. Lubbe (2013, pp. 90–91), the number of financial statements containing supplementary information was much higher (75% of the sample in 2009 and 80% in 2010), and the number of instances where supplementary information was not audited (75% for 2009 and 90% for 2010) was similar to the new results.

The new STSMA Regulations does not require the auditor to give the above-mentioned confirmation. In Rule 17(6)(k) of the STSMA Regulations it is stated that the body corporate must report on the lodgement of any amendments to the scheme’s rules as part of the order of business at the annual general meeting. Therefore, in future, it will not be a duty of the auditor anymore.

4.5.5 Amendment of rules – audit not required

As mentioned in sections 3.5.6.5, the rule prescribing that a sectional title scheme should be audited can be removed by way of passing a unanimous resolution. This can be especially helpful in cases such as, for example, a self-managed scheme with one owner who does not want to incur the extra expense and administration involved in having the financial statements of the complex audited.

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements as well as the audit reports/accounting officer reports were analysed

to determine whether the above changes to the rules were taken advantage of by any of the schemes. The finding was that none of the schemes in the sample amended their rules in such a way that an audit is no longer required. The conclusion can be made that all bodies corporate in the sample opted for auditing of the financial statements being done, due to the fact that banks often require audited financial statements of a body corporate as one of the preconditions before granting a home loan to a prospective buyer of a sectional title unit. The finding is similar to the finding of L. Lubbe (2013, p. 92), where it was found that none of the entities in the sample changed their rules in such a way that the compulsory auditing of the schemes was no longer required.

4.5.6 Auditing or inspection of budget

As mentioned in section 3.5.6.3, the new STSMA Regulations requires of the auditor of a body corporate's annual financial reports to include opinions on a number of items, including whether the body corporate has complied with the accounting requirements regarding budgeting. For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements as well as the audit reports/accounting officer reports were analysed for evidence of auditing or inspection of the budgets of the bodies corporate.

None of the audit reports or accounting officers' reports analysed gave any indication that the budget of the body corporate for the ensuing financial year was inspected or audited. It is therefore clear that no inspection or auditing of body corporate budgets occurred for the selected sample. The requirement is in all likelihood an example of the audit expectation gap, and it is unlikely that auditing practitioners will express an opinion on the budgeting of bodies corporate in future.

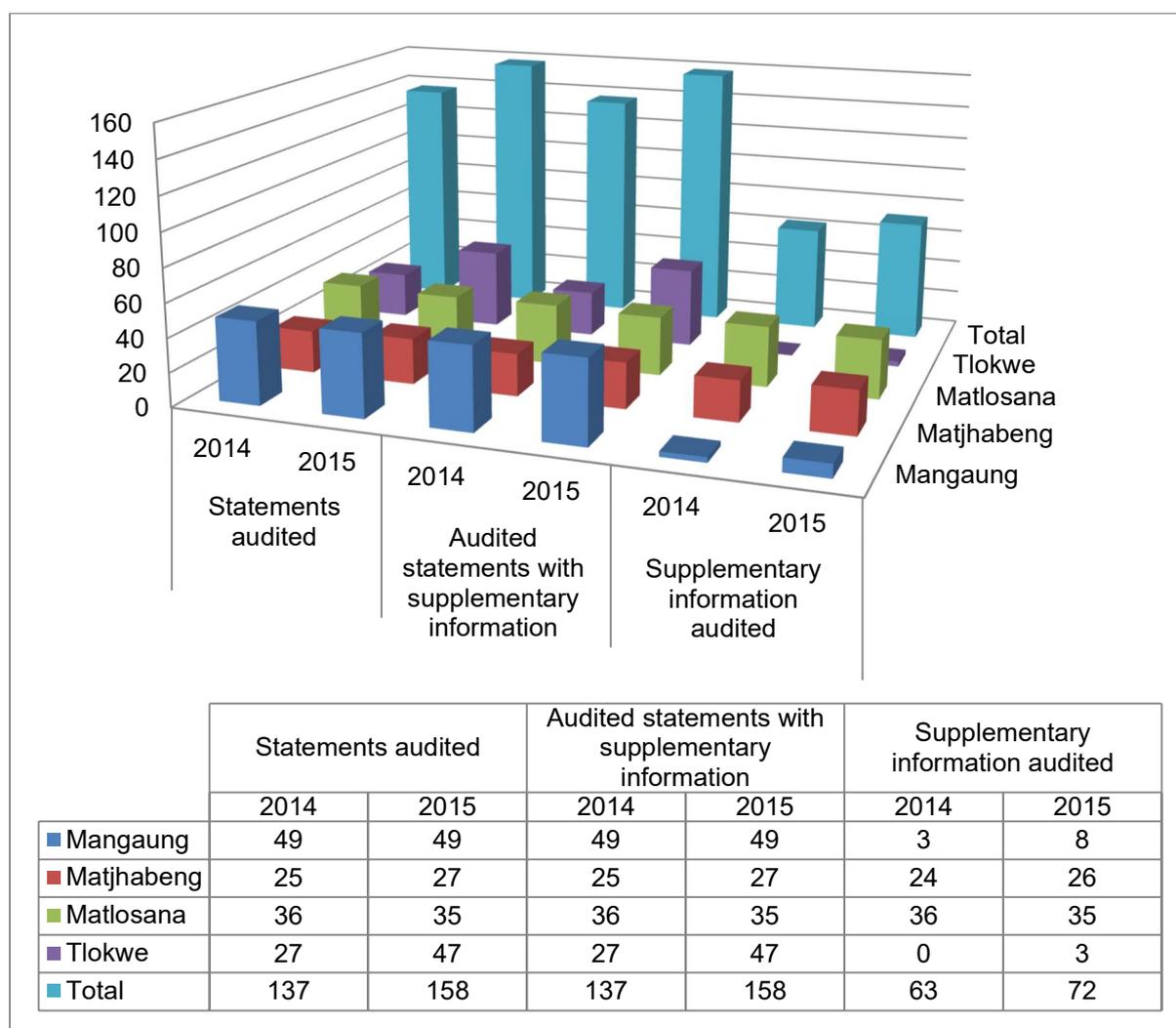
4.5.7 Auditing of supplementary information

Financial statements of bodies corporate often contain supplementary information over and above the standard contents. Supplementary information can include items such as an

explanation of audit fee provision, a debtors age analysis, creditors age analysis, expiry dates of insurance policies, information regarding changes to the rules of the complex (see section 4.5.4 above), or a statement regarding the solvency of the body corporate. Three of these items, namely the age analysis of debts, age analysis of amounts owing, and expiry dates of insurance policies are specifically required in subsection 2 of Section 37 of the original STA. (See sections 5.4.5, 5.4.6 and 5.4.7 for details of findings regarding the three specific items.)

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements were analysed to determine whether the supplementary information was audited. Figure 4-9 below summarises the findings.

Figure 4-9: Auditing of supplementary information



For Mangaung, for the financial year ended 2014 as well as 2015, 49 (98%) of the financial statements were audited, and all the sets of financial statements contained some form of supplementary information. Of the 49 audited financial statements containing supplementary information 3 (6%) of the audit reports for 2014 and 8 (16%) of the audit reports for 2015 indicated that the supplementary information was audited. In these cases, the line “as set out on pages xx to xx” in the audit report included the correct page numbers containing the supplementary information. Further inspection indicated that in the remaining instances the audit reports used seemed to be a template that was copied and pasted from one year to the next. This often resulted in the line “...supplementary information as set out on pages xx to xx...” in the audit report to be exactly the same from year to year or scheme to scheme, even though the page numbers did not stay the same. Therefore, even though the page number

references and wording was incorrect for 46 (94%) (2014) and 41 (84%) (2015) audit reports, it seems as though the supplementary information was, in fact, audited.

For Matjhabeng, for the financial years ended 2014, 25 (50%) of the 50 financial statements were audited, and in 2015 27 (54%) of the 50 financial statements were audited. All (100%) of the audited sets of financial statements for both years contained some form of supplementary information. For 2014, of the 25 audited financial statements containing supplementary information, 24 (96%) of the audit reports indicated that the supplementary information was audited. For 2015, 26 of the 27 (96%) audited financial statements containing supplementary information had audit reports indicating that the supplementary information was audited.

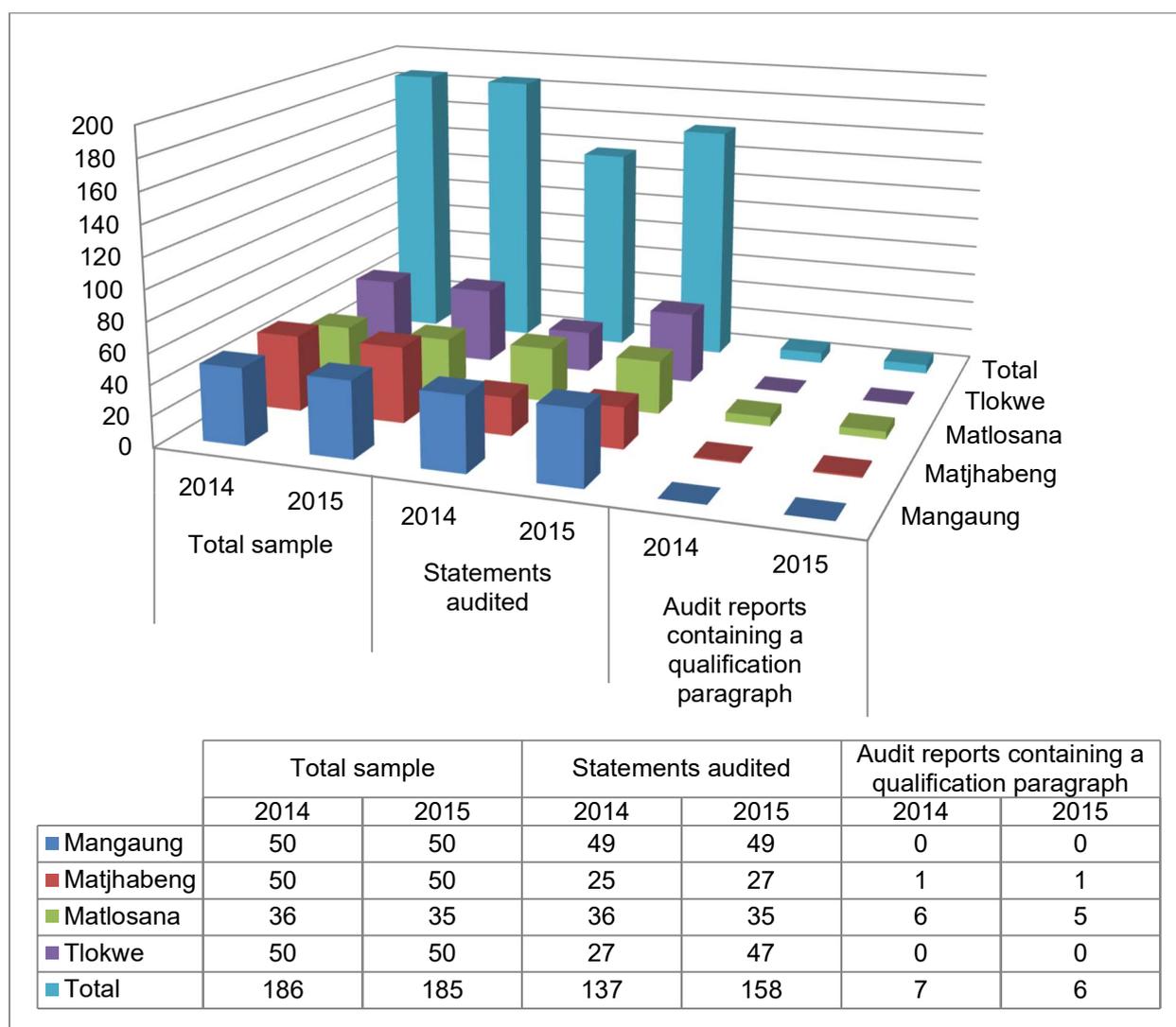
For Matlosana, all 36 of the financial statements for 2014 were audited, and all 35 of the financial statements of 2015 were audited. All (100%) of the audited financial statements contained supplementary information, and all of the audit reports to the financial statements indicated that the supplementary information was audited.

For Tlokwe, 27 of the 50 (54%) financial statements for 2014 were audited and 47 of the 50 (94%) financial statements for 2015 were audited. All (100%) of the audited financial statements for both years contained supplementary information. However, none (0%) of the 27 audit reports for 2014 and only 3 of the 47 (6%) audit reports for 2015 indicated that the supplementary information was audited. Further inspection indicated that (similar to Mangaung) in many instances the audit reports used seemed to be a template that was copied and pasted from one year to the next. This often resulted in the *line* “...supplementary information as set out on pages xx to xx...” in the audit report to be exactly the same from year to year or scheme to scheme, even though the page numbers did not stay the same. Therefore, even though the page number references and wording was incorrect for 27 of the 27 (100%) (2014) and 16 of the 47 (34%) (2015) audit reports, it seems as though the supplementary information was, in fact, audited.

4.5.8 Qualified audit reports

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements were analysed to determine whether the audit reports contained a qualification. The findings are summarised in figure 4-10 below.

Figure 4-10: Qualified audit reports



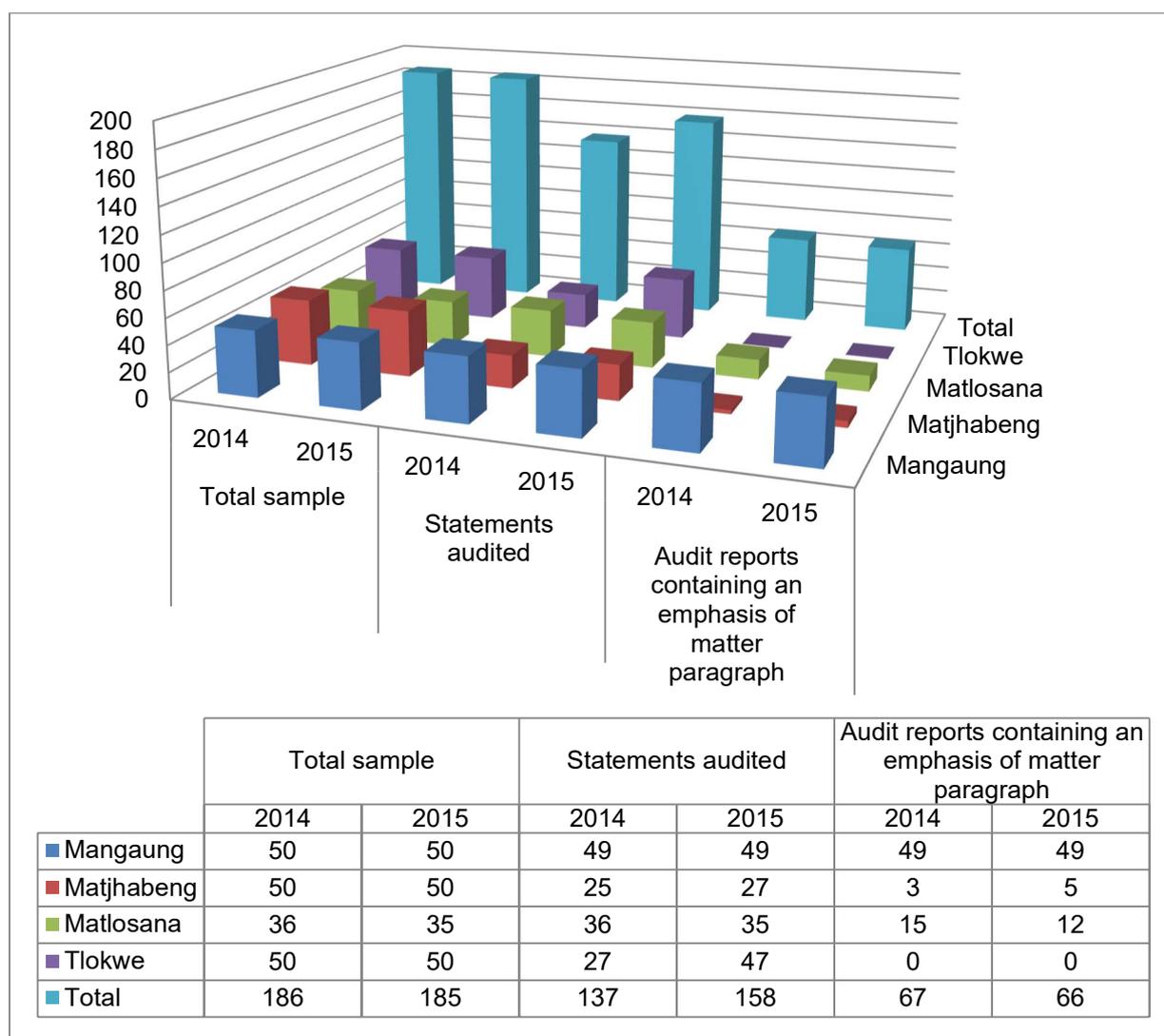
For Mangaung, for the 2014 as well as the 2015 financial years, 49 of the 50 (98%) bodies corporate had a “Report of the Independent Auditor”. From all the audit reports analysed, none of the bodies corporate received a qualified audit report. For Matjhabeng, for the 2014 financial year, 25 of the 50 (50%) bodies corporate had a “Report of the Independent Auditor” and for the 2015 financial year, the number was 27 of the 50 (54%). From all the audit reports analysed, 1 (4%) body corporate received a qualified audit report for both 2014 and 2015. The reason for the qualification was the insufficient control over the cash resources of the body corporate. For Matlosana, all the bodies corporate (36 in 2014 and 35 in 2015) had a “Report of the Independent Auditor”. In 2014, 6 of the 36 (17%) of the bodies corporate received a qualified audit report; 5 qualifications related to the recoverability of levies in arrear and 1 related to material expenses that could not be verified. In 2015, 5 of the 35 (14%) bodies

corporate received a qualified audit report, all relating to the recoverability of levies in arrears. For Tlokwe, for the 2014 financial year, 27 of the 50 (54%) bodies corporate had a “Report of the Independent Auditor”, and 47 of the 50 (94%) for 2015. From all the audit reports analysed, none of the bodies corporate received a qualified audit report. From the above, the conclusion can be drawn that from the total sample of 137 bodies corporate that were audited in 2014, a total of 7 (5%) and a total of 6 of the 158 (4%) in 2015 received qualified audit reports. Those who received qualifications received it mainly due to insufficient control over cash, recoverability of levies in arrear, and material expenses that could not be verified. In the study by L. Lubbe (2013, p. 94) only one body corporate in the sample (0.016%) received a qualified audit report for both the 2009 and 2010 financial year, stating that the body corporate is not a going concern. The percentage of qualified audit reports in the 2014 to 2015 study is therefore much higher than for the 2009 to 2010 study. (See also L. Steenkamp & N. Lubbe (2016a, pp. 1–2).)

4.5.9 Emphasis of matter paragraphs

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements were analysed to determine whether the audit reports contained an emphasis of matter paragraph. Figure 4-11 below summarises the findings.

Figure 4-11: Emphasis of matter paragraphs



For Mangaung, for the 2014 as well as the 2015 financial years, 49 of the 50 (98%) bodies corporate had a “Report of the Independent Auditor”. From all the audit reports analysed, all of these bodies corporate had an emphasis of matter paragraph in the audit report. The emphasis of matter paragraphs stated the following: *“The basis of accounting and presentation and disclosures contained in the financial statements are not intended to, and do not, comply with all the requirements of South African Statements of Generally Accepted Accounting Practice”*.

For Matjhabeng, for the 2014 financial year, 25 of the 50 (50%) bodies corporate had a “Report of the Independent Auditor” and for the 2015 financial year, the number was 27 of the 50

(54%). From all the audit reports analysed for 2014, 3 (12%) bodies corporate had an emphasis of matter paragraph in the audit report. The emphases related to bank confirmations not being received, liabilities exceeding assets and restriction on use due to non-compliance with SA GAAP. From all the audit reports analysed for 2015, 5 (19%) bodies corporate had an emphasis of matter paragraph in the audit report. The emphases related to bank confirmations not being sent for 2; liabilities exceeding assets for 1; and restriction on use due to non-compliance with SA GAAP for the remaining 2. See also section 5.4.2 for further detail on findings regarding non-compliance with SA GAAP.

For Matlosana, all the bodies corporate (36 in 2014 and 35 in 2015) had a “Report of the Independent Auditor”. A total of 15 (42%) bodies corporate had an emphasis of matter paragraph in the audit report for 2014, while 12 (34%) bodies corporate had an emphasis of matter paragraph in the audit report for 2015. The emphasis of matter paragraphs all stated the following: *“The body corporate incurred a net loss of Rxxx, and the body corporate total liabilities exceeded its total assets by Rxxx. The conditions indicate the existence of a material uncertainty which may cast significant doubt on the body corporate’s ability to continue as a going concern”*.

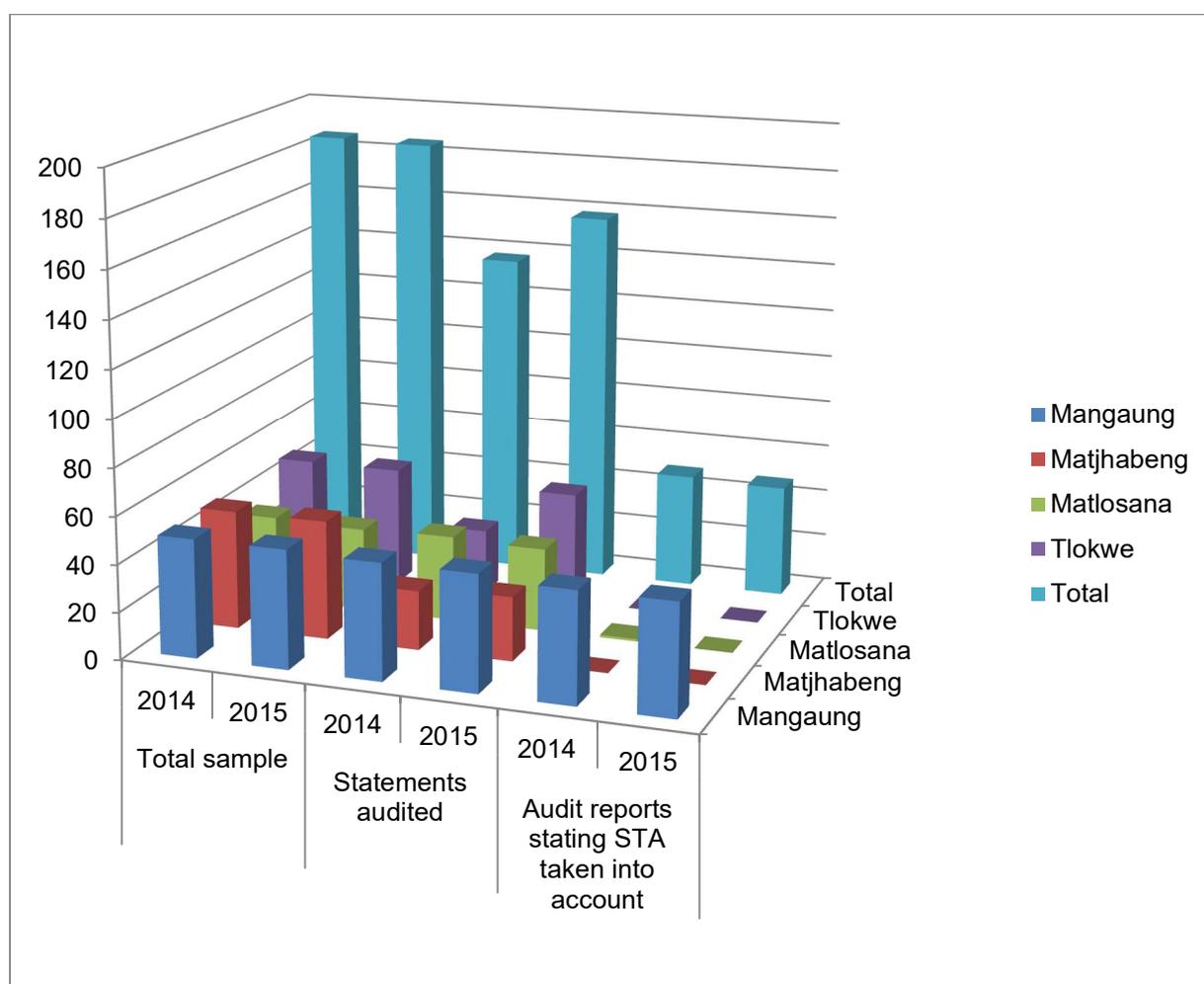
For Tlokwe, for the 2014 financial year, 27 of the 50 (54%) bodies corporate had a “Report of the Independent Auditor”, and 47 of the 50 (94%) for 2015. From all the audit reports analysed, none of the bodies corporate had an emphasis of matter paragraph in the audit report.

In summary, from the total sample of 137 bodies corporate that were audited in 2014, a total of 67 (49%) and a total of 66 of the 158 (42%) in 2015 contained emphasis of matter paragraphs in the audit reports. Emphases included non-compliance with SA GAAP, liabilities exceeding assets, and bank confirmations not being received. This is much lower than the finding of L. Lubbe (2013, p. 95) where all (100%) of the financial statements of the bodies corporate in the sample that were audited had audit reports containing emphasis of matter paragraphs.

4.5.10 Sectional Titles Act taken into account

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements were analysed to determine whether the audit reports contained a section stating that the contents of the Sectional Titles Act (STA) was taken into account when performing the audit. The findings are summarised in figure 4-12 below.

Figure 4-12: Audit report stating Sectional Titles Act (STA) was taken into account



For Mangaung, for the 2014 as well as the 2015 financial years, 49 of the 50 (98%) bodies corporate had a “Report of the Independent Auditor”. From all the audit reports analysed for both the 2014 as well as the 2015 year, 47 of the 49 (96%) of the audit reports mentioned that

specific aspects of the Sectional Titles Act were taken into account when performing the audits. For Matjhabeng, for the 2014 financial year, 25 of the 50 (50%) bodies corporate had a “Report of the Independent Auditor” and for the 2015 financial year, the number was 27 of the 50 (54%). None of the audit reports (0%) for 2014 and 2015 mentioned that specific aspects of the Sectional Titles Act were taken into account when performing the audits. For Matlosana, all the bodies corporate (36 in 2014 and 35 in 2015) had a “Report of the Independent Auditor”. Only 1 audit report (3%) for 2014 mentioned that specific aspects of the Sectional Titles Act were taken into account when performing the audit, while none of the audit reports (0%) for 2015 mentioned it. For Tlokwe, for the 2014 financial year, 27 of the 50 (54%) bodies corporate had a “Report of the Independent Auditor”, and 47 of the 50 (94%) for 2015. None of the audit reports (0%) for 2014 and 2015 mentioned that specific aspects of the Sectional Titles Act were taken into account when performing the audits. In summary, from the total sample of 137 bodies corporate that were audited in 2014, a total of 48 (35%) and a total of 47 of the 158 (30%) in 2015 mentioned that specific aspects of the Sectional Titles Act were taken into account when performing the audits.

4.6 Conclusion

The chapter commenced with a brief overview of the history and background of auditing. An overview was also given of the concept of sectional title assurance from an international perspective. Definitions and sundry aspects relating to sectional title assurance engagements were evaluated. Various sources were used, including the old and revised Sectional Titles Act, Sectional Title Schemes Management Act, and Regulations to the Acts, the SAICA Handbook on Auditing, and academic and other literature on the aforementioned. It is clear that there is much uncertainty, ambiguity and confusion on what is expected regarding the audit of bodies corporate, as well as inconsistencies between findings of different cities and towns. Most of these issues seem to stem from the expectation gap. Assurance-related aspects of a sample of audit reports of body corporate annual financial statements were analysed. From this analysis it is evident that auditing and accounting practitioners are not always acting consistently and that they are also not consistent in their application of the Sectional Titles Act.

Chapter 5 will investigate aspects relating to the accounting and reporting of sectional title schemes. The legal requirements for financial reporting by bodies corporate and currently available reporting frameworks will specifically be addressed. The possibility of a sectional title-specific reporting framework as well as the findings based on an analysis of a sample of body corporate financial statements over a period of three years will also be discussed.

Chapter 5

Accounting and reporting aspects relating to sectional title schemes

“A person who never made a mistake has never tried anything new.” – Albert Einstein

5.1 Introduction

Chapter 4 gave an overview of the history of auditing as well as the legal matters relating to the sectional title industry in South Africa as far as it concerns auditing and assurance of sectional title schemes. As already mentioned in Chapter 1, there are various aspects regarding accounting in the Sectional Titles Act which are unclear, or has some form of ambiguity, weakness or shortcoming. In this chapter, these aspects will be further alluded to against the background of the study, as set out in Chapter 1. This chapter will commence with a brief historical overview of accounting and deal in greater detail with accounting-related aspects relating to sectional title schemes. In the chapter an attempt will also be made to address the question as to which currently available financial reporting framework is suitable for the users of body corporate financial statements. The possibility of another alternative framework for use by bodies corporate will also be looked into.

5.2 The history and background of accounting

5.2.1 A brief historical overview

The art of numeration, or the method of counting, whether by words, signs or symbols, goes back to the dawn of intelligence among human beings. The development of social life, and especially the formation of sovereignties or governments levying any form of taxation necessitated, in addition a simple knowledge of numbers, a power of holding count and

counting, and in this the origin of the science of accounting is found (R. Brown, 1968, pp. 3–17). Chatfield (1974, pp. 3–4) points out that no government could afford not to keep an accurate record of receipts and disbursements, and tax collections in particular always had to be closely controlled. The accumulation of private wealth also necessitated the keeping of accurate and detailed records. (See also Merino and Mayper (1993, pp. 237–267).)

According to Chatfield (1974, pp. 4–5), the Chaldean-Babylonian, Assyrian and Sumerian civilisations produced what may have been the first organised government in the world, together with some of the oldest written languages, and the oldest surviving business records. Record-keeping and commercial documents are estimated to have begun around 4000 B.C, and by all descriptions, the Babylonians were obsessive bookkeepers, with a passion for organisation. Archaeologists have also found evidence of ancient Egyptian civilisations keeping records of transactions and taxes on clay tablets and papyrus scrolls dating as far back as 4000 B.C. (R. Brown, 1968, p. 21; Kew & Watson, 2012, p. 8). Detailed records of commerce were produced in Mesopotamia, with scribes writing up transactions for farmers, merchants and governments and ensuring that these transactions complied with commercial requirements (Chatfield, 1974, p. 5). (See also R. Brown (1968, pp. 16–18) and Littleton & Yamey (1956, pp. 14–15).)

Although evidence exist that business transactions have been recorded for many thousands of years, there was no organised system recording events until the Middle Ages. This was mainly due to the fact that the numbering systems of the time, being Roman numerals, were too cumbersome to use (T. A. Lee, Bishop, & Parker, 1996, pp. 14–15). The oldest known business records of the Middle Ages relate to partnership and date from 1157 (Littleton & Yamey, 1956, p. 115). During the Renaissance, the Italians actively sought more efficient ways of keeping financial records (Kew & Watson, 2012, pp. 8-9). Benedetto Cotrugli wrote the first chapter on accounting in his 1458 manuscript *Della mercatura e del mercante perfetto* (Berry, De Klerk, & Doussy, 2011, p. 5; Littleton & Yamey, 1956, pp. 210–211).

T.A. Lee et al. (1996, p. 4) remark that every subject has its classic text and in the case of accounting the classic text is the one by Pacioli. In 1494, 36 years after the Cotrugli manuscript, an Italian by the name of Luca Pacioli completed the first published work fully describing the double entry system (Carnegie & Napier, 1996, pp. 11–25). His book *Summa*

de Arithmetica, Geometria, Proportioni et Proportionalità (*Summa* in short), and more specifically the section *Particularis de Computis et Scripturis* (also referred to as *De Scripturis*) applied mathematical principles to trade and industry in the Renaissance society. Pacioli did not invent double-entry and the *Summa* was by no means an original book. Rather, it was a collection of material and ideas from many sources and by many authors which recounted the Venetian method of accounting (Littleton & Yamey, 1956, p. 179). The Venetian double-entry method of bookkeeping described in his monumental work laid the foundation for the universal standard for accounting which is still used today. Double-entry bookkeeping is valued for its inbuilt checks which help to indicate when errors have occurred (Berry et al., 2011, p. 5; Kew & Watson, 2012, p. 9; T. A. Lee et al., 1996, pp. 3–4). (See also Merino (1998, pp. 608–610).) This monumental text, together with other early literature works up until the nineteenth century focused on the technique of bookkeeping, explaining how recording of transactions should take place using the double-entry system. The more detailed development of the theory of accounting began only in the nineteenth century (Berry et al., 2011, p. 5; T. A. Lee & Parker, 1979, pp. 16–17).

5.2.2 The development of accounting standards

T.A. Lee et al. (1996, p. 65) explain that the major financial crisis of 1866, particularly the failure of Watson Overend & Co. (a firm of railway contractors), led to the appointment of the Royal Commission on Railways, which emphasised the importance of having a uniform or standardised system of accounts. A standardised system would provide shareholders with a means to “see at a glance what the exact financial position of each company was”. During this time, it also became necessary for accounting professionals to be formally organised. The movement for the formal organisation of accountants begun in Scotland in 1853 and was taken up in England in 1870, and soon spread to other parts of the British Empire, Canada, Australia, South Africa and the rest of the globe.

As mentioned in section 4.2, the accounting profession in South Africa underwent many changes since its inception in 1894. Today, the profession is highly regulated (Visser, 2013, p. 1) and there are many regional and national accounting societies and institutes in South Africa, the most prominent being the South African Institute of Professional Accountants (SAIPA) and the South African Institute of Chartered Accountants (SAICA). Many international

accounting institutes and societies are also recognised by the profession in South Africa. Some examples of these are the Chartered Institute of Management Accountants (CIMA), the Association of Chartered Certified Accountants (ACCA) and the Association of Accounting Technicians (AAT).

Brown (1968, p. 314) explains that no business or profession can remain untouched by scientific invention, growth in commerce, new legislation and the increasing volume and complexity of business affairs. The accounting profession is no exception, and the profession has seen many changes over the past century. The following viewpoint of Brown (1968, p. 315) remains largely true:

“The development [of the profession] has not been characterised by any startling discoveries of new principles or the introduction of entirely novel methods, but rather by the steady working out, with modifications suited to changing conditions, of those principles and methods which were already well understood and practiced by the old “accountants”. New departments of work have no doubt opened themselves up to the ever increasing number of members of the profession, but they have not, on the whole, caused any undue strain on the inventive faculties.”

Over the years, the accounting profession and, more specifically, accounting standard-setting bodies worldwide have tried to resolve accounting problems by developing accounting standards. Lee et al. (1996, p. 167) recount that written accounting and auditing standards originated in the late 1910s and were mandated in the mid-1960s. The authors explain that informed criticism by non-accountants of accounting and auditing practices appeared occasionally from the mid-1800s onward, grew persistent particularly in the early 1930s through the 1960s, and became a permanent feature of accountancy in the 1980s.

The accounting profession in the United States of America recognised the importance of establishing formal accounting standards during the 1930s (Gordon, 1992, p. 11). The establishment of the Accounting Principles Board in the 1960s was the first serious attempt at developing a formalised structure for accounting theory. In 1973 the Financial Accounting Standards Board (FASB) succeeded the APB with the mandate of setting accounting standards (T. A. Lee et al., 1996, pp. 75–77).

Verhoef (2012, pp. 1–5) explains that over the years since the development of South African Generally Accepted Accounting Practice (SA GAAP) in the early 1970s, the accounting profession in South Africa enjoyed high international recognition for the quality and strength of its reporting standards. South Africa was not the only country developing accounting standards and as a result of varying accounting regulatory frameworks for financial reporting throughout the world, financial statements differed greatly across various accounting jurisdictions (Oberholster et al., 2011, pp. 1–12). I. Lubbe, Modack & Watson (2014, pp. 5–9) point out that financial reporting standards require consistent accounting treatment of transactions, in order to ensure comparability and continuity in financial statements. The different accounting standards used across the globe were issued without a proper theoretical framework, and this resulted in a number of difficulties such as compromised comparability and a loss of credibility of financial statements (Oberholster et al., 2011, pp. 1–12; Wingard et al., 2011, p. 1).

I. Lubbe et al. (2014, pp. 5–7) explain that globalisation and increasing pressure among international role players to harmonise accounting standards lead to the establishment of the International Accounting Standards Board (IASB) in 2001 as part of the International Accounting Standards Committee (IASC) Foundation. The IASC Foundation tasked the IASB (as standard-setting body of the Foundation) with the development and issuing of International Financial Reporting Standards (IFRSs, with Interpretations) as well as related documents such as the Framework for Preparation and Presentation of Financial Statements, exposure drafts and discussion documents (IFRS Foundation, 2014a, p. A5). During 2003, the APB in South Africa embarked on a project to harmonise SA GAAP with IFRS. IFRSs set out the requirements for recognition, measurement, presentation and disclosure for general purpose financial statements and other reporting of all profit-oriented entities (IFRS Foundation, 2014a, pp. A8–A10).

5.2.3 Accounting standards for small and medium-sized entities

International Financial Reporting Standards (or full IFRS) are mainly aimed at the reporting needs of large entities and have cumbersome recognition, measurement and disclosure

requirements. Full IFRS is designed to meet the general financial information needs of a very wide range of users, for example, equity investors, entities in public capital markets, creditors, shareholders, employees and the public at large (I. Lubbe et al., 2014, p. 10). As a result, complying with the requirements of 'full' IFRS places an enormous burden on small and medium-sized entities (SMEs) since full compliance requires much in terms of management time, staff training and specialist consultations. Furthermore, the users of financial statements of SMEs do not have the same needs as the users of financial statements of large entities. These users do not need all the detailed and complex information provided by general purpose financial statements, since the SMEs often produce financial statements only for the use of tax authorities and owner-managers. The burden of implementing full IFRS is too heavy for most SMEs to bear and applying full IFRS do not result in useful and cost-effective information being provided to the users of the financial statements of SMEs (Coetsee et al., 2010, p. i). (See also Van Wyk and Rossouw (2009, pp. 109–101).) I. Lubbe et al. (2014, p. 10) observe that SMEs are estimated to account for over 95% of all companies around the world.

As a result of the above-mentioned challenges, the IASB responded by developing International Financial Reporting Standards for Small and Medium-sized Entities (commonly known as IFRS for SMEs). The IFRS for SMEs, as issued by the IASB in July 2009, is a self-contained standard, consisting of 230 pages and is less than 10% in volume of full IFRS (I. Lubbe et al., 2014, p. 10). According to the IASB (2012, p. 4) IFRS for SMEs is less complex than full IFRS in a number of ways, requiring approximately 300 disclosures, compared to the 3000 disclosures required by IFRS, and where full IFRS allows accounting policy choices, IFRS for SMEs allow only the easier option in all instances.

5.2.4 Accounting standards for micro entities

Despite IFRS for SMEs being much simpler than full IFRS, many still believed that IFRS for SMEs was too complex and costly for very small or micro entities to implement (SAICA, 2012b, p. 1) and despite the good intentions of the IFRS for SMEs, there is scepticism among accounting practitioners about whether the standard actually reduces the burden of financial reporting for SMEs (Van Wyk & Rossouw, 2009, pp. 99–101).

Accounting professionals servicing micro entities across South Africa requested the South African Institute of Chartered Accountants (SAICA) to develop a Framework for Non-Public Entities (FfNPE) or a so-called Micro GAAP/third-tier financial reporting framework. A working group was formed to embark on a project to develop the FfNPE, but after four years a decision has been made by SAICA not to proceed with the issuing of the proposed FfNPE, either as a standard or a SAICA guide. Instead, SAICA has developed a guide in the form of an electronic toolkit for applying the International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs) to a micro entity (Hassan & Ludolph, 2012, p. 1). According to SAICA (2012b, p. 1) the toolkit comprises a user checklist, an application guide with practical examples, illustrative financial statements, and a disclosure checklist. The guide is aimed primarily at assisting micro entities such as close corporations and companies with a public interest score (as determined by the Companies Act) below 100 points, partnerships and sole-proprietorships, with the practical application of the IFRS for SMEs standard.

L. Lubbe (2013, pp. 105–106) explains that, according to SAICA, the aim of the guide is to assist small companies, CCs, partnerships and sole-proprietors in applying IFRS for SMEs to their particular environments. The author points out that the guide includes chapters on topics such as business combinations and goodwill, investments in associates and joint ventures, consolidated financial statements and intangible assets - which is not applicable to sectional titles. Furthermore, SAICA did not mention that it is specifically applicable to the sectional title industry.

Riddin (2009, pp. 1–2, 2010, p. 1) explains that there are various aspects in IFRS for SMEs that is not applicable to the sectional title industry and may require deviation from the IFRS for SME framework. These challenges will be addressed in the rest of the chapter.

5.3 Sectional title accounting – a brief international comparison

Section 1.4.3 provided a brief overview of how selected property schemes similar to sectional titles operate in other parts of the world and section 4.3 provided an overview of how property schemes similar to sectional title are handled in other parts of the world – specifically from an auditing and assurance perspective. In this section, property schemes similar to sectional title in other parts of the world will be briefly discussed, specifically from an accounting perspective. It should be noted that a full global comparative study of similar international property forms falls outside the scope of this study. The specific countries that will be discussed are the United Kingdom, the United States of America, Canada, Australia, New Zealand, Spain, India and Singapore.

5.3.1 United Kingdom

According to the United Kingdom (UK) Department of Communities and Local Government, the landlord must provide the leaseholder with a summary of costs relating to service charges for each accounting year (Department for Communities and Local Government, 2009, p. 17). Landlords should provide yearly accounting statements to service charge payers. These statements would provide information about amounts paid into a service charge fund and standing to the credit of the service charge fund, as well as costs incurred by the landlord. The statements need to be accompanied by an accountant's report where necessary and the Commonhold and Leasehold Reform Act 2002 gives leaseholders the right to inspect documentation relevant to their accounting statements within 21 days of their request. Leaseholders will also be able to take copies of that information, or have copies provided to them on payment of a reasonable fee. Service charge payers will also be able to withhold service charges if the above requirements have not been complied with (Department for Communities and Local Government, 2009, p. 134).

5.3.2 United States of America

As mentioned in section 1.4.3 and 4.3.2 above, every state in the USA has its own piece of legislation governing condominium. In broad terms there are many similarities regarding condominium accounting of various states. However, a detailed analysis of the various differences between the legislation of the various states falls outside the scope of this text.

In Florida, for example, all accounting records of a condominium association must be maintained for at least 7 years. To be prudent, an association may decide to keep all association records since developer handover. If the Board of Directors of the condominium association does not have a member with a strong accounting background, hiring a 3rd party accountant to maintain the association's books may be necessary and is allowed by law (Florida Condominium Association Advisors, 2014, p. 1). Condominium associations must maintain, amongst others, accurate, itemized, and detailed accounting records of all receipts and expenditures as well as a current account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due. Furthermore, audits, reviews, accounting statements and financial reports of the association or condominium must be done and maintained in accordance with generally accepted accounting principles, the details depending on the size of the condominium (Florida Condominium Association Advisors, 2014, p. 1; The Florida Legislature, 2016, p. 1).

5.3.3 Canada

As mentioned in section 1.4.3.3 and 4.3.3, the various provinces in Canada all have separate pieces of legislation in place to govern the ownership of condominiums. In broad terms there are many similarities regarding condominium accounting in the different provinces. However, a detailed analysis of the various differences between the provincial legislation falls outside the scope of this text.

For example, in Ontario, the Condominium Act and related regulations specify that the condominium corporation shall prepare its financial statements in accordance with the accounting Canadian Accounting Standards and that certain reserve fund information shall be disclosed therein. General-purpose financial statements that comply with Canadian Accounting Standards for not-for-profit organizations that meet the disclosure requirements of the Act should be prepared for presentation to owners at the annual general meeting (Chartered Professional Accountants of Ontario, 2013, p. 4). Condominium boards often appoint outside management or hires management staff to assist them. Professional managers perform many of the functions of the board, including assisting owners in resolving matters relating to the affairs of the condominium and accounting for financial transactions (Chartered Professional Accountants of Ontario, 2013, pp. 5–6). Furthermore, budget amounts should also be included in the financial statements (Chartered Professional Accountants of Ontario, 2013, p. 26).

5.3.4 Australia

A strata corporation in Australia must keep proper accounting records of expenditure and receipts. The strata corporation must make sure that a proper statement of accounts is prepared for each financial year. The accounting records and notices of meetings must be kept for a total of seven years. If a strata manager or agent is authorised by the corporation to receive or hold money on the corporation's behalf, that money must be held in a trust account. Strata managers or agents who are not unit owners but are authorised to receive or hold money on behalf of the corporation have strict controls imposed upon them relating to the keeping of money and trust accounts (Legal Services Commission of South Australia, 2012, pp. 19–20). By law, a prospective purchaser must be able to inspect the above information as is required to establish the current financial position of the corporation, including a copy of the accounting records of the corporation, the minute books of the corporation and any other documentary material prescribed by regulation (Legal Services Commission of South Australia, 2012, p. 29). A small scheme consisting of two lots may exempt themselves from the requirements to prepare accounting records of the corporation's receipts and expenditure and to prepare an annual statement of accounts (Legal Services Commission of South Australia, 2012, p. 32). (See also Western Australian Land Information Authority (2012, p. 34).)

5.3.5 New Zealand

In New Zealand a unit title body corporate must keep accounting records, which detail all the financial transactions of the body corporate, and use these records to prepare a financial statement. The most recent financial statements must be sent with any notice that calls an AGM. The form and minimum content of financial statements are prescribed in regulations (Department of Building and Housing, 2011, p. 14; Ministry of Business Innovation and Employment, 2015, p. 1).

5.3.6 Spain

In Spain, the administrator of a horizontal property scheme must prepare a budget proposing ways to cover expenses. The board of proprietors of a horizontal property scheme must then meet at least once a year and is responsible for approving the budget of foreseeable expenditure and income as well as the corresponding accounts (Traductores, 2003, p. 7,10).

5.3.7 India

According to the Maharashtra Apartment Ownership Act, a treasurer must be appointed who shall keep the financial records and books of accounts. Apartment owners may add additional by-laws relating to the accounting of the property as they see fit (President of the Republic of India, 1971, pp. 8–9).

5.3.8 Singapore

In Singapore, every management corporation is required to keep accounting records and financial statements for at least seven years. The treasurer of the management corporation is responsible for giving receipts, carrying out banking errands, accounting for any money paid to the management corporation, keeping accounting records and preparing financial statements (Building and Construction Authority of Singapore, 2005, pp. 18–21; Singapore Government, 2014, p. 57).

5.3.9 Conclusion to the international comparison

Internationally, there are distinct differences in fragmented property legislation, and in 'large' countries such as the USA and India there are even individual pieces of legislation for the different states in the country. However, there are two aspects that run like a common golden thread through all the pieces of legislation. Firstly, there are clear legislative requirements for thorough financial record keeping and secondly, the legislation indicates that there is a risk relating to the concept of 'trust money' that forms part of fragmented property schemes.

5.4 General empirical results

This section will deal with findings and general observations as part of the analysis of a sample of sets of annual financial statements over a period of three years as discussed in section 5.1. Due to the fact that the new STSMA, STA and CSOSA was not in operation at the time that the empirical study was conducted, reference will also be made to the original STA where applicable throughout the text.

As part of the empirical study, an analysis will also be made of accounting-related aspects of a sample of body corporate annual financial statements. The financial statements with accompanying audit reports were obtained from a number of managing agents and audit firms of bodies corporate for the financial years ending 2014 and 2015. Since the 2014 financial statements also have figures for the comparative financial year (2013), the data of three financial years is available for analysis. The audit reports for the selected bodies corporate

drawn up by the appointed accounting and auditing practitioners also formed part of the data that have been analysed.

Furthermore, the sample was selected to include financial statements and audit reports drawn up and audited by various accounting and auditing practitioners appointed by the various bodies corporate. Where deemed necessary, a distinction was firstly made between small (consisting of fewer than 10 units), medium (between 10 and 50 units) and large (more than 50 units) schemes and indicated as such. Secondly, a distinction was also made between the various municipalities included in the sample, being Mangaung Metropolitan Municipality, Matjhabeng Local Municipality, City of Matlosana Municipality and Tlokwe Local Municipality. The detail of the sample was illustrated in figure 4-4 in Chapter 4. (See also section 2.3.6 in Chapter 2.)

5.4.1 Books of account and records

As mentioned in section 3.5.3, the content of the new STSMA Regulations is similar to the old STA Prescribed Management Rules regarding the requirements for the books of account. However, as mentioned in section 3.3.5.1, the wording now puts the onus on the body corporate (previously on the trustees) to prepare accounting records, financial statements, budgets, etc. Section 35 of the original Sectional Titles Act dealt with “books of account and records”. The wording in the Act was as follows:

*“(1) The trustees shall cause **proper books of account and records** to be kept so as **fairly to explain the transactions and financial position** of the body corporate, including-*

*(a) a **record of the assets and liabilities** of the body corporate;*

*(b) a record of all **sums of money received and expended** by the body corporate and the matters in respect of which such receipt and expenditure occur;*

*(c) a **register of owners and of registered mortgagees** of units and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners, mortgagees or other persons) showing in each case their **addresses**; and*

(d) **individual ledger accounts** in respect of each **owner**.” (Own emphasis.)

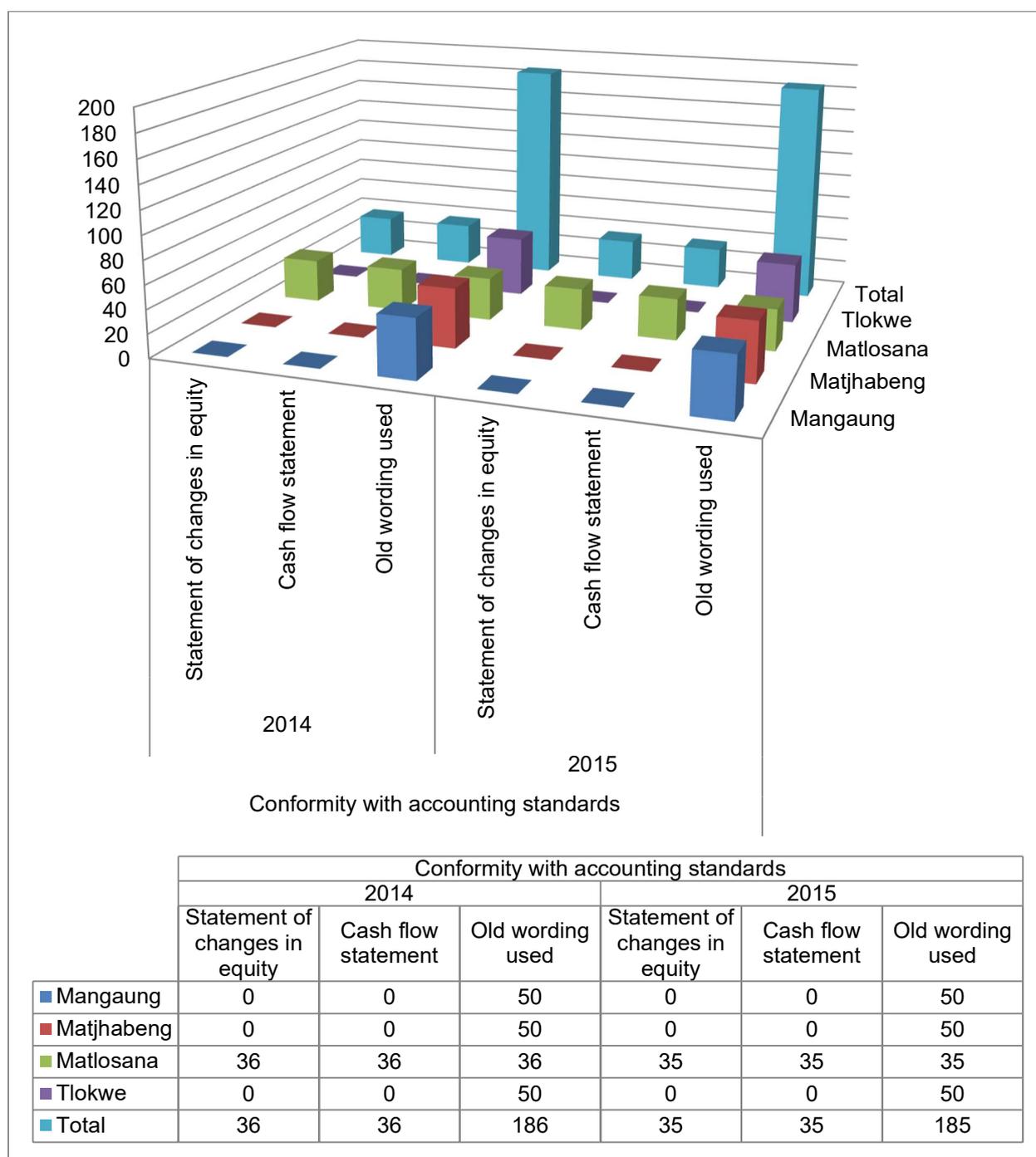
For the sample of annual financial statements selected, a formal enquiry was made to the managing agents as to who is responsible for keeping accounting records as required by the Act. According to all the managing agents, the keeping of these records are done by them and it is part of the business/accounting software packages that they use. In none of the cases did the trustees keep these registers. It is important to note that, as the sample was obtained directly from various managing agents, this observation may not be representative of the entire population of bodies corporate. Therefore, it is possible that there may be instances where trustees keep their own register of owners and of registered mortgagees. These findings are similar to that in the study of L. Lubbe (2013, pp. 112–113) where it was found that, for the entire sample, the keeping of books of account and records were a combined effort between the managing agents and the accounting practitioners, but the greatest part of the work was done by the managing agent.

5.4.2 Financial statements in conformity with accounting standards

As mentioned in section 4.5.9, many bodies corporate received an emphasis of matter paragraph in the audit report for not complying with South African Statements of Generally Accepted Accounting Practice (SA GAAP) or International Financial Reporting Standards (IFRS). Further enquiry from the auditors revealed that the emphasis of matter paragraph was included due to the fact that accounting for sectional titles is very unique and a number of the International Financial Reporting Standards are not applicable or cannot be applied to sectional titles.

For the sample of sets of financial statements of bodies corporate over a period of two years, the financial statements were analysed to determine whether the financial statements had certain shortcomings. Figure 5-1 below summarises the findings.

Figure 5-1: Financial statements in conformity with accounting standards



For Mangaung, Matjhabeng as well as Tlokwe, for both the 2014 and 2015 financial years, from the sample of 50 sets of financial statements for every year, none (0%) of financial statements included statements of changes in equity or cash flow statements, and all the financial statements (100%) still contained the 'old' wording of "balance sheet" and "income statement" instead of the wording "statement of financial position" and "statement of

comprehensive income". For Matlosana for the 2014 financial year (a sample of 36 sets of financial statements) and the 2015 financial year (a sample of 35 financial statements), all (100%) of the financial statements contained a statement of changes in equity and a cash flow statement. However, all (100%) still contained the 'old' wording of "balance sheet" and "income statement" instead of the wording "statement of financial position" and "statement of comprehensive income".

From the above it is evident that many of the financial statements analysed did not comply with International Financial Reporting Standards. During the interviews with accounting practitioners (further discussed in Chapter 6), the practitioners who did not include statements of cash flow explained that they found it unnecessary and not cost effective to present a statement of cash flows. The practitioners explained that it did not add any additional value, and from past experience they knew that the inclusion thereof tend to confuse the users of the financial statements of bodies corporate. Furthermore, they stated that the use of the old wording in the financial statements was due to the specific set-up of the accounting software packages used by them, such as Pastel Accounting, Caseware and QuickBooks. The software was still set up with the 'old' wording. The practitioners also added that the users of body corporate financial statements were more familiar with the 'old', more widely-known wording. As a result, there were no differences between these findings and findings in the study of L. Lubbe (2013, p. 126) where the original financial statement formats and wording were used.

As mentioned by L. Lubbe (2013, p. 128), the fact that sectional titles have unique financial reporting requirements is not something that is unique to the South African environment. In the province of Ontario in Canada, 'sectional title' property is governed by the *Ontario Condominium Act, 1998*. (See also sections 4.3.3 and 5.3.3.) The Institute of Chartered Accountants of Ontario issued a booklet called "*Accounting, Auditing and Tax Guidelines for Ontario Condominium Corporations*" (Chartered Professional Accountants of Ontario, 2013). These Guidelines suggest accounting principles, reporting practices, audit procedures and tax considerations specific to Ontario condominium corporations as well as recommendations for best practices that are in addition to the requirements of the CPA Canada Handbook and the *Condominium Act, 1998*. The possibility of a tailor-made accounting standard for sectional titles in South Africa was also addressed as part of the empirical study, the results of which are discussed in detail in Chapter 6.

5.4.3 Fairly present the state of affairs, finances and transactions

L. Lubbe (2013, pp. 128–130) explained that, in a number of instances, the original Sectional Titles Act used vague, non-technical terminology to explain what must be contained in the annual financial statements. For example, Section 37(1) of the original Sectional Titles Act states that the financial statements, as prepared by the trustees “*shall fairly present the state of affairs of the body corporate and its finances and transactions as at the end of the financial year concerned*”. (Own emphasis.) Furthermore, Section 35(1) of the original Sectional Titles Act dealing with “books of account and records” state that the trustees “*shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the body corporate...*”. (Own emphasis.) The problem with the words “*state of affairs*”, “*finances*” and “*transactions*” as stated in the Sectional Titles Act is that it does not form part of the acknowledged accounting terminology in IAS 1 (L. Lubbe, 2013, p. 129)

As mentioned in section 4.4.2.1 and 4.4.2.2, one should return to the principles of statutory interpretation in instances such as this. Botha (2005, p. 69) explains that, in terms of proper statutory interpretation, where one encounters technical legislation applicable to specific trades, industries or professions, the wording of that legislation should be interpreted in its specialised, technical context. Therefore, the words “*state of affairs*”, “*finances*” and “*transactions*” as stated in the Sectional Titles Act should perhaps rather be read as “*financial position*”, “*financial performance*” and “*cash flows*”.

5.4.4 Information and notes pertaining to proper financial management

Section 37 of the original Sectional Titles Act prescribes the detail of further information to be contained in the annual financial statements of a sectional title scheme:

“(2) The financial statement shall include **information and notes** pertaining to the **proper financial management** by the body corporate, including:

(a) the **age analysis of debts** in respect of **levies, special levies and other contributions**;

(b) the **age analysis of amounts owing** by the body corporate to the **creditors** and in particular to any **public or local authority** in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;

(c) the **expiry dates of all insurance policies.**” (Own emphasis.)

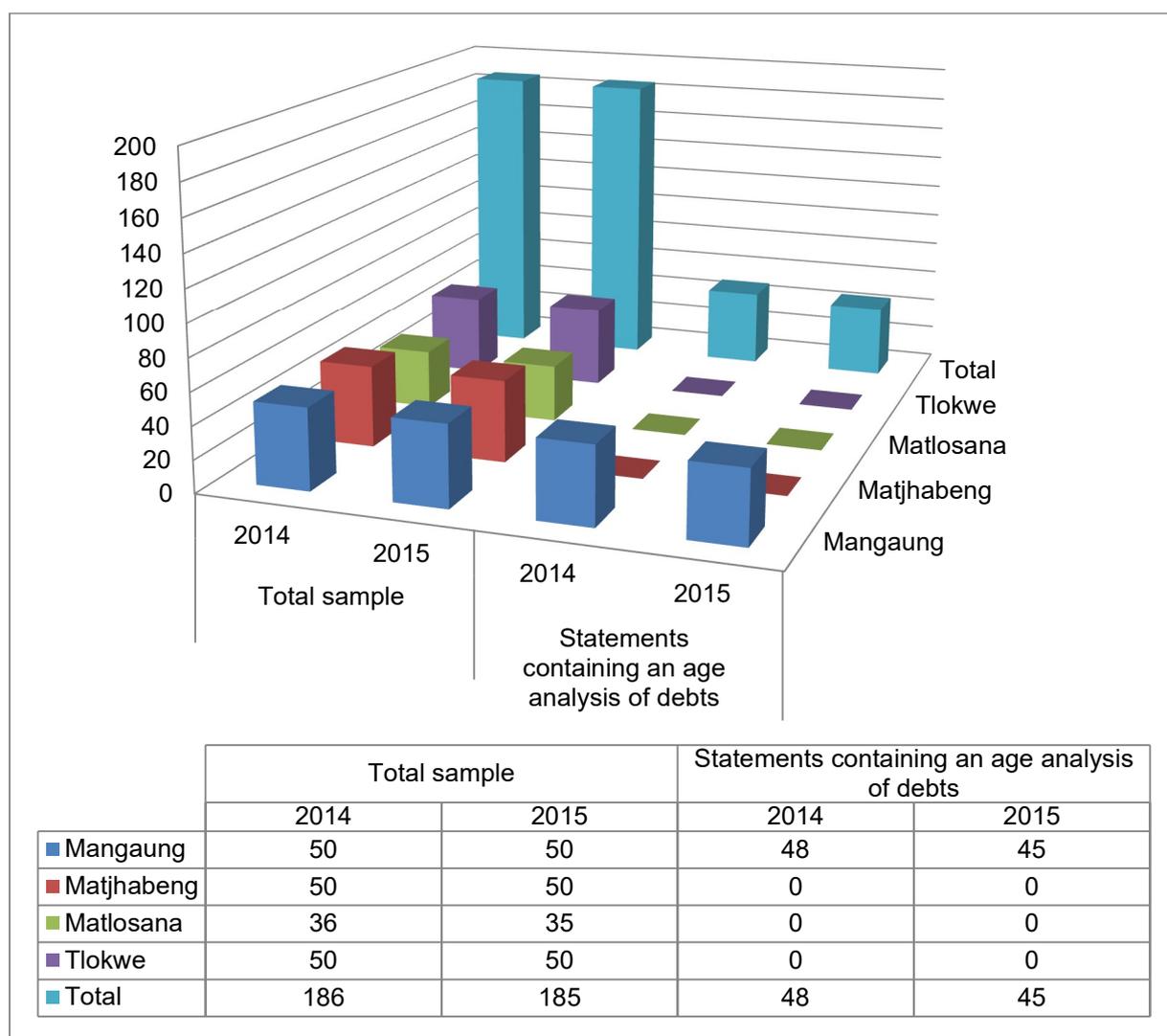
The Act once again uses a term that is very broad and open to interpretation. L. Lubbe (2013, p. 130) explains that the term “*proper financial management*” does not form part of the acknowledged accounting terminology. It can, therefore, be concluded that one of the objectives of financial reporting is to show the result of management’s stewardship, and provide sufficient information in order to be able to assess an entity’s past performance. This does not mean that the financial statements should include specific information and notes about an entity’s “*proper financial management*”. That would be a nearly impossible task (L. Lubbe, 2013, p. 131). Furthermore, for the sample of financial statements selected for testing for the current study, none of the statements included any information regarding financial management. The other three requirements of section 37(2), namely age analyses of debts and amounts owing, as well as expiry dates of insurance policies will be discussed below.

5.4.5 Age analysis of debts

Section 37(2) of the original STA required the trustees to prepare an “**age analysis of debts in respect of levies, special levies and other contributions**” as part of the information and notes to the financial statements. (Own emphasis.) In section 3.5.4 it was mentioned that rule 26(c) of the new STSMA Regulations requires that the body corporate should prepare, as part of the annual financial statements, an analysis of “**amounts due to the body corporate in respect of contributions, special contributions and other charges, classified by member and the periods for which such amounts were owed...**” (Own emphasis.) Regarding the wording

in the original STA, L. Lubbe (2013, p. 132) commented that the Act did not specify the format, content or level of detail of the age analysis of debts. For the sets of annual financial statements selected for testing over a period of two years for the current study, the financial statements were analysed in order to determine whether it included an age analysis of debts. The findings are summarised in figure 5-2 below.

Figure 5-2: Age analysis of debts



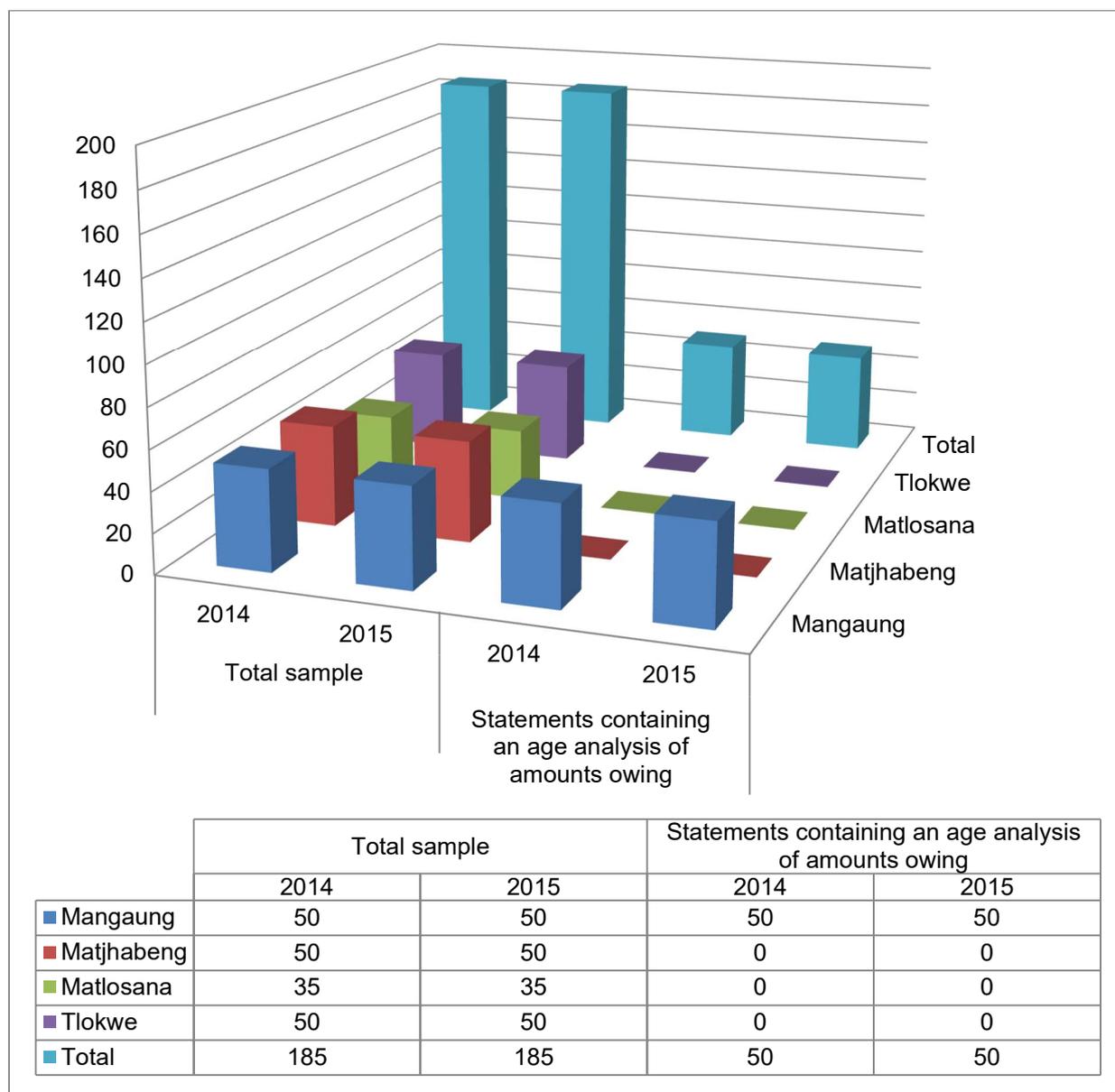
For Mangaung, for the 2014 financial year, from the sample of 50 sets of financial statements, 48 (96%) sets of financial statements included an age analysis of debts. For the 2015 financial year, from the sample of 50 sets of financial statements, 45 (90%) sets of financial statements included an age analysis of debts. For both years the age analyses were done using the total

amount owing by debtors, and not stating individual debt and time outstanding per owner or resident. The total debtors amount was broken down into four categories being current, 30 days, 60 days and 90 days outstanding. For Matjhabeng (a sample of 50 sets of financial statements for both 2014 and 2015), Matlosana (36 for 2014 and 35 for 2015) and Tlokwe (50 for both 2014 and 2015), none of the financial statements (0%) included an age analysis of debts. From the above it is evident that only for Mangaung there was an extent of compliance with the Act, and that for the total sample only 48 of the 186 (26%) financial statements for 2014 and 45 of the 185 (24%) financial statements of 2015 had an age analysis. These results are much lower than the results in the study of 2009 to 2010 information by L. Lubbe (2013, pp. 132–133). For the 2009 financial year, 45 of the 60 (75%) financial statements analysed included an age analysis of debtors, and for the 2010 financial year 53 of the 60 (88.33%) financial statements analysed included an age analysis of debtors.

