

COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case Number CT009Feb2016

In the Ex Parte Application of;

SOUTHERN ARROWS (PTY)LTD

Applicant

(Registration number 1970/004523/07)

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 (SEC) in terms of Section 72(5) and 72(6) of the Companies Act 71 of 2008 (the Act).
2. On 30 November 2012 Applicant applied for an exemption of the appointment of a SEC and was exempted for a period of 3 years.
3. In terms of the order granted the exemption would lapse on the 29th November 2015.

PRELIMINARY ISSUES

4. The deponent to the applicant's affidavit is Pieter Rudolf Louw, who avers that he is a director of the applicant and is duly authorised to depose to his affidavit and to launch this application for and on behalf of the applicant, in terms of a resolution of the board of directors, which is annexed to his affidavit.
5. The purpose of this application is to once again apply for an exemption for a period of 5 years.

FACTS

6. In a nutshell the applicant avers that the applicant is a public company listed on the exchange operated by the JSE Limited (JSE). The main asset of the Applicant is an indirect investment in Distell Group Limited, and apart from the aforementioned indirect interest in Distell, the Applicant does not have any other material assets or business operations and is purely an investment holding company.
7. The Applicant has very limited day to day operations and has no employees.
8. The Applicant is managed under contract by Remgro Management Services Limited, which is also responsible for its company secretarial work.
9. the Applicant has limited say in the operations of Distell, which has its own chief executive officer who runs the day to day operations. No Distell operational decisions are made on the Applicant's level.
10. It is submitted that, as contemplated in section 72(5)(b) of the Companies Act it is not reasonably necessary for the public interest to require the applicant to appoint a Social and Ethics Committee, having regards to the nature and extent of the activities of the Applicant.

THE APPLICABLE LAW

11. Exemption from this regulation in accordance with **Section 72 (5) (a) reads as follows:** *"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.**" (emphasis added)*

12. The functions of the Committee are set out in Regulation 43 (5) which reads:

"(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 as follows:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery."

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."

APPLICATION OF THE LAW TO THE FACTS

13. The Tribunal is to decide, whether in terms of Section 72 (5) (b), it is **reasonably necessary** (*emphasis added*) 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. (*emphasis added*)

14. Once the nature and extent of the activities are established, then it is to be established whether it is necessary to appoint a committee in relation to the functions it is to perform in terms of Regulation 43 (5).

15. The Tribunal is to weigh up whether by the applicant's very nature and extent, there is a need of an appointment of a Social and Ethics Committee and in doing so it is to look at the 'nature' of the company. In this instance the deponent avers that the applicant company is a public company listed on the stock exchange operated by the JSE Limited (JSE). The main asset of the Applicant is an indirect investment in Distell Group Limited, and apart from the aforementioned indirect interest in Distell, the Applicant does not have any other material assets or business operations and is purely an investment holding company. The Applicant has very limited day to day operations and has no employees.

16. The question to be asked is whether, by this very **nature of the company**, (*emphasis added*) it is reasonably necessary for the public interest to require the company to appoint a social and ethics committee?

17. It is my view that the nature of the company has been addressed sufficiently and that the applicant has made out a case that it is not reasonably necessary in this instance to appoint a social and ethics committee.

18. After analysing the functions of a Social and Ethics Committee, as stipulated above and after examining the nature and extent of the applicant, as stated above, and the reasons for the exemption as stated above, and the possible reasons for not having to appoint a Social and Ethics Committee, I come to the conclusion that the applicant does not require a social and Ethics committee.

Findings

19. After considering all the facts, I conclude 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.

Order

I accordingly grant the relief sought, the applicant is granted exemption from appointing a Social and Ethics Committee in accordance with the Section 72 (5) (b), of the Act for a period of 5 years.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 18.11.15