



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**CASE NO: CT01002ADJ2022**

In *ex parte* application of:

**TRADE FOR LIFE (PTY) LIMITED**

**Applicant**

**(Registration Number: 2001 / 002464 / 07)**

*for an exemption from the requirement to appoint a social and ethics committee*

---

**Summary:** *Application for an exemption from the requirement to appoint a social and ethics committee (SEC) – application based on section 72(5)(b) of the Companies Act, 2008 (Act No. 71 of 2008) – 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. Held, that exemption be granted for a period of five years.*

**Coram: Lindelani Daniel Sikhitha**

**Decision handed down on 01 June 2022**

---

**DECISION (Reasons and Order)**

---

*Per* **Lindelani Daniel Sikhitha:**

**A. INTRODUCTION**

[1] The Applicant in this matter is Trade for Life (Pty) Limited, Registration Number: 2001 / 002464 / 07, which is a private company with limited liability, duly formed, registered and incorporated in terms of the applicable laws of the

Republic of South Africa. The Applicant has its registered address at Trident Park III, Second Floor, 1 Niblick Way, Somerset West, 7130.

[2] This is an *ex parte* application for an exemption from the requirement to appoint a social and ethics committee (“SEC”) in terms of section 72(5)(b) read with section 72(6) of the Companies Act, 2008 (Act No. 71 of 2008) (“the Act”). The application is supported by a Founding Affidavit deposed to by Eelco Cornelius De Vries (“De Vries”) who is the sole director of the Applicant. De Vries’s authority to lodge the current application and to sign the documents in relation thereto is recorded on the Resolution of the Board of the Applicant dated 12 April 2022.

[3] I am satisfied that De Vries is duly authorised to sign all documents, forms and affidavits on behalf of the Applicant. He is also authorised to do all those things that are necessary to give effect to all the resolutions of the Board of Directors of the Applicant regarding the current application.

**B. FACTUAL BACKGROUND RELEVANT TO THE CURRENT APPLICATION FOR AN EXEMPTION TO ESTABLISH AN SEC**

[4] The Applicant is bringing an application for exemption to form a SEC in terms of section 72(5)(b) of the Act. The relevant provisions of section 72(5) states the following:

**“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 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.”** [Own emphasis added.]

[5] In terms of section 72(6) of the Act, an exemption granted in terms of subsection (5) is valid for five years, or such shorter period as the Tribunal may determine at the time of granting the exemption, unless set aside by the Tribunal in terms of subsection (7).

[6] The Applicant is basing its application on the following:

- 6.1 Reasonable necessity;
- 6.2 Public interest;
- 6.3 Nature of the activities of the Applicant; and
- 6.4 Extent of the activities of the Applicant.

[7] The Applicant based its application for the requested exemption from the requirement to appoint a SEC on the following reasons:

- 7.1 The Applicant is a company that acts as a commodities broker for various products including poultry, fish, meat and fruit for its foreign customers. In other words, the Applicant acts as an intermediary between the South African market and foreign customers.
- 7.2 The Applicant become the legal owner of the commodities sourced from the suppliers before they are on-sold to the foreign customers. It follows therefore that the Applicant does not only act as an agent for which commission or fees are earned. The Applicant will only place an order in the South African market for such commodities upon receipt of such an order from its foreign customers.
- 7.3 Due to the large volumes and value of commodities that are sourced from the suppliers, the Applicant's turnover appears to be substantial when it is not in reality.
- 7.4 In terms of each of these transactions, the Applicant's average gross profit margin is approximately 6%, which is an accurate indication of the Applicant's business activities. The Applicant annexed copies of annual financial statements for three financial years to illustrate and support this allegation.
- 7.5 The Applicant does not have a large suppliers' network and its current supplier network ranges between 10 and 15 suppliers. There are agreements which are concluded between the Applicant and its suppliers. These agreements are regulated privately, and they do not fall within the scope of public interest at large.

