

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

(“The Tribunal”)

CASE NO: CT20OCT2015

In Re: In an Application in terms of Section 72 (5) of the Companies Act 71 of 2008 (“the Act”) for an exemption to appoint a Social and Ethics Committee (SEC) for the Applicant, in terms of Regulation 43.

In an Ex parte Application for exemption by:

P.TRIMBORN AGENCY CC

(1988/000111/23)

THE APPLICANT

Coram K. Tootla

Decision delivered on 24 November 2015

DECISION

INTRODUCTION:

[1] The applicant applies to the Companies Tribunal presumably in terms of sections 72 (5) and presumably 72 (6) of the Companies Act 71 of 2008 (“Act”) and presumably the regulations in terms of the Companies Act (GNR 351 of 265 April 2011) (“regulation/s”) for an exemption from appointing a Social and Ethics Committee (“SEC”) for a Close Corporation.

BACKGROUND:

[2] It is to be noted that no sections of the Companies Act or the Close Corporations Act are mentioned in terms of which this Application is made.

[3] The Applicant states that it is required to appoint a SEC due to its public interest score being 1185 points. However, the Applicant has not indicated in terms of which section and regulation it has calculated its public interest score (“PIS”) nor why it is expected to appoint an SEC in terms of the Companies Act.

EVALUATION:

[4] Note firstly that Regulation 142 (3) (a) provides, as far as it is relevant, that “An application in terms of this regulation must indicate the basis of the application, *stating the section of the Act* or these regulations in terms of which the Application is made.

[5] Secondly, in accordance with the definition of “Company” in Section I of the Act, a close corporation is a juristic person which is recognized as a company, only if it has subsequently been converted to a company in terms of Schedule 2 as set out in terms of Section 1 (a)(ii) of the Act, which means that if that juristic person such as the Applicant is currently a Close Corporation, then the relevant Section 72 (5) in respect of an appointment of a social and ethics committee does not apply to a Close Corporation.

[6] Despite the fact that the Applicant has a public score exceeding 500 points, it is not recognized as a company in the Companies Act and hence it cannot be expected to appoint a Social and Ethics Committee (SEC) as set out in Section 72(5).

APPLICABLE LAW (relevant):

[7] The Companies Act 71 of 2008 provides as follows in section 72:

- (5) A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that— ...

[8] The regulations in terms of the Companies Act provide in Reg 43(2) that a SEC must be appointed by:

- State owned companies;
- listed public companies;
- Any other company with a Public Interest Score above 500 in any two of the previous five (financial) years.

[9] If a company is required to appoint a SEC, it can apply for a ruling by the Tribunal for an exemption, under the provisions of section 72 (5) of the Companies Act. Application for a ruling must be made in form CTR 142; together with a supporting affidavit setting out the facts on which the application is based (Reg 142 (3)).

FINDING:

[10] Since the Applicant as a Close Corporation is not a company in terms of Section 1 of the Act, nor does it fall within any of the categories above, it is not subject to Section 72 (5) nor Reg 43 (5).

[11] This however does not mean that the CC is not obliged to comply with all the laws which they are bound by in Law; but it means that they do not require a mechanism such as a social and ethics committee to monitor compliance of these laws.

ORDER:

[12] The application for an exemption in respect of the appointment of a SEC is hereby dismissed.

k.y. tootla (electronically signed)

KHATIJA TOOTLA

Member of the Companies Tribunal

24 November 2015