



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NUMBER: CT01881ADJ2024

In the *ex parte* application of:

Gowrie Homeowners Association NPC
(Reg No: 2002/027166/08)

APPLICANT

**APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A
SOCIAL AND ETHICS COMMITTEE (SEC)**

Presiding Member: D Terblanche

Date of handing down the Ruling: 17th of July 2024

RULING (DECISION AND REASONS)

THE APPLICANT

1. The Applicant is Gowrie Homeowners Association NPC (Applicant or Gowrie HOA) with Registration Number: 2002/027166/08, and with its registered business address at Gowrie Office, Gowrie Village Estate, Off P147, Nottingham Road, KZN, 3280.

THE APPLICATION

2. The Applicant has applied to the Companies Tribunal (the Tribunal) for an exemption from the requirement to appoint a Social and Ethics Committee (SEC) under sections 72(5)(a) & (b) of the Companies Act, 71 of 2008 (as amended) (the CA).
3. James Graham Balfour (Balfour), representing the Applicant, deposed to the founding affidavit supporting the application.
4. The Board of Directors of the Applicant authorized Balfour, in his capacity as Chairman of the Board, on 28 June 2024, to sign, endorse, and execute all documents on behalf of the Board to seek an exemption from the requirement to establish a SEC at the Tribunal, as stated in the founding affidavit in support of the application.

THE APPLICANT'S SUBMISSIONS

5. The Gowrie HOA is a non-profit company with a board of directors representing its Homeowners who are members of the HOA.
6. Membership to the Gowrie Village Estate (Gowrie Village) HOA is automatic once a person purchases a property within Gowrie Village. Gowrie Village consists of 150 erfs.
7. The Gowrie HOA's function is to serve its members by managing, promoting, and protecting the communal interests, safety, and welfare of the members of the HOA, as owners of the residential erven, units, or properties located within Gowrie Village.
8. The Gowrie HOA pays no dividends and compensates its staff members with market-related remuneration for their services.

9. The Gowrie HOA has 4 employees (one manager, one clerk, and two unskilled), and this is not likely to change.
10. The Gowrie HOA makes no sales to members. It only collects levies and recovers costs.
11. The estimated turnover for the year ended June 2024 is R6,788,000.
12. As of the end of June 2024, the Applicant's public interest score stood at 162 points, made up of the following: -
 - Stakeholders/Membership: 150 points
 - Estimated Turnover Year End June 2024 = R6,788,000: 7 points
 - Staff: 4 points
 - 3rd Party Liabilities = RR325.000: 1 point

APPLICABLE LAW

13. Section 72(4) of the CA empowers the responsible Minister to prescribe regulations setting out, amongst other things, the categories of companies required to have an SEC
14. Regulation 43(1) read with Regulation 43(2) requires every state-owned company; every listed public company; and any other company that has in any two of its previous five years scored above 500 public interest scores (PIS) points, in terms of Regulation 26(2), to appoint a SEC. Regulation 26(2) sets out the basis for calculating a company's PIS.
15. Section 72 of the Companies Act entitles a company who is obliged to appoint a SEC, to
apply to the Tribunal for an exemption from such requirement.

16. For the Tribunal to grant an exemption, either -

16.1. 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 SEC (section 72(5)(a)); or

16.2. it is not reasonably necessary in the public interest to require the company to have a SEC, having regard to the nature and extent of the activities of the company (section 72(5)(b)).

DISCUSSION AND ANALYSIS

17. The requirement for a SEC is not a blanket requirement for all companies, but only kicks in once specific criteria are met as prescribed in the regulations.

18. A company with a PIS above 500 points, calculated in terms of Regulation 26(2), in any two of its previous five years, has to appoint a SEC in terms of Regulation 43(1)(c) of the Regulations promulgated under the Act.

19. Only companies that are required to have a SEC may apply to the Tribunal for an exemption to appoint a SEC.

20. The Act provides that if a company is required to appoint a SEC, it may apply for an order by the Tribunal for an exemption under the provision of section 72(5) of the Companies Act.

21. Based on the evidence, the Applicant is not required by law to appoint a SEC –

21.1. The Applicant's PIS score was only 162 at the end of June 2024.

21.2. There is no evidence before me that the Applicant's PIS exceeded 500 points in any two of the previous five years.

22. Therefore, there is no basis in law for the Tribunal to entertain an application by the Applicant to exempt it from the requirement to appoint a SEC under the Act.

FINDINGS

23. There is no evidence presented to the Tribunal that the Applicant had a PIS of over 500 points in any two (2) years of the previous 5 years, and is therefore required to appoint an SEC.
24. Therefore, there is no legal basis for the Applicant to apply for exemption, and for the Tribunal to entertain such an application.

ORDER

25. The application for an exemption from the requirement to appoint an SEC is hereby dismissed.

Dated at Johannesburg on this 16th day of July 2024.



Diane Terblanche
MEMBER OF THE COMPANIES TRIBUNAL