

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO: CT003APRI2015

In the *ex parte* application of:

MEDICLINIC INTERNATIONAL LIMITED

Applicant

(Registration number: 1983/010725/06)

in respect of:

**AN APPLICATION IN TERMS OF REGULATION 7 (3) (a) OF THE COMPANIES
ACT FOR SUBSTITUTED SERVICE TO DELIVER NOTICES TO
SHAREHOLDERS BY ORDINARY POST.**

Decision handed down on 19 June 2015

DECISION

INTRODUCTION

[1] The Applicant applies to the Companies Tribunal ("the Tribunal") for substituted service in terms of Regulation 7 (3) (a) of the Companies Act No. 71 of 2008 ("the Act").

BACKGROUND

[2] The Applicant is the Mediclinic International Limited a public company with limited liability duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at Mediclinic Offices, Strand Road, Stellenbosch.

[3] The applicant seeks the following relief:

“An order in terms of Regulation 7 (3) (a) for substituted service.”

APPLICABLE LAW

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

Regulation 7 (3) (a) of the Act: DELIVERY OF DOCUMENTS

[5] Regulation 7 (3) (a) reads as follows:

“ (3) If, in a particular matter, it proves impossible to deliver a document in a manner provided for in the Act or these Regulations –

(a) If any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High Court for an order of substituted service;”

[Underlining added for emphasis]

EVALUATION

[6] The Deponent to the Applicant's affidavit Leanne Heerink-Smith paragraphs 2, 4, 5 and 6 states that:

"2. 'Pick n Pay Stores Limited has an authorised share capital of 800 million shares, of which 488,597,321 shares are issued.

4. As a result of this long-standing policy, the majority of our shareholders, in volume, are made up of past and present employees of Pick n Pay.

5. Many of our past and present employees live in disadvantaged communities. Delivery of notices by registered mail is often impossible.

6. Delivery of notices by ordinary mail will ensure that the notices are personally delivered and received by our shareholders."

[7] The Tribunal is to decide, whether in terms of Regulation 7 (3) (a) the Applicant has reasonably proved impossibility to deliver notices to the Applicant's shareholders by way of registered mail.

[8] 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 Regulation 7 (3) (a).

[9] The reasons given by the Applicant are the following:

1. "Many of our past and present employees live in disadvantaged communities. Delivery of notices by registered mail is often impossible"
2. "Delivery of notices by ordinary mail will ensure that the notices are personally delivered and received by our shareholders."

FINDING

[10] The relief sought by the Applicant is for an order of substituted service to deliver notices to shareholders by ordinary post.

[11] In support of its application the Applicant submits that delivery of notices by ordinary mail will ensure that notices are personally delivered and received by its shareholder, however failed to prove impossibility of delivery by registered post.

[12] In my view the Applicant has not provided the Tribunal with sufficient prove of impossibility to deliver 'a document in a manner provided for in the Act'.

[12] After considering all the facts, I conclude that the Applicant has not made a sound case in terms of Regulation 7 (3) (a).

[13] Therefore the Application cannot succeed due to insufficient evidence to prove impossibility of delivery of notices by registered post.

ORDER

In the result the following order is made:

- a) The Application is dismissed.

MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 19 June 2015