

Companies Act, 71 of 2008

Social and Ethics Committee

Section 72(4) to (10) of the Companies Act of 2008 (the "Act") and regulation 43 to the Act makes provision for a social and ethics committee to be appointed by certain companies.

Section 72(4) provides that the Minister, by regulation, may prescribe a category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to:

- annual turnover;
- workforce size; or
- the nature and extent of the activities of such companies.

The regulations to the Act prescribe the functions to be performed by the social and ethics committees required and the rules governing the composition and conduct of social and ethics committees.

What you should do:

Establish social and ethics committee with correct membership, if required.

What you should know:

In terms of regulation 43 the appointment of a social and ethics committee applies to:

- *every state-owned company;*
- *every listed public company; and*
- *any other company that has in any two of the previous 5 (five) years, scored above 500 (five hundred) points in terms of regulation 26(2).*

The points mentioned in regulation 26(2) refer to the „public interest score“ at the end of each financial year, calculated as the sum of the following:

- a number of points equal to the average number of employees of the company during the financial year;
- 1 (one) point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;

- 1 (one) point for every R 1 million (or portion thereof) in turnover during the financial year; and
- 1 (one) point for every individual who, at the end of the financial year, is known by the company:
 - in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
 - 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.

In terms of regulation 42(2), a company to which this regulation applies must appoint a social and ethics committee unless:

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

What you should know:

An exemption granted in terms of section 72(5) of the Act is valid for 5 (five) years, or such shorter period as the Tribunal may determine at the time of granting the exemption, unless the exemption is set aside by the Tribunal.

In terms of section 72(5), a company that falls within a category of companies that are required to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from the requirement, and the Tribunal may grant such an exemption if it is satisfied that:

- the company is required in terms of 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 in terms of the Act and its regulations; or
- 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.

What you should know:

It is important for a company to know when to appoint the social and ethics committee and the statutory composition thereof.

A board of a company that is required to have a social and ethics committee, and that:

- exists on the effective date, must appoint the first members of the committee within 12 (twelve) months after:
 - 1 May 2011 (the "effective date"); or
 - the determination by the Tribunal of the company's application, if any, if the Tribunal has not granted the company an exemption;
- is incorporated on or after the effective date, must constitute a social and ethics committee and appoint its first members within 1 (one) year after:
 - its date of incorporation, in the case of a state-owned company;
 - the date it first became a listed public company, in such a case; or
 - the date it first met the criteria set out above, in any other case.

A company's social and ethics committee must comprise of not less than **3 (three)** directors or prescribed officers of the company, at least 1 (one) of whom must be a director who is not involved in the day-to-day management of the company's business, and must not have been so involved within the previous 3 (three) financial years.

What you should know:

Ensure that the company is familiar with the statutory functions of a social and ethics committee.

A social and ethics committee has the following functions:

- To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to:
 - social and economic development, including the company's standing in terms of the goals and purposes of:

- the 10 principles set out in the United Nations Global Compact Principles; and
 - the OECD recommendations regarding corruption;
 - the Employment Equity Act; and
 - the Broad-Based Black Economic Empowerment Act;
- good corporate citizenship, including the company's:
 - promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - record of sponsorship, donations and charitable giving;
 - the environment, health and public safety, including the impact of the company's activities and of its products or services;
 - consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
 - labour and employment, including:
 - the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - the company's employment relationships, and its contribution toward the educational development of its employees;
- to draw matters within its mandate to the attention of the Board as occasion requires; and
 - to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

What you should know:

The establishment of a social and ethics committee provides for a regulatory framework to help directors and public companies reach high standards of corporate governance and ethical conduct.

Section 72(8) stipulates that a social and ethics committee of a company is entitled to:

- require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;
- request from any employee of the company any information or explanation necessary for the performance of the committee's functions;
- attend any general shareholders meeting;
- receive all notices of and other communications relating to any general shareholders meeting; and
- be heard at any general shareholders meeting contemplated in this paragraph on any part of the business of the meeting that concerns the committee's functions.

Where the board of a company fails to constitute such a committee, the Commission would convene a shareholders meeting, and call on the shareholders to appoint one. Each director who knowingly failed to make the appointment would be personally liable for the costs incurred by the Commission.

NEED ASSISTANCE WITH THE IMPLICATIONS OF THIS ACT?

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