



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02400ADJ2025

In the *ex parte* application of:

**IMPUMELELO CP NOTE PROGRAMME 1(RF)LTD
(2013/211998/06)**

APPLICANT

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO

Date of Decision: 17 NOVEMBER 2025

DECISION (Reasons and an Order)

INTRODUCTION

- [1] This is an application brought in terms of section 72(5) of the Companies Act 71 of 2008 ("the Act"), read with Regulation 142 of the Companies Regulations, 2011 ("the Regulations").
- [2] The Applicant seeks an order exempting it from the statutory requirement to appoint a Social and Ethics Committee ("SEC"), as contemplated in section 72(4) of the Act and Regulation 43.
- [3] The application is supported by a Form CTR 142 and a sworn Supporting Affidavit deposed to by Ms Rosalind Mary Friedericksen, a duly authorised director of the Applicant.
- [4] The Respondent, the CIPC Commissioner, did not oppose the application.

BACKGROUND

- [5] The Applicant is a public ring-fenced company, incorporated on 13 November 2013, with registration number 2013/211998/06.
- [6] The Applicant operates as a special purpose vehicle (SPV) established to issue commercial paper and acquire asset-backed notes under a listed debt program on the JSE's Debt and Specialist Securities Market.
- [7] The Applicant conducts no operational or trading activities and has no employees. All administrative, accounting, servicing, and risk-management functions are performed by Absa Bank Limited pursuant to the transaction documents governing the SPV.
- [8] The Applicant's Public Interest Score (PI Score) has exceeded 500 points in the last two financial years, due to its turnover and third-party liabilities associated with the listed note program. As a result, it falls within the category of entities that would ordinarily be required to appoint a SEC.
- [9] The Applicant submits that an exemption should be granted on the basis that, considering the nature and extent of its activities, it is not necessary in the public interest for it to appoint a SEC.

APPLICATION LAW

- [10] Section 72(4) requires certain companies to appoint an SEC, including those with a PI Score above 500.
- [11] Section 72(5)(b) permits the Companies Tribunal to exempt a company from appointing a SEC "if it is not reasonably necessary in the public interest", having regard to the nature and extent of the activities of the company.
- [12] Regulation 43(1) prescribes the categories of companies required to appoint a SEC, including public companies whose PI Score exceeds the regulatory threshold.

ISSUE

- [13] The issue before the Tribunal is whether, given the structure, function and scope of the Applicant's operations, it is reasonably necessary in the public interest that a Social and Ethics Committee be appointed.

ANALYSIS AND FINDINGS

- [14] Sections 72(4)-(10), read with Regulation 43, of the Companies Regulations, establish the statutory framework for the creation and functioning of the SEC.
- [15] The SEC is a governance mechanism designed to advance the principles of corporate sustainability by exercising oversight over a defined set of matters, including social and economic development, good corporate citizenship, environmental stewardship, health and public safety, consumer relations, and labour and employment practices. Its purpose is to embed a culture within a company that is consciously attuned to sustainability imperatives. The need for such a committee arises from the recognition that companies, as influential economic actors, have a profound impact on society and a broad range of stakeholders beyond their shareholders.
- [16] Historically, the corporate paradigm prioritised shareholder value maximisation, relegating the interests of other stakeholders. Corporate decision-making was expected to be aligned exclusively with shareholders' interests, with little regard for employees, consumers, communities, or broader societal considerations.
- [17] The 2008 Companies Act Policy Document states, "a company should have as its objective the conduct of business activities to enhance the economic success of the corporation, take into account, as appropriate, the legitimate interests of other stakeholder constituencies."¹ This expressly provides that a company should conduct business to enhance economic success while appropriately considering the legitimate interests of other stakeholder constituencies. The 2008 Act reaffirms the company's role in achieving economic and social benefits, complementing the constitutional principles of socioeconomic rights and

¹ South Africa Company Law for the 21st Century, Guidelines for Corporate Law Reform May 2004, pp1-54 (hereafter, the Policy Document) at 26.

corporate responsibility.² The policy underpinning the SEC requirement represents a deliberate shift from the traditional shareholder-centric governance model.

- [18] The SEC is therefore a critical instrument in realising this legislative purpose. It functions as a governance structure that complements the constitutional commitment to socioeconomic rights and the broader framework of corporate sustainability. Accordingly, an exemption from the requirement to appoint a SEC can only be granted after careful consideration of the SEC's statutory role and the social impact it is intended to promote.
- [19] To succeed in an application for exemption under section 72(5)(b), an applicant must demonstrate that it has established a formal and effective internal mechanism that substantially fulfils the functions that would otherwise be performed by a SEC in terms of the Act and the Regulations.
- [20] The Applicant has demonstrated that its activities are highly specialised and limited. It has no employees, conducts no operational trading, and engages with no external consumers or other stakeholders. Its governance and compliance functions are performed by Absa Bank Limited as servicer, ensuring proper administration and risk management.
- [21] The Tribunal finds that, given the nature and extent of the Applicant's activities, the functions generally performed by a SEC—monitoring labour practices, environmental impact, consumer protection, and social responsibility—are effectively non-existent within the Applicant's operations. Requiring a SEC would therefore not serve the public-interest purpose intended by the Act.
- [22] The Applicant has established internal governance mechanisms that manage risk, compliance, and corporate oversight, thereby substantially performing the functions that would otherwise be the responsibility of a SEC. This approach aligns with precedent decisions of the Tribunal, including, amongst others, *San*

² One of the purposes of the 2008 Companies Act is to “reaffirm the concept of the company as a means of achieving economic and social benefits.” S 7 (d) of the 2008 Companies Act.

Lameer Master Home Owners Association (CT01717ADJ2024), which recognised that internal governance mechanisms could substitute for a SEC company with limited stakeholder exposure and formal internal structures.

- [23] Considering the statutory objectives of the Act, the public-interest rationale of the SEC requirement, and the operational structure of the Applicant, the Tribunal is satisfied that appointing a SEC is not reasonably necessary in the public interest.

ORDER

- [24] The application for exemption from the requirement to appoint a Social and Ethics Committee is granted.
- [25] In terms of section 72(6) of the Companies Act, the Applicant, Impumelelo CP Note Programme 1 (RF) Limited, is hereby exempted from the requirement to appoint a SEC.
- [26] This exemption is granted for a period of five (5) years from the date of this order, or for such shorter period as may be prescribed by future legislative or regulatory requirements.

MINAH TONG-MONGALO

COMPANIES TRIBUNAL: MEMBER