IN THE COMPANIES TRIBUNAL OF THE REPUBLIC
OF SOUTH AFRICA

Case No: CT02762ADJ2026

In the *ex parte* application of:

NEWGOLD ISSUER (RF) LIMITED **APPLICANT**
(2004/014119/06)

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO Date of Decision: 26 June 2026

DECISION

A. INTRODUCTION

1. This is an ex parte application by NewGold Issuer (RF) Limited (the Applicant) 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), for exemption from the requirement to appoint a social and ethics committee (SEC).

2. The Applicant seeks an exemption for five years, alternatively for such shorter period as the Tribunal may determine. It relies principally on its character as a ring-fenced special-purpose issuer, the fact that it has no employees, and the performance by Absa Bank Limited of its accounting, risk-management and administrative functions.

3. The amended section 72(5)(a) contemplates publication of an intention to apply for

exemption in the prescribed manner. No regulations presently prescribe the manner, form, medium or period of that publication. Consistent with the Tribunal's approach while that regulatory lacuna persists, this application is not refused for want of publication. The application is determined on its substantive merits.

4. The decisive questions are whether the Applicant has established the formal-mechanism ground in section 72(5)(b)(i), or whether it has shown under section 72(5)(b)(ii) that, having regard to its structures, activities and the public interest, it is not reasonably necessary to require it to have an SEC.

5. For the reasons that follow, neither ground is established. The Applicant is a listed public company for purposes of regulation 43(1)(b); the papers identify no formal substitute mechanism that substantially performs the SEC functions; and the evidence does not justify the conclusion that an SEC is unnecessary in the public interest. The application must therefore be refused, without prejudice to a properly supported fresh application.

B. THE APPLICANT AND THE APPLICATION

6. The Applicant is a public company incorporated on 27 May 2004 under registration number 2004/014119/06. That status is admitted in paragraph 4 of the supporting affidavit and confirmed by the CIPC disclosure at pages 11-12 of the application pack. Paragraph 6 of the affidavit states that the Applicant has six directors; the CIPC disclosure identifies those directors and lists several of them as audit committee members.

7. The authority for the application appears in paragraphs 2 and 3 of the supporting affidavit. Although paragraph 2 refers to a board resolution dated 25 March 2026, Annexure A is a board resolution dated 27 March 2026. Resolutions 1 and 2 of Annexure A approve an application under section 72(5) and authorise any director to sign and lodge Form CTR 142 and the supporting affidavit. Annexure A also ratifies prior steps taken to give effect to the resolutions. The date discrepancy should be corrected in any fresh application, but it is not a substantive ground for refusal in this decision. Form CTR 142 is dated 30 April 2026.

8. The Applicant's business is described in paragraphs 7.1-7.4 of the supporting affidavit. Paragraph 7.1 states that it operates as a special-purpose exchange-traded fund that issues listed and unlisted debt instruments and invests the proceeds in gold bullion, platinum and palladium. Paragraph 7.2 states expressly that listed instruments are issued on the JSE. Paragraphs 7.3 and 7.4 record that the Applicant enters into the transaction documents, exercises rights and performs obligations under those documents. The same business is reflected in clauses 1.2.3.1 and 1.2.3.2 of the Memorandum of Incorporation (MOI).

9. Paragraphs 7.1 and 10.1 of the supporting affidavit state that Absa Bank Limited performs accounting, risk-management, administration, and management functions. Paragraph 10.2 says that the Applicant is not operational or trading in the ordinary sense and that a servicer identifies the participating assets. The MOI, however, identifies NewGold Managers Proprietary Limited as "Manco" in clause 1.2.17 and, in clause 26.2, provides that the directors delegate day-to-day management to Manco. The papers do not reconcile those descriptions or explain the governance responsibilities of Absa, Manco, and the servicer.

10. Paragraph 9 of the supporting affidavit asserts that the Applicant is not a listed public company for purposes of regulation 43(1)(b), notwithstanding the admission in paragraph 7.2 that its instruments are listed on the JSE. Paragraph 9 also confines the application to the grounds stated in paragraphs 10 and 11: the nature and extent of the business, the absence of employees, and the asserted public-interest score below 500.

11. Paragraph 8 of the supporting affidavit says that the public-interest score was calculated for the past two financial years, while paragraph 11 states that the score did not exceed 500 in either year. The record contains only Annexure E for the year ended 31 March 2024. At page 71 of the application pack, Annexure E records turnover of R86 325 772, external liabilities of R26 063 429 340, and a final recalculated public-interest score of 26 150. No corresponding calculation for a second financial year is included.

