

**SUBORDINATE LEGISLATION IN RESPECT OF THE SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996):**



**REFERRAL OF MATTERS TO SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL**

**A. Proclamation No. R. 27 of 27 June 2005 (Government Gazette No. 27719):**

**“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). have been made in respect of the affairs of the Municipalities as mentioned in the Schedule (hereinafter referred to as the “Municipalities”);

AND WHEREAS the Municipalities have 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 said Act, and at the request of the Premier of the Eastern Cape Province, refer the matters mentioned in the Schedule 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 these matters, the terms of reference of the Special Investigating Unit, are to investigate as contemplated in the said Act, any –

- (a) serious maladministration in connection with the affairs of the Municipalities;
- (b) improper or unlawful conduct by officials of the Municipalities;
- (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 has taken place between 1 January 1998 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Municipalities.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Eleventh day of June Two thousand and five.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

### **SCHEDULE**

#### **1. 0. R. Tambo Municipality**

- (a) The payment of the purchase price of a house by the Municipality on behalf of an acting municipal Manager.
- (b) The secondment of an employee of the Department of Health, Eastern Cape as a personal assistant to the Executive Mayor of the Municipality and the payment of a salary to that personal assistant out of the Municipality funds without proper authorisation.
- (c) The occupation and use by the Executive Mayor of a house belonging to the Municipality at no cost to herself and subsequent renovations and refurbishments to that house for the Mayor's benefit out of Municipal funds.
- (d) The use by the Executive Mayor of the Mayoral motor vehicle belonging to the Municipality for private transport purposes at the expense of the Municipality which expense included the cost of her driver and the fuel for the said vehicle.

- (e) Accommodation expenses incurred by the Executive Mayor in her private capacity and which were paid out of Municipal funds without any authorisation.
- (f) The failure by the Municipality to maintain a fixed asset register.
- (g) Expenditure incurred purporting to be payments out of Municipal funds without supporting documentation.
- (h) Loans made to Municipal Councillors for the purchase of cellular phones, which loans were not repaid.
- (i) The late submission or failure to submit VAT returns.
- (j) Losses suffered by the Municipality as a result of the negligence of the employees of the Municipality who failed to provide the South African Revenue Services with sufficient supporting documentation to warrant VAT refunds.
- (k) The failure by the Municipality to reverse transactions in the financial ledgers once cheques were dishonoured, leaving certain debts incorrectly reflected as having been paid.
- (l) Overpayments made to service providers in relation to Freedom Day celebrations which overpayments were not recovered by the Municipality.
- (m) The use of funds received for the financing of special projects to cover cash shortages occurring in the Municipality's bank account.
- (n) The failure by the Municipality to keep separate records of Municipal funds transferred from the Municipality's trading account and special projects account to the Municipality's investment account.
- (o) The failure by the Municipality to properly keep and maintain a cash book.

- (p) Irregularities regarding the approval of payments made from Municipality funds.
- (q) The failure by the Municipality to institute disciplinary proceedings timeously against employees who were on suspension with full pay.
- (r) The procurement of goods and services without proper tender procedures being followed.

## **2. Whittlesea Municipality**

- (a) The failure by the Municipality to ensure that an amount payable to the Municipality in terms of a deed of suretyship in favour of the Municipality did not prescribe.
- (b) Payments made to suppliers without valid invoices or without authorised cheque requisitions and in some cases without the cheques having been signed by two signatories.
- (c) The failure by the Municipality to timeously pay over PAYE tax deducted from its employees to the South African Revenue Services which resulted in the imposition of financial penalties against the Municipality.
- (d) The failure by the Municipality to account for all the expenditure in respect of an amount of R1 779 449,38 which was received from the Department of Housing and Local Government (Eastern Cape Province) for payment of leave gratuities for certain employees who were transferred from the TLC to the Municipality.
- (e) The increase of allowances for Councillors without prior consultation with the MEC for Local Government as required by law.

- (f) The losses suffered as a result of the Municipality's failure to timeously bank cheque payments.
- (g) The failure by the Municipality to submit VAT invoices in the prescribed manner with claims submitted to SARS for the repayment of VAT.
- (h) The lack of control and administration over fixed assets of the Municipality.

