

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT002SEP2018

In the Ex Parte Application

iNKOTHA INVESTMENTS (RF) LTD

Applicant

(Registration number 2006/012564/06)

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

DECISION (Reasons and Order)

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.

PRELIMINARY ISSUES AND FACTS

2. The Deponent to the Applicant's founding affidavit is Burger van der Merwe, who alleges that he is the Director of the Applicant and is duly authorised to depose to the founding affidavit to this Application.

3. It is averred that the Applicant is a ringfenced special purpose entity with no employees.

4. Furthermore that the Applicant's function is to acquire and hold financial receivables and issue commercial paper in order to raise capital, which is acquired to refinance and settle the assets.

5. Further that the applicant is, from an accounting perspective, consolidated within the FirstRand Group. The FirstRand Group has established a Group Social and Ethics Committee, which is tasked to ensure the optimal functioning of ethics management processes within the FirstRand Group.

6. It is averred that the applicant is a specialised purpose entity and is not required by any other legislation to have formal mechanisms that substantially performs the function that would otherwise be performed by a Social and Ethics Committee. And that the contribution of the Applicant to social and economic development of the community in which it operates would be negligible due to the limited effect on exposure to the community.

7. 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

8. 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 a ringfenced special purpose entity with no employees.

Furthermore that the Applicant's function is to acquire and hold financial receivables and issue commercial paper in order to raise capital, which is acquired to refinance and settle the assets.

Further that the applicant is, from an accounting perspective, consolidated within the FirstRand Group. The FirstRand Group has established a Group Social and Ethics Committee, which is tasked to ensure the optimal functioning of ethics management processes within the FirstRand Group.

9. 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.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 25.9.18