

PROCLAMATION 178 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: ESKOM HOLDINGS SOC LIMITED

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 Eskom Holdings SOC Limited (hereinafter referred to as "Eskom");

AND WHEREAS Eskom 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, in respect of Eskom, 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 Eskom;
- (b) improper or unlawful conduct by the employees or officials of Eskom;
- (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 Eskom; 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 March 2006 and the date of publication of this Proclamation or which took place prior to 1 March 2006 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 Eskom or the State, in relation to the said matters in the Schedule to this proclamation, and the performance of such functions which are not in conflict with the provisions of the Act, as the President may from time to time request.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 6th day of May Two thousand and twenty four.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet

SCHEDULE

1. The procurement of and contracting for—
 - (a) coal from Tegeta Exploration and Resources (Pty) Limited for coal supplied by Optimum Coal Mine (Pty) Limited and the Brakfontein Colliery Mine;
 - (b) information technology services in terms of a master services agreement concluded with T Systems International GmbH;
 - (c) information technology services related to software licence and support agreements concluded with SAP South Africa (Pty) Limited;
 - (d) services in respect of Task Order SM008 for “capital scrubbing”;
 - (e) security services from Combined Private Investigations (Pty) Limited, with registration number 2021/838939/07;
 - (f) forensic investigation services from Kapditwala Incorporated trading as

- Dentons South Africa; and
- (g) information technology services from Cutting Edge Commerce (Pty) Limited, with registration number 2004/005321/07, (formerly Leonardo Business Consulting),
- by Eskom, and payments 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, circulars, practice notes or instructions issued by the National Treasury; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of or applicable to Eskom,
- and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Eskom.

2. Serious maladministration in connection with the affairs of Eskom relating to a pre-payment by Eskom of approximately R1.68 billion for coal from Optimum Coal Mine to Hendrina Power Station, which pre-payment was later changed to a guarantee.

3. Serious maladministration in connection with the affairs of Eskom relating to a pre-payment by Eskom of approximately R659 million to Tegeta Exploration and Resources (Pty) Limited.

4. Any irregular, unlawful or improper conduct by officials or employees of Eskom or any other person or entity, in relation to the allegations as set out in paragraphs 1, 2 and 3 of this Schedule.

PROKLAMASIE 178 VAN 2024**van die
PRESIDENT van die REPUBLIEK van SUID AFRIKA****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996:
VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE
ONDERSOEKEENHEID: ESKOM HOLDINGS SOC BEPERK**

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 aangeleentheid van Eskom Holdings SOC Beperk (hierna na verwys as "Eskom");

EN AANGESIEN Eskom 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 aangeleentheid in die Bylae vermeld ten opsigte van Eskom, 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 aangeleentheid, 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 aangeleentheid van Eskom;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van Eskom;
- (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 Eskom; 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 tussen 1 Maart 2006 en die datum van publikasie van hierdie Proklamasie plaasgevind het of wat voor 1 Maart 2006 of na die datum van publikasie van hierdie Proklamasie plaasgevind het, maar betrekking het op, verband hou met, insidenteel of aanvullend is tot die aangeleenthede in die Bylae vermeld of dieselfde persone, entiteite of kontrakte betrek wat onder die gesag van hierdie Proklamasie ondersoek word, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die vermelde Spesiale Ondersoekeenheid verleen word, uit te voer of te verrig, met inbegrip van om enige verliese wat Eskom of die Staat met betrekking tot die in die Bylae vermelde sake, gely het, te verhaal, en die verrigting van sodanige werksaamhede wat nie in stryd met die bepalings van die Wet is nie, soos die President van tyd tot tyd kan versoek.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 6^{de} dag van Mei Twee duisend-vier-en-twintig.

President

Op las van die President-in-Kabinet

Minister van die Kabinet

BYLAE

1. Die verkryging van en kontraktering vir—
 - (a) steenkool van Tegeta Exploration and Resources (Edms) Beperk vir steenkool verskaf deur Optimum Steenkoolmyn (Edms) Beperk, 'n filiaal in volle besit van Tegeta en Brakfontein Steenkoolmyn;
 - (b) inligtingstechnologie dienste ingevolge 'n meester diensooreenkoms gesluit met T Systems International GmbH;
 - (c) inligtingstechnologie dienste verbandhoudend met sagteware lisensie- en ondersteuningsooreenkomste gesluit met SAP South Africa (Edms) Beperk;

- (d) dienste ten opsigte van Taakopdrag SM008 vir “capital scrubbing”;
- (e) seuriteitsdienste van Combined Private Investigations (Edms) Beperk, met registrasienommer 2021/838939/07;
- (f) forensiese ondersoekdienste van Kapditwala Incorporated, handeldrywend as Dentons South Africa; en
- (g) inligtingstegnologie dienste van Cutting Edge Commerce (Edms) Beperk, met registrasienommer 2004/005321/07, (voorheen Leonardo Business Consulting),

deur Eskom, en betalings wat ten opsigte daarvan 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, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is deur Eskom.

2. Ernstige wanadministrasie ten opsigte van die aangeleentede van Eskom met betrekking tot ‘n voorafbetaling deur Eskom van ongeveer R1.68 biljoen aan Optimum Steenkoolmyn (Edms) Beperk en/of Optimum Steenkoolmyn vir steenkool vir Eskom se Hendrina Kragstasie, welke voorafbetaling later na ‘n waarborg verander is.

3. Ernstige wanadministrasie ten opsigte van die aangeleentede van Eskom met betrekking tot ‘n voorafbetaling deur Eskom van ongeveer R659 miljoen aan Tegeta Exploration and Resources (Edms) Beperk.

4. Enige onreëlmatige, onwettige of onbehoorlike optrede deur beamptes of werknemers van Eskom of enige ander persoon of entiteit, met betrekking tot die bewerings uiteengesit in paragrawe 1, 2 en 3 van hierdie Bylae.