



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID AFRIKA

Vol. 642

3 December 2018  
Desember

No. 42076

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ISSN 1682-5843



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## PROCLAMATIONS • PROKLAMASIES

## PROCLAMATION NO. 32 OF 2018

by the  
President of the Republic of South Africa

**AMENDMENT OF THE TERMS OF REFERENCE OF THE COMMISSION OF  
INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY THE SOUTH  
AFRICAN REVENUE SERVICES**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby, with effect from 29 November 2018, amend the terms of reference of the Commission of Inquiry into tax administration and governance by the South African Revenue Services published under Proclamation No. 17 of 2018 published in the Government Gazette No. 41652 of 24 May 2018 as indicated in the attached Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg  
on this the 28<sup>th</sup> day of November Two Thousand and Eighteen.



**PRESIDENT**

By Order of the President-in-Cabinet:



**MINISTER OF THE CABINET**

**SCHEDULE**

## SCHEDULE

### Definition

1. In this Proclamation "Terms of Reference" means the terms of reference published under Proclamation No. 17 of 2018 published in the Government Notice No. 41652 of 24 May 2018.

### Amendment of the Terms of Reference

2. Paragraph 3 of the Terms of Reference is hereby amended by the substitution of the table under the said paragraph for the following table:

Interim report	30 September 2018
Final report	14 December 2018

**PROCLAMATION NO. 33 OF 2018****by the****PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA****COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY  
REGARDING THE PUBLIC INVESTMENT CORPORATION**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby –

- (a) declare that the provisions of the said Act shall be applicable to the Commission of Inquiry into allegations of impropriety regarding the Public Investment Corporation appointed in terms of Proclamation No.30 of 2018 published in the Government Gazette No. 41979 of 17 October 2018 (Commission); and
- (b) make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg  
on this 28<sup>th</sup> day of November Two Thousand and Eighteen.

**PRESIDENT**

By Order of the President-in-Cabinet:

**MINISTER OF THE CABINET**

**SCHEDULE**  
**REGULATIONS**

1. In these regulations, unless the context otherwise indicates -

**“assistants to the Commission”** means a person appointed by the President under the Proclamation constituting the Commission, or any subsequent Proclamation, to assist the Commissioner;

**“Commission”** means the Commission of Inquiry into allegations of impropriety regarding the Public Investment Corporation appointed by the President in terms of Proclamation No.30 of 2018 published in the Government Gazette No. 41979 of 17 October 2018 ;

**“Commissioner”** means the person appointed by the President as Commissioner under the Proclamation constituting the Commission or any substitute for such Commissioner appointed by the President under a subsequent Proclamation;

**“document”** includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture, data, disc, hard drive or recording;

**“Department”** means the Department of Justice and Constitutional Development;

**“inquiry”** means the inquiry conducted by the Commission;

**“Minister”** means the Minister of Justice and Correctional Services;

**“officer”** means any person in the service of the State who has been designated or seconded to the Commission to provide administrative support to the Commission; and

**“Secretary”** means a person who is responsible for the administrative support to the Commission.

2. The proceedings of the Commission may be recorded in the manner determined by the Commissioner.

3. The Commissioner may, with the approval of the Minister, designate one or more knowledgeable or experienced persons to assist the Commission in any capacity he or she may deem necessary.

4. The Minister shall, after consultation with the Commissioner, appoint or designate any suitably qualified person as Secretary of the Commission.

5. (1) The Commission shall be assisted by officers of the Department or any other department of State designated or seconded to its service or any person in the service of any public or other body who, by arrangement with the body concerned, is seconded to the service of the Commission.

(2) Officers in the service of the Commission shall be appointed additional to the establishment of the Department for the period of such appointment or the duration of the Commission as the case may be.

6. The National Treasury must ensure that adequate funds are made available to the Commission to enable it to perform its functions in accordance with its mandate.

7. Any person appearing before the Commission may be assisted by an advocate or an attorney.

8. The Commissioner, an Assistant to the Commission or an officer generally or specifically authorised thereto by the Commissioner may, where necessary, administer an oath to or accept an affirmation from any person appearing before the Commission.



9. (1) No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947).

