

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT010JAN2016

In the Ex Parte Application of

AMBER HOUSE FUND 2 (RF) LIMITED

Applicant

(Registration number 2012/065316/06)

in respect of

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

Presiding Member of the Tribunal; Lucia Glass

DECISION (Reasons and Order)

INTRODUCTION

1. The Applicant applies for an exemption, from the requirement to appoint a Social and Ethics Committee, as imposed by Section 72(5) of the Companies Act 71 of 2008 (further herein referred to as 'the Act').

2. This application is made, on the basis that SA Home loans (Registration Number 2006/035436/07) (further referred to as SA Home loans), is wholly owned, subsidiary of SAHL Investment Holdings (Pty) Ltd (Registration number 1998/004570/07) (further herein referred to as 'SAHL'), which has taken a decision to form a Social and Ethics Committee to perform the required functions of a Social and Ethics Committee, for all managed entities of SA Home loans (the Applicant being one of the managed entities).

3. Further that this Application is brought with regard to the nature and activities of the Applicant, given that a Social and Ethics Committee was formed by SAHL. It is submitted that it is not reasonably necessary in the public interest to have a separate Social and Ethics Committee for the Applicant.

4. The requirement to appoint a Social and Ethics Committee, is imposed by Section 72(4) of the Act.

PRELIMINARY ISSUES AND FACTS

5. The Deponent to the Applicant's founding affidavit is Ursula Schei, who alleges that she is the Group Legal and Compliance Manager at SA Home Loans (Pty) Ltd (Registration number 2006/035436/07), and alleges that she is fully authorized to depose to her affidavit. Furthermore, she alleges that SA Home Loans (Pty) Ltd is a wholly owned subsidiary of SAHL. She further alleges that the Applicant forms part of the SA Home Loans Group.

6. A resolution of the Board of Directors of the Applicant, is annexed to the papers, wherein a resolution was passed on 14th July 2014, appointing the deponent, in her capacity as the Group Legal and Compliance Officer of SA Home Loans Group, authorising her to generally do all things and sign all documents reasonable or necessary to give effect to the resolution passed by SAHL, that SAHL is to form a Social and Ethics Committee, which will perform the required functions for all managed entities. In a letter dated 21st January 2014, to the Companies Tribunal, KL Penwarden in his capacity as the Chief Executive Officer and Executive Director of SA Home Loans (Pty) Ltd, and SAHL, confirms that SAHL has established a Social and Ethics Committee in accordance with the Act, which has assumed responsibility for its businesses and that of its wholly owned subsidiaries and managed entities.

7. It is averred that the Applicant by virtue of its public interest score and or its listed public company status, is required in terms of Section 72(4) and Regulation 43(1), to form a Social and Ethics Committee.

8. Furthermore it is averred that this application to the companies Tribunal has regard to the nature and activities of the Applicant, given that a Social and Ethics Committee will be formed for SAHL and its subsidiary companies, including SA Home loans, to monitor the activities prescribed.

9. It is submitted that it is not reasonably necessary in the public interest to have a separate Social and Ethics Committee for the Applicant, and thus applies for an exemption from

forming a Social and Ethics Committee on behalf of the Applicant in terms of Section 72 (5) and Regulation 43 (2) (b) of the Act.

THE APPLICABLE LAW

10. The applicable Sections of the Act, and the applicable Regulations are as follows;

Section 72 (5) reads as follows:

- 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 for 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."

Regulation 43 (2) reads as follows:

"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)."

APPLICATION OF THE LAW TO THE FACTS

11. The Tribunal is to decide, whether in terms Section 72 (5), (a) the applicant 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. The Applicant does not provide any evidence to the effect that 'in terms of other legislation', it has some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee. The Tribunal can't make a decision on this score due to lack of information and evidence, on the 'other legislation' under which it may have a formal mechanism in place.

12. The Tribunal is to decide, whether in terms of Section 72 (5)(b) it is not reasonably necessary for 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. The applicant has not provided sufficient information regarding its nature and extent and thus the Tribunal can't make a decision on this score either.

FINDINGS

13. After considering all the facts, in relation to the Act and Regulations, I conclude that in order for the Applicant to be exempted, it is imperative that, more information is required for the Tribunal to make a finding in terms Section 72 (5) (a) or (b).

14. In terms of Regulation 43 (2) where a company is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company, is to perform the functions required by this regulation on behalf of that subsidiary company, then, in my view, in that case the subsidiary is automatically exempted.

15. In this case, it is alleged that the Applicant 'forms part' of the SA Home loans (Pty) Ltd, which is a subsidiary of SAHL. It is not clear how the Applicant 'forms part of' SA Home loans (Pty) Ltd, save to say that the Applicant alleges that it is a 'managed and consolidated entity' of the SAHL group. It is my view that if the applicant is a subsidiary of SAHL then it is automatically exempt.

Order

I accordingly make the following order;

The Applicant is not granted exemption from appointing a Social and Ethics Committee in terms Section 72 (5) (a) or (b).

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 18.2.16