PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 29 OF 2017

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 South African Broadcasting Corporation Limited (hereinafter referred to as "the SABC");

AND WHEREAS the SABC 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 the SABC, 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 the SABC;
(*b*) improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as "the personnel of the SABC");
(*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 the SABC; 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 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 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 the SABC 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 Twenty-fourth day of August Two thousand and seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd 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, circulars or instructions issued by the National Treasury; or

  (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,

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

2. Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—

(*a*) the mismanagement of the finances, rights, assets or liabilities of the SABC;

(*b*) the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;

(*c*) business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;

(*d*) the irregular appointment and promotion of staff; or

(*e*) the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—

  (i) legislation; or

  (ii) manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC,

including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.

3. Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to –

(*a*) contractors, suppliers or service providers who bid for work or did business with the SABC; or

(*b*) contracts awarded by or on behalf of the SABC.

PROKLAMASIE NO. R. 29 VAN 2017

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 Uitsaaikoöperasie (hierna na verwys as "die SAUK");

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

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge 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 SAUK, 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, dit 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 SAUK;
(*b*) onbehoorlike of onregmatige optrede deur raadslede, beamptes of werknemers van die SAUK (hierna na verwys as “die personeel van die SAUK”);
(*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 in verband met die sake van die SAUK gepleeg is; 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 November 2011 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 November 2011 of na die datum van publikasie van hierdie Proklamasie, maar 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 SAUK of die Staat gely is.

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

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir goedere, werke of dienste deur of namens die SAUK vanaf Lornavision (PTY) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (handel as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd en Mott MacDonald (Pty) Ltd en betalings wat in verband daarmee gemaak is op 'n wyse wat—

(*a*) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
(*b*) strydig was met toepaslike—
  (i) wetgewing;
  (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
  (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die SAUK van toepassing is,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die SAUK of die Staat opgeloop was.

2. Wanadministrasie in die aangeleenthede van die SAUK en enige verliese of nadeel wat deur die SAUK of die Staat gely is as gevolg van sodanige wanadministrasie ten opsigte van—

(*a*) die wanbestuur van die finansies, regte, bates of laste van die SAUK;
(*b*) die verkoop van bates of regte wat deur die SAUK besit was wat nie tot die voordeel van die SAUK was nie;
(*c*) besigheidstransaksies wat deur of namens die SAUK aangegaan was en wat nie lewensvatbaar of tot die voordeel van die SAUK was nie;
(*d*) die onreëlmatige aanstelling en die bevordering van personeel; of
(*e*) die betaling van salarisse, verhogings, bonusse en ander vorme van vergoeding wat nie verskuldig, opeisbaar of betaalbaar was nie of wat gedoen is strydig met toepaslike—
  (i) wetgewing; of
  (ii) handleidings, beleid, prosedures, omsendskrywes, praktyke of instruksies van of wat van toepassing is op die SAUK,

insluitend die oorsake van sodanige wanadministrasie en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die SAUK of die Staat opgeloop was.

3. Enige ongeopenbaarde of ongemagtigde belang wat sekere lede van die personeel van die SAUK mag gehad het met betrekking tot—

(*a*) kontrakteurs, verskaffers of diensverskaffers wat vir werk gebie het of besigheid met die SAUK gedoen het; of
(*b*) kontrakte wat deur of namens die SAUK toegeken was.