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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 65, 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 the Public Service Sector Education and Training Authority (hereinafter referred to as "the PSETA");

AND WHEREAS the PSETA or the State may have 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 the PSETA 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 -

- (a) serious maladministration in connection with the affairs of the PSETA;
- (b) improper or unlawful conduct by the Boards, board members, officials or employees of the PSETA;
- (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 PSETA; 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 February 2005 and the date of publication of this Proclamation or which took place prior to 1 February 2005 or after the date of publication of this Proclamation, and which is relevant to, connected with or 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 PSETA 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 Sixteenth day of October Two thousand and twelve.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. Losses or prejudice suffered by the PSETA as a result of –
 - (a) maladministration;
 - (b) irregular payments or transfers made from the PSETA Grant Disbursement account;
 - (c) irregular payments or transfers made from the PSETA National Skills Fund account;
 - (d) the failure or refusal by the PSETA to refund unused funds to the National Skills Fund;
 - (e) irregular use of skills development levy funds;
 - (f) unauthorised, irregular or fruitless and wasteful expenditure incurred; or
 - (g) irregular payments made by previous Boards of the PSETA.

2. The procurement of, and contracting for goods or services by or on behalf of the PSETA 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 the relevant provincial treasuries; or
 - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to, the PSETA,and related unauthorised, irregular or fruitless and wasteful expenditure by the PSETA.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 65, 2012

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 aangeleentheid van die “Public Service Sector Education and Training Authority” (hierna na verwys as “ die PSETA”);

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

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en beregbare siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleentheid in die Bylae vermeld, ten opsigte van die PSETA, 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 daardie aangeleentheid, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleentheid van die PSETA;
- (b) onbehoorlike of onregmatige optrede deur die Rade, raadslede, beamptes of werknemers van die PSETA;
- (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 die 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 PSETA; 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 Februarie 2005 en die datum van publikasie van hierdie Proklamasie, of wat plaasgevind het voor 1 Februarie 2005 of na die datum van publikasie van hierdie Proklamasie, en wat relevant is tot, verband hou met, of insidenteel of bykomstig is tot die aangeleentheid vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om 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 aangeleentheid in die Bylae, insluitend die verhaal van enige verliese wat deur die PSETA of die Staat gely is.

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

J G Zuma
President

Op las van die President-in-Kabinet:

J T Radebe
Minister van die Kabinet

BYLAE

1. Verliese of nadeel wat deur die PSETA gely is as gevolg van –
 - (a) wanadministrasie;
 - (b) onreëlmatige betalings of oorplasinge wat gemaak is van die PSETA “Grant Disbursement” rekening;
 - (c) onreëlmatige betalings of oorplasinge wat gemaak is van die PSETA “National Skills Fund” rekening;
 - (d) die versuim of weiering van die PSETA om ongebruikte fondse terug te betaal aan die “National Skills Fund”;
 - (e) onreëlmatige gebruik van bekwaamheidsontwikkeling heffingsfondse;
 - (f) ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat aangegaan is; of
 - (g) onreëlmatige betalings wat gemaak was deur die vorige Rade van die PSETA.
2. Die aanskaffing van, en kontraktering vir, goedere of dienste deur of namens die PSETA en betalings wat in verband daarmee gemaak is, op ’n wyse wat –
 - (a) nie regverdig, billik, deursigtig, mededingend, of koste-effektief was nie; of
 - (b) strydig was met toepaslike –
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas of instruksies deur die Nasionale Tesourie of die toepaslike provinsiale tesourieë uitgevaardig; of
 - (iii) handleidings, kodes, beleid, prosedures, voorskrifte, riglyne, instruksies of praktyke van, of wat op die PSETA van toepassing is,en verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes deur die PSETA.

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