12. The founding affidavit is internally inconsistent in several material respects. Paragraphs 4 and 7 describe the Applicant as a public company, and paragraphs 7.1 and 7.2 state that it operates an exchange-traded fund and issues instruments listed on the JSE, whereas paragraph 9 concludes that it is not a listed public company. Paragraph 8 says

the public-interest score was calculated for two financial years and sets out only three components of regulation 26(2), but the record supplies only a calculation for the year ended 31 March 2024 and Annexure E includes the omitted beneficial-interest component. Paragraph 11 states that the score did not exceed 500, whereas Annexure E records a final recalculated score of 26 150. Paragraph 10.2 describes the Applicant as not operational and as having only debt instruments in issue, whereas paragraphs 7.1-7.4 describe the issue of instruments, investment of proceeds, conclusion of transaction documents, and the exercise of rights and performance of obligations. Paragraph 10.1 attributes control and management to Absa Bank Limited, while MOI clause 26.2 delegates day-to-day management to NewGold Managers Proprietary Limited. These inconsistencies bear directly on regulatory status, the scale and nature of the business, and the governance arrangements relied upon for exemption; they are not peripheral matters.

C. ISSUES

13. The issues for determination are:
    13.1 whether the Applicant has established that it falls within a category of companies required to appoint a SEC;
    13.2 if the statutory trigger has been established, whether the Applicant has made out a case for exemption under section 72(5)(b)(i) or section 72(5)(b)(ii); and
    13.3 the appropriate order.

D. STATUTORY FRAMEWORK AND APPROACH

14. Section 72(4) authorises the Minister to prescribe categories of companies that must appoint an SEC. Regulation 43(1) applies to every state-owned company, every listed public company, and any other company that scored above 500 public-interest points in any two of the preceding five years.

15. The Act defines a listed company by reference to a public company whose securities have been admitted to listing on an exchange. The statutory concept of securities includes shares and debentures. It is therefore not confined to listed equity.

16. Section 72(5)(b) permits the Tribunal to grant an exemption if it is satisfied either that a formal mechanism within the company's structures substantially performs the SEC functions, or that it is not reasonably necessary in the public interest, having regard to

the nature and extent of the company's structures and activities, to require it to have an SEC. Under section 72(6), an exemption may endure for five years or a shorter period determined by the Tribunal.

17. Section 72(5) must be interpreted textually, contextually and purposively. In Natal Joint Municipal Pension Fund v Endumeni Municipality[1], the Supreme Court of Appeal treated language, context and purpose as the point of departure. Cool Ideas 1186 CC v Hubbard and Another[2] confirms that statutory provisions must be interpreted purposively and properly contextualised.

18. The words "may" and "satisfied" confirm that exemption is not automatic once an application is filed. The Tribunal exercises a statutory discretion. That discretion must remain within the power conferred, must be exercised for the purpose for which it was conferred, and must satisfy legality and rationality. Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex parte President of the Republic of South Africa and Others[3] and Affordable Medicines Trust and Others v Minister of Health and Another[4] support that principle.

19. Where legislation requires a decision-maker to be satisfied of a statutory criterion, the requisite state of satisfaction must rest on reasonable grounds disclosed by the evidence. A bare conclusion or characterisation by the Applicant is insufficient. The present test therefore cannot be met by labels or conclusions unsupported by facts.[5]

20. The Applicant must make out its case in its founding papers. Affidavits in motion proceedings serve as both pleadings and evidence. The Tribunal cannot construct an

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[1] 2012 (4) SA 593 (SCA) para 18. The court said at para 18 C-D that "The 'inevitable point of departure is the language of the provision itself', [16] read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

[2] 2014 (4) SA 474 (CC) para 28 the court said:
"There are three important interrelated riders to this general principle, namely:
(a) that statutory provisions should always be *interpreted purposively*;
(b) the relevant statutory provision must be properly *contextualised*; and
(c)all statutes must be construed consistently with the Constitution, A that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)."

[3] (2) SA 674 (CC) paras 85 and 90. At para 85 the court said that "Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement." In para 90 it said that "[r] ationality in this sense is a minimum threshold requirement applicable to the exercise of all public power by members of the executive and other functionaries. Action that fails to pass this threshold is inconsistent with the requirements of our Constitution, and therefore unlawful."

[4] 2006 (3) SA 247 (CC) para 49.

