



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02927ADJ2026

In the ex parte application of:

**WOSA EXPORT MARKETING NPC
(2006/005074/08)**

APPLICANT

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO

Date of Decision: 17 September 2026

DECISION

A. INTRODUCTION

1. This is an ex parte application by WOSA Export Marketing NPC (the Applicant) in terms of section 72(5) of the Companies Act 71 of 2008 (the Act), read with regulation 142 of the Companies Regulations, 2011 (the Regulations), for exemption from the requirement to appoint a social and ethics committee (SEC).¹
2. The Applicant relies on its status as a non-profit industry organisation, its workforce of 12 employees, the fact that its public-interest score is driven principally by its membership, and its participation in structures in the wider South African wine industry. It asks to be exempted under section 72(5)(b).²
3. The amended section 72(5)(a) contemplates publication of an intention to apply for exemption in the prescribed manner. No regulations presently prescribe the manner,

¹ Form CTR 142, application bundle p. 1; founding affidavit, application bundle pp. 6-14. Unless otherwise indicated, bundle page references are PDF-viewer page numbers.

² Founding affidavit paras 16-19, application bundle pp. 12-14; Annexure ST06, p. 107; Annexure ST08, p. 122.

content, medium or period of that publication. Consistent with the Tribunal's approach, while that regulatory lacuna persists, the application is not refused for want of publication and is determined on its substantive merits.³

4. The decisive questions are whether the Applicant has proved a formal mechanism within its structures that substantially performs the SEC functions under section 72(5)(b)(i), or whether it has shown under section 72(5)(b)(ii) that, having regard to the nature and extent of its structures and activities and the public interest, it is not reasonably necessary to require it to have an SEC.⁴
5. For the reasons that follow, neither ground is established. The papers identify no existing formal substitute mechanism within the Applicant's structures. They also disclose public-facing activities, statutory levy funding, a substantial membership constituency, annual revenue exceeding R69 million, and express mandates concerning inclusiveness and environmental and social sustainability. Those matters engage, rather than displace, the purposes of SEC oversight. The application must therefore be refused, without prejudice to a properly supported fresh application.⁵

B. THE APPLICANT AND THE APPLICATION

6. The Applicant is a non-profit company incorporated on 20 February 2006. The CIPC certificate of confirmation identifies its correct registration number as 2006/005074/08 and its registered office at Blaauwklip Office Park, Webersvallei Road, Jamestown, Stellenbosch. The same particulars appear in the supporting affidavit and the 2024 and 2025 summarised financial statements.⁶
7. Form CTR 142, dated 26 August 2026 and stamped by the Tribunal on 27 August 2026, records the Applicant's name but gives registration number 2008/012968/08. That number belongs to VINPRO NPC, the company whose Tribunal decisions are cited in paragraph 18.1 of the founding affidavit. The special power of attorney, founding affidavit, CIPC records, memorandum of incorporation (MOI), and financial statements consistently identify the Applicant as WOSA Export Marketing NPC with registration number 2006/005074/08. The error is serious and must be corrected, but it is not fatal to the

³ Companies Act 71 of 2008 s 72(5)(a), as amended by the Companies Amendment Act 16 of 2024; Proclamation 238, Government Gazette 51837 of 27 December 2024, which brought the amended s 72(5)(a) and (b)(i)-(ii) into operation on publication; *Ex parte NewGold Issuer (RF) Limited* CT02649ADJ2026, Companies Tribunal, 26 June 2026, paras 30-32.

⁴ Companies Act 71 of 2008 s 72(5)(b)(i)-(ii).

⁵ Founding affidavit paras 6-18, application bundle pp. 8-14; MOI clause 3.1, pp. 32-33; 2025 financial statements, pp. 109, 112 and 116-121; Annexure ST08, p. 122.