(3) Any witness appearing before the Commission may be cross-examined by a person only if the Commissioner permits such cross-examination should he or she deem it necessary and in the best interest of the function of the Commission.

(4) Any witness may be re-examined by his or her legal representative for the purpose of explaining the evidence given by the witness during his or her examination.

10. (1) The Commissioner may, at the request of any person appearing before the Commission direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

(2) The Commissioner may, in appropriate circumstances, make an order that a hearing be held in camera. In such a case, the Commissioner shall specify in the order those persons who will be permitted to attend the hearing in camera. At the request of the witness whose evidence is to be heard in camera, or, on own accord, the Commissioner must order that nobody may, directly or indirectly, disclose the identity of the witness who is to give evidence in camera

11. (1) The Commissioner, an Assistant to the Commission or an officer, may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate, enter, search and inspect any premises and demand and seize any document or article which is on such premises.

(2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order including-

- (a) a person's right to, respect for, and the protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(3) Subject to sub-regulation (4), the premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a judge of the Division of the High Court of South Africa having jurisdiction in respect of the area where such premises are situated.

(4) A warrant referred to in sub-regulation (3) may be issued by a judge in respect of premises situated in an area outside the jurisdiction of the Division of the High Court concerned if he or she deems it justified;

(5) A warrant referred to in sub-regulation (1) may be issued only if it appears to the judge, from information revealed under oath or affirmation, stating the need, in regard to the inquiry, for a search and seizure in terms of this regulation, that there are reasonable grounds to believe that any document or article referred to in sub-regulation (1) is on or at such premises, or suspected to be on or at such premises;

(6) The Commissioner may direct any person to submit an affidavit or affirmed declaration, or to produce any document in his or her possession or under his or her control, or to appear before the Commission to give evidence, and may examine such person.

**12.** (1) Any Assistant to the Commission, officer or any person assisting the Commission in any capacity, shall preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties relating to the functions of the Commission, except in so far as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Commissioner, or any officer, or

any person assisting the Commission in any other capacity, shall, before performing any duty in connection with the Commission, take and subscribe before the Commissioner an oath of fidelity or secrecy in the following form:

I, A.B., declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission or by order of a competent court, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to any records of the Commission, including any notes, record or transcription of the proceedings of the said Commission in my possession or custody of the said Commission or any officer.

(2) No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry, or allow or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

(3) No person shall without the written permission of the Commissioner –

- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Commissioner or intercept such document while it is being taken or forwarded to the Chairperson.

(4) No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission.

**13.** (1) Any person who insults, disparages or belittles the Commissioner or any Assistant to the Commission or prejudices the inquiry or proceedings or findings of the Commission, is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding six months.

(2) Any person who wilfully hinders, resists or obstructs the Commissioner or any of the Assistants to the Commission or any officer in the exercise of any power contemplated in these regulations, or disobeys a lawful order of the Commissioner is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding six months.

**14.** (1) The Commissioner shall determine the seat of the Commission by Notice in the Gazette.

(2) The Commission may, for purposes of facilitating access to the Commission, conduct hearings at any other place as may be determined by the Commissioner where he or she considers it appropriate to do so.

**15.** The Commission shall have access to any information in possession of, or held by the Public Investment Corporation established in terms of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) or any other Act applicable to the Corporation which is necessary for purposes of the inquiry.

**16.** These regulations may be added to, varied or amended from time to time.

**17.** The Commission may, by means of rules, determine its own procedures.

**18.** These shall be called the regulations of the Commission of Inquiry into allegations of impropriety regarding the Public Investment Corporation and shall come into effect on publication in the Gazette.

**PROKLAMASIE NO. 33 VAN 2018**  
**van die**  
**PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA**

**KOMMISSIE VAN ONDERSOEK NA BEWERINGS VAN ONBEHOORLIKHEID  
RAKENDE DIE “PUBLIC INVESTMENT CORPORATION”**

Kragtens my bevoegdhede ingevolge artikel 1 van die Kommissiewet, 1947 (Wet No. 8 van 1947) –

- (a) bepaal ek hierby dat die bepalings van die gemelde Wet van toepassing is op die Kommissie van Onderzoek na bewerings van onbehoorlikheid rakende die “Public Investment Corporation”, aangestel ingevolge Proklamasie No. 30 van 2018, gepubliseer in die Staatskoerant No. 41979 van 17 Oktober 2018; en
- (b) vaardig ek die regulasies in die Bylae uit met betrekking tot die gemelde Kommissie.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te  
..... op hede die ..... dag van ..... Tweeduisend-en-agtien.

