



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT01309ADJ2023

In the *ex parte* application of:

**AMBER HOUSE FUND 6 (RF) LIMITED**  
**(2013/020920/06)**

**APPLICANT**

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Presiding Member of the Companies Tribunal: Joshua Kadish

Date of Decision: 29 May 2023

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### **DECISION** (Reasons and an Order)

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#### **INTRODUCTION**

1. The Applicant is **AMBER HOUSE FUND 6 (RF) LIMITED**, a company duly incorporated in terms of the company laws of South Africa, with registration number 2019/292306/06, and with its registered address at 2 Milkwood Crescent, Milkwood Park, La Lucia Ridge, Durban, Kwa-Zulu Natal, 4051.
2. The *ex parte* application is brought by Ashley Eaton, duly authorized by the Board of Directors to act on behalf of the Applicant, for an exemption in terms of section 72(5) of the Companies Act 71 of 2008 ("the Act") from the requirement that the Applicant have a Social and Ethics Committee ("SEC") (as required by section 72(4) read with Regulation 43 of the Act).

## THE REQUIREMENTS OF THE ACT

3. Section 72(4) of the Act empowers the Minister to prescribe, by regulation, those categories of companies which must each have a SEC, 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.
4. Regulation 43 of the Act (*Social and Ethics Committee*) applies to (a) every state owned company; (b) every listed public company; and (c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).
5. Regulation 26(2) of the Act prescribes the methodology for calculating a company’s “public interest score” at the end of each financial year, being the sum of the following:  
  
*“(a) a number of points equal to the average number of employees of the company during the financial year;*  
*(b) one point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;*  
*(c) one point for every R 1 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 a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or*  
*(ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.”*
6. In terms of Regulation 43(2) of the Act, “[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; or (b) it has been exempted by the Tribunal in accordance with section 72(5) and (6).”*

7. The manner and grounds for a company to apply for an exemption from the requirement to appoint a SEC is contained in section 72(5) of the Act.
8. Section 72(5) of the Act provides that, notwithstanding the requirement to appoint a SEC, a company 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 SEC; or (b) it is not reasonably necessary in the public interest to require the company to have a SEC, having regard to the nature and extent of the activities of the company.

## **THE FACTS**

9. The Applicant is a ring-fenced public company and a special purpose vehicle which is part of a Securitised Structure. The Applicant’s public interest score calculated in accordance with Regulation 26(2) has exceeded 500 in at least two of the previous five years. Accordingly, the Applicant constituted a SEC. The Applicant has applied to this Tribunal seeking an exemption from the requirement to have a SEC.
10. The Applicant is regarded as a managed entity in terms of a Servicing and Standby Servicing Agreement concluded between the Applicant and, inter alia, SA Home Loans (Pty) Ltd (“the Servicer”) and SAHL Investment Holdings (Pty) Ltd (the SA Home Loans group’s holding company). As such, the Applicant is not a subsidiary as envisaged in terms of Regulation 43(2)(a).

## **ANALYSIS OF THE FACTS AND THE APPLICATION FOR EXEMPTION**

11. In order for the Applicant to be exempt from the requirement to have a SEC, it must show that (a) it is already required by another law to have an existing structure in place that actually performs the functions prescribed by the Act to the SEC; or (b) the nature and extent of its activities are such that it does not have any significant impact on the public interest.
  
12. Relying on the aforementioned grounds for exemption, the Applicant placed on record the following:
  - i. The Applicant is a ring-fenced public company, and a Special Purpose Vehicle and is the Issuer in a securitized structure;
  - ii. The Applicant is regarded as a managed entity under the SA Home Loans group structure as its business and assets are managed by the Servicer (the trading company in the group structure);
  - iii. The Applicant does not have (and is prohibited from having) any employees or executive directors. The Applicant has one shareholder and its stakeholders are large institutions which would not be prejudiced by not holding a SEC;
  - iv. The Applicant has entered into a Servicing and Standby Servicing Agreement with the Servicer in which all administration and compliance related monitoring is conducted by the Servicer;
  - v. The Applicant's public interest score is above 500 for the financial years 2020 and 2021, which calculation is predominantly comprised of third party liabilities and interest income of the Applicant which are managed by the Servicer;
  - vi. All information used in the SEC reports pertain to the business activities of the Servicer and accordingly the true purpose and spirit of Regulation 43(5) of the Act is not being served by the mandated committee, and is substantially provided by the SEC of the Servicer;
  - vii. The SEC of the Servicer's holding company is mandated to fulfil all duties and functions necessary on behalf of the Applicant and the rest of the Applicant's group of companies;

- viii. The nature and extent of the Applicant's activities make it unnecessary in the public interest to appoint a SEC in addition to the Servicer's holding company's SEC.

## **FINDINGS**

13. Taking into account the grounds upon which this application has been brought and the evidence provided on behalf of the Applicant in the papers, I am satisfied that the Applicant has made out a proper case that it is not reasonably necessary in the public interest to require the Applicant to have a SEC, having regard to the nature and extent of the activities of the Applicant and its group of companies.
14. The Applicant's application is granted as set out below.

## **ORDER**

15. The Applicant is exempted from being required to appoint a SEC for a period of five (5) years from the date of this order, in accordance with section 72(6) of the Act.
16. The Tribunal's Recording Officer (Registrar) is directed to serve a copy of this Order on the (i) Applicant; and (ii) Commissioner of the Companies and Intellectual Property Commission (CIPC).

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**JOSHUA KADISH**  
**COMPANIES TRIBUNAL: MEMBER**