

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT00767ADJ2021

In the Ex Parte Application

PHG PROPERTY HOLDINGS PTY LTD

Applicant

(Registration number 2006/0329651/07)

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, (SEC) 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 Susarah Johanna Boshoff, who alleges that she is a Director of the Applicant and is duly authorised to depose to the founding affidavit to this Application.

4. It is averred that the Applicant owns property, primarily shopping centres (properties).

These properties are not managed or administered by the Applicant but by various other companies and there are no employees and thus there is no impact on a workforce. Further there are two Directors with four shareholders, all juristic persons. There is no impact on the environment.

5. Consequently it is averred, that the nature of the Applicant, supports the notion that a SEC is not necessary.

6. It is averred that the Company had a public interest score, as calculated in terms of Companies Regulation 26(2), of more than 500 in two of the previous five years and is therefore required in terms of Section 72 of the Act, read with Regulation 43(1)(c), to establish a Social and Ethics Committee.

7. 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." (Italics added)

APPLICATION OF THE LAW TO THE FACTS

8. 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.* (Italics added)

9. I will weigh up the nature and extent of the Applicant in respect of the fact that the Applicant owns property, primarily shopping centres (properties). These properties are not managed or administered by the Applicant but by various other companies and there are no employees and thus there is no impact on a workforce. Further there are two Directors with four shareholders, all juristic persons. There is no impact on the environment.

10. 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.

11. In this case, it is quite clear to me that the Applicant 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 for 5 years.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 20.8.21