

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 2, 2012

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

AND WHEREAS Eskom 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 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 those 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 Eskom;
- (b) improper or unlawful conduct by board members, officials and/or employees 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 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 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 have taken place between 1 January 2006 and the date of publication of this Proclamation or which took place prior to 1 January 2006 or after the date of publication of this Proclamation, which are 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 recovery of any losses suffered by Eskom, 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 Fourteenth day of December Two thousand and eleven.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for coal supplies and coal transportation services by or on behalf of Eskom and payments made in respect thereof in a manner that was -

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable -
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or
 - (iii) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom,

and related irregular or fruitless and wasteful expenditure incurred or losses suffered by Eskom.

2. The procurement of, or contracting for helicopter services for the Eastern Cape region by or on behalf of Eskom and payments made in respect thereof in a manner that was -

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable -
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or
 - (iii) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom; or
- (c) conducted or facilitated by or through the intervention of board members, officials or employees of Eskom with undeclared or unauthorised conflicts of interest,

and related irregular or fruitless and wasteful expenditure incurred or losses suffered by Eskom.

3. Any undisclosed or unauthorised interests which the board members, officials or employees of Eskom may have had in contractors, suppliers or service providers bidding for work or doing business with Eskom or to whom contracts were awarded by Eskom, contrary to applicable -

- (a) legislation;
- (b) manuals, guidelines, practice notes or instructions issued by the National Treasury;
- (c) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom or Eskom's board members, officials or employees,

and the extent of any actual or potential benefits derived directly or indirectly by Eskom's board members, officials or employees from such undisclosed or unauthorised interests.

4. Maladministration in connection with the affairs of Eskom in relation to -

- (a) the incorrect blending of different grades of coal to fuel its coal burning power stations;
- (b) the payment for, or acceptance by Eskom, of coal of inferior quality than the coal that had been contracted for;
- (c) the procurement of, or contracting for work, goods or services for fencing in excess of the need for such work, goods or services;
- (d) the failure to safeguard fencing material belonging to Eskom or in respect of which Eskom carried the risk of loss or damage; or
- (e) payments made for the blending of coal, for coal or for fencing that were not due or payable,

and any related losses that Eskom suffered.