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**COMPANIES TRIBUNAL**  
**of**  
**THE REPUBLIC OF SOUTH AFRICA**

**Case Number CT005AUG2018**

In the Ex Parte Application

**MPILO INVESTMENT HOLDINGS 1 (RF) PTY LTD**

**Applicant**

(Registration number 2005/015015/07)

In respect of

**AN APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A  
SOCIAL AND ETHICS COMMITTEE**

**Presiding Member of the Tribunal; Lucia Glass**

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**DECISION (Reasons and Order)**

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**INTRODUCTION**

1. The Applicant applies for an exemption, from the requirement to appoint a Social and Ethics Committee, as imposed by Section 72(5)(b) of the Companies Act 71 of 2008 (further herein referred to as 'the Act') on the basis that it is neither reasonably necessary nor is it in the public

interest for the company to have a Social and Ethics Committee, having regard to the nature and extent of the activities of the Company.

2. This Application is made, on the basis that it is not reasonably necessary in the public interest to require the applicant to have a social and ethics committee, having regard to the nature and extent of the activities of the company.

## **PRELIMINARY ISSUES AND FACTS**

3. The Deponent to the Applicant's founding affidavit is Danielle Oosthuizen (Identity number [...]), who alleges that she is the Company Secretary of the Applicant and is duly authorised to depose to the founding affidavit to this Application.

4. It is averred that the Applicant is a private company with restricted functions, established and registered in 2005 as a special purpose vehicle as part of the black ownership initiative by Mediclinic International plc (then Mediclinic International Limited) (the holding company of the international private hospital group and listed on the London Stock Exchange, with secondary listings on the Johannesburg Stock Exchange and the Namibian Stock Exchange) ("Mediclinic").

5. The issued ordinary share capital of the Applicant Company is held by MP1 Investment Holding (Pty) Ltd, a black owned company, with A Preference, B Preference and C Preference shares issued to respective holders as well. The black ownership initiative by Mediclinic was aimed at introducing, inter alia, the Applicant Company as a strategic black partner of and shareholder in Mediclinic by the transfer of and issue of new ordinary shares in Mediclinic to the Applicant Company as a special purpose vehicle. A copy of the latest annual financial statements of the Company in respect of the financial year ended 31 December 2017 is attached to the application.

6. It is further averred that the Applicant does not have any employees.

7. The Applicant Company's activities are restricted to the activities listed in the Memorandum of Incorporation, which activities relate to the Company's shareholding in Mediclinic for purposes of the black ownership initiative.

8. It is averred that the Company had a public interest score, as calculated in terms of Companies Regulation 26(2), of more than 500 in two of the previous five years and is therefore required in terms of Section 72 of the Act, read with Regulation 43(1)(c), to establish a Social and Ethics Committee. A copy of the calculation of the Company's public interest score for the financial years ended 31 December 2013 to 31 December 2017 is attached to the affidavit.

9. The applicable Section of the Act is:

Section 72 (5)

*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 for 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."*

## **APPLICATION OF THE LAW TO THE FACTS**

10. The Tribunal is to decide, whether in terms Section 72 (5) *b) it is reasonably necessary for 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.*

I will weigh up the nature and extent of the applicant in respect of the fact that the Applicant was launched as special purpose vehicle, with no employees, and is restricted in its activities

which activities relate to the Applicant's shareholding in Mediclinic for purposes of the black ownership initiative.

After considering the law, interpreting and applying Section 72 (5) (b) of the Act it is my view that it is not reasonably necessary for 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 as stated above.

In this case, it is quite clear to me that the Applicant be exempted from appointing a Social and Ethics committee.

**Order**

I accordingly make the following order;

The Applicant is granted exemption from appointing a Social and Ethics Committee for 5 years.



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LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 28.8.18