



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01970ADJ2024

**WAAINEK WIND POWER
PROPRIETARY LIMITED (RF) (PTY) LTD
REGISTRATION NO: 2011/004046/07**

Applicant

Presiding Member: JUDGE DENNIS DAVIS

Date of Decision: 2 October 2024

DECISION (Reasons and an Order)

INTRODUCTION

1. There is an application for an exemption in terms of s 72 (5) of the Companies Act 71 of 2008 (the Act) in terms of which the applicant contends that it is not reasonably necessary in the public interest to require it to have a Social and Ethics Committee having regard to the nature and extent of the activities of the applicant.
2. According to an affidavit deposed to by Ms Janice Paulse, a director of the applicant, over the past two financial years the applicant's public interests score (PI Score) have exceeded 500 points. Accordingly in terms of Regulation 43 (1) (c) of the Companies Regulations, absent an exemption the applicant is required to appoint a Social and Ethics Committee ('SEC').
3. In support of its application for exemption in terms of s 75 (2) (b) of the Act, Ms Paulse states that the applicant is a ringfenced special purposes company and was established

and operates under the Department of Energy Renewable Energy Independent Power Producer Procurement Program with the sole purpose of undertaking the construction and completion of ownership and operation of a 23.28 MW wind energy generation facility located approximately 5 kilometers outside of Grahamstown. The nature and extent of the activities of the applicant is limited to operating the project subject to the terms and conditions set out in a applicable license and in accordance with the relevant legislation concerning the provision of electricity.

4. The applicant does not have any employees and therefore does not score any points in terms of Regulation 26 (2) (a). It is not envisaged that applicant will ever have any employees as these are not required for the operation of the project which is wholly outsourced in accordance with the limitations set out in an implementation agreement concluded on 9 May 2013 with the Department of Energy. To the extent that the PI score of the applicant exceeds 500 this is in the main attributable to the fact of third-party senior debt in terms of the relevant financing agreements.
5. Ms Paulse also states that the applicant had been established with the specific purpose which has been set out above and has not nor will it in the future have the scope to grow its business and increase its exposure to the public outside of that which has been authorized in terms of the license granted to it together with the implementation agreement. Furthermore the applicant is obliged in terms of the license granted to it to fulfill certain specific economic development commitments set out therein including job creation obligations, local content obligations, ownership obligations, management control obligations, preferential procurement obligations and enterprise development obligations, socio economic development obligation and reporting obligation to show compliance with these commitments.

EVALUATION

6. In terms of the specific mandate under which the applicant operates, it is not reasonably necessary in the public interest to require it to have a SEC having regard to the nature and extent of its activities. Accordingly, applicant is granted an exemption from establishing SEC in terms of s 72 (5) (b) and (6) of the Act for a period of five years from the date of the granting of this order.

JUDGE DENNIS DAVIS
MEMBER OF THE COMPANIES TRIBUNAL