

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

Case No: CTR001/12/2012

In the ex parte application of

H.G Molenaar & Company (Pty) Ltd

Coram: Kganyago M.F

Decision handed down on the 09th OCTOBER 2012



DECISION

INTRODUCTION

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

BACKGROUND

- [3] The Applicant is a privately owned company incorporated and existing under the company laws of South Africa and having its principal place of business at Daljosaphat, Paarl, Western Cape Province.
- [4] The Applicant has stated that the reasons for applying for exemption is that the Company is a privately owned family business. The board of directors consists solely of the shareholders. There are no non family shareholders. The main business of the company is the manufacturing of machines for the food and beverage industry.
- [5] On the 12th September 2012, I cause a letter to be sent to the applicant wherein I request them to inform me as to how many employees are in their employment and also the turnover of the company. The letter was sent by registered mail on the 12/09/12 and to date I have not received their response.

APPLICABLE LAW

[6] Section 72(5) of the Companies Act, 71 of 2008 reads as follows:-

“(5) 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 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 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.”*

EVALUATION

[7] The Applicant has brought an application seeking an exemption to appoint social and ethics committee in terms of section 72(5)(b) of the Act.

[8] From the application itself, the Applicant did not state what other form of formal mechanism do they have within their structures that will substantially perform the functions that would have been performed by the social and ethics committee.

[9] The number of employees and the turnover of the company are also the factors which are taken into consideration to determine whether the Applicant was obliged to have such a committee. However the Applicant has failed to furnish me with those details despite proper request.

[10] Even though the Applicant has mentioned the activities of the Company in their application, without the number of the employees and the turnover and become difficult to determine whether or not it is reasonably necessary in the public interest to have such a committee.

FINDINGS

[11] Therefore, under the circumstances, in my view the Applicant has failed to show that it is not reasonable necessary and in the public interest to have such a committee.

ORDER

[12] The Applicant's application is hereby refused.



M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL