



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT02235ADJ2025

Ex Parte Application:

TRANSFLOW (RF) PROPRIETARY LIMITED

Reg no: 2018/631811/07

APPLICANT

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

INTRODUCTION

1. This is an application in terms of section 72(5) of the Companies Act 71 of 2008, as amended and read together with the regulations and amendments to the Companies Act for an exemption from the requirement to constitute a social ethics committee. The Applicant herein seeks to be exempted from requirements of Social Ethics Committee on the basis that it is neither reasonably necessary nor is it in the public interest for the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company and the fact that the company does not have any employees.

BACKGROUND

2. The Applicant has approached the Companies Tribunal to seek relief in terms of section 72(5) (b) of the Companies Act, 2008 for an exemption from the requirement to appoint a social and ethics committee based on the following submissions amongst others:

2.1 The Applicant's public interest score for the past financial year is more than 500. Applicant submitted that it is not reasonably necessary in the public interest, having regard to the nature and extent of the activities of the company, to appoint a social and ethics committee, as:

2.1.1 the applicant is a not operational and trading in its true sense. It is an insolvency remote special purpose vehicle and its main purpose and main business is to acquire from various sellers the right, title and interest in and to vehicle financing agreements, including the vehicles thereto together with all related security, with funds raised pursuant to, inter alia, the senior loan facility agreement, the senior debenture facility agreement and the subordinated loan facility agreements and to manage and operate the business of the company for this purpose and as contemplated in the transaction documents. The company is a registered credit provider and is controlled, administered and managed by a SA Taxi holdings (Pty) Ltd.

2.1.2 There is no effect of the applicant as a corporate in particular community due to its functions and limited exposure to the community.

2.1.3 The applicant's activities and products have no direct or indirect effect on environment, health and public safety.

2.1.4 The applicant has no employees due to the nature of its business.

3. THE APPLICABLE LAW: THE COMPANIES ACT OF 2008 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 the social ethics committee required by this subsection; and

(c) The rules governing the composition and conduct of social and ethics committee required by this subsection; and

(5) A company that falls within a category of the companies that are required in terms of the section and the regulations to appoint a social and ethics committee may apply to the tribunal for an exemption from that requirement in the following manner:

- (a) The company must publish the intention to lodge an application for exemption with the Tribunal in the prescribed manner; and*
- (b) Apply to the tribunal, in the prescribed manner and form, for an exemption from the requirement, and the tribunal may grant such exemptions if it is satisfied that-*
- (c) The company has a formal mechanism within its structures, which substantially performs the functions of the social and ethics committee in terms of this section and the regulations; or*
- (d) It is not reasonably necessary, having regard to the nature and extent of the structures and activities of the company and the public interest, to require the company to have a social and ethics committee.*

6. APPLICATION OF THE LAW TO THE FACTS

6.1 In this matter, applicant has brought this application for exemption from creation of social and ethics committee in terms of the provisions of section 72(5)(b) of the Companies Act as amended. The affidavit submitted in support of this application on behalf of the applicant was signed and commissioned on the 14th of May 2025. The application has been brought using form CTR 142 of the Companies Tribunal and supported by a sworn statement and several annexures thereto.

6.2 It is important to note that the Companies Act went through Amendments in the year 2024 and the s 72(5) which the current application relies on has also been amended. The amended section 72(5) has introduced a new peremptory subsection applicable to this matter and the section provide as follows:

“ 72 (5) A company that falls within a category of the companies that are required in terms of the section and the regulations to appoint a social and ethics committee may apply to the tribunal for an exemption from that requirement in the following manner:

(a) The company must publish the intention to lodge an application for exemption with the Tribunal in the prescribed manner; and”

- 7 It is apparent from wording of the above section that it is now a requirement that when applicant brings exemptions applications of this nature, they must as a prerequisite, publish their intention to do so before they actually lodge the application with the Tribunal. The word “must” under s72(5)(a) makes it a peremptory provision.
- 8 I am quite aware that the Regulations which are supposed to guide the applicant regarding the publishing of such notice has not been promulgated at this stage, however the Amendment of the Act has been put into effect on the 27th of December 2024. The applicant has prepared and brought this application before the Tribunal being well aware of the absence of the Regulations regarding the publishing of the notice as a prerequisite before approaching the Tribunal, yet there is no submissions made on this regard on behalf of the applicant.
- 9 Having regard to the provisions of s 72(5)(a) of the Companies Act as amended, this matter will not be decided on the merits. The Companies Tribunal has no discretionary powers to exempt the applicant where there is no compliance with section 72(5)(a) of the Act.

10 **ORDER.**

10.1 The application is refused.

MUDZUNGA FS

PRESIDING MEMBER OF THE COMPANIES TRIBUNAL

29/05/2025