### **3. Maletswai Municipality**

- (a) The failure by the Municipality to recover insurance premiums paid for the subsidised vehicles of three former officials after these officials had either terminated their services with the Municipality and/or had withdrawn the motor vehicles from the subsidy scheme.
- (b) The failure by the Municipality to reconcile the units of electricity and water delivered by the Municipality with financial recoveries made in respect thereof which resulted in losses for the Municipality.
- (c) The failure by the Municipality to comply with the Council policy regarding the discontinuance of electricity services due to non-payment thereof.
- (d) The failure by the Municipality to take stock of assets or submit budgets and to take any remedial steps pursuant to findings contained in previous audit reports.
- (e) The utilisation of funds from the Municipality's capital account and the revolving fund for operational costs of the Council without any Council resolution.

- (f) The failure by the Municipality to repay the funds mentioned in paragraph (e), above.
- (g) The receipt of a loan from Ukhahlamba District Municipality by the Municipality without any Council resolution and the failure to repay the said loan.
- (h) The decision of the Municipality to place a moratorium on the repayment of two loans from the Department of Public Service Administration (DPSA).
- (i) The failure by the Municipality to establish a loan redemption fund into which all half yearly interest payable on the loans of the Municipality are deposited in order to repay amounts in terms of the loans when due.
- (j) The failure by the Municipality to —
  - (i) properly administer leases;
  - (ii) ensure that market related rentals are charged for the letting of properties; and
  - (iii) ensure that arrear rentals are recovered.
- (k) The failure by the Municipality to have adequate debt collection procedures in place.
- (l) The failure by the Municipality to ensure proper control over motor vehicle registration.

#### **4. Somerset East Municipality**

- (a) The failure by the Municipality to ensure that proper control measures are in place in respect of the use of Municipal vehicles.
- (b) The use of Municipal vehicles for private purposes.

- (c) The payment of travel allowances to municipal workers who make use of their own transport without verification of distances travelled.
- (d) The mismanagement of the motor vehicle loan scheme of the Municipality.
- (e) The non-compliance with applicable legislation and failure by the treasury section of the Municipality to compile and submit financial statements to the Auditors within 3 months after the end of the financial year.

## **5. Inkwanca Municipality**

- (a) The failure by the Municipality to produce, for audit purposes, a service agreement for the Municipal vehicles.
- (b) Unauthorized expenditure that was incurred relating to the service and maintenance of Municipal vehicles.
- (c) The appointment of a Councillor of the Municipality as acting Town Clerk and the payment of additional allowances pursuant to such appointment.
- (d) The purchasing of a farm from a former Town Clerk without the prior approval of the MEC as required by law.
- (e) The award of a tender for servicing of motor vehicles without inviting formal tenders.
- (f) Legal costs incurred by the Municipality in circumstances which render such expenditure fruitless, wasteful and unnecessary.
- (g) Loans and advances made to Councillors by the Municipality without any written agreements.

- (h) A loan to the Town Clerk for the purchasing of a motor vehicle, for which no repayment contract could be produced.
- (i) The granting of an amount of **R10 000,00** as travel allowance to the Town Clerk for which no tax was deducted and in respect of which it could not be shown that any work was performed by the said Town Clerk either away from his normal workplace or outside the Municipal boundaries.
- (j) Failure to collect rental owed by the Town Clerk for the period September 1998 to March 2000.
- (k) The failure by the Municipality to recover cellular phones from Councillors who left the service of the Municipality or to deduct the costs relating to the cellular phones from their allowances or salaries.
- (l) Irregularities in the Municipality relating to the collection and banking of revenue.
- (m) The shortfall incurred by the Municipality on the sale of prepaid electricity.
- (o) The increase of Councillors' allowances by the Municipality without the prior approval of the MEC.

## **6. KSD Municipality**

- (a) The adjustment of staff salaries by the treasury section of the Municipality without the Municipal Council's authorisation.
- (b) The failure by the Human Resources Department of the Municipality to keep, maintain and update personnel records and registers relating to personnel matters and matters such as staff advances and housing guarantees.