[5] 2008 (6) SA 129 (CC) paras 60-61.

exemption case that the Applicant did not place before it.[6]

21. The Tribunal's power is also controlled by legality. It cannot enlarge its jurisdiction or grant relief merely because a case appears administratively convenient.[7] The Applicant must first establish that it falls within a category required by section 72(4), read with regulation 43, to appoint an SEC. That requirement is the statutory gateway to the exemption power.[8]

22. The Tribunal is a creature of statute and has no inherent power to dilute, supplement or recast the statutory test.[9]

23. The reasonableness inquiry under section 72(5)(b)(ii) remains anchored in the statutory words. *Bato Star* is used here only as general public-law guidance that reasonableness is context-sensitive and depends on the nature of the decision, the relevant factors, the reasons advanced and the impact of the decision.[10]

24. For completeness, regulation 43(1) identifies the categories of companies to which the SEC requirement applies: every state-owned company, every listed public company, and any other company that has, in any two of the previous five years, scored above 500 points under regulation 26(2).[11]

25. Regulation 26(2) requires every company to calculate its public interest score at the end of each financial year. The score is calculated by adding: the average number of employees during the financial year; one point for every R1 million, or portion thereof, in third-party liability at financial year end; one point for every R1 million, or portion thereof, in turnover during the financial year; and one point for every individual known by the company to hold, directly or indirectly, a beneficial interest in its issued securities.[12]

26. Regulation 43(5) gives content to the SEC's statutory function. It is not a ceremonial

[6] 2009 (2) SA 277 (SCA) para 26.
[7] *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 49; see also *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) paras 56–58.
[8] Companies Act 71 of 2008 s 72(4)– (5); Companies Regulations, 2011 reg 43(1)(c).
[9] [2013] ZACC 50; 2014 (2) SA 480 (CC) para 38.
[10] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) paras 44-48.
[11] Companies Regulations, 2011 reg 43(1)(a)-(c).
[12] Companies Regulations, 2011 reg 26(2)(a)-(d).

governance structure. It monitors the company's standing and activities in relation to social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships, and labour and employment matters; it draws matters within its mandate to the board; and it reports to shareholders.[13]

27. Where a party seeks relief on motion, the case must be made out in the founding papers. That principle is especially important in an ex parte application, where there is no respondent to test the allegations and the Tribunal must itself ensure that the statutory requirements are met.[14]

28. The Tribunal has previously cautioned that a company relying on internal structures or mechanisms must provide facts and evidence identifying those structures and explaining what they actually do. In Ex parte The San Lameer Master Homeowners Association[15], the Tribunal was not prepared simply to rely on a deponent's word where the existence and functions of the alleged committees were not adequately demonstrated. That reasoning is relevant here, but the present matter is even narrower: the Applicant does not expressly rely on section 72(5)(b)(i), and no board committee, parent-company SEC, delegated governance forum, charter or terms of reference is identified. The record therefore contains no evidential basis for finding that a formal mechanism substantially performs the SEC functions.[16]

29. Those Tribunal decisions also show that exemptions are fact-specific. Where exemptions have been granted to private or special-purpose entities, the papers ordinarily established the applicable regulation 43 trigger and described the applicant's activities and stakeholder footprint sufficiently to permit the public-interest assessment.[17]

E. THE PUBLICATION REQUIREMENT

30. Section 72(5)(a), as amended, refers to publication of an intention to lodge an exemption

[13] Companies Regulations, 2011 reg 43(5)(a)-(c).
[14] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323F-324C and 324F-G; *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) para 43; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26; *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E-350C.
[15] *Ex parte The San Lameer Master Homeowners Association* CT01717ADJ2024, Companies Tribunal, 29 April 2024, paras 16-19.
[16] Companies Act 71 of 2008 s 72(5); Companies Regulations, 2011 reg 43(5).
[17] *Ex parte Absa Home Loans (RF) (Pty) Ltd* CT02488/ADJ2025, Companies Tribunal, 31 January 2026, paras 8-11; *Ex parte South African Mortgage Fund 1 (RF) (Pty)* Ltd CT01725ADJ2024, Companies Tribunal, 29 April 2024, paras 2 and 4; *Ex parte JT Ross (Pty) Ltd CT01960ADJ2024*, Companies Tribunal, 14 October 2024, paras 10 and 14-15.

application "in the prescribed manner". The statutory wording therefore contemplates subordinate legislation that specifies how the obligation is to be performed.

31. No prescribed notice content, medium, recipients, publication period or form of proof is presently available for implementation. The Tribunal cannot create those procedural requirements through adjudication, because its powers are confined by the Act and the principle of legality.

