



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00889/ADJ/2022

In the matter between:

**SWISS RE CORPORATE SOLUTIONS AFRICA LTD**

**APPLICANT**

and

**COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION**

**RESPONDENT**

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Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 25 March 2022

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

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#### **1. INTRODUCTION**

1.1. Applicant is Swiss Re Corporate Solutions Africa Ltd., a public company duly incorporated in accordance with the company laws of South Africa, with registration number 2014/064395/06, and having its principal place of business at 4<sup>th</sup> Floor, 11 Alice Lane, Sandhurst, Sandton, 2146.

- 1.2. Respondent is the Companies and Intellectual Property Commission (“CIPC”), a juristic person established in terms of section 185(1) of the Companies Act 71 of 2008 (“the Act”).
- 1.3. Applicant applied to the Companies Tribunal in terms of section 172 of the Act for an order modifying or cancelling the compliance notice issued by Respondent on 6 December 2021 (“the decision”), to disclose its directors’ or prescribed officers’ remuneration in its annual financial statements (AFS) for the 2019 financial year.
- 1.4. The application is unopposed. There is proof that the CIPC was served with papers in this application by delivery through an electronic mail sent to Respondent’s Corporate Legal Services unit on 28 December 2021, and again on 4 January 2022, the latter being a stamped version of the application. The delivery of documents by electronic mail is one of the recognised methods for the delivery of documents of this Tribunal. This is provided for by the Companies Regulations, 2011 (the Companies Regulations). Consequently, I am satisfied that the application was adequately served as envisaged by Regulation 153 of the Companies Regulations.
- 1.5. The *dies induciae* within which Respondent would have had to file opposing papers, having expired, Applicant lodged its papers on 15 February 2022 for the matter to be considered on a default basis.

## **2. BACKGROUND**

- 2.1. Applicant is licenced as a non-life insurer in terms of the Insurance Act 18/2017 and is a financial services provider as per the Financial advisory and Intermediary Services Act 37/2002 (FAIS). Up until 14 January 2021, Applicant was registered as a private company in terms of the Act.
- 2.2. Respondent, through its correspondence with Applicant prior to issuing the decision, referred to voluntary audits and interpreted s30(2) and (4) of the Act, and confirmed its conclusion as contained in the voluntary audit notice as

mandatory. Respondent issued the compliance notice on the grounds that Applicant failed to comply with S29 and S30(4) of the Act.

- 2.3 According to Applicant, during the 2019 financial year, it operated as a private company, and therefore S30(2)(a) does not apply. Applicant also contends that it did not have its 2019 AFS voluntarily audit, and therefore did not fall within the purview of the impugned sections of the Act.

### **3. Issues**

The issue to be determined is whether or not the compliance notice issued by Respondent should be confirmed, cancelled or modified.

### **4. Applicable law**

- 4.1 Section 30 of the Act deals with AFS and states at paragraph 2:

(2) The annual financial statements must-

(a) be audited, in the case of a public company; or

(b) in the case of any other profit or non-profit company –

(i) be audited, if so required by the regulations made in terms of subsection (7) taking into account whether it is desirable in the public interest, having regard to the economic or social significance of the company, as indicated by any relevant factors, including –

(aa) its annual turnover;

(bb) the size of its workforce; or

(cc) the nature and extent of its activities; or

(ii) be either-

(aa) audited voluntarily if the company's Memorandum of Incorporation, or a shareholders resolution, so requires or if the Company's board has so determined; or ...

4.2 Section 30 of the Act at paragraph 4 reads:

(4) The annual financial statements of each company that is required in terms of this Act to have its annual financial statements audited, must include particulars showing-

(a) the remuneration, as defined in subsection (6), and benefits received by each director, or individual holding any prescribed office in the company;

4.3 Section 172 of the Act states:

“(1) Any person issued with a compliance notice in terms of this Act may apply to the Companies Tribunal in the case of a notice issued by the Commission ... to review the notice within –

- (a) 15 business days after receiving that notice; or
- (b) such longer period as may be allowed on good cause shown.

(2) After considering any representations by the applicant and any other relevant information, the Companies Tribunal... may confirm, modify or cancel all or part of a compliance notice.

(3) If the Companies Tribunal ... confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it, subject to subsection (4).

(4) A decision by the Companies Tribunal ... in terms of this section is binding, subject to any right of review by or appeal to a court.”

## **5. Evaluation**

5.1 The gravamen of Applicant’s objection to the decision is that for all of the 2019 financial year, it operated as a private company, therefore S30(2)(a) of the Act does not apply. Applicant confirmed that there was no directors’ or shareholders’ resolution passed to the effect that Applicant’s 2019 AFS should be voluntarily audited.

- 5.2 Applicant argues further that it was not required to have its 2019 AFS audited in terms of the Companies Regulations because its public interest score was below 100 points, and because it did not hold assets in a fiduciary capacity for persons not related to the company, the aggregate value of which exceeded R5 million during the relevant period. There is no direct evidence of this, and the deponent to the founding affidavit refers to advice received from Applicant's internal finance team.
- 5.3 Applicant also attached the applicable Memorandum of Incorporation, which did not require it to have its AFS audited. Applicant confirms that it was under a statutory obligation to have its 2019 AFS audited because it is licenced to render financial services according to FAIS, which imposes penalties for failure to do so. Therefore, argues Applicant, it was not a voluntary audit as provided for in terms of S30(2)(b)(ii)(aa) of the Act.
- 5.4 In the alternative, Applicant has requested that Respondent's compliance notice be modified to remove the requirement that its restated 2019 AFS be published in a national newspaper and to extend the 30 business day period within which to comply.

## **6. Finding**

- 6.1 Based on a conspectus of the evidence before me, I am not satisfied that the provisions of S30(2)(b)(i) are irrelevant. Although there was no evidence of its annual turnover, and the size of its workforce, the nature and extent of Applicant's activities seem to trigger the operation of this section. Furthermore, there is no evidence of Applicant's PIS score for the 2019 financial year.
- 6.2 However, I do agree with Applicant that the decision ought to be modified. In light of this, I make the order as follows:

## **7. Order**

7.1 The application for review of Respondent's compliance notice is upheld and Respondent's decision is modified that:

- a. Applicant has sixty (60) business days from the date of receipt of this decision, within which to comply with Respondent's notice;
- b. Applicant is not required to publish its restated 2019 AFS in a national newspaper

7.2 The registrar of this Tribunal is requested to bring this order and the reasons therefor to the attention of Respondent.

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**ADV. ISHARA BODASING**