5.4.6 Age analysis of amounts owing

Section 37(2) of the original STA required the trustees to prepare an **“age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal”**. (Own emphasis.) It was mentioned in section 3.5.4 that, as per rule 26(c) of the new STSMA Regulations, the body corporate financial statements should include an analysis of **“amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed...”** (Own emphasis.) Regarding the wording in the original STA, L. Lubbe (2013, p. 133) commented that the original Act was much more vague than the new one, since it did not specify the format, content or level of detail of the age analysis of amounts owing. For the sets of annual financial statements selected for testing over a period of two years, the financial statements were analysed in order to determine whether it included an age analysis of amounts owing. Figure 5-3 below summarises the findings.

Figure 5-3: Age analysis of amounts owing



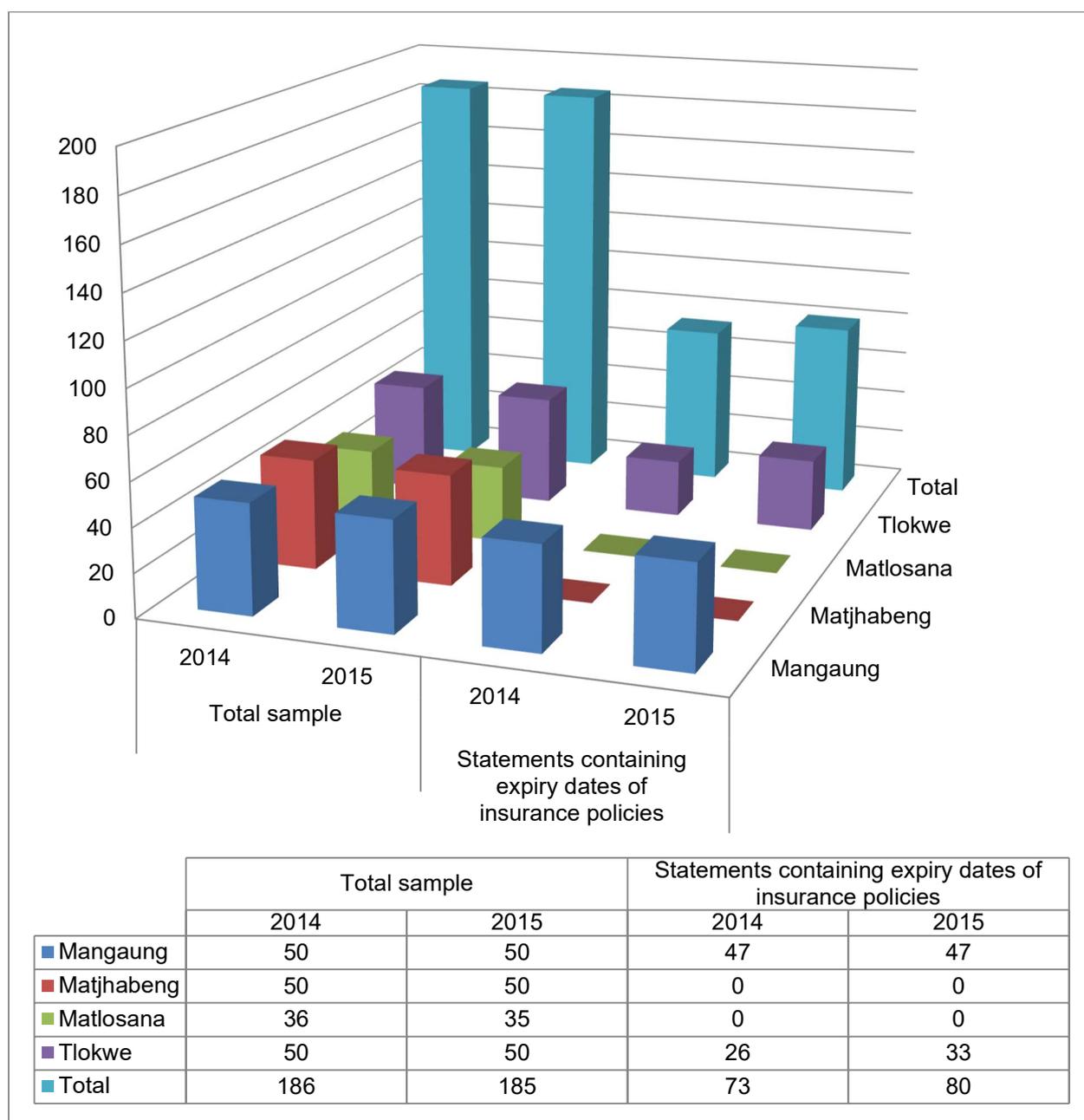
For Mangaung, for the 2014 as well as the 2015 financial year, from the sample of 50 sets of financial statements, all (100%) financial statements included an age analysis of amounts owing. For both years, the age analyses were done using the total amount owing to creditors, and not stating individual debt and time outstanding per creditor. The total creditors amount was broken down into four categories being current, 30 days, 60 days and 90 days outstanding. In the results of Mangaung in the study by L. Lubbe (2013, p. 133) there were no age analyses for amounts owing; therefore, there has been a large improvement. For Matjhabeng (a sample of 50 sets of financial statements for both 2014 and 2015), Matlosana

(36 for 2014 and 35 for 2015) and Tlokwe (50 for both 2014 and 2015), none of the financial statements (0%) included an age analysis of amounts owing. From the above it is evident that only for Mangaung there was compliance with the Act.

5.4.7 Expiry dates of insurance policies

As part of the information and notes to the financial statements, section 37(2) of the original STA required the trustees to indicate *“the **expiry dates of all insurance policies**”*. (Own emphasis.) In section 3.5.4, it was mentioned that, as per rule 26(c) of the new STSMA Regulations, the body corporate financial statements should include an analysis of *“**premiums and other amounts paid and payments received by the body corporate and any member in terms of the insurance policies of the body corporate and the expiry date of each policy...**”* (Own emphasis.) In the original STA, prescribed management rule (PMR) 37(2)(c) only required the trustees to indicate *“the expiry dates of all insurance policies”*. For the sets of annual financial statements selected for testing over a period of two years, the financial statements were analysed in order to determine whether it included the expiry dates of insurance policies. Figure 5-4 below summarises the findings.

Figure 5-4: Expiry dates of insurance policies



For Mangaung, for the 2014 as well as the 2015 financial year, from the sample of 50 sets of financial statements, 47 (94%) sets of financial statements included the expiry dates of the insurance policies of the bodies corporate. For Matjhabeng (sample of 50 for both 2014 and 2015), none (0%) of the sets of financial statements included the expiry dates of the insurance policies of the bodies corporate. For Matlosana (sample of 36 for 2014 and 35 for 2015), none (0%) of the sets of financial statements included the expiry dates of the insurance policies of the bodies corporate. For Tlokwe, for the 2014 financial year, from the sample of 50 sets of

financial statements, 26 (52%) sets of financial statements included the expiry dates of the insurance policies of the bodies corporate. For the 2015 financial year, from the sample of 50 sets of financial statements, 33 (66%) sets of financial statements included the expiry dates of the insurance policies of the bodies corporate. From the above it is evident that many bodies corporate are still not in compliance regarding this requirement in the Act.

5.4.8 Change in accounting practitioners

L. Lubbe (2013, p. 136) explains that it is not an uncommon occurrence in the sectional title industry for bodies corporate to change accounting or auditing practitioners, as many bodies corporate have serious financial constraints. The prospect of lower accounting and auditing fees often result in bodies corporate changing from one practitioner to another. For the sets of annual financial statements selected for testing over a period of two years, the financial statements were analysed in order to determine whether they changed from one accounting practitioner to another. None of the bodies corporate in the samples for Mangaung, Matjhabeng, Matlosana and Tlokwe changed accounting practitioners from the 2014 to the 2015 financial year. This is a decline from the results in the study by L. Lubbe (2013, p. 136) where it was found that 12% of the bodies corporate for which the financial statements were analysed changed to a different accounting/auditing practitioner from 2009 to 2010. (See also empirical results in sections 6.3.8, 6.4.6 and 6.5.6.)

5.4.9 Financial statements ratios and averages

As part of the empirical study, the financial data was used to calculate average amounts for the total sample as well as for the individual municipalities and small, medium and large schemes separately, where applicable. These averages were subsequently used to calculate various ratios. The detail of the results is presented in the following sections.

5.4.9.1 Averages for the total sample

Where average amounts were calculated, the amounts of all the sets of financial statements were added up on a line by line basis per year and then divided by the number of units in the sample. Figure 5-5 below illustrates the average number of units per scheme.

Figure 5-5: Average number of units per scheme

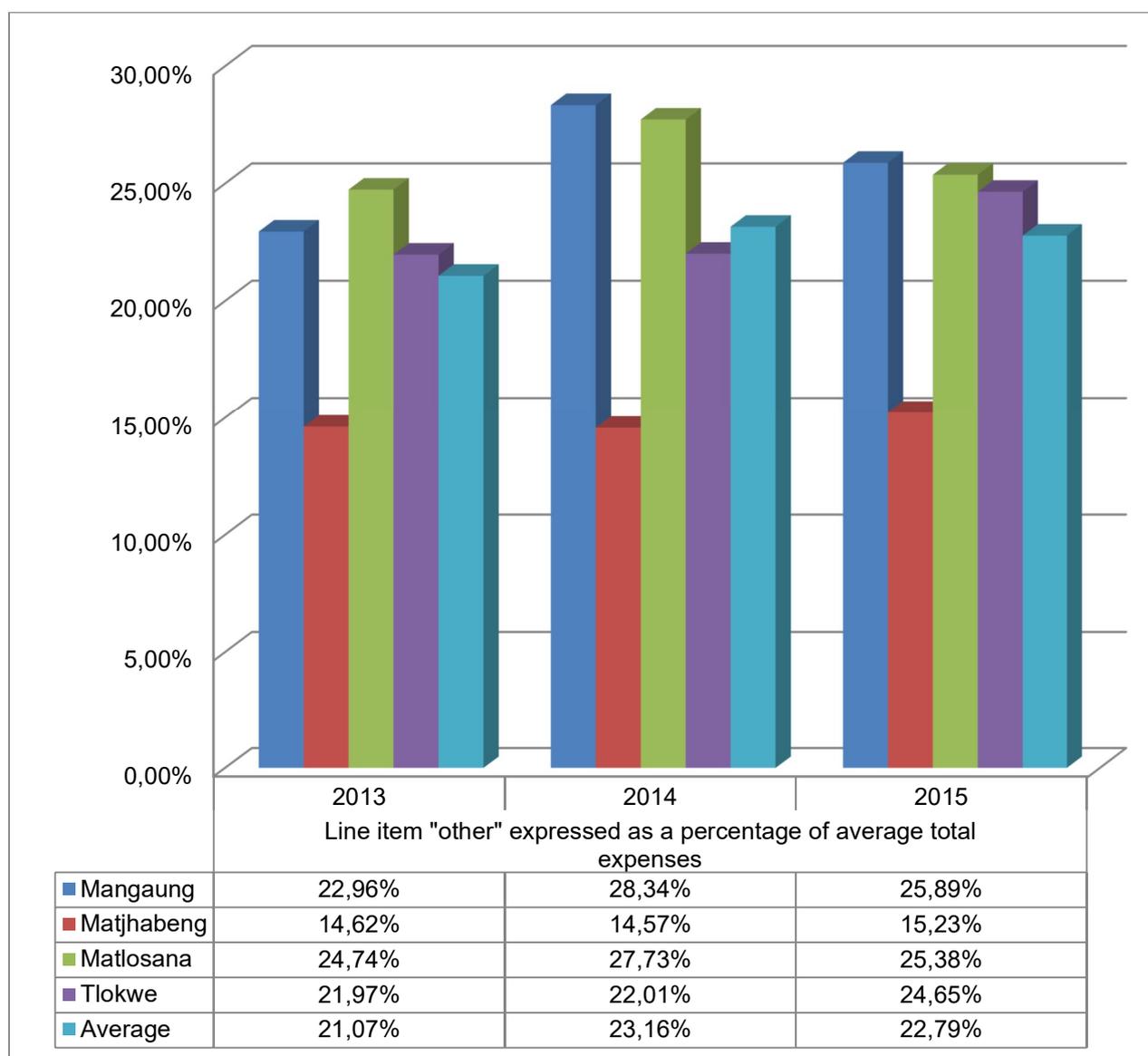
		Mangaung	Matjhabeng	Matlosana	Tlokwe	Total
Total sample	2014	50	50	36	50	186
	2015	50	50	35	50	185
Total number of units	2014	1264	747	877	1348	4236
	2015	1264	747	872	1348	4231
Average number of units	2014	25	15	24	27	23
	2015	25	15	25	27	23

All the data as per the annual financial statements were captured exactly as it was received from the various managing agents and audit firms. Some of the captured annual financial statements contained minor rounding or calculation errors, none of which were considered to be material. Due to the fact that these errors were not material and for purposes of data integrity, no changes were made to the data as originally captured. As a result, these minor non-material errors were incorporated in and are reflected on the average financial statements below. As a result of the above, some of the totals in the columns of the financial data (i.e. Fig. 5-7) are not balancing exactly.

Owing to the fact that the financial statements were prepared by a variety of accounting and auditing practitioners, the formats of the financial statements also differed from scheme to scheme. Consequently, only the most prevalent financial statement categories and line items were indicated on the face of the illustrative summarised financial statements. As mentioned in section 5.4.2, most of the financial statements still contained the 'old' terminology in the titles, namely "balance sheet" instead of "statement of financial position" and "income statement" instead of "statement of comprehensive income". For purposes of illustration, the current wording as per IAS 1 will be used in the summaries and analysis and in the discussion

the old and new terminology will be used interchangeably, as applicable. Two additional columns were also added to the summarised financial statements, indicating the variance from 20013 to 2014 and 2014 to 2015 respectively.

Corresponding to the concern of L. Lubbe (2013, pp. 137–138), it was observed during the summarising of the financial statements that many of the financial statements contained a line item called “other” on the face of the statement of comprehensive income, which was usually quite large. The findings are summarised in figure 5-6 below.

Figure 5-6: Line item “other”

In the summarised financial statements of Mangaung, the line item “other” accounted for 22.96% of the total average expenses in 2013; 28.34% in 2014 and 25.89% in 2015. In the summarised financial statements of Matjhabeng, the line item “other” accounted for 14.62% of the total average expenses in 2013; 14.57% in 2014 and 15.23% in 2015. In the summarised financial statements of Matlosana, the line item “other” accounted for 24.74% of the total average expenses in 2013; 27.73% in 2014 and 25.38% in 2015. In the summarised financial statements of Tlokwe, the line item “other” accounted for 21.07% of the total average expenses in 2013; 23.16% in 2014 and 22.79% in 2015. For the total sample, the line item “other” accounted for 21.07% of the total average expenses in 2013; 23.16% in 2014 and

22.79% in 2015. Even though individual amounts may not be material in nature and magnitude, allocating a large portion of expenses to a non-descriptive line item such as “other” is not necessarily in accordance with good, transparent accounting practices and does not comply with the qualitative characteristic of faithful representation (IFRS Foundation, 2014b, pp. 1–3). In some cases, though, the amounts were detailed in the notes to the financial statements.

Figures 5-7 to 5-11 below represent the averages for the entire sample as well as for the four municipal areas in the format of summarised income statements and balance sheets. The ‘old’ wording, namely “income statement” and “balance sheet” was used, due to the fact that the information was summarised to reflect the formats received from the managing agents and auditor.

Figure 5-7: Averages for the total sample in financial statement format (23 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	22	23		23	
Assets	89 343,18	97 299,19	9%	114 256,04	17%
Non-current assets	4 475,49	4 209,19	-6%	4 912,59	17%
Investments / long-term deposits	4 368,26	4 111,53	-6%	4 719,71	15%
Other	107,22	97,65	-9%	192,88	98%
Current assets	84 867,69	93 090,00	10%	109 343,45	17%
Trade and other receivables	18 916,07	20 366,73	8%	21 520,26	6%
Cash and cash equivalents	64 477,68	70 836,88	10%	84 678,73	20%
Deposits	1 146,08	1 519,67	33%	2 065,05	36%
Current tax receivables	151,09	88,51	-41%	6,03	-93%
Other	176,77	278,22	57%	1 073,38	286%
Equity and liabilities	89 343,24	97 299,19	9%	114 265,21	17%
Members' funds and reserves	56 523,88	64 771,57	15%	76 619,74	18%
Accumulated surplus/(shortage)	56 588,86	64 771,57	14%	76 619,74	18%
Other reserves	-	-	0%	-	0%
Liabilities	32 819,36	32 527,62	-1%	37 645,46	16%
Non-current liabilities	6 897,52	9 118,69	32%	5 585,41	-39%
Long-term loans	6 897,52	9 118,69	32%	5 585,41	-39%
Other	-	-	0%	-	0%
Current liabilities	25 921,85	23 408,94	-10%	32 060,06	37%
Current tax payable	656,09	722,61	10%	516,95	-28%
Trade and other payables	21 948,25	18 945,85	-14%	24 889,66	31%
Other	3 317,51	3 740,47	13%	6 653,45	78%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	185 438,50	200 695,42	8%	223 627,35	11%
Levies	170 528,63	185 127,03	9%	206 111,46	11%
Fines	62,47	52,98	-15%	57,30	8%
Interest received	2 342,96	2 225,48	-5%	3 324,70	49%
Other	12 504,44	13 289,93	6%	14 133,89	6%
Expenses	181 684,12	192 630,58	6%	211 828,19	10%
Bank charges	1 479,59	1 371,25	-7%	1 450,11	6%
Management fees	18 090,72	20 342,91	12%	22 584,28	11%
Rates and taxes	1 369,94	1 570,67	15%	1 810,36	15%
Repairs and maintenance	48 055,43	41 032,20	-15%	48 333,89	18%
Audit / accounting fee	2 808,47	3 088,93	10%	3 320,71	8%
Tax admin fee	143,54	138,71	-3%	161,07	16%
Legal fees	196,73	217,36	10%	321,02	48%
Insurance	28 133,58	29 889,53	6%	32 848,94	10%
Water and electricity	40 455,45	46 815,74	16%	49 330,81	5%
Bad debt	98,08	273,38	179%	-	-100%
Other	39 516,62	46 484,02	18%	49 934,37	7%
Taxation	1 335,98	1 405,89	5%	1 732,63	23%
Surplus / (deficit) for year	3 754,38	8 064,84	115%	11 799,16	46%

Figure 5-8: Averages for Mangaung in financial statement format (25 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	25	25		25	
Assets	107 590,24	128 543,31	19%	159 640,76	24%
Non-current assets	152,66	52,66	-66%	52,66	0%
Investments / long-term deposits	-	-	0%	-	1%
Other	152,66	52,66	-66%	52,66	0%
Current assets	107 437,58	128 490,65	20%	159 588,10	24%
Trade and other receivables	13 193,55	18 368,40	39%	22 217,22	21%
Cash and cash equivalents	90 729,55	106 816,83	18%	132 332,70	24%
Deposits	3 026,81	3 026,81	0%	5 016,81	66%
Current tax receivables	487,68	278,60	-43%	21,38	-92%
Other	-	-	0%	-	0%
Equity and liabilities	107 590,24	128 543,31	19%	159 640,76	24%
Members' funds and reserves	41 363,95	66 212,91	60%	90 522,18	37%
Accumulated surplus/(shortage)	41 595,29	66 212,91	59%	90 522,18	37%
Other reserves	-231,34	-	-100%	-	0%
Liabilities	66 226,30	62 330,40	-6%	69 118,58	11%
Non-current liabilities	24 555,16	33 921,52	38%	20 666,00	-39%
Long-term loans	24 555,16	33 921,52	38%	20 666,00	-39%
Other	-	-	0%	-	0%
Current liabilities	41 671,14	28 408,88	-32%	48 452,58	71%
Current tax payable	2 208,59	2 579,93	17%	1 804,53	-30%
Trade and other payables	39 019,97	25 828,95	-34%	37 879,49	47%
Other	442,58	-	-100%	8 768,56	100%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	230 438,30	245 263,60	6%	268 169,87	9%
Levies	188 267,48	201 588,04	7%	212 538,28	5%
Fines	222,40	193,10	-13%	212,00	10%
Interest received	3 076,03	3 626,43	18%	6 174,32	70%
Other	38 872,38	39 856,03	3%	49 245,27	24%
Expenses	239 462,88	220 414,63	-8%	243 860,58	11%
Bank charges	714,08	642,85	-10%	624,40	-3%
Management fees	20 214,20	22 077,98	9%	23 979,87	9%
Rates and taxes	303,78	132,95	-56%	99,72	-25%
Repairs and maintenance	95 938,82	62 851,02	-34%	81 060,78	29%
Audit / accounting fee	2 528,68	2 645,41	5%	2 983,10	13%
Tax admin fee	511,00	516,00	1%	595,00	15%
Legal fees	10,26	-	-100%	-	0%
Insurance	33 864,43	36 216,19	7%	39 114,45	8%
Water and electricity	25 649,77	26 822,39	5%	25 867,04	-4%
Bad debt	-	809,12	0%	-	-100%
Other	54 971,77	62 471,01	0%	63 125,48	1%
Taxation	4 756,09	5 229,72	10%	6 410,74	23%
Surplus / (deficit) for year	-9 024,58	24 848,97	-375%	24 309,29	-2%

Figure 5-9: Averages for Matjhabeng in financial statement format (15 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	15	15		15	
Assets	64 545,54	67 603,51	5%	68 190,64	1%
Non-current assets	15 543,06	15 286,70	-2%	17 452,66	14%
Investments / long-term deposits	15 543,00	15 286,64	-2%	17 452,60	14%
Other	0,06	0,06	0%	0,06	0%
Current assets	49 002,48	52 316,81	7%	50 737,98	-3%
Trade and other receivables	12 070,92	13 610,09	13%	9 354,81	-31%
Cash and cash equivalents	36 560,10	38 490,54	5%	41 206,65	7%
Deposits	331,34	175,60	-47%	175,60	0%
Current tax receivables	40,12	40,58	1%	0,92	-98%
Other	-	-	0%	-	0%
Equity and liabilities	64 545,54	67 603,53	5%	68 190,64	1%
Members' funds and reserves	51 401,30	52 925,53	3%	57 877,21	9%
Accumulated surplus/(shortage)	51 401,30	52 925,53	3%	57 877,21	9%
Other reserves	-	-	0%	-	0%
Liabilities	13 144,24	14 678,00	12%	10 313,43	-30%
Non-current liabilities	-	-	0%	-	0%
Long-term loans	-	-	0%	-	0%
Other	-	-	0%	-	0%
Current liabilities	13 144,24	14 678,00	12%	10 313,43	-30%
Current tax payable	-	-	0%	-	0%
Trade and other payables	12 907,08	14 548,72	13%	10 181,95	-30%
Other	237,16	129,28	-45%	131,48	2%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	126 225,28	137 930,83	9%	143 382,36	4%
Levies	121 071,82	129 132,06	7%	138 935,62	8%
Fines	-	-	0%	-	0%
Interest received	1 365,68	1 355,01	-1%	2 180,60	61%
Other	3 787,78	7 443,76	97%	2 266,14	-70%
Expenses	117 362,34	136 407,09	16%	138 429,93	1%
Bank charges	941,63	839,21	-11%	881,74	5%
Management fees	8 109,10	9 419,28	16%	10 545,54	12%
Rates and taxes	2 243,40	2 233,57	0%	2 100,73	-6%
Repairs and maintenance	30 191,14	41 076,22	36%	39 129,62	-5%
Audit / accounting fee	2 052,74	2 377,50	16%	2 511,98	6%
Tax admin fee	-	-	0%	0,96	0%
Legal fees	6,42	45,60	610%	-	-100%
Insurance	27 776,57	29 875,96	8%	32 650,22	9%
Water and electricity	28 535,87	30 457,28	7%	29 524,21	-3%
Bad debt	349,16	207,86	-40%	-	-100%
Other	17 156,30	19 874,41	16%	21 084,93	6%
Taxation	-	0,20	100%	-	-100%
Surplus / (deficit) for year	8 862,94	1 523,74	-83%	4 952,43	225%

Figure 5-10: Averages for Matlosana in financial statement format (25 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	25	24		25	
Assets	99 143,74	96 025,81	-3%	138 565,49	44%
Non-current assets	327,65	422,69	29%	935,31	121%
Investments / long-term deposits	-	-	0%	-	0%
Other	327,65	422,69	29%	935,31	121%
Current assets	98 816,09	95 603,11	-3%	137 630,17	44%
Trade and other receivables	40 036,71	39 066,86	-2%	46 254,83	18%
Cash and cash equivalents	57 971,47	55 620,33	-4%	89 299,54	61%
Deposits	-	-	0%	-	0%
Current tax receivables	14,82	14,00	-6%	-	-100%
Other	793,09	901,92	14%	2 075,80	130%
Equity and liabilities	99 144,03	96 025,81	-3%	138 565,49	44%
Members' funds and reserves	69 387,47	62 779,00	-10%	84 093,11	34%
Accumulated surplus/(shortage)	69 387,47	62 779,00	-10%	84 093,11	34%
Other reserves	-	-	0%	-	0%
Liabilities	29 756,56	33 246,81	12%	54 472,37	64%
Non-current liabilities	-	-	0%	-	0%
Long-term loans	-	-	0%	-	0%
Other	-	-	0%	-	0%
Current liabilities	29 756,56	33 246,81	12%	54 472,37	64%
Current tax payable	186,91	150,25	-20%	154,54	3%
Trade and other payables	24 922,29	27 228,58	9%	47 717,00	75%
Other	4 647,35	5 867,97	26%	6 600,83	12%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	266 842,79	273 698,17	3%	328 766,26	20%
Levies	266 169,68	272 689,61	2%	327 843,17	20%
Fines	-	-	0%	-	0%
Interest received	616,65	952,31	54%	875,09	-8%
Other	56,47	56,25	0%	48,00	-15%
Expenses	256 533,18	276 451,50	8%	309 353,14	12%
Bank charges	2 675,00	2 116,50	-21%	2 194,97	4%
Management fees	22 496,47	22 984,89	2%	25 459,20	11%
Rates and taxes	3 426,21	4 828,31	41%	6 425,54	33%
Repairs and maintenance	29 147,68	20 186,17	-31%	27 579,03	37%
Audit / accounting fee	3 178,09	3 356,00	6%	3 662,09	9%
Tax admin fee	-	-	0%	-	0%
Legal fees	637,82	366,33	-43%	209,77	-43%
Insurance	36 199,97	35 075,17	-3%	38 738,66	10%
Water and electricity	95 294,50	110 878,33	16%	126 577,74	14%
Bad debt	-	-	0%	-	0%
Other	63 477,44	76 659,81	21%	78 506,14	2%
Taxation	-	-	0%	-	0%
Surplus / (deficit) for year	10 309,62	-2 753,33	-127%	19 413,11	-805%

Figure 5-11: Averages for Tlokwe in financial statement format (27 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	25	27		27	
Assets	89 213,87	96 667,58	8%	97 920,09	1%
Non-current assets	16,15	14,47	-10%	16,53	14%
Investments / long-term deposits	9,11	8,27	-9%	10,33	25%
Other	7,05	6,20	-12%	6,20	0%
Current assets	89 197,72	96 653,11	8%	97 903,56	1%
Trade and other receivables	16 877,04	15 657,60	-7%	15 674,57	0%
Cash and cash equivalents	71 398,07	78 159,19	9%	77 262,27	-1%
Deposits	820,34	2 450,74	199%	2 448,28	0%
Current tax receivables	-	-	0%	-	0%
Other	102,27	385,58	277%	2 518,43	553%
Equity and liabilities	89 213,87	96 667,58	8%	97 954,04	1%
Members' funds and reserves	69 632,12	76 610,91	10%	76 228,48	0%
Accumulated surplus/(shortage)	69 632,12	76 610,91	10%	76 228,48	0%
Other reserves	-	-	0%	-	0%
Liabilities	19 581,75	20 056,67	2%	21 725,56	8%
Non-current liabilities	-	-	0%	-	0%
Long-term loans	-	-	0%	-	0%
Other	-	-	0%	-	0%
Current liabilities	19 581,75	20 056,67	2%	21 725,56	8%
Current tax payable	-	-	0%	-	0%
Trade and other payables	10 524,49	10 496,33	0%	10 628,40	1%
Other	9 057,25	9 560,34	6%	11 097,15	16%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	138 686,82	166 329,85	20%	185 732,57	12%
Levies	132 667,34	161 615,92	22%	181 648,27	12%
Fines	-	4,00	100%	-	-100%
Interest received	3 954,42	2 611,68	-34%	3 333,90	28%
Other	2 065,06	2 098,25	2%	750,40	-64%
Expenses	131 281,47	160 718,96	22%	184 926,59	15%
Bank charges	2 037,08	2 095,12	3%	2 322,79	11%
Management fees	23 615,98	27 629,25	17%	31 214,98	13%
Rates and taxes	-	-	0%	-	0%
Repairs and maintenance	28 553,36	34 178,50	20%	39 339,66	15%
Audit / accounting fee	3 699,57	4 051,59	10%	4 228,09	4%
Tax admin fee	-	-	0%	-	0%
Legal fees	284,04	499,20	76%	1 040,93	109%
Insurance	15 793,83	19 842,77	26%	22 659,34	14%
Water and electricity	28 449,42	37 042,47	30%	38 528,34	4%
Bad debt	-	-	0%	-	0%
Other	28 848,21	35 380,05	23%	45 592,45	29%
Taxation	-	-	0%	-	0%
Surplus / (deficit) for year	7 405,33	5 610,90	-24%	805,98	-86%

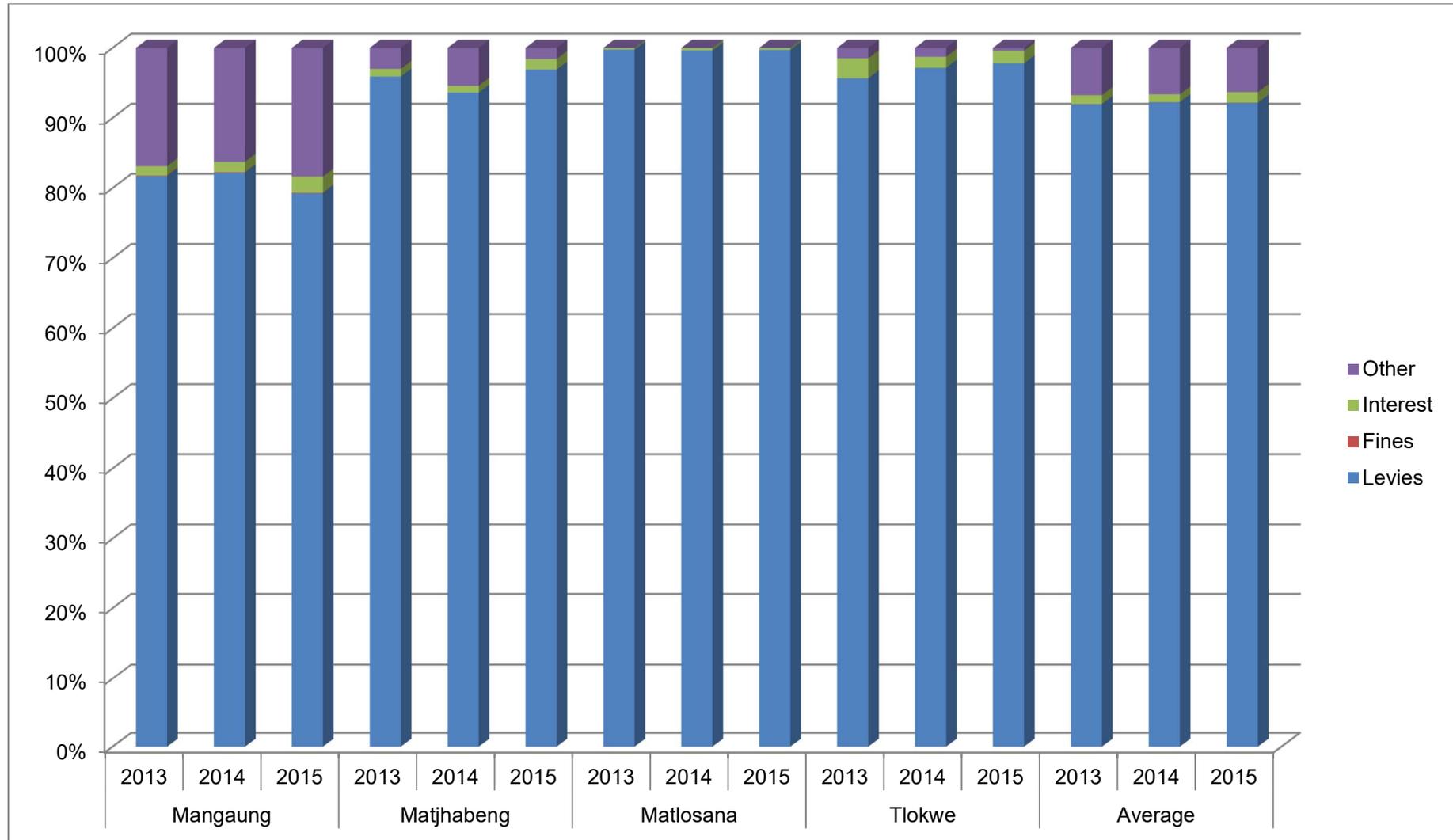
5.4.9.2 Ratio analysis

The following section will analyse the ratios for the total sample, as well as per municipal area, where applicable.

5.4.9.3 Analysis of income

As part of the empirical study, the income of the bodies corporate in the various municipal areas was analysed. Figure 5-12 below is a graphic representation detailing the breakdown of income items.

Figure 5-12: Analysis of amounts making up total average income in graph format



The analysis of the total average income for the total sample indicated that levies were the largest single contributing factor to total average income. Expressed in rand terms, total average annual levies for the total sample amounted to R170,528.63 (91.96% of total income) per scheme in 2013; R185,127.03 (92.24% of total income) in 2014 and R206,111.46 (92.17% of total income) in 2015. For Mangaung, the amounts were higher than the average at R188,267.48 (81.70%) per scheme in 2013; R201,588.04 (82.19%) in 2014 and R212,538.28 (79.26%) in 2015. These results for Mangaung are similar to the results for Mangaung in the study of L. Lubbe (2013, pp. 140–141) where levies accounted for 85% (2008); 82% (2009) and 80% (2010) of total average income. The amounts for Matjhabeng were lower than the amounts for the average sample, at R121,071.82 (95.92%) per scheme in 2013; R129,132.06 (93.62%) in 2014 and R138,935.62 (96.90%) in 2015. For Matlosana, the amounts were significantly higher than the average at R266,169.68 (99.75%) per scheme in 2013; R272,689.61 (99.63%) in 2014 and R327,843.17 (99.72%) in 2015. For Tlokwe, the amounts were lower than the average for the total sample at R132,686.82 (95.66%) per scheme in 2013; R161,615.92 (97.17%) in 2014 and R181,648.27 (97.80%) in 2015. For the total sample, the total average levies increased by 9% from 2013 to 2014 and by 11% from 2014 to 2015. For Mangaung, the total average levies increased by 7% from 2013 to 2014 and by 5% from 2014 to 2015. For Matjhabeng, the total average levies increased by 7% from 2013 to 2014 and by 8% from 2014 to 2015. For Matlosana, the total average levies increased by 2% from 2013 to 2014 and by 20% from 2014 to 2015. For Tlokwe, the total average levies increased by 22% from 2013 to 2014 and by 12% from 2014 to 2015. From the above it is evident that there was a general increasing trend in total average levies from 2013 to 2015 and levies as a percentage of total income for the sample also remained largely unchanged.

Fines were by far the smallest single contributor, almost insignificant, and amounted to 0.03% of total income from 2013 to 2015. For Mangaung, fines amounted to 0.10% (2013), 0.08% (2014) and 0.08% (2015) of total income. For Matjhabeng, Matlosana as well as Tlokwe, fines amounted to 0.00% from 2013 to 2015. In the study of Mangaung by L. Lubbe (2013, p. 141), fines amounted to 0.03% (2008); 0.02% (2009) and 0.01% (2010) of total income, and fines also represented the smallest contributor to total income.

For the total sample, interest received accounted for 1.26% (2013); 1.11% (2014) and 1.49% (2015) of total average income. For Mangaung, interest received accounted for 1.33% (2013); 1.48% (2014) and 2.30% (2015) of total average income. This is more or less in line with the

findings for Mangaung in the previous study by L. Lubbe (2013, p. 141), where interest received accounted for 2% (2008); 4% (2009) and 2% (2010) of total average income. For Matjhabeng, interest received accounted for 1.08% (2013); 0.98% (2014) and 1.52% (2015) of total average income. For Matlosana, interest received accounted for 0.23% (2013); 0.35% (2014) and 0.27% (2015) of total average income. For Tlokwe, interest received accounted for 2.85% (2013); 1.57% (2014) and 1.79% (2015) of total average income.

The practice by managing agents to have all funds deposited in a 'pool' of funds should be taken note of here. As mentioned in sections 6.2.3, 6.2.5, 6.3.8 and 6.4.4, many managing agents do not open a separate bank account for bodies corporate and all levies are to be deposited in the bank account (a 'pool' of funds) of the managing agent. Even though the bodies corporate are supposed to earn interest on surplus funds, they never receive this interest. Levies are often received by the first week of a month and creditors are only paid days or even weeks later. As a result, there are often large amounts of money in the bank account of the managing agent. The bodies corporate therefore never receive any interest on these funds, since the managing agents only pay the surplus funds over at the end of the month or at their own discretion. The analysis of interest above can therefore be misleading, as there are probably a number of instances where interest received is significantly understated.

For the total sample, income items classified as "other income" amounted to 6.74% (2013); 6.62% (2014) and 6.32% (2015) of total income. Expressed in rand terms, other income amounted to R12,504.44 in 2013, increasing by 6% to R13,289.93 in 2014 and again increasing by 6% to R14,133.89 in 2015. For Mangaung, income items classified as "other income" was much higher than the average, amounting to 16.87% (2013); 16.25% (2014) and 18.36% (2015) of total income. Expressed in rand terms, other income amounted to R38,872.38 in 2013, increasing by 3% to R39,856.03 in 2014 and again increasing by 24% to R49,245.27 in 2015. For Matjhabeng, income items classified as "other income" were lower than the average for the total sample, and amounted to 3.00% (2013); 5.40% (2014) and 1.58% (2015) of total income. Expressed in rand terms, other income amounted to R3,787.78 in 2013, increasing by 97% to R7,443.76 in 2014 and decreasing by 70% to R2,266.14 in 2015. For Matlosana, income items classified as "other income" were also much lower than for the total sample average, amounting to 0.02% (2013); 0.02% (2014) and 0.01% (2015) of total income. Expressed in rand terms, other income amounted to R56.47 in 2013 and R56.25

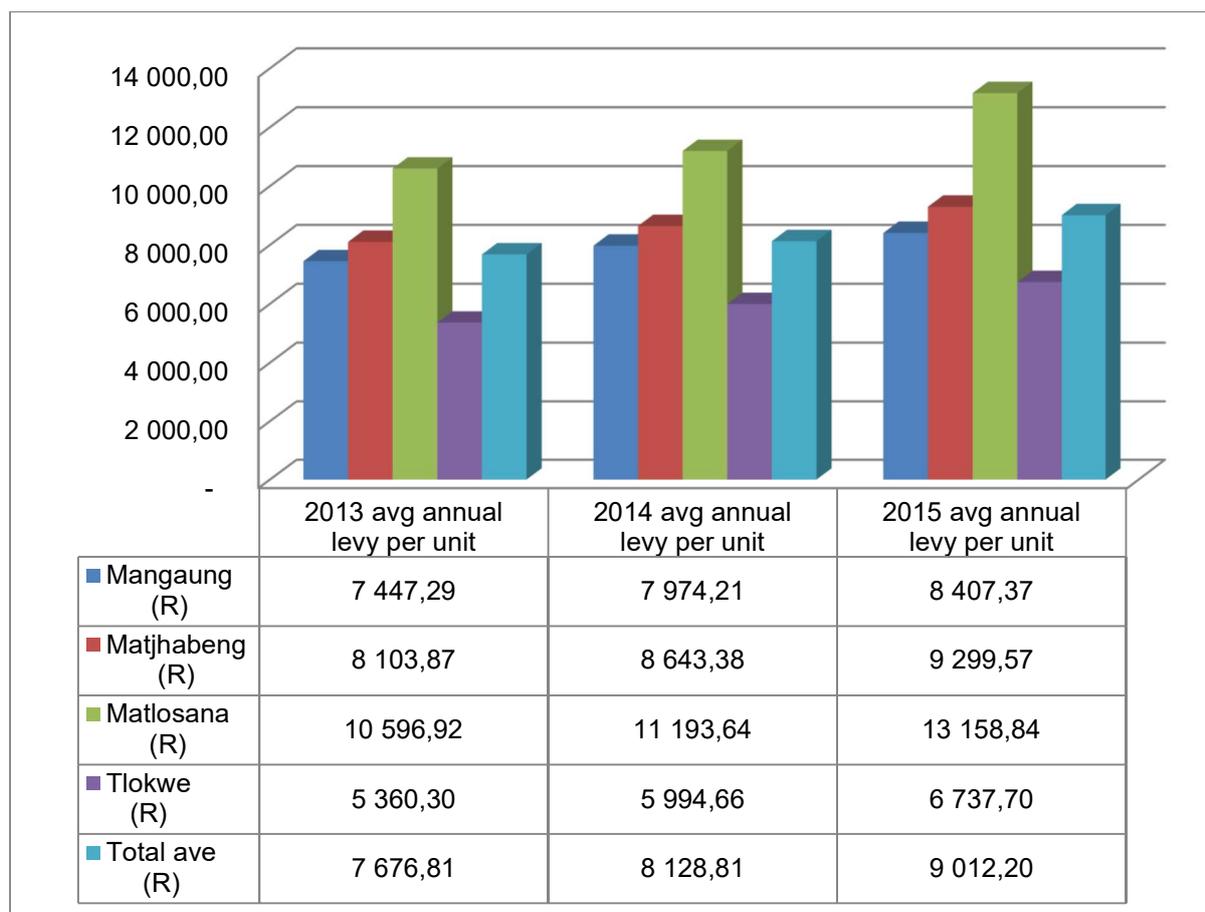
in 2014 and again decreasing by 15% to R48 in 2015. For Tlokwe, income items classified as “other income” were also much lower than the average for the total sample, amounting to 1.49% (2013); 1.26% (2014) and 0.40% (2015) of total income. Expressed in rand terms, other income amounted to R2,065.06 in 2013, increasing by 2% to R2,098.25 in 2014 and decreasing by 64% to R750.40 in 2015.

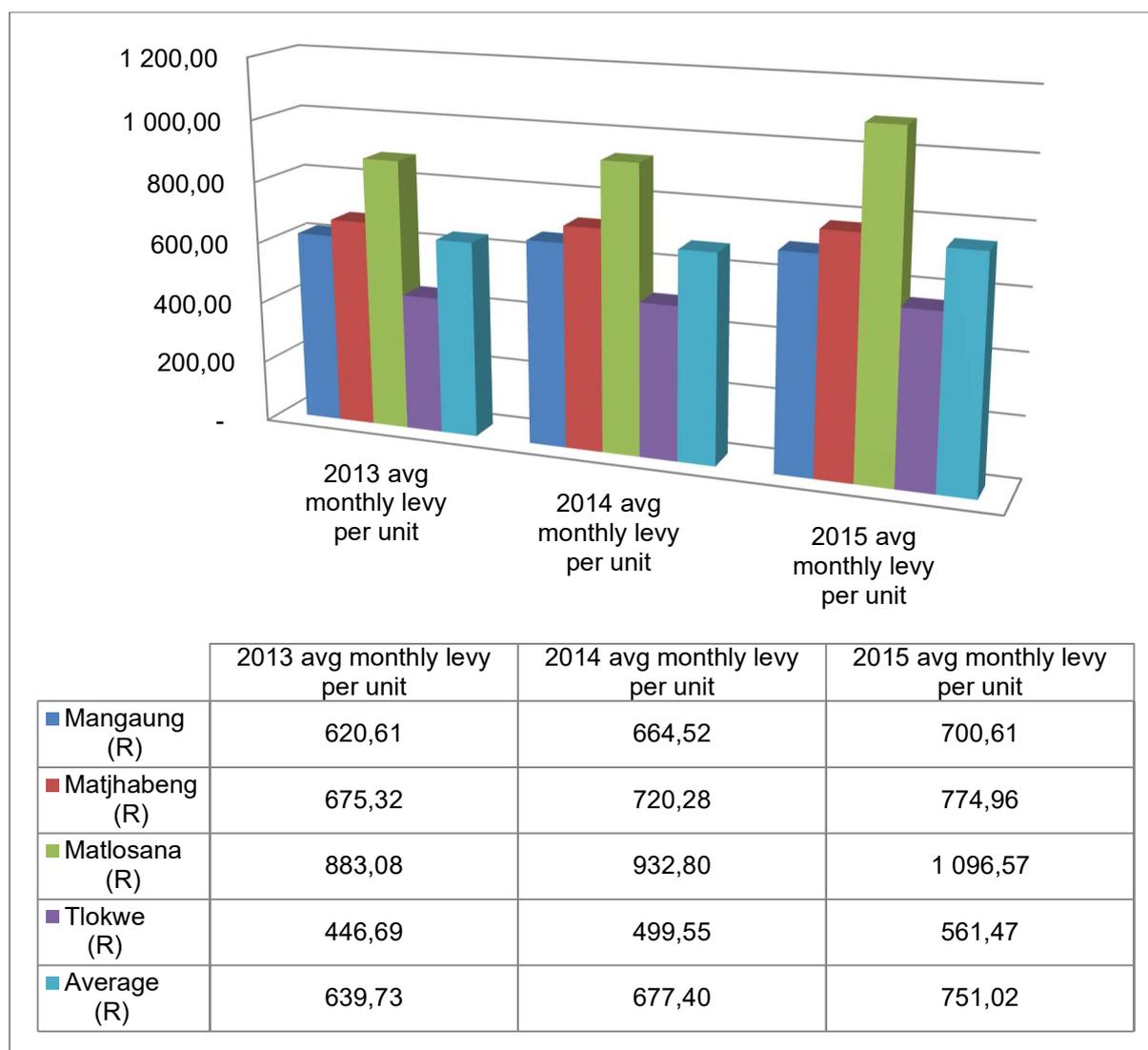
It is causing concern that this ‘unclassified’ type of income expressed as a percentage of total average income shows a general increasing trend, albeit small, while total average levies expressed as a percentage of total average income (as mentioned above) is remaining unchanged.

5.4.9.4 Analysis of levies per unit

Figure 5-13 below is a graphic representation of the levies per unit, presented firstly as an annual amount, and secondly as a monthly amount.

Figure 5-13: Analysis of levies per unit





The average number of units for the total sample was 22 units for 2013 and 23 units for 2014 and 2015. As a result, expressed in rand per unit, the average total levies per year amounted to R7,676.81 (2013), R8,128.81 (2014) and R9,021.20 (2015) per year. This amounted to an average total levy of R639.73 (2013), R677.40 (2014) and R751.02 (2015) per unit per month.

For Mangaung, the average number of units for the total sample was 25 units for 2013 to 2015. Expressed in rand per unit, the average total levies showed an increasing from R7,447.29 (2013) to R7,974.21 (2014) and R8,407.37 (2015). This amounted to R620.61 (2013), R664.52 (2014) and R700.61 (2015) per unit per month, just below the average for the total sample. The average number of units for Matjhabeng was 15 units for 2013 to 2015. Levies

for Matjhabeng showed a general increasing trend and was also higher than the average for the total sample, and expressed in rand per unit, the average total levies per year amounted to R8,103.87 (2013), R8,643.38 (2014) and R9,229.57 (2015). This amounted to R675.32 (2013), R720.28 (2014) and R774.96 (2015) per unit per month.

For Matlosana, the average number of units for the total sample was 25 units for 2013; 24 for 2014 and 25 for 2015. Levies for Matlosana increased year on year and was significantly higher than the average for the total sample. The Matlosana levies were also the highest of the four municipal areas. Expressed in rand per unit, the average total levies per year amounted to R10,596.92 (2013), R11,193.64 (2014) and R13,158.84 (2015). This amounted to R883.08 (2013), R932.80 (2014) and R1,096.57 (2015) per unit per month.

The average number of units for the total sample for Tlokwe was 25 units for 2013 and 27 units for 2014 and 2015. In line with the other municipal areas, the levies for Tlokwe showed an increasing trend over the three years. Levies for Tlokwe were the lowest of all the municipal areas, and also significantly lower than the average for the total sample. Expressed in rand per unit, the average total levies per year amounted to R5,360.30 (2013), R5,994.66 (2014) and R6,737.70 (2015). This amounted to R446.69 (2013), R499.55 (2014) and R561.47 (2015) per unit per month.

5.4.9.5 Analysis of expenses (excluding taxation)

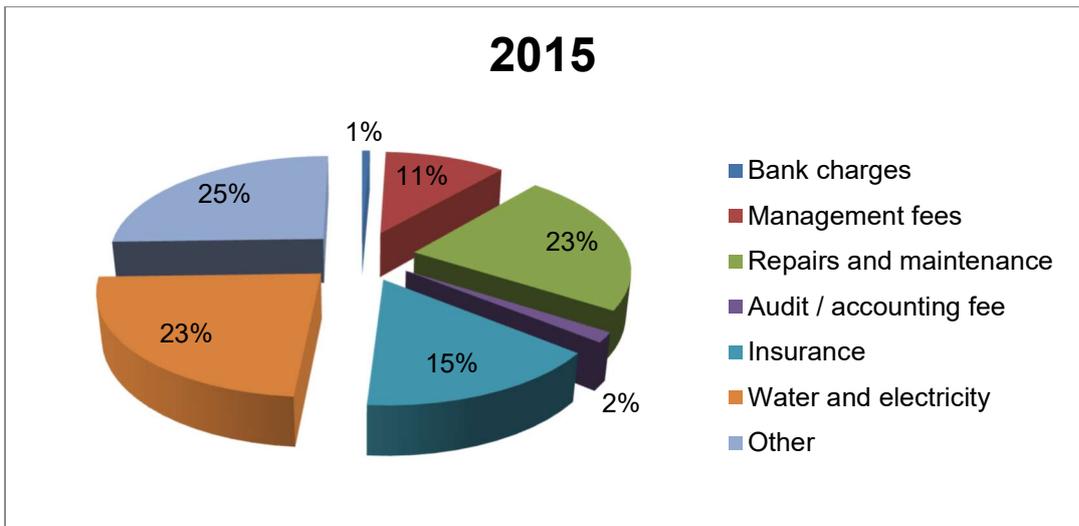
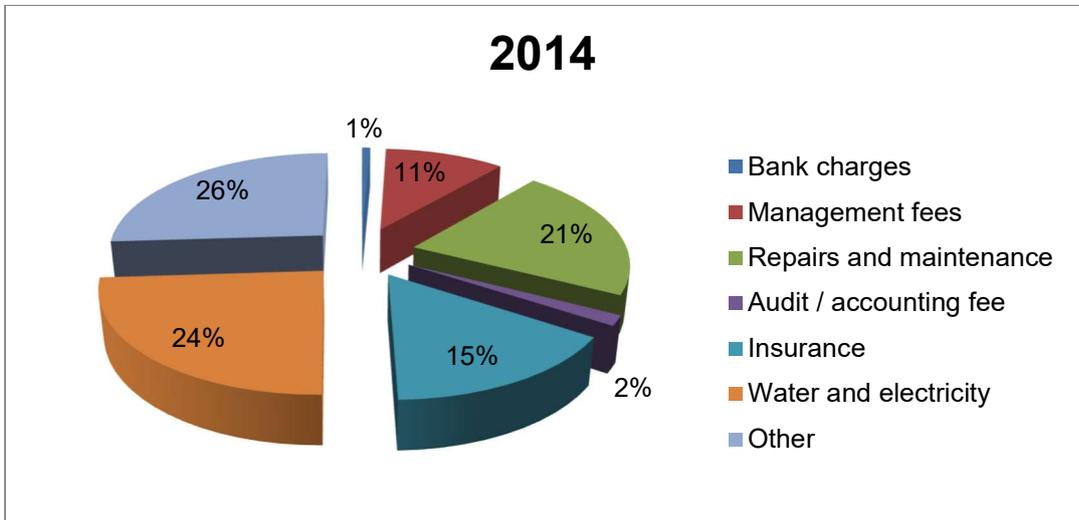
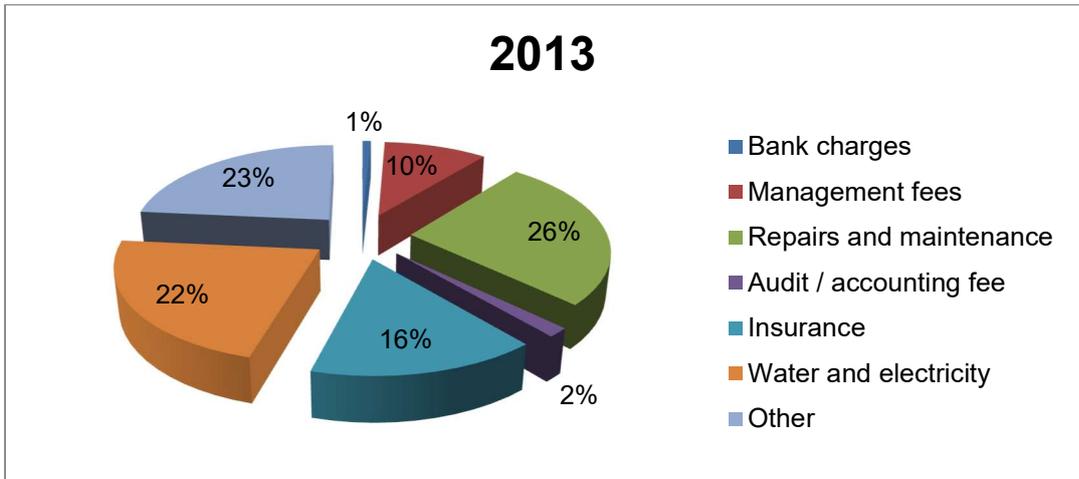
Analysis of the total average expenses of the total sample revealed that the six largest expenses were bank charges, management fees, repairs and maintenance, audit/accounting fees, insurance and water and electricity. These expenses accounted for a total of 76.52% (2013); 74.00% (2014) and 74.53% (2015) of average total expenses.

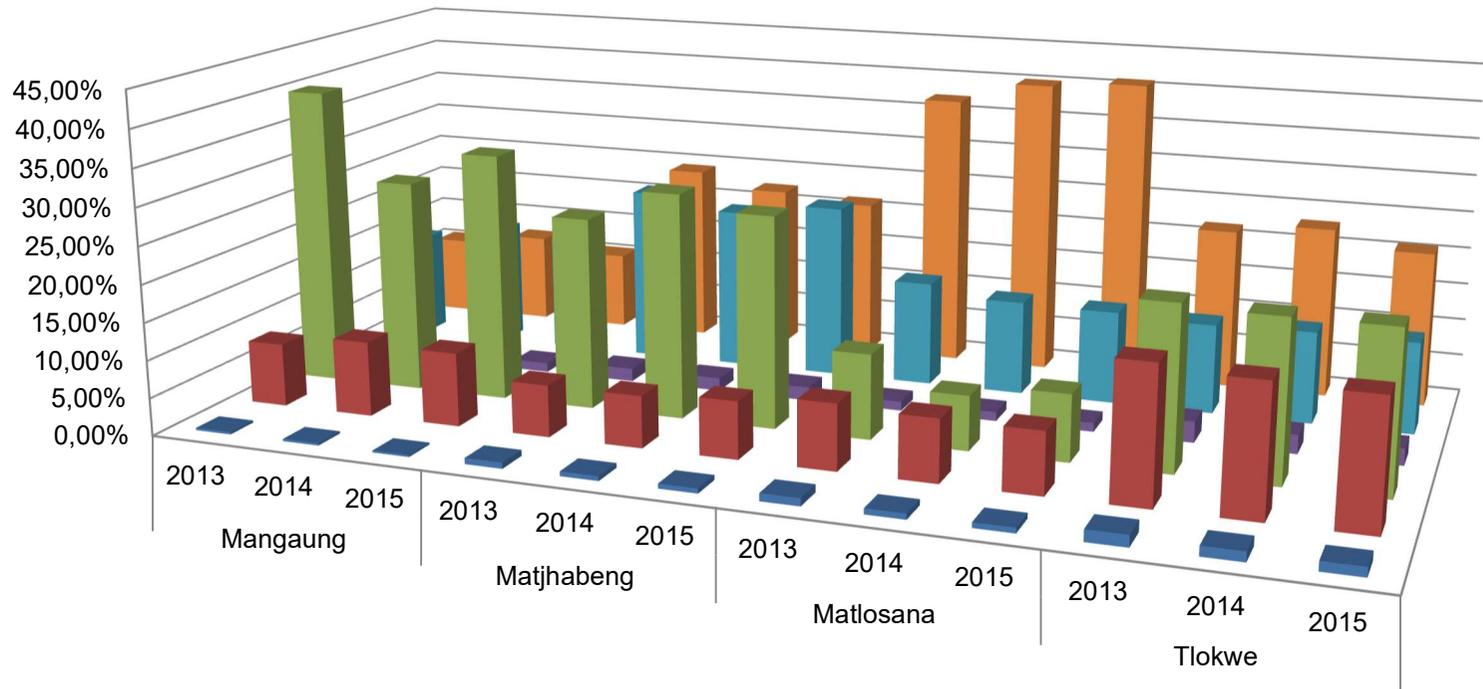
In the previous study by L. Lubbe (2013, pp. 143–145) the six largest expenses were identified as management fees, repairs and maintenance, audit/accounting fees, insurance, water and electricity and rates and taxes, accounting for a total of 76% (2008); 75% (2009) and 70% (2010) of average total expenses. Therefore, in the current study, the six largest expenses

make up a similar percentage of total expenses, but the item rates and taxes is not included, and has been replaced by bank charges. The reason for this change is due to changes in legislation. Before July 2009, municipalities billed rates and taxes directly to the body corporate of the sectional title scheme. The bodies corporate in turn recovered this from the individual owners in the scheme as part of their levies. In July 2009, the Local Government: Municipal Property Rates Act 6 of 2004, introduced a system of individual rating of sectional title units (Hodgon, 2007, p. 18; Pienaar, 2010, p. 139). This legislation required municipalities to individually value and rate sectional title units, and the owners of the individual units are responsible for paying the rates on the units directly to the municipality. This explains why rates and taxes were still included as one of the six largest expenses in the 2008 to 2010 study, but excluded in the current study.

Figure 5-14 below graphically represents the six largest expenses for the current study in two different formats, for the sake of clarity. Firstly, the six largest expenses is indicated in the form of a pie chart as a breakdown of the six largest expenses per year for the total sample. The item “other” was included in the pie chart (to add up all expenses to 100%). However, the item “other expenses” is discussed separately in section 5.4.9.1 and Figure 5-6. Secondly, the six largest expenses is indicated in the form of a column chart and broken down per individual municipal area.

Figure 5-14: The six largest expenses as a percentage of total expenses





	Mangaung			Matjhabeng			Matlosana			Tlokwe		
	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015
■ Bank charges	0,30%	0,29%	0,26%	0,80%	0,62%	0,64%	1,04%	0,77%	0,71%	1,55%	1,30%	1,26%
■ Management fees	8,44%	10,02%	9,83%	6,91%	6,91%	7,62%	8,77%	8,31%	8,23%	17,99%	17,19%	16,88%
■ Repairs and maintenance	40,06%	28,51%	33,24%	25,72%	30,11%	28,27%	11,36%	7,30%	8,92%	21,75%	21,27%	21,27%
■ Audit / accounting fee	1,06%	1,20%	1,22%	1,75%	1,74%	1,81%	1,24%	1,21%	1,18%	2,82%	2,52%	2,29%
■ Insurance	14,14%	16,43%	16,04%	23,67%	21,90%	23,59%	14,11%	12,69%	12,52%	12,03%	12,35%	12,25%
■ Water and electricity	10,71%	12,17%	10,61%	24,31%	22,33%	21,33%	37,15%	40,11%	40,92%	21,67%	23,05%	20,83%

For Mangaung, these six expenses accounted for a total of 74.71% (2013); 68.62% (2014) and 71.20% (2015). For Matjhabeng, these six expenses accounted for a total of 83.17% (2013); 83.61% (2014) and 83.25% (2015). For Matlosana, these six expenses accounted for a total of 73.67% (2013); 70.39% (2014) and 72.48% (2015). For Tlokwe, these six expenses accounted for a total of 77.81% (2013); 77.68% (2014) and 74.78% (2015).

For the total sample, repairs and maintenance were the largest single expense at 26.45% (2013); 21.30% (2014) and 22.82% (2015) of average total expenses. The average annual total repairs and maintenance expense amounted to R48,055.23 (2013), R41,032.20 (2014) and R48,333.89 (2015). Except for the Matlosana municipality, repairs and maintenance expenses were also the largest single expense for the bodies corporate in the individual municipalities. For Mangaung, repairs and maintenance amounted to 40.06% (2013); 28.51% (2014) and 33.24% (2015) of average total expenses. For the current study for Mangaung, repairs and maintenance expressed as a percentage of total expenses is somewhat higher than it was in the previous study by L. Lubbe (2013, p. 143), at 32% (2008); 31% (2009) and 30% (2010) of average total expenses. For Matjhabeng, repairs and maintenance amounted to 25.72% (2013); 30.11% (2014) and 28.27% (2015) of average total expenses. For Matlosana, repairs and maintenance amounted to 11.36% (2013); 7.30% (2014) and 8.92% (2015) of average total expenses. For Tlokwe, repairs and maintenance amounted to 21.75% (2013) and 21.27% (2014 and 2015) of average total expenses.

Water and electricity and insurance were the second and third largest expenses for the schemes in the total sample. For the financial statements analysed, the expenses for water and electricity were shown as a total amount and not separately. Water and electricity amounted to 22.27% (R40,455.45 for 2013); 24.30% (R46,815.74 for 2014) and 23.29% (R49,330.81 for 2015), and insurance amounted to 15.48% (R28,133.59 for 2013); 15.52% (R29,889.53 for 2014) and 15.51% (R32,848.94 for 2015) of average total expenses. For Mangaung, water and electricity amounted to 10.71% (2013); 12.17% (2014) and 10.61% (2015), and insurance amounted to 14.14% (2013); 16.43% (2014) and 16.04% (2015) of average total expenses. For Matjhabeng, water and electricity amounted to 24.31% (2013); 22.33% (2014) and 21.33% (2015), and insurance amounted to 23.67% (2013); 21.90% (2014) and 23.59% (2015) of average total expenses. For Matlosana, water and electricity amounted to 37.15% (2013); 40.11% (2014) and 40.92% (2015), and insurance amounted to 14.11% (2013); 12.69% (2014) and 12.52% (2015) of average total expenses. For Tlokwe,

water and electricity amounted to 21.67% (2013); 23.05% (2014) and 20.83% (2015), and insurance amounted to 12.03% (2013); 12.35% (2014) and 12.25% (2015) of average total expenses.

For the financial statements analysed for Mangaung, the expenses for water and electricity showed a decline from the figures of 13% (2009); 17% (2009) and 14% (2010), reported by L. Lubbe (2013, pp. 143–144). Further enquiry from the managing agents of the schemes revealed that the reason for the decline in the average water and electricity expense from 2009 to 2015 was that a number of schemes in the sample had individual prepaid electricity meters installed. This resulted in owners starting to pay for their own electricity and not being invoiced for the electricity of their units by the body corporate. The only remaining amount of electricity on the financial statements of such a body corporate would be the amount for electricity usage of the common property, such as electrified fencing, electronic gates, a lawn mower of the scheme, and the pump of a communal swimming pool.

Management fees for the total sample accounted for 9.96% (2013); 10.56% (2014) and 10.66% (2015) of average total expenses. The amounts for average annual total management fees were R18,090.72 (2013), R20,342.91 (2014) and R22,584.28 (2015). Management fees for Mangaung accounted for 8.44% (2013); 10.02% (2014) and 9.83% (2015) of average total expenses. Management fees for Matjhabeng accounted for 6.91% (2013 and 2014) and 7.62% (2015) of average total expenses. For Matlosana, management fees accounted for 8.77% (2013); 8.31% (2014) and 8.23% (2015) of average total expenses. Management fees expressed as a percentage of total expenses for Tlokwe was much higher than for the other municipal areas. It accounted for 17.99% (2013); 17.19% (2014) and 16.88% (2015) of average total expenses.

For the total sample, bank charges was the smallest of the six expenses, followed by audit/accounting fees. Audit/accounting fees were 1.55% (2013); 1.60% (2014) and 1.57% (2015) of average total expenses and bank charges amounted to 0.81% (2013); 0.71% (2014) and 0.68% (2015). For Mangaung, audit fees amounted to 1.06% (2013); 1.20% (2014) and 1.22% (2015) and bank charges to 0.30% (2013); 0.29% (2014) and 0.26% (2015) of average total expenses. For Matjhabeng, audit fees amounted to 1.75% (2013); 1.74% (2014) and 1.81% (2015) and bank charges to 0.80% (2013); 0.62% (2014) and 0.64% (2015) of average

total expenses. For Matlosana, audit fees amounted to 1.24% (2013); 1.21% (2014) and 1.18% (2015) and bank charges to 1.04% (2013); 0.77% (2014) and 0.71% (2015) of average total expenses. For Tlokwe, audit fees amounted to 2.82% (2013); 2.52% (2014) and 2.29% (2015) and bank charges to 1.55% (2013); 1.30% (2014) and 1.26% (2015) of average total expenses. A detailed analysis of audit fees was done in section 4.5.3 of Chapter 4.

5.4.9.6 Analysis of taxation

The Income Tax Act provides that all levies received and accrued to a body corporate, as well as the aggregate of any other receipts and accruals that do not exceed R50 000 shall be exempt from normal tax subject to certain provisos. SARS Interpretation Note 64 provides the interpretation of this exemption. In terms thereof, a body corporate is not required to apply to SARS' Tax Exemption Unit to qualify for this exemption. Instead, a body corporate must register for Income Tax and the exemption of their levies and other qualifying receipts shall be applied on assessment (SARS, 2015a, p. 9). Bodies corporate are also excluded from the payment of provisional tax and are not required to submit provisional tax returns (SARS, 2015a, p. 15). Accordingly, a body corporate must complete and submit annual tax returns even if the scheme is unlikely to have an income tax liability for a particular year of assessment.

