IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01302ADJ2023

Ex parte application:

MILKWOOD HOME LOANS (RF) LIMITED **APPLICANT**

Presiding Member: Brian Jennings

Date of handing down of decision: 25 October 2023

DECISION

Introduction

1 The Applicant is Milkwood Home Loans (RF) Limited (registration number: 2014/082840), represented by Ashley Eaton (authorised by a resolution passed by the board of directors of the Applicant dated 16 March 2023).

2 The Applicant has requested the Companies Tribunal ("**Tribunal**") to exempt it from the requirement to have a social and ethics committee. The Applicant is a special purpose vehicle and its main business is to –

2.1 acquire the rights, title and interest in and to residential property loan agreements and the related security with regard to such loan agreements (collectively, the "**Participating Assets**");

2.2 pursuant to a securitisation scheme described in the programme memorandum executed by the Applicant, with funds raised directly or indirectly through the issue of notes and to manage the Participating Assets so acquired;

2.3 enter into such agreements, documents, deeds or instruments as may be required to document and conclude any transactions contemplated above together with any agreement, documents, deeds or instruments which may be incidental or related to those transactions;

2.4 exercise and, if necessary, enforce the rights of the Applicant and perform its obligations under each transaction document and Participating Asset;

2.5 enter into other transactions with investors for the use of funds borrowed or raised directly from the notes and/or debt obligations;

2.6 acquire or invest in, from time to time, the rights, title and interest in any to any assets (together with security related thereto);

2.7 including the right to sell, assign, transfer or otherwise dispose of such Participating Assets;

2.8 collateralise its debt obligations and/or enter into derivatives contracts as may be desirable or necessary to manage the risks; and

2.9 hedge exposures of the Applicant or as may be contemplated in the issuer programme.

3 According to the memorandum of incorporation of the Applicant ("**MOI**"), the Applicant is a ring-fenced company and may not undertake any activities other than those contemplated above. The Applicant has entered into a servicing and standby agreement with SA Home Loans Proprietary Limited ("**SA Home Loans**"), and SA Home Loans' holding company, SAHL Investment Holdings Proprietary Limited ("**SAHL**"). SA Home Loans, in terms of the agreement, acts as the agent of the Applicant and manages the Applicant's business and assets, and further exercises the Applicant's rights, powers and duties under the various agreements to which the Applicant is party. This includes –

3.1 providing all administrative and management services to the Applicant, all duties in respect of defaulting borrowers and arrears, all custodial and data maintenance duties;

3.2 performing secretarial duties, redraw facility agreement administration duties, start-up loan agreement administration duties, derivative contracts, duties in respect of the notes, administration of the priority of payments; and

3.3 conducting investigations, fulfilling general cash management functions and generally doing all to ensure compliance by the Applicant with the various obligations to which the Applicant has agreed.

4 The Applicant does not set out its public interest score in its supporting affidavit, but alleges that it has exceed 500 points in 2 of the previous 5 years. This is clearly the case as the Applicant's third-party liabilities exceed R1,600,000,000 in its annual financial statements for the financial year ended 31 December 2021, and its interest income exceeds R91,000,000. However, the Applicant only has one shareholder, and its MOI prohibits it from employing any employees. The Applicant has 4 directors, 3 of which are non-executive directors, and 1 alternate director.

Applicable law

5 Section 72(4) of the Companies Act, No 71 of 2008 (as amended) ("**Companies Act**") empowers the responsible Minister to prescribe regulations setting out, amongst other things, a category of companies required to have a social and ethics committee.

6 Regulation 43(1)(c) to the Companies Act ("**Regulations**") requires a company to have a appoint a social and ethics committee if it has, in any two of its previous five years, scored above 500 points in terms of Regulation 26(2).

7 Regulation 26(2) sets out the basis for calculating a company's public interest score. I do not find it necessary to repeat this test here.

8 Section 72(5) of the Companies Act entitles a company who is obliged to appoint a social and ethics committee, to apply to the Tribunal for an exemption from such requirement. In order for the Tribunal to be satisfied to grant such exemption, either –

8.1 the company is required by some 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; or

8.2 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.

Determination of the applicant's request for exemption

9 The Applicant has not provided its calculation of its public interest score, but alleges that it has been exceeded in 2 of the last 5 years. From the evidence presented before the Tribunal, it is clear that its score exceeds 500 by virtue of its substantial third-party debts and its interest income, which is the main source of the Applicant's revenue. Its public interest score would have exceeded 500 in at least 2 of the previous 5 years.

10 The Applicant has requested an exemption from the obligation to appoint a social and ethics committee in terms of sections 72(5) and 72(6), although it does not specify whether it relies on the grounds in 72(5)(a), 72(5)(b) or both.

11 It is made clear in the papers that the Applicant is a "managed entity" under the terms of a service level agreement to which it is a party, and despite being treated as if it is part of the foresaid group, it is legally not a subsidiary as contemplated in the Companies Act. The reliance on this in the papers is misplaced, as the Tribunal has no power to exempt based on a subsidiary relationship as contemplated in Regulation 43(2)(a). It either is, or is not, applicable.

12 The Tribunal can only process exemptions as contemplated in Regulation 43(2)(b). This cross-refers back to section 72(5) of the Companies Act as contemplated in paragraphs 8.1 or 8.2. The exemption contemplated in paragraph 8.1 is not available on the current facts, which leaves only the exemption in paragraph 8.2 to consider.

13 I am satisfied that the Applicant meets the requirements of section 72(5)(b) for the reasons set out below.

13.1 The Applicant is restricted from employing employees, and only has one shareholder. It therefore has no external or internal stakeholders, other than institutional investors and SA Home Loans. The lack of employees would also render many key functions of a social and ethics committee, which includes those relating to employment equity, broad-based black economic empowerment, employment relationships, employee training, and working conditions redundant.

13.2 The Applicant's business does not involve manufacturing and distributing any goods or services to the public, and it only deals with institutional investors. The Applicant is prohibited in terms of its MOI from occupying any premises, and therefore does not have offices, factories or plants. There is therefore no need to monitor the activities of the Applicant from an environmental, health and/or safety perspective.

13.3 From the above, it is therefore clear that the nature and extent of the Applicant's activities do not have a significant impact on the public interest.

14 **Order**

15 The application for an exemption from the requirement to appoint a social and ethics committee is hereby granted in terms of section 72(5)(b) of the Companies Act, for a period of five years from the date hereof.

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BRIAN JENNINGS
MEMBER OF THE COMPANIES TRIBUNAL