

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT011APR2015

Ex Parte Application

AFRICAN BANK INVESTMENT LIMITED

APPLICANT

Presiding Member: K Moodaliyar

Date of Decision: 21 June 2015

DECISION

INTRODUCTION

[1] The Applicant, African Bank Investment Limited, is bringing an application in terms of section 61(7)(b) of the Companies Act 71 of 2008 ("the Act") for an extension of time for convening an annual general meeting.

BACKGROUND

[2] The Applicant is a public company incorporated under the company laws of the Republic of South Africa, (registration no 1946/021193/06).

[3] An affidavit in terms of CTR 142 is deposed to by Mr Nithiananthan Nalliah ("deponent"), a curator of the Applicant, duly authorised to do so in terms of a delegation of authority of the Board of Directors of the Applicant.

[4] It is stated by the Deponent that the financial year for the Applicant is 30 September each year.

ISSUES

- [5] According to section 30 of the Companies Act the Applicant must prepare annual financial statements within six months after the end of the financial year. This should have been prepared by 31 March 2015.
- [6] The Applicant's last annual general meeting was held on 6 February 2014 and was due to hold the next annual general meeting on or before 6 May 2015.
- [7] The Applicant requests that the Companies Tribunal grant relief to extend the time period to provide its annual financial statements and to hold the annual general meeting.

APPLICABLE LAW

- [8] Section 30(1) of the Act states:

“Each year, a company must prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 67(1).”

- [9] Section 61(7) of the Act stipulates:

“A public company must convene an annual general meeting of its shareholders-

- (a) initially, no more than 18 months after the company's date of incorporation; and

(b) thereafter, once every calendar year, but not more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause.”

[10] Section 61(8)(a)(ii) of the Act reads as follows:

“A meeting convened in terms of section (7) must, at a minimum, provide for the following business to be transacted:

(a) Presentation of—

(i).....

(ii) audited financial statements for the immediately preceding financial year,...

EVALUATION

[11] The Applicant was unable to hold the 2015 annual general meeting on or before 6 May 2015 or within 15 months from the date of the previous annual general meeting, due to the delay in preparation of the annual financial statements by certain subsidiaries of the Applicant.

[12] The deponent avers the Applicant is the sole shareholder of, amongst other companies, African Bank Limited (“African Bank”) and Ellerine Holdings (“EHL”). EHL is the sole shareholder of Ellerine Furnishers (Pty) Ltd (“EH”).

[13] The deponent states the Applicant is required to prepare consolidated group financial statements including information from the annual financial statements of the subsidiaries listed above.

[14] The deponent further states that African Bank was placed into curatorship on 10 August 2014 and EF filed for voluntary business rescue on 7 August 2014 and EHL filed for voluntary business rescue

on 22 August 2014. These entities have not as yet finalised their annual financial statements.

[15] The Tribunal understands that the Applicant's annual financial statements and annual general meeting cannot be finalised until the annual financial statements of the subsidiaries of the Applicant have been finalised.

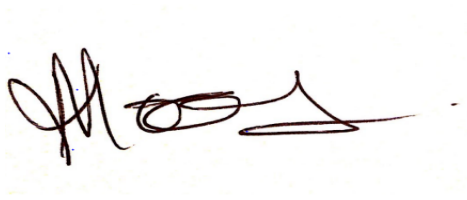
FINDINGS

[16] The Applicant has shown good cause as to why the annual financial statements could not be prepared before the due time and why the annual general meeting could not be held before 6 May 2015.

ORDER

[17] The Applicant is required to prepare the annual financial statements by no later than 31 August 2015.

[18] The Applicant, African Bank Limited is hereby granted an extension of time to prepare its annual financial statements and to hold its 2015 annual general by no later than 31 October 2015.

A handwritten signature in dark ink, appearing to be 'KASTURI MOODALIYAR', is written over a faint, circular official stamp. The signature is fluid and cursive.

KASTURI MOODALIYAR
MEMBER OF THE COMPANIES TRIBUNAL