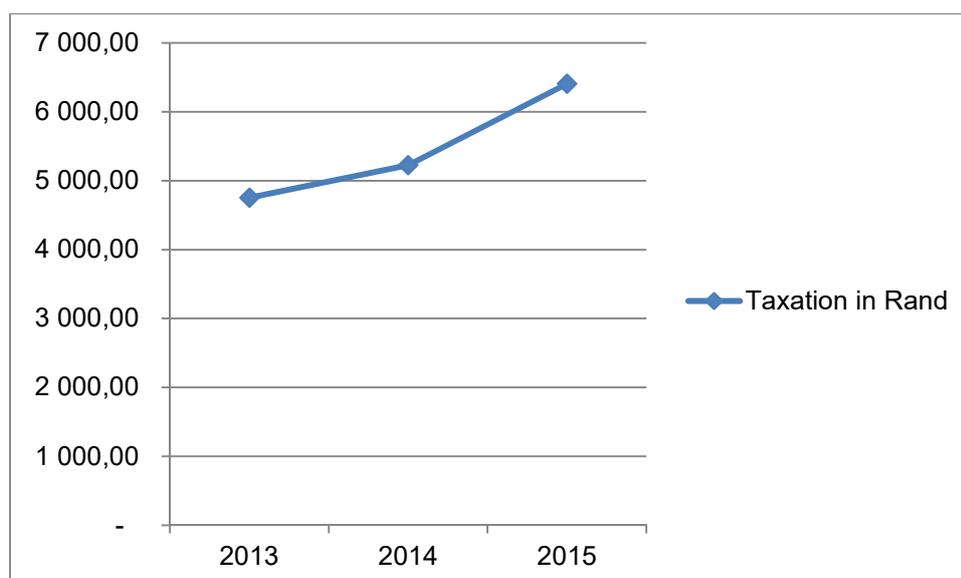
Before the above-mentioned tax relief was promulgated in 2012, taxable income earned by bodies corporate was subject to taxation at prevailing company rates. This included inter alia interest earned on investments and rental income (STBB, 2014, p. 1). In the past, the healthy cash reserves of many bodies corporate were being eroded by the taxation that was payable on the interest earned. Now that the first R50 000 of such income is exempt from taxation, there is a welcome relief for all schemes (Intersect Sectional Title Services, 2016, p. 1). Interest earned on investments is not the only income that bodies corporate could earn. The schemes may also derive income from sources such as rentals from car ports, store rooms, parking, etc., and this too will be subject to the exemption.

Regarding capital gains tax, SARS (2016, p. 1) clarifies that all capital gains and capital losses made on the disposal of assets must be taken into account in determining a taxable capital

gain or assessed capital loss unless excluded by specific provisions. Capital gains tax (CGT) forms part of the income tax system and a taxable capital gain must be included in taxable income. A body corporate has an inclusion rate of 66,6%. This means that 66,6% of a capital gain will be included in the taxable income of a body corporate. However, in practice it would be unusual for a body corporate to derive a capital gain during the normal course of its operations. Since the common property in a development scheme is owned by the sectional title holders jointly in undivided shares and not by the body corporate, the sale of a portion of the common property will not have CGT consequences for the body corporate; rather the unit holders must account for any capital gain or capital loss.

SAICA (2016, p. 1) explains that Section 12(f) of the VAT Act provides that the supplies that a body corporate makes to its members, where the cost of supplying such services is met out of the members' contributions, are exempt supplies. A body corporate may however apply to SARS that its supplies are regarded as taxable supplies. This may be especially helpful in cases such as commercial or industrial properties. (See also Riddin (2014, p. 1) PwC (2010, p. 1).)

For the total sample selected, the average amount of taxation expressed in rand terms was R1,335.98 (2013); R1,405.89 (2014) and R1,732.63 (2015). Total average taxation amounted to 0.74% (2013), 0.73% (2014) and 0.82% (2015) of total average income. For Mangaung, the average amount of taxation expressed in rand terms was R4,756.09 (2013), R5,229.72 (2014) and R6,410.74 (2015). Total average taxation amounted to 1.99% (2013); 2.37% (2014) and 2.63% (2015) of total average income, comparable to the results in the previous study by L. Lubbe (2013, p. 147), where average taxation amounted to 1.64% (2008); 1.61% (2009) and 1.55% (2010) of total average income. For Matjhabeng, Matlosana and Tlokwe, there was no taxation on the financial statement. Figure 5-15 below graphically represents the above information.

Figure 5-15: Analysis of taxation in graph format – Mangaung only

5.4.9.7 Analysis of surplus/deficit

For the total sample selected, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand showed an increasing trend over three years at R3,754.38 (2013), R8,064.84 (2014) and R11,799.16 (2015). Expressed as a percentage of total income the surpluses amounted to 2.02% (2013); 4.02% (2014) and 5.28% (2015) of average total income. Further analysis of the sample indicated that, for 2013, 64 of the 178 bodies corporate in the sample (35.96%) showed a deficit and the remaining 64.04% showed a surplus. For 2014, 74 of the 186 bodies corporate (39.78%) showed a deficit and the other 60.22% showed a surplus. In comparison, 40% (74 of the 185) bodies corporate showed a deficit for 2015, and the remaining 60% showed a surplus.

For Mangaung, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand was a deficit of R9,024.58 (2013), a surplus of R24,848.97 (2014) and another surplus of R24,309.29 (2015). Expressed as a percentage of total income, the deficit amounted to -3.92% (2013), and the surpluses to 10.13% (2014) and 9.06% (2015) of average total income. Further analysis of the sample indicated that, for 2013, 18 of the 50 (36%) bodies corporate in Mangaung showed a deficit and 64% showed a surplus. For 2014,

19 of the 50 bodies (38%) corporate showed a deficit and 62% showed a surplus, whereas for 2015, 16 of the 50 (32%) bodies corporate showed a deficit, and the remaining 68% showed a surplus

For Matjhabeng, the average surplus amount (total income less total expenses) for the total sample expressed in rand was a surplus of R8,862.94 (2013), a surplus of R1,523.74 (2014) and another surplus of R4,952.43 (2015). Expressed as a percentage of total income the surpluses amounted to 7.02% (2013); 1.10% (2014) and 3.45% (2015) of average total income. Further analysis of the sample indicated that the number of bodies corporate in Matjhabeng that showed a deficit increased from 2013 to 2015. For 2013, 14 of the 50 (28%) bodies corporate in Matjhabeng showed a deficit and 72% showed a surplus. For 2014, 17 of the 50 bodies (34%) corporate showed a deficit and 66% showed a surplus, whereas for 2015, 19 of the 50 (38%) bodies corporate showed a deficit, and the remaining 62% showed a surplus.

For Matlosana, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand was a surplus of R10,309.62 (2013), a deficit of R2,753.33 (2014) and a surplus of R19,413.11 (2015). Expressed as a percentage of total income the surplus amounted to 3.86% (2013), the deficit to -1.01% (2014) and the surplus to 5.90% (2015) of average total income. Further analysis of the sample indicated that Matlosana had, on average, the highest number of bodies corporate showing a deficit over the three years of all the municipalities in the sample. For 2013, 19 of the 34 (56%) bodies corporate in Mangaung showed a deficit and 44% showed a surplus. For 2014, 2 of the 36 bodies (61%) corporate showed a deficit and 39% showed a surplus, whereas for 2015, 16 of the 35 (46%) bodies corporate showed a deficit, and the remaining 54% showed a surplus.

For Tlokwe, the average surplus amount (total income less total expenses) for the total sample expressed in rand showed a declining trend at a surplus of R7,405.33 (2013), a surplus of R5,610.90 (2014) and another surplus of R805.98 (2015). Expressed as a percentage of total income the surpluses amounted to 5.34% (2013); 3.37% (2014) and 0.43% (2015) of average total income. Further analysis of the sample indicated that the number of bodies corporate in Tlokwe that showed a deficit, increased from 2013 to 2015. For 2013, 13 of the 44 (30%) bodies corporate in Tlokwe showed a deficit and 70% showed a surplus. For 2014, 16 of the

50 bodies (32%) corporate showed a deficit and 68% showed a surplus, whereas for 2015, 23 of the 50 (46%) bodies corporate showed a deficit, and the remaining 54% showed a surplus. Figures 5-16 and 5-17 below illustrate the above information.

Figure 5-16: Analysis of surplus/deficit as percentage of total income in graph format

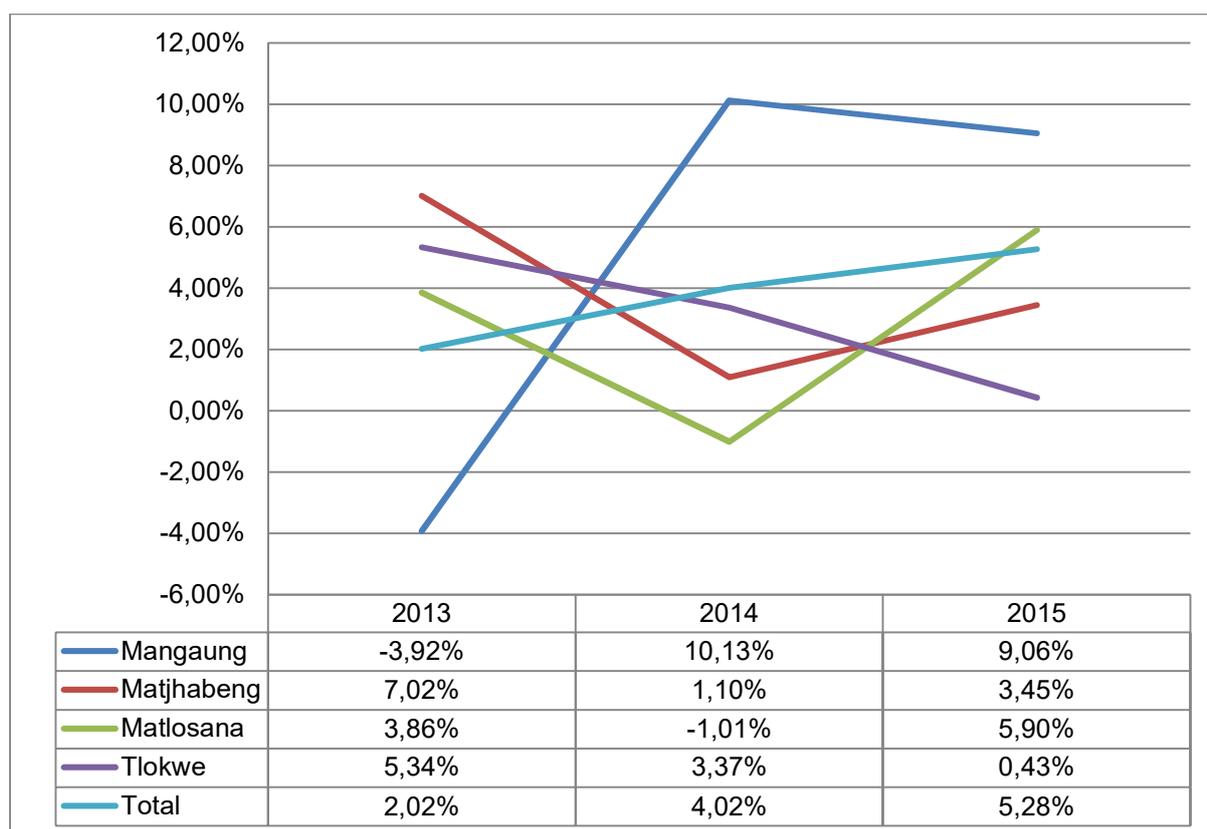
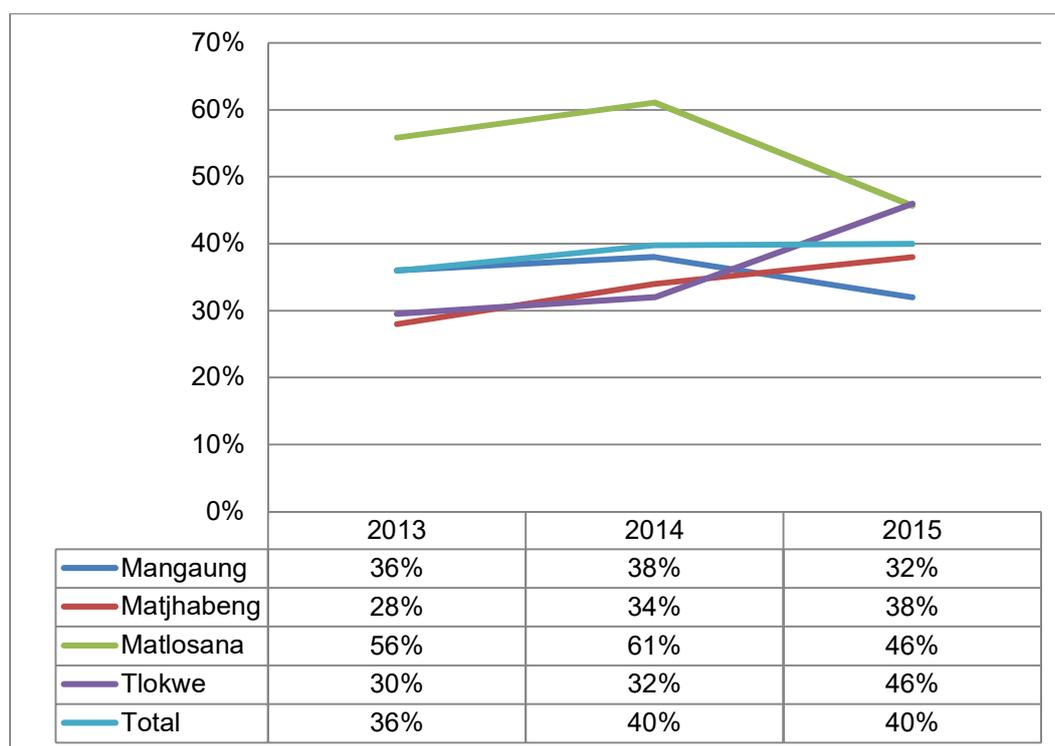
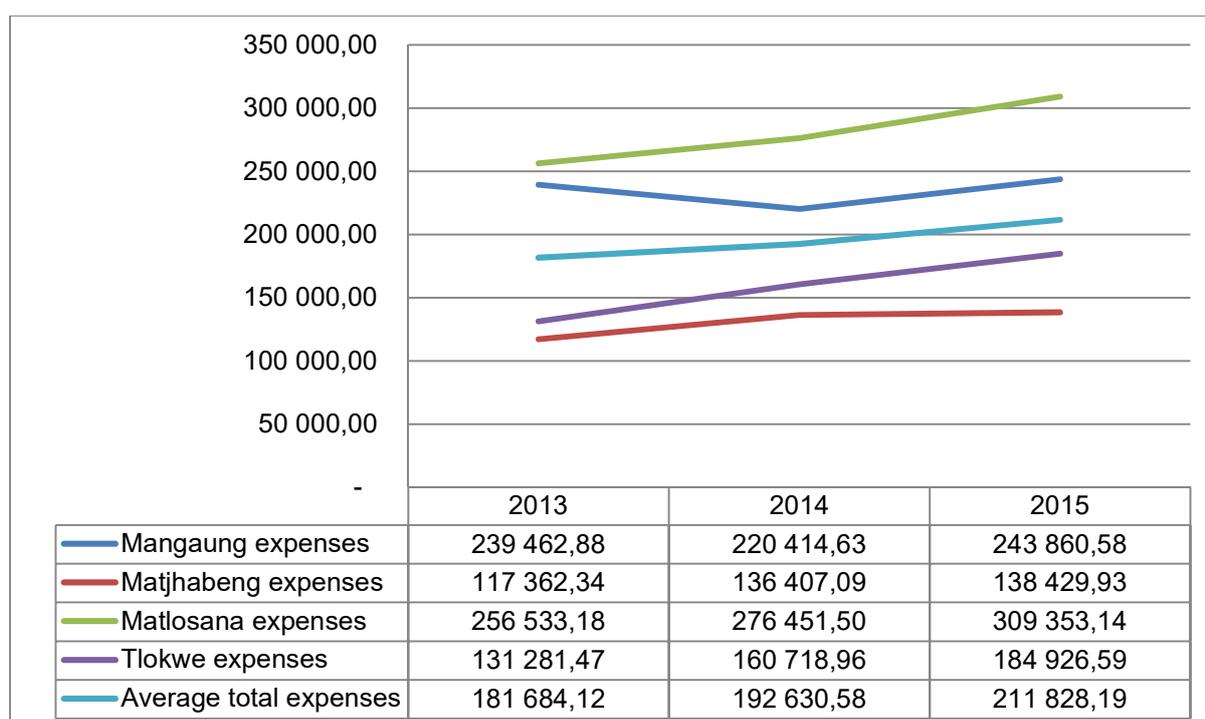
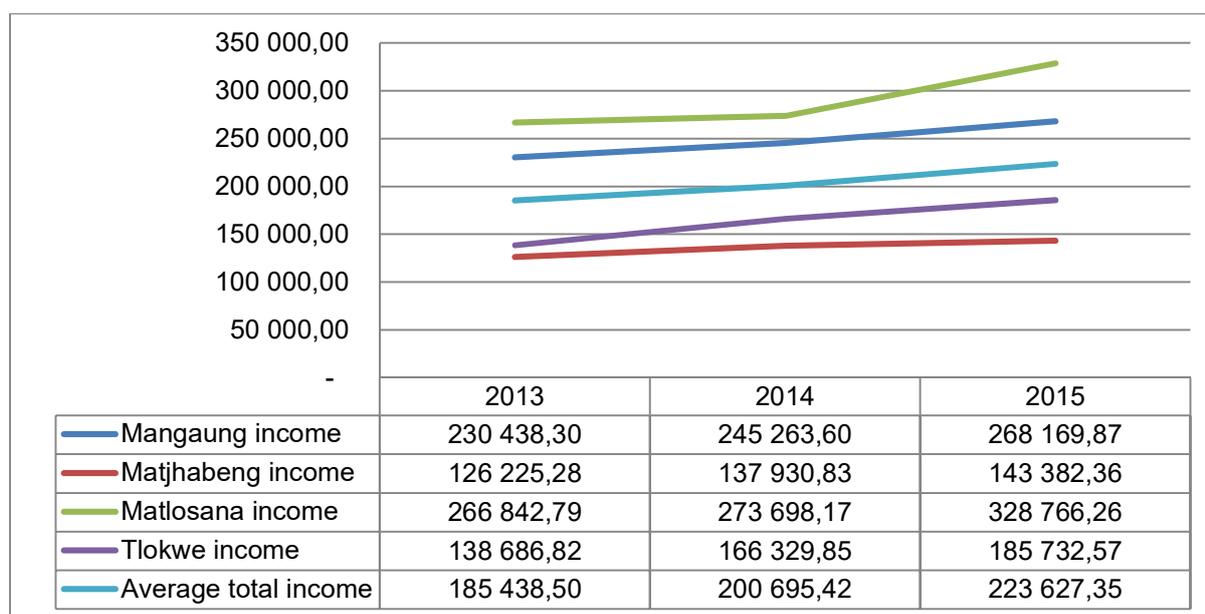


Figure 5-17: Analysis of number of bodies corporate showing a deficit



5.4.9.8 Analysis of growth in financial statement items

For the total sample selected as well as for the bodies corporate from the four individual municipalities, all the financial figures showed an increasing trend in income and expenses from year to year. Figure 5-18 below illustrates the growth in graph format.

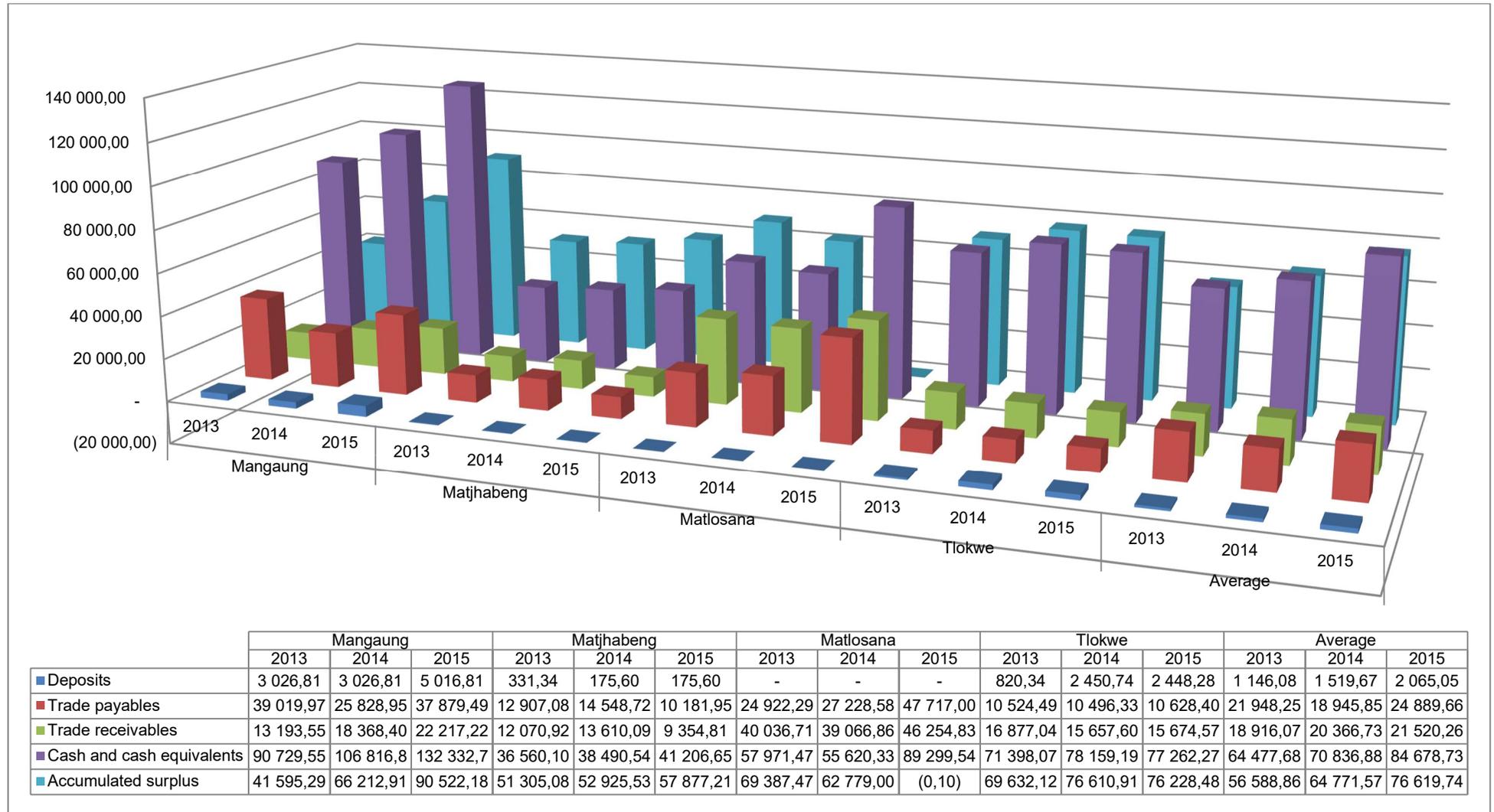
Figure 5-18: Growth of items on the statement of comprehensive income

From 2013 to 2014, there was a 6% increase in total average expenses and from 2014 to 2015, there was a 10% increase in total average expenses. From 2013 to 2014, there was an 8% increase in average total income and from 2014 to 2015, there was an 11% increase in average total income.

For Mangaung, from 2013 to 2014, there was a 9% decrease in total average expenses and from 2014 to 2015, there was an 11% increase in total average expenses. From 2013 to 2014, there was a 6% increase in average total income and from 2014 to 2015, there was a 9% increase in average total income. For Matjhabeng, the financial figures showed an increasing trend from year to year. From 2013 to 2014, there was a 14% increase in total average expenses and from 2014 to 2015, there was a 1% increase in total average expenses. From 2013 to 2014, there was an 8% increase in average total income and from 2014 to 2015, there was a 4% increase in average total income. For Matlosana, the financial figures also showed an increasing trend from year to year. From 2013 to 2014, there was a 7% increase in total average expenses and from 2014 to 2015, there was a 12% increase in total average expenses. From 2013 to 2014, there was a 3% increase in average total income and from 2014 to 2015, there was a 20% increase in average total income. For Tlokwe, the financial figures showed the highest overall increasing trend from year to year. From 2013 to 2014, there was an 18% increase in total average expenses and from 2014 to 2015, there was a 15% increase in total average expenses. From 2013 to 2014, there was a 17% increase in average total income and from 2014 to 2015, there was a 12% increase in average total income.

As part of the analysis of growth, a number of items on the statements of financial position were also analysed. Figure 5-19 below graphically represents the above information.

Figure 5-19: Growth of items on the statement of financial position



For the total sample, deposits, trade receivables, cash and cash equivalents as well as accumulated surplus showed an increase from 2013 to 2014 as well as from 2014 to 2015. Trade payables showed a decrease from 2013 to 2014 and an increase from 2014 to 2015. Total average deposit showed an increase of 33% from 2013 to 2014 and an increase of 36% from 2014 to 2015. Total average trade payables decreased by 15% from 2013 to 2014 and increased by 31% from 2014 to 2015. Total average trade receivables showed an 8% increase from 2013 to 2014 and a 6% increase from 2014 to 2015. Total average cash and cash equivalents increased by 10% from 2013 to 2014 and with 20% from 2014 to 2015, while accumulated surplus increased by 14% from 2013 to 2014 and 18% from 2014 to 2015.

For Mangaung, total average deposits remained unchanged from 2013 to 2014 and increased by 66% from 2014 to 2015. Trade payables decreased by 34% from 2013 to 2014 and increased by 47% from 2014 to 2015. Trade receivables showed an increase of 39% from 2013 to 2014 and 21% from 2014 to 2015. Cash and cash equivalents increased by 18% from 2013 to 2014 and 24% from 2014 to 2015, and accumulated surplus increased by 59% from 2013 to 2014 and 37% from 2014 to 2015.

For Matjhabeng, total average deposits decreased by 47% from 2013 to 2014 and remained unchanged from 2014 to 2015. Trade payables increased by 13% from 2013 to 2014 and decreased by 30% from 2014 to 2015. Trade receivables showed an increase of 13% from 2013 to 2014 and a decrease of 31% from 2014 to 2015. Cash and cash equivalents increased by 5% from 2013 to 2014 and by 7% from 2014 to 2015, and accumulated surplus increased by 3% from 2013 to 2014 and 9% from 2014 to 2015.

For Matlosana, total average deposits remained unchanged from 2013 to 2015. Trade payables increased by 9% from 2013 to 2014 and increased by 75% from 2014 to 2015. Trade receivables showed a decrease of 2% from 2013 to 2014 and an increase of 18% from 2014 to 2015. Cash and cash equivalents decreased by 4% from 2013 to 2014 and increased by 61% from 2014 to 2015, while accumulated surplus decreased by 10% from 2013 to 2014 and increased by 100% from 2014 to 2015.

For Tlokwe, total average deposits increased by 199% from 2013 to 2014 and remained unchanged from 2014 to 2015. Trade payables remained largely unchanged from 2013 to 2014 and increased by 1% from 2014 to 2015. Trade receivables showed a decrease of 37% from 2013 to 2014, but remained unchanged from 2014 to 2015. Cash and cash equivalents increased by 9% from 2013 to 2014 and decreased by 1% from 2014 to 2015. Accumulated surplus increased by 10% from 2013 to 2014 and remained unchanged from 2014 to 2015.

The reason for the varying trends in the statements of financial position could not be established with the available financial data. It is worth noting that further enquiry from the managing agents in Mangaung and Matlosana revealed that the increase in average debtors and payables from 2014 to 2015 were attributed to many debtors and bodies corporate experiencing financial difficulties due to the economic downturn in the country.

5.4.9.9 Analysis of financial strength

Literature sources on financial statement analysis and interpretation and on financial management refer to a number of standard ratios used to calculate financial strength. However, many of these ratio formulas use line items such as sales, purchases, inventory, shareholders' interest or share capital. Due to the nature of sectional title schemes, many of these concepts do not apply to the industry and some of these published general ratios cannot be applied to sectional title schemes their standard format. Furthermore, several variations can be calculated on various ratios and different authors use varying terms to describe the same item (Firer, Ross, Westerfield, & Jordan, 2012, p. 69; Koen & Oberholster, 1999, p. 53). As a result, the titles of ratios may differ from source to source. Nevertheless, one of the main concerns for any type of entity is the ability to honour obligations as they become due and to obtain funds needed timeously (Firer et al., 2012, p. 49; Graham & Winfield, 2010, pp. 53–57).

The analysis and interpretation of financial ratios is not the main aim of this study; the calculation thereof is simply done in order to identify a set of basic industry benchmarks. As a result, only a few ratios were selected for use, and some were extensively modified to be more suitable to sectional title schemes. The following financial strength ratios were calculated: accumulated surplus to total assets, total assets to total liabilities, current assets to current

liabilities, receivables to levies, payables to expenses, receivables to total assets, cash to total assets and bad debts to receivables.

Instead of using the traditional total shareholders' interest to total assets (Service, 2015, pp. 1180–1181), the ratio of accumulated surplus to assets was calculated. The ratio shows to what extent the assets of the body corporate are financed through accumulated funds. The only known available benchmark is the ratios as identified by L. Lubbe (2013, p. 151). The ratios for the average of the total sample in the study by Lubbe were 0.67:1 (2008); 0.67:1 (2009) and 0.7:1 (2010). The ratios for the average accumulated surplus to assets of the total sample in the current study showed a slight increasing trend and were generally in line with the previous study's ratios, at 0.63:1 (2013); 0.67:1 (2014) and 0.67:1 (2015). The ratios for Mangaung showed an increasing trend, but were lower than that of the total sample, at 0.39:1 (2013); 0.52:1 (2014) and 0.57:1 (2015). The ratios for Matjhabeng were higher than the ratios for the total sample at 0.80:1 (2013); 0.78:1 (2014) and 0.85:1 (2015). The ratios for Matlosana were more or less in line with the average, but showed a decreasing trend at 0.70:1 (2013); 0.65:1 (2014) and 0.61:1 (2015). The ratios for Tlokwe were higher than the average ratios, and the ratios remain largely unchanged at 0.78:1 (2013); 0.79:1 (2014) and 0.78:1 (2015).

The solvency ratio (Graham & Winfield, 2010, pp. 70–71), calculated as total assets to total liabilities, shows to what extent liabilities are covered by assets. It is also an indication of whether an entity will be able to honour obligations in future. The only known available benchmark sectional title industry benchmark is the ratios as identified by L. Lubbe (2013, p. 152). Using the average total assets and average total liabilities, the average ratios for the total sample amounted to 3.09 (2008); 3.36 (2009) and 3.07 (2010). Using the average total assets and average total liabilities, the average ratios for the total sample in the current study was slightly lower than the previous ratios identified, and amounted to 2.72 (2013), 2.99 (2014) and 3.04 (2015). This means that the total liabilities are, on average, covered more than three times by the total assets of the bodies corporate. The solvency ratios for the Mangaung sample was lower than the ratios for the total sample at 1.62 (2013), 2.06 (2014) and 2.31 (2015). For Matjhabeng, the average ratios were significantly higher than those of the total sample, at 4.91 (2013), 4.61 (2014) and 6.61 (2015). For Matlosana, the average ratios showed a decreasing trend at 3.33 (2013), 2.89 (2014) and 2.54 (2015). For Tlokwe, the average ratios were higher than those of the total sample, and amounted to 4.56 (2013), 4.82 (2014) and 4.51 (2015).

Regarding liquidity, the ratio of current assets to current liabilities is an indication of the ability of an enterprise to repay short-term debts as they become due (Young & Cohen, 2013, pp. 165–166). The ratio is usually called the current ratio and refers to the availability of cash in the near future after taking into account the financial commitments for a specific period. Generally, a current ratio of 2:1 is considered good (Graham & Winfield, 2010, pp. 75–76; Kew & Watson, 2012, pp. 568–569). The only known available benchmark for the sectional title industry is the ratios as identified by L. Lubbe (2013, p. 152). The average current ratio for the total sample was 2.85 (2008), 3.08 (2009) and 2.82 (2010). The average current ratios for the current total sample were higher than the previously identified ratios at 3.27 (2013), 3.98 (2014) and 3.41 (2015). Over the three years, the current liabilities were covered more than three times by the current assets and are well above the generally accepted norm. The average current ratio for Mangaung was 2.58 (2013), 4.52 (2014) and 3.29 (2015). The average current ratio for Matjhabeng was 3.73 (2013), 3.56 (2014) and 4.92 (2015). The average current ratio for Matlosana was lower than the average for the total sample, and showed a declining trend at 3.32 (2013), 2.88 (2014) and 2.53 (2015). The average current ratio for Tlokwe was significantly higher than the averages for the total sample at 4.56 (2013), 4.82 (2014) and 4.51 (2015).

Traditional working capital ratios include the inventory line item as part of the ratio analysis - more specifically, to calculate ratios such as the acid test ratio (Graham & Winfield, 2010, pp. 75–76; Young & Cohen, 2013, pp. 166–167). Bodies corporate, however, do not buy or sell inventory. As a result, not all of the traditional working capital ratios are relevant, and the traditional working capital ratios have to be adjusted in order to be applicable to the sectional title industry.

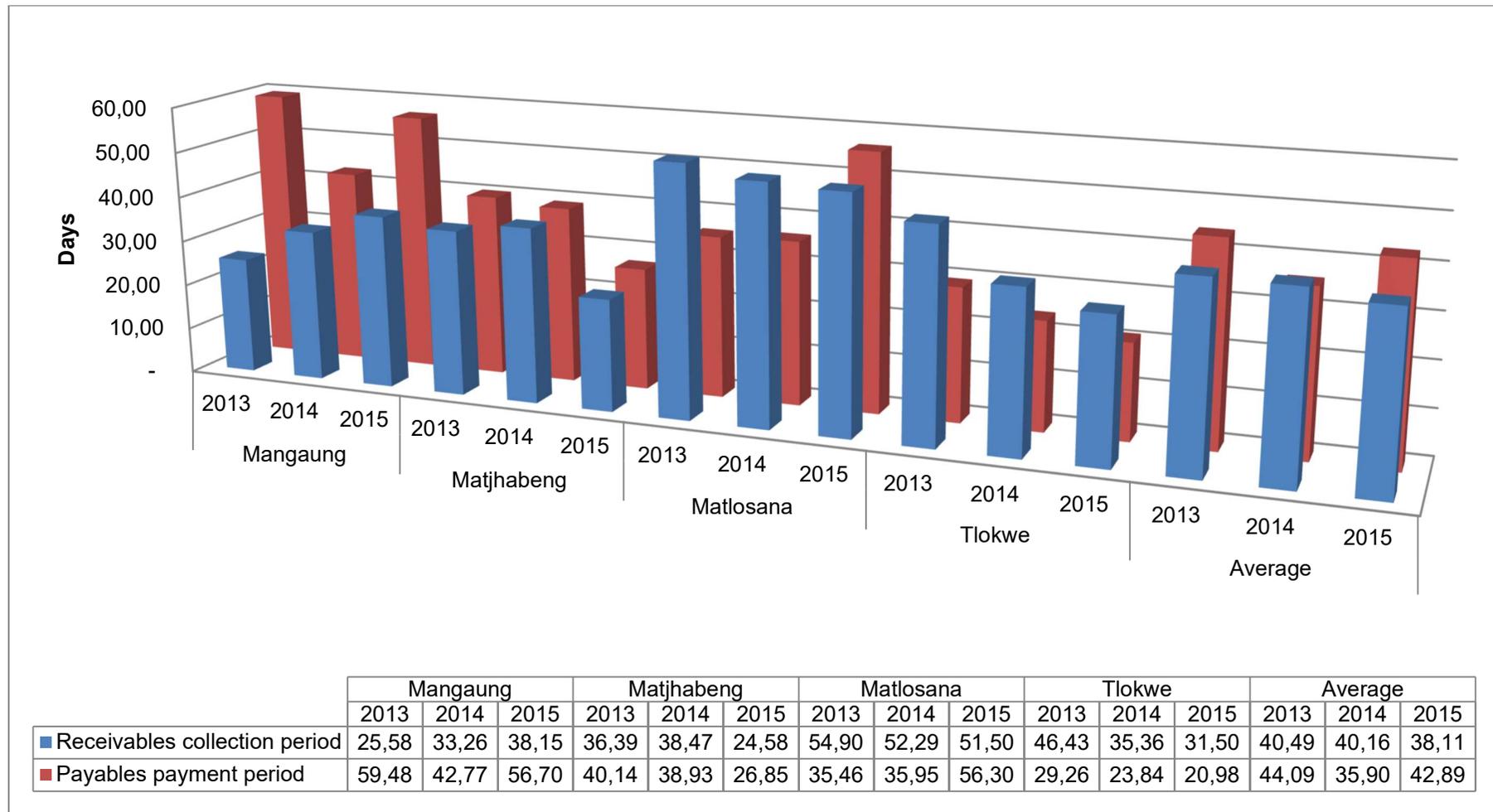
The debtors' collection period measures the average time in days between making a sale and collecting the money. The rule of thumb for average collection time is usually 30 days (Graham & Winfield, 2010, pp. 66–67). For the sectional title industry, the total average debtors' collection period should be calculated using total average levies instead of sales as per the traditional ratio. The only known available benchmark is the ratios as identified by L. Lubbe (2013, pp. 152–153). The collection period amounted to 35.24 days in 2008; 45.77 days in 2009 and 51.29 days in 2010. The debtors' collection period for the current total sample showed a declining trend and was lower than that of the previous sample, amounting to 40.49

days in 2013; 40.16 days in 2014; and 38.11 days in 2015. For Mangaung the collection period showed a steady increase over the three years at 25.58 days in 2013, 33.26 days in 2014, and 33.15 days in 2015. For Matjhabeng the collection period was 36.39 days in 2013; 38.47 days in 2014; and 24.58 days in 2015. For Matlosana the collection period showed a slight decrease over the three years, but the ratio was much higher than that of the total average for the sample, at 54.90 days in 2013; 52.29 days in 2014; and 51.50 days in 2015. For Tlokwe the collection period showed a steady downward trend at 46.43 days in 2013; 35.36 days in 2014; and 31.50 days in 2015. The increasing trend in the average receivables collection period for Mangaung may be indicative of possible problems regarding the collection of levies. Furthermore, the fact that the total average collection period and the collection periods for Matlosana and Tlokwe is still over 30 days (the average time allowed for payment of levies) may be attributed to the current difficult economic circumstances in the country. It is a somewhat concerning trend, and something which trustees should take note of. L. Lubbe (2013, pp. 153–154) further explains that the cut-off of debtors and creditors can vary significantly between bodies corporate. For example, some managing agents close their debtors system on the 15th of every month; financial statements are prepared as on the 30th/31st of the month and debtors have to settle their accounts by the 7th. Other managing agents have different collection policies and some close their debtors earlier or later than mentioned above. This makes it difficult to compare the financial results of schemes.

The creditors' payment period or settlement period measures the average amount of days that it takes the business to settle its accounts payable (Graham & Winfield, 2010, p. 67). The only known available industry benchmark is the ratios as identified by L. Lubbe (2013, p. 153). The total average creditors' payment period was calculated using total expenses instead of credit purchases as per the traditional ratio. The payment period went down from 47.59 days in 2008 to 40.29 days in 2009 and then up to 57.76 days in 2010. For the current total sample selected, the payment period also showed a slight decrease from 44.09 days in 2013, to 35.90 days in 2014 and an increase to 42.89 days in 2015. The payment period for Mangaung was significantly larger than that of the total sample, at 59.48 days in 2013, 42.77 days in 2014 and 56.70 days in 2015. The payment period for Matjhabeng was much lower than that of the total sample, and showed a declining trend at 40.14 days in 2013; 38.93 days in 2014 and 26.85 days in 2015. The payment period for Matlosana increased significantly from 35.46 days in 2013, to 35.95 days in 2014 and up to 56.30 days in 2015. The payment period for Tlokwe showed a steady decreasing trend, and was significantly lower than the average for the total sample at 29.26 days in 2013; 23.84 days in 2014 and 20.98 days in 2015. As is the case with

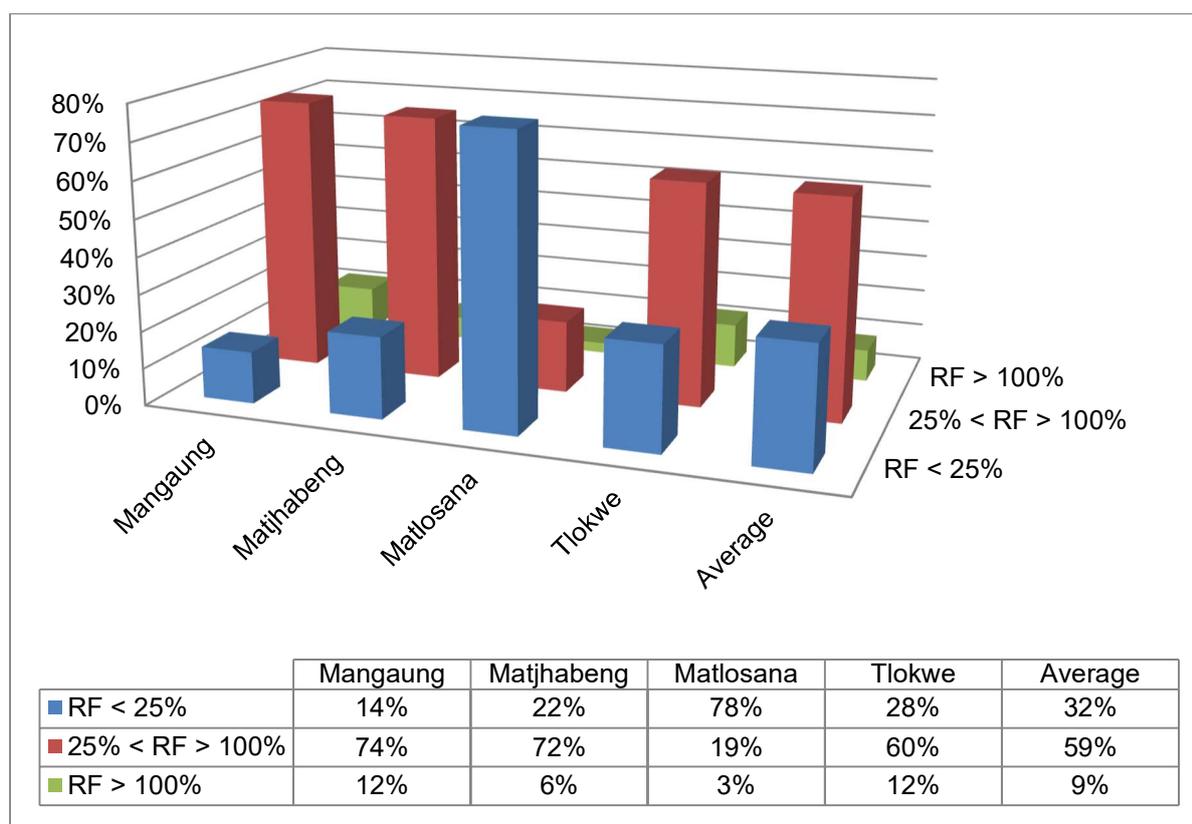
debtors, the handling of creditors can also result in some inconsistencies between schemes and between schemes managed by different managing agents. Furthermore, some municipal accounts have a long time lag; for example, a body corporate may be billed in October for electricity usage in July/August. Another concern is that municipal accounts for water are sometimes issued at estimated amounts and not the amount of actual usage. This can create havoc on a set of financial statements if an account with billing for actual usage is eventually received and the water was either over- or underpaid for a few months due to incorrect estimates. These issues will be discussed in more detail as part of the empirical results in Chapter 6. Figure 5-20 below represents the debtors' collection and creditors' payment periods graphically.

Figure 5-20: Average collection and payment periods



5.4.9.10 New reserve fund requirements

As mentioned in sections 3.2.1.1, 3.2.1.3 and 1.4.6.3, the requirement by section 3(1)(b) of the STSMA to establish and maintain a reserve fund will have a significant impact on bodies corporate in future. Section 3(1)(b) of the STSMA requires the fund to be reasonably sufficient to cover the cost of future maintenance and repair of common property. Rule 2 of the STSMA Regulations prescribes a formula for calculating the minimum amount of the annual contribution to the reserve fund for a financial year being budgeted for. The formula is based on the amount in the reserve fund at the end of a financial year and the total contributions collected in that year. If, at the end of the financial year, the money in the reserve fund is less than 25% of the total contributions to the administrative fund for that year, then, in the following financial year, the minimum allocation to the reserve must be 15% of the total contributions to the administrative fund. If, at the end of the financial year, the money in the reserve fund is more than 25% but less than 100% of the total contributions to the administrative fund for that year, the contribution to the reserve fund must at least equal the amount the body corporate budgeted to be spent from the administrative fund on repairs and maintenance in the following year. If, at the end of the financial year, the money in the reserve fund is equal to, or more than 100% of the total contributions to the administrative fund for that year, the body corporate does not have to top up its reserve fund. (See also figure 3.2 for more detail.) As part of the empirical study, the readiness of bodies corporate in the sample for the new reserve fund requirements was investigated. Figure 5-21 below summarises the findings. (RF = reserve fund)

Figure 5-21: Analysis of reserve fund requirements

For the average total sample analysed, almost a third (32%) of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund; 59% had between 25% and 100% of levy contributions for the year in the reserve fund, and 9% had more than 100% of the levy contributions for the year in the reserve fund. This means that only 9% of bodies corporate will not have to top up their reserve funds. For Mangaung, 14% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund, while 74% had between 25% and 100% of levy contributions for the year in the reserve fund, and 12% had more than 100% of the levy contributions for the year in the reserve fund. For Matjhabeng, 22% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund, while 72% had between 25% and 100% of levy contributions for the year in the reserve fund, and 6% had more than 100% of the levy contributions for the year in the reserve fund. For Matlosana, 78% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund; the highest percentage of the four municipalities in the sample. Merely 19% had between 25% and 100% of levy contributions for the year in the reserve fund, and only 3% had more than 100% of the levy contributions for the year in the reserve fund. For Tlokwe, 28% of the bodies corporate had less than 25% of

the total levy contributions for the year in the reserve fund, while 60% had between 25% and 100% of levy contributions for the year in the reserve fund, and 12% had more than 100% of the levy contributions for the year in the reserve fund.

In the next sections, a similar process will be followed as for the analysis of the total sample, but the analysis will be done separately for small (consisting of fewer than 10 units), medium (between 10 and 50 units) and large (more than 50 units) schemes.

5.4.9.11 Comparison of averages between small, medium and large

As mentioned in 2.3.6 and in 4.1 above, a distinction was made between small (consisting of fewer than 10 units), medium (between 10 and 50 units) and large (more than 50 units) schemes. For the calculation of the average amounts of the different sized schemes, the total amounts of all the sets of financial statements in the sample for a specific size were added up on a line by line basis per year and then divided by the number of schemes for the size.

For the total sample of sets of financial statements of bodies corporate over a period of two years, the annual financial statements were analysed. For the 2014 financial year, the sample comprised 186 schemes, and 39 were classified as small (consisting of fewer than 10 units); 136 were classified as medium (between 10 and 50 units) and 11 schemes were classified as large (more than 50 units). For the 2015 financial year, the sample was 185 schemes, and 38 were classified as small (consisting of fewer than 10 units); 136 were classified as medium (between 10 and 50 units) and 11 schemes were classified as large (more than 50 units). Comparative figures were also available for the 2013 financial year, as part of the 2014 financial statements. The comparative figures contained information for 178 schemes, and 38 were classified as small (consisting of fewer than 10 units); 131 were classified as medium (between 10 and 50 units) and 9 schemes were classified as large (more than 50 units).

For the calculation of the average amounts of the different sized schemes, the total amounts of all the sets of financial statements for a specific size were added up on a line by line basis per year and then divided by the number of schemes for the size. The average number of units

for the small-sized schemes was 7 units per scheme. For the medium-sized units there were, on average, 22 units per scheme, and for the large-sized schemes there were, on average, 93 units per scheme.

Similarly to what was explained in section 5.4.9 above, the data as per the financial statements were captured exactly as it was received from the managing agent. Some of the captured financial statements contained minor calculation or rounding errors, none of which were considered to be material. For the sake of data integrity, and due to the fact that these errors were not material, no changes were made to the data as originally captured. As a result, these minor non-material errors were incorporated in and are reflected on the average financial statements below. Figures 5-22 to 5-24 below represent the average amounts for the small-, medium- and large-sized entities respectively in the format of a summarised financial statement.

Figure 5-22: Averages for the small schemes in the sample in financial statement format (7 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	7	7		7	
Assets	33 513,94	35 369,72	6%	41 078,85	16%
Non-current assets	17,79	53,51	201%	30,47	-43%
Investments / long-term deposits	-	-	0%	-	0%
Other	17,79	53,51	201%	30,47	-43%
Current assets	33 496,15	35 316,21	5%	41 048,37	16%
Trade and other receivables	4 676,23	4 258,41	-9%	5 266,22	24%
Cash and cash equivalents	28 336,75	30 786,44	9%	35 396,68	15%
Deposits	463,74	252,18	-46%	319,31	27%
Current tax receivables	19,43	18,93	-3%	-	-100%
Other	-	0,26	100%	66,16	25702%
Equity and liabilities	33 513,94	35 369,72	6%	41 078,85	16%
Members' funds and reserves	27 902,42	29 207,17	5%	33 265,10	14%
Accumulated surplus/(shortage)	27 902,42	29 207,17	5%	33 265,10	14%
Other reserves	-	-	0%	-	0%
Liabilities	5 611,52	6 162,56	10%	7 813,75	27%
Non-current liabilities	-	-	0%	-	0%
Long-term loans	-	-	0%	-	0%
Other	-	-	0%	-	0%
Current liabilities	5 611,52	6 162,56	10%	7 813,75	27%
Current tax payable	-	-	0%	-	0%
Trade and other payables	5 145,16	5 852,48	14%	7 294,09	25%
Other	466,36	310,08	-34%	519,66	68%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	59 234,67	70 208,87	19%	75 290,84	7%
Levies	58 266,73	64 741,41	11%	71 958,29	11%
Fines	-	-	0%	-	0%
Interest received	661,26	663,40	0%	1 154,09	74%
Other	306,68	4 804,06	1466%	2 178,47	-55%
Expenses	57 790,23	68 496,37	19%	71 143,67	4%
Bank charges	758,27	747,16	-1%	770,08	3%
Management fees	6 465,40	7 105,83	10%	8 045,84	13%
Rates and taxes	1 509,95	1 377,44	-9%	1 556,39	13%
Repairs and maintenance	16 773,40	20 228,42	21%	19 538,71	-3%
Audit / accounting fee	1 632,12	1 674,29	3%	1 788,07	7%
Tax admin fee	45,39	44,23	-3%	53,29	20%
Legal fees	-	62,13	100%	-	-100%
Insurance	11 576,40	12 571,72	9%	14 059,00	12%
Water and electricity	15 111,43	20 407,37	35%	19 570,86	-4%
Bad debt	-	-	0%	-	0%
Other	3 917,86	4 277,58	9%	5 761,42	35%
Taxation	-	0,21	100%	-	-100%
Surplus / (deficit) for year	1 444,44	1 712,50	19%	4 147,18	142%

Figure 5-23: Averages for the medium schemes in the sample in financial statement format (22 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	22	22		22	
Assets	88 808,48	95 704,26	8%	110 091,97	15%
Non-current assets	6 012,47	5 733,82	-5%	6 537,08	14%
Investments / long-term deposits	5 934,71	5 622,37	-5%	6 419,44	14%
Other	77,76	111,45	43%	117,65	6%
Current assets	82 796,01	89 970,44	9%	103 554,88	15%
Trade and other receivables	21 713,76	22 104,38	2%	24 216,21	10%
Cash and cash equivalents	59 316,01	65 805,09	11%	76 236,12	16%
Deposits	1 422,75	1 564,92	10%	1 690,49	8%
Current tax receivables	182,76	115,62	-37%	8,20	-93%
Other	160,73	380,43	137%	1 403,86	269%
Equity and liabilities	88 808,55	95 704,27	8%	110 104,45	15%
Members' funds and reserves	66 644,11	73 473,37	10%	83 429,13	14%
Accumulated surplus/(shortage)	66 732,41	73 473,37	10%	83 429,13	14%
Other reserves	-88,30	-	-100%	-	0%
Liabilities	22 164,44	22 230,90	0%	26 675,32	20%
Non-current liabilities	-	-	0%	-	0%
Long-term loans	-	-	0%	-	0%
Other	-	-	0%	-	0%
Current liabilities	22 164,44	22 230,90	0%	26 675,32	20%
Current tax payable	4,34	4,18	-4%	4,18	0%
Trade and other payables	18 793,35	18 578,51	-1%	22 531,56	21%
Other	3 366,76	3 648,21	8%	4 139,58	13%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	172 513,99	185 845,00	8%	206 175,89	11%
Levies	160 402,11	174 386,75	9%	193 768,50	11%
Fines	84,89	51,11	-40%	70,59	38%
Interest received	2 545,58	2 209,70	-13%	3 076,89	39%
Other	9 481,41	9 197,44	-3%	9 259,91	1%
Expenses	167 189,91	178 035,48	6%	198 713,85	12%
Bank charges	1 510,44	1 406,04	-7%	1 496,49	6%
Management fees	17 625,77	19 576,15	11%	21 670,68	11%
Rates and taxes	1 359,41	1 700,85	25%	1 976,64	16%
Repairs and maintenance	42 384,54	41 366,15	-2%	51 685,45	25%
Audit / accounting fee	2 893,11	3 265,82	13%	3 508,88	7%
Tax admin fee	171,37	166,36	-3%	192,82	16%
Legal fees	221,32	231,41	5%	436,68	89%
Insurance	28 427,38	30 306,23	7%	33 105,04	9%
Water and electricity	39 488,27	42 605,95	8%	46 213,45	8%
Bad debt	133,27	373,89	181%	-	-100%
Other	32 974,65	37 036,63	12%	38 427,71	4%
Taxation	0,38	0,01	-96%	-	-100%
Surplus / (deficit) for year	5 324,07	7 809,52	47%	7 462,04	-4%

Figure 5-24: Averages for the large schemes in the sample in financial statement format (93 units per scheme on average)

BALANCE SHEET	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Number of units in complex	98	93		93	
Assets	332 849,56	336 586,35	1%	418 532,96	24%
Non-current assets	925,25	92,93	-90%	1 693,38	1722%
Investments / long-term deposits	11,47	9,38	-18%	9,38	0%
Other	913,78	83,55	-91%	1 684,00	1916%
Current assets	331 924,32	336 493,42	1%	416 839,58	24%
Trade and other receivables	38 317,91	55 994,32	46%	44 338,87	-21%
Cash and cash equivalents	292 203,76	275 045,10	-6%	359 307,17	31%
Deposits	-	5 454,00	100%	12 726,72	133%
Current tax receivables	245,98	-	-100%	-	0%
Other	1 156,67	-	-100%	466,82	100%
Equity and liabilities	332 849,56	336 586,35	1%	418 532,96	24%
Members' funds and reserves	30 064,36	83 277,65	177%	142 201,57	71%
Accumulated surplus/(shortage)	30 064,36	83 277,65	177%	142 201,57	71%
Other reserves	-	-	0%	-	0%
Liabilities	302 785,21	253 308,69	-16%	276 331,39	9%
Non-current liabilities	136 417,56	154 188,73	13%	93 936,36	-39%
Long-term loans	136 417,56	154 188,73	13%	93 936,36	-39%
Other	-	-	0%	-	0%
Current liabilities	166 367,65	99 119,97	-40%	182 395,03	84%
Current tax payable	12 912,89	12 167,00	-6%	8 642,45	-29%
Trade and other payables	138 815,94	69 909,53	-50%	114 829,08	64%
Other	14 638,82	17 043,44	16%	58 923,49	246%

INCOME STATEMENT	2013	2014	Variance 2013 to 2014	2015	Variance 2014 to 2015
Income	906 422,71	846 934,72	-7%	951 826,04	12%
Levies	791 920,58	744 737,64	-6%	822 153,45	10%
Fines	-	264,00	100%	90,91	-66%
Interest received	6 494,20	7 958,81	23%	13 887,02	74%
Other	108 007,94	93 974,27	-13%	115 694,66	23%
Expenses	915 762,92	813 191,22	-11%	859 970,16	6%
Bank charges	4 076,14	3 153,78	-23%	3 225,84	2%
Management fees	73 943,03	76 754,29	4%	84 103,31	10%
Rates and taxes	932,11	646,39	-31%	631,84	-2%
Repairs and maintenance	262 678,04	110 662,19	-58%	106 370,64	-4%
Audit / accounting fee	6 543,26	5 917,48	-10%	6 288,85	6%
Tax admin fee	152,78	131,82	-14%	140,91	7%
Legal fees	669,44	594,00	-11%	-	-100%
Insurance	93 765,31	86 137,01	-8%	94 593,24	10%
Water and electricity	161 541,30	192 493,69	19%	190 679,82	-1%
Bad debt	-	-	0%	-	0%
Other	285 044,38	312 929,10	10%	344 796,00	10%
Taxation	26 417,11	23 771,45	-10%	29 139,73	23%
Surplus / (deficit) for year	-9 340,20	33 743,50	-461%	91 855,88	172%

5.4.9.12 Ratios for small, medium and large schemes in the sample

For the small, medium and large schemes in the sample a similar approach will be followed for the ratio analysis as for the total sample in section 5.4.9.2.

5.4.9.13 Analysis of income for small, medium and large schemes

Similarly to the results for the total sample in 5.4.9.3, the analysis of the total average income analysed for the different sizes of schemes in the sample indicated that levies were the largest contributing factor to total average income.

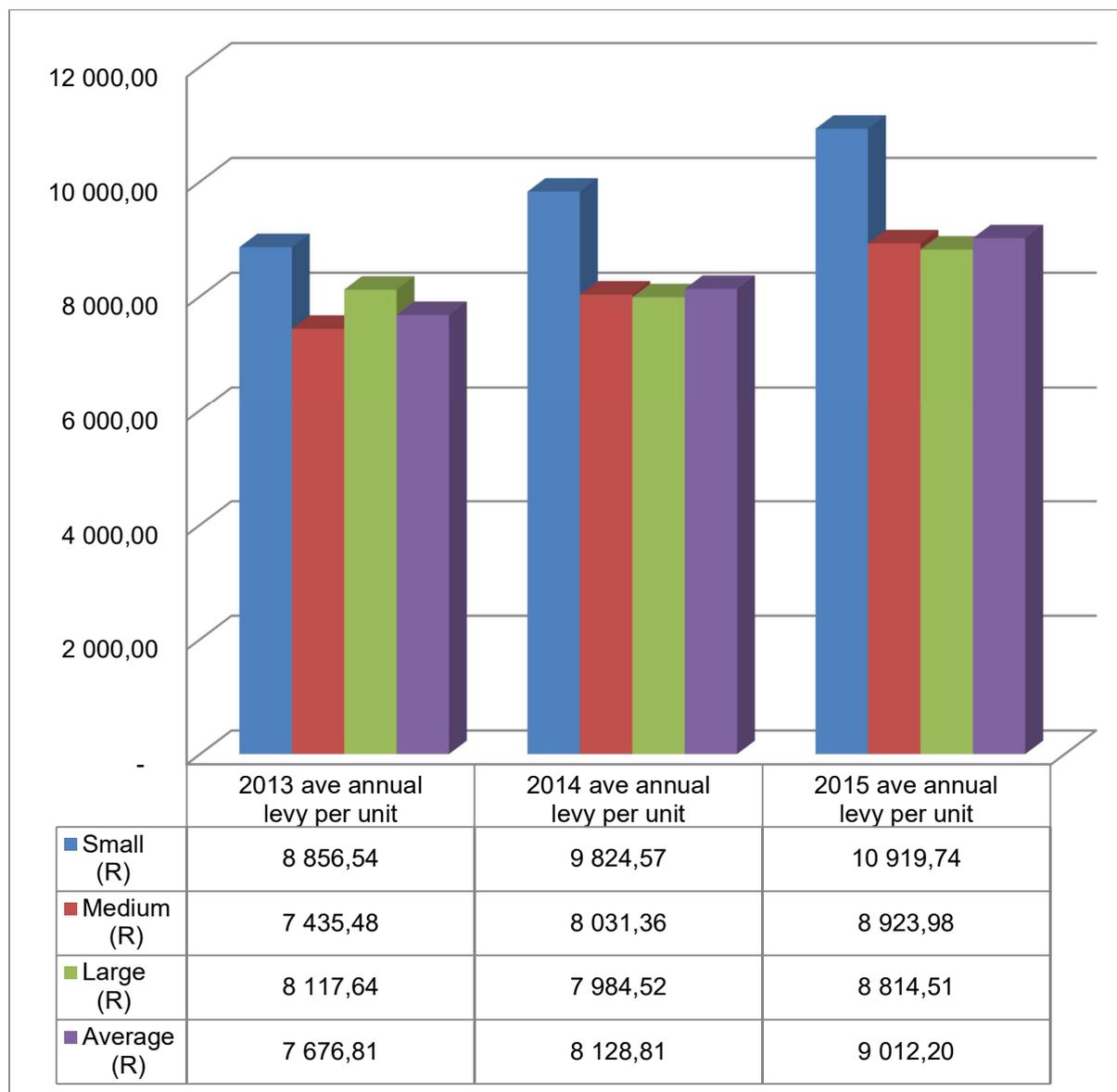
For the small schemes in the sample, levies amounted to 98% (2013), 92% (2014) and 92% (2015) of total average income. Expressed in terms of rand per unit, total average levies for the small schemes amounted to R8,856.54 in 2013, R9,824.57 in 2014 and R10,919.74 in 2015. Total average levies increased by 11% from 2013 to 2014 and by another 11% from 2014 to 2015. The only known comparable benchmark is that of L. Lubbe (2013, p. 162). For the small schemes in the sample, levies amounted to 97.68% (2008), 95.85% (2009) and 98.41% (2010) of total average income. Expressed in terms of rand per unit, total average levies for the small schemes amounted to R4,578.10 in 2008, R4,579.33 in 2009 and R6,110.45 in 2010. Total average levies increased by 0.03% from 2008 to 2009 and by 33.44% from 2009 to 2010. In comparison, there was an increase in the rand per unit amount of levies from the first study to the current study.

Levies accounted for 93% (2013), 94% (2014) and 94% (2015) of total average income for medium schemes in the sample. Expressed in rand per unit, total average levies for the medium schemes amounted to R7,435.48 in 2013, R8,031.36 in 2014 and R8,923.98 in 2015. Total average levies increased by 9% from 2013 to 2014 and 11% from 2014 to 2015. The results of L. Lubbe (2013, p. 163) indicated that levies accounted for 84.61% (2008), 79.82% (2009) and 80.27% (2010) of total average income for medium schemes in the sample. Expressed in rand per unit, total average levies for the medium schemes amounted to

R4,516.39 in 2008, R4,729.02 in 2009 and R5,363.90 in 2010. Total average levies increased by 4.71% from 2008 to 2009 and 13.43% from 2009 to 2010. The rand per unit amounts were much higher for the 2013 to 2015 sample than for the 2008 to 2010 sample. Levies per unit for medium schemes were 16.05% lower than the levies per unit for small schemes in 2013; 18.25% lower in 2014; and 18.28% lower in 2015.

For the large schemes in the sample, levies amounted to 87% (2013), 88% (2014) and 86% (2015) of total average income. Expressed in rand per unit, total average levies for the large schemes amounted to R8,117.64 in 2013, R7,984.52 in 2014 and R8,814.51 in 2015. Total average levies decreased by 7% from 2013 to 2014 and increased by 12% from 2014 to 2015. The results of L. Lubbe (2013, p. 163) indicated that, for the large schemes in the sample, levies amounted to 82.24% (2008), 79.92% (2009) and 70.96% (2010) of total average income. Expressed in rand per unit, total average levies for the large schemes amounted to R5,125.95 in 2008, R5,334.40 in 2009 and R5,512.10 in 2010. Total average levies increased by 4.07% from 2008 to 2009 and 4.33% from 2009 to 2010. The levies as percentage of total income was higher for the 2013 to 2015 sample than for the 2008 to 2010 sample. The levies for the large schemes were 9.17% higher than for medium schemes in 2013, 0.58% lower in 2014 and 1.23% lower in 2015. The levies for large schemes were significantly lower than that of small schemes by 8.34% in 2013; 18.73% in 2014 and 19.28% in 2015. Figure 5-25 below is a graphic representation of annual levies per unit analysed for the differently sized schemes.

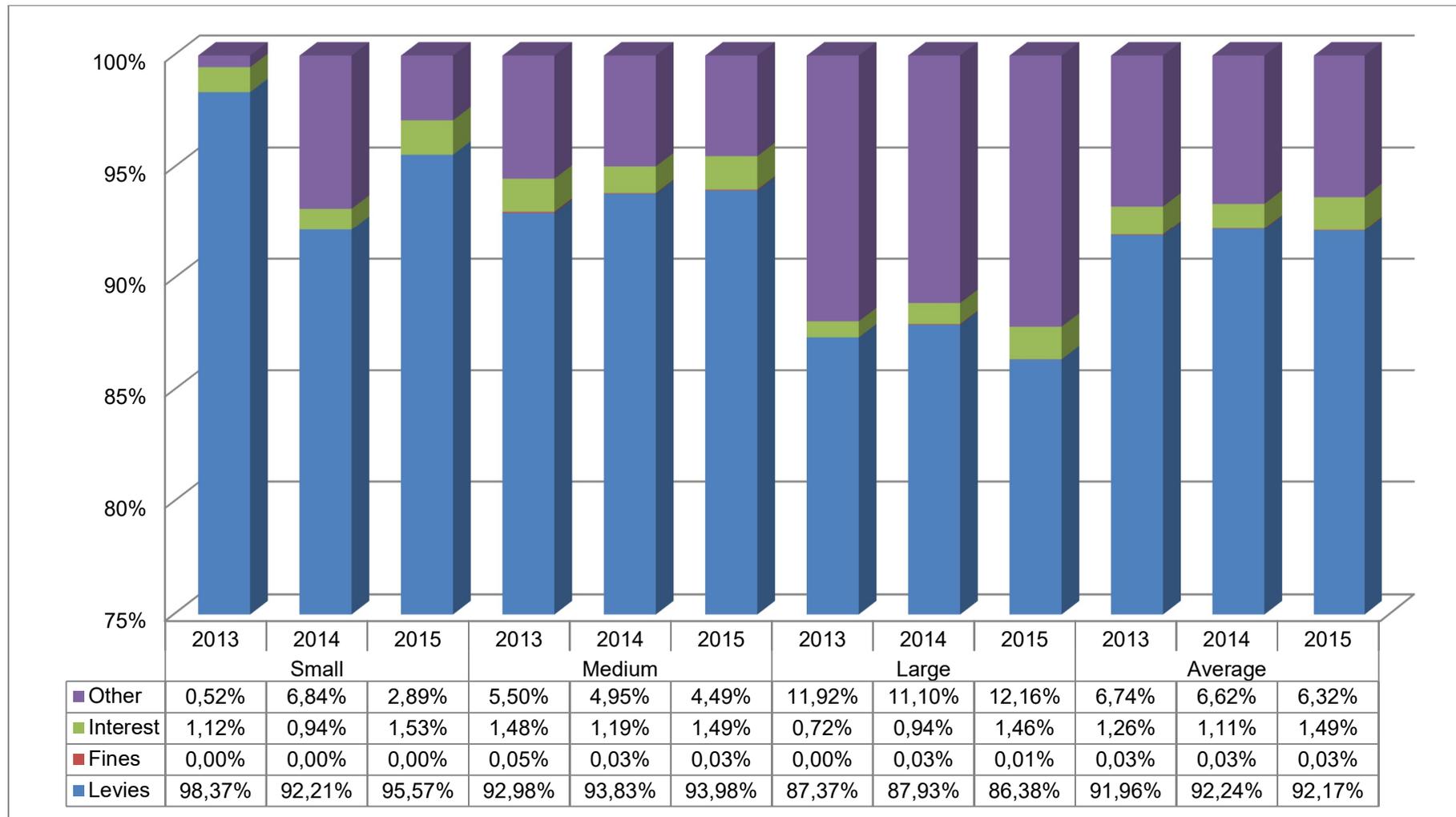
Figure 5-25: Analysis of annual average levies expressed in rand per unit for small, medium and large schemes in the sample



Fines were, as was the case for the total sample and similar to the findings of L. Lubbe (2013, p. 165), by far the smallest single contributor, almost insignificant, and amounted to 0% (2013 to 2015) of total income for the small schemes in the sample, 0.05% (2013), 1.03% (2014) and 0.05% (2015) of total income for the medium schemes in the sample and 0.00% (2013), 0.03% (2014) and 0.01% (2015) of total income for the large schemes in the sample. Interest received accounted for 1.12% (2013), 0.94% (2014) and 1.53% (2015) of total average income for small schemes in the sample; 1.48% (2013), 1.19% (2014) and 1.49% (2015) of total average income for the medium schemes in the sample and 0.72% (2013), 0.94% (2014) and

1.46% (2015) of total average income for the large schemes in the sample. Once again, this is similar to the findings of L. Lubbe (2013, p. 165), and in line with the average interest received for the total sample. Income items classified as “other income” accounted for 0.52% (2013), 6.84% (2014) and 2.89% (2015) of total average income for the small schemes in the sample, somewhat higher at 5.50% (2013), 4.95% (2014) and 4.95% (2015) of total average income for the medium schemes in the sample and the highest for the large schemes in the sample at 11.92% (2013), 11.10% (2014) and 12.16% (2015) of total average income for the large schemes in the sample. This is similar to the findings of L. Lubbe (2013, p. 166). Figure 5-26 below is a graphic representation detailing the breakdown of income items.

