THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT009Dec2013

In the matter:

Eazi Access Rental Proprietary Limited (Registration number: 2005/043679/07)

Applicant

Coram: S.Gounden

Decision handed down on the 31 January 2014

DECISION

INTRODUCTION

The applicant applies to the Companies Tribunal for an exemption from appointing a Social and Ethics Committee.

APPLICABLE LAW

The Companies Act 71 of 2008 provides as follows in section 72:

"(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 social and ethics committees required by this subsection; and

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

(5) 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 an exemption if it is satisfied that—

(a) the company is required in terms of other legislation to have, and does have, some 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."

The regulations in terms of the Companies Act (GNR 351 of 265 April 2011) ("Companies Regulations") provide in regulation 43 that a Social and Ethics Committee must be appointed by:

- State owned companies;
- listed public companies;
- any other company with a Public Interest Score above 500 in any two of the previous five (financial) years.

The Public Interest Score is calculated as follows –
(a) a number of points equal to the average number of employees of the company during the financial year ('employee' has the meaning set out in the Labour Relations Act 66 of 1995 (regulation 26(1)(a));
(b) one point for every R1 million (or portion thereof) in third party liability of the company held by creditors at the financial year end;
(c) one point for every R1 million (or portion thereof) in turnover during the financial year; and
(d) one point for every individual who, at the end of the financial year, is known by the company –
(i) in the case of a profit company, to directly or indirectly have [sic] a beneficial interest in any of the company's issued securities; or
(ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company (regulation 26(2)).

Application for a ruling must be made

- In form CTR 142
- together with a supporting affidavit setting out the facts on which the application is based (regulation 142 (3)).

EVALUATION

The applicant is a private company. The affidavit by the Finance Manager, Thomas Veith, states that the Public Interest Score is more than 500 in any two of the previous five (financial) years.

There are only two directors of the company who are both actively involved in the day-to-day running of the business.

The company has established various committees such as Human Resource, Finance and Health & Safety to assist with the promotion and compliance of the company's core values and integrity.

FINDINGS

It should be noted, that the affidavit by the said Finance Manager was done on authority of the Board of Directors of the company.

The fact that the current committees **can** substantially perform the functions of a Social and Ethics Committee is not sufficient reason to be granted an exemption from appointing a Social and Ethics Committee. The Company has not demonstrated that some form of formal structures within its structures **substantially** performs the function that would otherwise be performed by the Social and Ethics Committee

The Finance Manager has not demonstrated that it is not reasonably necessary in the public interest to require the company to have a Social and Ethics Committee, having regards to the nature and extent of activities of the company.

CONCLUSION / ORDER

Based on the facts above, I make the following order:

Application for exemption from appointing a Social and Ethics Committee for Eazi Access Rental Proprietary Limited is **not** granted.

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S.GOUNDEN

MEMBER OF THE COMPANIES TRIBUNAL