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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 35, 2008

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) (the Act), have been made in respect of the affairs of Mhlatuze Water;

AND WHEREAS Mhlatuze Water 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 said 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 said Act, any -

- (a) serious maladministration in connection with the affairs of Mhlatuze Water;
- (b) improper or unlawful conduct by officers and/or employees of the Mhlatuze

Water;

- (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 Mhlatuze Water ; 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 2004 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by Mhlatuze Water.

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

T. M. MBEKI

President

By Order of the President-in-Cabinet:

B. S. MABANDLA

Minister of the Cabinet

SCHEDULE

1. The procurement and background to the procurement of services by Mhlatuze Water for the inspection, repair and maintenance of underwater pipes conveying effluent from the Mondi Business Paper Plant into the sea, contrary to applicable legislation or internal prescripts, policy or regulations that regulate such procurement in respect of Mhlatuze Water, and losses suffered by Mhlatuze Water as a result thereof.
2. The procurement and background to the procurement of goods or services from various entities by Mhlatuze Water contrary to applicable legislation or internal prescripts, policy or regulations that regulate such procurement and losses suffered by Mhlatuze Water as a result thereof.
3. Any actual or prospective interest that a member of the governing Board of Mhlatuze Water or employee of Mhlatuze Water may have had in any of the transactions set out in paragraphs 1 and 2 above.
4. The use of advance payments by Mhlatuze Water received from entities for purposes other than those intended by these entities.
5. The failure by Mhlatuze Water to settle contractual obligations within a reasonable period of time and losses suffered by Mhlatuze Water as a result thereof.
6. The non-compliance with prescribed procurement and tender procedures by Mhlatuze Water.
7. The unlawful or constructive dismissal of staff which resulted in financial prejudice or losses to Mhlatuze Water.
8. The use of the resources of Mhlatuze Water by employees of Mhlatuze Water for private business purposes.

9. The financial prejudice and losses suffered by Mhlatuze Water as a result of the sale of houses owned by Mhlatuze Water.
10. The failure by Mhlatuze Water to rent out houses at a market related value and the absence of a control system to ensure that rent in respect of the property was collected by Mhlatuze Water.
11. The fruitless and wasteful expenditure incurred by Mhlatuze Water as a result of –
 - (a) a value chain analysis which was conducted by consultants on behalf of Mhlatuze Water, which was never finalised;
 - (b) the collapse of an electronic records management system that was introduced in 2003 at Mhlatuze Water; and
 - (c) a project undertaken to value the assets of Mhlatuze Water.
12. Irregular expenditure incurred by Mhlatuze Water in respect of security guards that were appointed to guard the house of the Chief Executive Officer of Mhlatuze Water.
13. Financial prejudice and losses suffered by Mhlatuze Water as a result of excessive spending on travel, accommodation and other expenses by members of the governing Board of Mhlatuze Water.