



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT01476ADJ2023

In the *ex parte* application of:

**NQABA FINANCE 1 (RF) LIMITED**  
**(2005/040050/06)**

**APPLICANT**

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Presiding Member of the Companies Tribunal: Joshua Kadish

Date of Decision: 9 October 2023

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

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#### **INTRODUCTION**

1. The Applicant is **NQABA FINANCE 1 (RF) LIMITED**, a company duly incorporated in terms of the company laws of South Africa, with registration number 2005/040050/06, and with its registered address at Eskom Head Office, 1 Maxwell Drive, Sunninghill, Gauteng, 2157.
2. The *ex parte* application is brought by Rosalind Mary Friedericksen, 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 are 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 this Tribunal in the prescribed manner and form for an exemption from that requirement, and this 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 not exceeded 500 in any of the previous five years and therefore it would not have ordinarily been required to constitute a SEC. Nevertheless, as the Applicant is a listed public company, it is required in terms of Regulation 43(1) to constitute a SEC. The Applicant has applied to this Tribunal seeking an exemption from the requirement to have a SEC.
10. The Applicant is an insolvency remote, ring-fenced special purpose vehicle incorporated as part of a securitisation structure which manages a pool of mortgage-backed securities listed on the asset-backed debt listings market of the Johannesburg Stock Exchange (JSE). Due to the nature of its business, the Applicant has no employees and is managed by its 4 directors.

11. The Applicant submits that having regard to the nature and extent of its activities, it is not reasonably necessary to constitute a SEC. Furthermore, the Applicant points out that many of the functions of a SEC are not applicable to the Applicant's business as it has no employees and has little impact on the public at large. The Applicant's Board of Directors would be tasked with handling all management of the Applicant's operations and in turn would be tasked with addressing any social and ethics matters with relevant stakeholders should they arise.

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

12. 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.

13. Having read the supporting Affidavit I am of the view that the Applicant does not have a major impact on public interest. The Applicant is part of a securitisation structure which manages a pool of mortgage-backed securities. Its activities do not impact the environment, health and safety. Its activities do not involve the sale of goods and products and it also has no employees. The Applicant is thus exempt from having a SEC.

### **FINDINGS**

14. 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.

15. The Applicant's application is granted as set out below.

## **ORDER**

16. 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.
  
17. 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**