



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NO: CT01306ADJ2022

Ex Parte Application:-

AMBER HOUSE FUND 7 (RF) LIMITED

Applicant

Presiding Member of the Companies Tribunal: HLALELENI KATHLEEN DLEPU

Date of Decision: 05 April 2023

DECISION AND REASONS

1. INTRODUCTION

- 1.1 The Applicant is **AMBER HOUSE FUND 7 (RF) LIMITED**, with registration number **2019/292339/06**, a South African company incorporated according to the company laws of South Africa with its registered address at **2 Milkwood Crescent, Milkwood Park, La Lucia Ridge, Durban, KwaZulu Natal.**

- 1.2 The Applicant is represented by the Group Company Secretary, Ashley Eaton for the S.A. Home Loans Group of Companies and is also the Company Secretary for the Applicant. The affidavit was deposed to by the Company Secretary duly authorized.

2. THE APPLICANT'S SUBMISSION

- 2.1 The Applicant has requested the Companies Tribunal to exempt it from the requirement to have a Social and Ethics Committee (SEC) in terms of section 72(5) of the Companies Act 71 of 2008 read with regulation 43(2) (b) of the regulations and amendments to the Companies Act.
- 2.2 The Applicant has entered into a servicing and standby servicing agreement with S.A. Home Loans (Pty) Ltd and the Groups Holding Company SAHL, Investment Holdings (Pty) Ltd, among other parties to the agreement (SLA). The Applicant is regarded as a managed entity under the S.A. Home Loans Group.
- 2.3 In terms of the SLA, S.A. Home Loans as the trading company of the S.A. Home Loans Group of Companies, has agreed to be the servicer of the Applicant and its lawful agent of its name and on behalf to manage the business and assets and to exercise its respective rights, powers, and duties under various agreements that the Applicant has obligations to. S.A. Home Loans has agreed to provide amongst others but not limited to:-

- 2.3.1 All administrative and management services to the Applicant, all duties in respect of all defaulting borrowers and arrears, all custodial and data maintenance duties;
 - 2.3.2 Secretarial duties, redraw facility agreement administration duties, start-up loan agreement administration duties in respect of the notes, administration of the priority of payments ; and
 - 2.3.3 Investigations, general cash management functions and generally do all to ensure compliance with the various obligations that the Applicant has agreed to.
- 2.4 The Applicant's financial performance is consolidated as part of the S.A. Home Loans Group of Companies under the Service Level Agreement between the companies and is treated as part of the S.A. Home Loans Group Companies.
- 2.5 The Applicant is a managed entity under the Service Level Agreement as part of the S.A. Home Loans Group and not a subsidiary as envisaged in terms of regulation 43(2) of the Companies Act of 2008.
- 2.6 In terms of clause 8.3.6 of the Applicant's Memorandum of Incorporation, it is not allowed to have employees.
- 2.7 The Applicant has one Shareholder namely, The Thekwini Warehousing Conduct Owner Trust, which is the 100% equity shareholder.
- 2.8 The Applicant does not have any external stakeholders other than

institutional investors and the servicer.

2.9 The basis for the application for exemption is per paragraph 7 of the affidavit of Ashley Eaton signed by him/her on the 10th March 2023 and also included in the affidavit is that;

2.9.1 It is not reasonably necessary in the public interest to require the company to have a Social and Ethics Committee as: -

2.9.2 The Applicant's business is to:

- (a) acquire the rights, title and interest to residential property, loan agreements and the related security with regard to such loan agreements (collectively referred to as the participating assets);
- (b) pursuant to a securitization scheme described in the programme memorandum executed by the Applicant, with funds raised directly or indirectly through the issue of notes and to manage the participating assets so required;
- (c) enter into such agreements, documents, deeds or instruments as may be required to document and conclude any transactions contemplated in (a) and (b) above, together with any agreement, documents, deeds or instruments which may be incidental or related to those transactions;

- (d) exercise and, if necessary, enforce the rights of the Applicant and perform its obligations under each transaction document and participating assets;
- (e) the Applicant also enters into other transactions with investors for the use of funds borrowed or raised directly from the notes and/or debt obligations;
- (f) to acquire or invest in from time to time, the rights, title, and interest in and to any assets (together with security related thereto);
- (g) including the right to sell, assign, to transfer or otherwise dispose of such participating assets;
- (h) to collateralize its debt obligations and / or enter into derivatives contracts as may be desirable or necessary to manage the risks; and
- (i) to hedge exposures of the Applicant or as may be contemplated in the issues programme;

2.10 In terms of the Companies Act 71 of 2008, Section 72(4) to (10), the Minister by regulation, may prescribe a category of companies that must each have a Social and Ethics Committee (SEC).

