

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 62, 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 Tshwane Metropolitan 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 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 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 -

- (a) serious maladministration in connection with the affairs of the Municipality;
- (b) improper or unlawful conduct by councillors, officials and/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 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 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 have taken place between 1 January 2007 and the date of publication of this Proclamation or which took place prior to 1 January 2007, but are connected with or incidental 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 Thirty-first day of October 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 recruitment, selection and appointment by or on behalf of the Municipality of officials or employees -
 - (a) contrary to manuals, codes, policies, procedures, prescripts, instructions or practices of or applicable to the Municipality;
 - (b) by or through the intervention of councillors, officials or employees of the Municipality with undeclared or unauthorised conflicts of interest; or
 - (c) into positions that they are not qualified or otherwise best suited for.
2. The mismanagement of the affairs of the Municipality by not ensuring that its municipal entities -
 - (a) keep verifying documentation in respect of book entries, including entries about income or grants to the Municipality or its municipal entities;
 - (b) do prescribed financial reporting;
 - (c) exercise adequate control over finances;
 - (d) keep detailed asset registers or verify assets;
 - (e) calculate residual values or depreciation of fixed assets; or
 - (f) prevent the occurrence of net losses or liabilities exceeding assets.
3. Fruitless and wasteful expenditure incurred by the Municipality as a result of -
 - (a) the outsourcing of works or services that could be rendered by officials or employees of the Municipality;
 - (b) the payment of remuneration, allowances or other benefits to councillors, officials or employees of the Municipality that were not due, owing or payable or that were in excess of stipulated limits; or
 - (c) the remuneration of persons in senior posts outside the approved post establishment of the Municipality.
4. The procurement of 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;
 - (b) contrary to applicable legislation;
 - (c) contrary to applicable manuals, guidelines, practice notes or instructions issued by the National Treasury or the relevant provincial treasury;
 - (d) contrary to manuals, codes, policies, procedures, prescripts, instructions or practices of or applicable to the Municipality; or
 - (e) conducted or facilitated by or through the intervention of councillors, officials or employees of the Municipality with undeclared or unauthorised conflicts of interest.
5. The mismanagement of the finances, assets or other resources of the Municipality as a result of -
 - (a) the failure to recover debts owed to the Municipality by councillors, officials or employees of the Municipality and the failure to take disciplinary or other appropriate action against such councillors, officials or employees;
 - (b) incorrect accounting for finance leases in the books of the Municipality and non-compliance with applicable laws in relation thereto;
 - (c) substantial unauthorised expenditure as at December 2009;
 - (d) fruitless and wasteful expenditure;
 - (e) amounts written off to bad debt without Council approval and without good reason;

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- (f) the non-disclosure of the location of assets in the asset registers;
 - (g) unexplained and undocumented transfer payments to outside organisations;
 - (h) the failure to pay the debts of the Municipality timeously or at all; or
 - (i) the failure to deduct or pay over Unemployment Insurance Fund contributions in respect of persons remunerated by the Municipality.
6. Interference by the City Manager of the Municipality in pending disciplinary proceedings against officials or employees of the Municipality or the City Manager's failure to institute well founded disciplinary or other appropriate proceedings against officials or employees of the Municipality.