



AIN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT01155ADJ2022

In *ex parte* application:

WMA AFRICAS (Pty) Ltd

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 04 October 2022

DECISION

1. INTRODUCTION

1.1 Applicant is WMA Africas (Pty) Ltd., a company duly incorporated in accordance with the company laws of South Africa, with registration number 2016/ 424666/07 and having its registered address at Suite 108-109 Mount Quray Street, Midlands Office, Midlands Estate, Gauteng, 1692.

1.2 On 12 August 2022, Applicant applied to the Companies Tribunal for an exemption from appointing a Social and Ethics Committee (“SEC”) in terms of section 72 (5) of the Companies Act 71 of 2008 (“the Act”) read with Regulation 43 of the Companies Regulations¹ (“the Regulations”).

¹ GN R351 in GG 34239 of 26 April 2011.

1.3 The founding affidavit in the CTR142 form is properly deposed to by Mr Kobus Keulder, one of Applicant's two Directors, duly authorised.

2. BACKGROUND

2.1 Applicant is a private company whose core business is to source and export ore and metals for its sole shareholder: World Metals & Alloys FZC, which is based in Dubai. Applicant employs five people and operates out of a small, rented office.

2.2 Applicant's public interest score ("PIS") exceeded 500 points in the past two financial years, which, according to Mr Keulder, was due to its high annual turnover driven by volume, US Dollar-Rand exchange rate and the value of commodities sourced.

2.3 Applicant submits that, due to the limited nature and extent of its business, it is not reasonably necessary in the public interest for it to establish an SEC.

3. ISSUES

3.1 The issue to be decided is if Applicant has made out a proper case for an exemption.

4. APPLICABLE LAW

4.1 Section 72 of the Act stipulates:

"(4) The Minister, by regulation, may prescribe –

(a) a category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to—

- i. annual turnover
- ii. workforce size; or
- iii. the nature and extent of the activities of such companies;

(b) the functions to be performed by social and ethics committees required by this subsection; and

(c) rules governing the composition and conduct of social and ethics committees.

(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 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.

(6) 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).”

4.2 The Companies Regulations provide in Regulation 43(1) that a SEC must be appointed by:

... (c) Any other company with a PIS above 500 in any two of the previous five (financial) years.

4.3 The PIS is calculated in terms of Regulation 26(2) as follows—

(a) a number of points equal to the average number of employees of the company during the financial year (‘employee’ has the meaning set out in the Labour Relations Act 66 of 1995 [Regulation 26(1)(a)];

(b) one point for every R1 million (or portion thereof) in third party liability of the company held by creditors at the financial year end;

(c) one point for every R1 million (or portion thereof) in turnover during the financial year; and

(d) one point for every individual who, at the end of the financial year, is known by the company-

- (i) in the case of the profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
- (ii) in the case of non-profit company, to be a member of the company, or a member of an association that is a member of the company.

4.4 If a company is required to appoint an SEC, it may apply for a ruling by the Tribunal for an exemption, under the provision of section 72(5) of the Companies Act.

4.5 In terms of Regulation 142(3), an application to this forum for a ruling must be made by filing:

- (a) an application form CTR 142; and
- (b) a supporting affidavit setting out the facts on which the application is based.

5. EVALUATION

5.1 Applicant briefly submits that, given the nature of its business, in terms of section 72(5) of the Act, it is not necessary in the public interest to require the company to have an SEC. Applicant attached as its supporting documentation, its annual financial statements for the past two years.

5.2 Applicant submits that it does not have a large supplier network, and that its supplier agreements are regulated privately. Its physical assets are minimal, and it does not currently bear any external debts, thereby reducing risk to external stakeholders.

5.3 Applicant argues further that to establish a functioning SEC requires the appointment of a non-executive director and executive director, which would add to its overhead costs.

6. FINDINGS

I find that Applicant has made out a case to be exempted from the appointment of an

SEC in terms of section 72(5) of the Act.

7. ORDER

The application for an order for the exemption from the requirement to appoint the SEC is therefore granted for three years² from the date of this order.

ADV. ISHARA BODASING

² In terms of section 72(6) of the Act