Figure 5-26: Analysis of income categories as a percentage of total average income for small, medium and large schemes in the sample



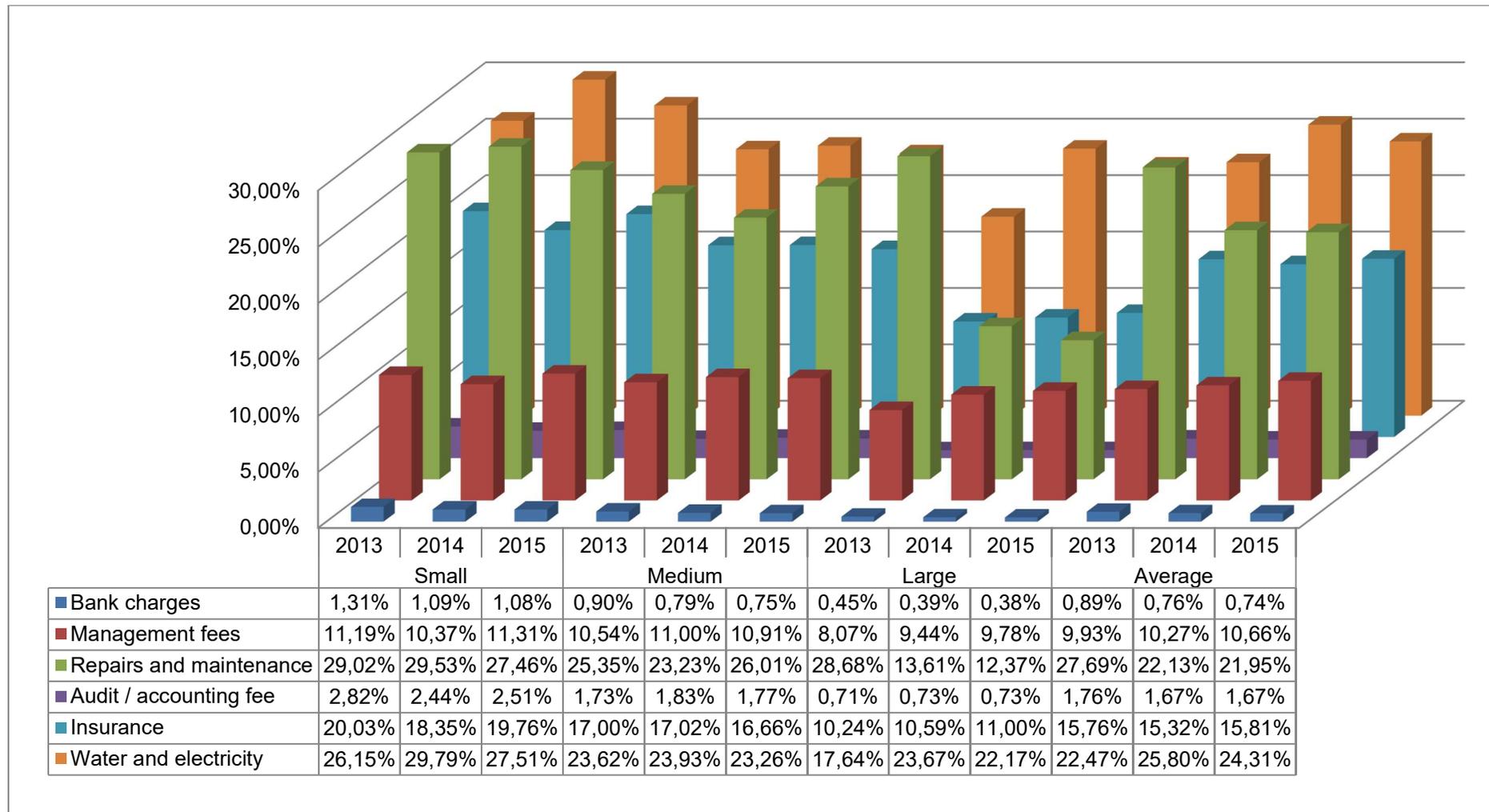
5.4.9.14 Analysis of expenses excluding taxation

Similar to the results for the total sample in 5.4.9.5, the analysis of the total average expenses of the small, medium and large schemes in the sample revealed that the six largest expenses were bank charges, management fees, repairs and maintenance, audit and accounting fees, insurance and water and electricity. In the study by L. Lubbe (2013, pp. 166–167) it was found that expenses accounted for a total of 86% (2008), 86% (2009) and 87% (2010) of average total expenses for the small schemes in the sample, 82% (2008), 79% (2009) and 75% (2010) of average total expenses for the medium schemes in the sample and 77% (2008), 79% (2009) and 71% (2010) of average total expenses for the large schemes in the sample. These expenses for the 2013 to 2015 accounted for a total of 90.53% (2013), 91.59% (2014) and 89.64% (2015) of average total expenses for the small schemes in the sample, 79.15% (2013), 77.81% (2014) and 79.35% (2015) of average total expenses for the medium schemes in the sample and 65.80% (2013), 58.43% (2014) and 56.43% (2015) of average total expenses for the large schemes in the sample.

For the small, medium as well as large schemes in the sample, repairs and maintenance and water and electricity were on average the two largest expenses. For small schemes at 29.02% (2013), 29.53% (2014) and 27.46% (2015) of expenses for repairs and maintenance and 26.15% (2013), 29.79% (2014) and 27.51% (2015) for water and electricity. For the medium schemes in the sample, repairs and maintenance as a percentage of expenses was 25.35% (2013), 23.23% (2014) and 26.01% (2015) and water and electricity 23.62% (2013), 23.93% (2014) and 23.26% (2015). For the large schemes in the sample, repairs and maintenance as a percentage of expenses was 28.68% (2013), 13.61% (2014) and 12.37% (2015) and water and electricity 17.64% (2013), 23.67% (2014) and 24.31% (2015). Insurance and management fees were the third and fourth largest expense for the small, medium and large schemes. Insurance amounted to 20.03% (2013), 18.35% (2014) and 19.76% (2015) for small schemes; 17.00% (2013), 17.02% (2014) and 16.66% (2015) for medium schemes and 10.24% (2013); 10.59% (2014) and 11.00% (2015) for large schemes. Management fees as percentage of expenses was 11.19% (2013), 10.37% (2014) and 11.31% (2015) for small schemes, 10.54% (2013), 11.00% (2014) and 10.91% (2015) for medium schemes and 9.07% (2013), 9.44% (2014) and 9.78% (2015) for large schemes. The fifth and sixth largest expenses expressed as a percentage of total expenses was audit fees and bank charges. Audit fees were 2.82% (2013), 2.44% (2014) and 2.51% (2015) for small schemes, 1.73%

(2013), 1.83% (2014) and 1.77% (2015) for medium schemes and 0.71% (2013), 0.73% (2014) and 0.73% (2015) for large schemes, while bank charges amounted to 1.31% (2013), 1.09% (2014) and 1.08% (2015) for small schemes; 0.90% (2013), 0.79% (2014) and 0.75% (2015) for medium schemes and 0.45% (2013), 0.39% (2014) and 0.38% (2015) for large schemes. Figure 5-27 below is a graphic representation of the above information.

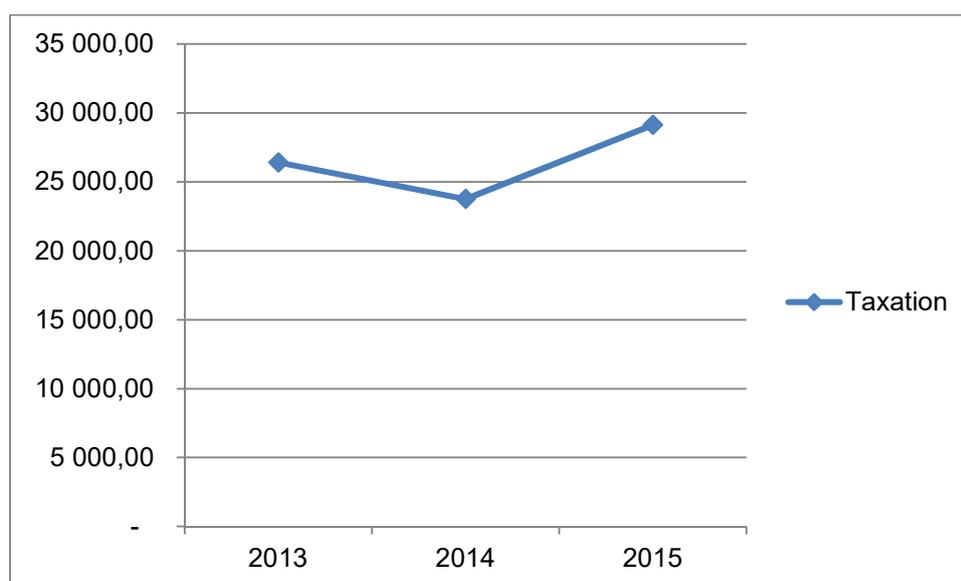
Figure 5-27: The six largest expenses as a percentage of total expenses for the small, medium and large schemes in graph format



5.4.9.15 Analysis of taxation

In section 5.4.9.6 it was explained that bodies corporate have very specific rules regarding tax. For the small as well as medium schemes in the sample, the average amount of taxation expressed in rand terms was insignificant. For the large schemes in the sample, the average amount of taxation expressed in rand terms was R26,417.111 (2013), decreasing by 10% to R23,771.45 (2014) and increasing by 23% to R29,139.73 (2015). Expressed as a percentage of total average income, taxation for the large schemes in the sample amounted to approximately 2.91% (2013), 2.81% (2014) and 3.06% (2015). The results were somewhat lower than the results in the study by L. Lubbe (2013, pp. 170–171), where total average taxation amounted to approximately 0.48% (2008), 0.49% (2009) and 0% (2010) of total average income for small schemes; 0.78% (2008), 0.72% (2009) and -0.20% (2010) for medium schemes; and 4.28% (2008), 4.44% (2009) and 6.60% (2010) for large schemes. Further analysis of the large schemes in the sample showed that these schemes had much larger amounts non-levy income in 2015 (such as investment income, rental income and penalty income) than the small and medium schemes. (See also section 5.4.9.13 above.) As a result, the effect of the above-mentioned legislation on the large schemes was not that evident on the ratios. The above information is graphically presented in figure 5-28 below.

Figure 5-28: Taxation indicated as a percentage of total average income for small, medium and large schemes



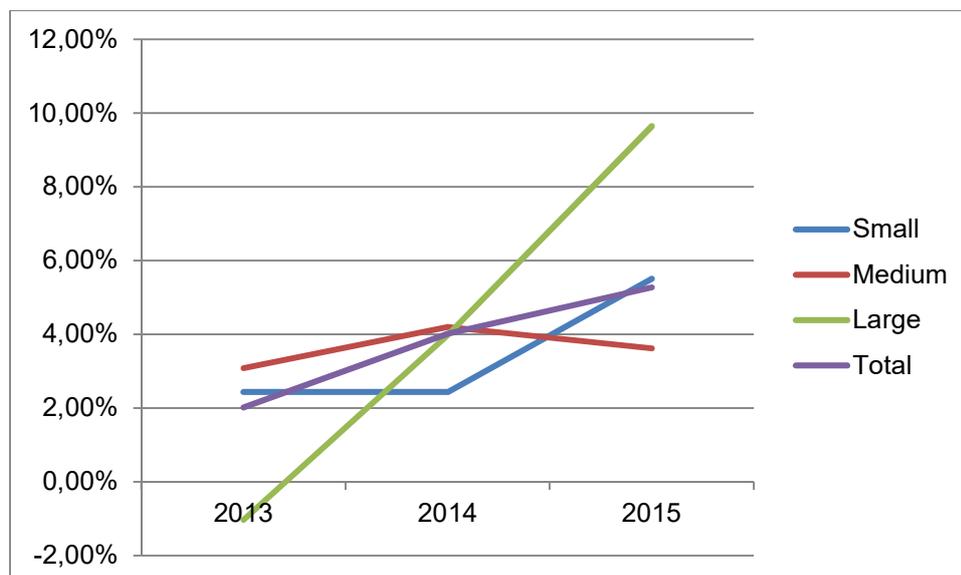
5.4.9.16 Analysis of surplus

For the small schemes in the sample, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand was a surplus of R1,444.44 (2013), R1,712.50 (2014) and R4,147.18 (2015). Expressed as a percentage of total income the surpluses amounted to 2.44% (2013 and 2014), and 5.51% (2015) of average total income. In 2013, 13 (33%) of the 38 small schemes in the sample showed a deficit and 66% showed a surplus. In 2014, 14 of the 39 (36%) schemes showed a deficit and 64% showed a surplus, and in 2015, 17 of the 38 (45%) showed a deficit, while 55% showed a surplus.

For the medium schemes in the sample, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand was a surplus of R5,324.07 (2013), R7,809.52 (2014) and R7,462.04 (2015). Expressed as a percentage of total income the surpluses amounted to 3.09% (2013), 4.20% (2014) and 3.62% (2015) of average total income. In 2013, 47 of the 131 (36%) medium schemes in the sample showed a deficit and 64% showed a surplus. In 2014, 55 of the 136 schemes (40%) showed a deficit and 60% showed a surplus, and in 2015, 53 of the 136 schemes (39%) showed a deficit and 61% showed a surplus.

For the large schemes in the sample, the average surplus/deficit amount (total income less total expenses) for the total sample expressed in rand was a deficit of R9,340.20 (2013), and a surplus of R33,743.50 (2014) and R91,855.88 (2015). Expressed as a percentage of total income the surpluses showed an increasing trend and amounted to -1.03% (2013), 3.98% (2014) and 9.65% (2015) of average total income. In 2013, 4 of the 9 (44%) large schemes in the sample showed a deficit and 56% showed a surplus. In 2014, 5 of the 11 (45%) schemes showed a deficit and 55% showed a surplus, and in 2015, 4 of the 11 (36%) showed a deficit in 64% showed a surplus. In the findings of L. Lubbe (L. Lubbe, 2013, pp. 171–173), the large schemes in the sample showed larger surpluses as a percentage of their total average income than their small and medium counterparts. However, in the 2013 to 2015 sample, the surpluses showed varying results between the different sizes of schemes. Figure 5-29 below is a graphic representation of the findings.

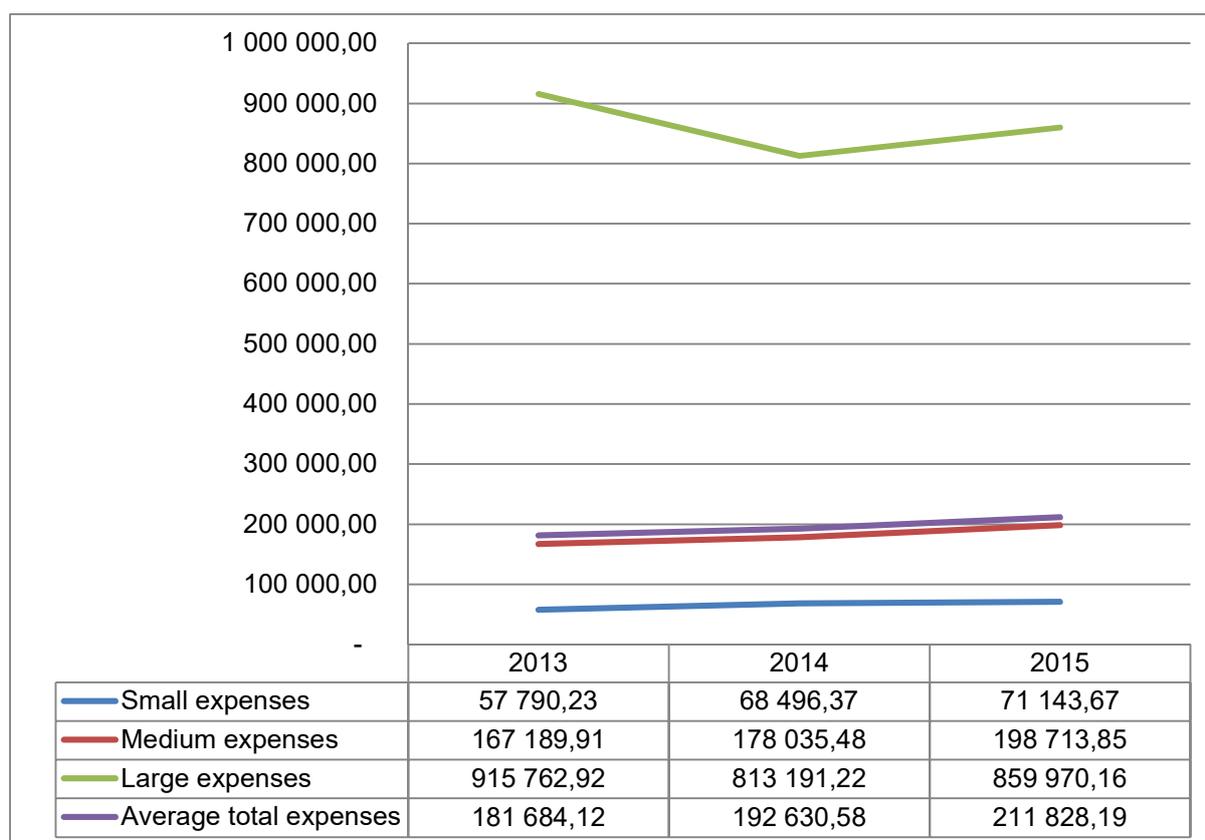
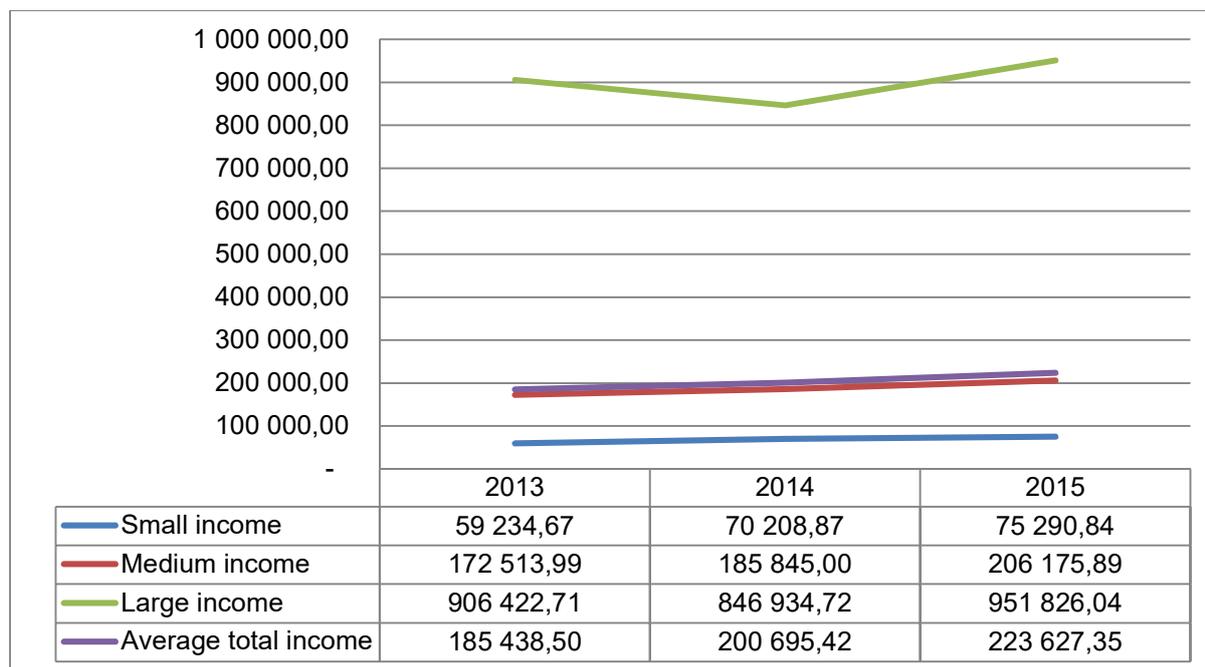
Figure 5-29: Surplus/deficit indicated as a percentage of total average income for small, medium and large schemes



5.4.9.17 Analysis of growth

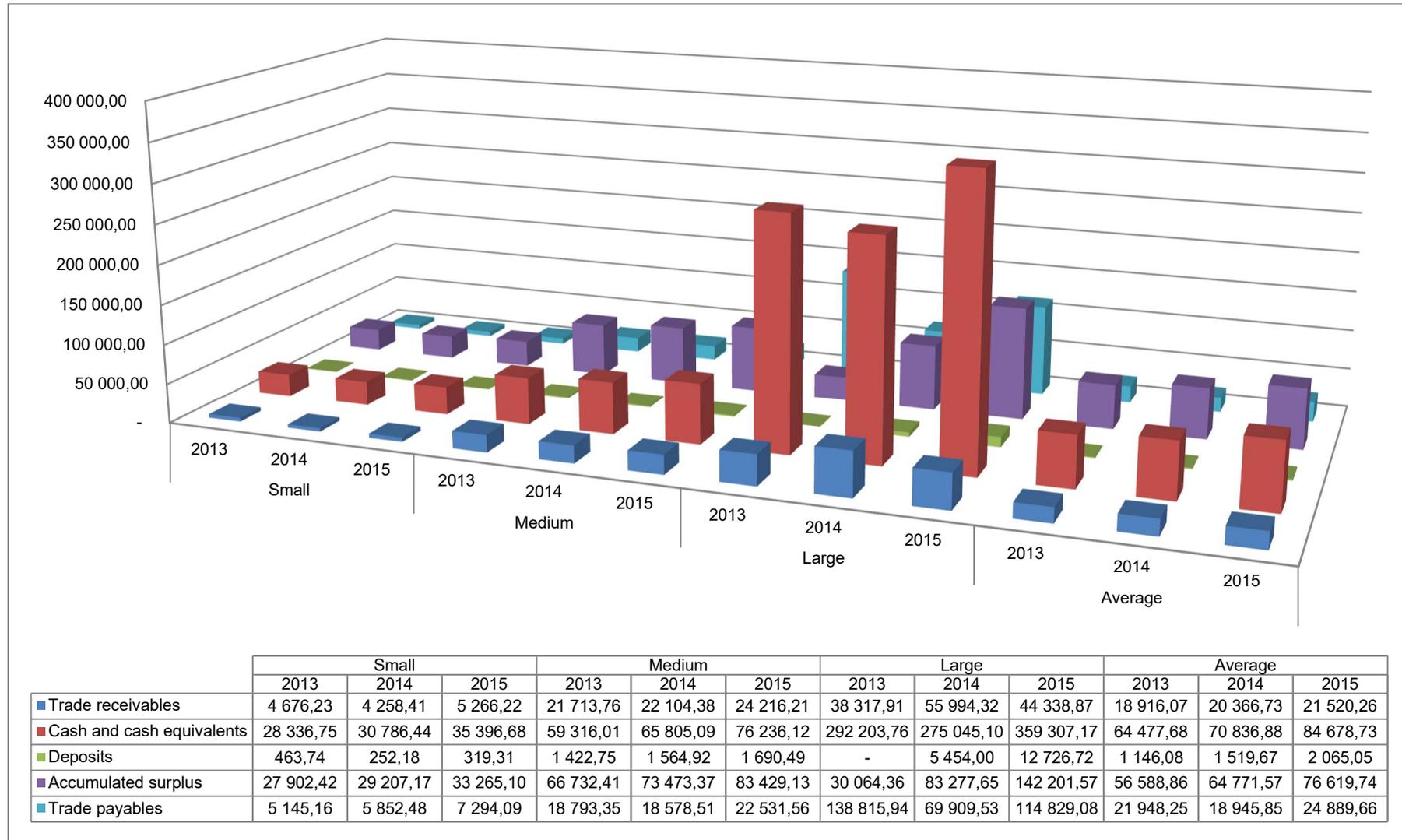
For the small and medium schemes in the sample, the financial figures showed an increasing trend from year to year. From 2013 to 2014 for the small schemes, there was an increase in total expenses of 19% and from 2014 to 2015 there was a 4% increase in total average expenses. From 2013 to 2014 there was a 19% increase in average total income and from 2014 to 2015 there was a 7% increase in average total income. For the medium schemes in the sample selected, from 2013 to 2014 there was an increase in total expenses of 6% and from 2014 to 2015 there was a 12% increase in total average expenses. From 2013 to 2014 there was an 8% increase in average total income and from 2014 to 2015 there was an 11% increase in average total income. For the large schemes in the sample, there was a decrease in total expenses of 11% in total expenses from 2013 to 2014, and from 2014 to 2015 there was a 6% increase in total average expenses. From 2013 to 2014 there was a 7% decrease in average total income and from 2014 to 2015 there was a 12% increase in average total income. The average income and expenses for the small and medium schemes were below the average figures for both years, and the average income and expenses for the large schemes were significantly higher than the average figures for both years. Figure 5-30 below illustrates the results.

Figure 5-30: Growth/decline of items on the statement of comprehensive income for small, medium and large schemes in the sample (income and expenses)



For the small schemes in the sample, trade and other receivables showed a decline of 9% from 2013 to 2014 and an increase of 24% from 2014 to 2015. For the medium schemes in the sample, trade and other receivables showed an increase of 2% from 2013 to 2014 and 10% from 2014 to 2015. For the large schemes in the sample, trade and other receivables increased by 46% from 2013 to 2014 and declined by 21% from 2014 to 2015. For the small schemes in the sample, cash and cash equivalents showed an increase of 9% from 2013 to 2014 and an increase of 15% from 2014 to 2015. For the medium schemes in the sample, cash and cash equivalents showed an increase of 11% from 2013 to 2014 and an increase of 16% from 2014 to 2015. For the large schemes in the sample, cash and cash equivalents decreased by 6% from 2013 to 2014 and increased by 31% from 2014 to 2015. Deposits decreased by 46% from 2013 to 2014 for the small schemes in the sample, and increased by 27% from 2014 to 2015. For the medium schemes in the sample, deposits showed an increase of 10% from 2013 to 2014 and an increase of 8% from 2014 to 2015. For the large schemes in the sample, deposits increased by 100% from 2013 to 2014 and 133% from 2014 to 2015. The accumulated surplus of the small schemes in the sample increased by 5% from 2013 to 2014, and increased by 14% from 2014 to 2015. The accumulated surplus of the medium schemes in the sample increased by 10% from 2013 to 2014, and increased by 14% from 2014 to 2015. For the large schemes in the sample, accumulated surplus increased by 177% from 2013 to 2014 and by 71% from 2014 to 2015. From 2013 to 2015, none of the small schemes in the sample showed an accumulated shortage. In 2013, 9 of the small schemes had an accumulated shortage, while in 2014, 11 of the medium schemes in the sample had an accumulated shortage, compared to 8 schemes in 2015. Only 1 of the large schemes showed an accumulated shortage from 2013 to 2015. The small schemes in the sample showed an increase in trade and other payables amounting to 14% from 2013 to 2014 and an increase of 25% from 2014 to 2015. The medium schemes in the sample showed a decline in trade and other payables of 1% from 2013 to 2014 and an increase of 21% from 2014 to 2015. The large schemes in the sample showed a decrease of 50% in trade and other payables from 2013 to 2014 and an increase of 64% from 2014 to 2015. Figure 5-31 below is a graphic representation of the above-mentioned analysis.

Figure 5-31: Growth/decline of items on the statement of financial position for small, medium and large schemes in the sample

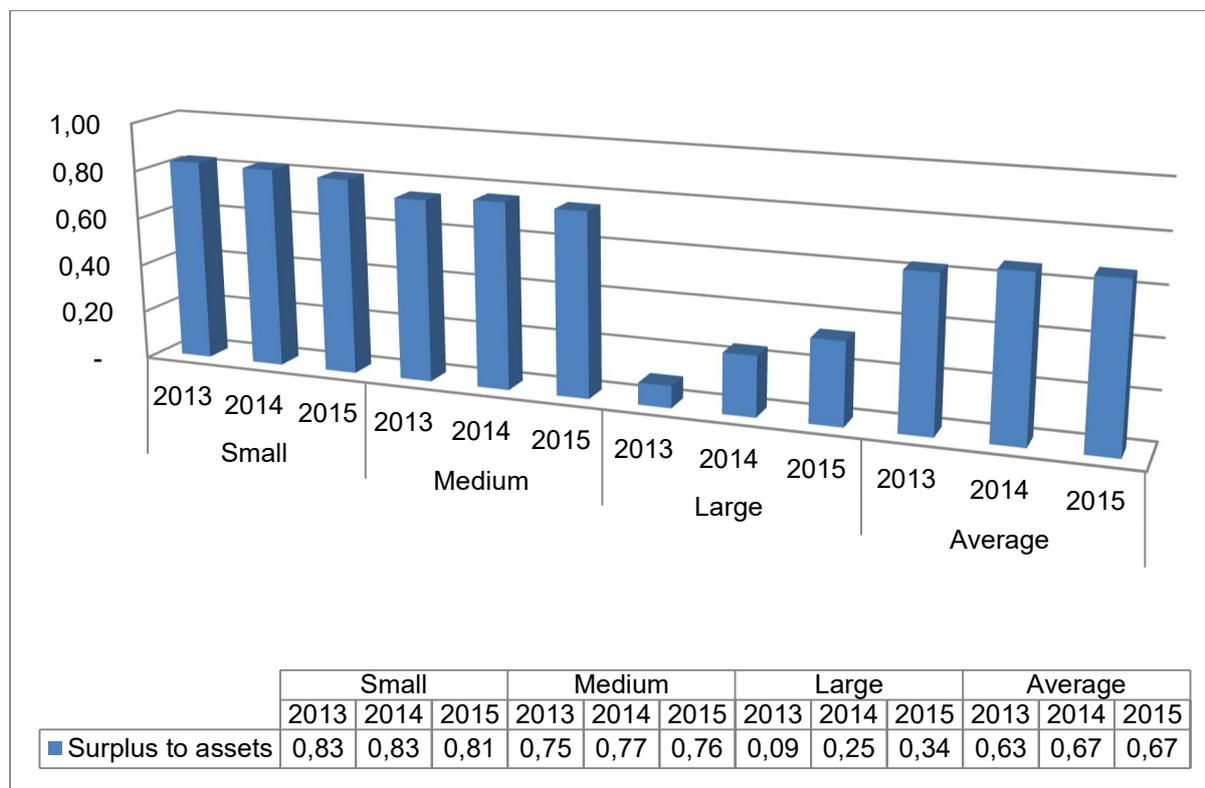


5.4.9.18 Analysis of financial strength

The same ratios were calculated for the small, medium and large schemes as was the case for the total samples. The following financial strength ratios were calculated: accumulated surplus to total assets, total assets to total liabilities, current assets to current liabilities, receivables to levies, payables to expenses, receivables to total assets, cash to total assets and bad debts to receivables.

The ratio of accumulated surplus to assets was calculated instead of the traditional total shareholders' interest to total assets ratio (Service, 2012, p. 1032). The ratio shows to what extent the assets of the body corporate are financed by way of accumulated funds. The ratios for the small schemes in the sample were 0.83 in 2013, 0.83 in 2014 and 0.81 in 2015. For the medium schemes in the sample, the ratios were 0.75 (2013), 0.77 (2014) and 0.76 (2015). For the large schemes in the sample, the ratios were 0.09 (2013), 0.25 (2014) and 0.34 (2015). The medium schemes showed an increasing trend over the three years and the small and large schemes showed a decreasing trend. The norms identified by L. Lubbe (2013, pp. 178–179) were 0.72:1 in 2008 and 2009 and 0.53:1 in 2010 for the small schemes. For the medium schemes in the sample, the ratios were 0.64:1 (2008); 0.68:1 (2009) and 0.76:1 (2010). For the large schemes in the sample, the ratios were 0.74:1 (2008); 0.68:1 (2009) and 0.66:1 (2010). Therefore, the small and medium schemes showed higher ratios in the 2013 to 2015 sample than in the 2008 to 2010 sample, and the large schemes showed lower ratios. Figure 5-32 below represents the analysis in the form of a graph.

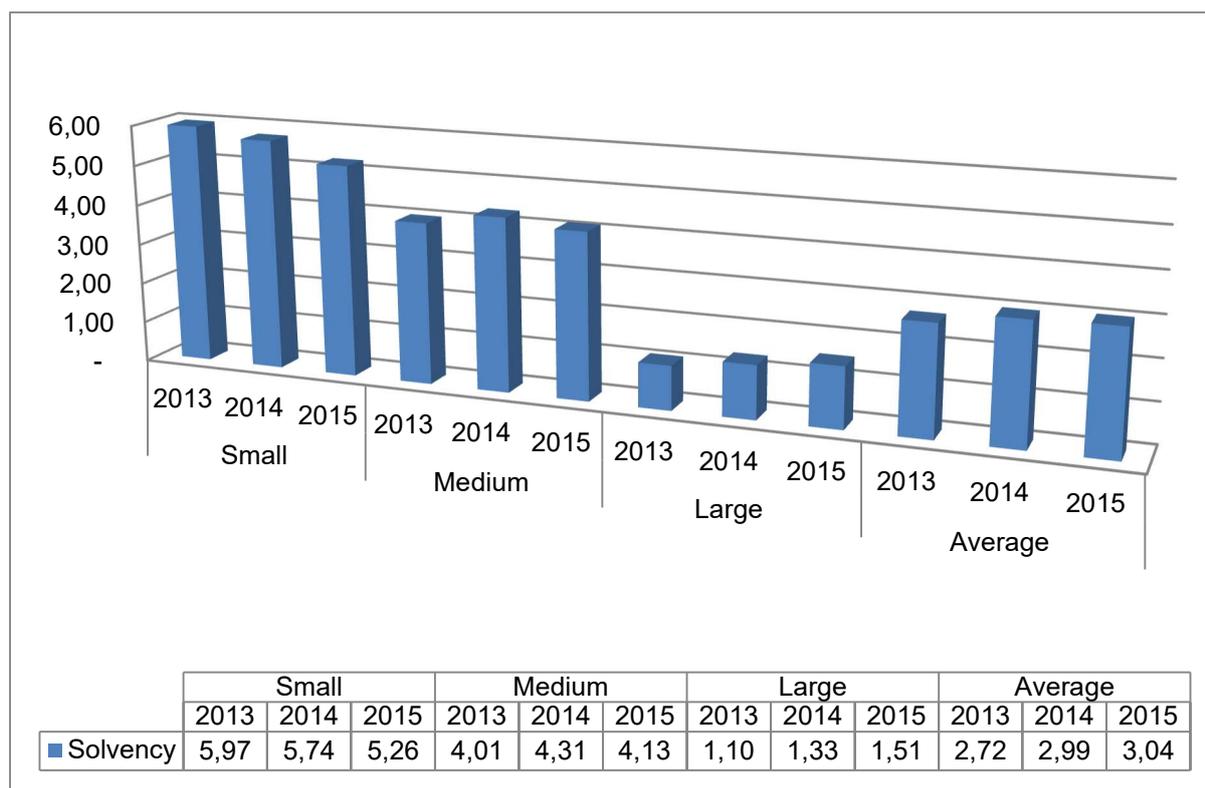
Figure 5-32: Ratio of accumulated surplus to assets for small, medium and large schemes in the sample



The solvency ratio calculated as total assets to total liabilities show to what extent liabilities are covered by assets. It is also an indication of whether an entity will be able to honour obligations in future. Using the average total assets and average total liabilities, the average ratios for the small schemes in the sample showed a declining trend of 5.97 (2013), 5.74 (2014) and 5.26 (2015). The average ratios for the medium schemes in the sample were 4.01 (2013), 4.31 (2014) and 4.13 (2015). The large schemes in the sample showed an increasing trend of 1.10 (2013), 1.33 (2014) and 1.51 (2015). Despite the declining trend identified for some schemes, the total liabilities were, on average, still covered by total assets more than five times for the small schemes, more than four times for the medium schemes and more than once for the large schemes. There seems to be no great cause for concern regarding the solvency of the schemes on average. The findings of L. Lubbe (2013, pp. 179–180) indicated that the average ratios for the small schemes in the sample showed a declining trend of 3.55 (2008), 3.54 (2009) and 2.14 (2010). The average ratios for the medium schemes in the sample were 2.93 (2008), 3.68 (2009) and 3.42 (2010). As was the case for the small schemes, the large schemes in the sample showed a declining trend of 4.07 (2008), 3.13 (2009) and 2.95 (2010). Therefore, for the 2013 to 2015 sample, the figures for the small and

large schemes were significantly higher and the figures for the large schemes were significantly lower than for the 2008 to 2010 sample. The reasons for these differences could not be established with the information that was available. Figure 5-33 below represents the above information in the form of a graph.

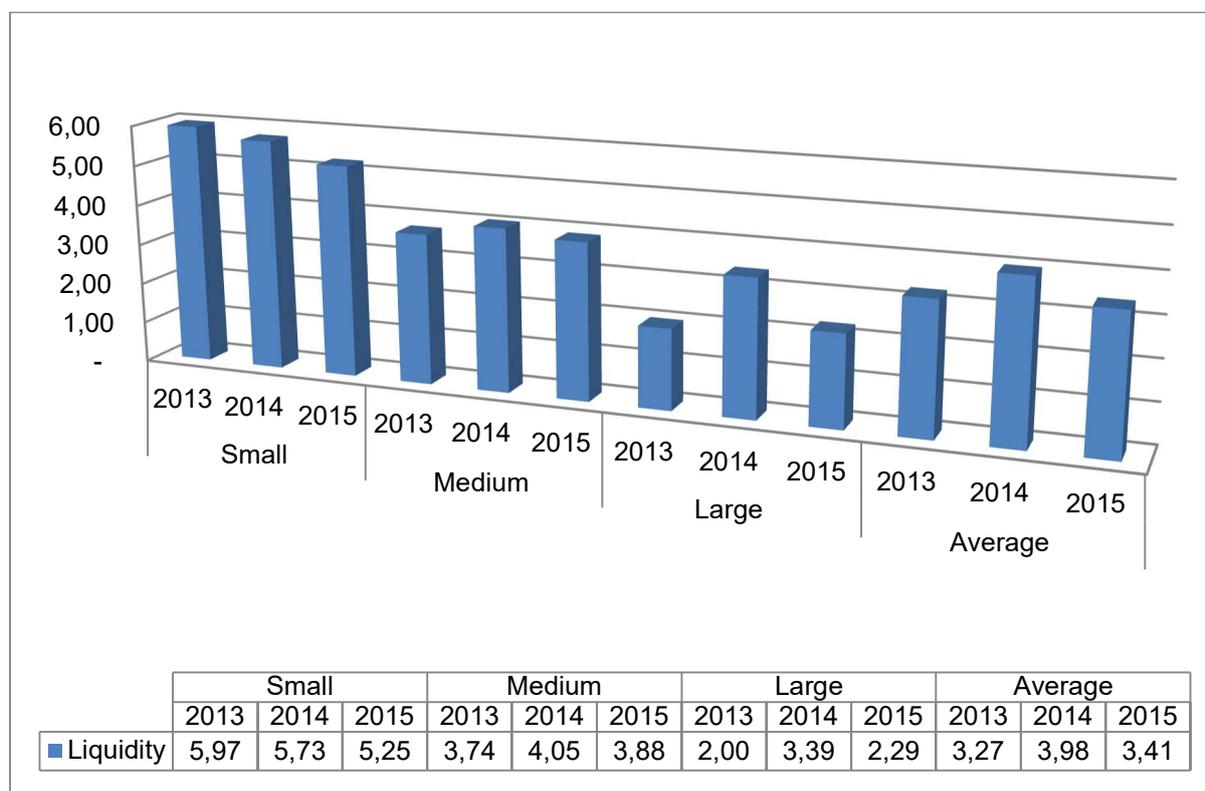
Figure 5-33: Solvency ratios for small, medium and large schemes in the sample



The average current ratio for the small schemes in the sample showed a declining trend of 5.98 (2013), 5.73 (2014) and 5.25 (2015). For the medium schemes in the sample, the current ratio was 3.74 (2013), 4.05 (2014) and 3.88 (2015). The large schemes in the sample also showed current ratios of 2.00 (2013), 3.39 (2014) and 2.29 (2015). Despite the declining trend for the small schemes and the varying trends for the medium and large schemes in the sample, the averages for the different sizes of schemes over the three years indicated that the coverage of current liabilities by current assets is well above the accepted norm of 2:1. (See also section 5.4.9.9.) The identified ratios agreed to a large extent with the findings of L. Lubbe (2013, pp. 179–180). In the mentioned study, the average current ratio for the small schemes in the sample showed a declining trend of 3.55 (2008), 3.54 (2009) and 2.14 (2010). For the medium schemes in the sample, the current ratio was 2.62 (2008), 3.24 (2009) and 2.95

(2010). The large schemes in the sample were 4.07 (2008), 3.13 (2009) and 2.95 (2010). Figure 5-34 below is a graphic representation of the various liquidity ratios.

Figure 5-34: Liquidity ratios for small, medium and large schemes in the sample

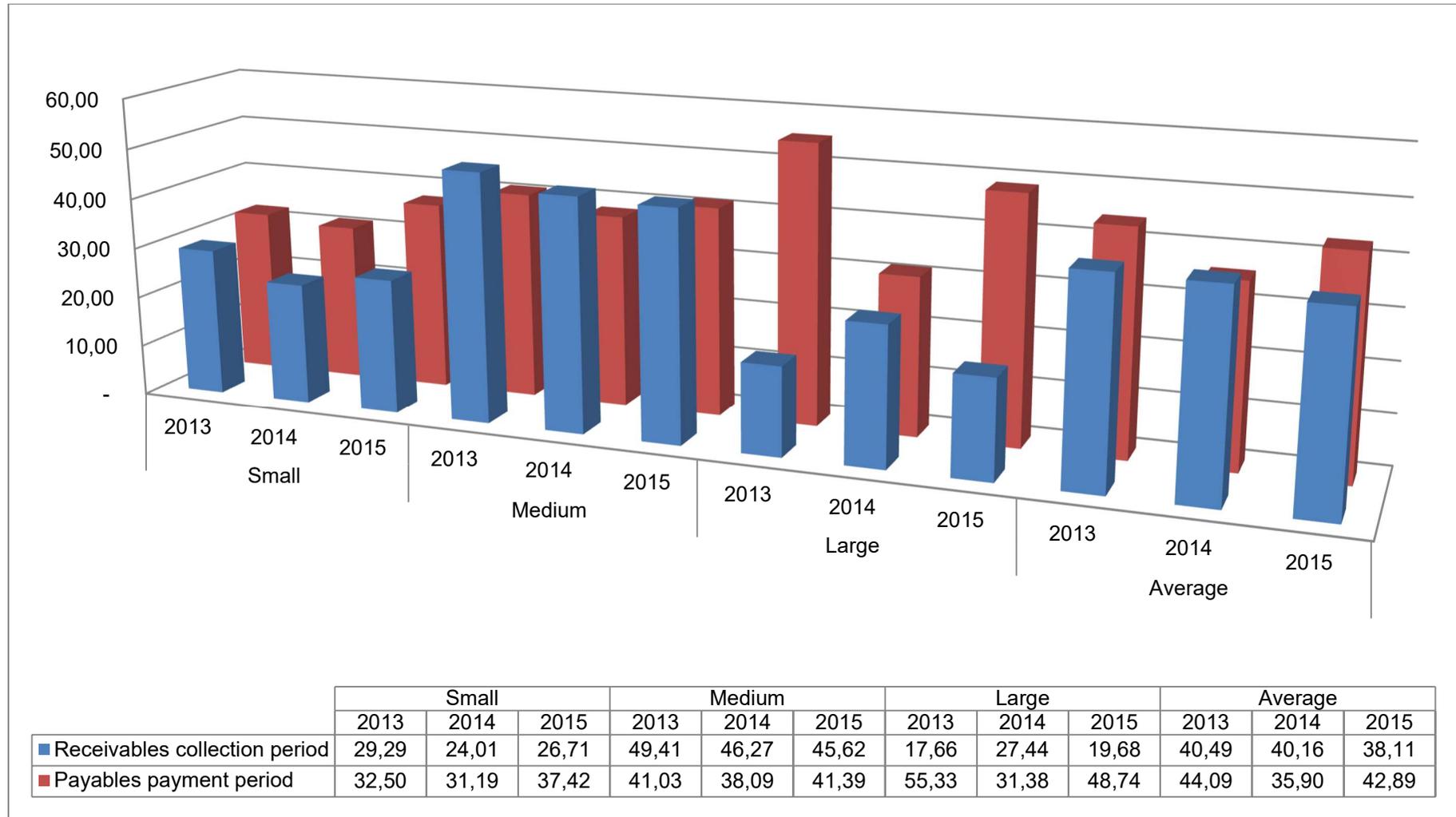


For the different sizes of schemes in the sample, the total average debtors' collection period was calculated using total average levies instead of sales as per the traditional ratio. (See also section 5.4.9.9.) For the small schemes in the sample, the collection period amounted to 29.29 days in 2013, 24.01 days in 2014 and 26.71 days in 2015. For the medium schemes in the sample, there was a definitive declining trend in the debtors' collection period from 49.41 days in 2013 to 46.27 days in 2014 to 45.62 days in 2015. However, the collection period for the medium schemes is still higher than the generally allowed levy payment period of 30 days. The debtors' collection period for the large schemes in the sample was much shorter than for the small and medium schemes, at 17.66 days in 2013, 27.44 days in 2014 and 19.68 days in 2015. The reason for the shorter collection period of the large schemes could not be determined with the available financial data. The results of the study by L. Lubbe (2013, pp. 181–182) showed that, for the small schemes in the sample, the collection period amounted to 44.20 days in 2008, 42.17 days in 2009 followed by a sharp increase to 69.61 days in 2010.

For the medium schemes in the sample, there was a definitive increasing trend in the debtors' collection period from 39.87 days in 2008 to 51.47 days in 2009 to 59.00 days in 2010. The debtors' collection period for the large schemes in the sample was, however, much shorter than for the small and medium schemes, at 14.11 days in 2008; 34.11 days in 2009 and 26.60 days in 2010. Therefore, as was also mentioned in section 5.4.9.9, the 2013 to 2015 sample had significantly shorter accounts receivable collection periods than the 2008 to 2010 sample.

For the sample selected, the total average creditors' payment period was calculated using total expenses instead of credit purchases as per the traditional ratio. (See also section 5.4.9.9.) For the small schemes in the sample, the creditors' payment period was 32.50 in 2013; 31.19 in 2014 and 37.42 in 2015. For the medium schemes in the sample, the creditors' payment period was 41.03 in 2013; 38.09 in 2014 and 41.39 in 2015. For the large schemes in the sample, the creditors' payment period was 55.33 in 2013; 31.38 in 2014 and 48.74 in 2015. In the findings of L. Lubbe (2013, pp. 182–183), for the small schemes in the sample, the creditors' payment period was 34.33 in 2008; 31.15 in 2009 and 64.39 in 2010. For the medium schemes in the sample, the creditors' payment period was 56.01 in 2008; 41.90 in 2009 and 47.98 in 2010. For the large schemes in the sample, the creditors' payment period was 28.86 in 2008; 37.24 in 2009 and 89.20 in 2010. Therefore, the 2013 to 2015 sample had significantly shorter accounts payable payment periods than the 2008 to 2010 sample. These results were also discussed in section 5.4.9.9 of this chapter. Figure 5-35 below depicts the average creditors' payment period in days for the different sizes of schemes.

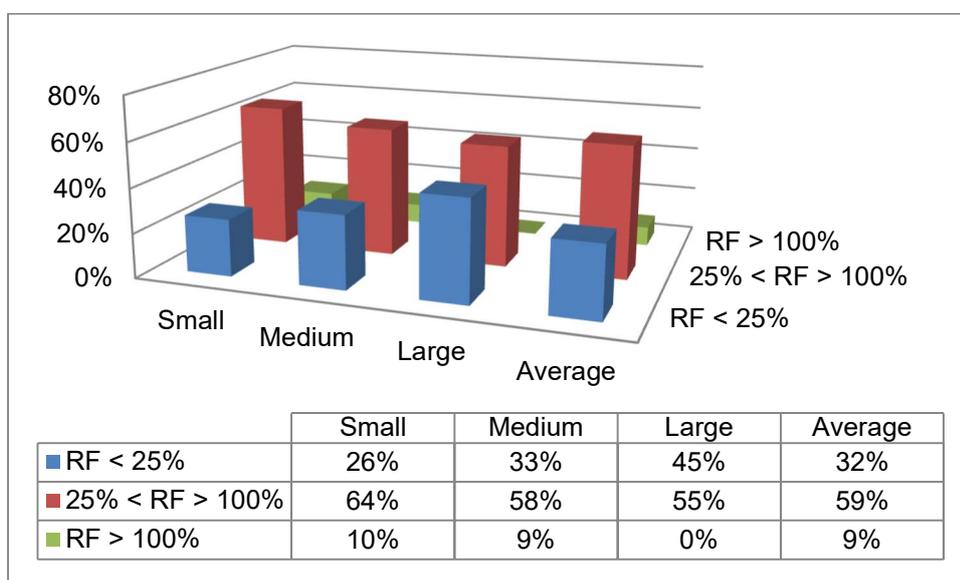
Figure 5-35: Comparison of debtors' collection period and creditors' payment period in days for small, medium and large schemes in the sample



5.4.9.19 New reserve fund requirements

Similarly to the analysis in section 5.4.9.10, the readiness of bodies corporate in the sample for the new reserve fund requirements was investigated. Figure 5-36 below summarises the findings. (RF = reserve fund)

Figure 5-36: Analysis of reserve fund requirements for small, medium and large schemes in the sample



For the average total sample analysed, 32% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund; 59% had between 25% and 100% of levy contributions for the year in the reserve fund, and 9% had more than 100% of the levy contributions for the year in the reserve fund. This means that only 9% of bodies corporate will not have to top up their reserve funds. For the small schemes in the sample, 26% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund, while 64% had between 25% and 100% of levy contributions for the year in the reserve fund, and 10% had more than 100% of the levy contributions for the year in the reserve fund. For the medium schemes in the sample, 33% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund, while 58% had between 25% and 100% of levy contributions for the year in the reserve fund, and 9% had more than 100% of the levy contributions for the year in the reserve fund. For the large schemes in the sample,

45% of the bodies corporate had less than 25% of the total levy contributions for the year in the reserve fund; 55% had between 25% and 100% of levy contributions for the year in the reserve fund, and none of the large schemes had more than 100% of the levy contributions for the year in the reserve fund.

5.5 Conclusion

The chapter commenced with the background to accounting and financial reporting in South Africa. An international overview was also given of accounting and reporting requirements of schemes similar to sectional title, with specific reference to the United Kingdom, the United States of America, Canada, Australia, New Zealand, Spain, India and Singapore. The sections in the Sectional Titles Act, Sectional Title Schemes Management Act and Regulations relating to accounting and reporting aspects of sectional title were discussed. Vagueness and ambiguity were identified in various instances of the legislation. In many cases, the legislation contains wording that is not true to the acknowledged subject terminology of, for example, IFRS. Certain sections of the legislation also make use of outdated terminology. The applicability of currently available accounting standards was also raised as a concern, and the aspect of a possible tailor-made accounting standard for sectional titles was addressed.

General observations and findings were also discussed as part of the analysis of the financial ratios of a sample of sets of annual financial statements of bodies corporate over a period of three years. The main categories in which the benchmarks were identified included financial statement averages expressed as rand amounts, income categories, levies per unit, expense categories, amounts for taxation, surpluses and deficits of schemes, growth trends, financial strength ratios and the new legal requirements for reserve funds. The benchmarks were identified for the sample in total, and where applicable, comparisons were made between the Mangaung, Matjhabeng, Matlosana and Tlokwe municipal areas. Distinctions were also made between different categories in the sample based on scheme size, and detailed comparisons were made between small, medium and large schemes. The various trends and ratios identified can be used by industry role players such as owners, trustees, accounting and auditing practitioners, managing agents, banking institutions and estate agents for purposes of comparison and benchmarking. The next chapter contains the results of the empirical study

that was conducted by means of questionnaires and interviews with various role players in the sectional title industry.

Chapter 6

The sectional title industry in South Africa: empirical findings

“Build, don’t talk.” – Ludwig Mies van der Rohe

6.1 Introduction

In section 1.1 it was mentioned that very little academic research has so far been done specifically from an accounting and auditing perspective to date on the sectional title industry in South Africa. As far as is known, the first research study of its kind was completed in 2013 by L. Lubbe. Against the background of the vital role that the sectional title industry plays in addressing the housing problem in South Africa, and in order to address some of the problems, ambiguity and challenges identified in the previous study, questionnaires were developed (see Annexures A to H) to determine the opinions of the most important role players in the sectional title industry, limited to the municipal areas identified in section 1.1. The municipal areas are Mangaung Metropolitan Municipality (Free State Province), Matjhabeng Local Municipality (Free State Province), City of Matlosana Municipality (North-West Province) and Tlokwe Local Municipality (North-West Province).

As mentioned in section 2.3.2, the empirical study was done by way of standardised interviews, incorporating the use of properly structured questionnaires. For the purposes of this study, the interviewees were divided into a sample of four main groups of role players. The first group being chairmen of bodies corporate of sectional title schemes, the second group managing agents of sectional title schemes, the third group accounting and auditing professionals involved in the sectional title industry, and the fourth group inspectors appointed by the EAAB. Given that the exact population of three of the four identified sectional title role players (trustee chairpersons, managing agents and accounting and auditing practitioners) is difficult and even impossible to determine, a non-probability sampling method was chosen for the qualitative study. A convenience sampling method was used to select the managing agents and trustee chairmen. For selecting the accounting and auditing practitioners, a

purposive sampling method was selected, since the practitioners needed to fit the criterion of having sectional title schemes as clients. For the EAAB appointed auditors, a quota sampling method was selected, since it was possible to determine the population (one EAAB inspector for each of the 9 provinces in South Africa). Throughout the chapter, whenever there are significant differences between the responses of the interviewees between the two provinces, or between the municipal areas, it will be highlighted as such. The following table summarises the four groups of respondents from the four municipal areas in tabular form.

Figure 6-1: Summary of sample selection for qualitative study

	Municipal Area				Total
	Mangaung Metropolitan Municipality	Matjhabeng Local Municipality	City of Matlosana Municipality	Tlokwe Local Municipality	
Trustees (large schemes)	2	0	1	2	5
Trustees (medium schemes)	4	5	2	1	12
Trustees (small schemes)	0	1	0	0	1
Total: trustees	6	6	3	3	18
Managing agents (large)	2	0	0	1	3
Managing agents (medium)	2	1	1	0	4
Managing agents (small)	1	1	1	3	6
Total: managing agents	5	2	2	3	13
Practitioners (large)	2	0	0	0	2
Practitioners (medium)	0	0	1	1	2
Practitioners (small)	3	2	2	2	9
Total: practitioners	5	2	3	3	13
	Province A	Province B	Province C	Province D	
EAAB appointees	1	1	1	1	4
Total: EAAB appointees	1	1	1	1	4

The detail of the sample selection for each of the four identified sectional title role players will be discussed under each of the following sections. The chapter will then continue with the opinions of chairmen of bodies corporate, followed by the viewpoints of the managing agents, then accountants and auditors of sectional title schemes and finally, the inspectors appointed by the EAAB. The chapter will conclude with an overview of the empirical findings as well as a summary of the chapter.

6.2 Perspective of sectional title trustee chairpersons

In this section, the results of the information from the questionnaires and interviews with chairmen of bodies corporate will be discussed. These aspects will be discussed under the following headings: scheme operations, meetings, problems and risks, managing agents and financial matters.

Regarding the empirical study on trustee chairpersons, a total of 20 requests for interviews were sent out as follows: 6 requests to the Mangaung Metropolitan Municipality, 6 to the Matjhabeng Local Municipality, 3 to the City of Matlosana Municipality and 5 to the Tlokwe Local Municipality. A total of 18 responses for interviews were received as follows: 6 out of 6 requests (100%) for the Mangaung Metropolitan Municipality, 6 out of 6 (100%) for the Matjhabeng Local Municipality, 3 out of 3 (100%) for the City of Matlosana Municipality and 3 out of 5 (60%) to the Tlokwe Local Municipality. A total of 18 positive responses were received out of the 20 requests sent out, resulting in a total response rate of 90%. The 18 chairmen of trustees of bodies corporate interviewed were selected after extensive enquiry from role players in the sectional title industry in the various municipal areas. The sample represents 5 large sectional title schemes (more than 50 units) in the form of town house complexes and blocks of flats, 12 medium-sized schemes (between 10 and 50 units) in the form of town house complexes and blocks of flat and 1 small sectional title scheme (fewer than 10 units) in the form of a town house. This ensured that in terms of residential schemes, the two main forms of complexes (flats and town houses) are represented and that inputs were received from chairmen over the entire size spectrum, from small to large schemes. No combined-use sectional title schemes (comprising of both commercial and residential units) were included in the sample, since these types of schemes are not as common as pure residential schemes. (See also figure 6.1 for more detail.)

6.2.1 Scheme operations

The 18 chairmen interviewed had varying numbers of units in their schemes, ranging from 7 units to 78 units. The total number of units in the schemes was 683, and the average number of units in the schemes amounted to 38. The boards of trustees of which they were chairmen also varied in size between 2 trustees and 7 trustees. 3 of the 18 trustees (17%) said that there were 2 trustees on the board of trustees. 8 of the 18 trustees (44%) said that their boards consisted of 3 trustees. A total of 3 of the 18 trustees (17%) said that their boards consisted of 4 trustees; 2 of the 18 trustees (11%) said that their boards consisted of 5 trustees; 1 of the 18 trustees (5%) said that their boards consisted of 7 trustee and 1 of the 18 trustees (5%) did not give a response to the question. The number of years served as trustee varied between 1 year and 30 years for the trustees in the sample, and the number of years served as trustee chairperson varied between 3 months and 15 years. The trustees had a total of 131 years (on average 7 years) of experience as trustees between them and a total of 86 years (on average 5 years) of experience as trustee chairpersons. The figure below summarises the above findings.

Figure 6-2: General information on trustee chairpersons in the sample

Respondent	No of units in scheme	No of trustees on board of trustees	Years served as trustee	Years served as trustee chairperson
1	78	3	15	15
2	41	5	4	4
3	46	4	8	6
4	54	3	5	2
5	12	4	30	15
6	38	2	5	5
7	52	7	2	2
8	42	5	1	1
9	38	3	11	3
10	52	4	11	10
11	27	3	7	6
12	68	3	3	3
13	24	3	4	3
14	32	3	10	3
15	24	2	6	3 months
16	28	3	6	6
17	20	2	1	1
18	7	n/a	2	1
Total	683	59	131	86
Ave	38	3	7	5

The chairmen differed in their opinions on what the optimal number would be for a well-functioning board of trustees and the answers varied between 3 and 7 trustees. 5 of the 18 chairmen (28%) said 3 trustees would be sufficient; 1 of the chairmen (6%) stated that 4 trustees would be sufficient; 5 of the chairmen (28%) said 5 trustees would be sufficient and 1 of the trustees said that 7 trustees would be sufficient. Only 1 chairman (6%) was of the opinion that the number of trustees should be 25% of the number of units in the scheme, while 1 chairman (6%) said 3 to 4 trustees would be sufficient, depending on the size of the scheme; 2 chairmen (11%) said 3 to 4 trustees would be sufficient, depending on the size of the

scheme, and 1 chairman (6%) said that there should be 3 to 5 trustees for schemes smaller than 15 units and 5 to 7 trustees for schemes larger than 15 units would be sufficient.

All of the chairmen (100%) interviewed stated that if they as chairmen incurred expenses on behalf of the body corporate, they are reimbursed for the expenses incurred. A total of 4 of the 18 (22%) chairmen interviewed received an honorarium. The annual honorariums received were R6,000, R6,600, R12,000, and R24,000 respectively. The other 14 of the 18 (78%) chairmen received no honorarium. The chairman who received the R6,000 honoraria was the only chairman that said the board of trustees was remunerated. In that scheme, all trustees received an honorarium of R6,000. Many of the trustees were of the opinion that trustees as well as chairmen should receive some form of remuneration. The concept of remuneration was also discussed in section 6.3.7 of this chapter. In the study by L. Lubbe (2013, p. 188), the results of the empirical study also indicated that trustee remuneration should be strongly considered by bodies corporate.

A total of 10 of the 18 (56%) chairmen interviewed said that they were entirely up to date with the latest stipulations of the Sectional Titles Act, while 8 (44%) of the chairmen said they were not up to date. It is quite a worrying observation that almost half of the trustee chairpersons are not up to date with the latest stipulations of the Sectional Titles Act. This is also a noteworthy change from the findings of L. Lubbe (2013, p. 188), where only 20% of the respondents indicated that they were not up to date with the stipulations of the legislation.

Only 5 of the 18 (28%) chairmen interviewed stated that they had attended sectional title training courses in the past. These training courses were presented by various managing agents, the National Association of Managing Agents (NAMA), the SA Real Estate Academy (REA) and the Institute of Estate Agents of South Africa (IEASA). A total of 13 (72%) of the chairmen stated that there is a definite need for sectional title training courses for trustees, and 11 (61%) said that there is a need for training specifically for trustee chairpersons. A number of the chairpersons mentioned, however, that the available training courses provided by some managing agents and the National Association of Managing Agents (NAMA) are too expensive and time-consuming. A total of 5 (28%) of the chairmen commented that they do not see a need for trustee training and 7 (39%) of the chairpersons did not see a need for training for trustee chairpersons. The figure below summarises the above findings.

Figure 6-3: General opinions and scheme operations

Respondent	Optimal number of trustees	Trustees remunerated (yes/no)	Amount trustee remuneration	Chairperson remunerated (yes/no)	Amount of chairperson annual remuneration	Up to date with STA	Training attended	Training needs - trustees	Training needs – chairpersons
1	3-5	No	n/a	Yes	R12,000	Yes	Yes	Yes	Yes
2	5	No	n/a	No	n/a	Yes	No	Yes	No
3	5	No	n/a	Yes	R24,000	Yes	Yes	No	No
4	3-5	No	n/a	No	n/a	No	No	Yes	Yes
5	25% of units	Yes	R6,000	No	n/a	Yes	Yes	Yes	Yes
6	3	No	n/a	No	n/a	No	No	Yes	Yes
7	7	No	n/a	No	n/a	No	No	Yes	No
8	5	No	n/a	No	n/a	Yes	No	Yes	Yes
9	5	No	n/a	No	n/a	No	No	No	No
10	3-4	No	n/a	No	n/a	Yes	No	Yes	Yes
11	4	No	n/a	No	n/a	No	Yes	Yes	Yes
12	3-5 if < 15 and 5-7 if > 15	No	n/a	No	n/a	Yes	No	Yes	Yes
13	5	No	n/a	No	n/a	Yes	No	Yes	Yes
14	3	No	n/a	No	n/a	Yes	No	No	No
15	3	No	n/a	No	n/a	No	No	No	No
16	3	No	n/a	Yes	R6,600	No	No	Yes	Yes
17	3	No	n/a	No	n/a	Yes	Yes	No	No
18	n/a	No	n/a	No	n/a	No	No	Yes	Yes
Yes	n/a	1	n/a	3	n/a	10	5	13	11
No	n/a	17	n/a	15	n/a	8	13	5	7

6.2.2 Meetings

According to 13 of the 18 chairmen interviewed (72%), the annual general meeting (AGM) of their body corporate is poorly attended, an opinion shared by the managing agents interviewed in section 6.3.4.

As part of the interviews, the trustees were asked what they perceived to be the biggest problems at AGMs. The interviewees were allowed to give more than one answer to the question. More than 83% (15 out of the 18) of the chairmen mentioned that their annual general meetings (AGMs) seldom or never have a quorum and have to be postponed. This happens despite various communication efforts such as registered mail and sms-messages. General apathy from the owners regarding meetings was also perceived to be a problem. Some of the chairmen added that there are high costs involved in postponing an AGM, since the managing agent charges them an after-hours meeting fee for each meeting, including the postponed one. (See also section 6.2.3.)