- 7.6 The Applicant does not have a large physical assets network and the current assets owned by the Applicant are office furniture, equipment and vehicles.
- 7.7 The Applicant has seven employees who operate from a small office that is situated in Somerset West and they all perform senior functions.
- 7.8 The Applicant has only one director who is involved in the day-to-day business activities and management of the Applicant.
- 7.9 If the Applicant was to be required to establish a SEC, this will simply means that the Applicant must appoint either two non-executive directors or one executive director and one non-executive director.<sup>1</sup>
- 7.10 The establishment of a SEC will result in the Applicant incurring costs that are associated with such appointments.
- 7.11 The Applicant submits that the appointment of two additional directors for the sole purpose of the composition of a SEC does not justify the cost burden to the Applicant.
- 7.12 According to the Applicant, there are no internal or external stakeholders are going to be prejudiced by the absence of a SEC within the Applicant's Board of Directors.

[8] I will now proceed to consider the law that is applicable to the current application for an exemption for the Applicant to establish a SEC. This

---

<sup>1</sup> In terms of regulation 43(4) of the Regulations, a company's SEC must comprise not less than three (3) directors or prescribed officers of the company, at least one of whom must be a director who is not involved in the day-to-day management of the company's business, and must not have been not have been so involved within the previous three (3) financial years.

exercise is crucial for me to do because it lays bare the two issues. The first issue relates to whether the Companies Tribunal does have jurisdiction to deal with the current application for an exemption for the Applicant to establish a SEC. The second issue relates to whether the Applicant had managed to adduce the necessary evidence to satisfy the requirements to enable the Companies Tribunal to grant it the exemption that is sought.

### **C. APPLICABLE LAW IN RELATION TO EXEMPTIONS**

[9] Section 72(4) empowers the Minister of Trade and Industry (“the Minister”) to prescribe, by way of Regulations, those companies which shall be required to appoint a SEC. The Minister did indeed make the Regulations in terms of section 223 of the Act and they are referred to as Companies Regulations, 2011 (“the Regulations”).

[10] Regulation 43(1) of the Regulations expressly states that it applies to every state-owned company, every listed public company, and any other company that has, in any two of the previous five years, scored above 500 points in terms of regulation 26(2) of the Regulations, or would have so scored if the Act had been in effect at that time.

[11] In paragraphs 6.1 and 6.2 of De Vries’s Founding Affidavit, the public interest score (“PIS”) of the Applicant for the past three financial years are listed as follows:

11.1 For the financial year ended February 2019, the Applicant’s PIS was 597;

11.2 For the financial year ended February 2020, the Applicant's PIS was 643; and

11.3 For the financial year ended February 2021, the Applicant's PIS was 428.

[12] The Applicant has therefore scored, in two of the previous five financial years (being 2019 and 2020), above 500 points and regulation 43(1) of the Regulations will apply to the Applicant. In terms of regulation 43(2) of the Regulations a company to which regulation 43 applies must appoint a SEC unless if the company in question:

12.1 **is a subsidiary of another company that already has a SEC, and a SEC of that other company will perform the functions required by regulation 43 of the Regulations on behalf of that subsidiary company; or**

12.2 **has been exempted by the Companies Tribunal in accordance with section 72 (5) and (6) of the Act.** [Own emphasis added.]

[13] In terms of section 72(5) a company that falls within a category of companies that are required in terms of section 72(4) and regulation 43 to appoint a SEC may apply to the Companies Tribunal in the prescribed manner and form for an exemption from that requirement, and the Companies Tribunal may grant such an exemption if it is satisfied that:

13.1 **the company in question 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 SEC in terms of section 72 and regulation 43 of the Regulations<sup>2</sup>; or**

13.2 **it is not reasonably necessary in the public interest to require the company to have the SEC, having regard to the nature and extent of the activities of the company<sup>3</sup>.** [Own emphasis added.]

[14] Based on what is outlined above, section 72(5)(a) of the Act provides that an exemption from the requirement to appoint the SEC may be granted by the Companies Tribunal on the basis that the company (the applicant) in question 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 SEC in terms of section 72 and the applicable provisions of the Regulations.

[15] Section 72(5)(b) of the Act provides that an exemption from the requirement to appoint a SEC may be granted by the Companies Tribunal on the basis that it is not reasonably necessary in the public interest to require such a company to appoint the SEC having regard to the nature and extent of the activities of the company in question. The Applicant is applying for an exemption to establish a SEC in terms of section 72(5)(b) of the Act for reasons that are fully outlined in paragraph 7 above.

