IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CTR008/04/2013

In the ex-parte application of:

Newgold Issuer Limited Applicant

Coram: Kganyago M.F

Decision handed down on the 15th December 2013

DECISION

INTRODUCTION

[1] The applicant is bringing an application in terms of section 72(5) of the Companies Act 71 of 2008 ("The Act"). This is an ex-parte application. The applicant is seeking an order that it be exempted from appointing a social and ethics committee.

[2] The applicant has submitted that it is a special purpose vehicle with no employee whose main object is to issue listed debentures, the value of which track the price of unwrought commodities and activities ancillary thereto.

[3] The applicant submit further that it is having only one shareholder, being the NewGold Owner Trust. According to the applicant, its management is undertaken by NewGold Manager Proprietary Limited in terms of a management agreement concluded between the two companies.

[4] In the applicant's view their activities do not concern matters relating to.

4.1. Social and economic development;

4.2. The 10 principles set out in the United Nations Global Compact Principles;

4.3. The OECD recommendations regarding corruption;

4.4. The Employment Equity Act;

4.5. The Broad-Based Black Economic Empowerment Act;

4.6. Good Corporate Citizenship;

4.7. The environment, health and public safety

4.8. Consumer relationships; or

4.9. Labour and employment.

[5] The applicant is therefore, contending that taking into account their activities, it is not reasonably necessary in the public interest for the Applicant to have a social and ethics committee.

[6] Based on the abovementioned, the applicant is applying for an exemption to appoint the social and ethics committee for a period of five years.

APPLICABLE LAW

[7] Section 72(5) of the Act reads as follows:-

" 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 reasonable 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."

[8] Regulation 43(2)(a) of the Act reads as follows:-

"(2) 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, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company."

EVALUATION

[9] The applicant has brought an application seeking an order for exemption from appointing the social and ethics committee. The application is brought in terms of section 72(5)(b) of the Act.

[10] The applicant do concede that over the five previous financial years, they have scored above five hundred points, and as a result, they are required to have a social and ethics committee, unless the Tribunal have exempted them.

[11] The applicant have failed to disclose its turnover. The applicant is merely stating that its management is undertaken by NewGold Managers Proprietary Limited in terms of a management agreement concluded between the two companies. It does not disclose their terms of reference. It does not state that NewGold Managers Proprietory Limited is having other formal mechanism within its structures that performs the function that would otherwise be performed by the social and ethics committee. The mere fact that the applicant does not have employees, is not a ground to grant exemption.

[12] In terms of regulation 43(2)(a) of the Act, a company will be exempted if it is a subsidiary of another company that has the social and ethics committee which

will perform the functions required by this regulation on behalf of that subsidiary company. The applicant is not stating that it is a subsidiary of NewGold Managers Proprietary Limited.

FINDINGS

[13] Therefore, under the circumstances, it is my findings that the applicant has failed to show that it is not reasonably necessary in the public interest to have a social and ethics committee.

ORDER

[14] The applicant's application is hereby refused.

Dated at POLOKWANE on the 15th day of DECEMBER 2013.

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M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL