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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 23 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 all State institutions as defined in section 1 of the Act (hereinafter referred to as "the State institutions");

AND WHEREAS the State institutions 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 State 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 State institutions;
- (b) improper or unlawful conduct by the officials or employees of the State

- 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 State 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 2020 and the date of publication of this Proclamation or which took place prior to 1 January 2020 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 or the State 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
JOHANNESBURG this 23rd day of July Two thousand and twenty.

CM RAMAPHOSA

President

By Order of the President-in-Cabinet:

RO LAMOLA

Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for, goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the national state of disaster, as declared by Government Notice No. 313 of 15 March 2020, by or on behalf of the State institutions, and payments made in respect thereof in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
 - (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the State institutions;
 - (c) conducted by or facilitated through the improper or unlawful conduct of—
 - (i) employees or officials of the State institutions; or
 - (ii) any other person or entity,
to corruptly or unduly benefit themselves or any other person; or
 - (d) fraudulent,
- and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the State institutions or the State.

2. Any improper or unlawful conduct by the officials or employees of the State institutions or any other person or entity, in relation to the allegations set out in paragraph 1 of this Schedule, including the causes of such improper or unlawful conduct and any loss, damage or actual or potential prejudice suffered by the State institutions or the State.

PROKLAMASIE NO. R. 23 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 aangeleentheid van alle Staatsinstellings soos omskryf in artikel 1 van die Wet (hierna na verwys as "die Staatsinstellings");

EN AANGESIEN die Staatsinstellings of die Staat verliese 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 aangeleentheid in die Bylae vermeld, ten opsigte van die Staatsinstellings, 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 aangeleentheid, 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 aangeleentheid van die Staatsinstellings;
- (b) onbehoorlike of onregmatige optrede deur die beamptes of werknemers van

- die Staatsinstellings;
- (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 Staatsinstellings; 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 2020 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2020 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 Staatsinstellings of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te
JOHANNESBURG op hede die 23ste dag van Julie Twee duisend-en-twintig.

CM RAMAPHOSA

President

Op las van die President-in-Kabinet:

RO LAMOLA

Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir, goedere, werke of dienste, insluitende die konstruksie, opknapping, verhuring, okkupasie en gebruik van onroerende eiendom, gedurende, of in verband met die nasionale ramptoestand, soos verklaar deur Goewermentskennisgewing No. 313 van 15 Maart 2020, deur of namens die Staatsinstellings, en betalings wat in verband daarmee gemaak is op wyse wat—

- (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
- (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of die betrokke Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Staatsinstellings van toepassing is;
- (c) gedoen of gefasiliteer was deur die onbehoorlike of onwettige optrede van—
 - (i) werknemers of beamptes van die Staatsinstellings; of
 - (ii) enige ander persoon of entiteit,
om hulself of enige ander persoon op 'n korrupte of onbehoorlike wyse te bevoordeel; of
- (d) bedrieglik was,
en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is deur die Staatsinstellings of die Staat.

2. Enige onbehoorlike of onwettige optrede deur beamptes of werknemers van die Staatsinstellings of enige ander persoon of entiteit ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae, insluitende die oorsaak van sodanige onbehoorlike of onwettige optrede en enige verlies, skade of werklike of potensiële nadeel wat die Staatsinstellings of die Staat gely het.

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