[16] In terms of paragraph 7 of De Vries Founding Affidavit, the current application for exemption from the requirement to appoint the SEC is being made in terms of section 72(5)(b) of the Act.

---

<sup>2</sup> Refer to section 72(5)(a) of the Act.

<sup>3</sup> Refer to section 72(5)(b) of the Act.

[17] In terms of regulation 142(1) of the Regulations, a person may apply to the Companies Tribunal for an order in respect of any matter contemplated by the Act, or the Regulations by completing and filing with the Companies Tribunal's recording officer:

17.1 an Application in Form CTR 142; and

17.2 a supporting affidavit setting out the facts on which the application is based.

[18] In the current application, the Applicant is seeking an exemption from appointing the SEC on the basis that it is not reasonably necessary in the public interest as contemplated in section 72(5)(b) of the Act to require the Applicant to appoint the SEC, having regard to the nature and extent of its activities, particularly in relation to the functions of the SEC as set out in regulation 43(5).

[19] Form CTR 142 was duly signed on behalf of the Applicant by De Vries, who is the sole director of the Applicant. In addition, the application is supported by a Founding Affidavit deposed to by De Vries. It is clear from the documents placed before me that De Vries had been duly authorized to depose the Founding Affidavit and to launch the current application.

[20] I am therefore satisfied that the current application complies with the requirements set out in Regulation 142(1) of the Regulations and it is therefore properly brought before the Companies Tribunal. I will now proceed to evaluate the merits of the application.

**D. EVALUATION OF THE CURRENT APPLICATION FOR EXEMPTION**

[21] The Applicant is a South African registered company and the day-to-day business activities and affairs of the Applicant are managed by its sole director.

[22] I gathered from the papers placed the Companies Tribunal that the current application is based on the premise that it is not reasonably necessary in the public interest to require the Applicant to establish a SEC having regard to the nature and extent of the activities of the Applicant. In my evaluation of the current application, I am expected to deal with issues related to the following:

22.1 reasonable necessity;

22.2 public interest;

22.3 nature of the activities of the Applicant; and

22.4 extent of the activities of the Applicant.

[23] In my view, the evaluation of the issues listed above is important for purposes of my determination of the bigger question of whether the Applicant should be granted an exemption from the requirement of establishing the SEC. In undertaking such kind of evaluation, I will rely on the information provided by the Applicant in its papers and more specifically the allegations contained in De Vries' Founding Affidavit.

[24] I have already outlined the reasons for bringing the current application for an exemption to establish a SEC in paragraph 7 above. I will therefore not repeat them again here.

[25] In terms of regulation 43(5) of the Regulations, the SEC of a company should be appointed for purposes of serving functions which can be grouped into three categories:

25.1 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:-

25.1.1 Social and economic development, including the company's standing in terms of the goals and purposes of: -

25.1.1.1 The 10 principles set out in the United Nations Global Company Principles;

25.1.1.2 The OECD recommendations regarding corruption (refer to the Organisation for Economic Co-operation and Development (OECD) website for further details ([www.oecd.org](http://www.oecd.org)));

25.1.1.3 The Employment Equity Act, No 55 of 1998; and

25.1.1.4 The Broad-Based Black Economic Empowerment Act, No 53 of 2003;

25.1.2 Good corporate citizenship, including the company's:-

25.1.2.1 Promotion of equality, prevention of unfair discrimination and measures to address corruption;

25.1.2.2 Contribution to development of the communities in which its activities are predominantly conducted or

within which its products or services are predominantly marketed; and

25.1.2.3 Record of sponsorship, donations and charitable giving;

25.1.3 The environment, health and public safety, including the impact of the company's activities and of its products or services;

25.1.4 Consumer relationships, including the company's policies and record relating to advertising, public relations and compliance with consumer protection laws; and

25.1.5 Labour and employment, including:-

25.1.5.1 The company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and

25.1.5.2 The company's employment relationships, and its contribution toward the educational development of its employees;

25.2 To draw matters within its mandate to the attention of the Board as occasion requires; and

25.3 To report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

[26] As outlined in regulation 43(5) of the Regulations, the role of the SEC is therefore in the main to look into compliance on social and ethics issues including but not limited to the following:

26.1 triple bottom reporting;

26.2 economic, social and environmental sustainability as provided for in the United Nations Global Reporting Initiatives;

26.3 decent work;

26.4 procurement;

26.5 transformational goals;

26.6 human rights and labour standards;

26.7 anti-corruption; and

26.8 all issues falling within its mandate.

[27] In my view, SECs are important not only to protect the communities and the environment where companies operate but for the protection of shareholders' interests as well. They are also very critical in the protection and development of basic human rights which are contained in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) ("the Constitution").

[28] Any negative news relating to social and ethics issues have a serious economic impact for companies and the country in general. SECs are there for the main purpose of bringing these issues to the attention of the board and to also report them in the shareholders' meetings, as and when required. Such reporting will

ensure that the board and shareholders of the company recommend and take appropriate corrective measures.

[29] As we may all know, companies that are required to have SECs are public companies, state owned companies and companies that have in any two or previous five years scored above 500 points in terms of the Regulations. I am therefore enjoined to consider the functions of the SEC as provided for in regulation 43(5) of the Regulations when dealing with this current Application.

**E. EXEMPTION BASED ON SECTION 72(5)(B) OF THE ACT (BASED ON PUBLIC INTEREST CONSIDERATIONS)**

[30] The current application for exemption from the requirement to appoint a SEC is brought in terms of section 72(5)(b) of the Act. This section provides that an exemption may be granted on the basis that it is not reasonably necessary in the public interest to require the applicant company to appoint the SEC having regard to the nature and extent of the activities of the applicant company.

[31] I did peruse De Vries's Founding Affidavit and I found the following allegations which are relevant for evaluation of the merits of the merits of the application for exemption of the Applicant to establish a SEC:

31.1 The Applicant is a company that acts as a commodities broker for various products including poultry, fish, meat and fruit.

31.2 The Applicant acts as an intermediary between the South African market and foreign customers. In other words, the Applicant becomes

the legal owner of the commodities sourced from suppliers before they are on-sold to the foreign customers. Therefore, the Applicant does not only act as an agent for which commission or fees are earned. The Applicant will only place an order in the South African market for such commodities upon receipt of an order from its foreign customers.

31.3 Due to the large volumes and value of commodities that are sourced and supplied to the foreign customers, the Applicant's turnover appears to be substantial whereas it is not in reality.

31.4 In terms of each of these transactions, the Applicant's average gross profit margin is approximately 6%, which is an accurate indication of the Applicant's business activities.

31.5 The Applicant does not have a large suppliers' network and its current supplier network ranges between 10 and 15 suppliers. The agreements between the Applicant and its suppliers are regulated privately and these agreements do not fall within the scope of public interest at large.

31.6 The Applicant does not have a large physical assets network and the current assets owned by the Applicant are office furniture, equipment and vehicles. The Applicant is therefore managing a small operation which has high turnover due to the volumes and value of the commodities that it sources for its foreign customers.

31.7 The Applicant has seven employees who operate from a small office that is situated in Somerset West and they all perform senior functions.

31.8 The Applicant has only one director who is involved in the day-to-day business activities and management of the affairs of the Applicant.

31.9 If the Applicant was to establish a SEC, it will be required in terms of regulation 43(4) of the Regulations, to appoint either two non-executive directors or one executive director and one non-executive director.

31.10 It follows therefore that the establishment of a SEC will result in the Applicant incurring costs that are associated with appointment of two additional directors.

31.11 The appointment of two additional directors for the sole purpose of the composition of a SEC as required by regulation 43(4) of the Regulations does not justify the cost burden to the Applicant.

31.12 No internal or external stakeholders are going to be prejudiced by the absence of a SEC within the Applicant's Board of Directors.

[32] I now turn to consider the following requirements for purposes of determining whether the an exemption from establishing a SEC should be granted to the Applicant:

32.1 **Reasonable necessity:**

32.1.1 The Applicant does not have a large suppliers' network and its current supplier network ranges between 10 and 15 suppliers.

32.1.2 There are various agreements which are concluded between the Applicant and its suppliers. These

agreements are regulated privately and they do not fall within the scope of public interest at large.

32.1.3 The Applicant does not have a large physical assets network and the current assets owned by the Applicant are office furniture, equipment and vehicles.

