

In the matter between:

Greenhouse Funding Limited

Applicant

And

Securitisation Issuer Owner Trust

Respondent

Coram: Kganyago M.F

Decision handed down on the 17th December 2013

DECISION

INTRODUCTION

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

BACKGROUND

[2] The applicant is a public company incorporated in accordance with the company laws of the Republic of South Africa, having its principal place of business at 3rd Floor, 200 on Main, Corner Main and Bowwoods Roads, Claremont, Cape Town. The respondent is a business trust registered in accordance with the laws of the Republic of South Africa having its principal place of business at the same address as that of the applicant.

[3] The applicant alleges that they are incorporated and registered as a ring-fenced, bankruptcy remote special purpose vehicle which was established for the sole

purpose to acquire, finance and/or hold rights and/or title to instalment sale agreements, assets, receivables, securities and/or other instruments in terms of a securitisation programme, with funds raised directly or indirectly by the issue of debt instruments and to operate the business so acquired. The applicant further submit that in terms of Transaction Documents and the provisions of its Memorandum of Incorporation, they may not engage in any other activities other than the purpose and activities as stated in this paragraph.

[4] The applicant further submit that the respondent is their sole shareholder. 100% of the applicant's issued ordinary shares are held by the respondent, which is an independently controlled trust. The applicant is restricted from trading and has no employees. The applicant further submit that all their require services are contracted to external service providers.

[5] The applicant is therefore of the view that it is not reasonably necessary nor in the public interest to require them to establish a social and ethics committee.

APPLICABLE LAW

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

“ 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 an 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 functions 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 company.”

[7] Regulation 43(2)(a) of the Act reads as follows:-

“(2) 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.”

EVALUATION

- (8) The applicant has brought an application seeking exemption to appoint a social and ethics committee in terms of section 72(5)(b) of the Act.
- (9) The applicant do concede that in terms of the Act, they are required to appoint a social and ethics committee. However the applicant is not stating that it is subsidiary of another company which is having the social and ethics committee. In terms of regulation 43(2)(a) of the Act, the applicant would have qualified for an exemption if it was a subsidiary of another company which has a social and ethics committee which will perform the functions required by this regulation. The applicant do concede that if it were to be assessed solely on its public interest score, it may be required to appoint a social and ethics committee. Therefore, in view it is immaterial whether it is restricted from trading or has no employees.

FINDINGS

- [10] Therefore under the circumstances, it is my finding that the applicant has failed to show that it is not reasonably necessary in the public interest to have a social and ethics committee.

ORDER

[11] The applicant's application is hereby refused.

Dated at POLOKWANE on this 17th day of DECEMBER 2013.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL