

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT006JUNE2015

In the ex-parte application of

Unigrain (Pty) Ltd

Applicant

Coram: Kganyago M.F

And

Decision handed down on the 20th July 2015

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**DECISION**

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[1] The applicant has authorized Gert Der Walt its Managing Director to bring an application in terms of section 72(5) of the Companies Act 71 of 2008 ("the Act"). The applicant is seeking an order that it be exempted from appointing a social and ethics committee ("SEC").

[2] The applicant has stated the following as the basis of their application:

2.1. The company is a privately owned entity with only 2 (two) shareholders, one with a 93% interest, and one with a 7% interest;

2.2. One shareholder controls the majority interest of the company by a very wide margin;

2.3. The company has only 2 (two) directors (both being executive directors).

2.4. The company has no non-executive directors to comply with the minimum of 3 (three) directors and one being a non executive director.

2.5. The high PI-Score of the entity is achieved due to the high value turnover of the company. The company's business is that of high turnover, low margin business. The true nature of the company's revenue is gross realized. However,

IFRS accounting recognition criteria requires the full value of the transaction to be included when recognizing revenue.

2.6. The company is not in a financial position to appoint and remunerate a non executive director purely for purpose of compliance with a social and ethics committee.

2.7. The company has a very flat management structure , and the responsibilities of a social and ethics committee are already treated at board level and it includes the following:-

- ❖ Social and economic development;
- ❖ Good corporate citizenship;
- ❖ The environment, health and public safety;
- ❖ Consumer relationship, and
- ❖ Labour and development.

- [3] In terms of section 72(5)(b) of the Act, the Tribunal is required to grant an exemption from appointing an SEC if 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.
- [4] Companies that are required to appoint an SEC are state owned companies, companies listed on the JSE and any company which has for the two previous five years scored above 500 points in terms of Regulation 26(2). Regulation 26(2) gives a guideline of how the public interest score should be calculated.
- [5] Regulation 43(2) compels a company which is covered by this regulation, to appoint an SEC unless that company is a subsidiary of another company that has an SEC that will perform the function required by this regulation on behalf of that subsidiary.
- [6] The applicant has failed to show that they have met these requirements or falls within the category of the abovementioned list of companies .

In my view there are deficiencies in the applicant's application.

[7] In the result I make the following order:-

7.1. The applicant's application is refused.



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**M.F KGANYAGO**

**MEMBER OF THE COMPANIES TRIBUNAL**