

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CTR 13/06/2012

In the exparte application of:

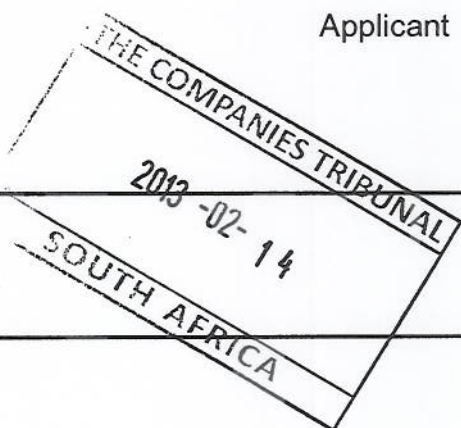
Slab Joint Finance Company (RF)(Pty)Ltd

Applicant

Coram: Kganyago M.F

Decision handed down on the 23rd October 2012

DECISION



INTRODUCTION

- [1] The Applicant is bringing an application in terms of section 75(5)(b) of the Companies Act, 71 of 2008. This is an exparte application. The Applicant is seeking an order that it be exempted from appointing a social and ethics committee.

BACKGROUND

- [2] 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 4 Merchant Place, Cnr Fredman & Rivonia Road, Sandton, Gauteng.
- [3] The Applicant has stated that the reasons for applying for exemption is that the entity falls within the FirstRand Limited Group which has established their own social and ethics committee. The Applicant has further stated that the entity is a specialised ring-fenced, specifically established to an investment holding company and that the entity does not have employees. The Applicant states further that the entity conducts its affairs though RMB (a division of FirstRand Bank Limited) as manager within the strict prescribed contractual terms. In their view, the purpose for which the entity is established is limited and since they

does not employ anyone, they should be exempted from appointing 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 Company resolution authorizing the deponent of the affidavit to lodge the application on behalf of the company.

4.2. The type of activities that the company is performing.

4.3. The turnover of the company

4.4. Copy of the terms of reference of FirstRand Social and Ethics Committee.

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

[5] 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 extend of the activities of the Company.”

EVALUATION

- [6] 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.
- [7] 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. It is not sufficient to merely state that they don't have any employees and that they conducts its affairs through RMB which is having an established social and ethics committee. The Applicant should inform us of the turnover of the entity and also attach the terms of reference of FirstRand Social Ethics Committee to establish whether indeed their committee covers the Applicant. The Applicant has failed to furnish me with the required particulars despite a proper request. Without the turnover of the company and terms of reference of FirstRand Social and Ethics Committee, it becomes difficult to determine whether or not it is reasonably in the public interest to have such a committee or not.

FINDINGS

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

ORDER

- [9] The Applicant's application is hereby refused.



M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL