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CONTENTS**INHOUD**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>	<i>No.</i>	<i>Bladsy No.</i>	<i>Koerant No.</i>
PROCLAMATION			PROKLAMASIE		
R. 42			R. 42		
Special Investigating Units and Special Tribunals Act (74/1996): Referral of matters to existing Special Investigating Unit and Special Tribunal.....	3	33451	Wet op Spesiale Ondersoekenhede en Spesiale Tribunale (74/1996): Verwysing van aangeleenthede na bestaande Spesiale Ondersoekenhede en Spesiale Tribunaal	5	33451

PROCLAMATION*by the**President of the Republic of South Africa*

No. R. 42, 2010

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) (hereinafter referred to as the "Act"), have been made in respect of the affairs of the South African Police Service, as established by section 5 of the South African Police Service Act, 1995 (Act No. 68 of 1995), on a national and provincial level (hereinafter referred to as the "Service");

AND WHEREAS the Service 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, in respect of the Service 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 Service;
- (b) improper or unlawful conduct by officials, officers, employees, personnel and/or members of the Service;
- (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 Service; 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 2005 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, including the recovery of any losses suffered by the Service, 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 First day of August Two thousand and ten.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. The procurement of and contracting for goods, works or services, including leased accommodation, by or on behalf of the Service (including procurement and contracting conducted on behalf of the Service by the Department of Public Works ("DPW") or the State Information Technology Agency (Pty) Ltd ("SITA")) and payments made in relation thereto, in a manner that was -
 - (a) not fair, equitable, transparent, competitive or cost-effective;
 - (b) contrary to applicable -
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury or the applicable Provincial Treasuries; or
 - (iii) manuals, codes, policies, procedures, instructions or practices of or applicable to the Service;
 - (c) conducted or facilitated by or through the intervention of officials, officers, employees, personnel or members of the Service (hereinafter collectively referred to as "the Service's personnel") with undeclared conflicts of interest; or
 - (d) conducted or facilitated by the manipulation of the Service's supply chain management, procurement or information system management processes -
 - (i) by property owners, property managers, contractors, suppliers or service providers (hereinafter collectively referred to as "the Service's suppliers and service providers") of the Service; or
 - (ii) by, in collusion with or through the intervention of the Service's personnel,
to unduly benefit themselves or others.
2. The incurrence of -
 - (a) unauthorized expenditure;
 - (b) irregular expenditure;
 - (c) fruitless and wasteful expenditure; or
 - (d) expenditure not due, owing and payable,in relation to payments made to agents of the Service (including the DPW and SITA) or to the Service's suppliers and service providers for goods, works or services, including leased accommodation procured by or on behalf of the Service.
3. Non-compliance with the provisions of the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007), or the conditions of the "devolution of custodial responsibilities of functional assets" process embarked upon by the DPW, the Service and National Treasury, inter alia, due to the manner in which the Service's Building Services have been conducting their projects.
4. Unlawful or irregular conduct by the Service's personnel, the Service's suppliers and service providers or third parties relating to any one or more of the aforementioned allegations.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 42, 2010

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE TRIBUNAAL

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenheide en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Suid-Afrikaanse Polisie diens, ingestel deur artikel 5 van die Wet op die Suid-Afrikaanse Polisie diens, 1995 (Wet No. 68 van 1995), op 'n nasionale en provinsiale vlak (hierna na verwys as die "Diens");

EN AANGESIEN die Diens verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en beregbare siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae, ten opsigte van die Diens, 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 daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Diens;
- (b) onbehoorlike of onregmatige optrede deur beamptes, amptenare, werknemers, personeel en/of lede van die Diens;
- (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, in verband met die sake van die Diens; 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 2005 en die datum van publikasie van hierdie Proklamasie, en om die bevoegdhede en werksaamhede wat deur die Wet aan die Spesiale Ondersoekeenheid toegewys of opgedra is uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, met inbegrip van die verhaal van enige verliese wat deur die Diens gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Eerste dag van Augustus Tweeduisend-en-tien.

J G Zuma
President

Op las van die President-in-Kabinet:

J T Radebe
Minister van die Kabinet

BYLAE

1. Die aanskaffing van en kontraktering vir goedere, werk of dienste, insluitende gehuurde akkomodasie, deur of namens die Diens (insluitende aanskaffing en kontraktering gedoen namens die Diens deur die Departement van Openbare Werke ("DOW") of die "State Information Technology Agency (Pty) Ltd" ("SITA") en betalings wat in verband daarmee gemaak is, op 'n wyse wat -
 - (a) nie billik, regverdig, deursigtig, mededingend of koste-effektief is nie;
 - (b) strydig is met toepaslike -
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas of instruksies deur die Nasionale Tesourie of die toepaslike Provinsiale Tesourieë uitgevaardig; of
 - (iii) handleidings, kodes, beleid, prosedures, instruksies of praktyke van of wat op die Diens van toepassing is;
 - (c) gedoen of gefasiliteer was deur of met die tussenkoms van beamptes, amptenare, werknemers, personeel of lede van die Diens (hierna gesamentlik na verwys as "die Diens se personeel") met ongeopenbaarde konflikte van belange; of
 - (d) gedoen of gefasiliteer was deur die manipulering van die Diens se voorsieningskanaal-bestuur, aanskaffing of inligtingstelsel bestuursprosesse -
 - (i) deur eienaars van eiendom, bestuurders van eiendom, kontrakteurs, verskaffers of diensverskaffers (hierna gesamentelik na verwys as die "Diens se verskaffers en diensverskaffers") van die Diens; of
 - (ii) deur, in samespanning met of deur die tussentrede van die Diens se personeel, om hulself of andere onbehoorlik te bevoordeel.

2. Die aangaan van -
 - (a) ongemagtigde uitgawes;
 - (b) onreëlmatige uitgawes;
 - (c) vrugteloze en verkwiste uitgawes; of
 - (d) uitgawes wat nie opeisbaar, verskuldig of betaalbaar is nie, ten opsigte van betalings wat gemaak is aan agente van die Diens (insluitende die DOW en SITA) of aan die Diens se verskaffers en diensverskaffers vir goedere, werk of dienste, insluitende gehuurde akkomodasie aangeskaf deur of namens die Diens.

3. Nie-nakoming van die bepalings van die Wet op die Bestuur van Onroerende Regeringsbates, 2007 (Wet No. 19 van 2007), of die voorwaardes van die "devolution of custodial responsibilities of functional assets" proses onderneem deur die DOW, die Diens en die Nasionale Tesourie, inter alia, as gevolg van die wyse waarop die Diens se Boudienste hul projekte onderneem het.

4. Onwettige of onreëlmatige optrede deur die Diens se personeel, die Diens se verskaffers en diensverskaffers of derde partye ten opsigte van een of meer van die voorafgaande bewerings.

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