COMPANIES TRIBUNAL

of

THE REPUBLIC OF SOUTH AFRICA

Case Number CT00542ADJ2020

In the Ex Parte Application

K2011141304 (South Africa) (RF) (Pty) LTD
Applicant

(Registration number **2011/141304/07**)

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, as imposed by Section 72(5) (b) of the Companies Act 71 of 2008 (further herein referred to as 'the Act'), on the basis that, it is neither reasonably necessary nor is it in the public interest for the company to have a Social and Ethics Committee, having regard to the nature and extent of the activities of the Company.

PRELIMINARY ISSUES AND FACTS

2. The Deponent to the Applicant's founding affidavit is Zintle Mjali, alleges that she is duly authorised to depose to the founding affidavit, to this Application and attaches a Director's Resolution in this respect.

3. It is averred that the Applicant is a ring fenced special purpose entity with no employees and no workplace.

4. Furthermore that the Applicant's function is associated with a particular investment activity, comprising of owning shares in an infrastructure investment and receiving dividends and sale proceeds therefrom, as well as any interest and capital payments on shareholder loans it may have provided.

5. The Applicant's sole investment is a 255 DIRECT SHAREHOLDING in Firefly Investment Holdings 253 (RF) Proprietary Limited, the Letsatsi Power Plant, which, is approximately 60 MW solar PV Park in the Free state;

6. It is alleged that the Applicant is also the recipient of a Development Bank of South Africa loan and it services the loan from the income received.

7. It is further alleged that the Applicant is 70% owned by Kuaji Energy Capital Investments Pty Ltd, which is an investment holding vehicle.

8. The Applicant is 30% owned by the Letsatsi Community Trust Company (Pty) Ltd, which in turn is 100% owned by the Letsatsi Solar Park Trust, a non-profit trust which funds social development programmes provided by DGMT PBO and REAP BBO to benefit the local communities living within a 50 km radius of the plant .

9. The applicable Section of the Act is:

Section 72 (5)

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."

APPLICATION OF THE LAW TO THE FACTS

10. The Tribunal is to decide, whether in terms Section 72 (5) *b)* it is 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.

11. I will weigh up the nature and extent of the applicant in respect of the fact that the Applicant was launched as a ring fenced special purpose entity with no employees or workplace.

12. It is alleged that the Applicant is associated with a particular investment activity, comprising of owning shares in an infrastructure investment and receiving dividends and sale proceeds therefrom, as well as any interest and capital payments on shareholder loans it may have provided.

13. The Applicant is also the recipient of a Development Bank of South Africa loan and it services the loan from the income received.

14. After considering the law, interpreting and applying Section 72 (5) (b) of the Act it is my view that 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 as stated above.

15. In this case, it is quite clear to me that the Applicant be exempted from appointing a Social and Ethics committee.

Order

I according make the following order;

The Applicant is granted exemption from appointing a Social and Ethics Committee for 5 years.

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LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 2.10.21