32.1.4 The Applicant's day-to-day business activities are managed by a sole director with the assistance of seven (7) employees. The Applicant's business activities are mainly conducted from a small office that is situated in Somerset West.

32.1.5 I have considered the reasons advanced by the Applicant as the basis for bringing the application for an exemption in this matter and I am satisfied that it is not reasonably necessary to require the Applicant to establish a SEC.

**32.2 Public interest:**

32.2.1 Should the Applicant be required to establish a SEC in terms of the Act, it would have to appoint either two non-executive directors or one executive director and one non-executive director or one non-executive director and a Chief Executive Officer (prescribed officer) in line with regulation 43(4) of the Regulations.

- 32.2.2 Therefore, the establishment of a SEC will result in the Applicant incurring costs that are associated with the appointment of two additional directors as the minimum membership of a SEC is three (3) directors. Alternatively, the Applicant may have to appoint one director and a prescribed officer, in the form of a Chief Executive Officer to meet the SEC's minimum membership requirements of regulation 43(4) of the Regulations.
- 32.2.3 I do agree with the Applicant that the appointment of two additional directors or a director and a prescribed officer for the sole purpose of meeting the minimum requirements for the proper composition of a SEC does not justify the cost burden to the Applicant.
- 32.2.4 I further do agree with the Applicant that no internal or external stakeholders are going to be prejudiced by the absence of a SEC within the Applicant's Board of Directors.
- 32.2.5 As already stated above, requiring the Applicant to establish a SEC will impose a cost burden on the Applicant. The Applicant will be required to appoint two additional directors who will come at a cost to it.
- 32.2.6 It is therefore not in the public interest that the Applicant should be required to establish a SEC.

### **32.3 Nature of the activities of the Applicant:**

- 32.3.1 The Applicant is a company that acts as a commodities broker for various products including poultry, fish, meat and fruit.
- 32.3.2 The Applicant acts as an intermediary between the South African market and foreign customers. In other words, the Applicant becomes the legal owner of the commodities sourced from suppliers before they are on-sold to the customers.
- 32.3.3 Due to the large volumes and value of commodities required to be sourced and supplied to its customers, the Applicant's turnover appears to be substantial when it is not in reality.
- 32.4.4 In terms of each of these transactions, the Applicant's average gross profit margin is approximately 6%, which is an accurate indication of the Applicant's business activities.
- 32.2.5 It follows therefore that based on the nature of the business activities of the Applicant, it is not reasonably necessary to require the Applicant to establish a SEC.

**32.4 Extent of the activities of the Applicant:**

- 32.4.1 The Applicant does not have a large suppliers' network and its current supplier network ranges between 10 and 15 suppliers.
- 32.4.2 The agreements that are concluded between the Applicant and its suppliers are regulated privately and these do not fall within the scope of public interest at large.
- 32.4.3 The Applicant does not have a large physical assets network and the current assets owned by the Applicant are office furniture, equipment and vehicles.
- 32.4.4 The Applicant has seven employees who operate from a small office that is situated in Somerset West and they all perform senior functions.
- 32.4.5 The Applicant has only one director who is involved in the day-to-day business activities and management of the Applicant. The sole director manages such business activities with the assistance of seven (7) employees.
- 32.4.6 I have considered the reasons advanced by the Applicant as the basis for bringing the application for an exemption in this matter and I am satisfied that based on the nature of the business activities of the Applicant, it is not reasonably necessary to require the Applicant to establish a SEC.

**F. FINDINGS**

[33] I find that the Applicant managed to adduce the necessary evidence that is sufficient for it to be granted exemption in terms of section 72(5)(b) of the Act read together with regulation 43 of the Regulations.

[34] I am satisfied that the exemption to be granted should be for a period of five (5) years which must be calculated from the date that I make my order which appears herein below.

**F. ORDER**

[35] I therefore make the following order:

35.1 the application for an exemption from the requirement to appoint a Social and Ethics Committee is hereby granted in terms of section 72(5)(b) of the Act read together with regulation 43 of the Regulations; and

35.2 the exemption granted in terms of paragraph 35.1 above is valid for a period of five (5) years from the date of this order.

---

**LINDELANI DANIEL SIKHITHA**  
**Member of the Companies Tribunal**  
**Date: 01 June 2022**