



**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO: CT013JUL2017

In the *ex parte* application

AdBEE (RF) LIMITED

(Registration number: 2015/054070/06)

Applicant

in respect of:

**AN APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO
APPOINT SOCIAL AND ETHICS COMMITTEE.**

Decision handed down on 29 AUGUST 2017

DECISION

INTRODUCTION

[1] The Applicant applies to the Companies Tribunal ("the Tribunal") for an

exemption from the requirement to appoint a social and ethics committee in terms of section 72 (5) (b) of the Companies Act No. 71 of 2008 ("the Act").

BACKGROUND

[2] The Applicant is AdBEE (RF) Limited, a public company with limited liability duly incorporated in terms of the Act, as amended.

[3] The Applicant seeks the following relief:

“Exemption from establishing a social and ethics committee under s72(5)(b) of the Companies Act”

[4] Further, the Applicant in terms of Regulation 147 of the Companies Regulations 2011 seeks condonation for the late filing of its application for exemption from appointing a social and ethics committee.

APPLICABLE LAW

[5] Before I deal with the relief sought, I wish to highlight what I believe to be the relevant applicable Section and Regulation of the Act.

Section 72 (5) (a) of the Act: Board Committees

[6] Section 72 (5) (a) reads as follows:

“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.

[Note my underling and emphasis]

Regulation 43 of the Act: Board Committees

[7] Regulation 43 reads as follows:

“ (1) This regulation applies to

(a) every state-owned company;

(b) every listed public company; and

- (c) *any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).*
- (2) *A company to which this regulation applies must appoint a social and ethics committee unless -*
 - (a) *it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or*
 - (b) *it has been exempted by the Tribunal in accordance with section 72 (5) and (6).*
- (3) *A board of a company that is required to have a social and ethics committee, and that -*
 - (a) *exists on the effective date, must appoint the first members of the committee within 12 months after—*
 - (i) *the effective date; or*
 - (ii) *the determination by the Tribunal of the company's application, if any, if the Tribunal has not granted the company an exemption;*
 - (b) *is incorporated on or after the effective date, must constitute a social and ethics committee and appoint its first members within one year after*
 - (i) *its date of incorporation, in the case of a state-owned company;*

- (ii) the date it first became a listed public company, in such a case;*
 - or*
 - (iii) the date it first met the criteria set out in sub-regulation (1) (c), in any other case.*
- (4) A company's social and ethics committee must comprise not less than three directors or prescribed officers of the company, at least one of whom must be a director who is not involved in the day-to-day management of the company's business, and must not have been so involved within the previous three financial years.*
- (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—*
 - (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.”*

EVALUATION

- [8] The Applicant is a special purpose vehicle and ring fenced public company established for the specific purpose of issuing its securities to the securities holders who were initially scheme participants under a scheme of arrangement proposed by Adcock Ingram Holdings Limited and has only 1 (one) ordinary shareholder Friedshelf 1653 Proprietary Limited and 1 (one) preference shareholder Ad-izinyosi (RF) Proprietary Limited.
- [9] The Applicant is listed on the main board of the JSE Limited in the special securities – other securities sector as an asset-backed security.
- [10] The Applicant submits that it is required to appoint a social and ethics committee as it is public company. However the Applicant does not give the detailed breakdown of the actual PI score in terms of Regulation 26 (2).
- [11] Further, the Applicant submits that it does not fall within the exemption contemplated in Regulation 43 (2) (a) of the Companies Regulations as it is not a subsidiary of another company which has a social and ethics committee which will perform the functions of a social and ethics committee.
- [12] The application is based on section 75 (5) (b) of the Act, that it is not reasonably necessary in the public interest for the Applicant to have a social and ethics committee.
- [13] In terms of section 75 (5) (b) of the Act an exemption will be granted by this Tribunal if it is satisfied that “... *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.”

- [14] The main question to be asked, in dealing with what the Tribunal is required to decide on, is whether the reasons submitted by the Applicant, justify an order in terms of Section 72 (5) (b) of the Act.

FINDING

- [15] The relief sought by the Applicant is for an order for exemption to appoint a social and ethics committee.
- [16] The Applicant submits that it has no employees, and it has been established for the specific purpose of issuing the AdBEE securities to the securities holders who were initially scheme participants under a scheme of arrangement proposed by Adcock Ingram Holdings Limited.
- [17] Regulation 43 (2) (b) provides that a company to which this regulation applies must appoint a social and ethics committee unless it has been exempted by the Tribunal in accordance with section 72 (5) and (6).
- [18] After considering all the facts, I conclude that the applicant has made a case in terms of Sec 72 (5) (b) that it is not reasonably necessary in the public interest to require the applicant to appoint a social and ethics committee having regard to the nature and extent of the activities of the company.

CONDONATION APPLICATION

[19] Application for the condonation is granted.

ORDER

In the result the following order is made:

- 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.

MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 29 AUGUST 2017