PROCLAMATIONS • PROKLAMASIES

PROCLAMATION 208 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: AFRICAN EXPLORATION MINING AND FINANCE CORPORATION 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 the African Exploration Mining and Finance Corporation SOC Limited (hereinafter referred to as “the AEMFC”);

AND WHEREAS the AEMFC 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 AEMFC, 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 AEMFC;
(b) improper or unlawful conduct by the employees or officials of the AEMFC;
(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

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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 AEMFC; 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 2016 and the date of publication of this Proclamation or which took place prior to 1 January 2016 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 AEMFC 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 14th day of October Two thousand and twenty four.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

T Simelane
Minister of the Cabinet

SCHEDULE

1. The procurement of or contracting for—

(a) coal insourcing in 2017 in terms of bid number AE/VLAK/022/2017;

(b) coal insourcing in 2018;

(c) asset-based financier services in terms of bid number AE/001/2018;

(d) the construction of a clean water diversion and a stream/wetland crossing at Vlakfontein Mine in terms of bid number AE/VLAK030/2018;

(e) diesel supply in terms of bid number AE/VLAK003/2017; and

(f) the review of mining contractor tenders in 2016,

by or on behalf of the AEMFC, and payments which were made in respect thereof in

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a manner that was—

(i) not fair, equitable, transparent, competitive 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, codes, guidelines, policies, procedures, prescripts, instructions or practices of, or applicable to the AEMFC,

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

2. Any unlawful or improper conduct by the employees or officials of the AEMFC or applicable service providers, or any other person or entity in relation to the allegations set out in paragraph 1 of this Schedule.

PROKLAMASIE 206 VAN 2024

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: "AFRICAN EXPLORATION MINING AND FINANCE CORPORATION SOC LIMITED"

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 "African Exploration Mining and Finance Corporation SOC Limited" (hierna na verwys as "die AEMFC");

EN AANGESIEN die AEMFC 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 die "AEMFC", 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 die AEMFC;

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

(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 die AEMFC; 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 2016 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2016 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 die AEMFC of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 14 dag van Oktober Twee duisend-vier-en-twintig.

CM Ramaphosa
President

Op las van die President-in-Kabinet

T Simelane
Minister van die Kabinet

BYLAE

1. Die verkryging van of kontraktering vir–

(a) steenkool deur binne-verkryging in 2017 ingevolge bodnommer AE/VLAK/022/2017;

(b) steenkool deur binne-verkryging in 2018;

(c) batesgebaseerde finansieringsdienste ingevolge bodnommer AE/001/2018;

(d) die konstruksie van 'n skoon water afleiding en 'n stroom/nat landkruising by Vlakfontein Myn, ingevolge bodnommer BID AE/VLAK030/2018;

(e) dieselvoorsiening ingevolge bodnommer BID AE/VLAK003/2017; en

(*f*) die hersiening van mynkontrakteurstenders in 2016,

deur of namens die AEMFC en betalings wat ten opsigte daarvan 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; of

(cc) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die AEMFC van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat deur die AEMFC of die Staat aangegaan is.

2. Enige onwettige of onbehoorlike optrede deur werknemers of beamptes van die AEMFC of betrokke diensverskaffers, of enige ander persoon of entiteit, met betrekking tot die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.