

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CTR002/05/2012

In the ex-parte application of:

South African Mint Company (Pty) Ltd

Applicant

Coram: Kganyago M.F

Decision handed down on the 29th November 2012



DECISION

INTRODUCTION

- [1] The Applicant is bringing an application in terms of section 75(5) 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

- [2] The Applicant is carrying on business at 370 Helen Joseph Street Pretoria, Gauteng, under the name The South African Mint Company (Pty) Ltd.
- [3] The Applicant has stated that the reason for applying for exemption is that they are a subsidiary of the South African Reserve Bank which is having a social and ethics committee.
- [4] On the 29th October 2012 I caused a letter to be sent to the Applicant wherein I requested them to furnish me with the following particulars:
- 4.1. Copy of the resolution of the board/company authorizing the deponent of the affidavit to lodge the application on their behalf;
 - 4.2. The turnover of the company;
 - 4.3. The number of employees of the company; and

4.4 Copy of the terms of reference of the SARB social and ethics committee.

- [5] The Applicant was requested to furnish me with the abovementioned particulars within 10 days of receipt of the letter. The Applicant has failed to respond to the letter or to furnish me with the requested particulars and more than 10 days have expired since the letter was dispatched to them.

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 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 exemption to appoint the social and ethics committee.
- [8] I have requested the Applicant to furnish me with the particulars that will assist me in arriving at an informed decision. However, despite a proper request, the Applicant has failed to furnish me with the required particulars.

The mere fact that a company is a subsidiary of another company is not sufficient, and does not mean that the subsidiary company is absolved from having the social and ethics committee, and that is not the intention of the Act. If it was the intention of the Act that a subsidiary company should be absolved, it would have stated so. Without the terms of reference of SARB social and ethics committee, it will be difficult for me to determine whether or not it is reasonably in the public interest to have such a committee or not. The onus is on the applicant to prove their case and they have failed to do so.

FINDINGS

[9] Therefore, under the circumstances, in my view, the Applicant has failed to show that it is not reasonably necessary in the public interest or that another committee substantially performs the same or similar functions that would be performed by the social and ethics committee.

ORDER

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



M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL