

PROCLAMATION NO. 11 OF 2018



PRESIDENT of the REPUBLIC of SOUTH AFRICA

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "Act"), have been made in respect of the affairs of Eskom Holdings SOC Limited (hereinafter referred to as "Eskom") and Transnet SOC Limited (hereinafter referred to as "Transnet") (hereinafter collectively referred to as the "Institutions");

AND WHEREAS the Institutions or the State suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule in respect of the Institutions, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the Institutions;
- (b) improper or unlawful conduct by employees, officials or agents of the Institutions;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Institutions; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or conduct investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the Institutions or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 14 day of March Two thousand and eighteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

SCHEDULE

1. The contracting for or procurement of—
 - (a) coal;
 - (b) coal transportation services; or
 - (c) diesel;
 by Eskom and payments made in respect thereof in a manner that was—
 - (i) not fair, equitable, transparent, competitive or cost-effective;
 - (ii) contrary to applicable—
 - (aa) legislation;
 - (bb) manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to Eskom;
 - (iii) conducted by or facilitated through the improper conduct of—
 - (aa) employees, officials or agents of Eskom; or
 - (bb) any other person or entity, to corruptly or unduly benefit themselves or others; or
 - (iv) fraudulent,
 and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Eskom or the State.

2. Maladministration in the affairs of Eskom and any losses or prejudice suffered by Eskom or the State as a result of such maladministration in relation to the—
 - (a) Medupi Power Station Project;
 - (b) Kusile Power Station Project;
 - (c) Ingula Pumped Storage Scheme; and
 - (d) high voltage transmission projects associated with the Medupi Power Station Project, Kusile Power Station Project and Ingula Pumped Storage Scheme,
 including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Eskom or the State.

3. Any non-performance or defective performance by the service providers appointed by Eskom or the agents of such service providers in respect of the Medupi Power Station Project, Kusile Power Station Project, the Ingula Pumped Storage Scheme or the high voltage transmission projects associated with the Medupi Power Station Project, Kusile Power Station Project and Ingula Pumped Storage Scheme, including the causes of such non-performance or defective performance.

4. The appointment of McKinsey, Trillian and Regiment Capital to render services to Eskom and Transnet and payments made in respect thereof in a manner

that was—

- (a) not fair, equitable, transparent, competitive or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to Eskom or Transnet;
- (c) conducted by or facilitated through the improper conduct of—
 - (i) employees, officials or agents of Eskom or Transnet; or
 - (ii) any other person or entity,to corruptly or unduly benefit themselves or others; or
- (d) fraudulent,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Eskom, Transnet or the State.

5. Any undisclosed or unauthorised interests which employees, officials or agents of Eskom may have had in contractors, suppliers or service providers bidding for work or doing business with Eskom or to whom contracts were awarded by Eskom, and the extent of any actual or potential benefits derived directly or indirectly by such employees, officials or agents from such undisclosed or unauthorised interests.

6. The contracting for or procurement of goods and services by Transnet and payments made in respect thereof in a manner that was—

- (a) not fair, equitable, transparent, competitive or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to Transnet;
- (c) conducted by or facilitated through the improper conduct of—
 - (i) employees, officials or agents of Transnet; or
 - (ii) any other person or entity,to corruptly or unduly benefit themselves or others; or
- (d) fraudulent,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Transnet or the State.

7. Any undisclosed or unauthorised interests which employees, officials or agents of Transnet may have had in contractors, suppliers or service providers bidding for work or doing business with Transnet or to whom contracts were awarded by Transnet, and the extent of any actual or potential benefits derived directly or indirectly by such employees, officials or agents from such undisclosed or unauthorised interests.

8. Any unlawful or improper conduct by any person or entity, in relation to the allegations referred to in paragraphs 1 to 7 of this Schedule.

PROKLAMASIE NO. 11 VAN 2018



PRESIDENT van die REPUBLIEK van SUID-AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van Eskom Beherend MSB Beperk (hierna na verwys as "Eskom") en Transnet MSB Beperk (hierna na verwys as "Transnet") (hierna gesamentlik na verwys as die "Instellings");

EN AANGESIEN die Instellings en die Staat verliese gely het wat moontlik verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld ten opsigte van die Instellings, vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, dit die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Instellings;
- (b) onbehoorlike of onregmatige optrede deur werknemers, beamptes of agente van die Instellings;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe in verband met die sake van die Instellings gepleeg is; of