⁶ Founding affidavit para 3, application bundle p. 7; CIPC amendment and certificate of confirmation, pp. 18-22; 2024 and 2025 financial statements, pp. 94 and 109.

present proceedings: the Applicant is correctly named on the form and its identity is established unambiguously by the remaining documents. The error nevertheless bears upon the accuracy and reliability of the application as presented.⁷

8. Siobhan Thompson, the Applicant's Chief Executive Officer, deposed to the founding affidavit and relies on a board resolution dated 24 August 2026. The resolution confers broad authority on the Chief Executive Officer to take legal steps and institute legal action on behalf of the company, and ratifies prior legal acts performed in the execution of her duties. A special power of attorney dated 26 August 2026 appoints Ian van Zyl to submit the application.⁸
9. Paragraph 4 of the founding affidavit states that the Applicant was granted a five-year exemption on 25 November 2000 under case number CT00473ADJ2020. The stated year is inconsistent with the case number and with the previous founding affidavit, which was commissioned in October 2020. The papers do not include the earlier decision itself. Although the intended year was probably 2020, the Tribunal cannot treat the date or terms of an absent decision as established facts. No weight is therefore attached to the alleged earlier exemption beyond recognising that a previous application was made. The present application must be determined anew under the current statutory text and on the present evidence.⁹
10. Clause 3.1 of the MOI states that the Applicant's main object is to create an enabling environment that unlocks and maximises sustainable benefits for its members in a unified wine-industry value chain. Its objects include representing the collective interests of exported South African wines; promoting South African wines globally; enhancing the image, reputation and value of South African wine; creating marketing and trading platforms; assisting international wine tourism; embedding inclusiveness; promoting leadership in environmental and social sustainability; and building marketing and exporting capacity.¹⁰
11. The founding affidavit describes the Applicant as an independent organisation representing South African wine producers who export their products. It does not produce or sell wine. Its principal activities are promotion, export-market development, exporter

⁷ Form CTR 142, application bundle p. 1, and separately filed stamped Form CTR 142, p. 1; special power of attorney, bundle p. 2; founding affidavit title and para 3, pp. 6-7; CIPC records, pp. 18-22; founding affidavit para 18.1 (VINPRO registration number), p. 13.

⁸ Founding affidavit para 1, application bundle p. 6; special power of attorney, p. 2; board resolution, Annexure ST01, p. 15.

⁹ Founding affidavit para 4, application bundle p. 7; previous founding affidavit, Annexure ST03, pp. 71-80, commissioned in October 2020. The earlier Tribunal decision is not included in the bundle. See *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26; *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.

¹⁰ Founding affidavit para 6, application bundle pp. 8-9; MOI clause 3.1, pp. 32-33.

capacity building and wine-tourism development. The affidavit describes it as a mouthpiece for Cape wine.¹¹

12. The Applicant is related to South Africa Wine NPC (SA Wine), an umbrella organisation for the wine industry. Under the Applicant's MOI, SA Wine appoints up to 10 of a maximum of 12 directors. SA Wine levies the amounts that mainly fund the Applicant, and SA Wine Industry Information and Systems NPC collects those levies as agent for SA Wine for the Applicant's benefit.¹²
13. Paragraph 10 of the founding affidavit states that the Applicant had 536 paid members in both 2024 and 2025. Annexure ST06, however, records 567 members for the 2024 score, while Annexure ST08 records 536 members for 2025. The score sheets are the more specific contemporaneous records and are used for purposes of this decision.¹³
14. The audited summarised financial statements record company revenue of R56 151 638 for 2024 and R69 273 114 for 2025. The company's third-party liabilities were R4 572 828 at 31 December 2024 and R4 782 472 at 31 December 2025. The 2025 statements further record company operating expenditure of R70 375 065 and employee costs of R7 277 699.¹⁴
15. The Applicant's public-interest score sheets record 639 points for 2024 and 622 points for 2025. Those recorded totals appear, however, to understate the scores calculated in accordance with regulation 26(2)(b) and (c), which allocate one point for every R1 million, or portion thereof, in third-party liability and turnover. On the financial figures supplied, the 2024 score comprises 57 points for turnover, five points for third-party liabilities, 567 points for members and 12 points for employees, producing a total of 641. The corresponding 2025 calculation comprises 70 points for turnover, five points for third-party liabilities, 536 points for members and 12 points for employees, producing a total of 623. Whether the recorded or correctly recalculated figures are used, the Applicant's score exceeded 500 in both years.¹⁵
16. The Applicant accepts that regulation 43(1)(c) applies because its public-interest score exceeded 500 in two of the previous five financial years. Its substantive case is that the