32. The Tribunal accordingly makes no adverse finding against the Applicant for not producing proof of publication. This does not disregard section 72(5)(a) or predetermine how it will operate once a prescribed mechanism exists. It means only that non-publication forms no part of the reasons for refusal in this matter.

F. ANALYSIS AND FINDINGS

The Applicant is a listed public company

33. The Applicant is indisputably a public company: paragraph 4 of the supporting affidavit says so, the CIPC disclosure classifies it as a public company, and clause 3 of the MOI does the same. Paragraphs 7.1 and 7.2 of the affidavit state that it issues listed debt instruments and that the listed instruments are issued on the JSE. Clause 1.2.3.1 of the MOI similarly describes the business as establishing and operating exchange-traded funds listed on the JSE or another exchange.
34. Clause 1.2.7 of the MOI defines "Debenture" as a debt instrument issued by the Applicant whose value tracks the price of a hedge commodity. Clause 1.2.9 defines the holders of those instruments as "Debenture Holders"; clauses 1.2.15 and 1.2.16 define the JSE and the Listing Requirements; and clauses 9.1, 9.2 and 9.5 regulate the issue and listing of the Applicant's securities. On the Applicant's own constitutional and evidential record, the listed debt instruments referred to in paragraphs 7.1 and 7.2 of the affidavit are debentures.
35. The statutory definition of "securities" includes debentures. The definition of a listed company does not say "a public company whose shares are listed"; it refers to a public company whose securities are listed. Paragraph 9 of the supporting affidavit therefore draws a distinction between a debt listing and an equity listing that is not supported by the text of the Act.
36. Applying those definitions, regulation 43(1)(b) applies to the Applicant. The facts

admitted in affidavit paragraphs 4, 7.1 and 7.2, read with MOI clauses 1.2.7, 3 and 9.5, establish that it is a public company whose debenture securities are listed on an exchange. It is consequently required to appoint an SEC unless exempted by the Tribunal.

37. That conclusion does not depend on the allegation in affidavit paragraph 11 that the Applicant's public-interest score was below 500. Regulation 43(1)(b) and regulation 43(1)(c) are separate triggers. The score remains relevant, however, to the nature and scale of the Applicant's activities and to whether the public-interest exemption in section 72(5)(b)(ii) has been proved.

38. The legal conclusion in affidavit paragraph 9 is therefore incorrect on the Applicant's own facts. More importantly for the exemption inquiry, paragraph 9 caused the founding case to understate the public character of the Applicant's business and to treat the application as if it concerned only a narrow, employee-less special-purpose vehicle, rather than a public issuer of JSE-listed debentures.

No formal substitute mechanism is established

39. Section 72(5)(b)(i) requires evidence of a formal mechanism within the company's structures that substantially performs the functions of an SEC. The requirement is not met merely because accounting, administration or asset-servicing functions are performed by an external institution.

40. The Applicant does not plead the formal-mechanism ground. Paragraph 9 of the supporting affidavit states expressly that the application is made solely on the basis of paragraphs 10 and 11. Neither paragraph 10 nor paragraph 11 identifies a board committee, a parent-company SEC, a formally delegated governance forum or any other structure with a mandate corresponding to the SEC functions.

41. Paragraph 10.1 contains only the statement that the Applicant is controlled, serviced, administered and managed by Absa Bank Limited and has no employees. Paragraph 7.1 refers more narrowly to Absa's accounting, risk-management and administrative role. Clause 26.2 of the MOI, by contrast, delegates day-to-day management to Manco. No service agreement, delegation, terms of reference, composition, meeting record, annual work plan or reporting line is placed before the Tribunal to show that Absa, Manco or the servicer performs the SEC mandate.

42. The CIPC disclosure at pages 11-12 identifies audit-committee participation, and MOI clauses 19.5.1-19.5.9 prescribe financial-reporting, audit and internal-control functions for the audit committee. Those functions are materially different from the social, ethical, environmental and stakeholder functions in MOI clause 38.3. The existence of an audit committee therefore does not, without evidence of an expanded and formally conferred mandate, establish substantial performance of the SEC functions.

43. Clause 38.1 of the MOI requires the board to appoint an SEC unless the Applicant is covered by another company's qualifying SEC or has obtained a statutory exemption. Clause 27.1 permits the directors to appoint board committees and delegate authority to them. The record contains no resolution, charter or terms of reference showing that another company's SEC, or any committee established under clause 27.1, performs clause 38 functions for this Applicant.

