

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT004APR2015

Ex Parte Application

AFRICAN BANK LIMITED

APPLICANT

Presiding Member: K Moodaliyar

Date of Decision: 19 June 2015

DECISION

INTRODUCTION

[1] The Applicant, African Bank Limited, is bringing an application in terms of section 61(7)(b) of the Companies Act 71 of 2008 ("the Act") for an extension of time for convening an annual general meeting.

BACKGROUND

[2] The Applicant is a public company incorporated under the company laws of the Republic of South Africa, (registration no 1975/002526/06). The sole shareholder of the Applicant is African Bank Investments Limited.

[3] An affidavit in terms of CTR 142 is deposed to by Mr Tom Winterboer ("deponent"), a curator of the Applicant, duly authorised to do so in accordance with the powers vested in him by the Registrar of Banks in terms of Section 69 of the Banks Act 94 of 1990.

[4] The Deponent avers that the Applicant was placed under Curatorship on 10 August 2014 and that he was appointed the Curator of the Applicant by the Minister of Finance.¹

[5] It is stated by the Deponent that the financial year for the Applicant is 30 September each year.

[6] The CTR 142 form was lodged with the Companies Tribunal on 31 March 2015.

ISSUES

[7] According to section 30 of the Companies Act as read with section 69(2B) of the Banks Act, the Applicant must prepare annual financial statements within six months after the end of the financial year. This should have been prepared by 31 March 2015.

[8] The Applicant's last annual general meeting was held on 6 February 2014 and was due to hold the next annual general meeting on or before 6 May 2015.

[9] The Applicant requests that the Companies Tribunal grant relief to extend the time period to provide its annual financial statements and to hold the annual general meeting.

APPLICABLE LAW

[10] Section 30(1) of the Act states:

“Each year, a company must prepare annual financial statements within six months after the end of its financial year,

¹ Paragraph 4.2 of Tom Winterboer's affidavit.

or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 67(1).”

[11] Section 61(7) of the Act stipulates:

“A public company must convene an annual general meeting of its shareholders-

- (a) Initially, no more than 18 months after the company’s date of incorporation; and
- (b) Thereafter, once every calendar year, but not more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause.”

[12] Section 61(8)(a)(ii) of the Act reads as follows:

“A meeting convened in terms of section (7) must, at a minimum, provide for the following business to be transacted:

- (a) Presentation of—
 - (i).....
 - (ii) audited financial statements for the immediately preceding financial year,...

EVALUATION

[13] The Applicant was unable to hold the 2015 annual general meeting within 15 months from the date of the previous annual general meeting, due to the delay in preparation of the annual financial statements.

[14] The Deponent avers “the reasons for the delay in preparing the annual financial statements centre around the finalisation of changes to the loan impairment methodologies related primarily to the carrying values of unsecured retail lending assets on the balance sheet. These changes

came about as a result of an extensive review exercise of the Applicant's loan impairment methodologies subsequent to the Applicant being placed under curatorship."²

[15] The Deponent further states, "these changes in loan impairment methodologies have now been finalised and are being implemented. The changes to the policies required significant additional calculation runs across both the 2014 and 2013 financial year and earlier periods, in order to restate opening balances for the 2013 financial year. This exercise is currently underway and is part of the process being followed targeting a finalisation of the audited annual financial statements for the year ended 30 September 2014 during the latter part of April 2014."³

[16] It is understood by the Tribunal that the processes required whilst the Applicant is under curatorship may have resulted in delays in producing the annual financial statements and thus a delay in the annual general meeting.

FINDINGS

[17] The Applicant has shown good cause as to why the annual financial statements could not be prepared before the due time and why the annual general meeting could not be held before 6 May 2015.

ORDER

[18] The Applicant is required to prepare the annual financial statements by no later than 31 July 2015.

² Paragraph 7.1 of Tom Winterboer's affidavit.

³ Paragraph 7.2 *ibid*.

[19] The Applicant, African Bank Limited is hereby granted an extension of time to prepare its annual financial statements and to hold its 2015 annual general by no later than 30 September 2015.

A handwritten signature in dark ink, appearing to be 'Kasturi Moodaliyar', written over a light yellow rectangular stamp.

KASTURI MOODALIYAR
MEMBER OF THE COMPANIES TRIBUNAL