



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NO: CT02736/ADJ/2026

Ex Parte Application:

Sethekgo Private Party (RF)(Pty) Limited

Applicant

Member of Tribunal: H K Dlepu

Date of Decision: 21 June 2026

Decision and Reasons

1. INTRODUCTION

- 1.1. The Applicant is Sethekgo Private Party (RF)(Pty) Limited, a company registered in terms of the laws of South Africa with Registration No. 2006/029236/07 and having its registered address at C/O ANF, Block D, Ground Floor, Oak Office Park, 372/376 Oak Avenue Ferndale, Randburg, 2194.

- 1.2. The Applicants affidavit was deposed by Estelle Esme Zwanepoel, the Company Secretary of the Applicant who has been duly authorized to act on behalf of the company.
- 1.3. This is an application in terms of section 72(5)(b) of the Companies Act seeking an exemption from the requirement to appoint a social and ethics committee.

2. BACKGROUND

- 2.1. The Applicant is a Private Company ring-fenced (RF) company, with conditions set out in the Company's Memorandum of Incorporation. The Applicant's had previously applied to the Companies Tribunal for an exemption an order was on the 2nd of July 2021 for a period of 5 years. The company was originally established in 2006 registered as a trading and an as principal in its widest form, its main object is "to undertake and implement the project to finance, design, construct and operate and maintain the head office of the Department in Pretoria".
- 2.2. The Company has no employees, and there are no products and consumers involved, and has no environmental health and safety impact or involved in social and economic development and it is believed that it is not reasonably necessary in the public interest to require the Applicant to have a Social and Ethics committee, having regard to the nature and extent of the activities of the Applicant as stated in Section of the Companies Act.

- 2.3. The Applicant has no employees with the PI score of 766 the calculation of the score was attached to the Applicants affidavit, which is more than 500 for the past 2 financial years as required in terms of the Company's Act. The higher than 500 PI Score is due to its high third-party debt and turnover. A copy of the company registration and memorandum of incorporation was attached to Applicants' founding affidavit.
- 2.4. The Applicant was incorporated on the 18th of September 2006, and it falls under a category of companies that are required in terms of section 72(5) of the Company's Act. The Company has 11 (eleven) Directors and has in the past two of the previous five years exceeded the PI score of 500 and the time of the application had not had a Social and Ethics Committee in place as required in terms section 72 of the Companies Act 71 of 2008 read with regulation 43 of the Regulations, 2011.
- 2.5. The Company is not a subsidiary of another company but maintains sound governance and ethical practices through its Board and existing committees, one of its governance committees is the Finance, Risk & Audit Committee consisting of the minimum of 3 directors and/or independent people nominated by the Board of Directors, including the Chief Financial Officer with no record of material non-compliance or ethical issues and is not required by any other legislation to have a formal mechanism that substantially performs the function to be performed by the social and ethics committee.

- 2.6. There is no contribution of the company to Social and economic development of the community in which it operates, if there is it would be negligible due to the limited exposure to the community, (Regulation) 43(5)(a)(i)
- 2.7. There is no effect of the company as a corporate citizen in the particular community (Regulation)43(5)(a)(ii)
- 2.8. By virtue of the nature, size of the company, with no employees and the company's activities and it is not required in the public interest to have a social and ethics committee, taking into consideration all these factors and the size of the company and the applicants boards function, the Applicant is a small to medium sized company to have a Social and Ethics Committee

3. APPLICABLE LAW

- 3.1. Section 72(4) of the Companies Act provides for the Minister to prescribe, by way of regulation, those companies which shall be required to appoint a Social and Ethics Committee.
- 3.2. Section 72(5) provides that notwithstanding a requirement to appoint a social and ethics committee, a company may apply to the Tribunal in the prescribed manner and form for exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that:
 - (a) *the company is required in terms of some other legislation to have and does have, some form of formal mechanism within its*

structures that substantially performs the function that would otherwise be performed by the social and ethics committee; or

(b) it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company.

3.3. Regulation 43(1)(c) of the Act requires that any other company that has in any two of the previous five years scored above 500 points in terms of Regulation 26 (2) is required to appoint a Social and Ethics Committee.

3.4. Regulation 43 (2)(a) of the Act requires that 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 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).

3.5. Regulation 26(2) sets out the methodology that is used in calculating its “public interest score”.

3.6. Section 72(4) stipulates that the categories of the companies that must each have a social and ethics committee, if is desirable in 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 the social and ethics committees. required by this subsection; and*
- (c) *the rules governing the composition and conduct of social and ethics committees.*

3.7. Regulation 43(1) provides that a social and ethics committee must be appointed by:

- (c) *Any company with a public interest score of above 500 in any two of the previous five (financial) years.*

3.8. The public interest score is calculated in terms of regulation 26(2) as follows:

- (a) *a number of points equal to the average number of employees of the company during the financial year (“employee has the meaning set out in the Labour Relations Act 66 of 1995.*
- (b) *one point for every 1 million Rand (or portion thereof in third party liability of the company held by creditors at the financial year end.*
- (c) *one point for every 1 million Rand (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 the profit company, to directly or indirectly have a beneficial interest in any of the company’s issued securities, or*
 - (ii) *in the case of non-profit company, to be a member of a company, or a member of an associate that is a member of the company.*

4. ISSUES

4.1. The issue to be decided is whether the Applicant has made out a proper case for an exemption in accordance with regulation 43(2)(b) and section 72(5) and (6).

5. ANALYSIS OF THE FACTS

5.1. The Applicant that has over 500 Public Interest scores is required to have a social and ethics committee unless exempted to do in terms of the Companies Act.

5.2. The two conditions of exemptions stated in the Act are:

5.2.1. *if the company is already required by another law to have an existing structure in place that actually performs the functions prescribed by the Act to the social and ethics committee; or*

5.2.2. *if the nature and extent of the company's activities are such that it does not have any significant impact on the public interest.*

6. MY ASSESSMENT OF THE APPLICANT'S SUPPORTING AFFIDAVIT

The Applicant has sufficient mechanisms and existing structures to substantially deal with matters related to social and ethics committee and has a Finance, Risk & Audit Committee (consisting of a minimum of 3 Directors) including the CFO as confirmed in the audited annual financial statements and Memorandum of Incorporation and as such I am satisfied that the applicant has made out a proper case, in that there are that it is not reasonably necessary to require the Applicant to appoint a Social and Ethics committee.

7. ORDER

In the circumstances I make the following order:

- 7.1. The Applicant is exempted for a period of five (5) years from appointing a social and ethics committee and;
- 7.2. A copy of this order must be served on the Applicant and the Commissioner of the Companies and Intellectual Property Commission (CIPC).

HLALELENI KATHLEEN DLEPU
MEMBER OF THE COMPANIES TRIBUNAL