# PROCLAMATIONS • PROKLAMASIES

## PROCLAMATION 174 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**

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 Transnet (SOC) Limited (hereinafter referred to as "Transnet");

AND WHEREAS Transnet 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 to this Proclamation, in respect of Transnet, 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 Transnet;
(b) improper or unlawful conduct by the employees or officials of Transnet;
(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 Transnet; 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 2014 and the date of publication of this Proclamation or which took place prior to 1 January 2014 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 to this Proclamation 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 Transnet 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 6th day of May Two thousand and twenty-four.

**CM Ramaphosa**
**President**

By Order of the President-in-Cabinet:

**RO Lamola**
**Minister of the Cabinet**

## SCHEDULE

1. Serious maladministration in connection with the affairs of Transnet relating to the conclusion of leases between Transnet and third parties in respect of property belonging to or controlled by Transnet or the State in a manner that was—

*(a)* conducted by or facilitated through the unlawful or improper conduct of—
   (i) employees, officials or agents of Transnet; or
   (ii) any other person or entity,

to corruptly or unduly benefit themselves or others; or

*(b)* fraudulent,

and any related—
   (i) unauthorised, irregular or fruitless and wasteful expenditure incurred or losses suffered by Transnet in relation thereto; or
   (ii) funding, tenant installation and fit-out allowances or payments made by Transnet in relation thereto,

in respect of the following leases—
      *(aa)* long term lease agreements concluded with entities for the construction and operation of bulk fuel storage facilities at Transnet's Ambrose Park Precinct in Bayhead, Durban, KwaZulu-Natal;
      *(bb)* lease agreement concluded in respect of the property described as Ptn of Erf 140 Rossburgh;
      *(cc)* lease agreement in terms of which Transnet leased premises of the old Durban International Airport, which included the runway, tarmac, apron, taxiways, old terminal building, the ATNS building, security building, Maritime School and SAA Site to an entity; and
      *(dd)* lease agreement concluded in respect of the property described as Film Production Studios, located on the 7$^{th}$ floor of Carlton Skyrink Building measuring approximately 2 654.80 m$^2$, part of Carlton Centre Precinct, stand number 1126, Marshalltown.

2. Serious maladministration in connection with the affairs of Transnet relating to the procurement of, or contracting for goods, works or services, including leased accommodation either received or disposed of, by Transnet, and payments made in relation thereto, in a manner that was—

*(a)* not fair, equitable, transparent, competitive or cost-effective; or

*(b)* contrary to the applicable—
   (i) legislation;
   (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or
   (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to Transnet;

*(c)* conducted by or facilitated through the unlawful or improper conduct of—
   (i) employees, officials or agents of Transnet; or
   (ii) any other person or entity,

   to corruptly or unduly benefit themselves or others; or

*(d)* fraudulent,

and any related—
   (i) unauthorised, irregular or fruitless and wasteful expenditure incurred or losses suffered by Transnet; or

(ii) funding, tenant installation and fit-out allowances or payments made by Transnet,

in relation to a contract concluded by Transnet for the leasing by Transnet of property situated at Erf 1763 and Erf 1764, Jukskei View, Extension 47, Midrand, for Transnet's use, in terms of Request for Proposals Number TPCP/JHB/760(T) as amended (by means of an addendum to the RFP) to TPCP/JHB/769(T).

3. Any undisclosed or unauthorised interests which employees, officials or agents of Transnet may have had in contractors, suppliers, service providers, developers, landlords, tenants or any other person or entity bidding for work or doing business with Transnet or to whom contracts (including leases either received or disposed of by Transnet or the State) were awarded by Transnet, and the extent of any actual or potential benefits derived directly or indirectly by such employees, officials or agents from such undisclosed or unauthorised interests.

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

**PROKLAMASIE 174 VAN 2024**

**deur 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 "die Wet" genoem), ten opsigte van die sake van Transnet (MSB) Bpk. (hierna "Transnet" genoem),

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

EN AANGESIEN ek dit nodig ag dat die vermelde bewerings ondersoek moet word en siviele verrigtinge wat uit sodanige ondersoek voortspruit, bereg moet word;

verwys ek nou, DERHALWE, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van Transnet, vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 188 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 ondersoek in te stel, soos in die Wet beoog, na enige beweerde—

(a) ernstige wanadministrasie in verband met die sake van Transnet;
(b) onbehoorlike of onregmatige optrede deur werknemers van Transnet;
(c) onregmatige bewilliging of besteding van publieke geld of eiendom;
(d) onwettige, onreëlmatige of niegoedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
(e) opsetlike of nalatige verlies van 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 Transnet gepleeg is; of
(g) onregmatige 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 Januarie 2014 en die datum van publikasie van hierdie Proklamasie plaasgevind het of wat voor 1 Januarie 2014 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 Transnet of die Staat met betrekking tot die in die Bylae vermelde sake, gely het, te verhaal .

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 6de dag van Mei Tweeduisend vier-en-twintig.

