



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02649ADJ2026

In the *ex parte* application of:

**NEXUS YACHTS (PTY) LTD
(2024/204959/07)**

APPLICANT

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO Date of
Decision: 12 May 2026

DECISION

A. INTRODUCTION

- [1] This is an application by Nexus Yachts (Pty) Ltd (“the Applicant”) for an exemption from the requirement to appoint a Social and Ethics Committee (“SEC”).
- [2] The application is brought in terms of section 72(5) of the Companies Act 71 of 2008 (“the Act”), read with regulations 26, 43, and 142 of the Companies Regulations, 2011 (“the Regulations”).¹
- [3] The application is supported by Form CTR 142, dated 25 February 2026 and stamped as received by the Companies Tribunal on 17 March 2026, and by a sworn affidavit deposed to by Mr. John Barry Henrick, the Applicant’s sole director.²

¹ Companies Act 71 of 2008 s 72(5); Companies Regulations, 2011 regs 26, 43 and 142.

² Form CTR 142 dated 25 February 2026 and stamped by the Companies Tribunal on 17 March 2026; affidavit of John Barry Henrick, paras 1-8.

- [4] The papers also include a mandate authorising PKF (PE) Inc to lodge Form CTR 142 on behalf of the Applicant, the Applicant's Memorandum of Incorporation, share certificate, share register, beneficial ownership records and company-secretarial supporting documents.

B. BACKGROUND

- [5] The Applicant is a private company incorporated in South Africa with registration number 2024/204959/07. Its registered address is reflected as 5th Avenue, Sea Vista Industrial Area, St Francis Bay, 6312.
- [6] The Applicant's Memorandum of Incorporation records that it is authorised to issue no more than 100 ordinary shares of a single class of shares with no nominal or par value. The share records reflect that Mr. Henrick holds 100 ordinary, no-par-value shares. The affidavit states that Mr. Henrick is the sole director and sole shareholder.
- [7] The Applicant avers that it "has had a public interest score in excess of 500 points during the last financial year". It then concludes that it falls into the category of companies required to establish a SEC.
- [8] The Applicant seeks exemption on three stated bases:
- 8.1 first, that it has alternative mechanisms in place which can perform the functions typically carried out by a SEC, including monitoring and reporting on social and economic development, corporate citizenship, labour and employment practices;
- 8.2 second, that the company has no effect as a corporate community because of its functions and limited exposure to the community; and
- 8.3 third, that the company's activities and products have no direct or indirect effect on the environment, health and public safety.

C. LEGAL FRAMEWORK

- [9] The Tribunal's authority is statutory. It may exercise only those powers conferred on it by the Companies Act 71 of 2008 and the Regulations made under that Act. The principle is not merely one of institutional restraint; it is required by the constitutional doctrine of legality. The Constitutional Court has held that the exercise of public power is controlled by the Constitution and that the doctrine of legality, as an incident of the

rule of law, constrains every repository of public power to exercise no power and perform no function beyond that conferred by law.³ Accordingly, the Tribunal cannot enlarge its own jurisdiction, even where an application is unopposed or the relief sought appears administratively convenient. In an application under section 72(5), the Tribunal must first be satisfied that the applicant is a company to which the statutory obligation in section 72(4), read with Regulation 43, applies.⁴ That requirement is a jurisdictional threshold. Unless the Applicant proves that it falls within Regulation 43, there is no obligation to appoint a Social and Ethics Committee and, consequently, no statutory obligation from which the Tribunal may grant an exemption.

- [10] Section 72 and regulation 43 must be interpreted textually, contextually and purposively. The words used by the legislature are the starting point, but they must be read in their statutory setting and in the light of the purpose served by SEC oversight.⁵
- [11] Section 72(4) empowers the Minister, by regulation, to prescribe categories of companies that must each have a SEC if desirable in the public interest, having regard to annual turnover, workforce size, and the nature and extent of the activities of such companies.⁶
- [12] Section 72(5) is framed in threshold language. It provides that 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 exemption. The opening words are important. They require the Applicant first to establish that it falls within a prescribed category before the Tribunal’s exemption discretion is engaged.⁷
- [13] Section 72(5) further requires the company to publish its intention to lodge an exemption application in the prescribed manner and to apply to the Tribunal in the prescribed manner and form. The Act then permits an exemption only if the Tribunal is satisfied that either the company has a formal mechanism within its structures which

³ *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 49; see also *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) paras 56–58.