¹¹ Founding affidavit paras 7-8, application bundle p. 9, and para 17.2, p. 12; 2024 financial statements, pp. 94 and 97; 2025 financial statements, pp. 109 and 112.

¹² Founding affidavit para 9, application bundle pp. 9-10; 2024 directors' report, p. 97; 2025 directors' report, p. 112.

¹³ Founding affidavit para 10, application bundle p. 10; 2025 membership list, Annexure ST04, pp. 81-92; Annexure ST06, p. 107; Annexure ST08, p. 122.

¹⁴ Founding affidavit paras 11-14, application bundle pp. 10-11; 2024 statements of financial position and profit or loss, pp. 101-102; 2025 statements of financial position and profit or loss, pp. 116-117; 2025 expenses by nature, p. 120.

¹⁵ Companies Regulations, 2011 reg 26(2)(a)-(d); public-interest score for 2024, Annexure ST06, application bundle p. 107; public-interest score for 2025, Annexure ST08, p. 122; 2024 statement of profit or loss and statement of financial position, pp. 101-102; 2025 statement of profit or loss and statement of financial position, pp. 116-117. Regulation 26(2)(b) and (c) allocate one point for every R1 million, or portion thereof, in third-party liability and turnover respectively.

scores are mechanically inflated by the number of voluntary members, and that its limited workforce, non-manufacturing role and participation in wider industry structures make an SEC unnecessary.¹⁶

17. Paragraph 18 of the founding affidavit refers generally to external industry structures said to perform functions equivalent to those of an SEC. It identifies SA Wine's transformation and research functions, cites two VINPRO NPC decisions, and purports to incorporate the contents of the Applicant's website. It does not identify a particular existing committee or mechanism within the Applicant, attach terms of reference or delegations, describe composition and reporting lines, or map actual activities against regulation 43(5).¹⁷

C. ISSUES

18. The issues for determination are:

- 18.1 whether the Applicant falls within a category of companies required to appoint an SEC;
- 18.2 whether the Applicant has established the formal-mechanism ground in section 72(5)(b)(i);
- 18.3 whether the Applicant has established the public-interest ground in section 72(5)(b)(ii); and
- 18.4 the appropriate order.

D. STATUTORY FRAMEWORK AND APPROACH

19. Section 72(4) authorises the Minister to prescribe categories of companies that must appoint an SEC. Regulation 43(1) applies to every state-owned company, every listed public company, and any other company that, in any two of the previous five years, scored above 500 public-interest points in terms of regulation 26(2).¹⁸
20. Regulation 26(2) requires every company to calculate its public-interest score at the end of each financial year. The score is the sum of the average number of employees; one point for every R1 million, or portion thereof, in third-party liability; one point for every R1 million, or portion thereof, in turnover; and, in the case of a non-profit company, one point for every member of the company or member of an association that is a member of the company.¹⁹

¹⁶ Founding affidavit paras 16-17, application bundle pp. 12-13; Annexure ST06, p. 107; Annexure ST08, p. 122.

¹⁷ Founding affidavit para 18, application bundle pp. 13-14. No SEC charter, delegation, membership list, minutes, monitoring report or member report is included among Annexures ST01-ST08.

¹⁸ Companies Act 71 of 2008 s 72(4)-(5); Companies Regulations, 2011 reg 43(1)(a)-(c).

¹⁹ Companies Regulations, 2011 reg 26(2)(a)-(d).

