

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

“The Tribunal”

Case Number: CT018May2019

Ex parte application:

Renati Exchange (Pty) Ltd

Applicant

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

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DECISION

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INTRODUCTION

- [1] The Applicant is Renati Exchange (Pty) Ltd, with registration number 2015/144991/07, duly represented herein by its director, John Stephen Ferreira.
- [2] The Applicant seeks an exemption from the requirement to appoint a Social and Ethics Committee (SEC) in terms of sections 72(5) of the Companies Act 71 of 2008 (“The Companies Act”), read with regulation 43(2)(b) of the Regulations to the Companies Act.

THE COMPANIES TRIBUNAL	
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## BACKGROUND

[3] Applicant duly filed form CTR142 and an affidavit with the Tribunal on 28 May 2019. Applicant made the following submissions:

- that the company is a registered wholesaler;
  - that the company's Public Interest Score (PIS) exceeds 500 per annum, as a result of its high turnover;
  - that the reason for the high PIS can be entirely contributed to the nature of the company's business being the selling of bulk fuel, which is a high volume and high price item, resulting in a high turnover;
  - that the company's profit on sales is 0.03% of the turnover amount;
  - that bulk fuel is sold in loads of 40 000L per load, which means that an average of 100 loads are processed per month, which is a low number in the petroleum wholesale industry;
  - that the business of the company is managed and administered in its entirety by a staff component of 4 people, which includes executive management;
  - that the company is a family owned and managed operation, where all social and ethics issues, if any, are resolved inhouse;
- and,

- that the company has not had any social or ethics complaint or issue in the business since its inception, due to small staff component and the strong family component.

### **Applicable Law**

**[4]** This is an application in terms of S.72 of the Companies Act, which provides that:

*(4) The Minister, by regulation, may prescribe-*

*(a) A category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to-*

*(i) Annual turnover;*

*(ii) Workforce size; or*

*(iii) The nature and extent of the activities of such companies;*

*(b) The functions to be performed by the social and ethics committee required by this subsection; and*

*(c) The rules governing the composition and conduct of social and ethics committees.*

**[5]** Subsection 5 provides the opportunity to apply for an exemption from having a social and ethics committee, for

those companies that are required to have a social and ethics committee in terms of subsection (4), as follows:

*A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such exemption if it is satisfied that-*

- (a) the company is required in terms of other legislation to have, and does have , some other 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 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.*

**[6]** Subsection 6 provides for the duration of an exemption granted in terms of the section above, and stipulates that such exemption shall be valid for five years, or such shorter period as the Tribunal may determine at the time of granting the exemption.

- [7] Regulation 43(1) gives effect to section 72(4) of the Companies Act and provides as follows:

*This regulation applies to:*

*(a) every state owned company;*

*(b) every listed company; and*

*(c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).*

Regulation 26 provides for the manner in which public interest score must be calculated.

- [8] A company to which Regulation 43 applies, must appoint a social and ethics committee, unless it has been exempted by the Tribunal, in accordance with Section 72(5) and (6) of the Act.

- [9] Regulation 43 (5) provides for the functions of a social and ethics committee, including; to monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice. These include the monitoring of; social and economic development, good corporate citizenship, the environment, health and public safety including the impact of the

company's activities and of its products or services, consumer relationships and labour and employment.

## **EVALUATION**

- [10] The applicant is a company that is required to appoint a social and ethics committee in terms of Regulation 43(1) and (2), as it has a turnover of over R600 million.
- [11] The applicant provided circumstances under which it operates, that is deems warranty the granting of the exemption.
- [12] The Companies Act provides that the Tribunal may grant an exemption if it is satisfied that 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. The applicant has submitted that it conducts a petroleum business wholesale, however, it has not provided details of who its clients are, and who its stakeholders are, except for the 4 staff members who are also family members. Further, the applicant has not provided how the bulk petroleum loads, which it sells, are transported from the warehouse or storage facility where the petroleum is kept, to its customers. There are also safety, health,

environmental and quality issues that the applicant must adhere to in its petroleum sales operations, which such pertinent issues can have an impact on public safety. These have not been addressed.

**[13]** The applicant has, further, not provided its audited annual financial statements in substantiation of its submissions, in support of the exemption. I reject the submission that it should be a consideration of this Tribunal that the company has, to date, not had any social or ethics complaints, as this is not relevant.

**[14]** The applicant has not adequately disclosed, to the satisfaction of this Tribunal, the nature and extent of its business activities, including the impact of its products and services on the public safety, to establish that it is not reasonably necessary in the public interest to require the company to have a social and ethics committee.

## **FINDINGS**

**[15]** The Tribunal is not satisfied that 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 its activities.

**ORDER:**

The application is dismissed.

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**B. Zulu**  
**Member: Companies Tribunal**  
**05 June 2019**