⁴ Companies Act 71 of 2008 s 72(4)–(5); Companies Regulations, 2011 reg 43(1)(c).

⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; *Cool Ideas* 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC) para 28.

⁶ Companies Act 71 of 2008 s 72(4)(a)(i)–(iii).

⁷ Companies Act 71 of 2008 s 72(5).

substantially performs the SEC functions, or it is not reasonably necessary, having regard to the nature and extent of the structures and activities of the company and the public interest, to require the company to have a SEC.⁸

- [14] Regulation 43(1) identifies the categories of companies to which the SEC requirement applies: every state-owned company; every listed public company; and “any other company” that has, in any two of the previous five years, scored above 500 points in terms of regulation 26(2).⁹
- [15] Regulation 26(2) requires every company to calculate its public interest score at the end of each financial year. The score is calculated by adding: the average number of employees during the financial year; one point for every R1 million, or portion thereof, in third-party liability at financial year end; one point for every R1 million, or portion thereof, in turnover during the financial year; and one point for every individual known by the company to hold, directly or indirectly, a beneficial interest in its issued securities.¹⁰
- [16] Regulation 43(5) gives content to the SEC’s statutory function. It is not a ceremonial governance structure. It monitors the company’s standing and activities in relation to social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships, and labour and employment matters; it draws matters within its mandate to the board; and it reports to shareholders.¹¹
- [17] Where a party seeks relief on motion, the case must be made out in the founding papers. Affidavits serve both as pleadings and as evidence. This is especially important in an ex parte application, where there is no respondent to test the allegations and the Tribunal must itself ensure that the statutory requirements are met.¹²
- [18] The Tribunal has previously cautioned that a company relying on internal structures or

⁸ Companies Act 71 of 2008 s 72(5)(a) and (b)(i) -(ii), as substituted by Companies Amendment Act 16 of 2024 s 13(a), with effect from 27 December 2024.

⁹ Companies Regulations, 2011 reg 43(1)(a)-(c).

¹⁰ Companies Regulations, 2011 reg 26(2)(a)-(d).

¹¹ Companies Regulations, 2011 reg 43(5)(a)-(c).

¹² *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323F-324C and 324F-G; *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) para 43; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26; *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E-350C.

mechanisms must provide facts and evidence identifying those structures and explaining what they actually do. In *San Lameer*, the Tribunal held that it could not simply rely on the deponent's word where the actual existence and functions of the alleged committees were not adequately demonstrated, and it warned that failure to provide such detail may lead to refusal. The Tribunal has previously cautioned that an applicant relying on internal structures or mechanisms to justify an exemption must do more than make broad assertions. In *Ex parte the San Lameer Master Homeowners Association*, the Tribunal expressed concern that the applicant had merely quoted Regulation 43(5) and allocated its statutory functions to various committees without explaining the actual functions performed by those committees. The Tribunal stated that it had been "seriously disadvantaged" by the manner in which the application had been brought, because it could not ascertain as a matter of fact whether the alleged committees existed and, if they did, the nature of the work they performed. The Tribunal further held that it could not be expected merely to rely on the deponent's word and that facts and evidence must be placed before it to enable it to determine the matter properly.¹³ That reasoning applies with particular force in the present matter. The Applicant's affidavit asserts that alternative mechanisms exist, but it does not identify those mechanisms, describe their composition, attach their terms of reference, explain their reporting lines, or map their functions to the matters listed in Regulation 43(5). A bare assertion that such mechanisms exist does not discharge the Applicant's evidential burden under section 72(5).¹⁴

- [19] Other Tribunal decisions illustrate the same principle from the opposite side. Where exemption has been granted to private or special-purpose entities, the papers ordinarily established, first, that the regulation 43 trigger had been met in the relevant years, and secondly, that the applicant's activities and stakeholder footprint were sufficiently explained to permit the Tribunal to undertake the public-interest assessment.¹⁵

D. ISSUES

- [20] The issues for determination are:

¹³ *Ex parte The San Lameer Master Homeowners Association* CT01717ADJ2024, Companies Tribunal, 29 April 2024, paras 16-19.

