

No. R. 23, 2007

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

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), have been made in respect of the affairs of the Office for Witness Protection ("the Office") established by section 2(1) of the Witness Protection Act, 1998 (Act No. 112 of 1998) (hereinafter referred to as the Witness Protection Act) and in respect of all branch offices of the Office established in terms of section 2(2)(a) of the Witness Protection Act (the Office and all its branch offices shall hereinafter collectively be referred to as the "Offices");

AND WHEREAS the Offices suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and justiciable civil disputes 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 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 -

- (a) serious maladministration in connection with the affairs of the Offices;
- (b) improper or unlawful conduct by officers and/or employees of the 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 Part 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, and which offences were committed in connection with the affairs of the 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 have taken place between 1 January 2001 and the date of publication 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, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Offices.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-sixth day of August Two thousand and seven.

T. M. MBEKI

President

By Order of the President-in-Cabinet:

B. S. MABANDLA

Minister of the Cabinet

SCHEDULE

1. The -
 - (a) granting of witness protection, whether on application or by means of a report as envisaged in the Witness Protection Act, to persons who do not or did not qualify for witness protection;
 - (b) payment or reimbursement of allowances and/or other financial benefits or expenses (hereinafter referred to as "witness allowances") to persons who do not or did not qualify for witness allowances; and
 - (c) provision or allowance of the occupation and/or use of places of safety and/or other accommodation (hereinafter referred to as "accommodation") to persons who do not or did not qualify for such accommodation,in contravention of the Witness Protection Act and/or policies, procedures, prescripts, directives, guidelines or standing instructions of the Offices (hereinafter collectively referred to as the "prescripts").
 2. The procurement of goods, services and/or accommodation by the Offices and payments that were made in respect thereof contrary to-
 - (a) the prescripts of the Offices; and/or
 - (b) procurement and provisioning or supply chain management systems prescribed by applicable legislation,in a manner that was neither fair, competitive, transparent, equitable nor cost-effective.
 3. The mismanagement of money, assets and/or resources which were allocated to the Offices, by persons who were appointed, assigned or seconded to the service of the Offices and/or their agents (hereinafter collectively referred to as "officials of the Offices").
 4. The failure to establish, maintain and/or comply with a fair system of recruitment and/or related labour practices in relation to officials of the Offices, in line with applicable legislation or prescripts of the Offices.
 5. The failure by the Offices and/or officials of the Offices to comply with and/or adhere to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
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and/or the regulations and instructions issued thereunder by the Minister of Finance or the National Treasury, and, in particular by -

- (a) incurring fruitless and wasteful expenditure of public money through the under-utilisation or misappropriation of accommodation and/or the making of excessive payments for such accommodation;
 - (b) failing to establish and maintain effective, efficient and transparent systems of financial and risk management and internal controls and/or to adhere strictly to the provisions of any such systems;
 - (c) failing to conclude, maintain, monitor and/or enforce appropriate protection agreements with protected persons, as envisaged in section 11 of the Witness Protection Act;
 - (d) failing to comply with the prescripts of the Offices pertaining to the incurring of expenditure and/or payments made by the Offices;
 - (e) failing to establish and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective and/or to adhere strictly to the provisions of such system;
 - (f) failing to ensure the effective, efficient, economical and transparent use of resources under the control of the Offices;
 - (g) failing to manage, safe-guard and/or maintain the assets of the Offices; and
 - (h) failing to keep full and proper records of the financial affairs of the Offices in accordance with the prescribed norms and standards.
6. Conduct of officials of the Offices, which has resulted or may have resulted in a loss of, damage to and/or a lack of control over public money, public property or other resources of the Offices and any conduct directed at promoting or facilitating the afore-mentioned.