PROCLAMATION NO. R. 32 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 Denel SOC Ltd and business divisions in which Denel is a majority shareholder (hereinafter jointly referred to as "Denel") ;

AND WHEREAS Denel 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 Denel, 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 Denel;

(*b*) improper or unlawful conduct by the employees or officials of Denel;

(*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 Denel; 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 2015 and the date of publication of this Proclamation or which took place prior to 1 January 2015 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 Denel 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 Johannesburg this 7th day of June Two thousand and Nineteen.

CM RAMAPHOSA
President

By Order of the President-in-Cabinet:

TM MASUTHA
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for—

(*a*) IT security assessment services;

(*b*) services to develop a white paper relating to the validity of advance payment bank guarantees on all contracts entered into by Denel and the Armaments Corporation of South Africa SOC Ltd;

(*c*) legal services; or

(*d*) steel fabrication services and steel fabricated goods,

by or on behalf of Denel, and payments made in respect thereof in a manner that was—

(i) not fair, competitive, transparent, equitable 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, policies, procedures, prescripts, instructions or practices of, or applicable to Denel,

and any related losses or irregular or fruitless and wasteful expenditure incurred by Denel or the State as a result thereof.

2. The awarding of bursaries by Denel contrary to applicable policies, procedures, prescripts, practices of, or applicable to Denel that regulate the awarding of such bursaries and any related losses or irregular or fruitless and wasteful expenditure incurred by Denel or the State as a result thereof.

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

PROKLAMASIE NO. R. 32 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 EN SPESIALE TRIBUNAAL

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 Denel MSB Bpk en besigheidsafdelings waarin Denel MSB Bpk 'n meerderheidsaandeelhouer is (hierna gesamentlik na verwys as "Denel");

EN AANGESIEN Denel 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 Denel, 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 Denel;

(*b*) onbehoorlike of onregmatige optrede deur die werknemers of beamptes van Denel;

(*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;

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(*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 Denel; 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 2015 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2015 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 Denel of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 7dag van Junie Twee duisend-en-negentien.

CM RAMAPHOSA
President

Op las van die President-in-Kabinet:

TM MASUTHA
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir—

(*a*) IT-sekuriteitsassesseringsdienste;

(*b*) dienste vir die ontwikkeling van 'n witskrif met betrekking tot die geldigheid van voorafbetaling bankwaarborge op alle kontrakte aangegaan tussen Denel en die Krygstuigkorporasie van Suid-Afrika MSB Bpk;

(*c*) regsdienste; of

(*d*) staal vervaardiging dienste en staal vervaardigde goedere,

deur of namens Denel, en betalings wat in verband daarmee gemaak is op ’n wyse wat—

(i) nie regverdig, mededingend, deursigtig, billik 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 Denel van toepassing is,

en enige verwante verliese of onreëlmatige of vrugtelose en verspilde uitgawes wat deur Denel of die Staat opgeloop was as gevolg daarvan.

2. Die toekenning van beurse deur Denel in stryd met die toepaslike beleid, prosedures, voorskrifte, praktyke van, of toepaslik op Denel wat die toekenning van sodanige beurse reël en enige verwante verliese of onreëlmatige of vrugtelose en verkwiste uitgawes wat deur Denel of die Staat aangegaan is as gevolg daarvan.

3. Enige onwettige of onreëlmatige optrede deur werknemers of beamptes van Denel of enige ander persoon of entiteit ten opsigte van die bewerings soos uiteengesit in paragrawe 1 of 2 van hiedie Bylae.

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