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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 7 OF 2020

by the

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 the Department of Justice and Constitutional Development in the Masters' offices and the Office of the Chief Master, established in terms of section 2 of the Administration of Estates Act, No. 66 of 1965 (hereinafter referred to as "the Masters offices");

AND WHEREAS the Masters' offices or the State may have 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 Masters' offices, 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 Masters' offices;

(*b*) improper or unlawful conduct by the officials or employees of the Masters' offices;

(*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 Masters offices; 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 2014 and the date of publication of this Proclamation or which took place prior to 1 January 2014 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 contracts 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 Masters' offices 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 ......29........ day of ....January........Two thousand and twenty.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet

SCHEDULE

1. Maladministration in connection with the affairs of the Masters' offices, in relation to the following functions of the Masters' offices as set out in the Administration of Estates Act, No. 66 of 1965, the Insolvency Act, No. 24 of 1936, and the Companies Act, No. 71 of 2008:

    (a) The administration of estates of deceased persons;

    (b) the winding up of estates of insolvent persons;

    (c) the protection and administration of the funds of minors, contractually incapacitated and undetermined and absent heirs, which have been paid into the Guardian's Fund;

    (d) the supervision of the administration of companies and close corporations in liquidation;

    (e) the safeguarding of all documentary material in respect of estates, insolvencies and liquidations;

    (f) the processing of enquiries by executors, attorneys, beneficiaries and other interested parties; and

    (g) the appointment of executors, trustees, curators and liquidators.

2. Any losses or prejudice suffered by the Masters' offices or the State as a result of such maladministration.

3. The incurring of unauthorised, irregular or fruitless and wasteful expenditure in respect of travel, subsistence and accommodation costs for officials who perform work at Masters' offices other than the office at which they are or were appointed in terms of their employment contract.

4. The appointment of officials or employees at the Masters' offices in a manner that was contrary to applicable—

    (a) legislation;

    (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or

    (c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices.

5. Interference by certain senior officials of the Masters' offices in pending disciplinary proceedings against officials or employees of the Masters' offices or the failure of certain senior officials in the Masters' offices to institute well founded disciplinary or other appropriate proceedings against such officials or employees.

6. The procurement of, or contracting for cleaning services by or on behalf of the Masters' offices and payments made in respect thereof in a manner that was—

(i) not fair, competitive, transparent, equitable or cost-effective; or

(ii) contrary to applicable—

(a) legislation;

(b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or

(c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices,

and any related losses or irregular or fruitless and wasteful expenditure incurred by the Masters' offices or the State as a result thereof.

7. The remuneration of fictitious officials or employees at the Masters' offices.

8. Any irregular, improper or unlawful conduct by-

(a) employees or officials of the Masters' offices; or

(b) any other person or entity,

in relation to the allegations set out in paragraphs 1 to 7 of this Schedule.

PROKLAMASIE NO. R. 7 VAN 2020

van die

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 die Departement van Justisie en Staatkundige Ontwikkeling in die Meesterskantore en die Kantoor van die Hoofmeester, soos ingestel ingevolge artikel 2 van die Boedelwet, 1965 (Wet No. 66 of 1965) (hierna verwys as "die Meesterskantore");

EN AANGESIEN die Meesterskantore of die Staat verliese kon gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille 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 Meesterskantore, 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, 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

Meesterskantore;

(*b*) onbehoorlike of onregmatige optrede deur die beamptes of werknemers van die Meesterskantore;

(*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 gepleeg is in verband met die sake van die Meesterskantore; 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 2014 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2014 of na die datum van publikasie van hierdie Proklamasie, 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 Meesterskantore of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria... op hede die ....30.............................dag van Januarie..................... Twee duisend-en-twintig.

President

Op las van die President-in-Kabinet:

Minister van die Kabinet

BYLAE

1. Wanadministrasie in verband met die aangeleenthede van die Meesterskantore, met betrekking tot die volgende funskises van die Meesterskantore soos uiteengesit in die Boedelwet, No. 66 van 1965, die Insolvensiewet, No. 24 van 1936, en die Maatskappyewet, No. 71 van 2008:

   (a) Die bereddering van boedels van afgetorwe persone;

   (b) die likwidasie van boedels van insolvente persone;

   (c) die beskerming en administrasie van die fondse van minderjariges, kontraktueel onbevoegde en onbepaalde en afwesige erfgename wat in die Voogdyfonds betaal is;

   (d) die toesig oor die administrasie van maatskappye en geslote korporasies wat in likwidasie is;

   (e) die bewaring van alle dokumentêre materiaal ten opsigte van boedels, insolvensies en likwidasies;

   (f) die prosessering van navrae deur eksekuteurs, prokureurs, begunstigdes en ander belanghebbende partye; en

   (g) die aanstelling van eksekuteurs, trustees, kuratore en likwidateurs.

2. Enige verliese of nadeel wat deur die Meesterskantore of die Staat gely is as gevolg van sodanige wanadministrasie.

3. Die aangaan van ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes ten opsigte van reis-, verblyf- en akkommodasiekostes vir beamptes wat werk verrig by Meesterskantore anders as die kantoor waar hulle ingevolge hulle dienskontrak aangestel is of was.

4. Die aanstel van beamptes of werknemers by die Meesterskantore op 'n wyse wat strydig is met toepaslike —

   (a) wetgewing;

   (b) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat

deur die Nasionale Tesourie uitgevaardig is; of

(c) handleidings, beleid, prosedures, voorskrifte, instruksies or praktyke van, of wat van toepassing is op die Meesterskantore.

5. Inmenging deur sekere senior beamptes van die Meesterskantore in hangende dissiplinêre verrigtinge teen beamptes of werknemers van die Meesterskantore of die versuim van sekere senior beamptes in die Meesterskantore om gegronde dissiplinêre of ander toepaslike verrigtinge teen sodanige beamptes of werknemers, in te stel.

6. Die verkryging van, of kontraktering vir, skoonmaakdienste deur of namens die Meesterskantore en betalings wat in verband daarmee gemaak is op 'n wyse wat —

(i) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie; of

(ii) strydig was met toepaslike —

(a) wetgewing;

(b) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of

(c) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Meesterskantore van toepassing is,

en enige verwante verliese of ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Meesterskantore of die Staat opgedoen het as gevolg daarvan.

7. Die vergoeding van fiktiewe beamptes of werknemers by die Meesterskantore.

8. Enige onreëlmatige, onbehoorlike of onwettige optrede deur -

(a) werknemers of beamptes van die Meesterskantore; of

(b) enige ander person of entiteit,

met betrekking tot die bewerings soos in paragrawe 1 tot 7 van hierdie Bylae uiteengesit.

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