

**COMPANIES TRIBUNAL**  
**of**  
**THE REPUBLIC OF SOUTH AFRICA**

**Case Number CT002Jan2017**

In the Ex Parte Application

**ADT KUSELA (PTY) LTD**

**Applicant**

(Registration number 2002/013172/07)

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**

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**DECISION (Reasons and Order)**

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**INTRODUCTION**

1. The Applicant applies for an exemption, from the requirement to appoint a Social and Ethics Committee, as imposed by Section 72(5)(a) of the Companies Act 71 of 2008 (further herein referred to as 'the Act').
2. This Application is made, on the basis that the Applicant's holding company has an existing social and ethics committee which will perform the tasks of the social and ethics committee for the Applicant.

**PRELIMINARY ISSUES AND FACTS**

3. The Deponent to the Applicant's founding affidavit is Kubashnie Pillay Identity number [8....], who alleges that she is a director of the Applicant and is authorised to depose to the

founding affidavit, by the authority granted to her, by the adopted board resolution, which is attached to the papers.

4. It is averred that the business operations of the Applicant involves the provision of security services.

5. It is further alleged that in terms of Section 72(4)(a) of the Act, read with Regulation 43 of the Regulations published in terms of the Act (further referred to as the “Regulations”), the Applicant is required to appoint a Social and Ethics committee due to the fact that its public interest score, as calculated in terms of Regulation 26(2) of the Regulations, for 2 (two) of the preceding 5 (five) years is more than 500 (five hundred) points.

6. An Application is also made to this Tribunal in terms of CTR 147, for the condonation of the late filing of this Application. The Application for exemption of a Social and Ethics Committee, is being lodged outside the period as provided for in regulation 43(3)(a) of the Regulations, being 2 (two) years from the effective date of 1 May 2011. It is understood that upon a strict interpretation of regulation 43(3), the Applicant, as an entity existing as at the effective date of the Act coming into operation, is bringing this application outside of the prescribed time period.

7. It is averred that the Applicant has gone through a significant realignment of its business operations and the company secretary appointed by the Applicant, during the period in which it met the criteria to appoint a social and ethics committee, failed to bring such requirement to the attention of the board of directors of the Applicant.

8. In terms of the Application for the exemption to appoint a Social and Ethics committee, it is averred that the Applicant is a subsidiary of ADT Security 2000/029969/07 (further referred to as “ADT Security”) as contemplated in Section 3 of the Act.

9. ADT Security resolved to appoint a Social and Ethics committee in accordance with the Act (“the ADT Security Committee”) and has tasked the ADT Security Committee to perform the functions required by regulation 43 of the Regulations for and on behalf of the Applicant in accordance with the provisions of the Act. A copy of the board resolution is attached to the papers.

10. As a result of the audit review conducted on the Applicant during the 2015 financial year, the Applicant’s auditors brought to the attention of the board of directors of the Applicant the requirement to appoint a Social and Ethics committee due to the Applicant having a public interest score of over 500 (five hundred) points.

11. It is averred that in terms of Regulation 43(2)(a) of the Regulations, the Applicant must appoint a Social and Ethics committee unless 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 regulations 43 on behalf of that subsidiary company.

12. It is alleged that the grounds for the application for exemption by the Applicant to appoint a Social and Ethics committee is based on the fact that the holding company of the Applicant, being ADT Security, has, as evidenced in its board resolution attached to the papers, appointed the ADT Security Committee to perform the social and ethics committee requirements for both the Applicant and ADT Security.

13. The Applicant requests the Tribunal to condone the late filing of the application and to grant the application for exemption in terms of regulation 43(2) of the Regulations, by the Companies Tribunal in such ruling that it would not be necessary for the Applicant to appoint its own social and ethics committee.

## **THE APPLICABLE LAW**

14. 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**

15. The Tribunal is to decide, whether in terms Regulation 43 (2), a company must appoint a Social and Ethics committee in the instance where and when 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.

## **FINDINGS**

16. I condone the late filing of this Application for an exemption of the appointment of a Social and Ethics committee.

17. After considering the law and interpreting 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 will perform the functions required by this regulation on behalf of that subsidiary company then in that case the subsidiary is **automatically exempted**” (emphasis added). The words “automatically exempted” may carry various meanings. It may mean that the Applicant is not required to bring this application to the Tribunal and that it is automatically exempted without having to prove that it is a subsidiary of another company, or that upon applying to the Tribunal, it will be automatically exempted.

18. In this case, it is quite clear to me that the Applicant is a subsidiary of a company which has a Social and Ethics committee in place and thus should be exempted from appointing a Social and Ethics committee.

### **Order**

I accordingly make the following order;

The Applicant is granted exemption from appointing a Social and Ethics Committee.

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LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 23.1.17