

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.

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT