IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01557ADJ2023

Ex Parte Application

RETIRE AT MIDSTREAM HOMEOWNERS ASSOCIATION NPC **APPLICANT**
registration number 2009 / 015067/08

Presiding Member: Dr. M A Chicktay
Date of Decision: 31st OCTOBER 2023

DECISION

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1. **INTRODUCTION**

[1] The Applicant is **RETIRE AT MIDSTREAM NPC** ("the Applicant"), registered in terms of the company laws of the Republic of South Africa, under registration number 2009 / 015067/08

2. **THE APPLICATION**

2.1 This is an *ex parte* application brought, on behalf of the Applicant by Hennie Wiehahn, in terms of Section 72(5) (b) of the Act for an exemption from the requirement to appoint a Social and Ethics Committee.

3. THE REQUIREMENTS OF THE ACT

3.1. Section 72 (4) provides for the Minister to prescribe, by way of Regulation, those companies which shall be required to appoint a Social and Ethics Committee.

3.2. Section 72 (5) provides that, notwithstanding a requirement to appoint a Social and Ethics Committee, a company 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 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 (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."

3.3. Regulation 43 (1) (c) of the Act requires "… any other company that has in any two of the previous five years, scored above 500 points in terms of Regulation 26 (2)".

3.4. Regulation 43 (2) (a) of the Act requires that a "company to which this regulation applies must appoint a social and ethics committee unless – (a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or (b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6)."

3.5. Regulation 26 (2) sets out the methodology of a company calculating its "public interest score".

4. THE FACTS

4.1. The Applicant confirms in the supporting affidavit filed that

4.1.1. The Applicant scored more than 500 PI Score and therefore is applying for the relief to establish a Social and Ethics Committee,

4.1.2. The Applicant is a non-profit company whose members own property within the estate. Its primary objective is to protect the interest of its members.

4.1.3. The applicant has 8 directors who are not remunerated for their work. The creation of a Social and Ethics committee would further burden the directors.

4.1.4. The only reason the Applicants have a score over 500 is due to the number of members it has.

4.1.5. The Applicant has no business interest. Its function is to assist homeowners within the estate.

4.1.6. The Applicant indicates that it was exempted from having a social and Ethics Committee for a period of five years;

5. ANALYSIS OF THE FACTS

5.1. A company that has over 500 PI Score is required to have a Social and Ethics Committee unless it is exempted to do so in terms of the Companies Act

5.2. The two conditions for exemption[1] stated in the Act are:

5.2.1. if the company is already required by another law to have an existing structure in place that actually performs the functions prescribed by the Act to the Social and Ethics Committee; or

5.2.2. If the nature and extent of the company's activities are such that it does not have any significant impact on the public interest.

[1] The Social and Ethics Committee Handbook – Guidebook for South African Companies P9, compiled by Prof Deon Rossouw, The Ethics Institute of South Africa (2012)

5.3. Having read the supporting affidavit I am satisfied that the Applicant has made out a proper case that it is not reasonably necessary to require the Applicant to appoint a Social and Ethics Committee. The Applicants primary function is to assist its members who are homeowners. It does not provide any other business. It would thus not serve any public interest for it to have a Social and Ethics Committee.

6. ORDER

In the circumstances I make the following Order:

6.1 The Applicant is exempted for a period of five (5) years from appointing a Social and Ethics Committee; and

6.2 A copy of this Order must be served on the Applicant and the Commissioner of the Companies and Intellectual Property Commission (CIPC).

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Dr. M A CHICKTAY

MEMBER OF THE COMPANIES TRIBUNAL