- (c) The procurement of goods and services without following proper tender procedures.
- (d) The appointment of officials on the basis of false qualifications.
- (e) The failure by the Municipality to pay over to appropriate institutions deductions made from employees' salaries in respect of, inter alia, the Unemployment Insurance Fund, the Municipality's Pension Fund and the Provident Fund.
- (f) The use of Municipal funds to pay beneficiaries of deceased employees.
- (g) The payment by the Municipality of travel allowances to certain officials contrary to the Transport Allowance Policy applicable to the Municipality.
- (h) Fraudulent claims made by officials of the Municipality in relation to transport allowances.
- (i) The payment by the Municipality of housing allowances to employees of the Municipality despite the fact that such officials were provided with free lodging by the Municipality.
- (j) The misuse of telephone facilities by the employees of the Municipality.
- (k) The failure by the Municipality to recover costs of private calls from its employees.

## **7. Nyandeni Municipality**

- (a) The purchasing of motor vehicles by the Municipality for the Mayor, the Speaker and the Municipal Manager, when this expenditure had not been budgeted for in the 2001/ 2002 financial year.

- (b) The absence of a policy or car scheme in terms of which the cars referred to in paragraph (a) were to be utilised or repaid.
- (c) Over-expenditure by the Municipality in respect of the hiring of motor vehicles.
- (d) The employment of casual workers by the ward Councillors without any Council Resolution.
- (e) The lack of control over the use of telephones by employees of the Municipality.
- (f) The procurement of goods and services —
  - (i) which were not budgeted for; and
  - (ii) without complying with prescribed tender procedures.
- (g) The payment by the Municipality of travelling allowances to Municipal Councillors who already participated in the Municipality's motor vehicle scheme.
- (h) The lack of control by the Municipality over the use of Municipal vehicles.
- (i) Unauthorised expenditure incurred as a result of the use of Municipal vehicles.”

**B. Proclamation R. 26 of 27 June 2005 (Government Gazette No. 27719):**

**“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),

have been made in respect of the affairs of the Municipalities as mentioned in the Schedule (hereinafter referred to as the “Municipalities”);

AND WHEREAS the Municipalities 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 said Act, and at the request of the Premier of the Eastern Cape Province, refer the matters mentioned in the Schedule 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 these matters, the terms of reference of the Special Investigating Unit, are to investigate as contemplated in the said Act, any –

- (a) serious maladministration in connection with the affairs of the Municipalities;
- (b) improper or unlawful conduct by officials of the Municipalities;
- (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 1998 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Municipalities.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Eleventh day of June Two thousand and five.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

## **SCHEDULE**

### **1. Emalahleni Municipality**

- (a) The failure by the Municipality to collect rent in respect of fixed property leased by the Municipality.
- (b) The utilisation by the Municipality of a grant by the National Department of Provincial and Local Government to the Municipality for purposes other than that for which the grant was intended.

### **2. Mngquma Municipality**

- (a) The failure by the Municipality to ensure that deductions that were made from employees' salaries in respect of PAYE tax, Unemployment Insurance Fund contributions and Provident Fund contributions were paid over to the appropriate institutions.
- (b) The utilisation by the Municipality of the Municipality's equitable share allocation and a grant to the Municipality for the provision of free basic services to refund Municipal employees in respect of the deductions referred to in paragraph (a), above.
- (c) The refunding, referred to in paragraph (b) above, of wrongly calculated amounts to employees.

- (d) The refunding, referred to in paragraph (b) above, of Provident Fund deductions to employees in a manner contrary to the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956).
- (e) The non-disclosure of an additional source of income by a Councillor of the Municipality contrary to the Code of Conduct for Councillors in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- (f) The decision of the acting Executive Mayor to authorise the payment of salaries, contrary to the Council's decision, to Municipal employees who participated in industrial action.

### **3. Ikwezi Municipality**

- (a) Losses suffered by the Municipality in respect of overpayments, advances, loans, allowances and wages which were paid by the Municipality to Councillors and other employees of the Municipality.
- (b) Overpayments made by the Municipality in respect of services rendered to the Municipality.
- (c) The issuing of cash cheques by the Municipality contrary to applicable prescripts and without supporting documentation.
- (d) The procurement of chemicals by the Municipality—
  - (i) contrary to applicable tender procedures;
  - (ii) in a manner that transgresses the Code of Conduct for Councillors;  
and
  - (iii) in excess of the amount budgeted for these purposes.

- (e) The absence of proof that the chemicals referred to in paragraph (d) were delivered to the Municipality.
- (f) Over-expenditure by the Municipality in respect of subsistence and travelling allowances.
- (g) The lack of internal controls in respect of petty cash disbursements.
- (h) The utilisation by the Municipality of financial aid obtained from the Department of Housing and Local Government to defray expenditure which was not budgeted for.

