IN THE COMPANIES TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CT02171/ADJ/2024

Ex Parte Application of:

HOEDSPRUIT WILD LIFE ESTATE NPC **APPLICANT**

(REGISTRATION NO. 2004/010767/08)

Presiding Member: Nomagcisa Cawe

Date of the decision: 20 February 2026

DECISION (Reasons and order)

A INTRODUCTION

[1] The Applicant is **HOEDSPRUIT WILDLIFE ESTATE NPC**, a non-profit company incorporated and registered in terms of South African company laws, with its registered address at Stand 722 Portion 1, Hoedspruit Wildlife Estate, Hoedspruit, Limpopo. This application is brought on behalf of the Applicant by its financial director, Mr. Jan Adriaan Smith ("Smith").

[2] This is an application for the Applicant to be exempted from establishing a Social and Ethics Committee (SEC) in terms of section 72(5) of the Companies Act 71 of 2008 ("the Act").

B APPLICANT'S ASSERTIONS

[3] The Applicant is a non-profit company that operates as a Home Owners Association. It manages a Wildlife Estate which consists of 511 registered units/residences. It also purchases electricity from Eskom and resells it to

those who own houses within the Wildlife Estate and surrounding businesses in the area. It derives 35% of its income from levies and 65% from purchasing electricity. The Applicant's turnover in the 2023 financial year was R 30 840 913.

[4] The Applicant employs twenty-one (21) employees, nine (9) directors (one of whom is an executive director), and one (1) Company Secretary. The Applicant states that based on the nature and extent of its activities, it is not reasonably necessary in the public interest for it to be required to have a Social and Ethics Committee.

C LEGAL FRAMEWORK

[5] Section 72(1) of the Companies Act provides that:

'Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the board of a company may— (a) appoint any number of committees of directors'.

[6] The Social and Ethics Committee is one of the committees that certain prescribed companies are obliged to establish. In terms of section 72(4) of the Companies Act:

'The Minister, by regulation, may prescribe—

(a) a category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to—

(i) annual turnover;

(ii) workforce size; or

(iii) the nature and extent of the activities of such companies;

(b) *the functions to be performed by social and ethics committees required by this subsection; and*

(c) *rules governing the composition and conduct of social and ethics committees'.*

[7] Not every company is obliged to establish a Social and Ethics Committee. The need to establish this committee will be dictated by whether it is desirable in the public interest for the company to have such a committee. This is determined having regard to its annual revenue, the number of employees and the type of activities carried out by the company.

[8] In terms of Regulation 43(a) – (c) of the 2011 Companies Regulations, every state-owned company, every listed company and any other company that has in the previous five years scored above 500 points in their Public Interest Score, at least on two occasions, must have a Social and Ethics Committee.

[9] In terms of Regulation 26(2) of the Companies Regulations, 2011, companies that, among others, are required to establish Social and Ethics Committees are obliged to calculate their Public Interest Score at the end of each financial year calculated as the sum of the following:

(a) *'a number of points equal to the average number of employees of the company during the financial year;*

(b) *one point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;*

(c) *one point for every R 1 million (or portion thereof) in turnover during the financial year; and*

(d) one point for every individual who, at the end of the financial year, is known by the company—(i) in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or (ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company'.

[10] Companies that are required to establish Social and Ethics Committees are entitled to approach the Tribunal for an exemption from setting up these committees. In terms of section 72(5) of the Act, the Tribunal can only exempt these companies from establishing Social and Ethics Committees when one of the two requirements is met.

[10.1] First, the company seeking to be exempt from establishing a Social and Ethics Committee should demonstrate that it has some formal mechanism within its structures, sanctioned by legislation, that substantially performs functions that ought to be performed by the Social and Ethics Committee.

[10.2] Secondly, when the Tribunal is satisfied that it is not reasonably necessary in the public interest to require the company to have a Social and Ethics Committee, considering the nature and extent of its activities.

The Applicant seeks to rely on this ground as the basis for the instant application.

[11] In terms of Regulation 43(2):

'[a] company to which this regulation applies must appoint a social and ethics committee unless—

(a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or

(b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6)'.

[12] Regulation 43(5) provides a variety of functions that the Social and Ethics Committee is required to perform.

D EVALUATION and FINDINGS

[13] The ground upon which the Applicant seeks to be exempted is that it is not reasonably necessary in the public interest to be required to have a Social and Ethics Committee, considering the nature and extent of its activities. In his Affidavit Smith directs the Tribunal to the company's Memorandum of Incorporation (the MOI). Although he is not specific about the relevant provisions of the MOI that he relies on, I have taken the liberty to read the MOI and am therefore familiar with its contents.

[14] In clause 6 the MOI sets out the main objectives of the company as follows:-

6.1.5 to manage the common property, fauna and flora including the game on sound environmental practices in terms of the Conditions of Establishment, ROD and the EMP…

[15] Clause 6.2 states that the ancillary objects of the company shall be –

6.2.1 to promote and conserve wildlife, fauna and flora on the property as a sanctuary for wildlife fauna and flora.

6.2.2 to implement any Environmental Management Plan based on universal principles of sound, integrated environmental management and in terms of the EIA.

[16] Although not specifically stated, it is clear from the statements that appear in paragraph 15 above that the Applicant has in place a formal and effective mechanism that deals with the responsibilities that would otherwise have been carried out by a SEC, in terms of the Act and the regulations.

[17] In view of the aforegoing I am satisfied that the Applicant has complied with the requirements of Section 72(5)(b) of the Act, and considering the public interest rationale of the SEC requirement, it is not reasonably necessary in the public interest to require the Applicant to establish a SEC.

ORDER

[18] In the results, I make the following order:

The Applicant is exempted from establishing a Social and Ethics Committee for five (5) years.

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N CAWE: MEMBER OF THE COMPANIES TRIBUNAL