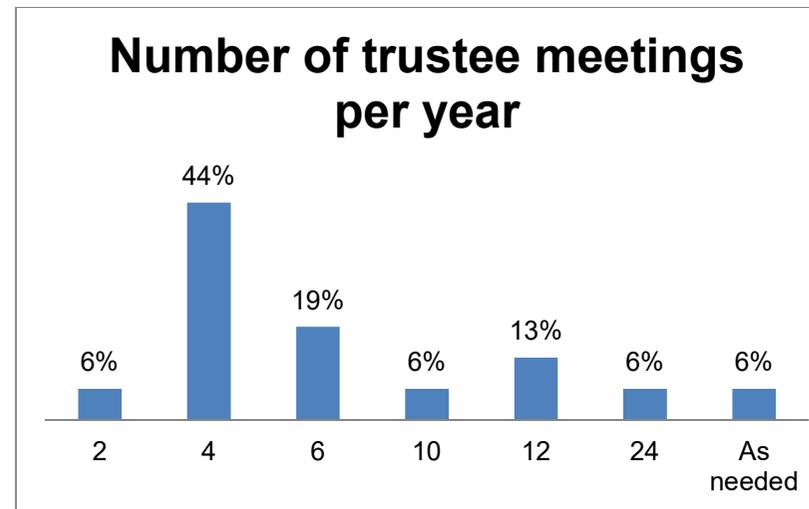
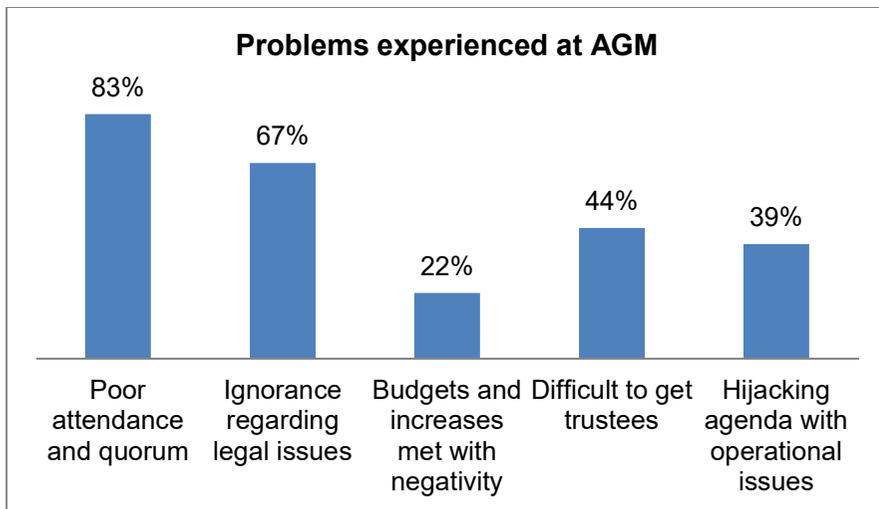
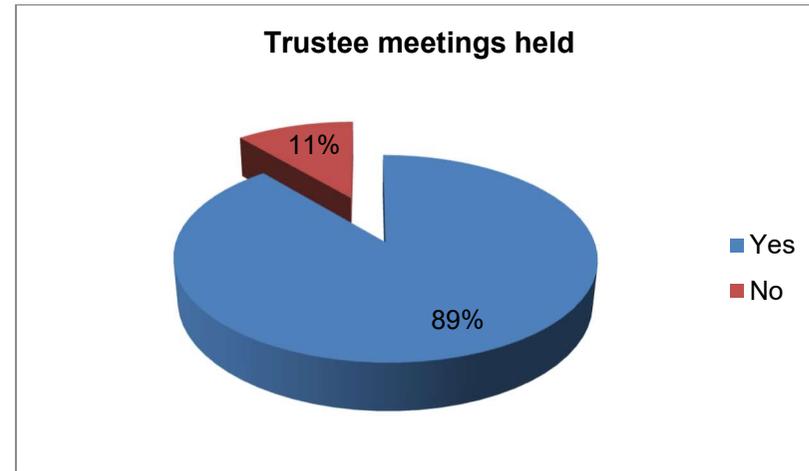
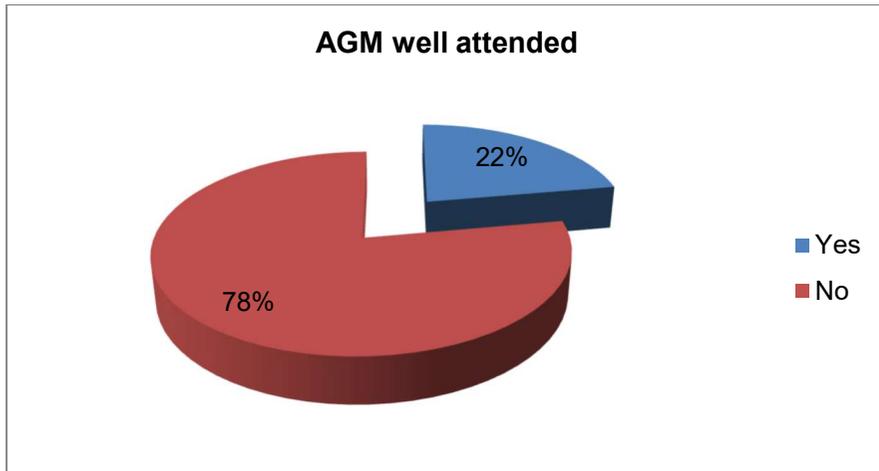
The approval of budgets at the AGMs was a problem for 4 of the 18 (22%) chairmen. This finding accords with the responses of the managing agents in section 6.3.4. The chairmen stated that increases in budgets and the resulting levies are always met with negativity.

As was mentioned by some managing agents in 6.3.4, a total of 7 of the 18 (39%) chairmen interviewed also stated that owners do not adhere to proper meeting procedure during AGMs. Often, one or two owners hijack the agenda wanting to discuss operational matters and general complaints which fall outside the scope of the agenda. A total of 8 of the 18 (44%) chairmen interviewed stated that very few people want to serve as trustees, and that the election of trustees at the AGM is usually problematic.

The boards of trustees hold meetings with varying regularity. Only 1 of the 18 (6%) chairmen said that their board of trustees have meetings twice a year, while 7 of the 18 (39%) chairmen said that the board of trustees meet quarterly; 3 of the 18 (17%) chairmen stated that the board of trustees only meet once every two months; 1 of the 18 (6%) chairmen said that they meet

roughly every 6 weeks (10 times per year); 2 of the 18 (11%) chairmen stated that the board of trustees meet on a monthly basis; 1 (6%) chairmen stated that they meet every two weeks (24 times per year) and 1 of the 18 (6%) chairmen said that they get together when necessary. The other 2 of the 18 (11%) do not hold any trustee meetings at all. All of the chairmen (100%) stated that there are never any meetings held for owners and residents other than the AGM and trustee meetings, but that if the need arises, they would arrange a special meeting. The figure below summarises these findings.

Figure 6-4: General findings on meetings



6.2.3 Risks and related problems

As part of the interviews, the trustee chairpersons were asked what they regarded to be the biggest problems they experienced in their sectional title schemes. The interviewees were allowed to give more than one answer. The trustee chairpersons identified a great variety of problems, some which occur more often than others. Of all the problems experienced by chairpersons, poor meeting attendance make up 16% of problems experienced; ignorance concerning legal issues 13%; difficulty to get trustees 9%; people, pets and parking 9%; developers 8%; service delivery and maintenance 8%; water and electricity estimates 8%; debt collection 7%; and the final 22% of problems are split between general apathy and uninvolved owners (6%), rules not adhered to (5%), tenants (4%), levy increases (4%) and owners not living in the complex (3%).

The single biggest problem experienced by chairmen of bodies corporate (mentioned by 15 of the 18 chairpersons) is that owners do not attend meetings. This problem is also mentioned in sections 6.2.2 and 6.3.5. Many of the chairmen mentioned that they have put communication mechanisms in place – such as sending meeting notices via registered mail and sms-messages, but despite these efforts meeting attendance remain poor.

Ignorance regarding legal issues was mentioned by 12 of the chairpersons interviewed. The chairpersons were of the opinion that most owners do not know what they buy into when they purchase sectional title property, and they do not understand the roles and responsibilities of the various parties involved. These chairmen stated that many owners, and sometimes even fellow trustees, are uninformed and ignorant regarding the way a body corporate functions. In addition, 5 of the chairpersons mentioned that there is general apathy amongst owners in their complexes, and 5 chairpersons also stated that general management and conduct rules are not adhered to. A total of 8 of the 18 trustee chairpersons interviewed stated that they spend most of their time as chairmen dealing with complaints and handling transgression of rules, such as noisy pets and residents, parking problems, and unauthorised changes and extensions to units. These are often referred to as the three P's in sectional title problems, namely pets, people and parking. Some of the chairpersons also commented that the trustees were very unpopular in their complexes due to the fact that they enforced the management

and conduct rules. These viewpoints were also shared by managing agents and auditors interviewed, as discussed in sections 6.3.5. and 6.4.5.

Of the 18 trustees interviewed, 8 mentioned that they regularly experience difficulty in getting owners to serve as trustees. The chairmen mentioned that being a trustee entails much more work than people think. They also stated that being a trustee of a body corporate is a 'thankless' job, and perhaps it may be easier to find individuals willing to serve as trustees and trustees may also take their tasks more seriously if they were remunerated. (See also sections 1.4.6.3 and 6.3.7.)

Not all the chairpersons interviewed had experience with developers. Of the 18 chairmen interviewed, 7 had been involved in schemes that were once under development. Most of these chairpersons said that the developers cut corners and used cheap materials during the building process, and did not want to take responsibility afterwards. Some of the chairmen mentioned that the developers bypassed certain building regulations. A few of the chairmen stated that they waited for a number of years to receive electricity certificates from the developers. A general opinion amongst the chairpersons is that developers only do the developments for their own financial gain, and that matter such as the registration of rules are not performed with the eventual owners in mind. The chairmen were of the opinion that developers market and sell sectional title properties without informing potential owners exactly what sectional title entails. The chairmen also mentioned that developers tend to leave a great number of units 'unoccupiable' and refuse to pay levies on these units, despite the fact that they use large portions of the common water and electricity of the scheme for their building purposes. Problems with developers were also mentioned by managing agents in section 6.3.6 below.

A further concern, which was experienced by 7 of the 18 chairmen, regards local authorities, more specifically, a lack of communication, account estimates for water and electricity, poor municipal service delivery, leaking water pipes not being repaired, inaccurate account balances, corrections and incorrect allocations on statements. Frustrations with local authorities were also mentioned in the study by L. Lubbe (2013, p. 189) as well as by managing agents in section 6.3.5 and accounting practitioners in section 6.4.5. Many of the chairpersons

mentioned that a lot of their problems with local authorities have been resolved after they installed prepaid water and electricity meters.

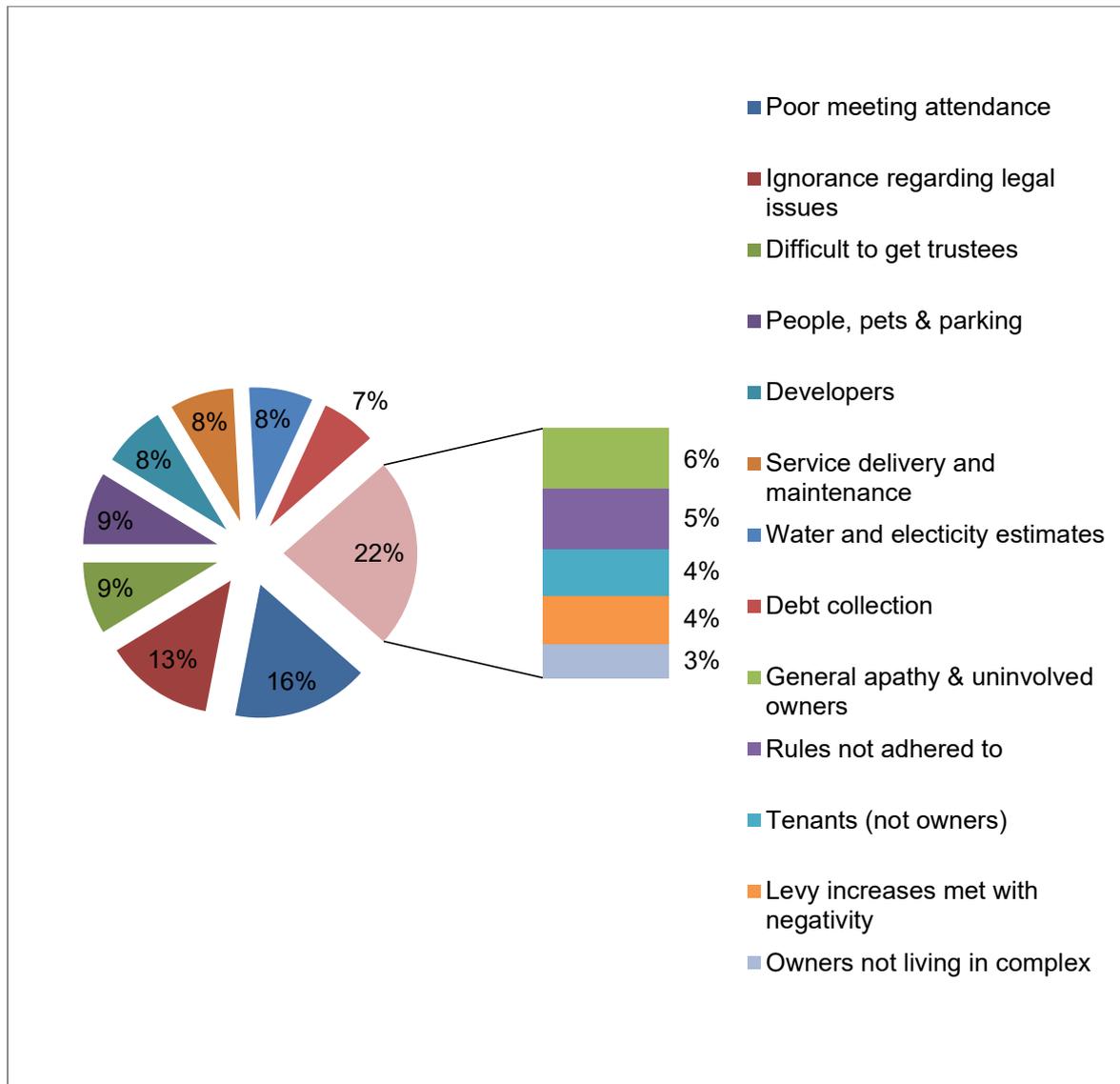
According to 6 of the 18 chairmen interviewed, there are many residents falling behind on their payments and debt collection is regarded as a great challenge. The problem was also mentioned by the managing agents in section 6.3.5 and the accounting practitioners in section 6.4.5 below. (See also L. Lubbe (2013, p. 191;196;208).)

General apathy and uninvolved owners were mentioned as a problem by 5 of the 18 chairpersons interviewed. These chairpersons stated that residents think trustees are available to handle complaints and are at their service 24 hours a day, 7 days a week. Some of the chairpersons mentioned that the owners think that the trustees are groundskeepers, and they even expect the trustees to sweep corridors and take out refuse bags.

Problems with tenants in the schemes were mentioned by 4 of the 18 trustee chairpersons interviewed. These chairpersons stated that tenants often have very little concern for the fact that they stay in sectional title schemes, and that there is a general attitude amongst tenants that the rules do not apply to them. A total of 3 of the chairpersons interviewed mentioned that they experienced problems with owners who do not live in the complexes (non-resident owners). They were of the opinion that these owners are generally uninvolved, are only interested in receiving rental income and do not care about the day-to-day operations of the complex.

In line with the findings in sections 6.2.2 and 6.2.7, of the 18 trustee chairpersons interviewed, 4 stated that levy increases are always met with negativity. They mentioned that everybody wants to stay in a well-maintained complex, but nobody wants to see any increases in levies. One trustee mentioned that the problem is especially relevant in his scheme where many residents are pensioners. Some of the trustees also mentioned that sectional title owners tend to forget that if you own a house you will also have to pay money to keep your property maintained. The figure below summarises the above findings.

Figure 6-5: Summary of the biggest problems experienced by trustee chairpersons



According to the chairpersons interviewed, the greatest risks involved in being a trustee of a body corporate include a lack of training, possible liabilities for not complying with legal requirements, poor management of scheme finances, overspending on the budget and personal vendettas against chairpersons. The greatest risks attached to being the chairperson of the board of trustees of a sectional title scheme included acting without the consent of other trustees, ignorance of the law, possible legal liability and making judgement errors. A number of misperceptions were identified during the interviews regarding the role of the trustee chairperson. These misperceptions included the fact that residents think trustees are being remunerated for their role as trustees, residents think that there are unlimited funds available, that the trustees take the body corporate money for themselves, and tenants often think that

they have the same rights as owners. Some of the chairpersons also mentioned that the rest of the trustees on their board of trustees are under the impression that only the trustee chairperson should have knowledge of sectional title legislation. It was also mentioned that owners think that paying their levy is all that they are responsible for and that they do not think they have any additional responsibilities.

6.2.4 Managing agents

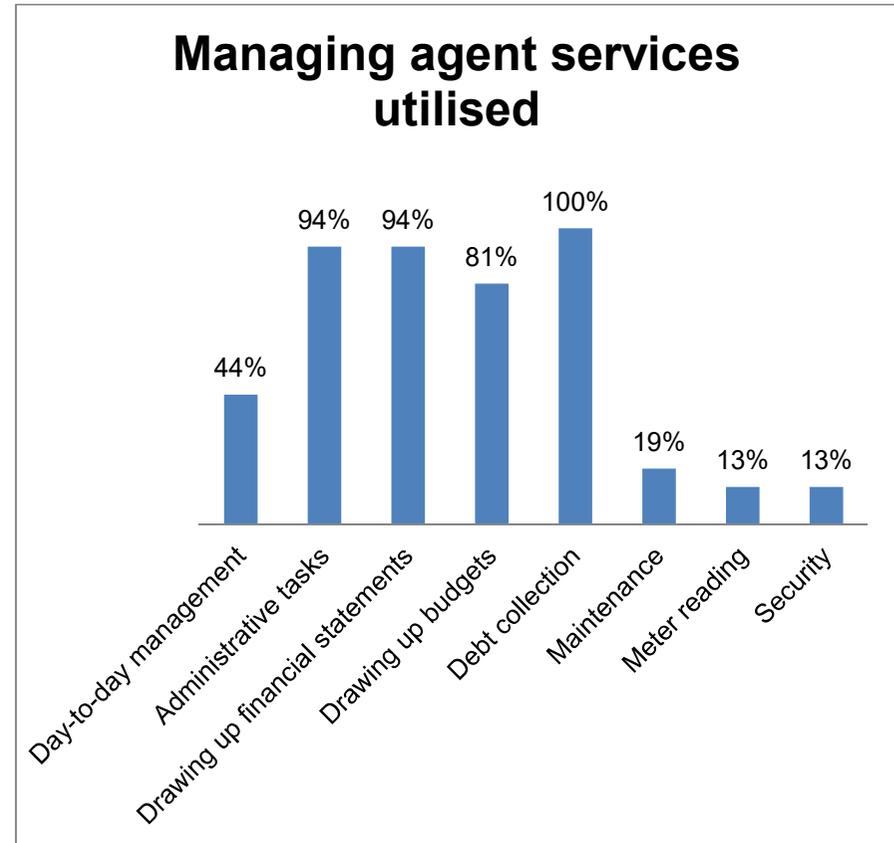
A total of 16 of the 18 chairpersons interviewed (89%) stated that their bodies corporate made use of the services of a managing agent. The managing agents assisted the bodies corporate with various tasks. Of the 16 chairpersons interviewed that made use of the services of a managing agent, 7 (44%) stated that the managing agent assists them with the day-to-day management of the scheme; 15 of the 16 (94%) used the managing agent to assist them with administrative tasks; 15 of the 16 (94%) used the managing agents service for drawing up of the financial statements (most of the managing agents subcontract this function to accounting and auditing firms, as mentioned in section 6.2.5); 13 of the 16 (81%) used the help of their managing agent for drawing up of budgets, all of the trustee chairpersons (100%) stated that the managing agent assists them with debt collection; 3 of the 16 (19%) chairpersons mentioned that their managing agents assist them with maintenance; 2 of the 16 (13%) used the help of their managing agent with the reading of water and electricity meters and 2 of the 16 (13%) chairpersons stated that their managing agents assisted them with providing security services. In total, the service provided by the managing agents to the bodies corporate are split up as follows: day-to-day management 10%, administrative tasks 20%, assistance with drawing up of financial statements 20%, drawing up of budgets 18%, debt collection 22%, maintenance 4%, meter reading 3% and security 3%.

The length of time that the trustees have been making use of the services of a managing agent ranged from 4 years to 20 years, and 2 of the chairpersons were unsure how long they had been making use of the services of their managing agent. A total of 11 of the 16 (69%) of the chairmen that made use of the services of a managing agent stated that they understood the basis the managing agents used for calculating their management fees. The other 5 said that they did not know how it was calculated.

The chairmen were asked to rate their level of satisfaction regarding the service received from their managing agent, with the options ranging from very satisfied to very dissatisfied. A total of 8 of the 16 (50%) chairmen who made use of the services of a managing agent stated that they were very satisfied with the services of the managing agents; 7 of the 16 (44%) chairmen who made use of the services of a managing agent stated that they were satisfied with the services of the managing agents; 1 of the 16 (6%) chairpersons did not answer the question. One of the chairpersons who did not currently make use of the services of a managing agent stated that their level of dissatisfaction with the service of the managing agent had led to the trustees ending the contract and managing the scheme on their own. The figure below summarises the above findings.

Figure 6-6: General findings and opinions of chairpersons regarding managing agents

Respondent	Make use of managing agent	Level of satisfaction	Years of service	Understand fee calculation
1	Yes	Satisfied	15	Yes
2	Yes	Very satisfied	4	Yes
3	Yes	Satisfied	8	No
4	Yes	Satisfied	5	Yes
5	No	n/a	n/a	n/a
6	Yes	Satisfied	11	Yes
7	Yes	Satisfied	unsure	Yes
8	Yes	n/a	unsure	No
9	Yes	Satisfied	20	No
10	Yes	Very satisfied	11	Yes
11	Yes	Very satisfied	11	Yes
12	No	n/a	n/a	n/a
13	Yes	Very satisfied	4	No
14	Yes	Very satisfied	4	Yes
15	Yes	Very satisfied	6	Yes
16	Yes	Very satisfied	7	Yes
17	Yes	Very satisfied	7	Yes
18	Yes	Satisfied	19	No
Total	16			11

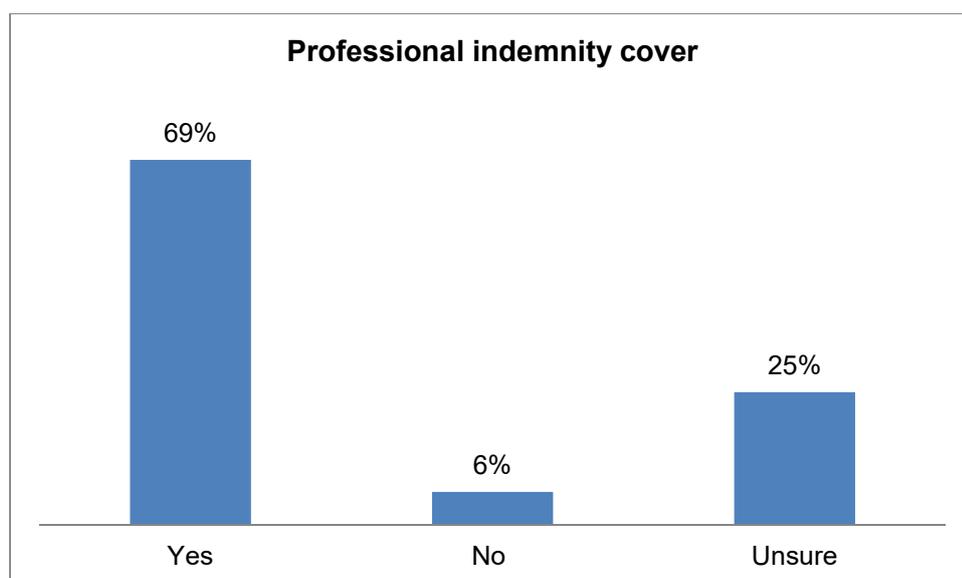
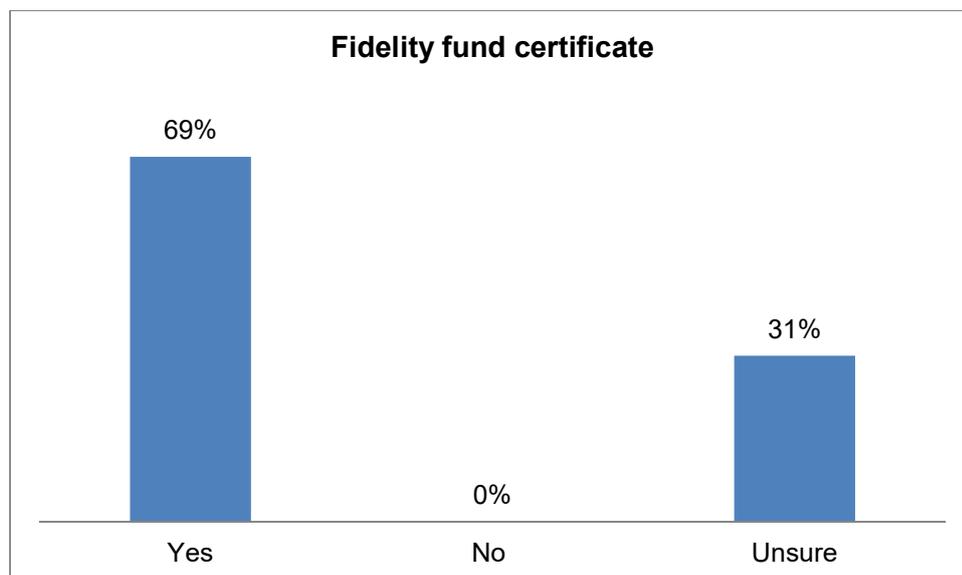


Some of the chairpersons interviewed stated that making use of a managing agent is very expensive. Some added that their problems did not always receive the necessary attention. However, they stated that they cannot operate without the services of a managing agent, and that other available managing agents have an even worse reputation. Some of the dissatisfied chairmen also mentioned that the lack of continuity of staff members at managing agents were frustrating. A few of the chairpersons also commented that very large managing agents are sometimes too busy and occupied with the matters of large schemes, with the result that they do not give the necessary attention to smaller schemes. These chairmen changed from large managing to smaller managing agents in recent years and were currently more satisfied with the service they receive.

During the interviews, the chairpersons were asked what the most important factors are that they take into account when appointing a managing agent. The most important factor that the chairpersons take into account is knowledge of the sectional title industry and the reliability of the managing agent. Other important factors to take into account when deciding on a managing agent is service delivery, and the trustworthiness of the managing agent regarding the finances of the body corporate. Affordability of the management fees is also considered as important. Some of the chairmen stated that the managing agents should display a genuine interest in the complex.

A total of 11 of the 16 (69%) trustee chairpersons who made use of the services of a managing agent stated that their managing agent has a valid fidelity fund certificate issued by the EAAB; 5 (31%) of these chairpersons said they were unsure whether their managing agent has a valid fidelity fund certificate issued by the EAAB; 11 of the 16 (69%) chairmen making use of the services of a managing agent stated that their managing agent has professional indemnity (PI) cover, while 1 (6%) stated that the managing agent did not have indemnity cover in place, and 4 (25%) of the chairpersons were unsure. One of the chairpersons who used to make use of the services of a managing agent in the past said that the managing agent claimed that they had a fidelity fund certificate and professional indemnity cover in place, but could not give evidence when requested to do so. This was one of the reasons for the body corporate to cease making use of the services of the managing agent. The figure below illustrates the above graphically.

Figure 6-7: Awareness of the managing agents' fidelity fund certificates and professional indemnity cover

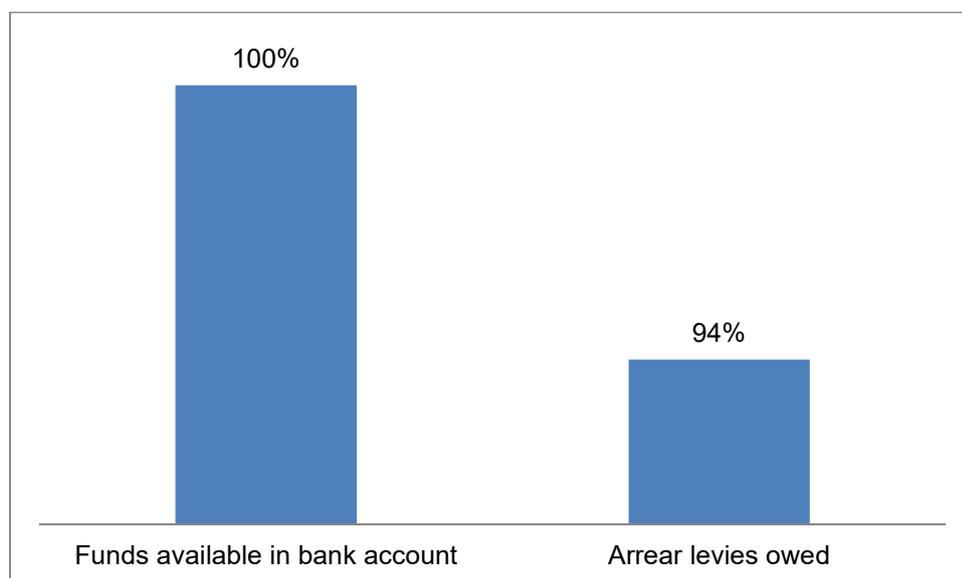


6.2.5 Financial matters

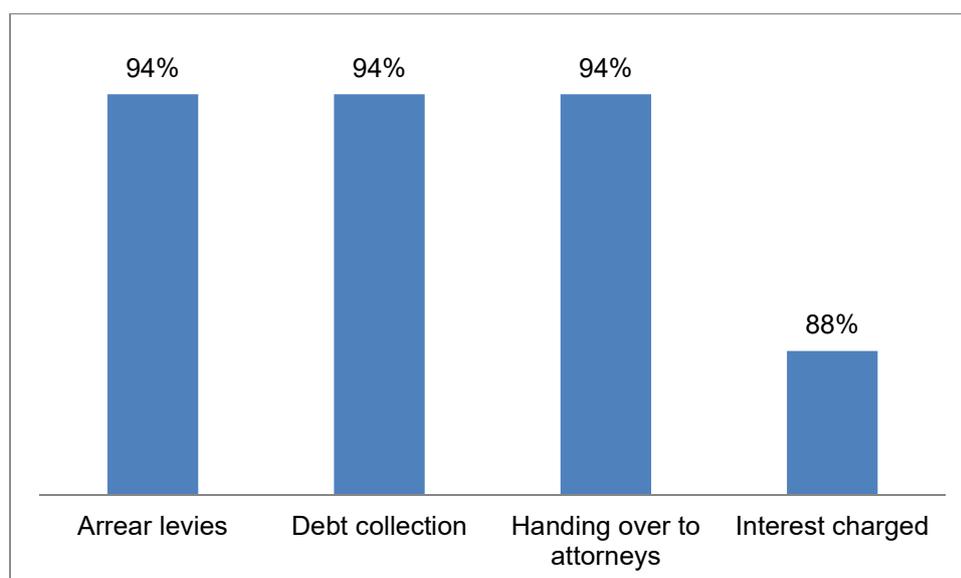
According to all of the chairmen (100%) interviewed who made use of the services of a managing agent, they are continually up to date with the funds available in the bank account of the scheme. A total of 15 (94%) of these 16 chairpersons stated that they were continually

up to date with the arrear levies owed to the body corporate, while the remaining 1 (6%) stated that he was not up to date. The graph below illustrates these results.

Figure 6-8: Awareness of funds and arrears



Of the 16 chairpersons interviewed who made use of the services of a managing agent, 15 (94%) stated that the managing agent had a fixed policy regarding arrear levies; 15 (94%) had a policy governing debt collections; 15 (94%) stated that their managing agent had a specific policy regarding the stage at which arrear accounts are handed over to attorneys; and 14 of the 16 (88%) of the chairpersons stated that their managing agent had a fixed policy for charging interest. These results are illustrated in the figure below.

Figure 6-9: Awareness of various managing agent policies in place

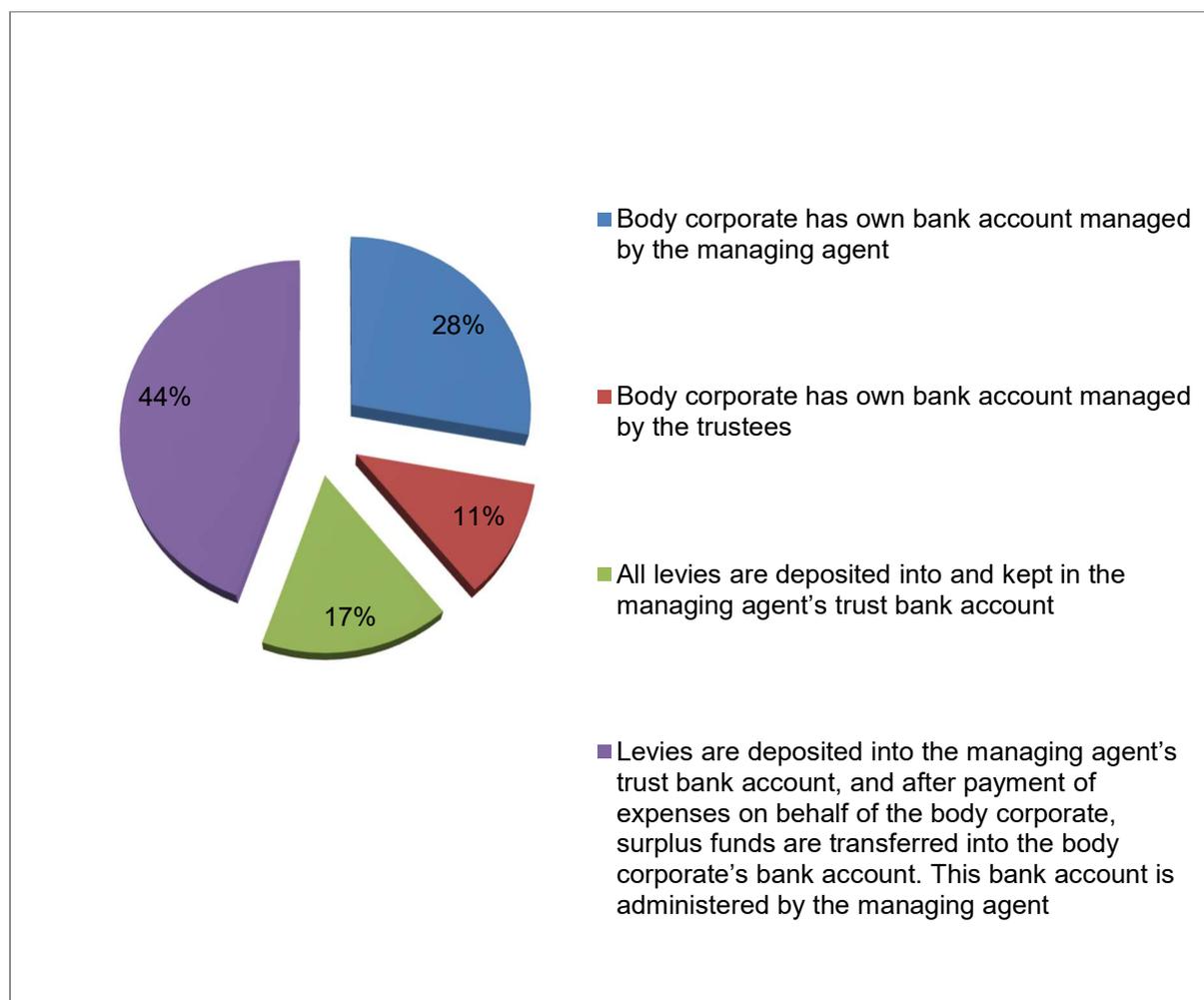
A total of 12 of the 16 (75%) chairpersons who were making use of the services of a managing agent commented that they receive monthly management accounts from their managing agents; 3 (19%) stated that they do not receive any statements and 1 (6%) received management accounts occasionally only.

During the interviews, 3 of the 18 chairmen (17%) mentioned that they felt uncomfortable with the way their managing agents handled their bank accounts and funds. This matter was also mentioned by the accounting and auditing practitioners in section 6.4.5. below, as well as in the study of L. Lubbe (2013, p. 190). The chairmen had serious concerns with the fact that the managing agent did not open a separate bank account for the body corporate and that all levies had to be deposited in the bank account (a 'pool' of funds) of the managing agent. The chairpersons stated that by law the body corporate are supposed to earn interest on surplus funds, which they never receive. Alternatively, interest should be paid over to the fidelity fund of the EAAB, but they could not get positive confirmation that this actually happened. The managing agents' response to the matter is that it is generally accepted practice in the industry. The managing agents also claim that their accounting systems are linked to their pooled bank account and that it cannot be changed to handle various separate body corporate accounts. The chairmen mentioned that since levies are received by the first week of a month and creditors are only paid days or even weeks later, there are often large amounts of money in the bank account of the managing agent. The bodies corporate therefore never receive any

interest on these funds, since the managing agents only pay the surplus funds over at the end of the month or at their own discretion. Even though the 'bank balance' is communicated to the body corporate of a monthly basis, the actual funds lie in the bank account of the managing agent, and interest accumulate accordingly. One chairman also added that the managing agent earns so-called 'loyalty points' from his bank on the balances and transactions of this bank account for his own benefit.

On further enquiry, 5 of the 18 (28%) chairmen interviewed stated that their body corporate had its own bank account and that this account was administered and managed by the managing agent; 2 of the 18 (11%) chairpersons said that their body corporate has its own bank account which is managed by the trustees; 3 of the 18 (17%) of the chairmen said that for their schemes, all levies are deposited into and kept in the managing agent's trust bank account and funds are never transferred to an account in the name of the body corporate; 8 of the 18 (44%) chairpersons stated that for their scheme, all levies are deposited into and kept in the managing agent's trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds were transferred into the body corporate's bank account. This bank account is administered by the managing agent. The matter of trust bank accounts and pooling of funds will be dealt with in more detail in sections 6.2.5, 6.3.8, 6.4.5 and 6.4.8 below. The results of the above are illustrated in the figure below.

Figure 6-10: Functioning of bank accounts



A total of 16 of the 18 (89%) of the chairpersons interviewed stated that the managing agent opened a bank account with a financial institution on behalf of the body corporate for purposes of investment of surplus funds; 12 (75%) of these chairmen mentioned that the board of trustees approved of the financial institution when the account was opened, while the other 4 (25%) stated that they did not approve.

According to 17 of the 18 chairmen (94%) interviewed, the annual financial statements of their schemes are prepared, and the audits performed by firms of chartered accountants (CA(SA)). Only 1 of the 18 (6%) chairpersons stated that the annual financial statements of their scheme were not prepared by firms of chartered accountants, but by the managing agent, and that the audit of the statements was performed by a firm of chartered accountants. A total of 13 of the

18 chairmen interviewed (72%) stated that the auditors were appointed by the members of the body corporate at the annual general meeting (AGM); 3 (17%) chairmen stated that their managing agents appoint the audit firm, while the other 2 (11%) stated that the auditors of their bodies corporate were appointed by the trustees. It should be noted that by law the members of the body corporate should appoint the auditors at the AGM. This appointment should not be made by the trustees or the managing agent. The two figures below illustrate this graphically

Figure 6-11: Preparation of annual financial statements

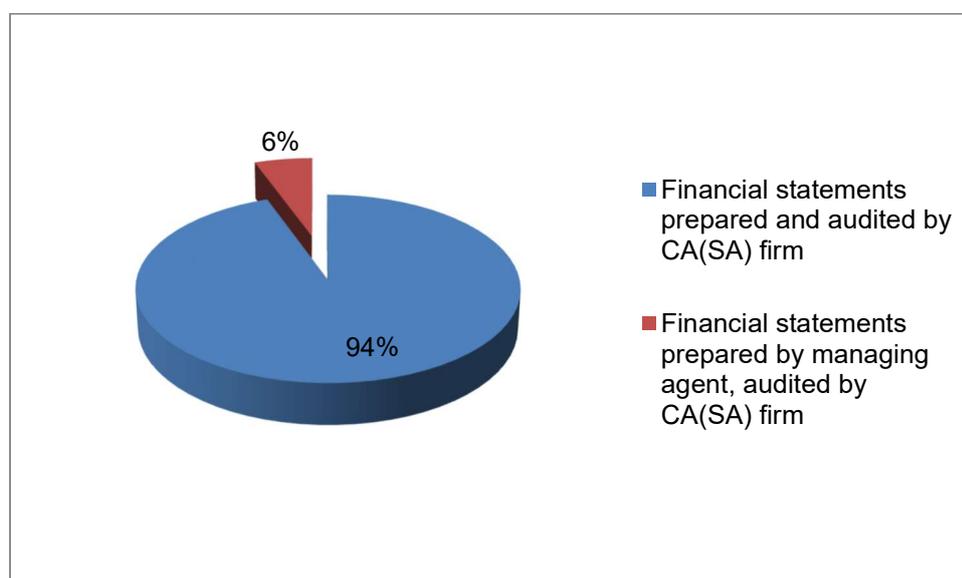
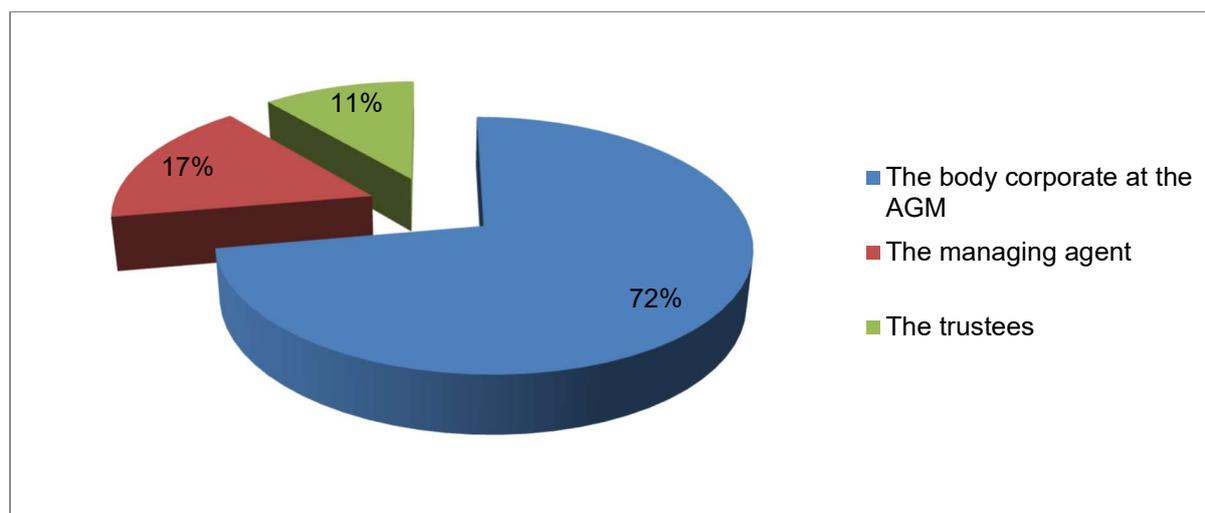
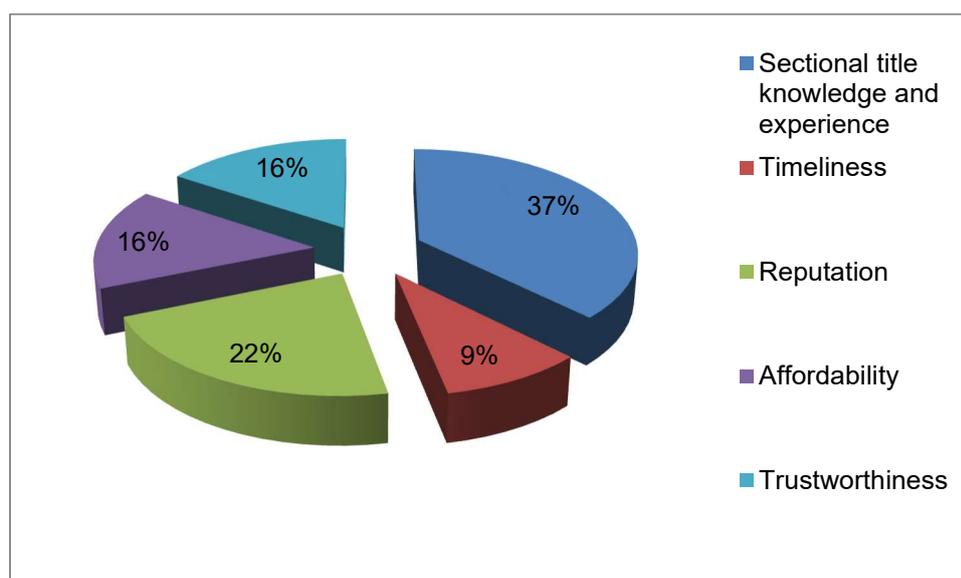


Figure 6-12: Appointment of auditors



During the interviews the trustees were asked which factors they take into account when choosing an audit firm. The most important factor was sectional title knowledge and experience (37%), followed by the reputation of the audit firm (22%), affordability (16%), trustworthiness (16%) and timely completion of work (9%). (See also the opinions of managing agents regarding this matter in section 6.3.8.)

Figure 6-13: Factors taken into account when choosing an audit firm

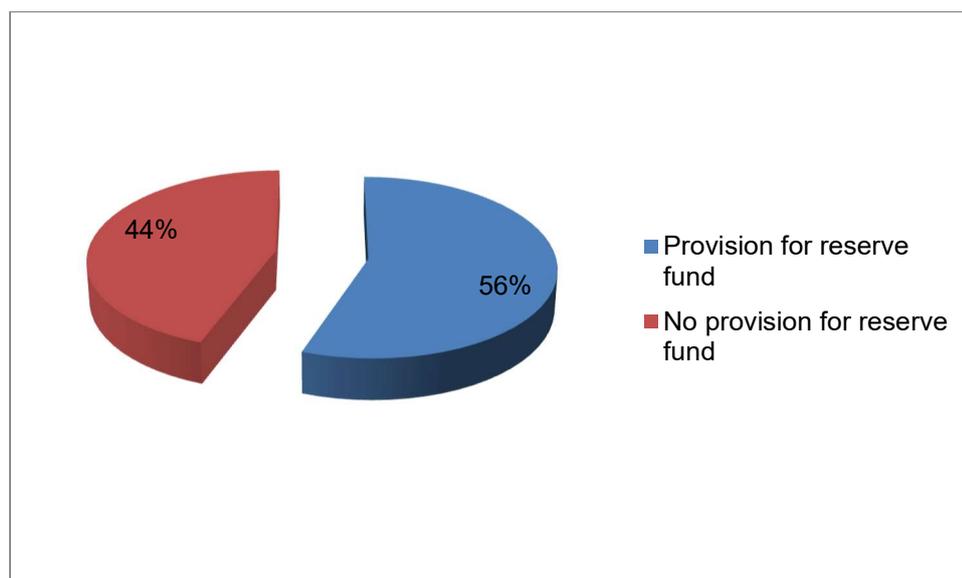


Of the 18 chairmen interviewed, 6 (33%) said that they experience bottle-neck situations regarding the receipt of financial statements and audit reports for their schemes. These chairmen mentioned that sometimes managing agents do not give documentation through to auditing practitioners in a timely manner. Late receipt of the financial statements often causes delays in the timing of the annual general meetings of bodies corporate, to be held within four months of the end of each financial year. The other 12 (67%) chairmen remarked that they never experienced any timing problems. This problem is also discussed from the viewpoint of managing agents in 6.3.5 and accounting and auditing practitioners in section 6.4.5 below.

A total of 17 of the 18 chairmen (94%) interviewed were of the opinion that the audit of the financial statements adds value to sectional title schemes; an opinion which agrees with that of managing agents (see section 6.3.8) as well as accounting and auditing practitioners (see section 6.4.6). Only 1 chairman (6%) was uncertain as to whether the audit of the financial statements added value his sectional title scheme. The majority of the chairmen stated that they need an independent opinion on the financial matters of the body corporate. They were of the opinion that an audit gives them assurance that the body corporate is run effectively and that the financial situation of the body corporate is healthy. They also feel that an audit assures them that their money is being handled by the trustees or managing agents in a responsible manner. It was also stated that auditing the financial statements of bodies corporate is important from an investment perspective and that it is good to know that the financial information dealt with at the AGM is reliable and was professionally prepared.

Of the 18 chairmen interviewed, 10 (56%) stated that they try to incorporate a reserve fund into the budget of their body corporate (see also section 5.2.4 above) and 8 (44%) stated that they do not make any provision for a reserve. Some of the chairmen commented that many owners just want to keep costs at a minimum and do not want to make provision for a reserve. It is important to note that, as was mentioned in section 3.2.1.3, the provision for a reserve fund will not be optional in future, but compulsory. The figure below is a graphic representation of the above findings.

Figure 6-14: Current provision for a reserve fund



6.3 Perspectives of sectional title managing agents

In this section, the results of the information from the questionnaires and interviews with managing agents will be discussed. These aspects will be discussed under the following headings: client base and services rendered, fees charged, training and staff, meetings, problems and risks, developers trustees and financial matters.

Regarding the empirical study on managing agents, a total of 20 requests for interviews were sent out as follows: 6 requests to the Mangaung Metropolitan Municipality, 4 to the Matjhabeng Local Municipality, 4 to the City of Matlosana Municipality and 6 to the Tlokwe Local Municipality. A total of 12 positive responses for interviews were received as follows: 5 out of 6 requests (83%) for the Mangaung Metropolitan Municipality, 2 out of 4 (50%) for the Matjhabeng Local Municipality, 2 out of 4 (50%) for the City of Matlosana Municipality and 4 out of 5 (80%) for the Tlokwe Local Municipality. A total of 13 positive responses were received out of the 20 requests sent out, resulting in a total response rate of 65%. The 13 sectional title managing agents interviewed were selected after extensive enquiry from role players in the sectional title industry in the various municipal areas. The sample represents 3 large sectional title managing agents (managing more than 100 units), 4 medium sectional titles

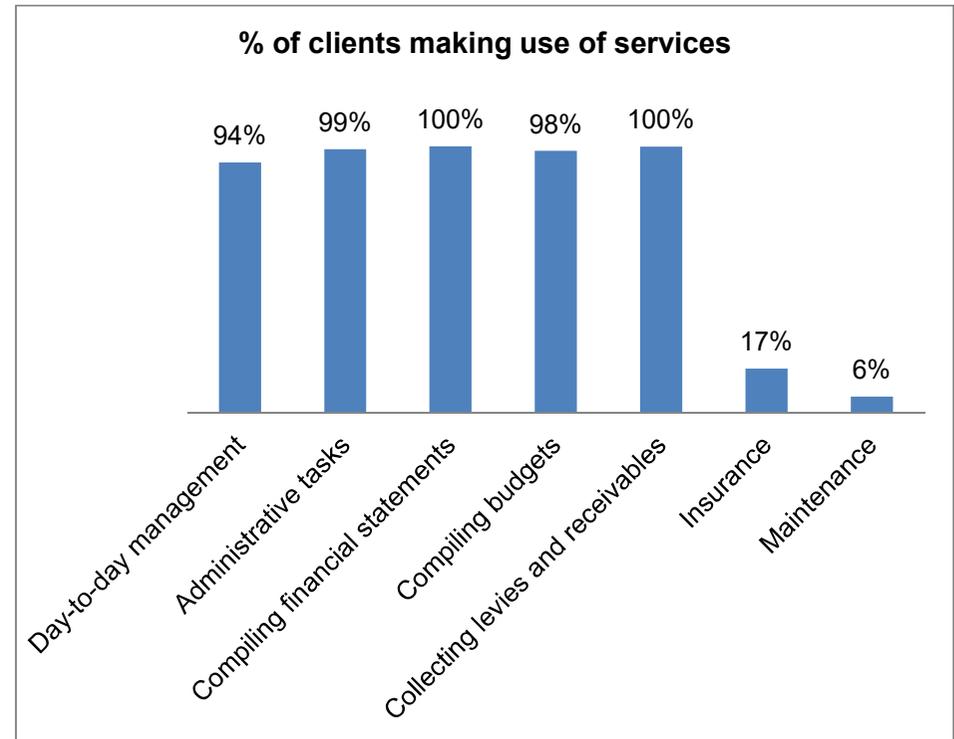
managing agents (managing between 30 and 100 schemes) and 6 small sectional title managing agents (managing less than 30 schemes).

6.3.1 Client base and services rendered

The total number of sectional title schemes managed by these 13 managing agents amounts to 801. The 13 managing agents interviewed had varying numbers of sectional title schemes as clients, the numbers ranging from 5 to 290 schemes, and they were active in the industry between 8 and 36 years. They managed a total of 801 schemes, an average of 62 schemes per managing agent. The managing agents had a total of 237 years and an average of 21 years of experience. The managing agents provided a range of services to their clients including day-to-day management of schemes, administrative tasks, compiling financial statements and budgets and levy collection, which were not all utilised to the same extent. The following figure is a representation of the number of schemes managed, years active and the different service offerings of the managing agents and the percentage of clients making use of the services.

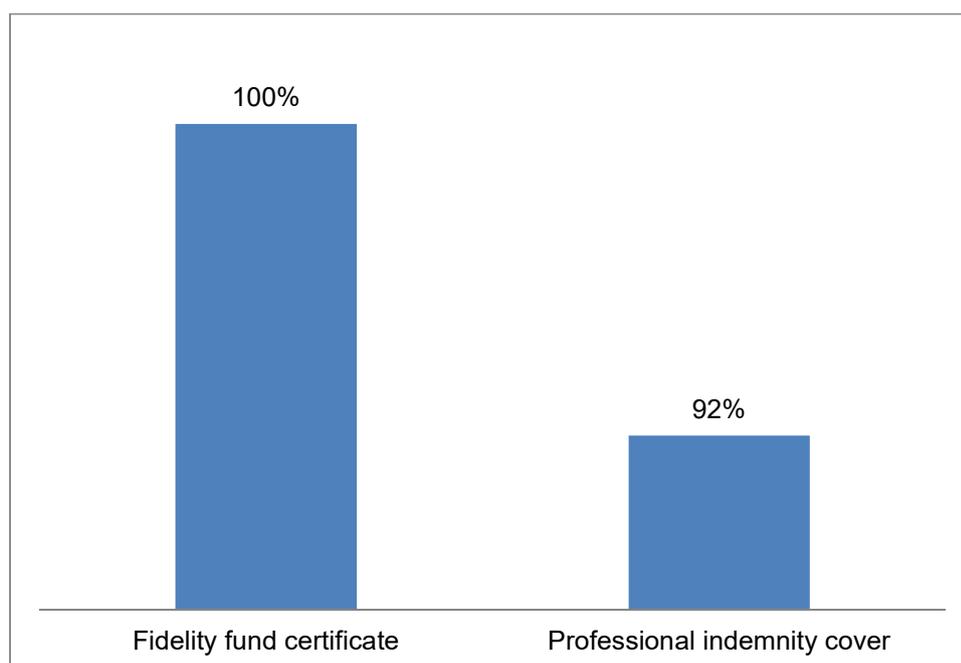
Figure 6-15: General information on managing agents in the sample

Respon- dent	No of schemes managed	Years active as managing agent
1	290	30
2	30	36
3	17	30
4	57	10
5	140	32
6	65	33
7	25	10
8	6	9
9	71	31
10	5	8
11	10	9
12	65	25
13	20	10
Total	801	273
Ave	62	21



All of the 13 managing agents interviewed were of the opinion that they were up to date with the latest stipulations of the Sectional Titles Act. All of the respondents (100%) stated that they were in possession of a fidelity fund certificate as issued by the EAAB, and 12 of the 13 managing agents (92%) stated that they had professional indemnity cover in place. The figure below represents this information graphically.

Figure 6-16: Fidelity fund certificates and indemnity cover



6.3.2 Fees charged

During the interviews, the managing agents were asked to discuss the factors that they take into account in the calculation of management fees. The respondents could give more than one answer to the question. A total of 7 of the 13 (54%) managing agents said that one of the main factors taken into account when determining their management fee is the size of the scheme and the number of units; 3 (23%) of the managing agents said that they had a general fee per unit, which they use as a guideline; 1 (7%) of the managing agents stated that they calculated their fees as a percentage of total levies. The fee is adjusted up or down depending on a number of variables. Of the 13 managing agents interviewed, 3 (23%) said that the level of involvement of the trustees also has an impact on their management fee. They stated that

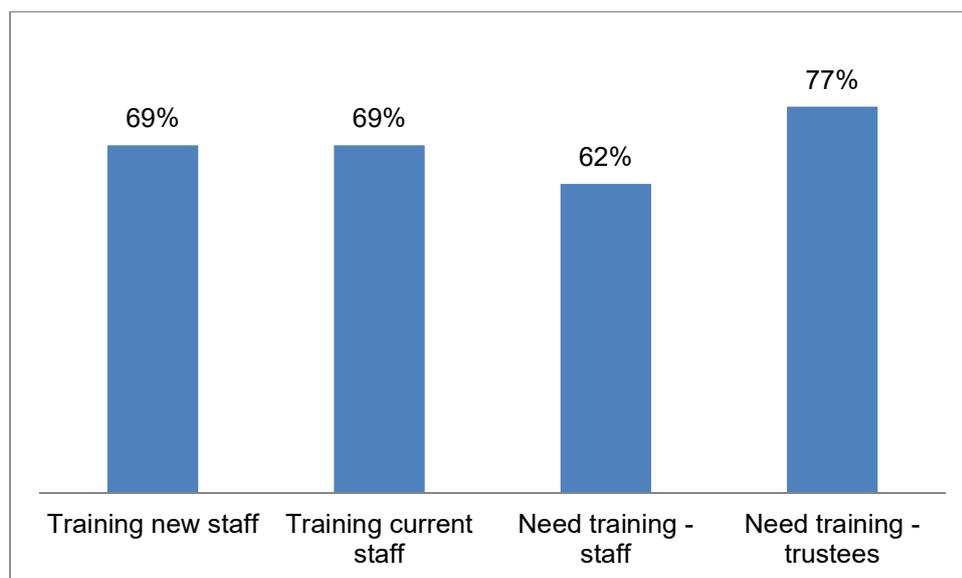
they adjust fees upward if the trustees are not actively involved in the management of the scheme. Only 1 (7%) of the managing agents stated that they take into account whether the scheme had a history of problems, while 2 of the 13 (15%) managing agents stated that they take into consideration what their competitors are charging and ensure that they charge market-related management fees.

6.3.3 Training and staff

A total of 9 of the 13 (69%) managing agents interviewed said that they gave formal sectional title-specific training to all of their newly appointed staff members, while 4 of the 13 (31%) managing agents did not give formal sectional-title specific training to their newly appointed staff members. A total of 9 of the 13 (69%) managing agents stated that they also gave training to current employees, while the remaining managing agents (31%) said that they did not.

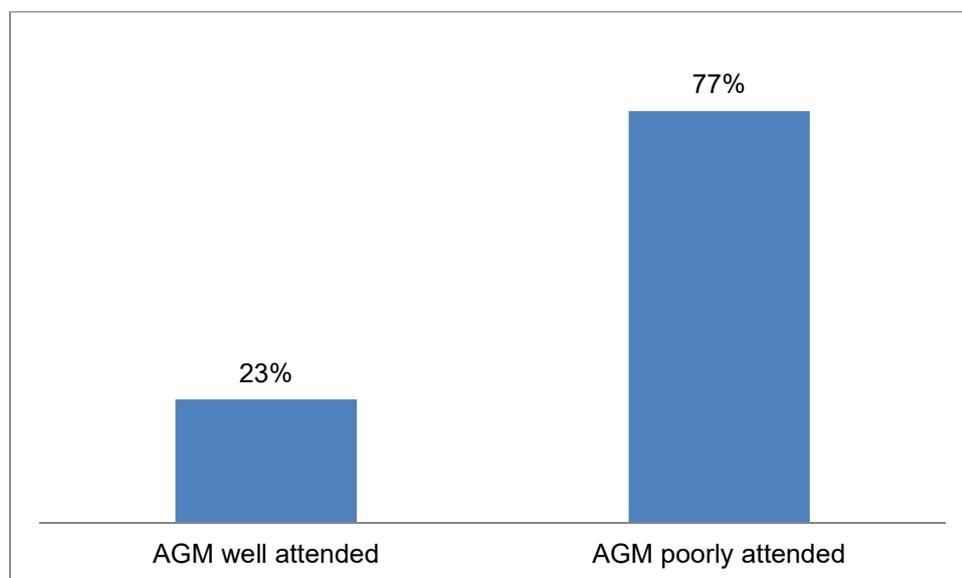
Of the 13 managing agents interviewed, 8 (62%) stated that there was a need for specialised training courses covering aspects such as legislation, insurance, accounting and the National Credit Act and new sectional title legislation. The managing agents who do not give formal sectional title training to their staff members indicated that there was no time available to send staff members on training, and they were facing budget constraints, so they would not be interested in training courses. There was also a comment that in many cases, the areas of work involving more expertise (such as insurance and accounting) are done by outside specialists. Therefore, they had no need for training. A total of 10 of the 13 (77%) respondents said that there was a definite need for training for trustees, specifically on legislative aspects. In the study of L. Lubbe (2013, p. 203), the need for training was also emphasised. The figure below summarises the above findings.

Figure 6-17: Training presented and training needs

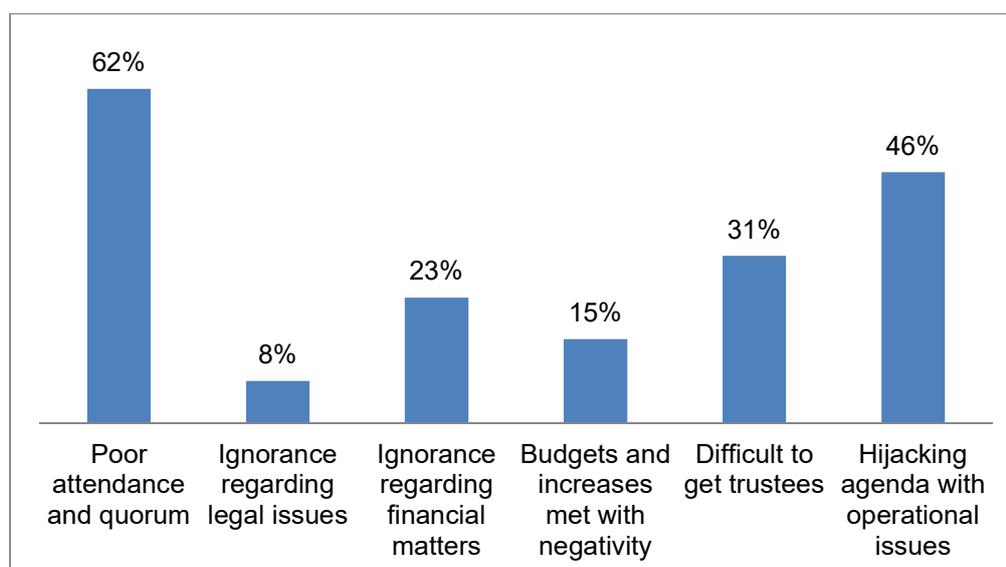


6.3.4 Meetings

Of the 13 managing agents interviewed, 10 (77%) stated that, in general, body corporate meetings were poorly attended. It was indicated by the managing agents that many annual general meetings (AGMs) did not initially have a quorum and had to be postponed. This is despite various communication efforts such as registered mail and sms-messages. (See also section 6.2.2.) The problem was also mentioned by L. Lubbe (2013, p. 203). Only 3 (23%) of the 13 managing agents said that AGMs were well attended. The managing agents attributed the good attendance to the fact that all documents are sent to owners via mail and e-mail beforehand, and reminder sms-messages are sent to owners 14 days as well as 7 days before an AGM or other meeting. The graph below summarises the findings.

Figure 6-18: Attendance of meetings

The managing agents identified a number of problems that occur at the annual general meetings of their clients. One of the biggest problems at AGMs is poor meeting attendance and attaining quorums at AGMs. The problem was mentioned by 8 of the 13 (62%) of the managing agents interviewed; 1 of the 13 (8%) managing agents stated that many owners are ignorant on sectional title legal issues, and that this creates problems at AGMs; 3 of the 13 (23%) managing agents stated that owners do not understand financial statements and budgets. These managing agents remarked that owners do not see increases in perspective and that owners often meet budget and levy increases with resistance. A further 2 of the 13 (15%) managing agents also stated that at most AGMs, owners want to put impossible cost restrictions on expenses, especially audit fees and management fees. This is a viewpoint that is also shared by accounting and auditing practitioners, as discussed in section 6.4.5 below. A total of 4 of the 13 (31%) managing agents stated that the election of trustees at the AGM is usually problematic. They said that it is often difficult to find persons willing to serve as trustees, and in some cases trustees are not re-elected, mainly due to past clashes or disagreements with owners. A further 6 of the 13 (46%) managing agents also said that owners do not adhere to proper meeting procedures during AGMs, and that owners regularly want to discuss operational matters which fall outside the scope of the agenda. All of the problems mentioned above were also experienced by the chairmen interviewed in 6.2.2 above. The findings are summarised in the figure below.

Figure 6-19: Problems experienced at AGMs

6.3.5 Problems and risks

As part of the interviews, the managing agents were asked to identify what they consider to be the greatest problems and risks they experience in the managing of sectional title schemes. The managing agents could give more than one answer. According to the managing agents interviewed, one of the biggest problems experienced with the managing of sectional title schemes is problems with municipal accounts. This frustration is shared by chairmen and accounting practitioners, as discussed in sections 6.2.3 and 6.4.5. This problem makes up approximately 20% of problems identified by the managing agents and was mentioned by 12 of the 13 managing agents interviewed. The managing agents mentioned that regarding local authorities, poor communication and service, account estimates, corrections on statements and incorrect allocations on statements caused countless problems when managing schemes. (See also the comments by trustee chairpersons in section 6.2.3.)

A total of 9 of the 13 managing agents interviewed stated that debt collection was a great challenge that keeps on escalating. Debt collection makes up approximately 15% of identified problems. The managing agents said that a lot of time and money is spent collecting outstanding levies, interest, electricity fees and other amounts. It was also mentioned that the legal processes that have to be followed in the case of non-payment are cumbersome and

expensive. Some of the agents added that in the case of tenants, the available deposits are not always sufficient to cover outstanding balances in the case of non-payment.

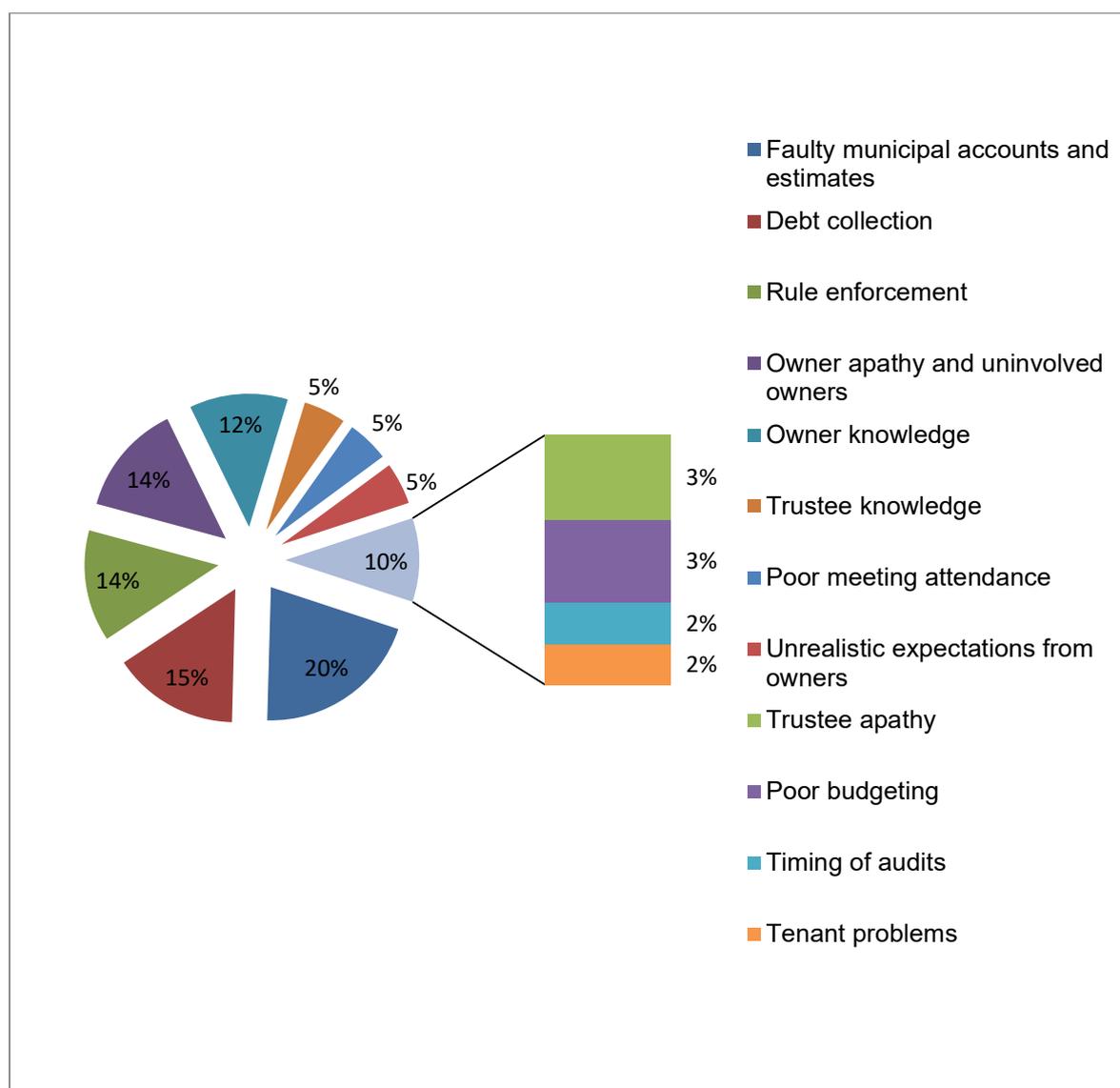
Of the 13 managing agents interviewed, 8 stated that uninformed owners and trustees cause many problems when managing schemes, especially regarding rule enforcement, making up 14% of identified problems. They said that there was general ignorance among owners and trustees regarding the legislation governing sectional titles and that many owners did not understand the basics of how sectional titles function. The problem of uninformed owners was also mentioned by the chairmen of bodies corporate in 6.2.3 above.

Problems with owner apathy and uninvolved owners were mentioned by 8 of the 13 managing agents, accounting for 14% of identified problems. The problem was also mentioned by trustee chairpersons in sections 6.2.2 and 6.2.3. The managing agents mentioned that owners did not want to get involved in their schemes, and the fact that many owners rent out their units and do not stay in the complexes adds to the problem.

Of the 13 managing agents interviewed, 7 mentioned that owners were ignorant regarding legal issues and did not understand how sectional title functions. This makes up approximately 12% of identified problems. The problem was also mentioned by trustee chairpersons, as discussed in section 6.2.3.

The remaining 25% of identified problems are split between insufficient trustee knowledge (5%), poor meeting attendance (5%), unrealistic expectations from owners (5%), trustee apathy (3%), poor budgeting (3%), timing of audits (2%), and problems with tenants (2%). The managing agents mentioned that often owners and trustees expect them to act outside of their mandates and solve matters such as personal disagreements and conflicts between residents. Some of these problems were also mentioned by trustee chairpersons in section 6.2.3.

Figure 6-20: Summary of the biggest problems experienced by managing agents



During the interviews, the managing agents were asked to identify what they perceived to be the greatest risks involved in being a managing agent. The respondents were allowed to give more than one answer. Most of the responses related to financial matters. A total of 5 of the 13 (38%) managing agents mentioned that there was a risk of not properly identifying and budgeting for capital projects of schemes. This can lead to a situation where urgent capital projects may arise, but these projects were not foreseen. This may reflect poorly on the managing agent. A further risk, mentioned by 7 of the 13 managing agents (54%), relate to improper budgeting, which may lead to budget overruns, and schemes running out of funds during the course of a year. The managing agents mentioned that they often propose a budget,

but due to the fact that owners do not understand the purpose of a body corporate budget and want to keep costs to an absolute minimum, schemes often encounter financial difficulties. Some bodies corporate even have to borrow money for operational expenses due to the fact that they have run out of funds. Situations like these may reflect poorly on the managing agent. In light of current difficult economic circumstances, 1 of the 13 (8%) managing agents mentioned that they run the risk of operating at a loss, especially with smaller schemes. It was also mentioned by 2 of the 13 (15%) managing agents that they often find it difficult to collect outstanding debts. This creates a financial risk for both the scheme and the managing agent. One of the 13 (8%) managing agents also stated that managing agents face a risk of possible legal liabilities and claims, and may be held liable for the shortcomings of schemes that face financial difficulties. Managing agents may also face legal action if they act outside the scope of sectional title legislation. A total of 3 of the 13 (23%) managing agents stated that it is great risk to manage and handle bank accounts and financial matters of schemes. It is possible that payments may be made to incorrect beneficiaries, which puts the managing agent at risk.

Of the 13 managing agents interviewed, 2 (13%) mentioned that real estate agents do not properly inform sectional title buyers regarding what they are buying into. Linking to this matter, 4 of the 13 (31%) managing agents stated that uninformed owners and residents put them at risk. Often these parties do not perform the required functions and leave everything to the managing agents, which puts the managing agent at risk. It was also mentioned that a great risk involved in being a managing agent is the fact that, even though they are given the freedom to perform the necessary management activities, the bodies corporate hold them responsible if they are unhappy with the outcome of the managing agent's decisions or actions. It was mentioned by 1 of the 13 (8%) managing agents that there is a large risk in taking over a scheme from another managing agent. It was stated that in such cases it is difficult to verify balances and that the whole process creates various administrative challenges.

During the interviews, the managing agents were asked to identify some of the greatest misperceptions that exist with regard to the services they render. The respondents were allowed to give more than one answer. The responses from the managing agents included that owners and trustees think that managing agents are available at all times. Owners often think managing agents are to blame for high levies or levy increases. It was also mentioned that owners often confuse the functions of managing agents with that of a caretaker, and

owners even request managing agents to do maintenance work on the inside of units. Some owners also think that the managing agent is responsible for resolving personal conflict between residents.

6.3.6 Developers

The managing agents interviewed experienced a number of problems where developers were involved in schemes, and the general viewpoint of the managing agents was that they prefer to manage schemes where no developers are involved. Problems with developers were also mentioned by the trustees in section 6.2.3 above.

A total of 4 of the 13 (31%) managing agents experienced situations where developers claimed that the units built were unoccupiable, and refusing to pay levies on those units. The units in the finished section of the scheme then have to subsidise the developer's units with their levy contributions. The managing agents said that this created budgeting problems and caused great frustration among owners. A further 7 of the 13 (54%) managing agents interviewed mentioned that they experienced instances where the developer did not pay the water and electricity bill for the development period and the body corporate had to settle the full amounts for these expenses.

Of the 13 managing agents interviewed, 3 (23%) said that developers often register sets of management and conduct rules without taking the interests of the potential future owners into account. According to 3 of the 13 (23%) managing agents, it takes a long time (sometimes even a number of years) to obtain occupation and electricity certificates from developers. It even happens that owners wanted to sell their units, and could not do so because of outstanding certificates from developers.

One of the 13 (8%) managing agents also remarked that it happens regularly that developers do not ensure that a proper valuation of the scheme is done on completion of every development phase. This creates problems with calculations and budgeting of rates and taxes. A further problem, mentioned by 1 of the 13 (8%) managing agents interviewed, is that

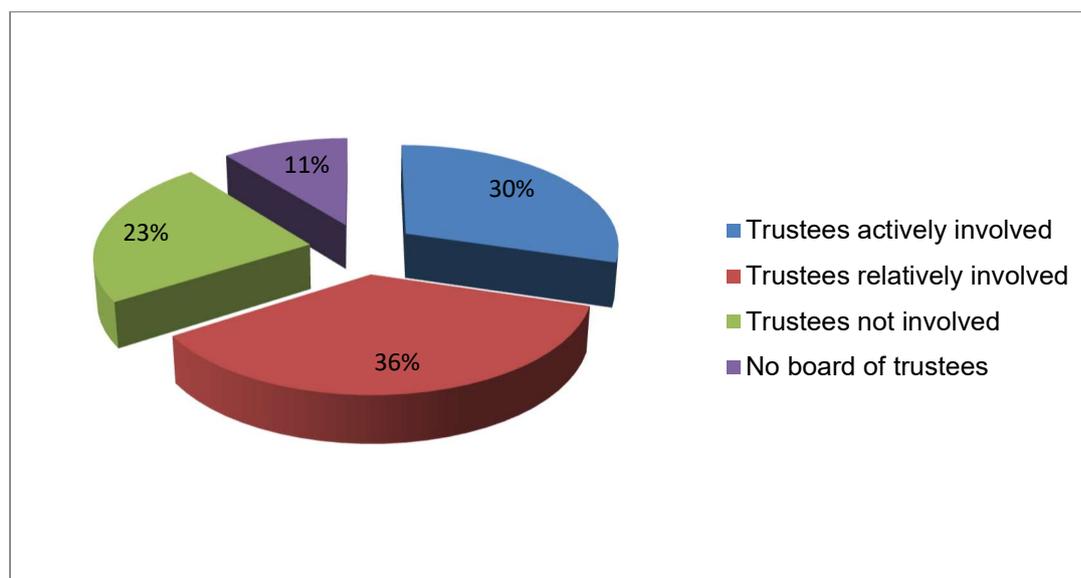
developers attempt to attract potential buyers by advertising new units with unrealistically low levies, based on incomplete and often untrue budgeting figures. Once the developer is finished with the development and the body corporate and managing agent does proper budgeting, owners are unhappy with the actual levies that they have to pay.

According to 3 of the 13 (23%) managing agents interviewed, developers often do sub-standard work, and use cheap materials in order to cut costs. Poor building quality inevitably leads to future maintenance and repair work. The interviewed managing agents mentioned that they often experienced difficulty budgeting for these events in the first years of a newly developed scheme. Problems with developers were also mentioned by trustee chairpersons in section 6.2.3 above. Similar findings regarding developers were identified by L. Lubbe (2013, pp. 201–202).

6.3.7 Trustees

The managing agents had varying opinions on whether the trustees of the schemes managed by them are actively involved. According to the managing agents, on average approximately 30% of the boards of trustees were actively involved in the affairs of their schemes. The managing agents stated that 36% of boards of trustees were relatively involved; 23% had boards of trustees that were not involved at all; and 11% of schemes did not have boards of trustees. The graph below is a graphic representation of the findings.

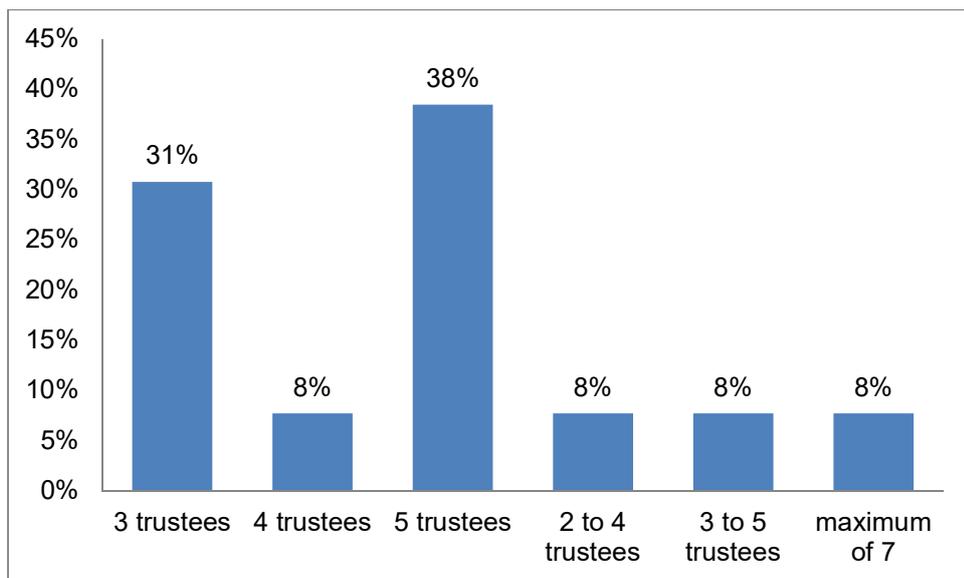
Figure 6-21: Level of involvement of boards of trustees



An interesting observation that was made regarding the above, was that the more schemes the managing agents managed, the less involved they perceived their trustees to be. The managing agents managing the smallest number of schemes all commented that they had actively involved trustees in the schemes that they managed.

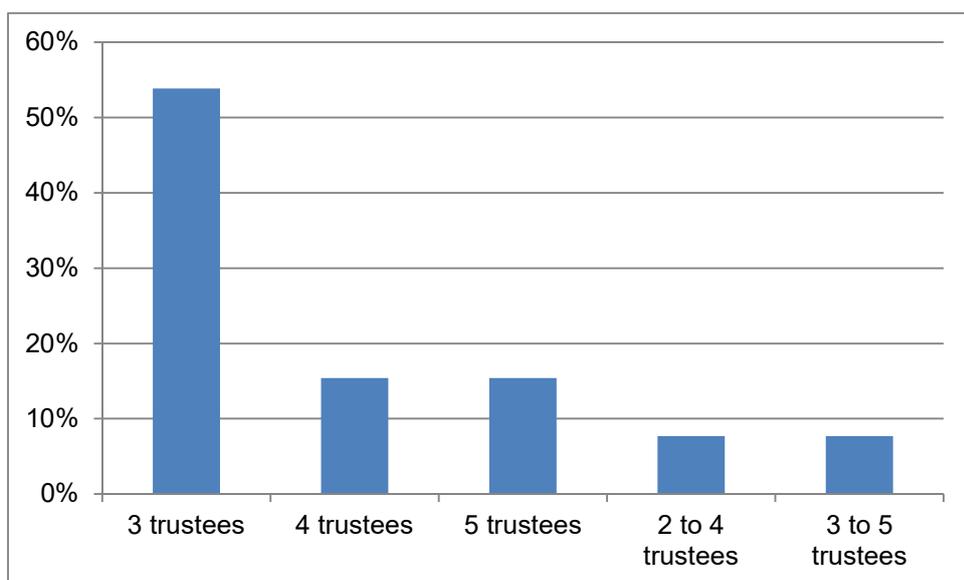
The managing agents had differing opinions on what the optimal number would be for a well-functioning board of trustees. A total of 4 of the 13 (31%) managing agents said 3 trustees is the optimal number; 1 managing agent (8%) said 4; 5 of the 13 (38%) managing agents were of the opinion that 5 trustees is an optimal number; 1 (8%) said 2 to 4 trustees; 1 (8%) said 4 to 6 trustees and 1 (8%) said there should be no more than 7, depending on the size of the scheme. See the figure below for a graphic representation of the findings.

Figure 6-22: Opinion on optimal number of trustees



A total of 7 of the 13 (54%) managing agents stated that, on average, the boards of trustees of the schemes managed by them consisted of 3 trustees; 2 managing agents (15%) said the average is 4 trustees; 2 (15%) said the average is 5 trustees; 1 managing agent (8%) said his schemes had between 2 and 4 trustees; and the remaining agent (8%) said that the current average was 3 to 5 trustees. The graph below summarises the findings.

Figure 6-23: Average number of trustees



An important observation was that 12 of the 13 (92%) managing agents were of the opinion that the average chairman of a board of trustees does not have sufficient skills and knowledge to act as chairman. A further 1 of the 13 (8%) managing agents said that he was of the opinion that only some trustee chairpersons are competent and that the majority of trustee chairpersons do not have sufficient skills and knowledge. This problem is also discussed from the viewpoint of auditing and accounting practitioners in section 6.3.7 below.

A total of 12 of the 13 (92%) managing agents remarked that trustees were never compensated for their services; 1 of the 13 (8%) managing agents said that only approximately 5% of the trustees received an honorarium and that the rest did not receive any form of compensation; 11 of the 13 (85%) managing agents stated that trustee chairpersons never received any form of remuneration. The remaining 2 of the 13 (8%) managing agents said that only approximately 13% of the trustee chairpersons received an honorarium and that the rest did not receive any form of compensation. The average honorarium received by chairpersons was approximately R2,000 per year. All of the managing agents (100%) said that if a trustee or chairman made purchases or payments on behalf of the body corporate, they were always reimbursed, provided that they had the necessary invoices and supporting documentation available. As mentioned in section 1.4.6.3 and also by L. Lubbe (2013, p. 200), being a trustee of a body corporate is a 'thankless' job, and perhaps it may be easier to find individuals willing to serve as trustees and trustees may also take their tasks more seriously if they were remunerated. The fact was also mentioned by L. Lubbe (2013, p. 74) that bodies corporate should be run like 'businesses', and the remuneration of trustees may be a starting point in achieving that. The chairmen of bodies corporate interviewed in section 6.2.1 also felt that remuneration of trustees as well as chairmen should be instated. This comment of the managing agents as well as the other role players should be taken note of by the industry.

6.3.8 Financial matters

A total of 10 of the 13 (77%) managing agents stated that the annual financial statements of their clients were prepared by and also audited by firms of chartered accountants (CA(SA)); 1 of the 13 managing agents (8%) stated that they prepared the financial statements of their bodies corporate and that the bodies corporate were audited by firms of chartered accountants (CA(SA)); 1 of the 13 (8%) managing agents said that the financial statements of the bodies

corporate managed by them were prepared by a Professional Accountant (SA) (SAIPA member), and not audited at all.

In approximately 90% of cases, the auditors of bodies corporate are appointed by the members of the body corporate at the annual general meeting. In most of these cases, the managing agent make recommendations regarding audit firms which give good service in cases when they are asked for advice regarding the appointment of auditors. A further 2% of auditor appointments are done by trustee chairpersons; 2% of appointments are made by boards of trustees and 6% of body corporate auditor appointments are done by managing agents. The two figures below illustrate this graphically.

Figure 6-24: Preparation and audit of annual financial statements

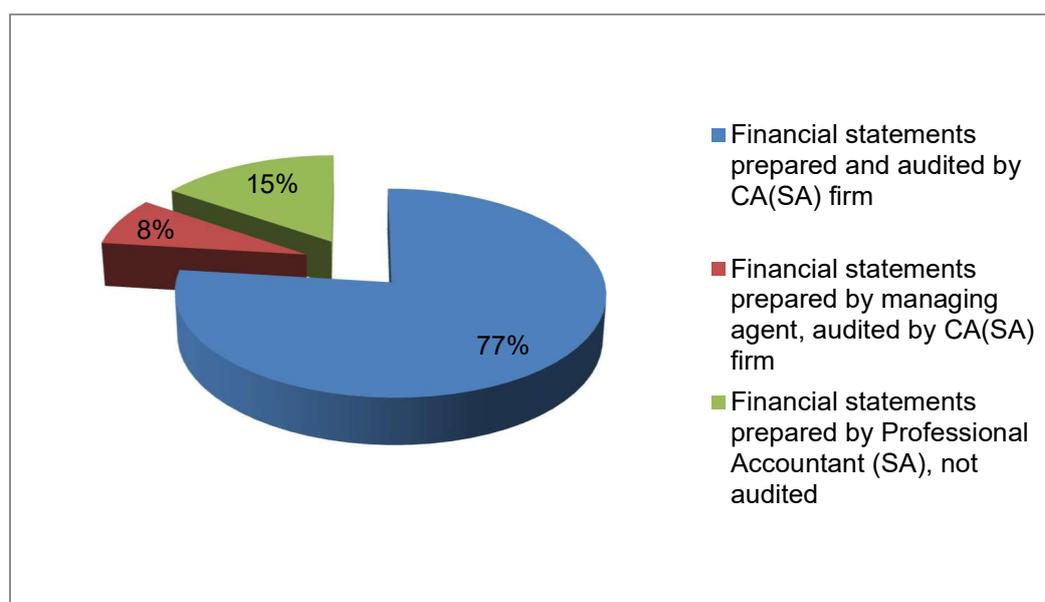
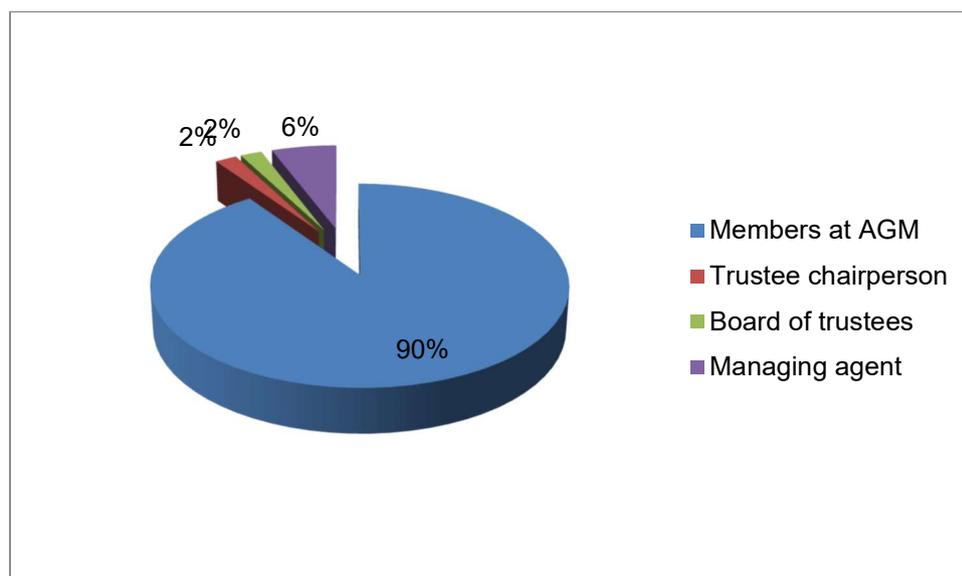
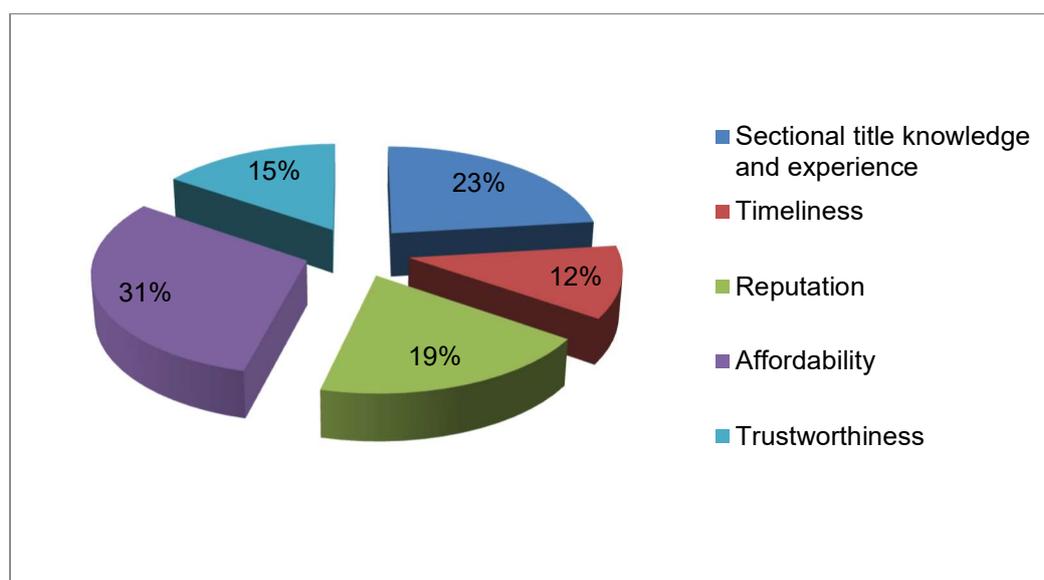


Figure 6-25: Appointment of auditors



During the interviews the managing agents were asked what factors should be taken into account when choosing an audit firm for a body corporate. The managing agents could give more than one answer to the question. The most significant factor, mentioned by 8 of the 13 managing agents, and is affordability. This accounts for 31% of responses. The second most important factor mentioned by the 6 of the 13 managing agents and accounting for 23% of responses is the auditor's knowledge and experience of the sectional title industry. The reputation of the audit firm accounted for 19% of responses (mentioned by 5 managing agents). A total of 4 of the 13 managing agents were of the opinion that the trustworthiness of the auditor is an important factor, and 3 of the 13 managing agents considered timely completion of audit work to be important. These factors added up to 15% and 12% of the responses respectively. (See also the opinions of trustee chairperson in section 6.2.5 and the comments of L. Lubbe (2013, p. 205).) These opinions are summarised in the graph below.

Figure 6-26: Factors taken into account when choosing an audit firm

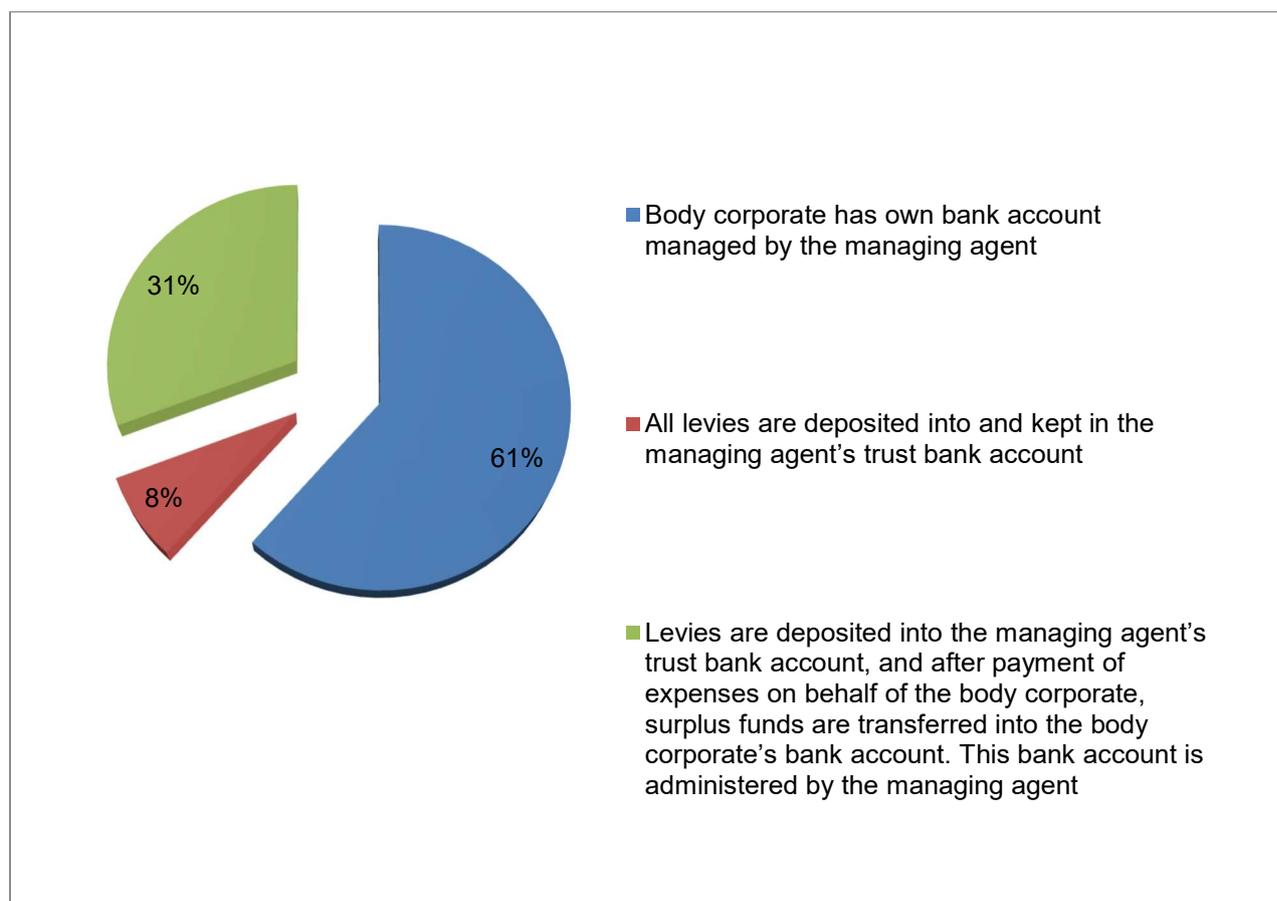
According to 7 of the 13 (54%) of the managing agents interviewed, bottle-neck situations are experienced with the receipt of financial statements and audit reports for schemes with February year-ends. The other 6 (46%) managing agents remarked that they never experienced any timing problems. This problem is also discussed from the viewpoints of trustee chairpersons and accounting and auditing practitioners in sections 6.2.5 and 6.4.2 respectively.

In line with the finding of L. Lubbe (2013, p. 205), all of the managing agents interviewed (100%) were of the opinion that the audit of the financial statements adds value to sectional title schemes. This agrees with the viewpoints of trustee chairpersons mentioned in section 6.2.5 and the accounting and auditing practitioners, as discussed in section 6.4.6 below. The managing agents stated that an objective opinion on the financial matters of a scheme is extremely important. They said that it gives assurance to the sectional title unit owners that the scheme is run properly and that their schemes are financially healthy. They remarked that it is especially important to obtain an audit report in cases where a scheme changed from one managing agent to another. One of the managing agents also stated that audited body corporate financial statements are becoming increasingly important for banking institutions.

During the interviews, the managing agents were asked to identify problems experienced during the budget process. Of the 13 managing agents interviewed, 10 (77%) stated that levy increases were almost always met with resistance. It was mentioned that owners do not grasp the fact that in a full title house, the owner has to do maintenance out of his own pocket and that a levy basically serves the same purpose. A total of 6 of the 13 (46%) managing agents stated that it is difficult to do proper planning for capital projects, and even more difficult to quantify these projects in monetary terms; 2 of the 13 (15%) managing agents interviewed were of the opinion that owners do not understand how the budgeting process works; 4 of the 13 (31%) managing agents interviewed stated that they often had difficulty in receiving feedback and quotes from trustees and role players regarding the items that should be budgeted for; 1 of the 13 (8%) managing agents reported that he found it extremely difficult to convince pensioners staying in schemes that levies should be increased; 6 of the 13 (46%) managing agents stated that despite advice, most of the bodies corporate under their management do not incorporate reserve funds into their budgets. Only 7 of the 13 (54%) managing agents interviewed stated that their clients had fixed policy for the provision of reserve funds. The managing agents all expressed concern regarding the compulsory reserve funds in the new sectional title legislation. (See section 5.4.9.10.) Most of the above-mentioned opinions were shared by the chairmen interviewed in section 6.2.5.

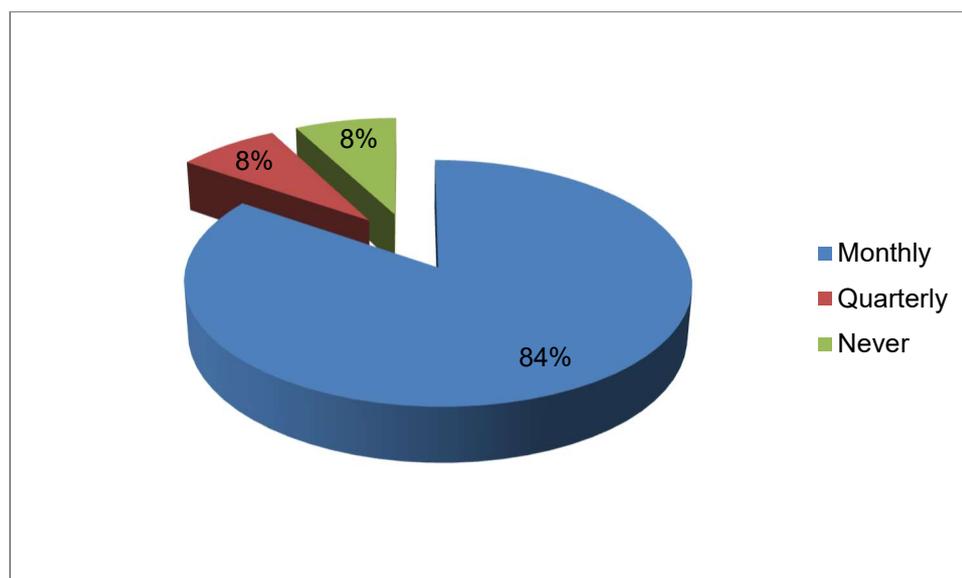
In sections 6.2.3, 6.2.5 and 6.4.4 it was mentioned that one of the biggest problems experienced by the trustee chairpersons and accounting and auditing practitioners is that all the levy funds of a number of schemes are deposited into a large 'pool' account. During the interviews, 8 of the 13 (62%) managing agents stated that for their schemes, each body corporate has its own bank account and that this bank account is managed by the managing agent; 1 of the 13 (8%) managing agents interviewed indicated that all levies are deposited into and kept in the managing agent's trust bank account; 4 of the 13 (31%) stated that levies are deposited into the managing agent's trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds are transferred into the body corporate's bank account. This bank account is administered by the managing agent. These results are illustrated in the figure below.

Figure 6-27: Functioning of bank accounts

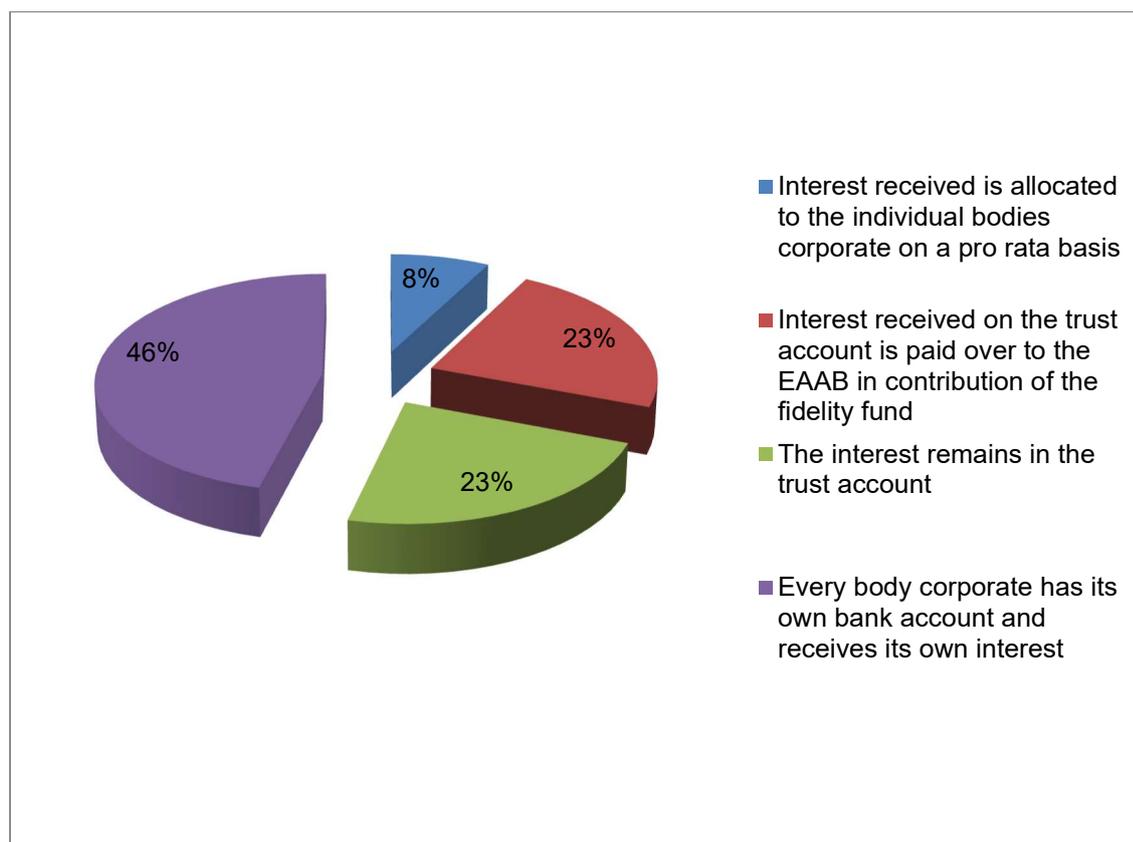


According to 11 (85%) of the 13 managing agents interviewed, monthly trust account and interest reconciliations are sent to their clients; 1 managing agent (8%) sends out quarterly reconciliations, while the remaining 1 (8%) never sends any reconciliations. These results are illustrated in the figure below.

Figure 6-28: Regularity of trust account and interest reconciliations sent to clients



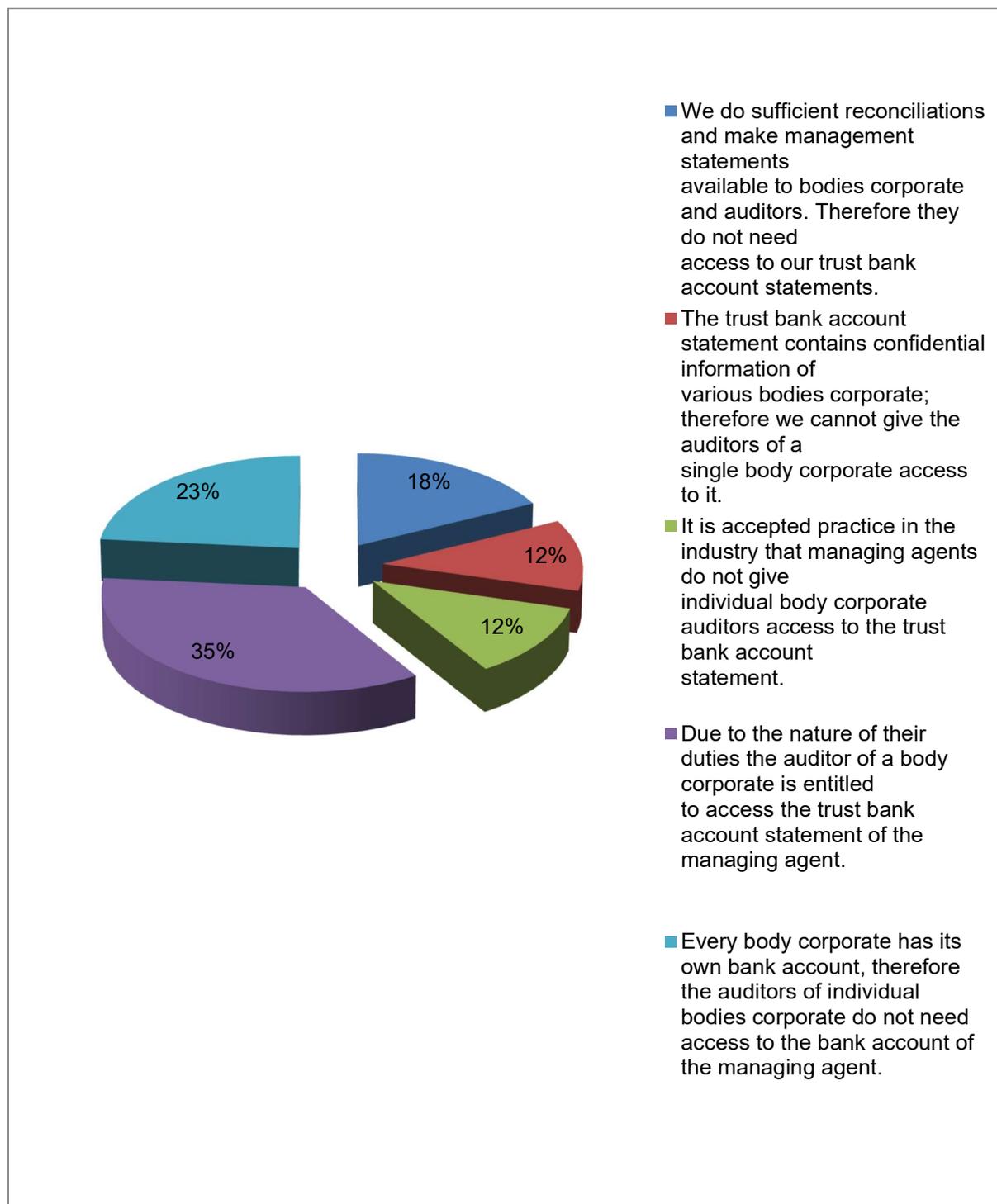
During the interviews, the managing agents were asked how interest received on their trust account is handled. One (8%) of the 13 managing agents interviewed stated that interest received is allocated to the individual bodies corporate on a pro rata basis. According to 3 (23%) of the 13 managing agents interviewed, interest received on their trust account is paid over to the EAAB in contribution of the fidelity fund; 3 (23%) stated that the interest remains in their trust account; 6 of the 13 (46%) stated that the only bank accounts managed by them are the individual body corporate accounts, and that they did not have their own trust account. The graph below summarises these findings.

Figure 6-29: Handling of interest on trust accounts

As mentioned in section 6.4.5 below, auditors of sectional title schemes are often not successful in obtaining full trust bank account statements from managing agents. During the interviews, the managing agents' opinions were asked regarding this. The respondents could give more than one answer. Of the 13 managing agents interviewed, a total of 3 (making up 18% of the responses) were of the opinion that they do sufficient reconciliations and make management statements available to bodies corporate and auditors, therefore the auditors do not need full access to their (the managing agents') bank account statements. Two of the managing agents (adding up to 12% of responses) stated that the trust bank account statement contains confidential information of various bodies corporate, and therefore the auditors of one single body corporate cannot be given access thereto. Two of the managing agents (making up 12% of responses) remarked that it is accepted practice in the industry that managing agents do not give individual body corporate auditors access to their trust bank account statements. Only 6 of the managing agents (accounting for 35% of responses) stated that the auditors are entitled to access the bank account statements of managing agents, due to the nature of their duties. Four of the managing agents (making up 23% of responses) responded that every body corporate had its own bank account; therefore, the auditors of

individual bodies corporate do not need access to the bank account of the managing agent. These findings are illustrated in the graph below.

Figure 6-30: Opinions on auditor access to trust bank account statements



6.4 Perspectives of sectional title accounting and auditing practitioners

In this section, the results of the information from the questionnaires and interviews with accounting and auditing practitioners will be discussed. These aspects will be discussed under the following headings: client base and services rendered, time and fees charged, training and staff, risk, problems experienced, accounting work and assurance matters, trustees and managing agents.

Regarding the empirical study on accounting and auditing practitioners, a total of 17 requests for interviews were sent out as follows: 5 requests to the Mangaung Metropolitan Municipality, 5 to the Matjhabeng Local Municipality, 4 to the City of Matlosana Municipality and 3 to the Tlokwe Local Municipality. A total of 13 responses for interviews were received as follows: 5 out of 5 requests (100%) for the Mangaung Metropolitan Municipality; 3 out of 5 (60%) for the Matjhabeng Local Municipality; 3 out of 4 (75%) for the City of Matlosana Municipality and 2 out of 3 (67%) to the Tlokwe Local Municipality. A total of 13 positive responses were received out of the 17 requests sent out, resulting in a total response rate of 76%.

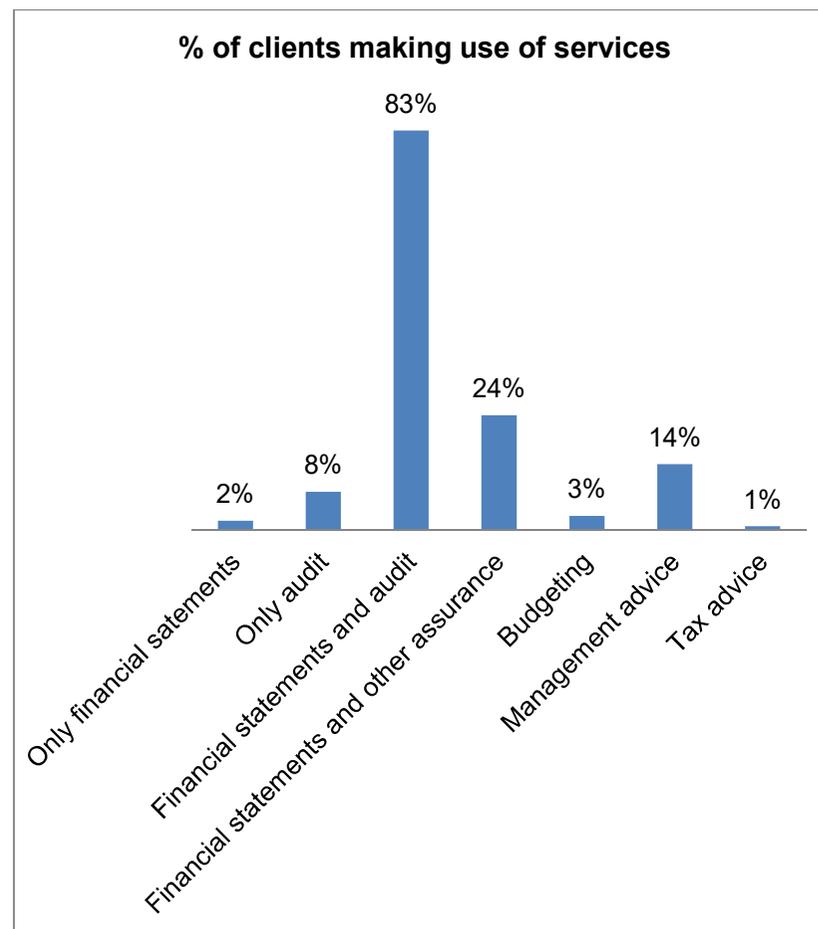
The 13 accounting and auditing practitioners interviewed were selected after extensive enquiry from role players in the sectional title industry in the various municipal areas. The sample represents 2 large sectional title accounting and auditing practitioners (having more than 100 sectional title schemes as clients), 2 medium sectional title accounting and auditing practitioners (having between 30 and 100 schemes as clients) and 9 small sectional title accounting and auditing practitioners (having less than 30 schemes as clients). One of the small practitioners used to service less than 30 schemes as clients; however, since 2016 the practitioner made the decision not to be involved in sectional title auditing any more. However, the practitioner agreed to provide feedback for an interview. The total number of sectional title schemes serviced by these 13 accounting and auditing practitioners is 713. The selected accounting and auditing practitioners service a variety of residential, commercial and combined-use schemes.

6.4.1 Client base and services rendered

The accounting and auditing practitioners interviewed had varying numbers of sectional title schemes as clients, ranging from 0 to 429 clients. One of the practitioners in the group of respondents explained that his firm recently took a national strategic decision not to be involved in the accounting and auditing work of sectional title schemes in future. However, the respondent could give valuable inputs due to many years of sectional title accounting and auditing experience, and therefore was included in the empirical study. During the interviews, the practitioners were asked to indicate the percentage of their clients requiring them to perform various tasks. The options included drawing up financial statements only, auditing financial statements only, drawing up and auditing financial statements, drawing up financial statements and providing another form of assurance, drawing up of budgets and management advice. (See also L. Lubbe (2013, pp. 206–207).) The table below summarises the responses.

Figure 6-31: Number of clients and services rendered

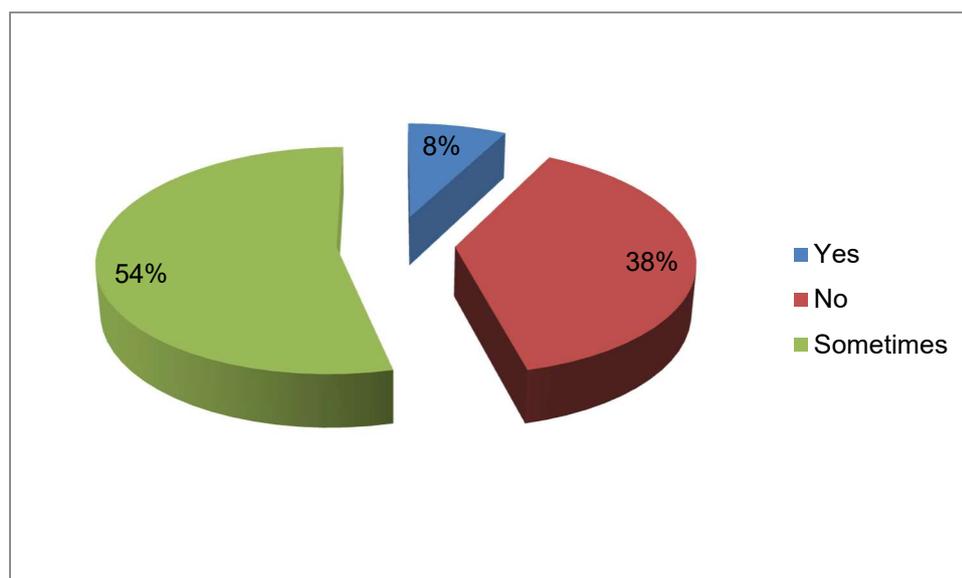
	Number of sectional title clients
1	429
2	0
3	5
4	10
5	121
6	5
7	41
8	3
9	20
10	26
11	30
12	15
13	8
Ave	55
Total	713



According to 11 (85%) of the 13 accounting and auditing practitioners interviewed, they were up to date with the latest stipulations of the Sectional Titles Act, while 1 (8%) of the practitioners stated that he was not up to date and the remaining 1 (8%) said that he was unsure.

Only 1 of the 13 (8%) practitioners said that they regularly attend the annual general meetings (AGM) of their sectional title clients. A total of 7 of the 13 (54%) practitioners said that they sometimes attend the AGMs of their sectional title clients, but only if they are specifically asked to do so. The other 5 (38%) practitioners stated that they never attended any AGM. The figure below represents this information graphically.

Figure 6-32: Attendance of meetings



6.4.2 Time and fees charged

Regarding the average time spent compiling sectional title financial statements and performing sectional title audits, the responses of the practitioners differed remarkably. The responses ranged from an average of 1 hour to an average of 24 hours for drawing up financial statements, and ranged from an average of 3 hours to an average of 20 hours to audit the

financial statements of a sectional title scheme. (See also L. Lubbe (2013, p. 207) The figure below summarises the findings.

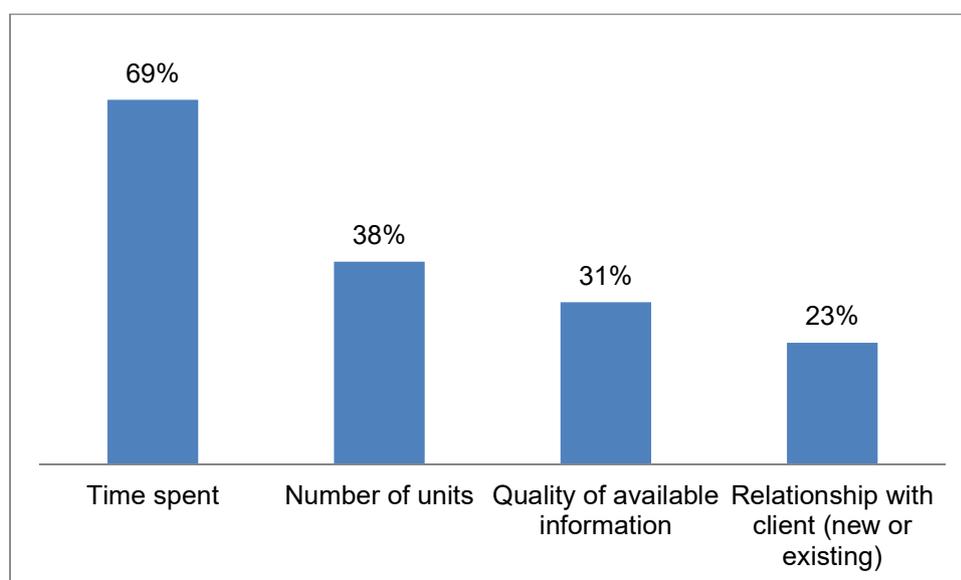
Figure 6-33: Average time spent

	Average hours spent compiling sectional title financial statements	Average hours spent on auditing of a sectional title scheme	Average hours spent on other assurance activities of a sectional title scheme
1	2	14	10
2	6	20	n/a
3	2	16	2
4	8	8-16	n/a
5	2	2	3
6	2	5	3
7	1	3	n/a
8	3	8	n/a
9	5	16	n/a
10	2	7	n/a
11	24	12	6-12
12	3	10-20	n/a
13	3	7	1
Total	63	137	27
Average	4.85	10.54	2.08

During the interviews, the practitioners were asked to identify the factors they take into account when determining their fees for sectional title work. The respondents were allowed to give more than one answer to the question. The most significant factor taken into account, mentioned by 9 of the 13 practitioners and making up 69% of responses, is the time spent on the client's work. The more time the practitioners spend on the preparation and auditing of the financial statements, the higher fees they charge. A total of 4 of the 13 practitioners interviewed (making up 31% of responses) mentioned that one of their considerations is the quality of information received from the managing agent. Fees would be higher if they experienced problems; had received sub-standard information from the managing agent in the past; or if the necessary information is not readily available to enable them to complete the work. According 3 of the 13 practitioners interviewed (accounting for 23% of responses) their relationship with the client plays an important role in determining their fees. Fees would be higher if they are not familiar with the sectional title scheme or managing agent. A further 5 of

the 13 practitioners (accounting for 38% of responses) indicated that they take the number of units in a scheme into account when determining their fees. The more units in a scheme, the higher the fee would be. The figure below presents a graphic summary of the findings.

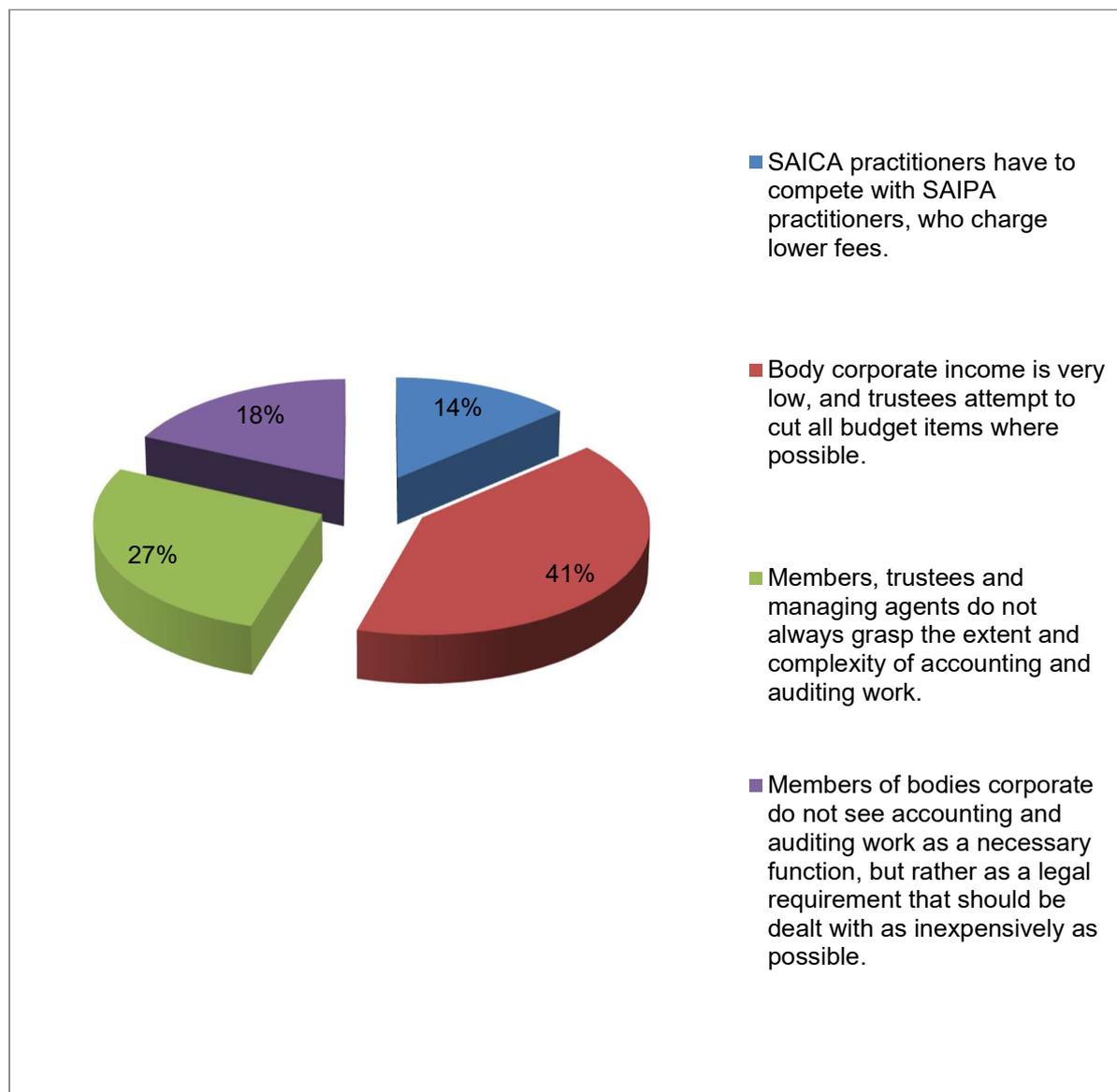
Figure 6-34: Factors taken into account when determining audit fees



Of the 13 practitioners interviewed, 11 (85%) were of the opinion that there is pressure on practitioners to keep fees for sectional title accounting and auditing low, while only 2 (15%) were of the opinion that there is no pressure to keep fees low. The practitioners were also asked to give reasons for the pressure on audit fees, and they were allowed to give more than one response. Of the practitioners who were of the opinion that there is pressure on fees, a total of 9 stated that body corporate income is very low and trustees attempt to cut all budget items where possible. This answer made up 41% of responses. A further 4 of the practitioners (making up 18% of responses) stated that members of bodies corporate do not regard auditing work as a necessary function, but rather as a legal requirement that should be dealt with as inexpensively as possible. Also, 6 of the practitioners (accounting for 27% of responses) mentioned that body corporate members, trustees and managing agents do not always grasp the extent and complexity of accounting and auditing work. Furthermore, 3 of the practitioners (making up 14% of responses) stated that SAIPA practitioners as a rule charge lower fees for sectional title work than SAICA practitioners. This is due to lower professional registration fees; fewer practice reviews and a number of other factors. The respondents remarked that it

is very difficult to compete with SAIPA practitioners in terms of fees. The findings are summarised in the figure below.

Figure 6-35: Perceived reasons for pressure on audit fees



Regarding time constraints, 5 of the 13 (38%) practitioners stated that there are certain times of the year that they experience bottle-neck situations with sectional title clients, while the remaining 8 (62%) stated that they never experience any timing problems. This problem was also addressed in sections 6.2.5 and 6.2.6 and by L. Lubbe (2013, p. 194,205,210). The practitioners mentioned that bottle-neck situations usually occur around February and June

each year, and according to them, the main reason was that they do not receive financial information from managing agents on time.

6.4.3 Training and staff

Only 2 of the 13 (15%) respondents present sectional title-specific training to their new accounting staff and 6 of the 13 (46%) present sectional title-specific training to their new auditing staff. A total of 4 of the 13 (31%) respondents presented sectional title-specific training to their current accounting staff and 5 of the 13 (38%) present sectional title-specific training to their current auditing staff. Two of the 13 (15%) practitioners indicated that there is a need for sectional title-specific training for junior staff members; 2 (15%) indicated a need for sectional title-specific training for their senior staff members, and 7 of the 13 (54%) stated that there was a need for sectional title-specific training courses for partners and directors of firms. The practitioners indicated that it would be very useful if a good basic training course could be made available covering the accounting, auditing and legal aspects specific to sectional title.

During the interviews, the accounting and auditing practitioners were asked about the average post level or qualification of the staff members doing work on their sectional title clients. The responses varied greatly between the practitioners from lower level staff to higher level staff responsible for sectional title work. The figure below is a summary thereof.

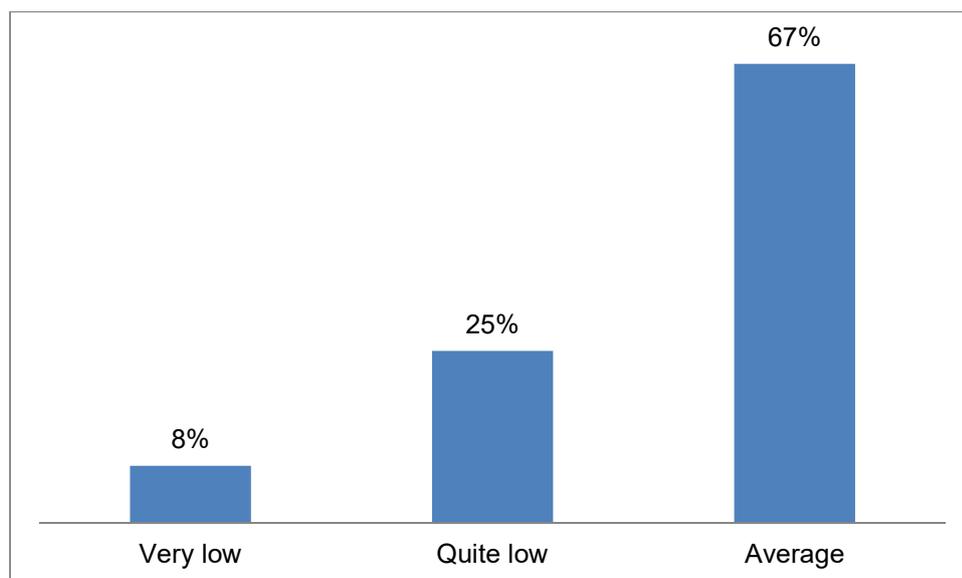
Figure 6-36: Average post level/qualification of staff doing sectional title work

	Person(s) compiling sectional title financial statements	Person(s) auditing sectional title schemes
1	1st year trainee	1st to 3rd year trainee
2	B. Acc degree	CA(SA)
3	1st year trainee	2nd/3rd year trainee
4	1st/2nd year trainee	1st/2nd year trainee
5	B. degree	B. degree
6	Audit manager	Audit manager
7	n/a	n/a
8	B. Com degree	B. Com degree
9	Junior trainee	Senior trainee
10	2nd year trainee	2nd year trainee
11	Junior trainee	SAIPA trainee under supervision of IRBA senior
12	3rd year trainee	3rd year trainee
13	Junior trainee	Senior trainee

As mentioned in section 6.4.4 below, practitioners who perceived the risk of sectional title audit to be low used staff members at a lower post grade to do the work on sectional title clients, compared to the other practitioners. The higher the practitioner perceived the risk of a sectional title audit to be, the higher the post level and qualification of the staff members used to do the work. The above findings concur with the findings of L. Lubbe (2013, p. 216).

6.4.4 Risk

During the interviews, the practitioners were asked to give their opinion on the level of risk associated with the auditing of sectional title schemes, in comparison with the auditing of clients in other industries; with the options being very low, quite low, average, high and very high. One of the 13 (8%) respondents perceived the risk of auditing sectional title schemes as very low, compared to auditing clients in other industries; 3 of the 13 (23%) practitioners viewed the risk of auditing sectional title schemes as relatively low, compared to auditing clients in other industries; 8 of the 13 (62%) practitioners viewed the risk of auditing a sectional title schemes as average, compared to auditing clients in other industries. None of the respondents perceived the risk to be high or very high. The graph below illustrates the results.

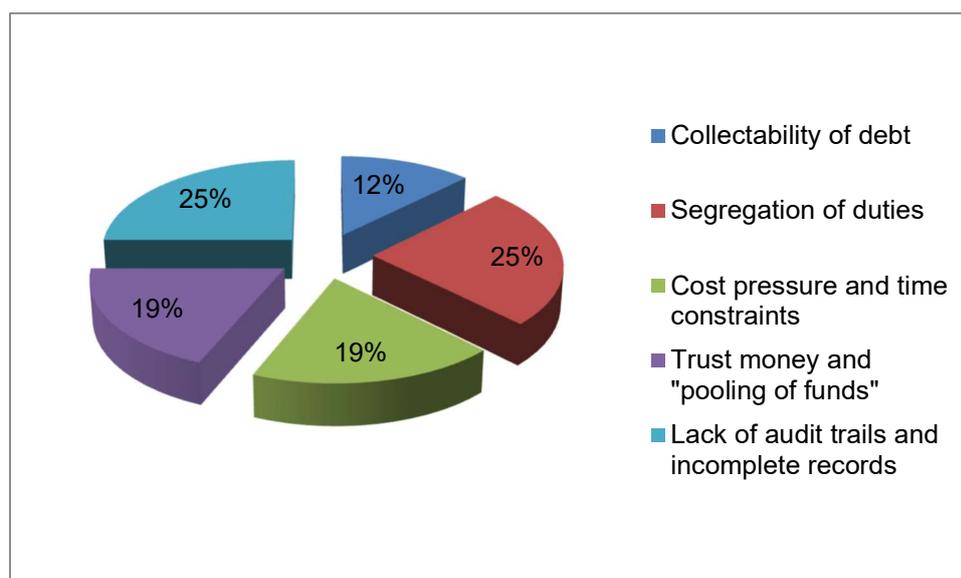
Figure 6-37: Perceived risk involved in sectional title audit work

As mentioned in section 6.4.3 above, an interesting observation was made when comparing the above risk assessment with the time spent by the practitioners. The higher the practitioner perceived the risk of a sectional title audit to be, the more time they spent on the audit of sectional titles. The practitioners who perceived the risk of sectional title audit to be low, spent the least number of hours auditing sectional title schemes, compared to the other practitioners.

During the interviews, the practitioners were also asked what they regarded to be the greatest risks related to the audit of sectional title schemes. The respondents were allowed to give more than one answer. A low 12% of the responses (mentioned by 2 of the 13 practitioners) indicated that collectability of levies is a great concern. This concurs with the findings of trustees in section 6.2.3. The practitioners stated that it was very difficult for them to determine provisions for doubtful debt. It also has an impact when the audit practitioner has to determine whether a body corporate is a going concern. According to 4 of the 13 (accounting for 25% of responses) practitioners interviewed, segregation of duties is a big problem in sectional title schemes, and creates opportunity for fraud. Segregation of duties is often a problem due to the small number of people responsible (e.g. commonly only the managing agent, or one or two trustees) for handling the financial matters of a body corporate. It was also mentioned that there is often no clear audit trail available to provide evidence of transactions.

It was also stated by 3 of the 13 practitioners (19% of responses) that cost pressures and resulting time constraints make it difficult to perform all the procedures required by the auditing standards, which increases the risk. It was mentioned by 3 of the 13 practitioners (accounting for 19% of responses) that the fact that there is trust money involved is a great risk, and therefore great care has to be taken during the audit of bodies corporate. Lack of audit trails and the incompleteness of records and supporting documentation were mentioned by 4 of the 13 practitioners and the responses added up to 25% of the identified risks. The respondents added that invoices/statements from local authorities for electricity, rates and water regularly result in problems with cut-off. According to the respondents, it is not always easy to determine correct balances at year-end. Due to incorrect estimates on statements, and late delivery of invoices, statements and supporting documentation, the cut-off of debtors and creditors is a great risk. The figure below contains a summary of the findings above.

Figure 6-38: Factors increasing audit risk



According to 6 (46%) of the 13 practitioners interviewed, they were aware of the practice whereby some managing agents use one trust bank account in which all sectional title scheme money is managed. Auditors of individual schemes are often refused access to the trust bank account statements due to 'confidentiality' issues. The other 7 of the 13 (54%) respondents were not aware of this practice. (See also the opinion of managing agents on this matter in section 6.3.8. and L. Lubbe (2013, p. 213).) The practitioners who were aware of this issue remarked that these managing agents were only willing to provide the auditors with their own

summary of the bank account and transactions of the body corporate under audit. A further concern was that unallocated deposits relating to a specific body corporate which was deposited into the managing agent's 'pool' trust account could remain unnoticed and unallocated due to the fact that the information is not made available to the auditors. The accounting and auditing practitioners expressed concern in that it was nearly impossible to reconcile the bank balances with the calculations and reconciliations that were provided to them by the managing agents.

Linking to the above matter, 3 of the 13 (23%) practitioners interviewed stated that they were aware of problems regarding the handling of interest on trust accounts by managing agents. They also mentioned that the interest accrued on this large trust account is never allocated to the individual bodies corporate, or even to the EAAB for the fidelity fund. The managing agents remain the sole beneficiaries of the interest on these 'pool' accounts. All of the practitioners stated that, even though it is 'accepted practice' among managing agents in the industry, they did not feel comfortable with this practice, and that they would rather see managing agents open a separate bank account for each body corporate. (See also sections 6.2.3, 6.2.5, and 6.3.8.)

In line with the findings of L. Lubbe (2013, pp. 213–214), it seems that the handling of trust money by managing agents is a concern which accounting and auditing practitioners should be well aware of. Usually, interest 'earned' on trust funds should not accrue to the managing agent, but to the EAAB for purposes of the fidelity fund or the individual bodies corporate. This is a serious aspect that should be taken note of by the industry.

6.4.5 Problems experienced

During the interviews, the accounting and auditing practitioners were asked to identify what they experienced as the biggest problems when doing accounting and auditing work of sectional title schemes. The respondents were allowed to give more than one answer. According to 11 of the 13 (85%) practitioners interviewed, one of the biggest problems is that bodies corporate often put unrealistic pressure on accounting and audit fees. Pressure on fees limits the time available to perform audits and as a result, the scope of the work is restricted.

It was also mentioned that many trustees and managing agents do not know exactly what an audit entails and the amount of work involved to complete an audit. This is, perhaps, another example of the expectation gap which was discussed in section 4.6 and later in this section. A total of 5 of the 13 (38%) respondents mentioned that they regularly experienced problems with incompetent trustees and managing agents who do not understand accounting.

