**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**"The Tribunal"**

**Case Number: CT01147ADJ2022**

**Ex parte application:**

**Kromco (Pty) Ltd** **Applicant**

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

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**DECISION**

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**[1]** The Applicant is Kromco (Pty) Ltd, a company registered in terms of the Companies Act, with registration number 1995/012961/07. The application is brought by Edith Jessie Wilkins of Sekretari (Pty) Ltd, authorised by virtue of power of attorney to act on behalf of the company.

**[2]** The Applicant has stated in the application form CTR142 that it applies for an exemption from appointing a Social and Ethics Committee. The relevant section of the Companies Act ("the Act") wherein the applicant draws its rights to apply for such an exemption has not been provided, but has provided the following reasons for its request for an exemption:

(a) that the company has a formal mechanism within its structures that substantially performs the function that would otherwise be performed by the Social & Ethics Committee.

(b) that this formal mechanism is defined as a monthly Exco meeting where the meeting, amongst others, monitors, and reports on:

(i) social and economic development

(ii) the environment, health, and public safety

(iii) consumer relationships

(iv) labour and employment.

**Applicable Law**

**[3]** The applicant has not cited any of the sections of the Act in which it relies upon in submitting this application for an exemption from appointing a Social & Ethics Committee. Section 72 of the Act provides for Board committees, and subsection (4), particularly, provides as follows:

*(4) The Minister, by regulation, may prescribe-*

*(a) A category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to-*

*(i) Annual turnover;*

*(ii) Workforce size; or*

*(iii) The nature and extent of the activities of such companies;*

*(b) The functions to be performed by the social and ethics committee required by this subsection; and*

*(c) The rules governing the composition and conduct of social and ethics committees.*

**[4]** Subsection 5 is the relevant section for this application and provides an opportunity to qualifying companies to apply for an exemption from having a Social and Ethics Committee, for those companies that are required to have one in terms of subsection (4), as follows:

*A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner*

*and form for an exemption from that requirement, and the Tribunal may grant such exemption if it is satisfied that-*

*(a) the company is required in terms of other legislation to have, and does have, some other form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee in terms of this section and the regulations; or*

(b) *it is not reasonably necessary in 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.*

**[5]** Subsection 6 provides for the duration of an exemption granted in terms of the section above and stipulates that such exemption shall be valid for five years, or such shorter period as the Tribunal may determine at the time of granting the exemption.

**[6]** Regulation 43(1) gives effect to section 72(4) of the Companies Act and provides as follows:

*This regulation applies to:*

*(a) every state-owned company;*

*(b) every listed company; and*

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

**[7]** Regulation 26(2) provides for the manner in which public interest score must be calculated and provides that it must be calculated as the sum of the following:

*(a) a number of points equal to the average number of employees of the company during the financial year;*

*(b) One point for every R1 million (or portion thereof) in third party liability of the company, at the end of the financial year;*

*(c) One point for every R1 million (or portion thereof) in turnover during the financial year; and*

*(d) .....*

**[8]** A company to which Regulation 43 applies, must appoint a social and ethics committee, unless it has been exempted by the Tribunal, in accordance with Section 72(5) and (6) of the Act.

**[9]** Regulation 43 (5) provides for the functions of a social and ethics committee, including; to monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice. These include the monitoring of; social and economic development, good corporate citizenship, the environment, health and public safety including the impact of the company's activities and of its products or services, consumer relationships and labour and employment.

**EVALUATION & FINDINGS**

**[10]** The applicant has provided this Tribunal with very little information for me to be able to establish whether the applicant, has, in any two of the previous five years, scored above 500 points in terms of regulation 26(2) and which factors contribute to it achieving such 500 points, so as to therefore firmly conclude that, as a private company, the applicant is, by law, required to

have a Social & Ethics Committee. The applicant has not submitted its Annual Financial Statements or Annual Reports to show its prior year performance and the nature and activities of the company. The applicant has merely advised this Tribunal that its "Exco" has the responsibility to oversee issues that would, in terms of the Act, be overseen by a properly constituted Social & Ethics Committee. This arrangement would not even satisfy the requirements for granting an exemption as stated in section 72(5)(a) and (b) of the Act. I am therefore unable, based on the information provided, to satisfy myself that the applicant is required to have a Social & Ethics Committee as per the reasons provided above, and to further consider the adequacy of reasons for seeking an exemption in line with the provisions of the Act.

**ORDER**

The application is dismissed.

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**B. Zulu**
**Member: Companies Tribunal**
**23 September 2022**