21. Section 72(5), as amended by the Companies Amendment Act 16 of 2024 with effect from 27 December 2024, permits the Tribunal to grant an exemption if it is satisfied that either: the company has a formal mechanism within its structures that substantially performs the SEC functions; or it is not reasonably necessary, having regard to the nature and extent of the company's structures and activities and the public interest, to require the company to have an SEC.²⁰
22. Section 72(6) provides that an exemption may be granted for five years or for a shorter period determined by the Tribunal. The expiry of an earlier exemption does not create an entitlement to renewal. Each application must establish the statutory criteria on the evidence then before the Tribunal.²¹
23. Section 72(5) must be interpreted textually, contextually and purposively. The language of the provision is the point of departure, read in its statutory setting and in light of the purpose served by SEC oversight. That approach follows *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) and *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC).²²
24. The words 'may' and 'satisfied' confirm that exemption is not automatic. The Applicant bears the evidential burden of placing facts before the Tribunal that establish at least one statutory ground. Where legislation requires a decision-maker to be satisfied of a criterion, that state of satisfaction must rest on reasonable grounds disclosed by the evidence; a bare assertion or conclusion is insufficient. The Tribunal's conclusion must also be rationally related to the statutory purpose and the material before it.²³
25. An applicant must make out its case in its founding papers. Affidavits in motion proceedings serve as both pleadings and evidence, and material facts must appear in the founding affidavit rather than be supplied by inference or general reference. This is especially important in an ex parte application: because there is no opposing party to test the evidence, the applicant bears a duty of utmost good faith and must disclose all material facts that may influence the decision.²⁴
26. Regulation 43(5) gives content to the SEC's functions. The committee monitors the

²⁰ Companies Act 71 of 2008 s 72(5)(b)(i)-(ii), as amended by the Companies Amendment Act 16 of 2024; Proclamation 238, Government Gazette 51837 of 27 December 2024.

²¹ Companies Act 71 of 2008 s 72(6).

²² *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.

²³ *Walele v City of Cape Town and Others* 2008 (6) SA 129 (CC) paras 60-61; *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) paras 85 and 90.

²⁴ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26; *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; *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E-350C.

company's activities and standing in relation to social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships, and labour and employment. It draws matters within its mandate to the board and reports to shareholders or members. The enquiry is therefore wider than whether the company manufactures products, employs a large workforce or is directly subject to consumer-protection legislation.²⁵

E. THE PUBLICATION REQUIREMENT

27. Section 72(5)(a), as amended, requires a company to publish its intention to lodge an exemption application “in the prescribed manner”. The statutory wording contemplates subordinate legislation specifying how the obligation must be performed.²⁶
28. On the legislative material presently available to the Tribunal, no regulation prescribes the content, medium, recipients, publication period or form of proof required for purposes of section 72(5)(a). In the absence of such prescription, the Tribunal cannot determine those requirements for itself without adding procedural content that the legislation has assigned to the prescribed regulatory process.²⁷
29. Consistently with the approach adopted in *Ex parte NewGold Issuer (RF) Limited*, the Tribunal does not treat the absence of proof of publication as a bar to the determination of this application. This conclusion is confined to the present regulatory position. It does not dispense with section 72(5)(a), nor does it determine how that provision must be applied once the prescribed publication mechanism has been enacted. Non-publication therefore forms no part of the reasons for refusing the present application.²⁸

F. ANALYSIS AND FINDINGS

The regulatory trigger is established

30. The Applicant’s score sheets record public-interest scores of 639 for 2024 and 622 for 2025. As explained in paragraph 15, application of the “or portion thereof” requirement in regulation 26(2)(b) and (c) produces recalculated scores of 641 and 623 respectively. On either calculation, the Applicant exceeded 500 public-interest points in two of the preceding five years and consequently falls within regulation 43(1)(c).²⁹
31. The discrepancy between paragraph 10 of the founding affidavit and Annexures ST06 and

²⁵ Companies Regulations, 2011 reg 43(5)(a)-(c).

²⁶ Companies Act 71 of 2008 s 72(5)(a), as amended by the Companies Amendment Act 16 of 2024.

²⁷ *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 49; *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) paras 56-58.

