



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("THE TRIBUNAL")

CASE NUMBER: CT004APR2017

In the *ex parte* matter of:

LOUGOT PROPERTY INVESTMENTS (PTY) LTD

APPLICANT

Registration Number 1992/003294/07

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

Coram: PJ Veldhuizen

Order delivered 13 APRIL 2017

DECISION

1. THE APPLICANT

The Applicant is **LOUGOT PROPERTY INVESTMENTS (PTY) LTD** ("the Applicant"), duly formed and incorporated in terms of the Company Laws of the Republic of South Africa as a profit company and is in terms of

Section 8(2)(b) of the Companies Act No 71 of 2008 (“the Act”) categorized as a private company.

2. THE APPLICATION

This is an *ex parte* application brought in terms of Section 72(5)(b) of the Act for an exemption from the requirement to appoint a Social and Ethics Committee on the basis that it is not reasonably necessary in the public interest to require the Applicant to have a Social and Ethics Committee, having regard to the nature and extent of the activities of the company.

3. THE REQUIREMENTS OF THE ACT

3.1. Section 72 (4) provides for the Minister to prescribe, by way of Regulation, those companies which shall be required to appoint a Social and Ethics Committee.

3.2. Section 72 (5) provides that, notwithstanding a requirement to appoint a Social and Ethics Committee, a company may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that (a) “...the company is required in terms of some 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;” or (b) “it is not reasonably necessary in 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.”

3.3. Regulation 43 (1) (c) of the Act requires “... any other company that has in any two of the previous five years, scored above 500 points in terms of Regulation 26 (2)”.

3.4. Regulation 43 (2) (a) of the Act requires that 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)."

3.5. Regulation 26 (2) sets out the methodology of a company calculating its "public interest score".

4. THE FACTS

4.1. The Applicant confirms in the supporting affidavit filed by **STEPHEN DAVID GOTTSCHALK** ("the Deponent") that the Applicant is a property investment company that has only one shareholder, a Trust, which was specifically created to hold the Deponent's family's commercial interests.

4.2. The Deponent is the sole director of the Applicant.

4.3. The Applicant held eighteen investment properties as at 29 February 2016.

4.4. The Deponent and his family are the beneficiaries of the Trust and the Deponent is one of the three trustees of the Trust.

4.5. The Deponent testifies that the Applicant's Public Interest Score exceeds 500 points. Accordingly, the Applicant is required in terms of Regulation 43 (1) (c) of the Act to appoint a Social and Ethics Committee.

4.6. The Deponent testifies that the level of the Applicant's debt is the principal reason why its Public Interest Score exceeds 500 points. The Deponent argues that Regulation 26 (2) is essentially outdated and in the result therefore, private property investment companies such as the Applicant, fairly easily exceed the Public Interest Score. The

Deponent argues that this could not have been the intention of the legislation.

4.7. The Deponent testifies further as to the commercial irrationality of having to appoint additional directors to comply with Regulation 43(4) and certain measures he intends to implement to identify "*employees of the company, members of their families and other previously disadvantaged persons who would benefit*" from subsidies that the shareholders (*sic*) are prepared to fund each year.

4.8. The Deponent holds the view that in the light of the limited nature and extent of the Applicant's activities it is not justified that the Applicant ought to be required to appoint a Social and Ethics Committee.

5. ANALYSIS OF THE FACTS

5.1. The Applicant is a company, which on its own version is required to appoint a Social and Ethics Committee.

5.2. In the circumstances, the Tribunal is vested with a discretion as to whether the conditions for exemption in the Act are met.

5.3. The two conditions for exemption¹ stated in the Act are whether the:

5.3.1. company is already required by another law to have an existing structure in place that actually performs the functions prescribed by the Act to the Social and Ethics Committee; or

5.3.2. nature and extent of the company's activities are such that it does not have any significant impact on the public interest.

5.4. The Deponent has not indicated any other existing structure that performs the functions of a Social and Ethics Committee for the Applicant and therefore leaves the Tribunal only to exercise its

¹ The Social and Ethics Committee Handbook – Guidebook for South African Companies P9, compiled by Prof Deon Rossouw, The Ethics Institute of South Africa (2012)

discretion as to whether the Applicant has made out a proper case that it is not reasonably necessary in the public interest to require it to appoint a Social and Ethics Committee.

5.5. I disagree that it is not reasonably necessary in the public interest for the Applicant to appoint a Social and Ethics Committee. The nature and extent of the Applicant's activities are extensive and I disagree with the Deponent that the legislature did not intend to extend the requirement to companies such as the Applicant. On the papers filed by the Applicant, the Tribunal is unable to exercise its discretion in favour of the Applicant and the application for the exemption from the requirement to appoint a Social and Ethics Committee on the basis that it is not reasonably necessary in the public interest to require the Applicant to have a Social and Ethics Committee, having regard to the nature and extent of the activities of the company must be refused.

6. ORDER

In the circumstances I make the following Order:

- 6.1 The application for the exemption from the requirement to appoint the Social and Ethics Committee is refused; and
- 6.2 A copy of this Order must be served on the Applicant and the Commissioner of the Companies and Intellectual Property Commission (CIPC).

PJ VELDHUIZEN
MEMBER OF THE COMPANIES TRIBUNAL
CAPE TOWN