

**REPUBLIC OF SOUTH AFRICA**



**COMPANIES TRIBUNAL**

**Case/File Number: CT005Mar2014**

In the *ex parte* application of:

**MOUNT EDGECOMBE COUNTRY CLUB ESTATE**

**MANAGEMENT ASSOCIATION II (RF) NPC**

**Applicant**

(Registration Number: 1995/012432/08)

in respect of:

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

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Presiding Member of the Tribunal : Khashane Manamela

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**DECISION (Reasons and Order)**

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[1] Mount Edgecombe Country Club Estate Management Association II (RF) NPC or as colloquially referred to by the chairperson of its board of directors David Granville Buxton, MECCEMA TWO, is evidently a non-profit company established in 1995 with a limited purpose “To maintain, control, administer and manage the Mount Edgecombe Country Club Estate 2 development... and to provide security to such residential development”.<sup>1</sup> It has 887 members, who are owners of the completed homes<sup>2</sup> and therefore with a public interest score of over 500 points. It is therefore, required to appoint a social and ethics committee (a SEC) in terms of regulation 43, read together with regulation 26(2)(d)(ii) of the Companies Regulations, 2011 (the Regulations). Regulation 43 gives effect to section 72(5) of the Companies Act 71 of 2008 (the Act).

[2] MECCEMA TWO applies for an exemption from the requirement to appoint a SEC specifically in terms of section 75(5)(b) of the Act. This section provides for an exemption where “...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] From the bare submissions made regarding the nature and extent of the activities of MECCEMA TWO (the applicant) the following is pertinent:

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<sup>1</sup> Paragraph 2 of the supporting affidavit.

<sup>2</sup> Paragraph 3 of the supporting affidavit.

- 3.1 the applicant consists of owners of freehold and sectional title properties (the owner members);
- 3.2 it derives its income from the levies collected from the owner members;
- 3.3 the income cannot be distributed to the owner members, directors or officers, except where this is reasonable compensation in the form of salaries to employees;
- 3.4 as a non-profit company, it can upon dissolution only distribute its assets to other non-profit companies;
- 3.5 it employs 21 permanent employees and performs some of its activities or projects through third-party contractors, and
- 3.6 it essentially exists to manage the collective affairs of the owner members within the estate.

[4] Evidently, the extent of the applicant's activities seems very limited and do not seem to render it reasonably necessary in the public interest to require the company to have a SEC. Obviously a determination or enquiry in this regard includes having regard to the functions of a SEC in terms of regulation 43(5) of the Regulations, being:

“(5) A social and ethics committee has the following functions:

- (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;
  - and
  - (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.”

[5] The applicant attracted the requirement to appoint a SEC due to the number of its owner members (887). However, its public interest score is very low when determined from other areas, like number of employees (21); third party liability (it seems to sustain itself exclusively from levies collected) or turnover (R19 450 738 for the year ended 28<sup>th</sup> February 2013). It appears not to be rendering any services beyond the confines of its estate perimeter walls and therefore its impact is limited to its owner members; a handful of employees and contractors (to whom it outsources security, landscaping and maintenance work). Therefore, on the basis of the aforesaid activities of the applicant, I hold the opinion that, it does not necessarily serve the public interest to require the applicant to appoint a SEC.

[6] In the result:

- a) the application for an exemption from the requirement to appoint a social and ethics committee is granted.

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**Khashane Manamela**

**Member, Companies Tribunal**

**08<sup>th</sup> May 2014**