²⁸ *Ex parte NewGold Issuer (RF) Limited* CT02649ADJ2026, Companies Tribunal, 26 June 2026, paras 30-32 and 68.

²⁹ Companies Regulations, 2011 regs 26(2)(a)-(d) and 43(1)(c); Annexure ST06, application bundle p. 107; Annexure ST08, p. 122. Applying the “or portion thereof” requirement to the financial figures supplied produces scores of 641 for 2024 and 623 for 2025.

ST08 does not alter that jurisdictional conclusion. Paragraph 10 alleges that the Applicant had 536 members in both years, whereas Annexure ST06 records 567 members for 2024 and Annexure ST08 records 536 members for 2025. Even if 536 members were used for 2024, the resulting score would remain above 500. The inconsistency is therefore not determinative, although it requires the Tribunal to distinguish carefully between the allegations in the affidavit and the figures appearing in the underlying records.³⁰

32. The submission that the public-interest score produces a mechanical distortion cannot displace regulation 26(2). Regulation 26(2)(d) expressly assigns one point to every member of a non-profit company, or to every member of an association that is a member of that company. Membership is therefore a component deliberately included in the prescribed calculation. The Tribunal is required to apply that provision and has no power to disregard a prescribed component merely because it produces a high score in the circumstances of a particular company.³¹

No formal substitute mechanism is established

33. Section 72(5)(b)(i) requires proof of an existing formal mechanism within the company's own structures that substantially performs the functions that would otherwise be performed by an SEC. The mechanism need not bear the same name, but it must be identifiable, formally mandated, accountable to the Applicant and shown in substance to cover the material functions in regulation 43(5). A potential power to create a committee, participation in external industry bodies, or the performance of selected projects does not, without evidence of mandate and accountability, satisfy that test.³²
34. The Applicant describes itself as related to SA Wine, a separate juristic person. The MOI permits SA Wine to appoint up to 10 of the Applicant's maximum of 12 directors. That appointment power raises the question whether the Applicant may constitute a subsidiary of SA Wine within the meaning of section 3(1)(a)(ii) of the Act. It also requires consideration of regulation 43(2)(a), which applies where a company is a subsidiary of another company that has an SEC and the SEC of that other company will perform the prescribed functions on behalf of the subsidiary.³³
35. It is unnecessary to determine conclusively whether the Applicant is a subsidiary of SA Wine because the remaining requirements of regulation 43(2)(a) have not been

³⁰ Founding affidavit para 10, application bundle p. 10; Annexure ST06, p. 107; Annexure ST08, p. 122.

³¹ Companies Regulations, 2011 reg 26(2)(d); founding affidavit para 16, application bundle p. 12; *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 49.

³² Companies Act 71 of 2008 s 72(5)(b)(i); Companies Regulations, 2011 reg 43(5)(a)-(c).

³³ Founding affidavit para 9, application bundle pp. 9-10; MOI clauses 1.1.6.1 and 13.2.1, pp. 27 and 50; Companies Act 71 of 2008 s 3(1)(a)(ii); Companies Regulations, 2011 reg 43(2)(a).

established. The founding affidavit does not allege, and the supporting documents do not demonstrate, that SA Wine has an SEC or that such an SEC has undertaken to perform the regulation 43(5) functions on behalf of the Applicant. Nor is there a charter, board resolution, delegation, service agreement, annual work plan, monitoring report or reporting arrangement establishing that SA Wine or another body assumes company-specific responsibility for the Applicant's SEC mandate. Regulation 43(2)(a) therefore provides no basis on the present evidence for concluding that the Applicant is relieved of the obligation to appoint an SEC. For the same reasons, the relationship with SA Wine does not establish a formal mechanism within the Applicant's structures for purposes of section 72(5)(b)(i).³⁴

