

PROCLAMATION NO. R. 18 OF 2017

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 Thabazimbi Local Municipality (hereinafter referred to as "the Municipality");

AND WHEREAS the Municipality 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 Municipality, 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 Municipality;
- (b) improper or unlawful conduct by the councillors, officials or employees of the Municipality;
- (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 Municipality; 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 September 2012 and the date of publication of this Proclamation or which took place prior to 1 September 2012 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 Municipality, 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 Tenth day of March Two thousand and Seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of or contracting for goods, works or services by or on behalf of the Municipality and payments made in respect thereof in a manner that was—

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

and related irregular or fruitless and wasteful expenditure incurred by the Municipality in relation to—

- (aa) fleet related goods or services;
- (bb) auctioneering or asset disposal related services;
- (cc) the drafting or implementation of an asset disposal policy;
- (dd) waste management services for the Northam landfill site;
- (ee) the provision of office equipment;
- (ff) the conversion of conventional prepaid meters to smart meters;
- (gg) human resources related goods or services;
- (hh) the provision of meter reading related services;
- (ii) the provision of debt collection related services;
- (jj) the provision of credit control related services; and
- (kk) the drafting or implementation of a credit control management policy and the management of such a policy.

2. Maladministration in the affairs of the Municipality in respect of employees' tax deductions and the payment of such deductions to the South African Revenue Service, and any losses, prejudice or fruitless and wasteful expenditure incurred by the Municipality as a result of the non-payment or late payment of such deductions to the South African Revenue Service, including the causes of such maladministration.

3. The failure or refusal of the Municipality to—

- (a) timeously act upon conclusions or findings which were made; or
 - (b) implement recommendations contained,
- in a final report entitled "Possible abuse of office: Forensic Investigation", dated 29 October 2014.

4. Any unlawful or improper conduct by councillors, officials or employees of the Municipality or the applicable contractors, suppliers or service providers or any other person or entity, in relation to any of the allegations set out in paragraphs 1 to 3 of this Schedule.

PROKLAMASIE NO. R. 18 VAN 2017

**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 Ondersoekeenheede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleentehede van die Thabazimbi Plaaslike Munisipaliteit (hierna na verwys as "die Munisipaliteit");

EN AANGESIEN die Munisipaliteit verliese gely het wat 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 aangeleentehede in die Bylae vermeld, ten opsigte van die Munisipaliteit, 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 aangeleentehede, 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 aangeleentehede van die Munisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur die raadslede, beamptes of werknemers van die Munisipaliteit;
- (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 Munisipaliteit; 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 September 2012 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 September 2012 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleentehede 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 aangeleentehede in die Bylae, insluitend die verhaal van enige verliese wat deur die Munisipaliteit gely is.

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

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die aanskaffing van of kontraktering vir goedere, werke of dienste deur of namens die Munisipaliteit en betalings wat in verband daarmee gemaak is op 'n wyse wat—

- (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
- (b) strydig was met toepaslike —
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of relevante Plaaslike Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is,

en verwante onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Munisipaliteit opgeloop was ten opsigte van—

- (aa) vloot-verwante goedere en dienste;
- (bb) veiling of batebeskikking verwante dienste;
- (cc) die opstel of implementering van 'n batebeskikkingsbeleid;
- (dd) afval bestuursdienste vir die Northam vullis stortingssterrein;
- (ee) die verskaffing van kantoortoerusting;
- (ff) die omskakeling van konvensionele vooruitbetaalde meters na slim meters;
- (gg) menslike hulpbronverwante goedere of dienste;
- (hh) die verskaffing van meterlesing verwante dienste;
- (ii) die verskaffing van skuldinvordering verwante dienste;
- (jj) die verskaffing van kredietbeheer verwante dienste; en
- (kk) die opstel of implementering van 'n kredietbeheer bestuursbeleid en die bestuur van die beleid.

2. Wanadministrasie in die aangeleenthede van die Munisipaliteit ten opsigte van werknemersbelasting aftrekkings en die oorbetalings van sodanige aftrekkings aan die Suid-Afrikaanse Inkomstediens en enige verlies, nadeel of vrugtelose en verspilde uitgawes wat deur die Munisipaliteit opgeloop was as gevolg van die wanbetaling of laat betaling van sodanige aftrekkings aan die Suid-Afrikaanse Inkomstediens, insluitende die oorsake van sodanige wanadministrasie.

3. Die versuim of weiering van die Munisipaliteit om—

- (a) tydig op te tree teen gevolgtrekkings of bevindings wat gemaak is; of
- (b) aanbevelings te implementeer wat vervat is, in 'n finale verslag getiteld "Possible abuse of office: Forensic Investigation", gedateer 29 Oktober 2014.

4. Enige onwettige of onreëlmatige optrede deur raadslede, beamptes of werknemers van die Munisipaliteit of die betrokke kontrakteurs, verskaffers of diensverskaffers of enige ander persoon of entiteit, ten opsigte van enige van die bewerings uiteengesit in paragrawe 1 tot 3 van hierdie Bylae.