IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02488/ADJ2025**

In the *ex parte* application of:

ABSA HOME LOANS (RF) (PTY) LTD
(registration number: 2003/021488/06) Applicant

Presiding member: Nomagcisa Cawe

Date of decision:
31January 2026

DECISION (Reasons and Order)

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1. This is an application for an exemption to appoint a Social and Ethics Committee ("SEC") which has been applied for on behalf of the Applicant by Mr. Jan Louis du Plessis ("du Plessis"), a director of the Applicant.

2. This application is brought in terms of section 72(5)(*b*) of the Companies Act 71 of 2008 ("**the Act**") for an exemption from the requirement to appoint a Social and Ethics Committee, notwithstanding that the Applicant's public interest score exceeds the threshold prescribed in regulation 43 of the 2011 Companies Regulations. Mr. du Plessis submits that, having regard to the

nature and extent of its activities, it is not reasonably necessary in the public interest for the company to be required to appoint an SEC.

PRELIMINARY MATTERS

Publication of intention to lodge an application

3. Section 13 of the Companies Amendment Act 16 of 2024 modifies Section 72(5) of the Companies Act 71 0f 2008 ("the Act"), by adding a new subsection 5(a) which stipulates that Applicants must publish their intention to submit an application for exemption with the Tribunal. This amendment took effect on 27 December 2024.

4. The amended Section 72(a) provides that-

"(*5) A company that falls within the 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 for an exemption from that requirement in the following manner: (a) The company must publish the intention to lodge an application for exemption with the Tribunal in the prescribed manner".*

5. The "*prescribed manner*" for the publication has not been promulgated.

6. The filing record of the Applicant does not show that the Applicant published a notice of its intention to apply for an exemption from the requirement to appoint a Social and Ethics Committee.

7. In the absence of the promulgation of how the publication of the intention to apply for the exemption and proof of such application should be carried out, the Tribunal will consider the instant application.

8. According to Mr. du Plessis the company's Public Interest Score in the past 2 years (i.e 2023 and 2024) has been calculated and the resultant PIS is in excess of 500 points. Accordingly, the company is required to appoint a SEC. However, taking into account the company's activities the Board has determined that, in terms of the purpose for which the company was established and legislative rationale for a company to establish a SEC, it is prudent for the company to make use of the dispensation opportunity contained in Section 72(5)(b) of the Act to apply for an exemption to establish a SEC.

9. The Applicant explains that because it is not a listed public company in terms of regulation 43(1)(b), but rather an asset-backed debt listed on the JSE and regulated by the Debt and Specialist Securities Listings Requirements, the application for exemption is made solely on the basis that:-

9.1 The company is controlled, serviced, administered and managed by ABSA Bank Limited and due to the nature of its business, has no employees;

9.2 the Applicant is not operational nor trading in the true sense. The sole purpose of the company is to issue Notes in order to raise sufficient funds to purchase participating assets (as defined in its Transaction Documents). The Servicer is responsible for the identification of participating assets which the issued Notes are backed against;

9.3 the ordinary share capital of the company is held solely by the Owner Trust, ABSA HOME LOANS 101 OWNER TRUST; and

9.4 the Applicant's Public Interest Score exceeds the prescribed threshold almost entirely as a result of its third-party liabilities, which are intrinsic to its function as a debt funding vehicle, and does not maintain an operational footprint.

10. Having regard to the nature and extent of the Applicant's activities described above, and as set out in the founding papers, there is nothing on the Applicant's papers to suggest that the Applicant's activities engage with the broader public in a manner that would require formal oversight by a Social and Ethics Committee in order to achieve the purposes of the Act.

11. I am satisfied that the appointment of a SEC would not meaningfully advance the public interest objectives of the Act. The Applicant has accordingly made out a proper case for exemption in terms of section 72(5)(*b*) and regulation 43.

ORDER

12. The Applicant is exempted from the requirement to appoint a social and ethics committee in terms of section 72(5)(*b*) of the Companies Act 71 of 2008, for a period of five (5) years from the date of this decision.

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NOMAGCISA CAWE

Member of the Companies Tribunal