36. Clause 18 of the MOI permits the board to appoint committees and delegate authority to them. That enabling power proves only that a committee may be established. It does not prove that a qualifying mechanism exists, what its mandate is, or what it has done.³⁵
37. The VINPRO decisions cited in paragraph 18.1 concern a different non-profit company. No copies are attached and no evidence is given that VINPRO's structures, activities and reporting arrangements are materially the same as those of the Applicant. A conclusion reached on another evidential record cannot substitute for proof in this application.³⁶
38. Paragraph 18.3's attempted incorporation of the Applicant's website does not cure the deficiency. A changing website is not identified by date or page, its relevant contents are not attached or authenticated, and it does not establish a formal delegation, reporting line or accountability mechanism within the Applicant.³⁷
39. The Applicant has accordingly not established the formal-mechanism ground in section 72(5)(b)(i).³⁸

The public-interest ground is not established

40. Several facts favour the Applicant's case. It is a non-profit company, has only 12 employees, does not manufacture or sell wine, and performs a promotional and support role for exporters. Its public-interest scores are driven primarily by membership rather than by liabilities or employee numbers. These facts reduce some aspects of operational risk, but they do not answer the full statutory inquiry.³⁹

³⁴ Companies Regulations, 2011 regs 43(2)(a) and 43(5); founding affidavit paras 9 and 18, application bundle pp. 9-10 and 13-14. No evidence that SA Wine has an SEC, or that such an SEC will perform the prescribed functions for the Applicant, is contained in Annexures ST01-ST08.

³⁵ MOI clause 18, application bundle pp. 56-57.

³⁶ Founding affidavit para 18.1, application bundle p. 13. Copies of the cited VINPRO decisions are not annexed.

³⁷ Founding affidavit para 18.3, application bundle pp. 13-14. No dated or authenticated extract from the website is annexed.

³⁸ Companies Act 71 of 2008 s 72(5)(b)(i).

³⁹ Founding affidavit paras 7-8 and 16-17, application bundle pp. 9 and 12-13; Annexures ST06 and ST08, pp. 107 and 122.

41. The absence of manufacturing and a large workforce address only part of the SEC mandate. Regulation 43(5) also concerns social and economic development, corporate citizenship, environmental and public-safety matters, consumer relationships, escalation to the board and accountability to members.⁴⁰
42. The Applicant's own objects place those matters at the center of its work. It promotes South African wine to international trade and consumers, seeks to influence the industry's image and reputation, develops export markets and wine tourism, assists inclusiveness, and promotes environmental and social sustainability. Those are not remote interests of individual wine producers. They are activities undertaken by the Applicant itself.⁴¹
43. The Applicant's conclusion that it has no direct environmental, health, public-safety or consumer implications because it does not produce or sell goods is too narrow. It carries out marketing and promotional activities concerning alcoholic products and wine tourism. The Tribunal does not find that any campaign has been improper. The point is that the nature of those public-facing activities is capable of engaging, responsible marketing, consumer relationships, health and public safety, corporate citizenship and sustainability - subjects that regulation 43(5) expressly places within SEC oversight.⁴²
44. The funding model adds a public-interest dimension. The financial statements state that the Applicant receives statutory export levies collected under the Marketing of Agricultural Products Act 47 of 1996. The 2025 statements describe those amounts as subject to statutory restrictions and record a non-distributable statutory reserve. Oversight of how a representative industry body advances public commitments while using levy-derived funding is relevant to good corporate citizenship and social and economic development.⁴³
45. The scale of the Applicant's activities is material even though its workforce is small. Company revenue increased from R56 151 638 in 2024 to R69 273 114 in 2025, while company operating expenses reached R70 375 065 in 2025. The public-interest inquiry concerns the nature and extent of the company's structures and activities, not headcount alone.⁴⁴
46. The Applicant represents a substantial constituency. The score sheets record 567

⁴⁰ Companies Regulations, 2011 reg 43(5)(a)-(c).

⁴¹ Founding affidavit paras 6-8, application bundle pp. 8-9; MOI clause 3.1, pp. 32-33.

⁴² Founding affidavit paras 6-8 and 17.2-17.3, application bundle pp. 8-9 and 12-13; MOI clause 3.1, pp. 32-33; Companies Regulations, 2011 reg 43(5)(a)(ii)-(iv).