#### **4. Inxuba Yethemba Municipality**

- (a) The failure by the Municipality to ensure that cheques received from the Michausdal and Linelihie Townships are banked timeously.
- (b) The failure by the Municipality to exercise proper control over reconciliations of daily income with bank deposit details.
- (c) The failure by the Municipality to charge an employee for electricity rendered to him by the Municipality.
- (d) The lack of proper control in respect of, and irregularities relating to, the selling of prepaid electricity vouchers by the Municipality.
- (e) Payments made to creditors of the Municipality without substantiating supporting documentation.

#### **5. Ndlambe Municipality**

- (a) Irregularities relating to the tender processes in terms of which —

- (i) a tender to build a new municipal office was awarded to H J Builders;
  - (ii) a tender for the construction of Karel Landman Street was awarded to a trust; and
  - (iii) a tender for the installation of a drainage system for the traffic centre was awarded to a consultant of the Municipality.
- (b) Wasteful expenditure incurred by the Municipality in relation to —
- (i) the building of a lecture room to accommodate traffic officers not employed by the Municipality;
  - (ii) the operating of two accounting systems; and
  - (iii) the installation of a drainage system and the construction of a veranda for the traffic centre.”

**C. Proclamation No. R. 18 of 6 April 2005 (Government Gazette No. 27468):**

**“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), have been made in respect of the affairs of the National and all Provincial Departments of Social Development (hereinafter referred to as the "Departments");

AND WHEREAS the Departments have 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 said Act, refer the matter in the Schedule 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 matter, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the said Act, any

-

- (a) serious maladministration in connection with the affairs of the Departments;
- (b) improper or unlawful conduct by employees of the Departments;
- (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;
- (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 offence were committed in connection with the affairs of the Departments; 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 has taken place between 1 April 1996 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Departments.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Fifth day of April Two thousand and five.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

## **SCHEDULE**

1. The payment and/or receipt of social assistance or benefits in respect of deceased and/or fictitious persons and/or persons who do not, or did not qualify for such assistance and/or benefits or any portion thereof and any conduct directed at promoting or facilitating payment or receipt of such assistance or benefits.
2. Conduct of government officials and/or agents responsible for the administration and/or payment of social assistance or benefits, which has resulted in losses of, lack of control over, or delays in, the payment of

monies allocated for the payment of social assistance or benefits and any conduct directed at promoting or facilitating the aforementioned.”

**D. Proclamation No. R. 5 of 31 January 2005 (Government Gazette No. 27221):**

**“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), have been made in respect of the affairs of the Institutions mentioned in Part I and Part II of Column A of the Schedule;

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 said Act, refer the matters mentioned in Column B of the Schedule in respect of the Institutions listed in Part I and Part II of Column A 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 these matters, the terms

of reference of the Special Investigating Unit are to investigate as contemplated in the said Act, any-

- (a) serious maladministration in connection with the affairs of the Institutions;
- (b) improper or unlawful conduct by officials of the Institutions;
- (c) corruption in connection with the affairs of the Institutions; or
- (d) 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 has taken place between 1 January 1994 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 said Act in relation to the matters.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-first day of January Two thousand and five.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

## SCHEDULE

COLUMN A	COLUMN B
<p><u>Part I</u></p> <p>(a) National Department of Transport</p> <p>(b) Provincial Departments of Transport</p> <p>(c) Municipal Structures</p>	<ol style="list-style-type: none"><li>1. The conversion of forged driving licences, invalid driving licences and foreign driving licences to the credit card form driving licence issued in terms of applicable legislation, pursuant to applications submitted to Driving Licence Testing Centres.</li> <li>2. The issuing of driving licences, including professional driving permits and learner's licences by examiners at driving licence testing centres without complying with the prescripts of applicable legislation for the issuing thereof.</li> <li>3. The registration of stolen vehicles on the National Traffic Information System.</li></ol>

	4. The failure to properly manage and control the activities of officials and the transactions executed by them and to ensure compliance with the prescripts of the relevant legislation regarding the issuing and/or conversion of driving licences.
<u>Part II</u> South African Police Service	The registration of stolen vehicles on the National Traffic Information System.”