¹⁴ Companies Act 71 of 2008 s 72(5); Companies Regulations, 2011 reg 43(5).

¹⁵ *Ex parte Absa Home Loans (RF) (Pty) Ltd* CT02488/ADJ2025, Companies Tribunal, 31 January 2026, paras 8-11; *Ex parte South African Mortgage Fund 1 (RF) (Pty) Ltd* CT01725ADJ2024, Companies Tribunal, 29 April 2024, paras 2 and 4; *Ex parte JT Ross (Pty) Ltd* CT01960ADJ2024, Companies Tribunal, 14 October 2024, paras 10 and 14-15.

- 20.1 whether the Applicant has established that it falls within a category of companies required to appoint a SEC;
- 20.2 if the statutory trigger has been established, whether the Applicant has made out a case for exemption under section 72(5)(b)(i) or section 72(5)(b)(ii); and
- 20.3 the appropriate order.

E. ANALYSIS AND FINDINGS

- [21] The first enquiry is jurisdictional. A company may seek exemption only if it is a company that falls within the categories required by section 72 and the Regulations to appoint a SEC. This is not a mere pleading preference; it is the statutory gateway to the Tribunal's exemption power.
- [22] The Applicant is a private company. It is not alleged to be a state-owned company. It is not alleged to be a listed public company. Accordingly, the only possible trigger is regulation 43(1)(c), namely that it is an "other company" which has scored above 500 public interest score points in any two of the previous five years.
- [23] The Applicant's evidence does not meet that threshold. The affidavit states only that the Applicant had a public interest score above 500 "during the last financial year". It does not identify two financial years. It does not attach a regulation 26(2) calculation. It does not identify the components of the alleged score. It does not distinguish between turnover, third-party liabilities, employees and beneficial-interest holders.
- [24] This omission is material. Regulation 43(1)(c) deliberately uses a two-year formulation for companies other than state-owned companies and listed public companies. A private company does not become subject to the SEC obligation merely because it exceeded 500 points in one financial year. The requirement is that it must have exceeded 500 in any two of the previous five years.
- [25] The Applicant was incorporated in 2024. That fact makes the evidentiary gap more, not less, significant. If the Applicant has existed for only a limited period, the papers must clearly explain its financial years since incorporation and show how, if at all, the regulation 43(1)(c) trigger has been met. The Tribunal cannot infer compliance with a

two-year statutory threshold from a single-year averment.

- [26] The difficulty is therefore not that the Applicant has failed to persuade the Tribunal that exemption is commercially sensible. The difficulty is prior to that. On the papers, the Applicant has not established that it is presently required to appoint a SEC. The Tribunal cannot exempt a company from an obligation which the company has not shown applies to it. To do so would exceed the statutory power conferred by section 72(5).
- [27] The second difficulty concerns the Applicant's reliance on "alternative mechanisms". Section 72(5)(b)(i), as amended, no longer requires that the mechanism must be required by other legislation, but it does require a formal mechanism within the company's structures which substantially performs the SEC functions. That is an evidential requirement.
- [28] The Applicant's affidavit does not identify the mechanism. It does not say whether the mechanism is a board committee, management committee, compliance function, external service-provider arrangement, policy framework, reporting structure or board-reserved matter. It does not attach terms of reference, board resolutions, policies, compliance reports, minutes, reporting lines or any document showing that the alleged mechanism exists and substantially performs the functions listed in regulation 43(5).
- [29] The Tribunal is therefore in the same position described in *San Lameer*, but without the additional features that persuaded the Tribunal there to grant relief despite reservations. The Applicant asks the Tribunal to accept a conclusion without the underlying facts. That is not sufficient in motion proceedings, and it is particularly insufficient in an *ex parte* statutory application.
- [30] The third difficulty concerns the public-interest ground in section 72(5)(b)(ii). The Applicant asserts that it has limited community exposure and that its activities and products have no direct or indirect effect on the environment, health or public safety. Those statements are made at a high level of generality.
- [31] A yacht-related private company may, depending on its actual business model, have no meaningful public-interest footprint; but that conclusion cannot be reached from the