⁴³ Founding affidavit para 9.2, application bundle p. 10; 2024 directors' report and notes, pp. 97 and 106; 2025 directors' report and notes, pp. 112 and 121; Marketing of Agricultural Products Act 47 of 1996 s 15(5)(a); Companies Regulations, 2011 reg 43(5)(a)(i)-(ii).

⁴⁴ 2024 statement of profit or loss, application bundle p. 102; 2025 statement of profit or loss, p. 117; Companies Act 71 of 2008 s 72(5)(b)(ii).

members in 2024 and 536 in 2025. The MOI gives members governance and voting rights, and the Applicant describes itself as their industry mouthpiece. The regulation expressly treats that membership as relevant to public interest. The Tribunal cannot characterise it as a distortion merely because it is the largest component of the score.⁴⁵

47. The relationship with SA Wine may offer scope for coordinated oversight, but the present papers do not explain who monitors the Applicant's conduct against the SEC subjects, how concerns are escalated to its board, what information is reported to its members, or how SA Wine's transformation and research activities cover the Applicant's own marketing, tourism, sustainability, employment and stakeholder activities.⁴⁶
48. The broad statements in the financial statements about internal control, ethical standards and risk management are relevant but insufficient. They concern financial reporting and general control. They do not identify a body accountable for monitoring and reporting across the full regulation 43(5) mandate.⁴⁷
49. The previous exemption does not decide the present application. The Applicant's MOI was amended in 2025, its relationship with SA Wine forms part of the restructured industry framework described in the affidavit, and section 72(5) was amended with effect from 27 December 2024. The present evidence must therefore establish the current statutory test; an earlier outcome on a different record creates no entitlement to renewal.⁴⁸
50. On that evidence, the Tribunal cannot be satisfied that an SEC is not reasonably necessary in the public interest. The Applicant's small workforce and non-manufacturing status do not outweigh its public-facing promotional role, sizeable membership, levy-derived funding, financial scale and express social, environmental and inclusiveness mandates. Nor do the papers demonstrate an accountable alternative system that would make separate SEC oversight unnecessary.⁴⁹
51. The Applicant has therefore not discharged the burden under section 72(5)(b)(ii).⁵⁰

G. WHY REFUSAL IS THE APPROPRIATE OUTCOME

52. The record contains a number of inaccuracies, including the incorrect registration number

⁴⁵ Founding affidavit paras 7-8 and 10, application bundle pp. 9-10; MOI clause 3.1, pp. 32-33; Annexure ST06, p. 107; Annexure ST08, p. 122.

⁴⁶ Founding affidavit paras 9 and 18, application bundle pp. 9-10 and 13-14.

⁴⁷ Directors' responsibilities and approval in the 2024 financial statements, application bundle p. 96, and the 2025 financial statements, p. 111.

⁴⁸ Founding affidavit paras 3-4 and 18.2, application bundle pp. 7 and 13; CIPC confirmation of the 2025 MOI amendment, p. 18; previous founding affidavit, Annexure ST03, pp. 71-80; Companies Act 71 of 2008 ss 72(5)-(6), as amended by the Companies Amendment Act 16 of 2024; Proclamation 238, Government Gazette 51837 of 27 December 2024.

⁴⁹ Companies Act 71 of 2008 s 72(5)(b)(ii); *Walele v City of Cape Town and Others* 2008 (6) SA 129 (CC) paras 60-61.

