

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT00463ADJ2020

In the Ex Parte Application of

MAXIM SECURITY SERVICES (PTY) LTD

Applicant

(Registration number 1995/004266/07)

In respect of

**AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A SOCIAL AND
ETHICS COMMITTEE**

Presiding Member of the Tribunal; Lucia Glass

DECISION (Reasons and Order)

INTRODUCTION

1.The Applicant applies to the Tribunal, in terms of Section 72(5) of the Companies Act 71 of 2008 (further herein referred to as 'the Act') for an exemption, from the requirement to appoint a Social and Ethics Committee as prescribed by the Act.

PRELIMINARY ISSUES AND FACTS

2. The Deponent to the Applicant's founding affidavit is Kim William Greyling, who alleges that he is a Director of the Applicant, and that he is authorised to act for the Applicant herein. He attaches to his affidavit, a Directors resolution in this respect.

3. It is averred that the Applicant has calculated its public interest score, as prescribed in regulation 26(2) of the Act, as at the financial year end dated 29th February 2020, to be 719 and is consequently required in terms of regulation 43 to form a Social and Ethics Committee.

THE LAW

4. The applicable Section of the Act is:

Section 72 (5) (b); *it is not reasonably necessary for 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.*

Regulation 43 Social and Ethics Committee

(1) This regulation applies to

*(c) any other company that has in any **two of the previous five years**, scored above 500 points in terms of regulation 26 (2) (emphasis added).*

APPLICATION OF THE LAW TO THE FACTS

5. Before this Tribunal can consider applying the law to the facts and making an order, it is to decide, whether this Application is properly before it.

6. It is averred that the Applicant has calculated its public interest score, as prescribed in regulation 26(2) of the Act, as at the financial **year end dated 29th February 2020**, to be 719 and is consequently required in terms of regulation 43 to form a Social and Ethics Committee (emphasis added).

APPLICATION OF LAW TO THE FACTS

7. In terms of Regulation 43 of the Act, it is mandatory that a Social and Ethics Committee to be established, when “*a company that has in any **two of the previous five years**, scored above 500 points in terms of regulation 26 (2)*” (emphasis added).

8. It is averred that the Applicant has calculated its public interest score, for February 2020. It has not calculated its public interest score for any two of the previous five years in terms of the Act, but only for the year 2020.

CONCLUSION

9. It is unnecessary for the Applicant to apply for an exemption of establishing a Social and Ethics Committee as it has not scored over 500 points in any two of the previous five years.

DECISION

10. Given the fact that the Applicant has scored over 500 points in 2020 only, and not in any two of the previous five years, the Applicant is not compelled to appoint a Social and Ethics Committee in terms of the Act, consequently, need not apply for an exemption.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 2.10.20