



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01543ADJ2023

In the *ex parte* application of

PALLIDUS CREDIT CONNECT (RF) LIMITED

APPLICANT

Presiding Member:

H.K Dlepu

Date of handing down decision:

23rd October 2023

Decision and reasons

INTRODUCTION

1. The Applicant is **Pallidus Credit Connect (RF) Limited** registration number 2022/465544/06) represented by Jan Daniel Symington (authorized by a written resolution passed by the board of directors on the 11th of September 2023).
2. The Applicant has requested the Companies Tribunal (“Tribunal”) to exempt it from the requirement to have a Social and Ethics Committee.
3. The basis for the application for exemption is as per the affidavit of Jan Daniel Symington, as signed by him and commissioned by a commissioner of oaths

on the 14th September 2023, and included in the papers, namely” that due to the fact that the company is not trading and operational in its true sense, and it is evident that the nature and extent of the company’s activities is such that it does not have a significant impact on the public interest”.

APPLICABLE LAW

4. Section 72(4) of the Companies Act, no 71 of 2008 (as amended) (“Companies Act”) empowers the responsible Minister to prescribe regulations setting out, amongst other things, a category of companies required to have a Social and Ethics Committee.
5. Regulation 43(1) (c) of the Companies Act (“Regulations”) requires a company to have appointed a Social Ethics Committee if it has, in any two (2) of its previous five (5) years, scored above 500 points in terms of Regulation 26(2).
6. Regulation 26(2) set out the basis for calculating a company’s public interest score. I do not find it necessary to repeat this test here.
7. Section 72(5) of the Companies Act entitles a company who is obliged to appoint a Social and Ethics Committee, to apply to the Tribunal for an exemption from such requirement. In order for the Tribunal to be satisfied to grant such exemption, either-
 - 7.1 The company is required by some 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; or
 - 7.2 It is 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.

8. It is clear from the resolution authorizing Mr. Jan Daniel Symington this application on behalf of the Applicant that it relies on the latter ground, namely that it is not reasonably necessary in the public interest for the Applicant to have a Social and Ethics Committee

9. The Applicant has calculated its Public Interest Score ("PIS") in terms of Regulation 26(2) as follows:-
 - 9.1 a number of points equal to the average number of employees at the company during the financial year.
 - 9.2 One point for every R1 million (or portion thereof) in third party liability of the company held by the creditors at the financial year end.
 - 9.3 One point for every R1 million (or portion thereof) in turnover during the financial year. On the basis of the Applicant's annual turnover and third-party debt for the past financial year, the P1 score is calculated in the collection.

On the basis of the Applicant's annual turnover and third-party debt for the part 1 financial year, PI Score is calculated in the second column below.

Annual Financial Year Ended	PI Score	Annual Turnover	Third Party Debt (R)
30 June 2023	107	R5 259 053	R100 075 145

10. **APPLICATION**

- 10.1 While listed in separately in the Applicant's affidavit, both of these items speak to the same ground for exemption, namely that the Applicant is a family-owned and family-run business.
- 10.2 The Applicant alleges the company is administered by **Pallidus Capital (Pty) Ltd** and managed by its board of Directors and due to the nature of business, it has no employees.
- 10.3 The Applicant P1 score at no time in the last financial year exceeds 500 points.

10.4 The Applicant is not operational and trading in its true sense as it has listed securities and noteholders.

10.5 The main purpose of the company and main business is:-

10.5.1 To extend loans to specific corporate entities, acquire invest in debt explosives and other assets and acquire the related securities with regard to such loans, debt exposures and/or assets, with funds raised directly or indirectly through the insurance of notes.

10.5.2 The notes are issued under the multi-issuer note programme and is registered with the Cape Town Stock Exchange ("CTSE").

10.5.3 The company has three (3) Executives Directors close to its daily operations of the business and three (3) non-executive directors that will ensure that material matters which would otherwise fall into the remit of a second would be discussed by the board, as and when required.

CONCLUSION

11. The Applicant has provided sufficient compelling reasons and justifications as to why it should be exempted from the requirement to appoint a Social and Ethic Committee, in light of the nature of its activities set out above.
12. Therefore, I am satisfied that I should grant an order for the exemption based on the information put before the Tribunal.

ORDER

13. The Application by the Applicant, **Pallidus Capital (Pty) Ltd**, for an exemption from the requirement to appoint a Social and Ethics Committee is hereby granted.
14. The exemption is granted for the period of five (5) years from the date of this order.

**HLALELENI KATHLEEN DLEPU
MEMBER OF THE COMPANIES TRIBUNAL
DATED IN JOHANNESBURG ON THE 23RD DAY OF OCTOBER 2023**