PROCLAMATION 184 OF 2024

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 Transnet (SOC) Limited (hereinafter referred to as "Transnet");

AND WHEREAS Transnet 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, refer the matters mentioned in the Schedule to this Proclamation, in respect of Transnet, 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 Transnet;
(b) improper or unlawful conduct by the employees or officials of Transnet;
(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 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 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of Transnet; 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 January 2007 and the date of publication of this Proclamation 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 to this Proclamation 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 Transnet or the State, in relation to the said matters in the Schedule to this Proclamation.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 16th day of August Two thousand and twenty-four.

CM Ramaphosa
President

By Order of the President-in-Cabinet:
T Simelane
Minister of the Cabinet

SCHEDULE

1. Serious maladministration in connection with the affairs of Transnet relating to—
(a) the re-instatement of Mr Siyabonga Gama as Chief Executive Officer of Transnet Freight Rail in February 2011; and
(b) the payment of Mr Siyabonga Gama's legal costs pursuant to his re-instatement,
and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Transnet in relation thereto.

2. Serious maladministration in respect of the affairs of Transnet in respect of the procurement of, or contracting for goods, works or services, including leased accommodation, by Transnet, and payments made in relation thereto, in a manner that was—
(a) not fair, equitable, transparent, competitive or cost-effective; or
(b) contrary to the applicable—
(i) legislation;
(ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or
(iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to Transnet.

3. Unauthorised, irregular or fruitless and wasteful expenditure incurred by or losses suffered by Transnet or the State in relation to the contract for security services relating to cable theft and the prevention of criminal activities against Transnet Freight Rail, which contract was awarded to Abalozi Security Risk Advisory Services (Pty) Limited (formerly known as General Nyanda Security Advisory Services (Pty) Limited).

4. Offences 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 Transnet in relation to the allegations mentioned in paragraphs 1, 2 and 3 of this Schedule.

5. Any irregular, improper or unlawful conduct by—
(a) employees or officials of Transnet;
(b) Board members of Transnet at the relevant time; or
(c) the suppliers, service providers or any other person or entity,
relating to the allegations as set out in paragraphs 1, 2, 3 and 4 of this Schedule.

PROKLAMASIE 184 VAN 2024

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 werksaamhede van Transnet (MSB) Beperk (hierna na verwys as "Transnet");

EN AANGESIEN Transnet of die Staat verliese gely het wat verhaal kan word;

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

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van Transnet, 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, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige beweerde—

(a) ernstige wanadministrasie in verband met die werksaamhede van Transnet;
(b) onbehoorlike of onregmatige optrede deur werknemers of beamptes van Transnet;
(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 voorvermelde 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 gepleeg is in verband met die sake van Transnet; 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 2007 en die datum van publikasie van hierdie Proklamasie of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae tot hierdie Proklamasie 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 tot hierdie Proklamasie, met inbegrip van die verhaal van enige verliese wat deur Transnet of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 16de dag van Augustus Twee-duisend vier-en-twintig.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

T Simelane

Minister van die Kabinet

BYLAE

1. Ernstige wanadministrasie in verband met die werksaamhede van Transnet met betrekking tot—

(a) die herinstelling van Mnr Siyabonga Gama as Hoof Uitvoerende Beampte van Transnet in Februarie 2011; en

(b) die betaling van Mnr Siyabonga Gama se regskostes met betrekking tot sy herinstelling,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspulde uitgawes deur Transnet in verband daarmee aangegaan.

2. Ernstige wanadministrasie ten opsigte van die werksaamhede van Transnet ten opsigte van die verkryging van, of kontraktering vir goedere, werk of dienste, met inbegrip gehuurde akkommodasie, deur Transnet, en betalings gemaak in verband daarmee, op 'n wyse wat—

(a) nie regverdig, gelykmatig, deursigtig, kompeterend of koste effektief was nie;

(b) strydig met die tersaaklike—

(i) wetgewing;

(ii) handleidings, riglyne, praktyksnotas of instruksies deur die Nasionale Tesourie uitgereik; of

(iii) handleidings, kodes, beleid, prosedures, voorskrifte, riglyne, instruksies of gebruike van, of van toepassing op Transnet,

was.

3. Ongemagtigde, onreëlmatige of vrugtelose en verspulde uitgawes aangegaan deur of verliese gely deur Transnet of die Staat in verband met die kontrak vir sekuriteitsdienste met betrekking tot kabel diefstal en die voorkoming van misdadige aktiwiteite teen "Transnet Freight Rail", welke kontrak aan "Abalozi Security Advisory Services (Pty) Limited" (voorheen as "General Nyanda Security Advisory Services (Pty) Limited" bekend) toegeken was.

4. Misdrywe bedoel in Deel 1 tot 4, of artikel 17, 20 of 21 (vir soverre dit op voormelde misdrywe betrekking het) of Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004, en welke misdrywe gepleeg is in verband met die werksaamhede van Transnet met betrekking tot die aantygings in paragrawe 1, 2 en 3 van hierdie Bylae vermeld.

5. Enige onreëlmatige, onbehoorlike of onregmatige gedrag deur—

(a) werknemers of beamptes van Transnet;

(b) Raadslede van Transnet op die betrokke tydstip; of

(c) die verskaffers, diensverskaffers of enige ander persoon of entiteit,

met betrekking tot die aantuigings soos in paragrawe 1, 2, 3 en 4 van hierdie Bylae uiteengesit.