

**PROCLAMATION NO. R. 9 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—

- (a) KwaZulu-Natal Provincial Department of Agriculture and Rural Development (formerly known as the Department of Agriculture and Environmental Affairs) (hereinafter referred to as "the Department"); and
- (b) Mjindi Farming (Pty) Ltd (hereinafter referred to as "Mjindi"), which is a Provincial Government Business Enterprise of the KwaZulu-Natal Provincial Government in terms of Schedule 3, Part D of the Public Finance Management Act, 1999 (Act No. 1 of 1999), (hereinafter referred to collectively 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, and after consultation with or at the request of the Premier of the KwaZulu-Natal Province, 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 or officials 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 sections 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 February 2011 and the date of publication of this Proclamation or which took place prior to 1 February 2011 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 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 Ninth day of December Two thousand and sixteen.

**J G Zuma**  
**President**

By Order of the President-in-Cabinet:

**T M Masutha**  
**Minister of the Cabinet**

#### SCHEDULE

1. The procurement of, and contracting for—
  - (a) fertiliser, seeds or seed potatoes; or
  - (b) goods, works or services relating to events or event management, by or on behalf of the Department, and payments made in respect thereto, 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 the applicable Provincial Treasury; or
      - (cc) manuals, codes, policies, procedures, instructions or practices of, or applicable to the Department,and any related irregular or fruitless and wasteful expenditure incurred by the Department.
2. The procurement of, and contracting for agricultural equipment by or on behalf of the Institutions, and payments made in respect thereto, in a manner that was—
  - (a) not fair, equitable, transparent, competitive or cost-effective; or
  - (b) contrary to applicable—
    - (i) legislation;
    - (ii) manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury or the applicable Provincial Treasury; or

(iii) manuals, codes, policies, procedures, instructions or practices of or applicable to the Institutions,  
and any related irregular or fruitless and wasteful expenditure incurred by the Institutions.

3. Any undisclosed or unauthorised interests the board members, directors, officials or employees of the Institutions or any of their family members may have had—

- (a) with contractors, suppliers or service providers that—
- (i) were registered on the Vendor Databases of the Institutions;
  - (ii) did business with the Institutions; or
- (iii) were in a position to influence purchases made by or on behalf of the Institutions; or

(b) in contracts awarded by or on behalf of the Institutions, with regard to fertiliser, seeds, seed potatoes, agricultural equipment, agricultural inputs, chemicals, food production packs, events or event management services.

4. Fraud, corruption, irregularities, malpractices or maladministration in the affairs of the Institutions relating to the matters contemplated in paragraphs 1, 2 and 3 of this Schedule, including the causes of such fraud, corruption, irregularities, malpractices or maladministration and any losses, damages or actual or potential prejudice which the Institutions or the State may have suffered.

**PROKLAMASIE NO. R. 9 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 Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleentheid van die—

- (a) KwaZulu-Natal Provinsiale Departement van Landbou en Plattelandse Ontwikkeling (voorheen bekend as die Departement van Landbou, Omgewingsake en Plattelandse Ontwikkeling) (hierna na verwys as "die Departement"); en
- (b) Mjindi Farming (Edms) Bpk (hierna na verwys as "Mjindi"), wat 'n Provinsiale regeringsbesigheidsondernemings van die KwaZulu-Natalse Provinsiale Regering ingevolge Bylae 3, Deel D van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), is,  
(hierna gesamentlik na verwys as "die Instellings");

EN AANGESIEN die Instellings of die Staat moontlike 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, en op versoek van die Premier van die KwaZulu-Natal Provinsie, 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 of beamptes 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 Februarie 2011 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Februarie 2011 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 Instellings of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Negende dag van Desember Twee duisend-en-sestien.

**J G Zuma**  
**President**

Op las van die President-in-Kabinet:

**T M Masutha**  
**Minister van die Kabinet**

**BYLAE**

1. Die aanskaffing van, en kontraktering vir—  
(a) kunsmis, saad of saad-aartappels; of  
(b) goedere, werke of dienste verbandhoudend met geleentede of geleentheidsbestuurdienste,  
deur of namens die Departement 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—

(aa) wetgewing;

(bb) handleidings, riglyne, omsendbriewe, praktyknotas of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of

(cc) handleidings, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die Departement van toepassing is,

en enige verwante onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Departement opgeloopt is.

2. Die aanskaffing van, en kontraktering vir landbou toerusting deur of namens die Instellings en betalings wat in verband daarmee gemaak is op 'n wyse wat—

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

(b) strydig was met toepaslike—

(i) wetgewing;

(ii) handleidings, riglyne, omsendbriewe, praktyknotas of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of

(iii) handleidings, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die Instellings van toepassing is,

en enige verwante onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Instellings opgeloopt is.

3. Enige ongeopenbaarde of ongemagtigde belange wat die raadslede, direkteure, beamptes of werknemers van die Instellings of enige van hulle familielede kon gehad het—

(a) met kontrakteurs, verskaffers of diensverskaffers wat—

(i) geregistreer was op die Verkoper Databasis van die Instellings;

(ii) besigheid gedoen het met die Instellings; of

(iii) in 'n posisie was om die aankope wat deur of namens die Instellings gemaak is, te beïnvloed; of

(b) in kontrakte wat deur of namens die Instellings goedgekeur was, ten opsigte van kunsmis, sade, saad-aartappels, landboutoerusting, landbou-insette, chemikalieë, voedselproduksie pakke, geleentede of geleentheidsbestuurdienste.

4. Bedrog, korrupsie, onreëlmatighede, wanpraktyke of wanadministrasie in die aangeleentede van die Instellings ten opsigte van die aangeleentede verwys na in paragrawe 1, 2 en 3 van hierdie Bylae, insluitende die oorsake van sodanige bedrog, korrupsie, onreëlmatighede, wanpraktyke of wanadministrasie en enige verliese, skade of werklike of potensiele nadeel wat die Instellings of die Staat mag gely het.