(g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak, wat plaasgevind het tussen 1 Januarie 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2010 of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Instellings of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 14 dag van Maart Twee duisend-en-agtien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TM Masutha
Minister van die Kabinet

BYLAE

1. Die kontraktering vir of aanskaffing van—

- (a) steenkool;
- (b) steenkool vervoerdienste; of
- (c) diesel,

deur Eskom en betalings wat in verband daarmee gemaak is op 'n wyse wat—

- (i) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
- (ii) strydig was met toepaslike—
 - (aa) wetgewing;
 - (bb) handleidings, riglyne, omsendskrywes, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
 - (cc) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom van toepassing is;
- (iii) gedoen of gefasiliteer was deur die onbehoorlike optrede van—
 - (aa) werknemers, beamptes of agente van Eskom; of
 - (bb) enige ander persoon of entiteit,om hulself of andere op 'n korrupte of onbehoorlike wyse te bevoordeel; of
- (iv) bedrieglik was,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur Eskom of die Staat opgeloopt was.

2. Wanadministrasie in die aangeleenthede van Eskom en enige verliese of nadeel wat Eskom of die Staat gely het as gevolg van sodanige wanadministrasie ten opsigte van die—

- (a) Medupi Kragstasie Projek;
- (b) Kusile Kragstasie Projek;
- (c) Ingula Pomp-opgaar Skema; en
- (d) hoë-spanning transmissie projekte geassosieer met die Medupi Kragstasie Projek, Kusile Kragstasie Projek en die Ingula Pomp-opgaar Skema,

insluitende die oorsake van sodanige wanadministrasie en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur Eskom of die Staat opgeloopt was.

3. Enige wanprestasie of gebrekkige prestasie deur diensverskaffers wat deur Eskom aangestel was of agente van sodanige diensverskaffers ten opsigte van die Medupi Kragstasie Projek, Kusile Kragstasie Projek, Ingula Pomp-opgaar Skema of die hoë-spanning transmissie projekte geassosieer met die Medupi Kragstasie Projek, Kusile Kragstasie Projek en die Ingula Pomp-opgaar Skema, insluitende die oorsake van sodanige wanprestasie of gebrekkige prestasie.

4. Die aanstelling van McKinsey, Trillian en Regiment Capital om dienste aan Eskom en Transnet te lewer en betalings wat in verband daarmee gemaak is op op 'n wyse wat—
- (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, omsendskrywes, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom of Transnet van toepassing is;
 - (c) gedoen of gefasiliteer was deur die onbehoorlike optrede van—
 - (i) werknemers, beamptes of agente van Eskom of Transnet; of
 - (ii) enige ander persoon of entiteit, om hulself of andere op 'n korrupte of onbehoorlike wyse te bevoordeel; of
 - (d) bedrieglik was,
- en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur Eskom, Transnet of die Staat opgeloopt was.
5. Enige ongeopenbaarde of ongemagtigde belange wat werknemers, beamptes of agente van Eskom mag gehad het in kontrakteurs, verskaffers of diensverskaffers wat vir werk gebie het of besigheid met Eskom gedoen het of aan wie kontrakte toegeken was deur Eskom en die omvang van enige werklike of potensiele voordele wat direk of indirek aan sodanige werknemers, beamptes of agente toegeval het.
6. Die kontraktering vir of aanskaffing van goedere of dienste deur Transnet en betalings wat in verband daarmee gemaak is op op 'n wyse wat—
- (a) nie regverdig, billik, mededingend, deursigtig of koste-effektief was nie; of
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, omsendskrywes, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Transnet van toepassing is;
 - (c) gedoen of gefasiliteer was deur die onbehoorlike of onreëlmatige optrede van—
 - (i) werknemers, beamptes of agente van Transnet; of
 - (ii) enige ander persoon of entiteit, om hulself of andere op 'n korrupte of onbehoorlike wyse te bevoordeel; of
 - (d) bedrieglik was,
- en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur Transnet of die Staat opgeloopt was.
7. Enige ongeopenbaarde of ongemagtigde belange wat werknemers, beamptes of agente van Transnet mag gehad het in kontrakteurs, verskaffers of diensverskaffers wat vir werk gebie het of besigheid met Transnet gedoen het of aan wie kontrakte toegeken was deur Transnet en die omvang van enige werklike of potensiele voordele wat direk of indirek aan sodanige werknemers, beamptes of agente toegeval het.
8. Enige onwettige of onbehoorlike gedrag deur enige persoon of entiteit, wat in verband staan met die bewerings waarna in paragrawe 1 tot 7 van hierdie Bylae verwys word.