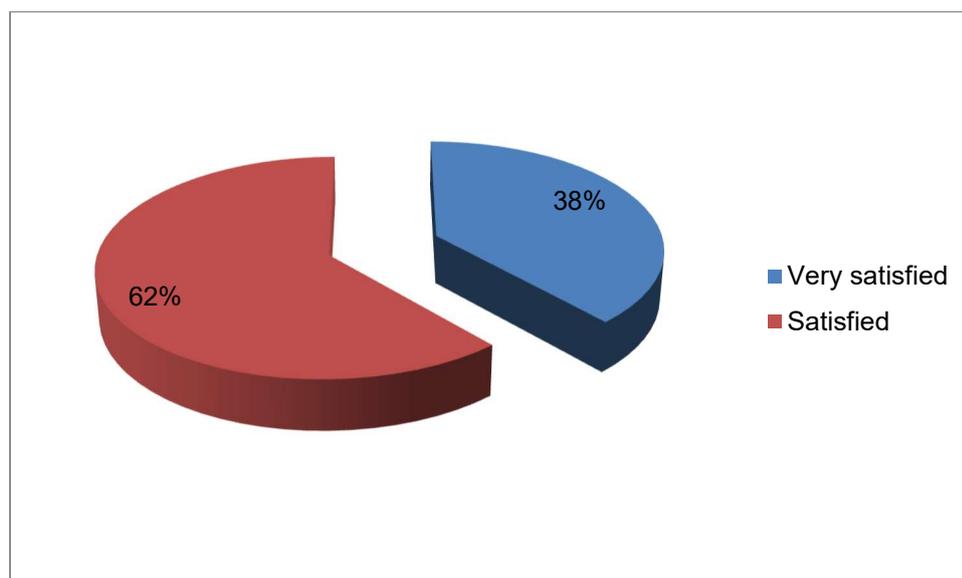
Another problem experienced with the accounting and auditing of sectional title schemes, mentioned by 9 of the 13 (69%) respondents, related to problems with municipal accounts. This problem was also mentioned by the chairmen and managing agents in sections 6.2.3 and 6.3.5 above. The practitioners mentioned that corrections on statements, account estimates and incorrect allocations between water and electricity on statements caused problems when doing accounting and auditing work. It also makes it very difficult to perform analytical procedures on the account balances.

A further concern, mentioned by 6 of the 13 (46%) respondents, is the fact that accounting records, reconciliations and audit trails are often incomplete. The practitioners also experienced frustrations with a lack of supporting documents for decisions taken by trustees and minutes of meetings. Four of the 13 (31%) practitioners stated that the collectability of body corporate debts is usually quite difficult to determine.

According to 2 of the 13 (15%) practitioners interviewed, the fact that some bodies corporate prepare their books of account manually leads to frustration. The practitioners would prefer that the bodies corporate computerise their accounting records.

During the interviews, the practitioners were asked what their level of satisfaction was with regards to the completeness of source documents received from trustees and managing agents. The options given were very dissatisfied, dissatisfied, satisfied and very satisfied. Five of the 13 (38%) practitioners were very satisfied with source documents and information from trustees and managing agents, while 8 of the 13 (62%) practitioners were satisfied with the source documents. (See also section 6.4.4.) The graph below illustrates these results.

Figure 6-39: Level of satisfaction with source documents received



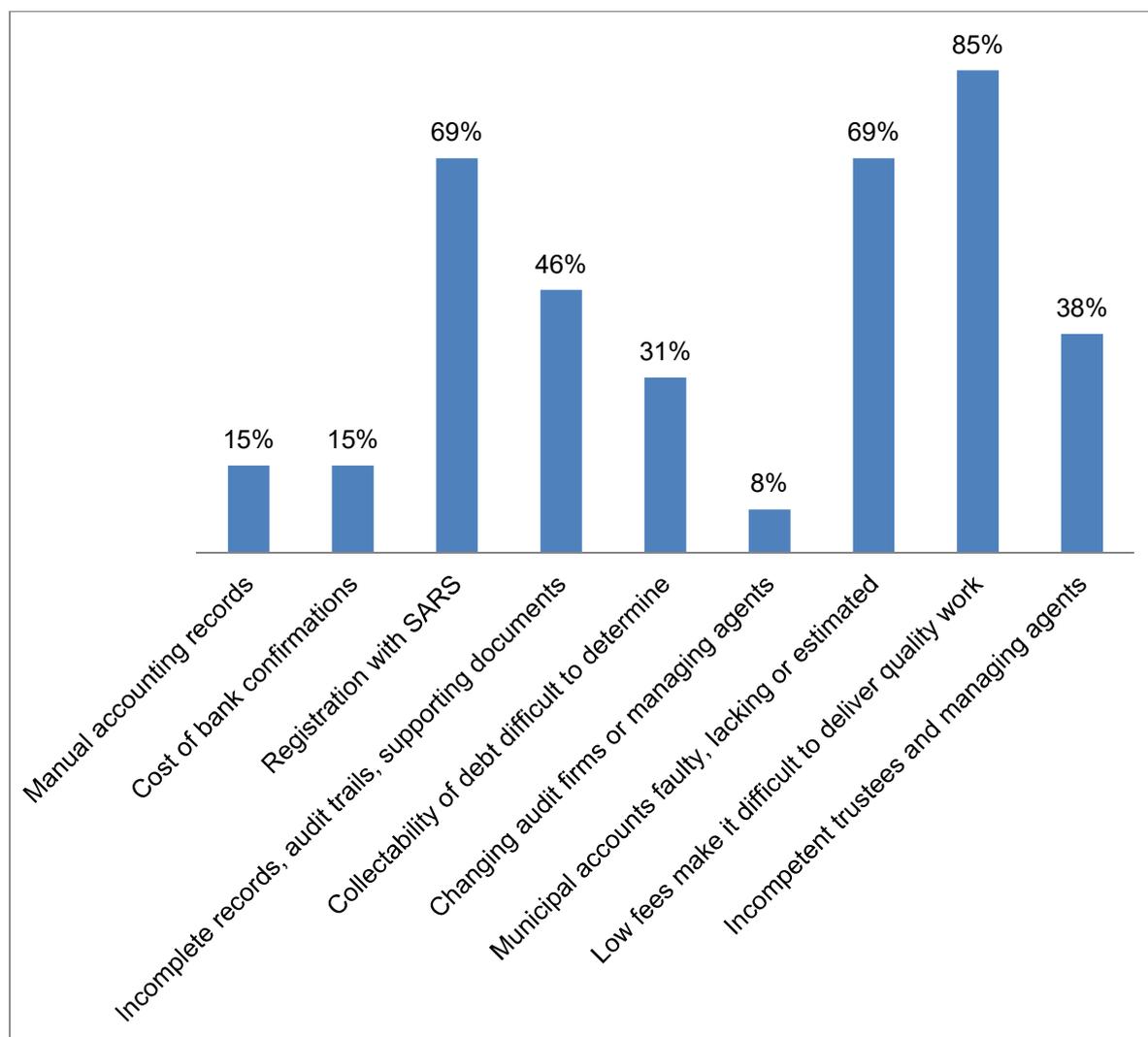
Another problem mentioned by 1 of the 13 (8%) practitioners is that bodies corporate changing from one managing agent to another or from one audit firm to another. Some managing agents then refuse to hand over the control of the body corporate's bank account after changing to another agent. As a result of poor communication to owners and tenants, it also happens that fees are still paid over to the old managing agent. Verifying opening balances of accounts and financial statements can also become problematic.

In section 6.4.2 it was mentioned that bottle-neck situations sometimes occur at accounting and auditing firms due to many February and June financial year-ends. A total of 3 of the 5 (60%) practitioners who experienced timing problems said that moving the financial year-ends of bodies corporate could be a solution to the problem. They mentioned that it is a great practical challenge and, therefore, they are not in favour thereof. The other 2 (40%) practitioners said that managing agents should improve their service and have financial information available sooner after year-end in order to solve the said problem.

Nine of the 13 (69%) practitioners said that they experienced problems with the South African Revenue Service (SARS) regarding their sectional title clients. It was mentioned that the process of registering a sectional title client with SARS is a lengthy, cumbersome and frustrating process. The practitioners were also of the opinion that the SARS officials do not

understand the nature of the affairs of bodies corporate and that they are not up to date with the current tax legislation governing bodies corporate. A further 2 of the 13 (15%) practitioners also mentioned that it was becoming increasingly expensive to obtain bank confirmations from banking institutions and that is often not financially worthwhile to obtain a bank confirmation for a body corporate. The problems regarding municipal accounts, pressure on audit fees and incomplete source documents were also identified in the study of L. Lubbe (2013, pp. 209–211). However, a much greater range of problems were identified by the practitioners in the current study. The graph below summarises the results above.

Figure 6-40: Problems experienced by practitioners



During the interviews, the practitioners also mentioned a number of misperceptions that exist amongst various parties with regards to their services rendered. These included the fact that trustees and owners do not have a clear understanding of the work and time involved in preparing and auditing the financial statements of a body corporate. A further misperception mentioned was that managing agents think that auditing practitioners audit 100% of a body corporate and will always pick up fraud and identify all errors. All of the mentioned factors point to the 'expectation gap', as was also discussed earlier in this section as well as in sections 1.1 and 4.6.

6.4.6 Accounting work and assurance matters

Of the 13 practitioners interviewed, 10 (77%) were of the opinion that the auditing of body corporate financial statements adds value to sectional title schemes, while the remaining 3 (23%) think that auditing body corporate financials do not add any value. The practitioners who were of the opinion that auditing adds value stated that audits are important, because it gives a form of assurance to the generally ignorant and uninformed trustees and members of bodies corporate. The practitioners added that the fact that trust money is involved makes an audit absolutely essential. It was also mentioned that audits are imperative because it will indicate whether the managing agents are doing their work in terms of debt collection and keeping to budgeted amounts.

Similar to the findings of L. Lubbe (2013, p. 208) 5 of the 15 (38%) practitioners were of the opinion that a full audit is the most applicable way of providing assurance to a sectional title scheme. A total of 5 of the 13 (38%) practitioners felt that Agreed-upon Procedure Engagements were more applicable than audits for their sectional title clients, whereas the remaining 2 (15%) stated that they would prefer doing Independent Review Engagements for their sectional title clients instead of full audits. These practitioners stated that there were still many grey areas regarding Independent Reviews, and that alternatives to full audits may not necessarily result in cost savings for the client. (See also section 6.5.6 below for the opinions of EAAB inspectors in this regard.)

A further important finding, which corresponds to the research of L. Lubbe (2013, p. 208) concerns accounting standards. During the interviews, the practitioners were asked which accounting standards they deem to be the most applicable in compiling the annual financial statements of bodies corporate. The options given were IFRS, IFRS for SMEs, a custom-made standard or another alternative. None of the respondents (0%) considered full IFRS to be an appropriate accounting standard to use for the preparation of body corporate financial statements. A total of 5 of the 13 practitioners interviewed (38%) were of the opinion that IFRS for SMEs is an applicable accounting standard for bodies corporate in its current form and the remaining 7 of the 13 respondents (54%) stated that an accounting standard must be developed specifically for the sectional title industry. The practitioners mentioned that they are currently uncertain of the accounting treatment of certain transactions in the sectional title

industry, such as the capitalisation of assets, accounting of schemes under development, treatment of certain VAT components for commercial schemes, the split between capital and expense items, and the allocation of repair and maintenance payments. The practitioners were of the opinion that additional guidance is needed from the accounting professional bodies, similar to the guidance available to non-profit entities and for attorneys (so-called attorneys 'trust audits'). This is certainly a finding that the accounting professional bodies in South Africa should take note of. (See also section 6.5.6 below for the opinions of EAAB inspectors in this regard.)

6.4.7 Trustees

The practitioners had differing opinions on what the optimal number would be for a well-functioning board of trustees. Five (38%) of the 13 practitioners interviewed said 3; 1 (8%) said between 3 and 5 depending on the size of the scheme; 4 of the 13 (31%) stated that 5 is an optimal number; 1 (8%) said that there should be 1 trustee for every 5 to 7 units; 1 (8%) said that the optimal number of trustees depends on the size of the scheme. The remaining 1 (8%) responded did not answer the question. An alarming observation was that only 2 of the 13 (15%) practitioners interviewed were of the opinion that the average chairman of a board of trustees has sufficient skills and knowledge to act as chairman. A total of 10 (77%) of the practitioners did not think that the average chairman of a board of trustees has sufficient skills and knowledge to act as chairman, while the remaining 1 (8%) respondent was unsure. This corresponds with the opinion of the managing agents in section 6.3.7 above. The figure below summarises the results.

Figure 6-41: Opinion on optimal number of trustees

Respondent	Optimal number of trustees	Sufficient skills and knowledge
1	5	No
2	3	No
3	3	Yes
4	3	No
5	depends on size	No
6	5	Yes
7	5	No
8	3	No
9	5	No
10	n/a	No
11	one trustee for every 5-7 units	No
12	3-5	Unsure
13	3	No

6.4.8 Managing agents

During the interviews the practitioners were asked whether they thought that the average managing agent has the necessary skills and competence to act as such. A total of 9 of the 13 (69%) practitioners interviewed agreed. The other 2 (15%) practitioners were of the opinion that the managing agents they came into contact with were not knowledgeable and did a poor job, while the remaining 2 practitioners (15%) said that they were unsure. The practitioners who were unsure said that some managing agents were doing good work, while the skills and competence of others were sub-standard. It was also mentioned that many managing agents had no idea how the budgeting process works and how to prepare a budget, and that amounts are simply adjusted with inflation year after year. See the figure below for a graphic representation of the findings.

Figure 6-42: Opinion on skills and knowledge of managing agents

Respondent	Sufficient skills and knowledge
1	Yes
2	Yes
3	Yes
4	No
5	Yes
6	Yes
7	No
8	Yes
9	Unsure
10	Unsure
11	Yes
12	Yes
13	Yes

6.5 Perspectives of EAAB inspectors

The Estate Agency Affairs Board (EAAB) has as one of its mandates to regulate, maintain and promote the standards of conduct of estate agents having due regard to public interest. The EAAB conducts both routine and non-routine inspections to ascertain compliance of estate agents with the Estate Agency Affairs Act 112 of 1976, Financial Intelligence Centre Act 38 of 2001 and ethical conduct (Estate Agency Affairs Board, 2015, p. 38). Routine inspections are being done of estate agents across the country, with the assistance of audit practitioners countrywide. It should be noted that, in terms of the legislation, the inspections are done at estate agents. Another important fact to note is that all estate agents do not function as managing agents, and all managing agents are not registered as estate agents. The EAAB developed a so-called 'inspections questionnaire' with the help of auditing practitioners. (See Annexure I for detail.) For each of the provinces in the country, one or more audit practitioner is appointed by the EAAB to inspect all estate agents in the province once in a three-year cycle. Since the inspections were only implemented by the EAAB in 2012, the development is relatively new.

High-ranking officials at the EAAB were contacted in order to obtain the contact details of the audit firms responsible for the inspections in the various provinces. It was difficult to obtain this information, probably due to governance issues and the fact that the management structures at the EAAB changed numerous times in recent years, as mentioned in section 1.4.4.1. After various unsuccessful attempts to obtain the contact information, requests were also sent to the South African Institute of Chartered Accountants (SAICA) and the Independent Regulatory Board for Auditors (IRBA). It was clearly emphasised in all correspondence that, due to the confidential nature of the information, all responses and information would be dealt with the highest degree of confidentiality. Without going into further detail, it seems that institutions are often hesitant to assist academics with their research.

Requests for interviews were sent out to EAAB-appointed estate agent auditors for each of the 9 provinces in South Africa. A total of 4 responses for interviews were received, resulting in a response rate of 44%. Due to the fact that the population and the sample are very small, the provinces will not be identified by name, in order to protect the confidentiality of the responses received. In the sections that follow, the results of the information from the questionnaires and interviews with EAAB inspectors will be discussed under the following headings: client base and services rendered, training and staff, risk, background to the inspection work, problems experienced, and accounting and auditing.

6.5.1 Client base and services rendered

During the interviews, the inspectors were asked how many sectional title schemes they service. The question was asked in order to get an indication if the auditors who perform the EAAB inspections at estate agents also do accounting or auditing work for individual bodies corporate. The answers received ranged from 0 to 10 sectional title schemes. Two of the 4 (50%) inspectors did not have any sectional title clients at the time of the interviews; 1 of the 4 (25%) had 8 clients and the other 1 (25%) had 8. The inspectors have been practicing as auditing practitioners for a varying number of years. Two (50%) of the inspecting firms have been practicing for 8 years, and the remaining 2 (50%) were unsure, due to the fact that they were larger firms with operations and branches throughout the country. Further, current

accounting and auditing firms are often the result of amalgamations and mergers between various firms over the course of many years and as a result the practitioners are not able to answer this question. The inspectors have been responsible for between 2 and 3 inspection cycles. According to the inspectors, approximately 90% of the inspection work relates to estate agency affairs, whereas roughly 10% of the inspection work relate to sectional titles. According to all 4 (100%) of the inspectors interviewed, they are unsure as to whether the average sectional title managing agent has the necessary knowledge and skills to act as a managing agents.

6.5.2 Training and staff

The inspectors interviewed were all partners or directors of their respective audit firms and they all had CA(SA) qualifications. The average qualifications of the staff members responsible for doing the EAAB inspections field work is a B. Com degree, with the average post level being an intermediate article clerk.

Two of the 4 (50%) practitioners did not provide any form of formal sectional title training for their staff members, while the remaining 2 (50%) provided sectional title-specific training to new and current staff members, and also provided regular update training to their staff members. 2 of the 4 (50%) of the practitioners stated that it would be very useful if a good basic training course can be made available covering the accounting, auditing and legal aspects specific to sectional title.

6.5.3 Risk

During the interviews, the inspectors were asked to give their opinion on the level of risk associated with the auditing of sectional title schemes, in comparison with the auditing of clients in other industries. Two of the 4 (50%) practitioners interviewed perceived the risk of auditing sectional title schemes as very high, compared to auditing clients in other industries. The other 2 (50%) inspectors did not answer the question, since they did not audit individual

sectional title schemes at the time of the interviews. The inspectors were also asked to give their opinion on the level of risk associated with performing EAAB inspections, in comparison with the auditing of clients in other industries. All 4 of the practitioners interviewed (100%) perceived the risk of performing EAAB inspections as quite low, compared to auditing clients in other industries.

During the interviews, the inspectors were also asked what they regarded to be the greatest risks related to the audit of sectional title schemes. The respondents could give more than one answer. Trust account risks and problems with record keeping were mentioned as the greatest risks. The inspectors stated that they found the trust account detail difficult to verify, and often personal expenses of the managing agent paid from the trust account goes unnoticed. The inspectors also mentioned that many of the managing agents inspected do not keep proper records, making verification of transactions very difficult.

6.5.4 Background to inspection work

All of the inspectors interviewed (100%) stated that the EAAB identified clear goals for the inspections, and that the EAAB compiled clear working papers for the inspections. According to all of the inspectors interviewed (100%), there was enough room left for them to use their professional judgement during the inspections. All of the inspectors interviewed (100%) were of the opinion that they received sufficient cooperation from the EAAB regarding the inspection engagements, and that there were clear reporting lines to the EAAB for reporting of inspection findings. All of the inspectors interviewed (100%) were of the opinion that the EAAB had clear guidelines regarding the auditor remuneration paid for the inspections. An alarming finding, however, is that none (0%) of inspectors interviewed were of the opinion that the EAAB took sufficient action regarding reported findings. This is an important matter of which the EAAB should take serious note.

6.5.5 Problems experienced

As part of the interviews, the inspecting practitioners were asked to identify all the problems that they experienced when performing the inspections on behalf of the EAAB. The practitioners were allowed to give more than one answer. As mentioned in section 6.5.3 above, the inspectors regularly encounter trust account irregularities, such as trust account deficits and personal expenses paid from trust accounts. Recordkeeping is often lacking and incomplete. The inspectors further stated that many managing agents are not up to date with sectional title legislative requirements. It was also mentioned that the time allowed (worked out in terms of fees) for the inspections is very limited, sometimes equivalent to around half a day per inspection per estate agent. The inspectors were of the opinion that more time should be allowed for larger managing agents. The inspectors also stated that organising and making appointments for the inspections take a lot of time. Furthermore, the inspectors stated that many managing agents are reluctant to have the inspections done, giving many excuses for not being able to accommodate the inspecting auditors. The inspectors also stated that, since the inspections have not been in place for a long time, there were still some inconsistencies and lacking aspects in the guidelines received from the EAAB.

6.5.6 Accounting and auditing

During the interviews, the inspectors were asked to give their opinion on whether the auditing of financial statements and other forms of assurance over the financial statements adds any value to sectional title schemes. All (100%) of the inspectors interviewed were of the opinion that the auditing of body corporate financial statements adds value to sectional title schemes. Furthermore, all the inspectors interviewed (100%) were of the opinion that other forms of assurance over of body corporate financial statements would not add value to sectional title schemes, due to the inherent limitations thereof. The practitioners stated that full audits are important, because it gives a form of assurance to the generally ignorant and uninformed trustees and members of bodies corporate. All the inspectors (100%) stated that the fact that trust money is involved makes an audit absolutely essential. (See also section 6.4.6 above.)

A further important finding, which corresponds to the findings in section 6.4.6 above concerns accounting standards. During the interviews, the inspectors were asked which accounting standards they deem to be the most applicable in compiling the annual financial statements of bodies corporate. The options given were IFRS, IFRS for SMEs, a custom-made standard or another alternative. All the inspectors interviewed (100%) were of the opinion that a specific standard should be developed for sectional title schemes, as it is a very unique and highly specialised industry. They all felt that neither IFRS nor IFRS for SMEs is applicable to bodies corporate in its current form. This finding is in line with the opinions of accounting and auditing practitioners as discussed in section 6.4.6.

6.6 Overview of empirical findings and recommendations

In this section a brief overview will be given of the main observations from the interviews with the various role players. For the chairmen of bodies corporate, the main concerns were rule enforcement, uninvolved and uninformed owners, difficulties with municipal accounts, municipal service delivery and poor meeting attendance. Financial pressures, problems with debt collection and difficulties in getting budgets and budget increases approved were also raised as concerns. A lack of trustee remuneration was mentioned as a problem, together with the fact that it is very difficult to get members who are willing to serve as trustees. Frustrations were also mentioned where developers were involved, and the pooling of funds by managing agents was a concern.

The managing agents also had problems with ignorant and uninvolved owners, members who do not want to serve as trustees, as well as poor meeting attendance. Municipal accounts caused serious concerns and service delivery was also a problem. Difficulties with debt collection, pressures on management fees and problems in obtaining budget approval created further frustrations for managing agents. The managing agents also had various problems with developer involvement.

The accounting and auditing practitioners who were interviewed regarded municipal accounts, time constraints and pressures on audit fees, pooling of funds by managing agents, as well as

uninformed trustees and owners as problems. The practitioners also had various accounting-related questions on which they need guidance clarity from their professional bodies.

According to the EAAB inspectors they regularly encounter trust account irregularities from the managing agents, and managing agent record keeping is often lacking. Time and budget constraints were also mentioned, and a lack of follow-up by the EAAB on reported findings were a point of concern.

All of the role players were of the opinion that auditing the financial statements of bodies corporate adds value and should be continued. Another recommendation that should be taken note of by the industry is the possibility of developing a custom accounting standard for the sectional title industry.

A further matter that runs like a common golden thread through the responses of all the groups of respondents is the viewpoint that the 'pooling' of trust money is a great risk. It is also likely that irregularities can occur if this practice is followed.

6.7 Conclusion

In this chapter the results of interviews with a sample of role players, namely chairmen of bodies corporate, managing agent, accounting and auditing practitioners and EAAB inspectors in the sectional title industry were discussed. Various problems, concerns and recommendations were mentioned – of which the industry should take note. A number of risks, such as the aspect of 'pooling' of trust funds, were mentioned in this chapter, as well as elsewhere in the study. The mentioned risks should be addressed as a matter of urgency. The empirical findings can also be used as a basis for future research. The next chapter will contain the conclusion of the study as well as recommendations for future research.

Chapter 7

Reflections, conclusions and recommendations

“Who looks outside, dreams; who looks inside, awakens.” – Carl Gustav Jung

7.1 Introduction

It was noted in section 1.2 of Chapter 1 that South Africa has a long and complex history of land and housing problems, and a variety of issues in housing have been identified by researchers such as Gibson (2009, pp. 11–16) and Cowen (2008, pp. 22–34). From the late 1800s, the South African government administrations spent considerable time and energy on the land issue and adopted and implemented numerous pieces of land-related legislation to the fall of apartheid in 1994, as put into context in the brief historical overview by L. Marais & Cloete (2015, pp. 263–265). It was also mentioned that South Africa shares a number of housing challenges with other BRICS countries, which include problems such as serious housing shortages, affordability of property, large urban areas with informal settlements, slums, overcrowding and access to essential services (Cai & Lu, 2015, pp. 169–175; Huchzermeyer, 2011, pp. 6-7-34; Morris, 2012, pp. 10–12; Rabenhorst & Ignatova, 2008, p. 16). A further problematic issue linked to the housing problem in South Africa that was mentioned in section 1.2.5 of Chapter 1 is the increasing occurrence of building hijacking during the past few years. Buildings are often taken over by hundreds of illegal squatters, especially in urban areas. Also, researchers Turok & Borel-Saladin (2014, p. 687) describe urbanisation and population growth as an inevitable and important process that poses great economic, social and environmental challenges, including an additional challenge to the existing housing shortage in the vicinity of employment hubs in South Africa.

Authors Crotty (2012, p. 16) and Mohapi (2012, p. 31) emphasise that sectional title property can greatly assist in providing much needed urban accommodation in South Africa. Even though sectional title property has many benefits, as mentioned in section 1.4.2, the industry has seen numerous fraud scandals in recent years, and the Estate Agency Affairs Board was even put under administration for a number of years (Rees, 2013, p. 19). Over and above

numerous roles and responsibilities, role players in sectional title property face a great number of risks and potential areas of concern, including owner apathy, ignorance of the law, complex legal matters in sectional title schemes, problems with trust money and fiduciary responsibilities to name but a few. In section 1.4.6, it was mentioned that agency theory can also be applied to sectional title property. When the trustees or managing agents, as agents of the body corporate, do not act in the best interest of the body corporate, the agency problem arises. Furthermore, it was explained in section 1.4.1 that the sectional title industry has recently seen the development and promulgation of so-called third generation sectional title legislation. The legislation brings about significant changes that will affect the finances of sectional title schemes. There are also a large number of contradictory and confusing legal aspects in the old and new sectional title legislation. Regarding the accounting and auditing of sectional title schemes, accounting and auditing practitioners also encounter various practical challenges when performing accounting and assurance services for sectional title clients. Very few members of bodies corporate have knowledge of accounting standards, and the size of sectional title entities and the budgeting constraints they face also raises questions on how to perform proper assurance engagements in the most cost-effective way. These challenges and uncertainties have been in existence for many years, but very little research has so far been done on the South African sectional title industry from an accounting and auditing perspective.

Based on the matters mentioned above, the problem statement of this study was formulated in section 1.6 and it was argued that governance-, accounting- and auditing-related research on the sectional title industry is relevant, topical and imperative if current governance, accounting and auditing practises is to be enhanced. Following this argument, this thesis aimed to give an in-depth overview of:

- Risks associated with sectional title for various stakeholders (i.e. owners, trustees, managing agents, auditors and accountants and EAAB-appointed inspectors) from an accounting, governance and auditing perspective;
- Auditing- and governance-specific problems relating to sectional title; and
- Accounting-specific problems relating to sectional title.

More specifically, the research objectives were as follows:

- To find possible solutions to the above-mentioned problems and to make recommendations in this regard;
- To set benchmarks from the analysis of the annual financial statements of respondents over a three-year period. These benchmarks can be of assistance as an industry standard for owners, trustees, managing agents, auditors and accountants rendering a professional service, and so enhance accounting and auditing practices;
- To identify future research opportunities that fall outside the scope of the study.

Next, the research overview was given in Chapter 2, with specific reference to the philosophical research paradigms and research methodologies that were applied. The population and sampling for both the qualitative and the quantitative empirical studies were discussed in sections 2.3.3, 2.3.4, 2.3.5, 2.3.6 as well as in sections 4.5, 5.4 and 6.1. The following section consists of brief overviews of each of the research aims and objectives as stated in Chapter 1, together with a discussion of the most notable findings and conclusions relating to each one.

7.2 Revisiting the research aims, objectives, results and conclusions

7.2.1 Risk associated with sectional title for various stakeholders

In the literature review and qualitative empirical study, sectional title risks were identified for the various stakeholder groups being owners, trustees, managing agents, accounting and auditing practitioners and EAAB-appointed inspectors. The identified risks for the stakeholder groups will be addressed for each group below.

7.2.1.1 Owners

A few of the greatest risks identified for owners in sectional title schemes are:

- Owners in sectional title schemes are generally apathetic and are often uninvolved in the affairs of the scheme. The problem is increased by owners who rent out units and do not stay in complexes, and non-owner residents often do not abide by scheme rules.
- There is general ignorance among owners and trustees regarding the legislation governing sectional titles and many owners do not understand the basics of how sectional titles function.
- Owners do not always understand the purpose of a body corporate budget and want to keep costs at an absolute minimum, resulting in schemes often encountering financial difficulties.
- Many sectional title owners do not understand accounting and find it difficult to analyse and interpret financial statements and audit reports.
- Where developers are involved, owners are often put at risk due to developers bypassing building regulations, developers not paying their share of levies and expenses, and developers taking very long to issue occupation and electricity certificates to owners.
- Owners were of the opinion that the audit of the financial statements adds value to sectional title schemes and reduce risk.

7.2.1.2 Trustees

The biggest risks identified for trustees include the following:

- The handling of trust money and administering the bank accounts and finances of bodies corporate is a great risk that trustees deal with on a regular basis.
- Meetings and more specifically the annual general meetings of bodies corporate are generally poorly attended by members.

- Owners are apathetic and uninvolved and it is very difficult to get owners to serve as trustees of a body corporate.
- Many residents are falling behind on their payments. As a result, debt collection is becoming increasingly difficult and is regarded as a great challenge. There is general concern regarding the financial situations of many bodies corporate.
- Some trustees find it difficult to do the budgeting of their schemes, and levy increases are often met with negativity. Also, many trustees have trouble analysing and interpreting financial statements and audit reports.
- Many trustees find the legislation governing sectional titles to be complex. Most owners do not know what they buy into when they purchase sectional title property, and therefore do not understand the roles and responsibilities of the various parties involved.
- Poor communication from local authorities, account estimates for water and electricity, poor municipal service delivery, inaccurate account balances, corrections and incorrect allocations on statements increase risk for trustees.
- Tenants often have very little concern for the fact that they stay in sectional title schemes, and that there is a general attitude amongst tenants that the scheme rules do not apply to them.
- There are very few training programmes available for trustees, and trustees face possible liabilities for making judgement errors, not complying with legal requirements, poor management of scheme finances, and overspending on budgets.
- Many boards of trustees do not currently incorporate reserve funds in their budgeting process, which increases the financial risks of schemes.
- Trustees were of the opinion that the audit of the financial statements adds value to sectional title schemes and reduce risk.

7.2.1.3 Managing agents

A few of the greatest risks identified for sectional title managing agents are the following:

- Regarding local authorities, managing agents experience poor communication and service, account estimates, corrections on statements and incorrect allocations on statements that cause countless problems when managing schemes.
- A lot of time and money is spent collecting outstanding levies, interest, electricity fees and other amounts and the legal processes that have to be followed in the case of non-payment are cumbersome and expensive. Available deposits are not always sufficient to cover outstanding balances in the case of non-payment by tenants.
- Uninformed owners and trustees cause many problems when managing schemes, especially regarding rule enforcement.
- Owners do not want to get involved in their schemes, and the fact that many owners rent out their units and do not stay in the complexes adds to the problem.
- Managing agents face a risk of not properly identifying and budgeting for capital projects of schemes. This can lead to a situation where urgent capital projects may arise, but these projects were not foreseen. Also, improper budgeting, may lead to budget overruns, and schemes running out of funds during the course of a year. Managing agents often propose a budget, but due to the fact that owners do not understand the purpose of a body corporate budget and want to keep costs to an absolute minimum, schemes regularly encounter financial difficulties.
- In light of current difficult economic circumstances, managing agents run the risk of operating at a loss, especially with smaller schemes.
- Managing agents may also face legal action if they act outside the scope of sectional title legislation.
- It is great risk to manage and handle bank accounts and financial matters of schemes. It is possible that payments may be made to incorrect beneficiaries, which puts the managing agent at risk.
- Uninformed owners and residents put managing agents at risk, due to the fact that these parties do not always perform the required functions and leave everything to the

managing agents. Also, even though they are given the freedom to perform the necessary management activities, bodies corporate hold the managing agent responsible if they are unhappy with the outcome of the managing agent's decisions or actions.

- There is a large risk in taking over a scheme from another managing agent, due to the fact that it may be difficult to verify balances and the whole process creates various administrative challenges.
- Managing agents were of the opinion that the audit of the financial statements adds value to sectional title schemes and reduce risk.

7.2.1.4 Accounting and auditing practitioners

The majority of accounting and auditing practitioners consider the risk of sectional title scheme audits as average, compared to auditing clients in other industries. The biggest risks identified for accounting and auditing practitioners include the following:

- Collectability of levies is a great concern, making it difficult for practitioners to determine provisions for doubtful debt. It also has an impact when determining going concern of schemes.
- Segregation of duties is often a problem due to the small number of people responsible for handling the financial matters of a body corporate. The practitioners consider segregation of duties to be a big risk in sectional title schemes, which creates opportunities for fraud.
- There is often no clear audit trail available to provide evidence of transactions in sectional title schemes, which increase the risk for practitioners.
- Cost pressures by bodies corporate and resulting auditing time constraints make it difficult to perform all the procedures required by the auditing standards, which increases the risk for practitioners. Pressure on fees limits the time available to perform audits and as a result, the scope of the work is restricted.
- The fact that there is trust money involved is a great risk, and therefore great care has to be taken during the audit of bodies corporate.

- Problems with invoices from local authorities for electricity, rates and water regularly result in problems with cut-off, since it is not always easy to determine correct balances at year-end. Due to incorrect estimates on statements, and late delivery of invoices, statements and supporting documentation, the cut-off of debtors and creditors is a great risk. It also makes it very difficult to perform analytical procedures on the account balances.
- The practice whereby some managing agents use one trust bank account in which all sectional title scheme money is managed is a further great risk. Auditors of individual schemes are often refused access to the trust bank account statements due to 'confidentiality' issues. Managing agents are sometimes only willing to provide the auditors with their own summary of the bank account and transactions of the body corporate under audit.
- A further concern is that unallocated deposits relating to a specific body corporate which was deposited into the managing agent's 'pool' trust account can remain unnoticed and unallocated due to the fact that the information is not made available to the auditors. This makes it nearly impossible for accounting and auditing practitioners to reconcile the bank balances with the calculations and reconciliations that are provided to them by the managing agents.
- The handling of interest on trust accounts by managing agents can increase risk for accounting and auditing practitioners. Interest accrued on trust accounts is often not allocated to the individual bodies corporate, or even to the EAAB for the fidelity fund and the managing agents remain the sole beneficiaries of the interest on these 'pool' accounts.
- Bottle-neck situations sometimes occur at accounting and auditing firms due to many February and June financial year-ends.
- It is becoming increasingly expensive to obtain bank confirmations from banking institutions and that is often not financially worthwhile to obtain a bank confirmation for a body corporate. This creates a risk regarding verification of bank balances.
- Practitioners were of the opinion that the audit of the financial statements adds value to sectional title schemes and reduce risk.

7.2.1.5 EAAB-appointed inspectors

The EAAB-appointed inspectors perceived the risk of performing EAAB inspections as quite low, compare to auditing clients in other industries. A few of the greatest risks identified for the EAAB-appointed inspectors are the following:

- The inspectors often find trust account detail difficult to verify, and it sometimes happens that personal expenses of managing agents paid from the trust account goes unnoticed.
- The inspectors often encounter trust account irregularities, such as trust account deficits and personal expenses paid from trust accounts.
- A further risk identified is that the managing agents do not keep proper accounting records, making verification of transactions very difficult.
- According to the inspectors, the EAAB did not take sufficient action regarding reported findings on the inspections.
- Fees paid for inspection and the resulting time allowed for the inspections are very limited, and this puts a restriction on the inspectors' ability to perform the necessary procedures.
- There is a general reluctance by managing agents to have the inspections done, and inspectors do not always receive the necessary cooperation from the agents.
- The inspectors identified some inconsistencies and lacking aspects in the inspection guidelines received from the EAAB.

7.2.2 Auditing- and governance-specific problems relating to sectional title

Many of the auditing- and governance-specific problems relating to sectional title are closely linked to the risks mentioned in section 7.2.1. Some of the biggest problems identified are the following:

- Very few practitioners provide sectional title-specific training to their staff members.
- There is a definite need for sectional title-specific training for accounting and auditing practitioners, especially at partner/director level.
- The majority of practitioners are of the opinion that there is pressure on practitioners to keep fees for sectional title auditing low.
- There are certain times of the year that some practitioners experience bottle-neck situations with sectional title clients, specifically for clients with February and June financial year-ends.
- The audit expectation gap is a problem for auditing practitioners, since many trustees and managing agents do not know exactly what an audit entails and the amount of work involved to complete an audit.
- It is becoming increasingly expensive to obtain bank confirmations from banking institutions and that is often not financially worthwhile to obtain a bank confirmation for a body corporate.
- The fact that some bodies corporate prepare their books of account manually leads to frustration, and computerised accounting records are preferred.
- The opinions of practitioners regarding the most appropriate way of providing assurance to sectional title schemes varied between full audits, Agreed-upon Procedure Engagements and Independent Review Engagements.
- Additional guidance is needed from the accounting professional bodies, similar to the guidance available to non-profit entities and for attorneys.
- Auditing practitioners have serious concerns with the practice where managing agents use one single 'pool' trust account for all bodies corporate managed, and auditors of sectional title schemes are often not successful in obtaining full trust bank account statements from managing agents.
- Audit reports are often copied and pasted from one year to the next. As a result, the page number references and wording is incorrect, making it seem as though the supplementary information was not audited.

- The audit reports of many bodies corporate contained emphasis of matter paragraphs in the audit reports. Emphases included non-compliance with SA GAAP, liabilities exceeding assets, and bank confirmations not being received.

7.2.3 Accounting-specific problems relating to sectional title

Many of the accounting-specific problems relating to sectional title are closely linked to the risks mentioned in section 7.2.1:

- The majority of practitioners are of the opinion that there is pressure on practitioners to keep fees for sectional title auditing low.
- Accounting practitioners often receive incomplete source documents, which complicates their work.
- Some accounting practitioners find it difficult to determine provisions for doubtful debt.
- Practitioners often experience problems with the South African Revenue Service (SARS) regarding their sectional title clients, and the process of registering a sectional title client with SARS was found to be a lengthy, cumbersome and frustrating process. It was also stated that SARS officials do not understand the nature of the affairs of bodies corporate and that they are not up to date with the current tax legislation governing bodies corporate.
- There is uncertainty amongst practitioners regarding the most applicable standard to use when compiling the annual financial statements of bodies corporate. Full IFRS is not considered appropriate to use, IFRS for SMEs is considered relevant, but the majority of practitioners feel that an accounting standard must be developed specifically for the sectional title industry.
- The practitioners mentioned that they are uncertain of the accounting treatment of certain transactions in the sectional title industry, such as the capitalisation of assets, accounting of schemes under development, treatment of certain VAT components for commercial schemes, the split between capital and expense items, and the allocation of repair and maintenance payments.

- The majority of body corporate financial statements do not contain all the elements as per the legislation. This includes age analyses of amounts due, age analyses of amounts owing and details on the expiry dates of insurance policies.

7.2.4 Possible solutions and recommendations

The following are the most important recommendations from the empirical findings:

- As mentioned in sections 5.2.3, 5.2.4 and 6.4.6 even though IFRS for SMEs is much simpler than full IFRS, many practitioners still view IFRS for SMEs as too complex and costly to implement. Also, many topics relating to, for example, goodwill, investments in associates and joint ventures, consolidated financial statements and intangible assets are not applicable to sectional titles. Deviation from the IFRS for SME framework is therefore required. Therefore, it is imperative that an accounting standard must be developed specifically for the sectional title industry. The South African Institute of Chartered Accountants (SAICA) has various interest groups for different industries in South Africa, such as for the legal profession for which a specific auditing guideline has been made available. In section 1.1 it was stated that the South African Institute of Chartered Accountants (SAICA) indicated that they are currently in the process of developing a guide for financial reporting specifically for the sectional title industry. However, it is uncertain when the process will be finalised. In light of the findings in Chapters 4 to 6, SAICA should possibly consider establishing an interest group for the sectional title industry in South Africa, and increasing the level of priority of the mentioned project.
- In the development of a sectional title-specific accounting framework mentioned above, the developers of the framework should give clear guidance on certain types of transactions that are specific to the sectional title industry, such as the capitalisation of assets, accounting of schemes under development, treatment of certain VAT components for commercial schemes, the split between capital and expense items, and the allocation of repair and maintenance payments.
- It was mentioned in sections 6.4.6 and 7.2.2 that there is uncertainty amongst practitioners on the most appropriate way of providing assurance to sectional title schemes, with the possible option being full audits, Agreed-upon Procedure

Engagements and Independent Review Engagements. Linking in with the two points above, additional guidance is needed from the accounting professional bodies regarding the auditing of sectional title schemes, similar to the guidance available to non-profit entities and for attorneys (so-call attorneys 'trust audits').

- In section 7.2.1.5, it was stated that EAAB-appointed inspectors often find serious irregularities especially relating to trust funds, when doing the inspections on behalf of the EAAB. It was also mentioned that the EAAB does not always take sufficient action on the reported findings. A possible recommendation in this regard is that the sectional title interest group mentioned in the first point of this section should liaise with the EAAB in order to find solutions.
- A definite need was identified for sectional title training for role players in the sectional title industry, focusing specifically on matters such as governance, accounting and auditing.

7.2.5 Benchmarks identified

As part of the quantitative empirical study, a number of financial statement ratios and averages were identified in section 5.4.9 that can be used as benchmarks by bodies corporate. The main categories of benchmarks included financial statement averages expressed as rand amounts, various income categories, levy amounts per unit, various expense categories, taxation amounts, surpluses and deficits of schemes, growth trends, financial strength ratios and new reserve fund requirements. The benchmarks were identified for the sample in total, and detailed comparisons were made between the Mangaung, Matjhabeng, Matlosana and Tlokwe municipal areas. Further, a distinction was made between different categories in the sample based on scheme size, and detailed comparisons were made between small, medium and large schemes. Industry role players such as owners, trustees, accounting and auditing practitioners, managing agents, banking institutions and estate agents can use the identified ratios and averages for purposes of benchmarking.

7.2.6 Further research opportunities

As mentioned in section 2.3.3, as well as in section 7.3 below, the empirical research done in this study focused only on role players limited to two large municipalities from each of the two provinces that were selected for field visits, namely Mangaung Metropolitan Municipality (the 'larger' Bloemfontein) and Matjhabeng Local Municipality (the 'larger' Welkom) in the Free State Province, and City of Matlosana Municipality (the 'larger' Klerksdorp) and Tlokwe Local Municipality (the 'larger' Potchefstroom) in the North-West Province. An empirical study could be undertaken amongst the role players throughout South Africa, covering a larger geographical area and including other provinces, cities and towns. A full comparative empirical study could be done, comparing role players in different provinces in the country. Furthermore, an internationally comparative study could also be undertaken, comparing sectional title accounting and auditing aspects in South Africa with similar entities around the globe as mentioned in sections 1.4.3, 4.3 and 5.3.

Throughout the study it was mentioned that third generation sectional title legislation became effective in October 2016, and was therefore not in effect during this study. A future research study can be undertaken once third generation sectional title has been in effect for a certain time period. The implementation by bodies corporate of the new legal aspects can be researched, and the effect of legislative changes on the finances of bodies corporate can also be analysed.

As mentioned in sections 2.3, 4.5, 5.4 and 7.3, the financial information for the quantitative empirical study only covered a period of three years (with limited references to figures and benchmarks for 2008 to 2010). Furthermore, no commercial and combined bodies corporate were included in the sample. In future research studies financial information can be obtained for more than three years, in order to identify clearer trends. Also, financial information can be obtained for residential, commercial and combined bodies corporate and split into these categories for purposes of analysis.

Another aspect that was mentioned in section 2.3.6, is the fact that all the bodies corporate in the sample made use of the services of a managing agent and no self-managed schemes

were incorporated into the study. Future samples for research studies can be selected to include owner-managed as well as agent-managed schemes for purposes of comparative studies.

It was mentioned in section 1.1 that combined residential and commercial schemes often have complex structures and challenging tax calculations. Since the focus of this study was mainly on governance, accounting and auditing, taxation was only briefly addressed in sections 1.1, 5.2.1, 5.4.9.6 and 5.4.9.15. A further study can be undertaken addressing the issues in the sectional title from a taxation perspective.

The new legislative requirements regarding reserve funds and maintenance, repair and replacement plans mentioned in sections 3.2.1.3 and 3.2.1.7 are going to have far-reaching implications for bodies corporate in the future. Future research studies can be undertaken regarding the financial management, budgeting and auditing aspects thereof.

Further, a research study can be undertaken regarding the aspect of 'pooling' of trust funds. The study can be done from a forensic aspect, with specific reference to possible risks of fraud and corruption that can result from this practice.

7.3 Limitations of the study

Even though this comprehensive study highlighted numerous governance, auditing and accounting aspects relating to the sectional title industry, the findings of this study are not without limitations. A single research study cannot explore all aspects relating to a specific field of study and there are always conditions, influences and shortcomings that place a certain degree of restrictions on the results and findings of a study. It should be noted that these factors have an impact on the coverage achieved with regard to the specific field of research as set out by the research objectives of the study, but do not limit the quality of the study. Therefore, the empirical results of this study as set out in Chapters 4, 5 and 6 should be understood and interpreted in the context of the limitations as explained below.

One of the limitations of the study, as mentioned in sections 2.3.3 and 7.2.6, was that the population from which the samples for the empirical study was selected was limited to two large municipalities from each of the two provinces that were selected for field visits, namely Mangaung Metropolitan Municipality (the 'larger' Bloemfontein) and Matjhabeng Local Municipality (the 'larger' Welkom) in the Free State Province, and City of Matlosana Municipality (the 'larger' Klerksdorp) and Tlokwe Local Municipality (the 'larger' Potchefstroom) in the North-West Province. Even though the study was limited to the mentioned municipal areas, the literature review and qualitative empirical results indicated that the risks, problems and unclear aspects were pervasive in the industry throughout South Africa.

The sample of annual financial statements including the audit reports thereto (186 for 2014 and 185 for 2015) that was selected for the quantitative empirical study was selected at random, and covered only a period of two years, with one additional year (2013) as comparative figures. The quantitative sample covered a variety of sizes of bodies corporate (being small, medium and large), but only included the annual financial statements for residential bodies corporate, and no commercial or combined bodies corporate were included. Although the results were only analysed for the 2013 to 2015 financial years and no commercial or combined bodies corporate was part of the sample, the benchmarks identified can be useful for role players in the industry.

All of the bodies corporate in the quantitative sample made use of the services of a managing agent. Therefore, the fact that no financial statements for self-managed schemes were incorporated into the study could be a limiting factor. However, except for the line item management fees, most financial statement items and benchmarks are largely pervasive throughout all types of schemes.

For the empirical study, the samples included a limited number of respondents in each category, namely 18 chairmen of bodies corporate of sectional title schemes; 13 managing agents of sectional title schemes; 13 accounting and auditing practitioners involved in the

sectional title industry and 4 EAAB-appointed inspectors of estate agents. In future studies, the sample can be extended to include more role players in each category.

7.4 Final remarks

Throughout this thesis, two main thoughts kept surfacing, namely that sectional title property plays a vital role in addressing the housing problem in South Africa, and that there are numerous challenges facing the sectional title industry from a governance, accounting and auditing perspective. This was proven not only by the extensive literature review, which covered most of the valuable research done on the sectional title industry since its inception in the 1970s, but also by the empirical findings which evidenced that the sectional title industry in South Africa still has a long way to go. It was established that change can be brought about by cooperation between various role players in the sectional title industry and accounting professional bodies. Also, this study attempted to show the contribution that research can make in identifying and creating awareness of problems and risks in a specific industry. Based on the findings of this study, it can be concluded that many role players in the sectional title industry need to make changes to their current practises. This will not only enhance the quality of the governance and financial matters of sectional title schemes, but will also ensure that the valuable property assets of sectional title owners are adequately protected.

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Annexure A – Questionnaire for trustee chairpersons

1 For how many years have you been serving on the board of trustees of your complex?

2 For how many years have you been trustee chairperson?

3 How many units are in your sectional title complex?

4 What are the three (3) biggest problems that you have experienced as chairperson of the board of trustees?
i) _____
ii) _____
iii) _____

5 Are you up to date regarding the latest stipulations of the Sectional Titles Act?

Yes
No

6 Have you attended any form of sectional titles training course in the past?

Yes
No

• If yes, specify:

7 Do you feel that there is a need for special courses or training for trustees and trustee chairpersons?

• Training for trustees?

Yes
No

• If yes, specify:

• Training for trustee chairpersons?

Yes
No

- If yes, specify:

8 In your opinion, what is the optimal number of trustees for a well-functioning board of trustees?

9 How many people serve on the board of trustees of the sectional title scheme of which you are the chairperson?

10 Are the **trustees** of the board of which you are the chairperson remunerated for their services?

Yes
No

- If they are remunerated, what is the average annual amount per trustee?

11 Are you as **chairperson** of the board of trustees remunerated for your services, over and above the remuneration mentioned in point 10 above?

Yes
No

- If you are, what is the amount of your annual remuneration/honorarium?

12 Are the services of a management agent used in your sectional title scheme?

Yes
No

If yes, what services are rendered?

- Day-to-day management of complex
- Administrative tasks
- Drawing up of financial statements
- Drawing up of budgets
- Collection of levies, amounts receivable, etc.
- Other (specify)

13 If your complex is managed by a managing agent, are you aware of how the management fees are calculated?

Yes
No

14 If your complex is managed by a managing agent, what is your level of satisfaction (choose only one option) with the services of the managing agent?

- Very satisfied
- Satisfied
- Dissatisfied
- Very dissatisfied

15 If your complex is managed by a managing agent, how long has the managing agent been managing your sectional title scheme?

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16 If your complex is managed by a managing agent, are you continually up to date with the funds available in the bank account of the complex?

Yes
No

17 If your complex is managed by a managing agent, are you continually up to date with the arrear levies owed to the body corporate?

Yes
No

18 If your complex is managed by a managing agent, are you aware of a **fixed policy** regarding the following? (Choose all applicable options.)

Arrear levies
Levy (debt) collections
Stage when handed over to attorneys
Interest charged

19 If your complex is managed by a managing agent, does the managing agent have a valid fidelity fund certificate, issued by the Estate Agency Affairs Board (EAAB)?

Yes
No
Unsure

20 If your complex is managed by a managing agent, does the managing agent have professional indemnity (PI) cover?

Yes
No
Unsure

21 If your complex is managed by a managing agent, do you receive monthly management accounts from the managing agent?

Yes
No
Sometimes

22 In your opinion, what two (2) factors play the most important roles in the decision about the appointment of a managing agent?

i)

ii)

23 How is the body corporate funds handled?

- All levies are deposited into and kept in the **managing agent's** trust bank account
- Levies are deposited into the **managing agent's** trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds are transferred into the **body corporate's** bank account. This bank account is administered by the **managing agent**.
- Levies are deposited into the **managing agent's** trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds are transferred into the **body corporate's** bank account. This bank account is administered by the **trustees**.
- Unsure
- Other ways (specify)

24 If the **managing agent** opened a bank account on behalf of the body corporate with a financial institution for investment of surplus funds, did the board of trustees approve of the **financial institution** when the account was opened?

Yes
No

25 What is your opinion about developers who are involved in sectional title schemes?

26 Is/are there any specific problem(s) experienced when developers are involved in a sectional title scheme?

27 Is the annual general meeting (AGM) of your sectional title scheme generally well attended?

Yes
No

28 What are the three (3) most common problems that are experienced regarding the annual general meeting?

i)

ii)

iii)

29 Are any other meetings held for the **board of trustees**, besides the annual general meeting?

Yes
No

- If there are, specify the type of meetings:

- How often are these meetings held?

30 Are any other meetings, over and above the annual general meeting, held for the **residents** of the sectional title scheme?

Yes
No

- If so, specify the type of meetings:

- How often are these meetings held?

31 Are any other meetings, other than the annual general meeting, held for the **owners** of the units of the sectional title scheme?

Yes
No

- If so, specify the type of meetings:

- How often are these meetings held?

32 Are the annual financial statements of your sectional title scheme **drawn up** by a chartered /professional accountant/firm of accountants?

Yes
No
Sometimes

- If so, specify the type of firm that does the work:

CA(SA)
SAIPA
Other

- If other, specify:
-

33 Are the annual financial statements of your sectional title scheme **audited** by a chartered/professional accountant/firm?

Yes
No
Sometimes

- If so, specify the type of firm that does the work:

CA(SA)
SAIPA
Other

- If other, specify:

- If the financial statements are not **audited**, what kind of assurance is obtained?

34 Who appoints the auditors of your sectional title scheme?

- The trustee chairperson
- The trustees
- The members of the body corporate during the AGM
- The managing agent

35 In your opinion, what two (2) factors play the most important role in the decision about the appointment of the accountant/auditor?

i)

ii)

36 Do you find that the time pressure experienced by auditors/accountants of complexes causes bottleneck situations?

Yes
No
Unsure

- If yes, can you suggest a possible solution(s) to the problem?

37 In your opinion, does the auditing of/other form of assurance regarding the annual financial statements **add any value** to the sectional title scheme(s) where you are involved?

Yes
No
Unsure

- Motivate your answer briefly

38 In your opinion, what are the two (2) greatest risks attached to being the **trustee chairperson** of a sectional title scheme?

i)

ii)

39 In your opinion, what are the two (2) greatest risks attached to being **a member of the board of trustees** (other than the chairperson) of a sectional title scheme?

i)

ii)

40 What are the three (3) greatest problems experienced during the budgeting process of your sectional title scheme?

i)

ii)

iii)

41 What are the most significant problems that you experience with the local authority (municipality)/service providers, with regard to:

- Water?

- Rates?

- Electricity?

- Clearance certificates for levies?

42 Are there any specific problems that your sectional title scheme has experienced with regard to banks or other financial institutions?

43 Does your sectional title scheme have a fixed policy for the provision of reserve funds?

Yes
No

- If yes, specify:

44 In your opinion, what are the two (2) greatest **misperceptions** amongst the following parties with regard to your duties and responsibilities as **trustee chairperson**:

- Residents of the sectional title scheme?

i)

ii)

- The board of trustees?

i)

ii)

- The management agent, if any?

i)

ii)

- Other possible stakeholders

Annexure B – Vraelys aan trustee-voorsitters

1 Vir hoeveel jaar dien u al op die raad van trustees van u kompleks?

2 Vir hoeveel jaar is u voorsitter van die raad van trustees?

3 Hoeveel eenhede is in u deeltitelkompleks?

4 Wat is die drie (3) grootste probleme wat u as voorsitter van die raad van trustees ervaar?

i)

ii)

iii)

5 Is u op die hoogte van die nuutste bepalings rakende die Wet op Deeltitels?

Ja

Nee

6 Het u al enige deeltitel opleidingskursus bygewoon?

Ja

Nee

- Indien wel, spesifiseer:
-

7 Bestaan daar volgens u 'n behoefte aan spesiale kursusse of opleiding vir trustees en trustee-voorsitters?

- Opleiding vir trustees?

Ja

Nee

- Indien wel, spesifiseer:
-

- Opleiding vir trustee-voorsitters?

		Ja
		Nee
	• Indien wel, spesifiseer:	
<hr/>		
8	Hoeveel trustees is na u mening die optimale getal vir 'n raad van trustees wat goed funksioneer?	<input type="text"/>
9	Uit hoeveel persone bestaan die raad van trustees van die deeltitelskema waarvan u die voorsitter is?	<input type="text"/>
10	Word die trustees van die raad waarvan u die voorsitter is vir hul dienste vergoed?	Ja
		Nee
	• Indien wel, wat is die gemiddelde jaarlikse vergoeding per trustee?	<input type="text"/>
11	Word u as voorsitter van die raad van trustees vir u dienste vergoed, bo en behalwe die vergoeding in 10 hierbo gemeld?	Ja
		Nee
	• Indien wel, wat is die bedrag van u jaarlikse vergoeding/honorarium?	<input type="text"/>
12	Word daar van die dienste van 'n bestuursagent in u deeltitelskema gebruik gemaak?	Ja
		Nee
	Indien wel, watter dienste word gelewer?	
	• Dag-tot-dag-bestuur van kompleks	<input type="text"/>
	• Administratiewe take	<input type="text"/>
	• Opstel van finansiële state	<input type="text"/>
	• Opstel van begrotings	<input type="text"/>
	• Invordering van heffings, bedrae ontvangbaar, ens.	<input type="text"/>
	• Ander (spesifiseer)	<input type="text"/>
	<hr/>	<input type="text"/>
	<hr/>	<input type="text"/>

- 13 Indien u kompleks deur 'n bestuursagent bestuur word, weet u hoe die bestuursfooie bereken word?

Ja
Nee

- 14 Indien u kompleks deur 'n bestuursagent bestuur word, wat is u vlak van tevredenheid (kies net een opsie) ten opsigte van die dienste van die bestuursagent?

- Baie tevrede
- Tevrede
- Ontevrede
- Baie ontevrede

- 15 Indien u kompleks deur 'n bestuursagent bestuur word, hoe lank is die bestuursagent reeds vir die bestuur van u deeltitelskema verantwoordelik?

--

- 16 Indien u kompleks deur 'n bestuursagent bestuur word, is u deurlopend op hoogte van die fondse beskikbaar in die kompleks se bankrekening?

Ja
Nee

- 17 Indien u kompleks deur 'n bestuursagent bestuur word, is u deurlopend op hoogte van die agterstallige heffings verskuldig aan die beheerliggaam?

Ja
Nee

- 18 Indien u kompleks deur 'n bestuursagent bestuur word, is u bewus van 'n **vaste beleid** rakende die volgende? (Kies alle opsies van toepassing.)

Agterstallige heffings
Invordering van heffings (skuld)
Oorhandiging aan prokureurs
Rente gehef

- 19 Indien u kompleks deur 'n bestuursagent bestuur word, beskik die bestuursagent oor 'n getrouheidswaarborgsertifikaat, uitgereik deur die "Estate Agency Affairs Board" (EAAB)?

Ja
Nee
Onseker

- 20 Indien u kompleks deur 'n bestuursagent bestuur word, beskik die bestuursagent oor professionele aanspreeklikheidsversekering?

Ja
Nee
Onseker

- 21 Indien u kompleks deur 'n bestuursagent bestuur word, ontvang u maandeliks bestuurstate vanaf die bestuursagent?

Ja
Nee
Soms

- 22 Watter twee (2) faktore speel volgens u die belangrikste rol by die besluit oor die aanstelling van 'n bestuursagent?

i)

ii)

- 23 Hoe word die beheerliggaam se fondse hanteer?

- Alle heffings word gedeponeer en gehou in die **bestuursagent** se trustbankrekening
- Heffings word gedeponeer in die **bestuursagent** se trustbankrekening. Die oorskot na betaling van uitgawes namens die beheerliggaam word oorgeplaas na die **beheerliggaam** se bankrekening. Hierdie rekening word geadministreer deur die **bestuursagent**.
- Heffings word gedeponeer in die **bestuursagent** se trustbankrekening. Die oorskot na betaling van uitgawes namens die beheerliggaam word oorgeplaas na die **beheerliggaam** se bankrekening. Hierdie rekening word geadministreer deur die **trustees**.
- Onseker
- Ander metodes (spesifiseer)

- 24 Indien die **bestuursagent** namens die beheerliggaam 'n bankrekening geopen het by 'n finansiële instelling vir die belegging van surplus fondse, het die raad van trustees die **finansiële instelling** goedgekeur toe die rekening geopen is?

Ja
Nee

25 Wat is u opinie rakende ontwikkelaars wat by deeltitelskemas betrokke is?

26 Is daar enige spesifieke probleem/probleme wat ondervind word wanneer ontwikkelaars by 'n deeltitelskema betrokke is?

27 Word die algemene jaarvergadering (AJV) van u deeltitelskema oor die algemeen goed bygewoon?

Ja
Nee

28 Wat is die drie (3) algemeenste probleme wat ten opsigte van die algemene jaarvergadering ondervind word ?

i) _____

ii) _____

iii) _____

29 Word daar enige ander vergaderings, bo en behalwe die algemene jaarvergadering, vir die **raad van trustees** gehou?

Ja
Nee

- Indien wel, spesifiseer die tipe vergaderings:

- Hoe gereeld word hierdie vergaderings gehou?

30 Word daar enige ander vergaderings, bo en behalwe die algemene jaarvergadering, vir die **inwoners** van die deeltitelskema gehou?

Ja
Nee

- Indien wel, spesifiseer die tipe vergaderings:

- Hoe gereeld word hierdie vergaderings gehou?

31 Word daar enige ander vergaderings, bo en behalwe die algemene jaarvergadering, vir die **eienaars** van eenhede van die deeltitelskema belê?

Ja
Nee

- Indien wel, spesifiseer die tipe vergaderings:

-
- Hoe gereeld word hierdie vergaderings gehou?
-

32 Word die finansiële jaarstate van u deeltitelskema deur 'n geoktrooieerde/professionele rekenmeester/rekenmeestersfirma **opgestel**?

Ja
Nee
Soms

- Indien wel, spesifeer die tipe firma wat die werk doen:

CA(SA)
SAIPA
Ander

- Indien ander, spesifiseer:
-

33 Word die finansiële jaarstate van u deeltitelskema deur 'n geoktrooieerde/professionele rekenmeester/firma **geoudit**?

Ja
Nee
Soms

- Indien wel, spesifeer die tipe firma wat die werk doen:

CA(SA)
SAIPA
Ander

- Indien ander, spesifiseer:

- Indien die finansiële state nie **geoudit** word nie, watter vorm van gerusstelling word verkry?
-
-

34 Deur wie word die ouditeure van u deeltitelskema aangestel?

- Die trustee-voorsitter

--

- Die trustees
- Die lede van die beheerliggaam tydens die AJV
- Die bestuursagent

35 Watter twee (2) faktore speel volgens u die belangrikste rol by die besluit oor die aanstelling van die rekenmeester/ouditeur?

i)

ii)

36 Ondervind u dat tydsdruk wat deur die ouditeure/rekenmeesters van komplekse ervaar word, bottelnek-situasies versoorzaak?

Ja
Nee
Onseker

- Indien wel, kan u 'n moontlike oplossing(s) vir die probleem voorstel?

37 Voeg die ouditering van of ander vorm van gerusstelling oor die finansiële jaarstate na u mening enige **waarde** toe tot die deeltitelskema(s) waarby u betrokke is?

Ja
Nee
Onseker

- Motiveer u antwoord kortliks

38 Wat is volgens u die twee (2) grootste risiko's daaraan verbonde om die **trustee-voorsitter** van 'n deeltitelskema te wees?

i)

ii)

39 Wat is volgens u die twee (2) grootste risiko's daaraan verbonde om 'n **lid** van die **raad van trustees** (anders as die voorsitter) van 'n deeltitelskema te wees?

i)

ii)

40 Wat is die drie (3) grootste probleme wat tydens die begrotingsposes van u deeltitelskema ervaar word?

i)

ii)

iii)

41 Wat is die beduidendste probleme wat u ten opsigte van die plaaslike owerheid (munisipaliteit)/diensverskaffers ervaar met betrekking tot:

• Water?

• Erfbelasting?

• Elektrisiteit?

• Klaringsertifikate vir heffings?

42 Is daar spesifieke probleme wat u deeltitelskema met betrekking tot banke en ander finansiële instellings ondervind?

43 Het u deeltitelskema 'n vaste beleid rakende reserwefondse en surplusrekeninge?

Ja
Nee

• Indien wel, spesifiseer:

44 Wat is volgens u die twee (2) grootste **wanpersepsies** wat onder die volgende partye bestaan met betrekking tot u pligte en verantwoordelikhede as **trustee-voorsitter**:

• Inwoners van die deeltitelskema?

i)

ii)

• Die raad van trustees?

i)

ii)

• Die bestuursagent, indien enige?

i)

ii)

Annexure C – Questionnaire for managing agents

- 1 How many sectional title schemes are currently being managed by your managing agency?
- 2 For how many years have your managing agency been operating as a sectional title managing agent?
- 3 What are the three (3) biggest problems that you experience regarding the management of sectional title property?
- i) _____
- ii) _____
- iii) _____
- 4 What percentage of your clients have:
- Actively involved trustees?
 - Trustees who are relatively involved?
 - Trustees who are not involved at all?
 - No board of trustees?
- 5 Are you aware of the latest stipulations of the Sectional Titles Act?
- | |
|-----|
| Yes |
| No |
- 6 What percentage of your clients makes use of the following services that you provide?
- Day-to-day management of the complex
 - Administrative tasks
 - Compiling of financial statements
 - Compiling of budgets
 - Collection of levies, amounts receivable etc.
 - Other (specify)
- _____
- _____
- _____
- 7 Do you present sectional title-specific training for your new staff?
- | |
|-----|
| Yes |
| No |

- 8 Are sectional title-specific updating courses presented to your current staff?
- | |
|-----|
| Yes |
| No |
- 9 In your organisation, is there a need for special courses or training, such as legal aspects, insurance, accounting, etc., regarding sectional titles:
- For **staff members**?
- | |
|-----|
| Yes |
| No |
- If yes, specify
-
-
- For **trustees**?
- | |
|-----|
| Yes |
| No |
- If yes, specify
-
-
- 10 In your opinion, how many trustees would be the optimal number for a well-functioning board of trustees?
- | |
|--|
| |
|--|
- 11 What is the average number of persons making up the boards of trustees of your clients at the present moment?
- | |
|--|
| |
|--|
- 12 In your opinion, does the average trustee chairperson have the necessary knowledge and skills to be a chairperson?
- | |
|--------|
| Yes |
| No |
| Unsure |
- 13 Are **trustees** of your clients generally remunerated for their services?
- | |
|--------|
| Yes |
| No |
| Unsure |
- If yes, in what percentage of the complexes is this the case?
 - What is the average annual remuneration per trustee?
- | |
|--|
| |
| |

14 Are the **trustee chairpersons** of your clients (over and above those in 13 above) remunerated for their services?

Yes
Sometimes
No
Unsure

- If yes, in what percentage of the complexes is this the case?
- What is the average annual remuneration per chairperson?

15 What factors/criteria are taken into account in the calculation of your management fees?

16 Are there any specific problems that are experienced when developers are involved in a sectional title scheme?

17 Are the annual general meetings of your clients generally well attended?

Yes
No

18 What are the two (2) most common problems that you experience regarding the annual general meetings of your clients?

- i)
- ii)

--

19 Are the annual financial statements of your clients **drawn up** by a chartered/professional accountant/firm? Indicate the percentage.

	%
	Yes
	No
	Sometimes

- If yes, specify the type of firm that does the work.

CA(SA)
SAIPA
Other

- If other, specify:
-

20 Are the annual financial statements of your clients **audited** by a chartered/professional accountant/firm? Indicate the percentage.

%	
	Yes
	No
	Sometimes

- If yes, specify the type of firm that does the work.

