IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("THE TRIBUNAL")

CASE NUMBER: CT008MAR2017

In the *ex parte* matter of:

Q400 LEASING (PTY) LTD **APPLICANT**

Registration Number 2010/018707/07

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

Coram: PJ Veldhuizen

Order delivered 28 MARCH 2017

ORDER

---

1. **THE APPLICANT**

The Applicant is **Q400 LEASING (PTY) LTD** ("the Applicant"), duly formed and incorporated in terms of the Company Laws of the Republic of South

Africa as a profit company and is in terms of Section 8(2)(b) of the Companies Act No 71 of 2008 (“the Act”) categorized as a private company.

2. **THE APPLICATION**

This is an *ex parte* application brought in terms of Section 72(5)(a) 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 by Gregory McKenzie ("the Deponent") that the Applicant is a specialised investment company that purchases and leases aircraft, including all services and activities related and / or ancillary thereto.

4.2. The Deponent confirms further that the Applicant's Public Interest Score exceeds 500 points. Accordingly, the Applicant is required in terms of Regulation 43 (1) (c) of the Act to appoint a Social and Ethics Committee.

4.3. The Applicant has previously applied successfully to the Tribunal for an exemption from the requirement to appoint a Social and Ethics Committee.

4.4. The previous exemption was granted by the Tribunal under case number CT019SEP2014, on 30 March 2015 and the Order read as follows: *"(a) The Applicant is exempted for two years from appointing a Social and Ethics Committee. (b) This Determination must be served on the Applicant and the Registrar of Close Corporations of the Companies and Intellectual Property Commission."*

5. ANALYSIS OF THE FACTS

5.1. The Applicant is a company, which on its own version is required to appoint a Social and Ethics Committee.

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.

5.3. Having read the supporting affidavit of the Deponent and having had the benefit of reading the Tribunal's Decision granted in 2015 on the same facts, I am satisfied that the Applicant has made out a proper case that it is not reasonably necessary in the public interest to require the Applicant to appoint a Social and Ethics Committee. This Decision is arrived at after having regard to *inter alia*:

5.3.1. The limited stated nature and extent of the Applicant's activities.
5.3.2. The fact that the Applicant has no employees.
5.3.3. The fact that the Applicant's investors are sophisticated investors who, as the Tribunal has previously held, can "fend for themselves".

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

---

[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)

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

_____

PJ VELDHUIZEN

MEMBER OF THE COMPANIES TRIBUNAL

CAPE TOWN