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PROCLAMATION
by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA

No. R. 6, 2011

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 Oudtshoorn Local Municipality in the Western Cape Province (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 2004 and the date of publication of this Proclamation or which took place prior to 1 January 2004, 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 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 Twenty-sixth day of January Two thousand and eleven.

K P MOTLANTHE
Acting 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 by or on behalf of the Municipality and payments made in relation thereto, in a manner which 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 relevant provincial treasury; or
 - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of or applicable to the Municipality; or
 - (c) conducted or facilitated by the manipulation of the Municipality's supply chain management or procurement processes -
 - (i) by contractors, suppliers or service providers of the Municipality (hereinafter collectively referred to as "the Municipality's suppliers and service providers"); or
 - (ii) by, in collusion with or through the intervention of the councillors, officials or employees of the Municipality (hereinafter collectively referred to as "the Municipality's personnel"),
to fraudulently or unduly benefit themselves or others.
2. Losses or prejudice suffered by the Municipality as a result of unlawful conduct or irregular practices of the Municipality's personnel, the Municipality's suppliers and service providers or third parties, in respect of -
 - (a) false claims for payment;
 - (b) payments made to fictitious entities;
 - (c) the forgery of documents; or
 - (d) the circumvention of financial control mechanisms.
3. Losses or prejudice suffered by the Municipality as a result of the mismanagement of the Municipality's assets, finances or other resources, in respect of -
 - (a) the lack of, or non-adherence to financial control mechanisms;
 - (b) the incurrence of irregular or fruitless and wasteful expenditure;
 - (c) the making of payments that were not due, owing or payable; or
 - (d) the payment of the Municipality's suppliers and service providers prematurely or without any or due performance.

PROKLAMASIE
van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA

No. R. 6, 2011

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 Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleentehede van die Oudtshoorn Plaaslike Munisipaliteit geleë in die Wes-Kaap Provinsie (hierna na verwys as die "Munisipaliteit");

EN AANGESIEN die Munisipaliteit 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 vermeld, ten opsigte van die Munisipaliteit, vir ondersoek na die Spesiale Ondersoekkeenheid 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 Ondersoekkeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Munisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur raadslede, beamptes en/of werknemers, van die Munisipaliteit;
- (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 Munisipaliteit; 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 2004 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2004, maar wat verband hou met, of insidenteel is tot, die aangeleenthede vermeld in die Bylae of dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekkeenheid toegewys of opgedra is, uit te oefen of te verrig, insluitend die verhaal van enige verliese wat deur die Munisipaliteit gely is, ten opsigte van die aangeleenthede in die Bylae vermeld.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Ses-en-twintigste dag van Januarie Tweeduisend-en-ef.

K P MOTLANTHE
Waarnemende President

Op las van die President-in-Kabinet:

J T RADEBE
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, en kontraktering vir goedere, werke of dienste deur of namens die Munisipaliteit en betalings wat in verband daarmee gemaak is op 'n wyse wat -
 - (a) nie regverdig, billik, deursigtig, mededingend, of koste-effektief was nie;

- (b) strydig was met toepaslike -
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas of instruksies deur die Nasionale Tesourie of die toepaslike provinsiale tesourie uitgevaardig; of
 - (iii) handleidings, kodes, beleid, prosedures, voorskrifte, riglyne, instruksies of praktyke van of wat op die Munisipaliteit van toepassing is; of
 - (c) gedoen of gefasiliteer was deur die manipulering van die Munisipaliteit se voorsieningskanaal-bestuur of aanskaffingsprosesse -
 - (i) deur kontrakteurs, verskaffers of diensverskaffers van die Munisipaliteit (hierna gesamentelik na verwys as die "Munisipaliteit se verskaffers en diensverskaffers"); of
 - (ii) deur, in samespanning met of deur die tussenkoms van die Munisipaliteit se raadslede, beamptes of werknemers (hierna gesamentelik na verwys as die "Munisipaliteit se personeel"), om hulself of andere op 'n korrupte wyse of onbehoorlik te bevoordeel.
2. Verliese of nadeel deur die Munisipaliteit gely as gevolg van die wederregtelike?? optrede of onreëlmatige praktyke van die Munisipaliteit se personeel, die Munisipaliteit se verskaffers en diensverskaffers of derde partye, ten opsigte van -
- (a) vals eise vir betaling;
 - (b) betalings gemaak aan versinde entiteite;
 - (c) die vervalsing van dokumente; of
 - (d) die ontduiking van finansiële beheer meganismes.
3. Verliese of nadeel deur die Munisipaliteit gely as gevolg van die wanbestuur van die Munisipaliteit se bates, finansies of ander hulpbronne, ten opsigte van -
- (a) die afwesigheid van, of nie-nakoming van finansiële beheer meganismes;
 - (b) die aangaan van onreëlmatige of vrugtelose en verkwistende uitgawes;
 - (c) die maak van betalings wat nie opeisbaar, verskuldig of betaalbaar is nie; of
 - (d) die betaling van die Munisipaliteit se verskaffers of diensverskaffers voortydig of sonder enige of behoorlike prestasie.
-

**GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING**

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 87

4 February 2011

**CORRECTION NOTICE
Proclamation No. R. 3 of 14 January 2011**

Proclamation No. R. 3 of 14 January 2011, is hereby corrected by the substitution in the fourth paragraph of the Afrikaans text for the expression "1 Januarie 2005", wherever it appears, of the expression "1 September 2005".

No. R. 87

4 Februarie 2011

**REGSSTELLINGSKENNISGEWING
Proklamasie No. R. 3 van 14 Januarie 2011**

Proklamasie No. R. 3 van 14 Januarie 2011, word hierby reggestel deur in die vierde paragraaf van die Afrikaanse teks die uitdrukking "1 Januarie 2005", waar dit ookal voorkom, deur die uitdrukking "1 September 2005" te vervang.

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