

COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT014JUN2019

In the *ex parte* application of:

SOUTH AFRICAN AIRWAYS TECHNICAL SOC LIMITED Applicant

(Registration number: 1999/0240058/30)

in respect of:

AN APPLICATION FOR EXTENSION OF THE PERIOD FOR CONVENING AN ANNUAL GENERAL MEETING IN TERMS OF SECTION 61(7)(b)

Decision handed down on 02 JULY 2019

DECISION

INTRODUCTION

[1] The Applicant applies to the Companies Tribunal[1] (''the Tribunal'') for an extension of a period of convening an Annual General Meeting (''the AGM'') of the

[1] Juristic person established in terms of section 193 of the Act to provide speedy resolution of company disputes. The Tribunal has jurisdiction throughout the Republic of South Africa.

shareholders of a public company in terms of section 61(7)(b) of the Companies Act No. 71 of 2008 (''the Act''), which section empowers this Tribunal, on application, to grant an extension of the period for convening an AGM.

BACKGROUND

[2] The Applicant is the South African Airways Technical SOC Limited a state owned company with limited liability duly incorporated in terms of the Act, as amended with its registered address at SAA Technical Head Office, Airways Park, 1 Jones Road, OR Tambo International Airport, Kempton Park, Gauteng.

[3] The Applicant is in the business of maintenance, repairs and overhaul of aircrafts. The Applicant is a wholly owned subsidiary of South African Airways SOC Limited.

[4] The Applicant seeks the following relief from the Tribunal:

''grant the company an extension of time to hold the annual general meeting beyond 15 months''

APPLICABLE LAW

Section 61(7)(b): SHAREHOLDERS MEETINGS

[5] Section 61(7)(b) reads as follows:

''A public company must convene an annual general meeting of its shareholders

(b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.''

EVALUATION

[6] The Deponent to the Applicant's papers is Ruth Nambi Kibuuka, who avers that she is the Company Secretary of the Applicant and has been authorised by the Applicant to depose to her affidavit and to make an application for an extension to hold the AGM for the Applicant.[2]

[7] Further, the Deponent avers that the Applicant held its last AGM on 12 April 2018 and the next AGM of the Applicant is due to be held on 12 July 2019. Furthermore, the Deponents avers that the 12 July 2019 deadline to convene the AGM of the Applicant will not be met due to the delay in finalising the Annual Financial Statements of the Applicant.[3]

FINDING

[8] The relief sought by the Applicant is for an order for an extension of the period for convening an AGM. Having considered the application, I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM.

[9] In arriving at my conclusion, I am guided by the decision of the Constitutional Court, the decision of *Minister of Defence and Military Veterans v Motau and Others*,[4] where it is said that "*Good cause may be defined as a substantial or "legally sufficient reason" for a choice made or action taken. Assessing whether*

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[2] Paragraph 1 of the supporting affidavit reads as follows: *''I am an adult female person employed by the South African Airways SOC Ltd (SAA) as the Company Secretary. I am also the Company Secretary of SAA's subsidiaries apart from Mango Airlines. I am duly authorised to make an application for an extension to hold the Annual General Meeting for South African Airways Technical SOC Ltd (SAAT).''*

[3] Paragraph 5 of the supporting affidavit reads as follows: *'SAAT last held its Annual General Meeting on 12 April 2018.and the next AGM should be held on 12 July 2019. However, it seems likely that the 12 July deadline to convene the next Annual General Meeting will not be met due to the delay in the finalisation of the company's Annual Financial Statements (AFS) for the year ended 31 March 201 as a result of ongoing engagement with the Shareholder to eliminate the significant uncertainties regarding SAAT's going concern status. At this stage SAAT cannot confirm when the AGM is likely to be held''*

[4] *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) 89 at par 54.

there is good cause for a decision is a factual determination dependent upon the particular circumstances of the case at hand."

[10] Therefore, based on the aforesaid, I grant the extension of the period to convene an AGM.

ORDER

In the result the following order is made:

a) The application for extension of the period for convening an Annual General Meeting in terms of section 61(7)(b) of the Act is hereby granted.

b) The period for the Applicant to hold its Annual General Meeting is extended until 30 December 2019.

MMOLEDI MALOKANE
(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)
Date: 02 JULY 2019