



COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT007FEB2017

In the *ex parte* application of:

WELKOM YIZANI INVESTMENTS (RF) LIMITED

Applicant

(Registration Number: 2006/021434/06)

in respect of an application for an exemption from the requirement to appoint a social and ethics committee

Presiding Member : Khashane La M. Manamela (Mr.)

Date of Decision : 31 March 2017

DECISION (Reasons and an Order)

Khashane La M. Manamela

[1] The applicant was previously granted an exemption from the requirement to appoint a social and ethics committee for a period of five years.¹ The exemption has since expired, hence this application.

[2] The application is based on section 72(5)(b) of the Companies Act 71 of 2008 (the Companies Act).² This is the provision allowing an exemption to be granted on the basis that it is not necessarily in the public interest for a company to appoint a social and ethics committee bearing in mind the nature and extent of the activities within the applicant company.

[3] It is submitted that the applicant is a dormant company with no employees and third party liability.³ It is an investment holding company with shares in Media24 Holdings Proprietary Limited, but does not trade in shares nor conduct any trading activity. It is explained that the applicant's public interest score exceeded the 500 threshold, due the applicant having more than 500 holders of beneficial interest in its securities since the end of the 2016 financial year. The applicant's memorandum of incorporation is included as part of the papers.

¹ The previous exemption was granted under case number CTR 002/06/2012. See par 14 of the supporting affidavit.

² Section 72(5) of the Companies Act reads: "(5) A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that -

(a) the company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee in terms of this section and the regulations; or

(b) it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company."

³ See regulation 26(2) below, which deals with the calculation of a public interest score.

[4] Due to the level of its public interest score as aforementioned, the applicant is accordingly required in terms of section 72(4)⁴ of the Companies Act and regulation 43(1)⁵ of the Companies Regulations, 2011⁶ (the Companies Regulations) to appoint a social and ethics committee. The public interest score is calculated in terms of regulation 26(2)⁷ of the Companies Regulations.

[5] When determining whether or not to grant an exemption, this Tribunal ought to consider, among others, applicable legislative provisions, particularly those dealing with the role played or functions performed by an SEC in companies. The areas of function of an SEC are stated in regulation 43(5) as follows:

“(5) A social and ethics committee has the following functions:

(a) To monitor the company’s activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to -

⁴ **Section 72(4)** reads as follows: “The Minister, by regulation, may prescribe -

(a) a category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to -

(i) annual turnover;

(ii) workforce size; or

(iii) the nature and extent of the activities of such companies;

(b) the functions to be performed by social and ethics committees required by this subsection; and

(c) rules governing the composition and conduct of social and ethics committees.”

⁵ **Regulation 43(1)** reads as follows in the material part: “This regulation applies to—

(a) every state owned company;

(b) every listed public company;

(c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).”

⁶ The Companies Regulations were determined by the Minister of Trade and Industry in terms of section 223 of the Act 71 of 2008 and published under GN R351 in Government Gazette 34239 of 26 April 2011.

⁷ **Regulation 26(2)** reads as follows in the material part: “For the purposes of regulations 27 to 30, 43... every company must calculate its ‘public interest score’ at the end of each financial year, calculated as the sum of the following:—

(a) a number of points equal to the average number of employees of the company during the financial year;

(b) one point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;

(c) one point for every R 1 million (or portion thereof) in turnover during the financial year; and

(d) one point for every individual who, at the end of the financial year, is known by the company—

(i) in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company’s issued securities...”

- (i) social and economic development, including the company's standing in terms of the goals and purposes of—
 - (aa) the 10 principles set out in the United Nations Global Compact Principles; and
 - (bb) the OECD recommendations regarding corruption;
 - (cc) the Employment Equity Act; and
 - (dd) the Broad-Based Black Economic Empowerment Act;
- (ii) good corporate citizenship, including the company's—
 - (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - (cc) record of sponsorship, donations and charitable giving;
- (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
- (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
- (v) labour and employment, including—
 - (aa) the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (bb) the company's employment relationships, and its contribution toward the educational development of its employees;
- (b) to draw matters within its mandate to the attention of the Board as occasion requires; and
- (c) to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.”

[6] The above provisions, as I understand them, confirm the role of an SEC in monitoring the activities within companies against the applicable law and prevailing

codes of best practice;⁸ drawing matters thereon to the attention of the board of directors⁹ and reporting to the shareholders at annual general meetings.¹⁰ The aforesaid provide, in my view, a framework within which this Tribunal may determine the nature and extent of the activities within an applicant for an exemption.

[7] I have reviewed the application against the statutory regime stated above. I agree that applicant exceeded the threshold for public interest score solely due to the number of holders of beneficial interest in its securities. It is actually a special purpose vehicle with restrictions in its Memorandum of Incorporation. Therefore, I am satisfied that it is not reasonably necessary in the public interest to require the applicant to have an SEC.

[8] In the result:

- a) the applicant is exempted from the requirement to appoint a social and ethics committee for a period of 5 (five) years from date of this order.

Khashane La M. Manamela (Mr.)

Member, Companies Tribunal

31 March 2017

⁸ See regulation 43(5)(a).

⁹ See regulation 43(5)(b).

¹⁰ See regulation 43(5)(c).