CA(SA)
SAIPA
Other

- If other, specify:

- If the financial statements are not audited, what kind of assurance is obtained?
-
-

21 Who appoints the auditors of your clients? Indicate the percentage.

- The trustee chairperson
- The trustees
- The members of the board of control during the AGM
- We as the managing agent

%	

22 In your opinion, what two (2) factors play the most important role in the decision about the appointment of the accountant/auditor?

i)

ii)

23 Do you find that the time pressure experienced by the auditors/accountants of complexes causes bottleneck situations?

Yes
No

- If yes, are there certain times in the year when the problem is worse?
-

- Can you suggest a possible solution(s) to the problem?
-

24 In your opinion, does the auditing of and/or any other form of assurance about the financial statements add any value to sectional title schemes?

Yes
No
Unsure

- Motivate your answer briefly.

25 In your opinion, what are the two (2) greatest risks in being a managing agent for sectional title schemes?

i)

ii)

26 What are the three (3) greatest problems experienced during the budgeting process of your clients?

i)

ii)

iii)

27 How are monthly levy payments received on behalf of bodies corporate handled?

- All levies are deposited into and kept in the **managing agent's** trust bank account
- Levies are deposited into the **managing agent's** trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds are transferred into the **body corporate's** bank account. This bank account is administered by the **managing agent**.
- Levies are deposited into the **managing agent's** trust bank account, and after payment of expenses on behalf of the body corporate, surplus funds are transferred into the **body corporate's** bank account. This bank account is administered by the **trustees**.
- Unsure
- Other ways (specify)

28 How regularly are trust account reconciliations done (including the reconciliations of interest)?

Monthly
Quarterly
Annually

Never

29 How is interest received on the trust account handled?

- Interest received is allocated to the individual bodies corporate on a pro rata basis
- Interest received on the trust account is paid over to the EAAB in contribution of the fidelity fund
- The interest remains in the trust account
- Other (explain briefly)

30 Body corporate auditors sometimes request the full trust bank account statement from managing agents. What is your opinion on the matter? (Mark all applicable answers.)

- We do sufficient reconciliations and make management statements available to bodies corporate and auditors. Therefore, they do not need access to our trust bank account statements.
- The trust bank account statement contains confidential information of various bodies corporate; therefore, we cannot give the auditors of a single body corporate access to it.
- It is accepted practice in the industry that managing agents do not give individual body corporate auditors access to the trust bank account statement.
- Due to the nature of their duties the auditor of a body corporate is entitled to access the trust bank account statement of the managing agent.

31 Do you have a fidelity fund certificate issued by the EAAB?

Yes
No

32 Do you have professional indemnity cover in place?

Yes
No

33 What are the most significant problems that you experience with the local authority (municipality)/service providers, with regard to:

- Water?

- Rates?

- Electricity?

- Clearance certificates for levies?
-
-

34 Are there specific problems that are experienced with regard to banks and other financial institutions of your sectional title clients?

Yes
No

- If yes, specify:
-
-

35 Are there specific problems experienced from SARS regarding your sectional title clients?

Yes
No

- If yes, specify:
-
-

36 Do your clients have a fixed policy regarding the provision for reserve funds for their sectional title schemes?

Yes
No

- If yes, specify:
-
-

37 In your view, what are the two (2) greatest misperceptions that exist amongst the following parties with regard to the services that you render:

- Residents of sectional title schemes?

i)

ii)

- Board of trustees?

i)

ii)

- Trustee chairpersons?

i)

ii)

- Other stakeholders?

i)

ii)

38 Any further comments?

- Would you like to receive an **electronic copy** of the dissertation once this study is completed?

Yes
No

If yes, please provide your email address

Thank you for your time and participation.

Annexure D – Vraelys aan bestuursagente

- 1 Hoeveel deeltitelskemas word tans deur u bestuursagentskap bestuur?
- 2 Vir hoeveel jaar is u bestuursagentskap al betrokke by die bestuur van deeltiteleiendom?
- 3 Wat is die drie (3) grootste probleme wat u ervaar met betrekking tot die bestuur van deeltiteleiendom?
- i) _____
- ii) _____
- iii) _____
- 4 Watter persentasie van u kliënte het:
- Trustees wat aktief betrokke is?
 - Trustees wat relatief betrokke is?
 - Trustees wat glad nie betrokke is nie?
 - Geen raad van trustees nie?
- | |
|--|
| |
| |
| |
| |
- 5 Is u op die hoogte van die nuutste bepalings rakende die Wet op Deeltitels?
- | |
|-----|
| Ja |
| Nee |
- 6 Watter persentasie van u kliënte maak van die volgende dienste gebruik wat deur u gelewer word?
- Dag-tot-dag-bestuur van kompleks
 - Administratiewe take
 - Opstel van finansiële state
 - Opstel van begrotings
 - Invordering van heffings, bedrae ontvangbaar, ens.
 - Ander (spesifiseer)
- | |
|--|
| |
| |
| |
| |
| |
| |
| |
| |
- 7 Word daar deeltitelspesifieke opleiding vir u **nuwe** personeel aangebied?
- | |
|-----|
| Ja |
| Nee |
- 8 Word daar deeltitelspesifieke opdateringskursusse vir u **huidige** personeel aangebied?

Ja
Nee

9 Bestaan daar 'n behoefte in u onderneming aan spesiale kursusse of opleiding, bv. regsaspekte, versekering, rekeningkunde, ens. aangaande deeltitels:

- Vir **personeel**?

Ja
Nee

Indien wel, spesifiseer

- Vir **trustees**?

Ja
Nee

Indien wel, spesifiseer

10 Hoeveel trustees is na u mening die optimale getal vir 'n raad van trustees wat goed funksioneer?

11 Wat is die gemiddelde aantal persone waaruit die rade van trustees van u kliënte op die oomblik bestaan?

12 Beskik die gemiddelde trustee-voorsitter na u mening oor die nodige kennis en vaardighede om as voorsitter op te tree?

Ja
Nee
Onseker

13 Word **trustees** van u kliënte oor die algemeen vir hul dienste vergoed?

Ja
Nee
Onseker

- Indien wel, vir watter persentasie van komplekse is dit die geval?
- Wat is die gemiddelde jaarlikse vergoeding per trustee?

14 Word u kliënte se **trustee-voorsitters** (bo en behalwe vir 13 hier bo) vir hul dienste vergoed?

Ja
Soms
Nee
Onseker

- Indien wel, vir watter persentasie van komplekse is dit die geval?
- Wat is die gemiddelde jaarlikse vergoeding per trustee?

15 Watter faktore/kriteria word in ag geneem by die berekening van u bestuursfooie?

16 Is daar enige spesifieke probleme wat ondervind word wanneer ontwikkelaars by 'n deeltitelskema betrokke is?

17 Word die algemene jaarvergaderings (AJV's) van u kliënte oor die algemeen goed bygewoon?

Ja
Nee

18 Wat is die twee (2) algemeenste probleme wat u ten opsigte van die algemene jaarvergaderings van u kliënte ondervind?

i)

--

ii)

19 Word die finansiële **jaarstate** van u kliënte deur 'n geoktrooieerde/professionele rekenmeester/firma **opgestel**? Dui ook die persentasie aan.

%

	Ja
	Nee
	Soms

- Indien wel, spesifiseer die tipe firma wat die werk doen:

CA(SA)
SAIPA

Ander

- Indien ander, spesifiseer:
-

20 Word die finansiële **jaarstate** van u kliënte deur 'n geoktrooieerde/professionele rekenmeester/firma **geoudit**? Dui ook die persentasie aan.

%	
	Ja
	Nee
	Soms

- Indien wel, spesifeer die tipe firma wat die werk doen:

CA(SA)
SAIPA
Ander

- Indien ander, spesifiseer:

- Indien die finansiële state nie geoudit word nie, watter vorm van gerusstelling word verkry?
-
-

21 Deur wie word die ouditeure van u kliënte aangestel? Dui ook die persentasie aan.

%	
• Die trustee-voorsitter	
• Die trustees	
• Die lede van die beheerliggaam tydens die AJV	
• Ons as die bestuursagent	

22 Watter twee (2) faktore speel volgens u die belangrikste rol by die besluit oor die aanstelling van die rekenmeester/ouditeur?

i)

ii)

23 Ondervind u dat tydsdruk wat deur die ouditeure/rekenmeesters van komplekse ervarings word bottelnek-situasies veroorsaak?

Ja
Nee

- Indien wel, is daar sekere tye van die jaar wat die probleem vererger?
-

- Kan u 'n moontlike oplossing(s) vir die probleem voorstel?

- 24 Voeg die ouditering van en/of ander vorm van gerusstelling oor die finansiële state, na u mening, enige waarde toe tot deeltitelskemas?

Ja
Nee
Onseker

- Motiveer u antwoord kortliks.

- 25 Wat is volgens u die twee (2) grootste risiko's daaraan verbonde om 'n bestuursagent vir deeltitelskemas te wees?

i)

ii)

- 26 Wat is die drie (3) grootste probleme wat tydens die begrotingsposes van u kliënte ervaar word?

i)

ii)

iii)

- 27 Hoe word maandelikse heffings wat namens die beheerliggame ontvang word hanteer?

- Alle heffings word gedeponeer en gehou in die **bestuursagent** se trustbankrekening
- Heffings word gedeponeer in die **bestuursagent** se trustbankrekening. Die oorskot na betaling van uitgawes namens die beheerliggam word oorgeplaas na die **beheerliggaam** se bankrekening. Hierdie rekening word geadministreer deur die **bestuursagent**.
- Heffings word gedeponeer in die **bestuursagent** se trustbankrekening. Die oorskot na betaling van uitgawes namens die beheerliggam word oorgeplaas na die **beheerliggaam** se bankrekening. Hierdie rekening word geadministreer deur die **trustees**.
- Onseker
Ander metodes (spesifiseer)

- 28 Hoe gereeld word trustrekening rekonsiliasies gedoen (insluitend die rekonsiliasie van rente)?

Maandeliks

Kwartaalliks
Jaarliks
Nooit

29 Hoe word rente ontvang in die trustrekening hanteer?

- Rente ontvang word geallokeer na die individuele beheerliggame op 'n pro-rata basis.
- Rente ontvang op die trustrekening word oorbetaal aan die EAAB ten gunste van die getrouheidswaarborgfonds
- Die rente word in die trustrekening gehou
- Ander (verduidelik kortliks)

30 Die ouditeure van beheerliggame versoek soms toegang tot die volledige trustbankrekeningstate van die bestuursagent. Wat is u opinie hieroor? (Merk alle antwoorde waarmee u saamstem.)

- Ons doen voldoende rekonsiliasies en stel bestuurstate beskikbaar aan die ouditeure van beheerliggame. (Die ouditeure het dus nie toegang tot ons trustbankrekeningstate nodig nie.)
- Die trustbankrekeningstate bevat vertroulike inligting van verskeie beheerliggame; dus kan ons nie die ouditeure van 'n individuele beheerliggame toegang daartoe gee nie.
- Dit is algemeen aanvaarde praktyk in die industrie dat bestuursagente nie aan individuele beheerliggame se ouditeure toegang gee tot die trustbankrekeningstate nie.
- Uit die aard van die ouditeure se pligte is hulle geregtig tot toegang tot die bestuursagent se volledige trustbankrekeningstate.

31 Beskik die bestuursagentskap oor 'n getrouheidswaarborgsertifikaat wat uitgereik is deur die EAAB?

Ja
Nee

32 Beskik die bestuursagentskap oor professionele aanspreeklikheidsversekering?

Ja
Nee

33 Wat is die grootste probleme wat u ten opsigte van die plaaslike owerhede (munisipaliteite)/diensverskaffers ervaar met betrekking tot:

- Water?

- Erfbelasting?

-
- Elektrisiteit?
-

- Klaringsertifikate vir heffings?
-
-

34 Is daar spesifieke probleme wat ondervind word met betrekking tot banke en ander finansiële instellings van u deeltitelkliënte?

Ja
Nee

- Indien wel, spesifiseer:
-
-

35 Is daar spesifieke probleme wat ondervind word met die Suid-Afrikaanse Inkomstediens (SAID) met betrekking tot u deeltitelklënte?

Ja
Nee

- Indien wel, spesifiseer:
-
-

36 Het u kliënte 'n vaste beleid rakende die voorsiening vir reserwefondse van hul deeltitelskemas?

Ja
Nee

- Indien wel, spesifiseer:
-
-

37 Wat is volgens u die twee (2) grootste wanpersepsies wat onder die volgende partye bestaan met betrekking tot die dienste deur u gelewer:

- Inwoners van deeltitelskemas?

i) _____

ii) _____

- Rade van trustees?

i) _____

ii) _____

- Trustee-voorsitters?

i) _____

ii) _____

- Ander moontlike belanghebbendes?

i)

ii)

38 Enige verdere kommentaar?

- Wil u graag 'n **elektroniese kopie** van die verhandeling ontvang wanneer hierdie studie voltooi is?

Ja
Nee

Indien wel, verskaf asseblief u e-pos adres

Baie dankie vir u tyd en deelname.

Annexure E – Questionnaire for accounting and auditing practitioners

- 1 How many sectional title schemes are currently clients of yours?
- 2 What are the three (3) biggest problems that you experience in your firm with regard to the **accounting work** of sectional title schemes?
- i) _____
- ii) _____
- iii) _____
- 3 What are the three (3) biggest problems that you experience in your firm with regard to the **auditing/assurance work** of sectional title schemes?
- i) _____
- ii) _____
- iii) _____
- 4 In your opinion, what is the level of risk (choose **one** option) associated with the auditing of sectional title schemes, in comparison with the auditing of clients in other industries:
- The risk in sectional title auditing is very low
 - The risk in sectional title auditing is quite low
 - The risk in sectional title auditing is average
 - The risk in sectional title auditing is high
 - The risk in sectional title auditing is very high
- 5 Are you up to date regarding the latest stipulations of the Sectional Title Act? Yes
- No
- 6 What **percentage** of your sectional title clients makes use of the following services that are rendered by you?
- Only **drawing up** of financial statements
 - Only **auditing** of financial statements
 - **Drawing up and auditing** of financial statements
 - **Drawing up** of financial statements and **other form** of assurance
 - Drawing up of **budgets**
 - Management **advice**

- Other (specify)

7 Is sectional title-specific training presented for your **new** staff members?

- To accounting staff?

Yes
No
- To audit staff?

Yes
No

8 Are sectional title-specific updating courses presented for **current** staff members that do accounting work or audits of sectional title schemes?

- To accounting staff?

Yes
No
- To auditing staff?

Yes
No

9 Is there a need in your firm for special courses or training on sectional title schemes for **junior** staff?

- If so, specify:

Yes
No
-
-

10 Is there a need in your firm for special courses or training on sectional title schemes for **senior** staff?

- If so, specify:

Yes
No
-
-

11 Is there a need in your firm for special courses or training on sectional title schemes for **partners/directors**:

- If yes, specify:

Yes
No
-

12 In your opinion, how many trustees is the optimal number for a well-functioning board of trustees?

--

13 In your opinion, does the average **trustee chairperson** have the necessary knowledge and skills to be a chairperson?

Yes
No
Unsure

14 In your opinion, does the average **managing agent** have the necessary knowledge and skills to be a managing agent?

Yes
No
Unsure

15 How long (hours) does it take on average to:

- draw up the financial statements of a sectional title scheme?
- audit the financial statements of a sectional title scheme?
- perform other types of assurance activities for a sectional title scheme

16 What is the average post level/qualification of staff who are responsible for:

- drawing up the financial statements of a sectional title scheme?
- auditing the financial statements of a sectional title scheme?

17 What factors are taken into account in the calculating of fees for a sectional title scheme?

18 In your experience, is there pressure on practitioners to keep fees for sectional title accounting and auditing low?

Yes
No

19 If you answered yes to question 18, what may, in your opinion, be the reasons for pressure on fees? (Mark all applicable answers.)

- Body corporate income is very low, and trustees attempt to cut all budget items where possible.

--

- Members of bodies corporate do not see accounting and auditing work as a necessary function, but rather as a legal requirement that should be dealt with as inexpensively as possible.
- Members, trustees and managing agents do not always grasp the extent and complexity of accounting and auditing work
- Other (please explain)

20 Do you or any of your staff as auditors attend the **annual general meetings** of your sectional title clients?

Yes
No
Sometimes

21 Do you find that the time pressure in your firm regarding the audit of sectional title clients regularly causes bottleneck situations?

Yes
No

- If so, are there certain times of the year when the problem is worse?

- Can you suggest possible solution(s) to the problem?

22 In your opinion, does the **auditing** of the financial statements add any value to the sectional title scheme?

Yes
No
Unsure

- Briefly motivate your answer

23 In your opinion, do **other forms of assurance** activities of the financial statements add any value to the sectional title scheme?

Yes
No
Unsure

- Briefly motivate your answer

24 In your opinion, what are the two (2) greatest risks attached to the auditing of sectional title schemes?

i)

ii)

25 Which two (2) problems are experienced most with SARS regarding sectional title schemes?

i)

ii)

26 In your opinion, which of the following standards is the most applicable in the drawing up of the financial statements of sectional title schemes?

- IFRS
- IFRS for SMEs
- A standard must be developed specifically for sectional title schemes
- Other (specify)

27 In your opinion, what is the most applicable manner to provide assurance regarding the financial statements of a sectional title scheme?

- A complete audit
- Agreed upon procedures
- An independent review
- Other (specify)

28 What is your level of satisfaction with regards to the completeness of source documents received from trustees and managing agents?

- Very satisfied
- Satisfied
- Dissatisfied
- Very dissatisfied

29 Do you experience problems with high staff turnover at managing agents?

Yes
No

- If yes, briefly motivate your answer

30 Some managing agents use one trust bank account in which all sectional title scheme money is managed. Auditors of individual schemes are often refused access to trust bank account statements due to “confidentiality issues”.

- Are you aware of the above-mentioned practice?

Yes
No

- If yes, briefly give your opinion on the matter.

31 Are you aware of any problems regarding the handling of interest on trust accounts by managing agents?

Yes
No

- If yes, briefly motivate your answer

32 What are the most significant problems that you experience with the following organisations/service providers, with regard to the audits of sectional title units?

- Local authorities (municipalities)?

- Other government institutions?

- Banks and other financial institutions?

- Management agencies?

- Other?

33 In your opinion, what are the two (2) greatest **misperceptions** that exist amongst the following parties with regard to services rendered by you:

- Management agents?

i)

ii)

Annexure F – Vraelys aan rekenmeesters en ouditpraktisyns

- 1 Hoeveel deeltitelskemas is tans kliënte van u firma?
- 2 Wat is die drie (3) grootste probleme wat u in u firma ervaar met betrekking tot die **rekeningkundige werk** deeltitelskemas?
- i) _____
- ii) _____
- iii) _____
- 3 Wat is die drie (3) grootste probleme wat u in u firma ervaar met betrekking tot die **audit-/gerusstelingswerk** deeltitelskemas?
- i) _____
- ii) _____
- iii) _____
- 4 Wat is na u mening die vlak van risiko geassosieer met die oudit van deeltitelskemas (merk net een opsie), in vergelyking met die oudit van kliënte in ander industrieë:
- Die risiko van deeltitel-oudit is baie laag
 - Die risiko van deeltitel-oudit is redelik laag
 - Die risiko van deeltitel-oudit is gemiddeld
 - Die risiko van deeltitel-oudit is hoog
 - Die risiko van deeltitel-oudit is baie hoog
- 5 Is u op die hoogte van die nuutste bepalings rakende die Wet op Deeltitels?
- Ja
- Nee
- 6 Watter **persentasie** van u kliënte maak van die volgende dienste gebruik wat deur u gelewer word?
- Slegs **opstel** van finansiële state
 - Slegs **oudit** van finansiële state
 - **Opstel en oudit** van finansiële state
 - **Opstel** van finansiële state en **ander vorm** van gerusstelling
 - Opstel van **begrotings**
 - **Bestuursadvies**
 - Ander (spesifiseer)

7 Word daar deeltitelspesifieke opleiding vir u **nuwe** personeel aangebied?

- Aan rekeningkundige personeel?

Ja

Nee

- Aan ouditpersoneel?

Ja

Nee

8 Word daar deeltitelspesifieke opdateringskursusse aangebied vir **huidige** personeel wat rekeningkundige werk of oudits van deeltitelskemas doen?

- Vir rekeningkundige personeel?

Ja

Nee

- Vir ouditpersoneel?

Ja

Nee

9 Bestaan daar 'n behoefte in u firma vir spesiale kursusse of opleiding met betrekking tot deeltitelskemas vir **junior** personeel?

Ja

Nee

- Indien wel, spesifiseer:
-

10 Bestaan daar 'n behoefte in u firma aan spesiale kursusse of opleiding met betrekking tot deeltitelskemas vir **senior** personeel?

Ja

Nee

- Indien wel, spesifiseer:
-
-

11 Bestaan daar 'n behoefte in u firma aan spesiale kursusse of opleiding met betrekking tot deeltitelskemas vir **vennote/direkteure**:

Ja

Nee

- Indien wel, spesifiseer:
-
-

- 12 Hoeveel trustees is na u mening die optimale getal vir 'n raad van trustees wat goed funksioneer?

--

- 13 Beskik die gemiddelde **trustee-voorsitter** na u mening oor die nodige kennis en vaardighede om as voorsitter op te tree?

Ja
Nee
Onseker

- 14 Beskik die gemiddelde **bestuursagent** na u mening oor die nodige kennis en vaardighede om as bestuursagent op te tree?

Ja
Nee
Onseker

- 15 Hoe lank (ure) neem dit gemiddeld om:

- 'n Deeltitelskema se finansiële state op te stel?
- 'n Deeltitelskema se finansiële state te oudit?
- Ander gerusstellingsaktiwiteite uit te voer vir 'n deeltitelskema?

- 16 Wat is die gemiddelde posvlak/kwalifikasie van personeel wat daarvoor verantwoordelik is om:

- 'n Deeltitelskema se finansiële state op te stel?
- 'n Deeltitelskema se finansiële state te oudit?

- 17 Watter faktore word in ag geneem by die berekening van u fooie vir 'n deeltitelskema?

- 18 Ondervind u dat daar druk geplaas word op praktisyns om fooie vir deeltitel rekeningkundige en ouditwerk laag te hou?

Ja
Nee

- 19 Indien u ja geantwoord het op vraag 18, wat is na u mening the vernaamste redes vir die druk op fooie (Merk alle antwoorde van toepassing.)

- Beheerliggaam inkomste is baie laag, en trustees probeer om so ver moontlik op alle begrote items te bespaar.
- Beheerliggaamlede beskou nie rekeningkundige en ouditwerk as 'n noodsaaklike funksie nie, maar eerder 'n regsvereiste wat so goedkoop as moontlik afgehandel moet word.

- Lede, trustees en bestuursagente begryp nie altyd die omvang en kompleksiteit van rekeningkundige en ouditwerk m.b.t. deeltitels nie.
- Ander (verduidelik kortliks)

20 Woon u of van u personeel as ouditeure die **algemene jaarvergaderings** van u deeltitelkliënte by?

Ja
Nee
Soms

21 Ondervind u dat tydsdruk in u firma rakende die oudit van deeltitelkliënte gereeld bottelnek-situasies versoorzaak?

Ja
Nee

- Indien wel, is daar sekere tye van die jaar wat die probleem vererger?

- Kan u moontlike oplossing(s) vir die probleem voorstel?

22 Voeg die **ouditering** van die finansiële state na u mening enige waarde toe tot deeltitelskemas?

Ja
Nee
Onseker

- Motiveer u antwoord kortliks.

23 Voeg die **ander vorme van gerusstelling** oor die finansiële state na u mening enige waarde toe tot deeltitelskemas?

Ja
Nee
Onseker

24 Wat is volgens u die twee (2) grootste risiko's daaraan verbonde om deeltitelskemas te oudit?

i)

ii)

25

Watter twee (2) probleme word die meeste met die Suid-Afrikaanse Inkomstediens (SAID) ten opsigte van deeltitelskemas ervaar?

i)

ii)

26 Watter van die volgende standaarde is volgens u die toepaslikste om te gebruik by die opstel van finansiële state van deeltitelskemas?

- IFRS
- IFRS for SMEs
- 'n Standaard moet spesifiek vir deeltitelskemas ontwikkel word
- Ander (spesifiser)

27 Wat is volgens u die toepaslikste manier om gerusstelling oor die finansiële state van 'n deeltitelskema uit te spreek?

- 'n Volledige audit
- Ooreengekome prosedures
- 'n Onafhanklike oorsig
- Ander (spesifiser)

28 Wat is u vlak van tevredenheid met die volledigheid van brondokumente wat ontvang word van trustees en bestuursagente?

- Baie tevrede
- Tevrede
- Ontevrede
- Baie ontevrede

29 Ervaar u enige probleme in terme van hoë personeel-omset by bestuursagente?

- Indien wel, motiveer kortliks

Ja
Nee

30 Sommige bestuursagente gebruik een trustbankrekening waarin alle deeltitelskema gelde hanteer word. Ouditeure van individuele deeltitelskemas word dikwels toegang tot die trustbankrekeningstate geweier as gevolg van "vertroulikheid" van inligting.

- Is u bewus van bogenoemde praktyk?

Ja
Nee

- Indien wel, gee kortliks u opinie oor die aangeleentheid.
-

31 Is u bewus van enige probleme rakende die hantering van rente op trustgelde deur bestuursagente?

Ja
Nee

- Indien wel, motiveer kortliks

32 Wat is die grootste probleme wat u met die volgende instansies/diensverskaffers, met betrekking tot die oudits van deeltitelskemas ervaar:

- Plaaslike owerhede (munisipaliteite)?

- Ander regeringsinstellings?

- Banke en ander finansiële instellings?

- Bestuursagentskappe?

- Ander?

33 Wat is volgens u die twee (2) grootste **wanpersepsies** wat onder die volgende partye bestaan met betrekking tot die dienste deur u gelewer:

- Bestuursagente?

i)

ii)

- Rade van trustees?

Annexure G – Questionnaire for EAAB inspectors

- 1 How many sectional title schemes are currently clients of yours?
- 2 For how many years have you been an auditing practitioner?
- 3 What is your qualification?

- 4 What is the average **qualification(s)** of the person(s) responsible for doing the EAAB inspections field work?

- 5 What is the average **post level(s)** of the person(s) responsible for doing the EAAB inspections field work?
- 6 What are the three (3) biggest problems that you experience in your firm with regard to the EAAB inspections?
i) _____
ii) _____
iii) _____
- 7 In your opinion, what is the level of risk (choose **one** option) associated with the **auditing of sectional title schemes**, in comparison with the auditing of clients in other industries:
- The risk in sectional title auditing is very low
 - The risk in sectional title auditing is quite low
 - The risk in sectional title auditing is average
 - The risk in sectional title auditing is high
 - The risk in sectional title auditing is very high
- 8 In your opinion, what is the level of risk (choose **one** option) associated with performing **EAAB inspections**, in comparison with the auditing of clients in other industries?
- The risk in EAAB inspections is very low
 - The risk in EAAB inspections is quite low
 - The risk in EAAB inspections is average
 - The risk in EAAB inspections is high
 - The risk in EAAB inspections is very high

9 How many inspection cycles have you been responsible for?

--

10 Indicate the percentage of the inspection work relating to:

	%
Estate agency	
Sectional titles	

11 Have the EAAB identified clear **goals** for the inspections?

Yes
No

12 Have the EAAB compiled clear **working papers** for the inspections?

Yes
No

13 Is enough room left for the practitioners to use his/her professional **judgement** during the inspections?

Yes
No

14 Do you get sufficient **cooperation** from the EAAB regarding the inspection engagements?

Yes
No

15 Are there clear **reporting lines** to the EAAB for reporting of inspection findings?

Yes
No

16 In your opinion, is sufficient **action** being taken by the EAAB regarding reported findings?

Yes
No
Unsure

17 Are there clear **guidelines** regarding the **auditor remuneration** that the EAAB pays for the inspections?

Yes
No

18 Is sectional title-specific training presented for your **new** staff members?

Yes
No

19 Are sectional title-specific updating courses presented for **current** staff members that do accounting work or audits of sectional title schemes?

Yes
No

20 Is there a need in your firm for special courses or training on EAAB inspections:

- For **junior** staff

Yes
No

- For **senior** staff?

Yes
No

- For **partners/directors**?

Yes
No

21 In your opinion, does the average sectional title managing agent have the necessary knowledge and skills to be a managing agent?

Yes
No
Unsure

22 In your opinion, does the **auditing** of the financial statements add any value to a sectional title scheme?

Yes
No
Unsure

- Briefly motivate your answer

23 In your opinion, do **other forms of assurance** over the financial statements add any value to a sectional title scheme?

Yes
No
Unsure

- Briefly motivate your answer

24 In your opinion, what are the two (2) greatest **risks** attached to the EAAB inspection engagements?

i)

ii)

25 In your opinion, which of the following standards is the most applicable in the drawing up of the financial statements of sectional title schemes?

- IFRS
- IFRS for SMEs
- A standard must be developed specifically for sectional title schemes
- Other (specify)

26 In your opinion, what is the most applicable manner to provide assurance regarding the financial statements of a sectional title scheme?

- A complete audit
- Agreed upon procedures
- An independent review
- Other (specify)

27 Any further comments?

• Would you like to receive an **electronic copy** of the dissertation once this study is completed?

Yes
No

- If yes, please provide your email address

Thank you for your time and participation.

Annexure H – Vraelys aan EAAB inspekteurs

1 Hoeveel deeltitelskemas is tans kliënte van u firma?

2 Vir hoeveel jaar praktiseer u al as ouditeur?

3 Wat is u kwalifikasie?

4 Wat is die gemiddelde **kwalifikasie(s)** van die persoon/persone wat die EAAB inspeksie veldwerk doen?

5 Wat is die gemiddelde **posvlak(ke)** van die persoon/persone wat die EAAB inspeksie veldwerk doen?

6 Wat is die drie (3) grootste probleme wat u in u firma ervaar met betrekking tot die EAAB inspeksies?

i)

ii)

iii)

7 Wat is na u mening die vlak van risiko (kies **een** opsie) geassosieer met die **audit van deeltitelskemas**, in vergelyking met die audit van kliënte in ander industrieë?

- Die risiko van deeltitel-audit is baie laag
- Die risiko van deeltitel-audit is redelik laag
- Die risiko van deeltitel-audit is gemiddeld
- Die risiko van deeltitel-audit is hoog
- Die risiko van deeltitel-audit is baie hoog

8 Wat is na u mening die vlak van risiko (kies **een** opsie) geassosieer met die **EAAB inspeksies**, in vergelyking met die audit van kliënte in ander industrieë?

- Die risiko van EAAB inspeksies is baie laag
- Die risiko van EAAB inspeksies is redelik laag
- Die risiko van EAAB inspeksies is gemiddeld
- Die risiko van EAAB inspeksies is hoog
- Die risiko van EAAB inspeksies is baie hoog

9 By hoeveel inspeksie-siklusse was u al betrokke?

10 Dui die persentasie van die EAAB inspeksie aan wat het betrekking op:

	%
Eiendomsagentskap	
Deeltitels	

11 Het die EAAB duidelike **doelwitte** uiteengesit vir die inspeksies?

Ja
Nee

12 Het die EAAB duidelike **werkspapiere** saamgestel vir die inspeksies?

Ja
Nee

13 Word daar na u mening genoeg ruimte gelaat vir die praktisyn se **professionele oordeel** tydens die inspeksies?

Ja
Nee

14 Kry u genoegsame **samewerking** vanaf die EAAB rakende die inspeksie aanstellings?

Ja
Nee

15 Is daar duidelike **rapporteringslyne** na die EAAB vir die rapportering van bevindinge rakende die inspeksies?

Ja
Nee

16 Word daar na u mening voldoende **aksie** geneem deur die EAAB op gerapporteerde bevindinge?

Ja
Nee
Onseker

17 Is daar duidelike **riglyne** rakende die **ouditeursvergoeding** wat die EAAB betaal vir die inspeksies?

Ja
Nee

18 Word daar deeltitelspesifieke opleiding vir u **nuwe** personeel aangebied wat betrokke is by EAAB inspeksies?

Ja
Nee

- 19 Word daar deeltitelspesifieke opdateringskursusse aangebied vir **huidige** personeel wat betrokke is by EAAB inspeksies?

Ja
Nee

- 20 Bestaan daar 'n behoefte in u firma vir spesiale kursusse of opleiding met betrekking tot EAAB inspeksies:

- Vir **junior** personeel?

Ja
Nee

- Vir **senior** personeel?

Ja
Nee

- Vir **vennote/direkteure**?

Ja
Nee

- 21 Beskik die gemiddelde deeltitel bestuursagent na u mening oor die nodige kennis en vaardighede om as bestuursagent op te tree?

Ja
Nee
Onseker

- 22 Voeg die **ouditering** van die finansiële state na u mening enige waarde toe tot deeltitelskemas?

Ja
Nee
Onseker

- Motiveer u antwoord kortliks.
-
-

- 23 Voeg **ander vorms van** gerusstelling oor die finansiële state na u mening enige waarde toe tot deeltitelskemas?

Ja
Nee
Onseker

- Motiveer u antwoord kortliks.
-
-

- 24 Wat is volgens u die twee (2) grootste **risiko's** daaraan verbonde om deeltitelskemas te audit?

i)

ii)

25 Watter van die volgende standaarde is volgens u die toepaslikste om te gebruik by die opstel van finansiële state van deeltitelskemas?

- IFRS
- IFRS for SMEs
- 'n Standaard moet spesifiek vir deeltitelskemas ontwikkel word
- Ander (spesifiser)

26 Wat is volgens u die toepaslikste manier om gerusstelling oor die finansiële state van 'n deeltitelskema uit te spreek?

- 'n Volledige audit
- Ooreengekome prosedures
- 'n Onafhanklike oorsig
- Ander (spesifiser)

27 Enige verdere kommentaar?

- Wil u graag 'n **elektroniese kopie** van die verhandeling ontvang wanneer hierdie studie voltooi is?

Ja
Nee

Indien wel, verskaf asseblief u e-pos adres

Baie dankie vir u tyd en deelname.

Annexure I – EAAB inspections report



ESTATE AGENCY AFFAIRS BOARD OF SOUTH AFRICA

INSPECTIONS REPORT IN TERMS OF ESTATE AGENCY AFFAIRS ACT:

The Estate agency affairs Board (“EAAB”) has as one of its mandates to regulate and promote the standard of conduct of estate agents having due regard to public interest. Section 32A empowers the Board to conduct inspections for the purpose of compliance with the Act as well as ensuring ethical conduct and sanctions transgression of the code of conduct for estate agents.

The EAAB is also responsible for the supervision and enforcement of compliance by estate agents with the provision of the Financial Intelligence Centre Act (“FICA”) or any order, determination or directive made in terms of the FICA

The EAAB conduct both routine and non-routine inspections, the inspections conducted in this regard was a routine inspection and focused on compliance with both the estate agency affairs act and financial intelligence Centre act

SECTION 6 OF Act NO 112 OF 1976

Staff of Board and Designation of Inspectors

- (1) The work incidental to the carrying out of its functions by the board shall be performed under its direction and control by persons appointed by the board on such conditions and at such remuneration as the board may determine

- (2) The Board may designate persons appointed in terms of subsection (1) and any other persons whom he may deem fit to perform the function of inspectors under this Act subject to its control.

DEFINITIONS

In terms of the Estate Agency Affairs Act No 112 of 1976 the following are defined;

“Estate Agent” means –

- (a) Any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instruction of or on behalf of any other person –
- i. Sells or purchases or publicly exhibits for sale immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller therefor; or
 - ii. Let's or hires or publicly exhibit for hire immovable property or any business undertaking or negotiates in connection therewith or canvasses or under takes or offer to canvass a lessee or lessor therefor; or
 - iii. Collects or receive any moneys payable on account of a lease of immovable property or any business undertaking; or
 - iv. Renders any such other service as the Minister on the recommendation of the board may specify from time to time by notice in the gazette.
- (b) For purpose of section 3(2)(a), include any director of a company or member who is competent and entitled to take part in the running of the business and the management or a manager who is an officer of a close corporation which is an estate agent as defined in paragraph (a).

(c) For purpose of section 7,8,9,12,15,16,18,19,21,26,27,30,33 and 34B includes-

- (i) Any director of a company or a member referred to in paragraph (b) of a close corporation which is an estate agent as defined in paragraph (a) and
- (ii) Any person who is employed by an estate agent as defined in paragraph (a) and performs on his behalf any Act referred to in subparagraph (i) or (ii) of the said paragraph.

(d) For the purpose of section 7,9(1)(a), 16,26,27,28 and 33 include any person who is employed by an attorney or a professional company as defined in section 1 of the Attorneys Act 53 of 1979 otherwise than as an attorney or an articled clerk and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company.

(e) Does not include an attorney who, on his own account or as a partner in a firm of attorneys or as member of a professional company, as defined in section 1 of the Attorneys Act or an articled clerk as defined in the said section of that Act, who performs any act referred to in paragraph (a) in the course of and in the name of and from the premises of such attorneys or professional company's practice:
Provided that such an act is not performed:

- (i) In partnership with any person other than a partner in the practice of that attorney as defined in section 1 of Attorneys Act,

(iii) Through the medium of or as a director of a company other than such professional company.

(f) For the purpose of section 30(2), (3), (4), (5), (6), (7) and (8) and of regulation made under section 33(1)(h), include any person who was an estate agent at the time when he or she was guilty of any act or omission which allegedly constitute conduct deserving of sanction referred to in section 30. Provided that for the purpose of this definition, “advertise” does not include to advertise in compliance with the provision of any law.

“Fidelity fund certificate” means –

a fidelity fund certificate referred to in section 16 and include for the purpose of section 26, 27, 28 and 33(1) (e) and (f), a registration certificate referred to in section 16.

“Auditor” means –

any person registered in terms of section 23 of the Public Accountant and Auditors Act 51 of 1951 an accountant and auditor and engaged in public practice as such.

“Trust moneys” means –

- (a) Money or other property entrusted to an estate agent in his capacity as an estate agent,
- (b) Money collected or received by an estate agent and payable in respect of or on account of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of “estate agent”,
- (c) Any other moneys, including insurance premiums, collected or received by an estate agent and payable in respect of any immovable property, business undertaking or contract for the building or erection of any improvements on immovable.

A. BACKGROUND OF THE INSPECTED ESTATE AGENCY

Inspections Report for:

Type of inspections: SCHEDULED

Date of previous inspections:

Inspector/s:

On *(Insert date)* an inspection of the entity was conducted in accordance with the authority and provision of section 32A of the estate agency affairs act 112 of 1976. The inspection was conducted in order to confirm the entity compliance with the provision of sections 26, 29, 32 and 34 of The Estate Agency Affairs Act and the Regulations and Code of Conduct.

The inspection further examined the entity compliance with section 21, 22, 28, 29, 31, 42 and 47 of the Financial Intelligence Centre Act.

COMPREHENSIVE BACKGROUND OF THE FIRM: (TYPE OF BUSINESS, EMPLOYEES, NUMBER OF PRINCIPALS, PERIOD OF EXISTENCE OF THE BUSINESS, ACTIVITY LEVEL OF THE BUSINESS, PROVISION OF INFORMATION BY PRINCIPAL, ANY OTHER APPLICABLE INFORMATION)

PARTICULARS OF THE FIRM

NAME OF REPRESENTATIVE OF FIRM	
NUMBER OF ESTATE AGENTS EMPLOYED	

CONTACT DETAILS

BUSINESS ADDRESS	PHYSICAL ADDRESS	POSTAL ADDRESS
TELEPHONE NUMBER		
CEL PHONE NUMBER		
FAX NUMBER		
E-MAIL ADDRESS		

ACCOUNTS DETAILS

ACCOUNT TYPE	TRUST ACCOUNT DETAILS	BUSINESS ACCOUNT DETAILS
ACCOUNT NAME		
BANK NAME		
ACCOUNT NUMBER		

BRANCH CODE		
--------------------	--	--

COMPANY BACKGROUND:

--

A. CONDUCTING INSPECTION AND TESTING

SCOPE OF WORK AS PER THE PROVISION OF ESTATE AGENCY AFFAIRS ACT AND FINANCIAL INTELLEGENGE CENTRE ACT

B. ESTATE AGENCY AFFAIRS ACT REQUIREMENTS - scope of work

COMPLIANCE WITH THE PROVISIONS OF SECTION 26 - fidelity fund certificate

Call for and inspect the FFC and CIPC documents of the firm and individual’s estate agents compare them to the records of the Estate Agency Affairs Board (EAAB) and confirm the following regarding the FFC:

Name of the agency	Type of entity	FFC number	Documents obtained	Entity registration number as per CIPC Documents, CK etc.
1.			CC registration documents	
Name of estate agent	Status	FFC number	Documents obtained	Identity Number
1.			ID Copy	
2.			ID Copy	
3.			ID Copy	
4.			ID Copy	

5.			ID Copy	
6.			ID Copy	

NOTE: Obtain confirmation that the principal is a director in terms of CIPC requirements and supporting documents.

OBSERVATIONS:

EXCEPTIONS:

Observe and confirm that the fidelity fund certificates are displayed in a prominent position as required by regulation 4.3 in terms of the Estate Agency Affairs Act 112 of 1976.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH THE PROVISION OF SECTION 32(1) - trust account

Call for and examine bank statements (bank stamped), dating for period of 6 months or more in respect of section 32(1) account operated by the estate agent and confirm that the designation inspected is compliant.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH PROVISION OF SECTION 32(2) (a) - trust investment accounts

Call for the bank statement (bank stamped) of any trust investment account opened, designated and held in terms of section 32(2) (a) and confirm that the trust investments are **compliant / non-compliant with provisions of section 32(2)**.

OBSERVATIONS:

EXCEPTIONS:

BANK CHARGES IN THE TRUST ACCOUNT

Call for trust bank statements to confirm that bank charges are not debited against the trust account as required by Common Law practice on trust accounts.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH PROVISION OF SECTION 32(2) (c) – (interest paid in terms of the mandate)

Request written mandates from the client requesting interest to be paid out and confirm that interest has been paid out correctly to clients.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH THE PROVISION OF SECTION 32(3) – Accounting Records

Call for and inspect accounting records for trust accounts opened, to verify if the estate agent keeps separate accounting records of all monies deposited by him in his trust account, balances his books of account on a monthly basis and reconciled, the inspection revealed the following:

OBSERVATIONS:

EXCEPTIONS:

Call for and examine the audit report and the financial statements for the recent financial year-end.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH PROVISIONS OF SECTION 29 - Accounting records

Call for and examine the estate agent accounting records to confirm that the accounting records contain all the monies received, expended by the estate agent including moneys deposited to a trust account, invested and all his assets and liabilities, all his financial transactions as well as financial position of the business.

Confirm that the estate agent has caused the accounting records required to be audited in terms of section 29(a) and section 32(3)(a) within four months of the estate agency financial year.

OBSERVATIONS:

EXCEPTIONS:

CONTRACTS:

COMPLIANCE WITH PROVISIONS OF SECTION 34A Estate Agent not entitled to remuneration in certain circumstances

Call for and inspect sale and lease agreement utilized by the estate agency and confirm the following:

The sale or lease agreement does not contain a clause whereby a sole mandate is directly or indirectly conferred on the agent to sell or let the said property at any time after the conclusion of the lease or sale agreement

The details of any attorney are not pre-printed in the contract

There is no pattern relating to the appointment of a specific conveyancer

Review a sample of sale/ lease agreement for a selected period (2 copies of each type of contracts)

The contract does not provide for the estate agent to be paid prior to fulfilment of a suspensive condition or the resolutive condition

Sale agreement for immovable property does not provide for the proceed to be paid by the estate agent to the seller prior to transfer into the purchaser name

The contract substantially complies with the Consumer Protection Act in terms of giving notices by the parties

Call for and inspect the FFC for validity

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH PROVISIONS OF SECTION 34B Prohibition of completion of documents by certain estate agents

Call for and examine the contracts (sale or lease agreement) and confirm that: intern estate agents were not allowed to sign the contract. Only the Principal signs off ALL the contracts.

OBSERVATIONS:

EXCEPTIONS:

COMPLIANCE WITH THE CODE OF CONDUCT

Regulation 4.1.2 - Contracts

Call for and inspect a selection of documentation to confirm that if the estate agent conducts his business, in terms of a franchise, s/he discloses clearly and unambiguously in all his/her correspondence, circulars, advertisements and other written documentation that s/he operates in terms of the franchise and state thereon his/her name and the name of the franchisor and/or trade name.

OBSERVATIONS:

EXCEPTIONS:

Compliance with code of conduct - Sole Mandates

Call for and inspect sole mandates utilized by the state agent and confirm the following:

All the terms of the mandate (mandatee and the mandator details, details of the property, purchase price, commissions, date of expiry, parties signatures etc.) are in writing and signed by parties to the agreement

The expiry date of the mandate is expressed as a calendar date

The extension period is contained in a separate document signed by the parties prior to the extension been granted

The sole mandate does not include or confer a power of attorney on the estate agent unless all the consequences are explained in the agreement

The sole mandate clearly states the rights and obligations of both parties

OBSERVATIONS:

EXCEPTIONS:

B. EAAB EDUCATIONAL REQUIREMENTS

We called for and inspected the educational qualifications and fidelity fund certificate of estate agent and confirmed the following in respect of the educational requirements:

Principal NQF 5 Certificate / Equivalency Exemption compliance requirements-(QUALID20188)	Compliant		COMMENTS
	YES	NO	
Principal PDE 5 Certificate (Master Practitioner in Real Estate)/PDE 5 Exemption letter OR Certificate of Professional Recognition	Compliant		COMMENTS
	YES	NO	
Age-based letter of exemption issued for a principal estate agent (over 60 principal agent who met the age-based exemption process)	Compliant		COMMENTS
	YES	NO	
Note: call for employment contract of the estate agent to determine the distinction between the employer estate agent and employee estate agent in respect of service provided			
Obtain confirmation of the principal certification and period in which he has been acting in that capacity as a principal	Compliant		COMMENTS
	YES	NO	
Mentorship by principal- obtain confirmation that the principal has held FFC for 3 years continuously to qualify as a mentor	Compliant		COMMENTS
	YES	NO	

Non-principal compliance requirements- NQF 4 Certificate/ Equivalency Exemption(QAULID59097)	Compliant		COMMENTS
	YES	NO	
PDE 4 Certificate (Professional Practitioner in Real Estate)/PDE 4 Exemption letter OR Certificate of Professional Recognition- Non principal estate agent	Compliant		COMMENTS
	YES	NO	
Age- based letter of exemption issued for a non-principal agent (over 60 non-principal who met the aged based exemption process)	Compliant		COMMENTS
	YES	NO	
Note: obtain confirmation of the full status non-principal certification and period in which the agent has been acting in that capacity as a full status non-principal	Compliant		COMMENTS
	YES	NO	
Mentorship by non – principal -obtain confirmation that the non –principal has held FFC for 3 years continuously to qualify as a mentor	Compliant		COMMENTS
	YES	NO	No intern
Intern estate agent compliance requirements- call for contract of employment / appointment letter confirming employment relationship between Intern and Employer	Compliant		COMMENTS
	YES	NO	No intern
Call for details of a mentor assigned to mentor the intern over 12months period	Compliant		COMMENTS
	YES	NO	
Call for the full details of the intern and mentor and confirm that it appears on the front page of the logbook	Compliant		COMMENTS
	YES	NO	
Call for intern logbook and confirm that it has been maintained and signed off by the mentor on a monthly basis	Compliant		COMMENTS
	YES	NO	

Obtain confirmation that the mentor / principal has held full status FFC for a continuous 3-year period	Compliant		COMMENTS
	YES	NO	
Call for proof that the principal, interns, non-principal have enrolled and are in the process of completing the prescribed qualification	Compliant		COMMENTS
	YES	NO	
Obtain confirmation that the estate agent has completed the relevant qualification within the prescribed period	Compliant		COMMENTS
	YES	NO	

Note: check period of internship- should not exceed 2 years as from first issue of FFC by EAAB: At the end of 2 years the intern should already meet the requirement of and upgraded status into a full status, non-principal estate agent and this after having successfully completed workplace learning (12months internship), NQF 4 qualification and passed PDE 4	Compliant		COMMENTS
	YES	NO	
Change of Employment by Intern – Has change of employment been noted and communicated to EAAB to issue FFC with a new firm	Compliant		COMMENTS
	YES	NO	
Has change of employment been noted in the logbook	Compliant		COMMENTS
	YES	NO	
Call for the logbook and confirm that it has been signed off from date of joining the new firm (and confirming by the previous employment details)	Compliant		COMMENTS
	YES	NO	
Is the logbook being monitored from effective date of employment (signed by the employer for the new mentor	Compliant		COMMENTS
	YES	NO	
CPD – sensitized	Compliant		COMMENTS
	YES	NO	
CPD – Payment	Compliant		COMMENTS
	YES	NO	
CPD – PDP Completed	Compliant		COMMENTS
	YES	NO	

CPD - Points lodgement/approved	Compliant		COMMENTS
	YES	NO	
Transformation – Skills Development Levy payments	Compliant		COMMENTS
	YES	NO	
Transformation – workplace skills plan, annual report, etc.	Compliant		COMMENTS
	YES	NO	
Transformation – Intern employment	Compliant		COMMENTS
	YES	NO	
Transformation – Scorecard	Compliant		COMMENTS
	YES	NO	
Transformation – BEE Certificate	Compliant		COMMENTS
	YES	NO	

IMPORTANT NOTICE

Maximum period to obtain NQF4 & 5 Qualification:

If inspections conducted prior to 30 June 2015- EAAB has extended estate agents to complete prescribed qualifications by 30 June2015 - it is envisaged there will not be any further extensions

Principals- must acquire QUALID 20188 by 30 June 2015. Non-principal must acquire QAULID 59097 BY 30June2015. Interns – must acquire QUALID 59097 within the first 12 months of internship or acquire both the QUALID 59097 and PDE 4 within 2 years of first of intern FFC

OR

If inspection conducted after 30 June 2015- EAAB has extended estate agent to complete prescribed qualification by 30June2015- it is envisaged there will not be any further extension

Maximum period to obtain PDE4 & 5:

The principal is required to have passed PDE 5 within 2 years of being certificated against QUALID 20188; Non-principal is required to have passed PDE4 within 2 years of being certificated against QUALID 59097. Interns must acquire PDE4 within 2 years of first issue of intern FFC after completing 12 months' internship and after completing and certificated against QUALID 59097

OBSERVATIONS:

EXCEPTIONS:

C. FINANCIAL INTELLIGENCE CENTRE ACT

Call for and inspect the records of previous and pending transactions and confirm the following in respect of compliance with Financial Intelligence Centre Act, 38 of 2001:

REGISTRATION (Section 43B and Reg 27A)			
Call for email confirmation from the Centre that agency is registered with Financial Intelligence Centre as an accountable institution. <i>(In terms of Regulation 27A of the Regulations the period for registration commences on 1 December 2010 until, and including, 1 March 2011)</i>	Compliant		COMMENTS
	YES	NO	
If the estate agency has other branches, determine whether the other branches are registered with the Centre? (Request the registration confirmation letter issued by FIC or registration reference number) <i>(In terms of Regulation 27A of the Regulations the period for registration commences on 1 December 2010 until, and including, 1 March 2011)</i>	Compliant		COMMENTS
	YES	NO	
Determine if there are any changes to the estate agency. If any changes, has the registration information of the estate agency been updated with the Centre in terms of section 43B (4) <i>Agency has 90 days to notify FIC of such changes.</i>	Compliant		COMMENTS
	YES	NO	
DUTY TO APPOINT A COMPLIANCE OFFICER (Section 43(b))			
Has the estate agency formally appointed a Compliance Officer? <i>(If so, obtain copy of formal letter of appointment or copy of employment contract)</i>	Compliant		COMMENTS
Has the Board of Directors approved the appointment of the compliance officer?	YES		NO
	Compliant	COMMENTS	

<i>(Obtain if any, minutes of the Board meeting where the appointment of the compliance officer was approved?)</i>	YES	NO	
Does the Compliance Officer have any AML /CFT experience?	Compliant		COMMENTS
	YES	NO	
Does the Compliance Officer have sufficient authority to have access to all areas of the institution's operations and to effect corrective action?	Compliant		COMMENTS
	YES	NO	
DUTY TO IDENTIFY CLIENTS (Section 21)			
Does the estate agency have processes and procedures in place for identification and verification of clients?	Compliant		COMMENTS
	YES	NO	
Is documentation in support of the identification and verification of client available	Compliant		COMMENTS
	YES	NO	
Determine how the estate agency deals with the following: Face-to-face clients do the estate agency conduct verification of all their clients; If another person is acting on behalf of the client, is the identity of that other person established and verified;	Compliant		COMMENTS
	YES	NO	

If another person is acting on behalf of the client, is the authority to act on behalf of the client established and verified?			
Is the estate agency aware of the exemptions applicable to their industry? <i>Note: Familiarize yourself with the relevant exemptions applicable to estate agencies.</i>	Compliant		COMMENTS
	YES	NO	
DUTY TO KEEP RECORDS (Section 22)			
How are your customers' identification and verification documents recorded or kept, as well as records of the business relationships and transactions?	Compliant		COMMENTS
	YES	NO	
Are the records kept in a place that is fire and water, etc. resistant?	Compliant		COMMENTS
	YES	NO	
Is there a backup system (electronic copy) for the records?	Compliant		COMMENTS
	YES	NO	
	Compliant		COMMENTS
	YES	NO	

Has the estate agency kept adequate records of the previous transactions in terms of section 22 of FICA and confirm the details of a person having access to these records			
PERIOD FOR WHICH RECORDS MUST BE KEPT (Section 23)			
Does the agency keep records for at least five years from the date on which the business relationship is terminated? <i>NB: Obtain record/contract dating back five years ago as evidence</i>	Compliant		COMMENTS
	YES	NO	
RECORDS KEPT BY THIRD PARTY (Section 24 & Reg 20)			
Whether the records are kept by a third party and the estate agent has easily access to these records;	Compliant		COMMENTS
	YES	NO	
Is there a signed service level agreement in place to specify what the third parties' duties are?	Compliant		COMMENTS
	YES	NO	
Confirm whether the estate agent notified and furnished the FIC with the prescribed particulars regarding the third party	Compliant		COMMENTS
	YES	NO	
Is the estate agency aware of the fact that the estate agency is ultimately responsible for the failure to keep records	Compliant		COMMENTS
	YES	NO	
CASH TRANSACTION ABOVE THRESHOLD (Section 248 & Regs 22B, 22C, 24)			
Request and examine all trust bank account statements and any bank account use by the estate agency, cash receipt books and any other records and confirm the following:	Compliant		COMMENTS
	YES	NO	

<ul style="list-style-type: none"> • Whether the estate agency has received cash amounts of R24 999.99 and above • Determine whether the estate agent has filed CTRs located on the aforementioned documents, if any • Is the estate agency aware of? • The threshold limit; • Reporting period; • Dual reporting; and • Aggregation. • Request reference numbers of the CTRs filed with the Centre; • Does the estate agency have procedures and processes in place to detect, monitor and report cash above threshold? • Is the above procedure or process incorporated in the internal rules? 			
SUSPICIOUS AND UNUSUAL TRANSACTIONS (Section 29 & Reg 23 & 24)			
Did the estate agent received a transaction which may be suspicious as to amount to illegal activities by client in terms of section 29 of FICA	Compliant		COMMENTS
	YES	NO	

Was the above suspicious transaction reported to FIC	Compliant		COMMENTS
	YES	NO	
Whether the agency has procedure and process in place to detect suspicious transactions	Compliant		COMMENTS
	YES	NO	
FORMULATION AND IMPLEMENTATION OF INTERNAL RULES (S42 and Reg 25, 26 & 27)			
Whether the estate agent have internal rules and do they conform to the prescribed requirements in terms of section 42(1)	Compliant		COMMENTS
	YES	NO	
Do the rules make provision for disciplinary steps against staff for non-compliance with the FIC Act and the internal rules?	Compliant		COMMENTS
	YES	NO	
Has the rules been customized, documented to the internal requirements of the agency	Compliant		COMMENTS
	YES	NO	

Have the rules been communicated to all staff and is there a training plan in place (who is responsible for the training)	Compliant		COMMENTS
	YES	NO	

OBSERVATIONS:

EXCEPTIONS (FICA REQUIREMENTS)

D. SCHEDULE OF CONTRAVENTIONS

ESTATE AGENCY AFFAIRS ACT, 112 of 1976 (1)

SECTIONS OF THE ACT CONTRAVENED	NO. CONTRAVENTIONS
Section 26 – Fidelity Fund Certificate (FFC)	
Section 32(1) – Trust account(s) compliance and bank charges	
Section 32(2)(a) – Trust Investment account(s) and bank charges	
S 32(2) (c) - Interest on trust monies	
Section 32(2)(e) – Retention of trust monies	
Section 32(3) – Trust accounting records	
S 32 (7) - Cessation of practice	
S 29(b) – Audited accounting records	
S 34A - Invalid FFC's & Remuneration	
S 34B – Contracts sign off by interns	
Not available for inspection	
Unannounced Inspection - Supporting documents not submitted	
TOTAL	

EAAB' EDUCATIONAL REQUIREMENTS (2)

REQUIREMENTS CONTRAVENED	NO. CONTRAVENTIONS

TOTAL	

FINANCIAL INTELLIGENCE CENTRE ACT, 38 OF 2001 (3)

SECTIONS OF THE ACT CONTRAVENED	NO. CONTRAVENTIONS
S 43B & Reg 27A - Registration	
S 43(b) - Duty to appoint a compliance officer	
S 21 Duty to identify clients	
S 22 - Duty to keep records	
S 23 – Period for which records must be kept	
S 24 – Records kept by third party	
S 28 Regs 22B, 22C & 24 - Cash transaction above threshold	
S 29 & Regs 23 & 24 - Suspicious and unusual transactions	
S 42 & Regs 25,26&27 - Internal rules	
TOTAL	

CONTRAVENTIONS GRAND TOTAL

	NO. CONTRAVENTIONS
EAAACT,112 of 1976(A)+EDUCATIONAL REQUIREMENTS(B)+FICA, 38 of 2001(C)	

E. RECOMMENDATIONS

REMARKS:

PLEASE NOTE: All information provided will be treated with the utmost confidentiality. An inspector may not communicate any such matter to any person or authority except: -

- For the Board or the EAAB
- Unless ordered to do so by court of law
- Or insofar as such communication is necessary and desirable properly to carry out and complete the required inspection.

Inspector Signature

Date

Annexure J – Cover letter for questionnaires



Prof. D.S. Lubbe
Centre for Accounting
University of the Free State
Bloemfontein

26 January 2016

TO WHOM IT MAY CONCERN

**Interviews for research project for the obtainment of the degree PhD (Auditing)
Mrs. L. Steenkamp - MAcc, BAcc (Hons), CTA, CA(SA), CISA, CIA, Professional Accountant (SA)**

For many years, sectional titles has been a well-known concept in the South African property industry and in legislation. There are also many citizens in this country who are living in property registered in terms of legislation of sectional titles. In a country where sufficient housing for all citizens still remains a dream, sectional title property will play an ever greater role to assist in satisfying the huge need for housing.

Notwithstanding the fact that sectional titles is a well-known concept, there are still many problems associated with the practice, and relatively little or no academic research has been undertaken on the subject. Managing sectional title complexes, especially, often produces problems because sectional title owners are apathetic towards the management of the complex. Furthermore, the trustees of such complexes are often not well informed about the relevant legislation or the risks attached to sectional title property. This can lead to a situation where a substantial number of complexes are not able to find persons who are prepared to make themselves available to be elected as trustees. In such cases the "management" of the complex is often left to management agents without any, or very few, inputs from the owners of the properties concerned.

Problems such as those mentioned above often widen out to affect members of the boards of trustees of sectional title complexes, and especially the chairpersons of these boards. It may then happen that misperceptions about the roles and functions of the management bodies of sectional title complexes occur. It also appears that there are certain misunderstandings amongst auditors of sectional title complexes and other professional persons who perform "assurance activities" for complexes.

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During 2013 the candidate was awarded the degree Magister in Accounting *cum laude* for her dissertation titled *Sectional title property in South Africa: an accounting and auditing perspective*. The results of the empirical study and data analysis revealed a great number of contradictory and confusing legal aspects, as well as uncertainties in the sectional title industry. Various opportunities for further research were identified in the dissertation, which will form the basis of this study. In recent years South Africa has also seen the development of so-called "third generation" sectional title legislation, for which the industry is eagerly awaiting an implementation date.

Against this background, an expanded academic research project has been undertaken (in the form of a thesis for the obtaining of the degree Philosophiae Doctor in Auditing) in order to collect information by means of interviews and incorporating the use of properly structured questionnaires. The interviews will be held with the following four groups of stakeholders:

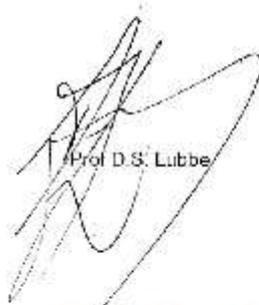
- Chairpersons of the boards of trustees of sectional title complexes
- Managing agents of sectional title complexes
- Auditors of sectional title complexes
- EAAB appointed auditors of estate agents

The four groups of respondents involved have been chosen from persons residing in Bloemfontein, Kimberley and Klerksdorp. It would be appreciated if you could make available about 45 minutes of your valuable time for an interview, in order to answer the questions posed. Because the respondents represent only a sample of a greater population, your responses are important for the collection of data that is representative of the people that you represent. Any information and answers that you provide will be treated as strictly confidential and there will be no reference made in the study to the respondents in the research project (either to you as individual or to the organisation that you operate/where you work).

The answers that you provide will be processed together with the answers of other respondents in order to determine tendencies, problems, solutions, perceptions, etc. By these means the study will provide a valuable contribution towards the finding of solution to the problems as mentioned. Such solutions could be of great value to trustees of sectional title complexes, residents of sectional title complexes, the auditing profession, other professions who undertake assurance work for sectional title complexes, management bodies of sectional title complexes, property agents and the legal profession.

Thank you very much for being prepared to sacrifice your valuable time to provide answers to these questions – it is highly appreciated.

Yours sincerely



Prof D.S. Lubbe

BProc, MCompt, MCom, DCom, CA(SA)
(Study leader)

Please feel free to contact me should you need any additional information.

Annexure K – Dekbrief vir vraelyste



Prof. D.S. Lubbe
Sentrum vir Rekeningkunde
Universiteit van die Vrystaat
Bloemfontein

26 Januarie 2016

Heil die leser

**Onderhoude vir 'n navorsingsprojek ter verwerwing van die graad PhD (Ouditkunde)
Mev L Steenkamp - MRek, BRek (Hons), STR, CA(SA), CISA, CIA, Professionele Rekenmeester (SA)**

Deeltitels is reeds vir etlike jare 'n bekende konsep in die Suid-Afrikaanse eiendomsindustrie en wetgewing. Daar is ook talle inwoners van die land wat in eiendom woon wat ingevolge wetgewing op deeltitel geregistreer is. In 'n land waar voldoende behuising vir die inwoners steeds 'n droom bly, gaan deeltiteleiendom in die toekoms 'n steeds groter rol speel om die groot behoeftes aan huisvesting te help bevredig.

Nieteenstaande die feit dat deeltitels 'n bekende konsep is, is daar steeds baie probleme in die praktyk en is daar relatief min, indien enige, akademiese navorsing daarvoor onderneem. Veral die bestuur van deeltitelkomplekse lewer dikwels probleme op deurdat deeltiteleienaars apaties staan teenoor die bestuur van die kompleks. Verder is trustees van sulke komplekse dikwels nie op die hoogte van die betrokke wetgewing en die risiko's verbonde aan deeltiteleiendom nie. Voorafgaande lei selfs daartoe dat 'n wesentlike aantal komplekse soms nie daarin slaag om persone te kry wat bereid is om hulself as trustees verkiesbaar te stel nie. In sulke gevalle word die "bestuur" van komplekse dan dikwels aan bestuursagente oorgelaat sonder enige, of baie min insette vanaf die eienaars van die betrokke eiendom.

Probleme soos hierbo genoem kring dan ook dikwels uit na lede van die trustees van deeltitelkomplekse, en veral die voorsitters van rade van trustees. Daar kom ook gevalle voor waar daar wanpersepsies by inwoners en selfs eienaars van deeltiteleiendom bestaan rakende die rol en funksies van bestuursagente van deeltitelkomplekse. Dit blyk ook dat daar sekere misverstande by ouditeure van deeltitelkomplekse en ander professionele persone mag voorkom wat ander "gerusstellingsaktiwiteite" vir komplekse uitvoer.

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Gedurende 2013 het die kandidaat die graad Magister in Rekeningkunde *cum laude* verwerf vir haar verhandeling getiteld *Sectional title property in South Africa: an accounting and auditing perspective*. Die bevindinge van die empiriese studie en data-ontleding het 'n groot hoeveelheid weersprekende en verwarrende regsaspekte onthul, asook 'n groot aantal onsekerhede in die deeltitelindustrie uitgewys. Verskeie geleenthede vir verdere navorsing is geïdentifiseer in die verhandeling, wat die basis van hierdie studie sal vorm. Gedurende die laaste paar jaar het Suid-Afrika ook die ontwikkeling van sogenaamde "derdegelag" deeltitelwetgewing gesien, waarop die industrie in spanning wag vir 'n datum van inwerkingtreding.

Teen bogenoemde agtergrond is daar 'n akademiese navorsingsprojek ('n verhandeling ter verwerwing van die graad Philosophiae Doctor in Ouditkunde) onderneem om inligting deur middel van behoorlik gestruktureerde vraelyste tydens onderhoude in te win. Die onderhoude word onder die volgende drie groepe belanghebbendes uitgevoer:

- Voorsitters van die trustees van deeltitelkomplekse
- Bestuursagente van deeltitelkomplekse
- Ouditeure van deeltitelkomplekse
- Ouditeure van eiendomsagente soos aangestel deur die EAAB

Die vier groepe respondente hierbo is gekies uit persone woonagtig in Bloemfontein, Kimberley en Klerksdorp. Ons sal dit waardeur indien u bereid sou wees om ongeveer 45 minute van u kosbare tyd af te staan om antwoorde op die vrae gestel tydens die onderhoud te verskaf. Aangesien die respondente slegs 'n steekproef uit 'n groter populasie is, is u antwoorde belangrik om data te bekom wat verteenwoordigend is van die populasie van persone wat u verteenwoordig. Antwoorde deur u verskaf en inligting bekom sal as uiters vertroulik hanteer word en daar sal op geen wyse in die studie na respondente wat aan die navorsingsprojek deelgeneem het (u as individu of die onderneming wat u bedryf/waar u werksaam is), verwys word nie.

Die antwoorde wat u verskaf, sal saam met die antwoorde van die ander respondente verwerk word ten einde neigings, tendense, probleme, oplossings, persepsies, ens. te bepaal. Hierdeur sal die studie 'n uiters waardevolle bydrae lewer om oplossings te probeer vind vir genoemde probleme. Sulke oplossings kan van groot waarde wees vir trustees van deeltitelkomplekse, inwoners van deeltitelkomplekse, die ouditeurs-professie, ander

professies wat gerusstingswerk vir deeltitelkomplekse onderneem, bestuursliggame van deeltitelkomplekse, eiendomsagente en die regsprofessie.

Weer eens dankie dat u bereid is om u kosbare tyd af te staan om antwoorde op hierdie vrae te verskaf. Ons waardeer die opoffering opreg.

Die uwe



Prof D.S. Lubbe

BProc, MCompt, MCom, DCom, CA(SA)
(Studeleier)

Kontak my gerus indien u enige verdere inligting benodig.

Seven Watchmen

1918

Seven Watchmen sitting in a tower,
Watching what had come upon mankind,
Showed the Man the Glory and the Power,
And bade him shape the Kingdom to his mind.
"All things on Earth your will shall win you."
('Twas so their council ran)
" But the Kingdom--the Kingdom is within you,"
Said the Man's own mind to the Man.
For time--and some time--
As it was in the bitter years before
So it shall be in the over-sweetened hour--
That a man's mind is wont to tell him more
Than Seven Watchmen sitting in a tower

-- Rudyard Kipling