PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 51 OF 2019

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 the Passenger Rail Agency of South Africa SOC Limited (hereinafter referred to as "PRASA");

AND WHEREAS PRASA or the State may have 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, in respect of PRASA, 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 PRASA;
(*b*) improper or unlawful conduct by employees or officials of the PRASA;
(*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 PRASA; 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 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 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 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 PRASA or the State, 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 13th day of August Two thousand and nineteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

R Lamola
Minister of the Cabinet

SCHEDULE

1. The procurement of or contracting for—

(*a*) security services;
(*b*) general overhaul and upgrade services;
(*c*) works or services in respect of systems overhauling, repair of rails and infrastructure, or maintenance through the implementation of the Supplier Development Programme;
(*d*) an advanced early detection cable theft solution in the Bonteheuwel-Phillipi Corridor in the Western Cape;
(*e*) travel management services;
(*f*) supply of mobile transporters; and
(*g*) forensic services,

by or on behalf of PRASA and payments which were made in respect thereof in a manner that was—

(i) not fair, equitable, transparent, competitive or cost-effective; or
(ii) contrary to applicable—
(*aa*) legislation;
(*bb*) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
(*cc*) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of, or applicable to, PRASA,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by PRASA or the State.

2. Any unlawful or improper conduct by the employees or officials of PRASA or the applicable service providers, or any other person or entity in relation to the allegations set out in paragraph 1 of this Schedule.

PROKLAMASIE NO. R. 51 VAN 2019

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 aangeleenthede van die Suid-Afrikaanse Spoorpendelkorporasie MSB Beperk (hierna na verwys as "die SASPK");

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

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en 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 SASPK 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 gemelde Wet, ondersoek te doen na enige beweerde—

(*a*) ernstige wanadministrasie in verband met die aangeleenthede van die die SASPK;
(*b*) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die SASPK;
(*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 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die SASPK; 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 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2010 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae 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, insluitend die verhaal van enige verliese wat deur die SASPK die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 13 dag van Augustus Twee duisend-en-negentien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

R Lamola
Minister van die Kabinet

BYLAE

1. Die verkryging van, of kontraktering vir —
(*a*) sekuriteitsdienste;
(b) algemene opknappings- en opgraderingsdienste;
(c) werke of dienste ten opsigte van stelsels opknapping, herstel van spore en infrastruktuur, of instandhouding deur die implementering van die Verskaffer Ontwikkelingsprogram;
(d) 'n gevorderde vroeë opsporing kabel diefstal oplossing in die Bonteheuwel-Philippi Korridor in die Wes-Kaap;
(e) reis bestuursdienste;
(f) verskaffing van mobiele vervoerders en
(g) forensiese dienste,
deur of namens die SASPK en betalings wat in verband daarmee gemaak is op ‘n wyse wat—
(i) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie; of
(ii) strydig was met toepaslike—
(*aa*) wetgewing;
(*bb*) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
(*cc*) handleidings, kodes, riglyne, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die SASPK van toepassing is,
en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die SASPK aangegaan was.

2. Enige onwettige of onbehoorlike gedrag deur die werknemers of beamptes van die SASPK of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.