3. APPLICABLE LAW

- 3.1 Section 72(4) of the Companies Act, No. 71 of 2008 (as amended) (“**Companies Act**”) empowers the responsible Minister to prescribe regulations setting out, amongst other things, a category of companies required to have a social and ethics committee.
- 3.2 Regulation 43(1)(c) to the Companies Act (“**Regulations**”) requires a company to have a appoint a social and ethics committee if it has, in any two of its previous five years, scored above 500 points in terms of Regulation 26(2).
- 3.3 Regulation 26(2) set out the basis for calculating a company’s public interest score. I do not find it necessary to repeat this test here.
- 3.4 Section 72(5) of the Companies Act entitles a company who is obliged to appoint a social and ethics committee, to apply to the Tribunal for an exemption from such requirement. In order for the Tribunal to be satisfied to grant such exemption, either-
- 3.4.1 the company is required by some other legislation to have, and does have, some form of a formal mechanism within its structures that

substantially performs the function that would otherwise be performed by the social and ethics committee; or

3.4.2 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.

4. EVALUATION OF THE FACTS

- 4.1 The Applicant has elaborated in detail in its affidavit signed by the Company Secretary the nature of its business.
- 4.2 The Applicant does not have employees or Executive Directors and that the stakeholders of the Applicant are large institutions which will not be prejudiced by not establishing a Social and Ethics Committee (SEC).
- 4.3 The Applicant has entered into a servicing and standby servicing Agreement with S.A. Home Loans (Pty) Ltd in which all administration and compliance related, monitoring is included by S.A. Home Loans (Pty) Ltd, (the servicer).
- 4.4 The Applicant's Public interest score is above 500 for the financial years 2020 and 2021, which calculations are predominantly comprised of third-party liabilities of the company managed by the (servicer).
- 4.5 The mandated Social and Ethics Committee is provided for by the Social and Ethics Committee of S.A Home Loans as regulated by Regulation 43(5).

4.6 All information used in the Social and Ethics Committee (SEC) pertaining reports to the reports to the business activities of S.A. Home Loans (Pty) Ltd (the Servicer) and not the Applicant:-

4.6.1 All the Applicant's contribution to the social and economic development of the community is that of the S.A. Home Loans Group;

4.6.2 The Applicant's activities and products have no effect, directly or indirectly on the environment, health, or public safety;

4.6.3 The actions of the Applicant in respect of the stakeholders, inclusive of consumers, public relations and consumer protection are dealt with by the S.A. Home Loans (Pty) Ltd (The Servicer);

4.6.4 The Applicant's requirement to comply and oversee the labour relations are irrelevant as the company does not have employees of any Executive Directors.

5. FINDINGS

5.1 The Applicant has submitted all the relevant documents, the nature of its business, in terms of Section 72(5) of the Act, it is clear that it is not necessary in the public interest to require the company to have a Social and Ethics Committee.

5.2 If the company is required to appoint the Social and Ethics Committee, it may apply for a ruling by the Tribunal for an exemption under the provision of section 72(5) of the Companies Act.

5.3 The company has in terms of Regulation 142(3) made an Application to the Tribunal by filing:-

5.3.1 A supporting affidavit duly commissioned setting out the facts on which the Application is based together with the supporting annexures.

5.3.2 The company has made out a case to be exempted from the appointment of Social and Ethics Committee (SEC) in terms of Section 72(5) of the Act.

6. ORDER

6.1 The Application is exempted for a period of five (5) years from appointing a Social and Ethics Committee.

6.2 A copy of this Order must be served on the applicant and the Commissioner of the Companies and Intellectual Property Commission (CIPC)

Signed on the 05th April 2023

HLALELENI KATHLEEN DLEPU
MEMBER OF THE COMPANIES TRIBUNAL