**President**

Op las van die President-in-Kabinet:

**Minister van die Kabinet**

**BYLAE**  
**REGULASIES**

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken -

**“assistent van die Kommissie”** ‘n persoon deur die President aangestel kragtens die Proklamasie wat die Kommissie aangestel het, of enige daaropvolgende Proklamasie, om die Kommissaris by te staan;

**“beampte”** ‘n persoon in diens van die Staat, wat aan die Kommissie toegewys of geseondeer is om administratiewe steun aan die Kommissie te verleen;

**“Departement”** die Departement van Justisie en Staatkundige Ontwikkeling;

**“dokument”** ook enige boek, pamflet, notule, lys, omsendskrywe, plan, plakaat, publikasie, skets, foto, prent, data, skyf, hardeskyf of opname, hetsy in elektroniese formaat of andersins;

**“Kommissaris”** die persoon deur die President as Kommissaris aangestel ingevolge die Proklamasie wat die Kommissie aangestel het, of enige plaasvervanger vir sodanige Kommissaris deur die President ingevolge ‘n daaropvolgende Proklamasie aangestel;

**“Kommissie”** die Kommissie van Onderzoek na bewerings van onbehoorlikheid rakende die “Public Investment Corporation”, aangestel deur die President ingevolge Proklamasie No. 30 van 2018, gepubliseer in die Staatskoerant No. 41979 van 17 Oktober 2018;

**“Minister”** die Minister van Justisie en Korrektiewe Dienste;

**“ondersoek”** die ondersoek wat deur die Kommissie gedoen word; en

**“sekretararis”** ‘n persoon wat verantwoordelik is vir die administratiewe ondersteuning van die Kommissie.

2. Die Kommissie se verrigtinge mag genotuleer word op die wyse deur die Kommissaris bepaal.
3. Die Kommissaris mag, met goedkeuring van die Minister, een of meer kundige of ervare persone aanwys om die Kommissie in enige hoedanigheid wat hy of sy nodig ag, by te staan.
4. Die Minister moet, na oorlegpleging met die Kommissaris, ‘n gepas gekwalifiseerde persoon as sekretaris van die Kommissie aanstel of toewys.
5. (1) Die Kommissie word bygestaan deur beamptes van die Departement of enige ander Staatsdepartement toegewys of gesekondeer aan sy diens of enige persoon in die diens van ‘n openbare of ander liggaam wat, na ‘n reeling met die betrokke liggaam, tot diens van die Kommissie gesekondeer is.  
  
(2) Beamptes in die diens van die Kommissie word aangestel addisioneel tot die personeelsterkte van die Departement vir die tydperk van sodanige aanstelling of die durasie van die Kommissie, na gelang van die geval.
6. Die Nasionale Tesourie moet verseker dat voldoende fondse aan die Kommissie beskikbaar gestel word om dit in staat te stel of sy funksies te verrig in ooreenstemming met sy mandaat.
7. ‘n Persoon wat voor die Kommissie verskyn mag deur ‘n advokaat of ‘n prokureur bygestaan word.
8. Die Kommissaris, ‘n assistent van die Kommissie of ‘n beampte wat in die algemeen of spesifiek deur die Kommissaris daartoe gemagtig is kan, indien nodig, ‘n eed afneem of ‘n bevestiging aanvaar van ‘n persoon wat voor die Kommissie verskyn.

9. (1) Geen persoon wat voor die Kommissie verskyn mag weier om 'n vraag te antwoord nie op enige gronde anders as daardie in artikel 3(4) van die Kommissiewet, 1947 (Wet No. 8 van 1947) beoog nie.

(2) 'n Selfinkriminerende antwoord of 'n verklaring afgelê deur 'n getuie voor die Kommissie sal ontoelaatbaar wees as getuienis teen daardie persoon in enige strafregtelike verrigtinge wat teen daardie persoon in enige hof ingestel word, buiten in strafregtelike verrigtinge waar die betrokke persoon van 'n misdryf ingevolge artikel 6 van die Kommissiewet, 1947 (Wet No. 8 van 1947).