⁵⁰ Companies Act 71 of 2008 s 72(5)(b)(ii).

on Form CTR 142, the inconsistent membership figure for 2024 and the misstated date of the alleged earlier exemption. Those inaccuracies warrant identification and correction, but they do not independently or cumulatively determine the application. The decisive deficiencies are substantive: no qualifying formal mechanism is identified or proved; the external industry structures relied upon are not supported by mandates or reporting arrangements; and the public-interest case does not engage adequately with the Applicant's own objects, activities, membership, funding model and accountability arrangements.⁵¹

53. The Tribunal may evaluate proved facts and draw proper inferences from them, but it cannot construct a case that the Applicant's founding papers do not establish. It would be speculative to assume that SA Wine has undertaken responsibility for the Applicant's SEC functions, to import factual findings from the VINPRO applications, or to infer the existence and operation of an oversight arrangement for which no mandate, delegation or reporting evidence has been produced. The state of satisfaction required by section 72(5)(b) must arise from the evidence in this matter.⁵²
54. Refusal is not punitive and is not based on the incorrect registration number, the discrepancy in the membership figures, the misstated date of the earlier exemption or the absence of proof of publication. It follows solely from the Applicant's failure to establish, on the evidence presented, either a qualifying formal mechanism under section 72(5)(b)(i) or that it is not reasonably necessary in the public interest to require it to have an SEC under section 72(5)(b)(ii).⁵³
55. A fresh application may cure the deficiencies by filing a corrected CTR 142; attaching the earlier decision if reliance is placed on it; identifying the precise exemption ground; producing the terms of reference, delegations and reporting arrangements of every mechanism relied upon; explaining the company-specific role of SA Wine and any group or industry committee; mapping each regulation 43(5) function to an accountable structure; and providing evidence of monitoring, escalation to the Applicant's board and reporting to members.

H. FINDING

56. No adverse finding is made regarding publication under section 72(5)(a), because no

⁵¹ Form CTR 142, application bundle p. 1; founding affidavit paras 4, 10 and 16-19, pp. 7 and 10-14; Annexure ST06, p. 107; Annexure ST08, p. 122.

⁵² *Walele v City of Cape Town and Others* 2008 (6) SA 129 (CC) paras 60-61; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26; *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) paras 85 and 90; *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.

⁵³ Companies Act 71 of 2008 s 72(5)(b)(i)-(ii); founding affidavit paras 16-19, application bundle pp. 12-14; MOI clause 3.1, pp. 32-33; financial statements, pp. 93-106 and 108-121; Annexures ST06 and ST08, pp. 107 and 122.

prescribed publication mechanism is presently available for implementation and the Tribunal does not rely on that issue.⁵⁴

57. Whether the scores recorded in Annexures ST06 and ST08 or the recalculated scores identified in paragraph 15 are used, the Applicant exceeded 500 public-interest points in 2024 and 2025 and consequently falls within regulation 43(1)(c).⁵⁵
58. The Applicant has not established a formal mechanism within its structures that substantially performs the SEC functions contemplated in section 72(5)(b)(i).⁵⁶
59. Having regard to the nature and extent of the Applicant's structures and activities and the public interest, the Applicant has not shown under section 72(5)(b)(ii) that it is not reasonably necessary to require it to have an SEC.⁵⁷
60. The application must therefore be refused, without prejudice to a fresh application supported by accurate, complete and properly integrated governance evidence.

I. ORDER

61. The application by WOSA Export Marketing NPC under section 72(5) of the Companies Act 71 of 2008 for exemption from the requirement to appoint a social and ethics committee is refused.
62. The refusal is without prejudice to a fresh application supported by corrected company particulars and evidence addressing the deficiencies identified in this decision.
63. For clarity, the refusal is not based on a failure to publish an intention to apply under section 72(5)(a).
64. There is no order as to costs.

Dr MINAH TONG-MONGALO
COMPANIES TRIBUNAL: MEMBER

⁵⁴ Companies Act 71 of 2008 s 72(5)(a); *Ex parte NewGold Issuer (RF) Limited* CT02649ADJ2026, Companies Tribunal, 26 June 2026, paras 30-32 and 68.

⁵⁵ Companies Regulations, 2011 regs 26(2)(a)-(d) and 43(1)(c); Annexure ST06, application bundle p. 107; Annexure ST08, p. 122.

⁵⁶ Companies Act 71 of 2008 s 72(5)(b)(i).

⁵⁷ Companies Act 71 of 2008 s 72(5)(b)(ii).