



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01494ADJ2023

Ex parte application:

INGUZA INVESTMENTS (RF) LIMITED

APPLICANT

Presiding Member:

Brian Jennings

Date of handing down of decision:

3 November 2023

DECISION

Introduction

- 1 The applicant is Inguza Investments (RF) Limited (registration number: 2008/003346/06) represented by Burger van der Merwe (authorised by a resolution passed by the directors of the applicant dated 11 April 2023).

- 2 The Applicant applied on 11 April 2023 to the Companies Tribunal ("**Tribunal**") in terms of section 75(2)(b) of the Companies Act No. 71 of 2008, to exempt it from the requirement to have a social and ethics committee. The applicant is a ring-fenced special purpose entity, and it –
- 2.1 acquires the rights and obligations of third parties underwritten loan agreements and/or other securities meeting the eligibility criteria established by the applicant from time to time;
- 2.2 issues commercial paper and other debt instruments to investors in order to fund the acquisition by the applicant of the rights and obligations under the loan agreements and or securities referred to in clause 2.1;
- 2.3 if and to the extent required, enters into swap agreements in order to hedge the payments payable by the applicant on the commercial paper and/or debt instruments issued by the applicant;
- 2.4 if and to the extent required, enters into guarantees in relation to the obligations of the borrowers and/or issuers under the written loan agreements and/or other security acquired by the issuer referred to in clause 2.1 above; and
- 2.5 directly or indirectly grants security for its obligations to investors in respect of the commercial paper and/or debt instruments so issued.
- 3 According to the applicant's Memorandum of Incorporation ("**MOI**"), the applicant is a ring-fenced company and may not undertake any activities other than those contemplated in paragraphs 2.1 to 2.5 above.
- 4 The applicant has no employees and merely acquires the rights of third parties.

- 5 It is made clear in the papers that the applicant is "from an accounting perspective" considered to fall under the FirstRand Group, but despite being treated as if it is part of the foresaid group, it is legally not a subsidiary as contemplated in the Companies Act. The reliance on this by the applicant is misplaced, as the Tribunal has no power to exempt based on a subsidiary relationship as contemplated in Regulation 43(2)(a). It either is, or is not, applicable.
- 6 The Tribunal can only process exemptions as contemplated in Regulation 43(2)(b). This cross-refers back to section 72(5) of the Companies Act as contemplated in paragraph 11 below.
- 7 The applicant has asserted that its public interest score exceeded 500 points for the previous 3 out of 5 years as a result of its turnover and liabilities with institutional investors.

Applicable law

- 8 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.
- 9 Regulation 43(1)(c) to the Companies Act ("**Regulations**") requires a company to have or 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).
- 10 Regulation 26(2) sets out the basis for calculating a company's public interest score. I do not find it necessary to repeat this test here.

- 11 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 –
- 11.1 the company is required by 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
- 11.2 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.

Determination of the applicant's request for exemption

- 12 The applicant's public interest score exceeded 500 points in the previous 3 out of its 5 years.
- 13 The applicant has requested an exemption from the obligation to appoint a social and ethics committee in terms of sections 72(5)(b) and 72(6).
- 14 I am satisfied that the applicant meets the requirements of section 72(5)(b) for the reasons set out below –
- 14.1 the applicant is restricted from employing employees. The lack of employees would also render many key functions of a social and ethics committee, which includes those relating to employment equity, broad-based black economic empowerment, employment relationships, employee training, and working conditions redundant.

14.2 The applicant's business does not involve manufacturing and distributing any goods or services to the public, and it only deals with institutional investors. The applicant is prohibited in terms of its MOI from occupying any premises, and therefore does not have offices, factories or plants. There is therefore no need to monitor the activities of the applicant from an environmental, health and/or safety perspective.

14.3 From the above, it is therefore clear that the nature and extent of the applicant's activities do not have a significant impact on the public interest.

15 I am satisfied that the applicant satisfies the requirements of section of section 72(5)(b).

Order

16 The application for an exemption from the requirement to appoint a social and ethics committee is hereby granted in terms of section 72(5)(b) of the Companies Act, for a period of five years from the date hereof.



BRIAN JENNINGS
MEMBER OF THE COMPANIES TRIBUNAL