44. The formal-mechanism ground in section 72(5)(b)(i) is therefore not established on the case pleaded in affidavit paragraphs 9-11 or on the governance documents supplied.

The public-interest ground is not established

45. Paragraph 12 of the supporting affidavit states that it is "therefore" not necessary in the public interest for the Applicant to appoint an SEC. The word "therefore" shows that the conclusion is derived from paragraphs 10 and 11. The Tribunal must accordingly examine whether the facts in those paragraphs are sufficient, accurate, and complete enough to satisfy section 72(5)(b)(ii).

46. The absence of employees in affidavit paragraph 10.1 addresses only the labour-and-employment component in MOI clause 38.3.1.5. The SEC mandate also includes social and economic development and anti-corruption standards under clause 38.3.1.1; good corporate citizenship under clause 38.3.1.2; environmental, health and public-safety matters under clause 38.3.1.3; consumer relationships under clause 38.3.1.4; escalation of material matters to the board under clause 38.3.2; and reporting to shareholders at the annual general meeting under clause 38.3.3.

47. Paragraph 10.1 therefore proves, at most, that one category of the SEC's work may be limited. It does not address the remaining functions in MOI clauses 38.3.1.1-38.3.1.4, 38.3.2 and 38.3.3. Nor does it explain how the Applicant monitors anti-corruption

standards, corporate citizenship, environmental and public-safety implications, stakeholder relationships, or escalation and reporting of material concerns.

48. Paragraph 10.2 describes the Applicant as not operational and as having "only" debt instruments in issue. That characterisation is incomplete when read with paragraphs 7.1-7.4: the Applicant issues listed and unlisted instruments, receives and invests their proceeds in gold bullion, platinum and palladium, enters into transaction documents, acquires participating assets, enforces rights and performs obligations. MOI clauses 1.2.3.1 and 1.2.3.2 likewise describe an active listed-fund and commodity-hedging business. Administration by a servicer does not make those activities legally or economically insignificant.

49. The objective scale of the Applicant's financial exposure appears from Annexure E at page 71. It records external liabilities of R26 063 429 340 and a final recalculated public-interest score of 26 150 for the year ended 31 March 2024. Those figures demonstrate substantial creditor exposure. The affidavit's description of listed and unlisted debt instruments held by investors separately confirms an investor and market-facing dimension. Both are directly relevant to the statutory enquiry into the nature and extent of the Applicant's activities and the public interest.

50. Affidavit paragraph 11 states under oath that the score did not exceed 500 in the last two financial years. That statement is irreconcilable with Annexure E. The difference is not marginal: the annexure records a score more than fifty times the 500-point threshold. The founding affidavit gives no explanation for the contradiction.

51. The evidential deficiency is compounded in two respects. First, paragraph 8 says the calculation covers the past two financial years, but only the calculation for the year ended 31 March 2024 is produced. Secondly, paragraphs 8.1-8.3 summarise only the employee, third-party-liability and turnover components of regulation 26(2), while Annexure E itself records the additional component concerning individuals known to hold a beneficial interest in the company's issued securities. The Tribunal is not given a complete and reconciled account of the score.

52. The public-interest score is not itself the exemption test, but it is an objective legislative indicator of public significance. Because paragraph 12 expressly derives its conclusion

from paragraphs 10 and 11, the contradiction between paragraph 11 and Annexure E removes a central factual premise of the application. A conclusion framed in the language of the statute cannot substitute for the facts required to support it.

53. The governance evidence is also incomplete. Affidavit paragraph 10.1 attributes control and management to Absa, while MOI clause 26.2 delegates day-to-day management to Manco. MOI clause 19.5 defines the audit committee's financial-control mandate, clause 27.1 permits additional board committees, and clause 38.3 defines the SEC mandate. The papers do not reconcile the roles of Absa and Manco or map any existing governance body, function by function, against clause 38.3.

54. In particular, there is no evidence of a reporting and escalation system satisfying MOI clauses 38.3.2 and 38.3.3, which require material matters within the SEC mandate to be brought to the board and reported to shareholders at the annual general meeting. The Tribunal cannot infer those arrangements from the bare statements in affidavit paragraphs 7.1, 10.1 and 10.2.

55. The CIPC disclosure at pages 11-12 records six directors and identifies several as audit-committee members. MOI clause 22.1 requires at least four directors, while clause 27.1 permits the appointment of board committees. These facts do not themselves require or preclude an exemption. They are relevant because the papers could have explained whether existing governance functions substantially overlap with the SEC mandate, what duplication would arise, and why an SEC would nevertheless be unnecessary in the public interest. No such explanation or supporting governance material is provided.