present papers. The affidavit does not explain whether the Applicant designs, manufactures, sells, imports, charters, repairs, stores or manages yachts; whether it has employees or contractors; whether it interfaces with consumers; whether it uses marine, harbour or industrial facilities; whether it has environmental, health, safety or product-compliance obligations; or whether any third-party liabilities or turnover account for the alleged public interest score.

- [32] The Tribunal does not require unnecessary evidence. It does, however, require enough evidence to connect the statutory test to the facts. The SEC exemption enquiry is not an accounting score exercise only. It requires an assessment of whether SEC oversight would advance the public-interest objectives embedded in section 72 and regulation 43.
- [33] There is also no proof of publication of the intention to apply for exemption. The Tribunal notes, as in Absa Home Loans, that the prescribed manner of publication under amended section 72(5)(a) has not yet been promulgated. For that reason, this decision does not rest on non-publication. The application fails on the more fundamental basis that the Applicant has not established the regulation 43 trigger and has not placed sufficient facts before the Tribunal to satisfy either exemption ground.
- [34] This conclusion is consistent with the Act, the Regulations and the authorities. The text of section 72(5) confines the exemption jurisdiction to a company that falls within a prescribed category. Regulation 43(1)(c) prescribes a two-year threshold for private companies. Motion-proceeding authority requires the jurisdictional facts and merits to be established on affidavit. San Lameer confirms that bare assertions about alternative structures are insufficient and may justify refusal.
- [35] The appropriate order is a refusal without prejudice. This is not a finding that the Applicant may never qualify for exemption. Nor is it a finding that a SEC is necessarily required. It is a finding that the present application is premature or inadequately supported. If the Applicant is in fact required to appoint a SEC, it may bring a fresh application supported by proper evidence. If it is not yet required to appoint a SEC, no exemption is presently necessary.

F. WHAT A FRESH APPLICATION SHOULD ADDRESS

- [36] Should the Applicant elect to bring a fresh application; the papers should include:

- 36.1 a public interest score table for each financial year since incorporation, calculated under regulation 26(2);
- 36.2 the financial information supporting each component of the score, including annual financial statements or management accounts, turnover, third-party liabilities, average employees and beneficial-interest holders;
- 36.3 a clear statement identifying whether the Applicant is a private company, public company, listed company, state-owned company, subsidiary of another company, or otherwise subject to another SEC mechanism;
- 36.4 a full description of the Applicant's business activities, products or services, operational footprint, workforce, customers, suppliers, consumer interface, environmental profile, health and safety profile, and public/community impact;
- 36.5 if reliance is placed on section 72(5)(b)(i), documentary evidence of the formal mechanism within the Applicant's structures and a table mapping that mechanism against each function in regulation 43(5); and
- 36.6 an explanation of how the Applicant has dealt with the amended section 72(5)(a) publication requirement, having regard to the absence, at present, of a prescribed publication procedure.

G. ORDER

- [37] The application for exemption from the requirement to appoint a Social and Ethics Committee is refused.
- [38] The refusal is without prejudice to the Applicant's right to lodge a fresh application in the prescribed form, supported by evidence establishing that the Applicant falls within regulation 43(1)(c) or another applicable category, and that one of the exemption grounds in section 72(5)(b)(i) or section 72(5)(b)(ii) has been satisfied.

- [39] No order is made as to costs.

Dr MINAH TONG-MONGALO

COMPANIES TRIBUNAL: MEMBER