(3) 'n Getuie wat voor die Kommissie verskyn mag slegs deur 'n persoon kruisondervra word as die Kommissaris sodanige kruisondervraging toelaat indien hy of sy dit nodig ag en in die beste belang van die werk van die Kommissie.

(4) 'n Getuie mag deur sy of haar regsverteenvoerder herondervra word vir die doel van verduideliking van getuienis deur die getuie gelewer tydens sy of haar ondervraging.

10. (1) Die Kommissaris mag, op versoek van enige persoon wat voor die Kommissie verskyn, beveel dat geen persoon op enige wyse hoegenaamd die naam of adres van sodanige persoon of enige inligting wat waarskynlik sy of haar identiteit sal openbaar, mag bekendmaak nie.

(2) Die Kommissaris kan, in gepaste omstandighede, 'n bevel maak dat 'n verhoor in *camera* gehou word. In so 'n geval moet die Kommissaris in die bevel spesifiseer welke persone toegelaat sal word om die verhoor in *camera* by te woon. Op versoek van die getuie wie se getuienis in *camera* gehoor gaan word, of in eie beweging, moet die Kommissaris beveel dat niemand direk of indirek die identiteit van die getuie wat in *camera* gaan getuig se identiteit mag bekendmaak nie.

11. (1) Die Kommissaris, 'n assistent van die Kommissie of 'n beampte kan met 'n lasbrief, vir doeleindes van die ondersoek, te enige redelike tyd en sonder vooraf kennisgewing of met sodanige kennisgewing as wat hy of sy gepas mag vind,



enige perseel betree en inspekteer en enige dokument of voorwerp wat op sodanige perseel is eis en op beslaglê.

(2) 'n Betreding of deursoeking van 'n perseel of persoon ingevolge hierdie regulasie moet gedoen word met streng inagneming van fatsoenlikheid en orde insluitend-

- (a) 'n persoon se reg tot, respek vir en die beskerming van sy of haar waardigheid;
- (b) die reg van 'n persoon tot vryheid en veiligheid; en
- (c) die reg van 'n persoon tot sy of haar persoonlike privaatheid.

(3) Onderhewig aan subregulation (4), mag die perseel bedoel in subregulasie (1) slegs betree word by magte van 'n lasbrief in kamers uitgevaardig deur 'n regter van 'n Afdeling van die Hooggeregshof van Suid-Afrika wat jurisdisie het ten opsigte van die gebied waar daardie perseel geleë is.

(4) 'n Lasbrief na verwys in subregulasie (3) kan deur 'n regter uitgevaardig word ten opsigte van 'n perseel wat in 'n gebied buite die jurisdisie van die betrokke Afdeling van die Hooggeregshof geleë is indien hy of sy die geregverdig ag.

(5) 'n Lasbrief na verwys in subregulasie (1) kan slegs uitgevaardig word indien dit vir die regter uit inligting bekendgemaak onder eed of bevestiging wat die nodigheid ten opsigte van die ondersoek vir 'n deursoeking en beslaglegging ingevolge hierdie regulasie, voorkom asof daar redelike gronde is om te glo dat 'n dokument of voorwerp in subregulasie (1) na verwys op of by sodanige perseel is of vermoedelik op of by sodanige perseel is.

(6) Die Kommissaris kan enige persoon beveel om 'n eedsverklaring of bevestigende verklaring af te lê, of om 'n dokument in sy of haar besit of onder sy of haar beheer te toon, of om voor die Kommissie te verskyn om getuienis te lewer en kan daardie persoon ondervra.