56. Paragraph 13 seeks an exemption for five years, alternatively a shorter period. Such an order would remove a statutory governance safeguard for a listed issuer over a substantial period. Before granting it, the Tribunal must be satisfied on concrete facts that the safeguard is unnecessary or substantially replicated elsewhere. Affidavit paragraphs 9-12 and the supporting documents do not provide that assurance.

57. The Applicant has accordingly not discharged the burden under section 72(5)(b)(ii). Its reliance on affidavit paragraphs 10.1, 10.2 and 11 is insufficient when those paragraphs are tested against affidavit paragraphs 7.1-7.4, Annexure E at page 71 and MOI clauses

26.2 and 38.3.

G. WHY REFUSAL IS THE APPROPRIATE OUTCOME

58. The defects are substantive and cumulative. Paragraph 9 proceeds from an incorrect listed-status premise; paragraphs 10.1 and 10.2 do not address most of the functions in MOI clause 38.3 and do not reconcile the roles of Absa, Manco and the servicer; paragraph 11 is contradicted by Annexure E; paragraph 8 refers to two financial years but supplies only one calculation and omits a component of regulation 26(2); and no formal mechanism under section 72(5)(b)(i) is identified. The 25/27 March resolution-date discrepancy should be corrected in any fresh application, but the refusal does not depend on it.

59. The Tribunal cannot repair those defects by selecting favourable phrases from paragraphs 10-12, speculating about the responsibilities of Absa, Manco or the servicer, or constructing a governance case not made in the founding affidavit. *Walele* requires information capable of supporting the state of satisfaction prescribed by the statute, while *Zuma* confirms that the founding affidavit must contain both the pleaded case and the evidence supporting it.

60. Refusal is not punitive and does not rest on the absence of publication. It follows from the failure of the specific case pleaded in affidavit paragraphs 9-12 to establish either exemption ground when measured against the Applicant's own evidence in affidavit paragraphs 7.1-7.4, Annexure E and MOI clause 38.

61. A fresh application may cure the deficiencies by: correcting or explaining the board-authority date; reconciling affidavit paragraph 9 with the statutory definition of a listed company and the admissions in paragraphs 7.1 and 7.2; supplying complete public-interest score calculations for the relevant years and reconciling paragraph 11 with Annexure E; identifying the precise exemption ground relied upon; reconciling the roles of Absa, Manco and the servicer; and providing a function-by-function account, supported by governance documents, of how every material function in MOI clause 38.3 is performed and reported.

H. FINDING

62. No adverse finding is made regarding publication under section 72(5)(a), because no prescribed publication mechanism is presently available for implementation and the Tribunal does not rely on that issue.

63. The admissions in supporting-affidavit paragraphs 4, 7.1 and 7.2, read with MOI clauses 1.2.7, 3 and 9.5, establish that the Applicant is a listed public company within regulation 43(1)(b).

64. The Applicant has established neither a formal mechanism under section 72(5)(b)(i), because affidavit paragraph 9 confines the case to paragraphs 10 and 11 and no qualifying structure is identified, nor the public-interest ground under section 72(5)(b)(ii), because paragraphs 10-12 are incomplete and paragraph 11 is contradicted by Annexure E.

65. The application must therefore be refused, without prejudice to a fresh application supported by accurate, complete, reconciled and legally relevant evidence drawn from the Applicant's own records.

I. ORDER

66. The application by NewGold Issuer (RF) Limited under case number CT02762ADJ2026 for exemption from the requirement to appoint a social and ethics committee is refused.

67. The refusal is without prejudice to a fresh application. Any fresh application should, at a minimum: (a) correct or explain the board-authority date; (b) address the Applicant's listed status and the inconsistency between supporting-affidavit paragraphs 7.2 and 9; (c) provide public-interest score calculations for the relevant financial years and reconcile paragraph 11 with Annexure E; (d) identify clearly whether section 72(5)(b)(i), section 72(5)(b)(ii), or both are relied upon; (e) reconcile the roles of Absa, Manco and the servicer; and (f) map the Applicant's governance arrangements, with supporting documents, against each material function in MOI clause 38.3.

68. For clarity, the refusal is not based on a failure to publish an intention to apply under section 72(5)(a).

69. There is no order as to costs.

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Dr MINAH TONG-MONGALO

COMPANIES TRIBUNAL: MEMBER