IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01737ADJ2024

In the *ex parte* application of:

DAINFERN HOMEOWNERS' ASSOCIATION NPC **APPLICANT**

REGISTRATIONNUMBER:1991/004217/08

APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A SOCIAL AND ETHICS COMMITTEE (SEC)

Presiding Member: D Terblanche

Date of handing down of decision: 9 April 2024

Ruling (Decision and reasons)

INTRODUCTION:

1. The Dainfern Homeowners Association NPC, referred to as the Applicant, is a private company registered in South Africa. Its main office is at 74 St Andrew Street, Birdhaven, Johannesburg, Gauteng, 2196.

APPLICATION:

2. The Applicant is requesting an exemption from appointing a Social and Ethics Committee (SEC) under the Companies Act 71 of 2008, as amended, along with regulation 43 of the Companies Regulations of 2011. This application is made to the Companies Tribunal.

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3. The Applicant has filed the necessary form and affidavit with the Companies Tribunal,. The form is date stamped 2 April 2024.

4. Geraldine Harris, the Applicant's Finance Director, deposed to the sworn affidavit as authorized by the Applicant's Board through a resolution dated 23 August 2023.

APPLICANT'S SUBMISSIONS:

5. The Applicant is a Homeowners Association.

6. Its main objective is to collect income from levies, interest, and penalties paid by members, ensuring revenue is used for property maintenance and approved projects without paying dividends or bonuses to members. The company may provide reasonable remuneration to officers, servants, or members for services rendered.

7. The Applicant has calculated its public interest score for the past five financial years and found that it exceeded 500 points for at least two of those years.

8. As of the financial year ending on 31 March 2023, the Applicant's public interest score was 1354, with the number of members being the highest contributor.

9. Due to its public interest score being over 500 points, the Applicant is required to establish a Social and Ethics Committee unless exempted by the Companies Act.

10. The Applicant seeks exemption from establishing a Social and Ethics Committee based on section 72(5)(b) of the Act, believing it's not necessary in the public interest considering the nature of its activities.

APPLICABLE LAW AND DETERMINATION OF THE APPLICANT'S REQUEST FOR EXEMPTION:

11. Section 72(4) empowers the Minister to set regulations, including those related to the requirement of having a SEC.

12. Regulation 43 requires certain categories of companies, including those with a public interest score exceeding 500 points in any two of its previous five years to appoint a SEC. Regulation 26(2)[1] outlines how to calculate a company's public interest score. A company must appoint a SEC.

13. Regulation 43(4) defines the composition of the SEC. Regulation 43(5) outlines the functions of the SEC. It reads -

"(a) To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –

(i) social and economic development, including the company's standing in terms of the goals and purposes of—

(aa) the 10 principles set out in the United Nations Global Compact Principles[2]; and

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[1] Regulation 26(2) 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 the profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or

(ii) in the case of non-profit company, to be a member of the company, or a member of an association that is a member of the company."

[2] Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour; Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

(bb) the OECD recommendations regarding corruption;

(cc) the Employment Equity Act; and

(dd) the Broad-Based Black Economic Empowerment Act;

(ii) good corporate citizenship, including the company's—

(aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;

(bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and

(cc) record of sponsorship, donations and charitable giving;

(iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;

(iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and

(v) labour and employment, including—

(aa) the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and

(bb) the company's employment relationships, and its contribution toward the educational development of its employees;

(b) to draw matters within its mandate to the attention of the Board as occasion requires; and

(c) to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate."

14. Regulation 43(2) allows exceptions for companies to appoint a SEC. Section 72(5) allows companies obligated to appoint a SEC to apply for exemption under certain conditions. The company may be exempted if it has another mechanism performing similar functions or if it's not necessary in the public interest considering the company's activities.

Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery."

15. In considering the application a main factor I will take into account is whether it is in the public interest to require the company to have a SEC, considering the company's activities and the functions a SEC monitors and oversees as outlined in Regulation 43(5), i.e., those activities that contribute to the public interest score.

16. I accept the company's submission that its activities involve collecting revenue and using it for property maintenance and approved projects, with provisions for reasonable remuneration to members. This is reflected in its Memorandum of Incorporation.

17. Considering the nature and extent of the company's activities against Regulation 43(5) I am of the view that it is not reasonably necessary to require the company to have a SEC.

FINDING:

18. After considering the Applicant's submissions, it's deemed that the Applicant may be exempted from appointing a SEC as permitted under section 72 of the Companies Act.

19. The Applicant has shown that it's not necessary in the public interest to require the company to have a SEC, considering its activities.

ORDER:

20. The application for exemption from appointing a SEC is granted for a period of five (5) years from the date of this order, in terms of section 72(5)(b) read with section 72(6) of the Companies Act.

Dated at Johannesburg on this 9th day of April 2024.

Diane Terblanche
MEMBER OF THE COMPANIES TRIBUNAL