**CM Ramaphosa**
**President**

Op las van die President in die Kabinet:

**RO Lamola**
**Minister van die Kabinet**

**BYLAE**

1. Ernstige wanadministrasie in verband met die sake van Transnet betreffende die sluiting van huurkontrakte tussen Transnet en derde partye ten opsigte van eiendom wat aan Transnet of die Staat behoort of wat deur Transnet of die Staat beheer word op 'n wyse wat—

*(a)* gevoer is of vergemaklik is deur die onregmatige of onbehoorlike gedrag van—
   (i) werknemers, beamptes of agente van Transnet; of
   (ii) enige ander persoon of entiteit,

om hulself of ander op 'n korrupte wyse of ten onregte te bevoordeel; of

*(b)* bedrieglik is,

en enige verwante—
   (i) ongemagtigde, onreëlmatige of vrugtelose en verkwistende uitgawes aangegaan of verliese wat Transnet in verband daarmee gely het; of
   (ii) befondsing, huurderinrigtings- en uitrustingtoelaes of betaling wat Transnet in verband daarmee gemaak het,

ten opsigte van die volgende huurkontrakte—
      *(aa)* langtermynhuurooreenkomste wat gesluit is met entiteite vir die konstruksie en bedryf van brandstofbergingsfasiliteite by Transnet se Ambrosepark-gebied in Bayhead, Durban, KwaZulu-Natal;
      *(bb)* huurooreenkoms gesluit ten opsigte van die eiendom wat as gedeelte van Erf 140 Rossburgh beskryf word;
      *(cc)* huurooreenkoms ingevolge waarvan Transnet persele by die ou Durban Internasionale Lughawe verhuur het, wat die aanloopbaan, laaiblad, landingsblad, rybane, ou terminaalgebou, die ATNS-gebou, sekuriteitsgebou, seevaartskool en SAL-terrein ingesluit het, aan 'n entiteit verhuur het; en
      *(dd)* huurooreenkoms gesluit ten opsigte van die eiendom beskryf as Film Production Studios, geleë op die 7de vloer van die Carlton Skyrink-gebou van ongeveer 2 654.80 $m^2$, deel van die Carltonsentrum-gebied, staning nommer 1126, Marshalltown.

2. Ernstige wanadministrasie in verband met die sake van Transnet betreffende die verkryging van, of kontraktering vir goedere, werke of dienste, met inbegrip van verhuurde akkommodasie wat óf ontvang óf oor beskik is, deur Transnet, en betalings wat in verband daarmee gemaak is, op 'n wyse wat—

*(a)* nie billik, gelyk, deursigtig, mededingend of koste-doeltreffend was nie; of

*(b)* wat strydig was met toepaslike—
   (i) wetgewing;
   (ii) handleidings, riglyne, praktyknotas, omsendbriewe, of opdragte deur die Nasionale Tesourie uitgereik; of
   (iii) handleidings, kodes, prosedures, voorskrifte, riglyne, instruksies of praktyke van of van toepassing op Transnet;

*(c)* gevoer is of vergemaklik is deur die onregmatige of onbehoorlike gedrag van—
   (i) werknemers, beamptes of agente van Transnet; of
   (ii) enige ander persoon of entiteit,

   om hulself of ander op 'n korrupte wyse of ten onregte te bevoordeel; of

*(d)* bedrieglik is,

en enige verwante—

(i) ongemagtigde, onreëlmatige of vrugtelose en verkwistende uitgawes aangegaan of verliese deur Transnet gely; of

(ii) befondsing, huurderinrigting- en uitrustingtoelaes of betalings deur Transnet in verband daarmee gemaak,

in verband met 'n kontrak wat deur Transnet gesluit is vir die verhuring deur Transnet van eiendom geleë te Erf 1763 en Erf 1764, Jukskei View, Uitbreiding 47, Midrand, vir Transnet se gebruik, ingevolge "Request for Proposals Number TPCP/JHB/760(T)" soos gewysig (by wyse van 'n addendum tot die RFP) na TPCP/JHB/769(T).

3. Enige onverklaarde of ongemagtigde belange wat werknemers, beamptes of agente van Transnet moontlik gehad het by kontrakteurs, verskaffers, diensverskaffers, ontwikkelaars, verhuurders, huurders of enige ander persoon of entiteit wat vir werk bie of wat met Transnet sake doen of aan wie kontrakte (met inbegrip van huurkontrakte wat Transnet of die Staat óf ontvang óf oor beskik het) deur Transnet toegestaan is, en die omvang van of enige potensiële voordele wat regstreeks of onregstreeks deur sodanige werknemers, beamptes of agente uit sodanige onverklaarde of ongemagtigde belange verkry is.

4. Enige onreëlmatige, onregmatige of onbehoorlike gedrag deur beamptes of werknemers van Transnet, of enige ander persoon of entiteit, betreffende die bewerings soos in paragrawe 1 tot 3 van hierdie Bylae uiteengesit.

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