**12.** (1) 'n Assistent van die Kommissie, beampte of 'n persoon wat die Kommissie in enige hoedanigheid bystaan, moet geheimhouding handhaaf ten opsigte van enige aangeleentheid of inligting wat tot sy of haar kennis mag kom in

die uitvoering van sy of haar pligte ten opsigte van die werksaamhede van die Kommissie, buiten in soverre as wat die bekendmaking van sodanige aangeleetheid of inligting nodig is vir doeleindes van die verslag van die Kommissie en elke sodanige persoon, buiten die Kommissaris, of enige beampte, of enige persoon wat die Kommissie in enige ander hoedanigheid bystaan, moet, voor die verrigting van enige plig met betrekking tot die Kommissie, voor die Kommissaris 'n eed van getrouheid of geheimhouding aflê en onderskryf in die volgende formaat:

Ek, A.B., verklaar onder eed/bevestig en verklaar dat, buiten in soverre as wat dit nodig is in die uitvoering van my pligte ten opsigte van die werksaamhede van die Kommissie of op die bevel van 'n bevoegde hof, ek nie aan enige persoon enige aangeleentheid of inligting wat tot my kennis kom met betrekking tot die ondersoek sal oordra nie, of enige persoon sal toelaat of vergun om toegang tot die notules van die Kommissie te kry nie, insluitend enige notas, opname of transkripsie van die verrigtinge van die gemelde Kommissie in my besit of beheer van die gemelde Kommissie of 'n beampte.

(2) Geen persoon mag aan enige ander persoon enige aangeleentheid of inligting wat tot sy of haar kennis kon gekom het ten opsigte van die ondersoek oordra nie, of enige ander persoon toelaat of vergun om toegang tot enige notules van die Kommissie te kry nie, buiten in soverre as wat dit nodig is in die uitvoering van sy of haar pligte ten opsigte van die werksaamhede van die Kommissie of op bevel van 'n bevoegde hof.

(3) Geen persoon mag sonder skriftelike toestemming van die Kommissaris –

- (a) 'n dokument wat aan die Kommissie voorgelê is deur 'n persoon ten opsigte van die ondersoek versprei nie of die inhoud daarvan of die inhoud van enige gedeelte van die inhoud van sodanige dokument bekendmaak nie; of
- (b) 'n dokument, insluitend 'n verklaring, wat bedoel is om aan die Kommissaris voorgelê te word, lees nie of sodanige dokument onderskep terwyl dit na die Kommissaris geneem word of onderweg is nie.

(4) Geen persoon mag, buiten in soverre dit vir die uitvoering van die opdrag van die Kommissie nodig is, die verslag of 'n tussentydse verslag van die

Kommissie of 'n afskrif of 'n gedeelte daarvan of inligting rakende die oorweging van getuienis deur die Kommissie bekendmaak of aan enige ander persoon verskaf nie.

**13.** (1) 'n Persoon wat die Kommissaris of 'n assistent van die Kommissie beledig, slegmaak of verkleineer of die ondersoek, verrigtinge of bevindinge van die Kommissie benadeel, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete, of tot gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(2) 'n Persoon wat doelbewus die Kommissaris of enige van die assistente van die Kommissie of enige beampte in die uitvoering van enige bevoegdheid ingevolge hierdie regulasies hinder, teengaan of dwarsboom, of van die wettige bevel by die Kommissaris nie gehoorsaam nie, is skuldig aan 'n misdryf en by skuldigbevinding gevonnissen word met 'n boete, of tot gevangenisstraf vir 'n tydperk van hoogstens ses maande.

**14.** (1) Die Kommissaris moet die setel van die Kommissie by Kennisgewing in die Staatskoerant bepaal.

(2) Die Kommissie kan, vir doeleindes van die fasilitering van toegang tot die Kommissie, verhore op enige ander plek hou soos deur die Kommissaris bepaal waar hy of sy dit wenslik ag om so te doen.

**15.** Die Kommissie is gemagtig om toegang te kry tot enige inligting in besit van, of gehou deur, die Openbare Beleggingskorporasie, ingestel deur die Wet op die Openbare Beleggingskorporasie, 2004 (Wet No. 23 van 2004) of enige ander Wet van toepassing op die Korporasie, wat nodig is vir doeleindes van die ondersoek.

**16.** Daar mag tot hierdie regulasies bygevoeg word en dit mag van tyd tot tyd gewysig of aangepas word.

**17.** Die Kommissie kan by wyse reëls sy eie prosedure bepaal.

**18.** Hierdie regulasies heet die regulasies betreffende die Kommissie van Ondersoek na bewerings van onbehoorlikheid rakende die "Public Investment Corporation", en tree in werking by publikasie in die Staatskoerant.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za  
Publications: Tel: (012) 748 6053, 748 6061, 748 6065