

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 7, 2014

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—

- (a) the Department of Rural Development and Land Reform (formerly known as the Department of Land Affairs), in its national department, its provincial departments, its trading entities and their respective agencies (hereinafter collectively referred to as "the DRDLR"); and
 - (b) the State Information Technology Agency (Pty) Ltd, (hereinafter referred to as "the SITA"),
- (hereinafter collectively referred to as "the Institutions");

AND WHEREAS the Institutions 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 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 Institutions, 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 Institutions;
- (b) improper or unlawful conduct by members of the board, directors, officials, employees, personnel or members of one or both of the Institutions (hereinafter collectively referred to as "the Institutions' personnel");
- (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) offences 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 Institutions; 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 2008 and the date of publication of this Proclamation, or which took place prior to 1 January 2008 or after the date of publication of this Proclamation, but which is relevant to, connected with, incidental to or ancillary to the matters mentioned in the Schedule or which involve the same persons, entities, procurement processes 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 recovery of any losses suffered by the Institutions 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 Sixth day of February Two thousand and fourteen.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. For purposes of this Schedule, any reference to—
 - (a) **“contracting”** includes, but is not limited to, any negotiation processes involving a contract, the conclusion and signing of a contract and any novation, renewal, extension or amendment of the contract;
 - (b) **“the ICT systems/projects”** means—
 - (i) the e-Cadastre project and the e-Cadastre system for the DRDLR;
 - (ii) the Deeds Registries System for the DRDLR;
 - (iii) the Enterprise Architecture product for the DRDLR;
 - (iv) the Regulatory Impact Assessment for the DRDLR;
 - (v) a BPR project for the DRDLR; and
 - (vi) the back scanning of records of the DRDLR into microfilm images for the DRDLR database,
individually or collectively, as the context may require or as may be applicable;
 - (c) **“the Institutions”** means the DRDLR and the SITA, individually or collectively, as the context may require or as may be applicable; and
 - (d) **“the Institutions’ suppliers and service providers”** includes any consultants, contractors, sub-contractors, suppliers or service providers of the Institutions.
2. Theft, fraud, corruption or maladministration in the affairs of the DRDLR in relation to the lodging and processing of deeds on the Deeds Registration System of the Pretoria, Cape Town and Bloemfontein Deeds Registries or in the processes of requesting for or the giving-out of deeds information, in a manner that was contrary to applicable—
 - (a) legislation; or
 - (b) manuals, guidelines, policies, procedures, practice notes, instructions, prescripts or practices of, or applicable to the DRDLR,
including the causes of such fraud, corruption or maladministration and any loss, damage or prejudice actually or potentially suffered by the DRDLR or the State.
3. The procurement of and contracting for the ICT systems/projects or any goods, works or services in respect of the ICT systems/projects by or on behalf of the Institutions and payments made in relation thereto, in a manner that was—
 - (a) not fair, equitable, transparent, competitive or cost-effective; or
 - (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury or the applicable Provincial Treasuries; or

- (iii) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the Institutions.
- 4. Losses or prejudice actually or potentially suffered by the Institutions as a result of the mismanagement of the assets, finances or other resources in respect of the ICT systems/projects, including any —
 - (a) overspending, mismanagement, misspending or misappropriation of funds;
 - (b) payments which were made to agents of the Institutions or the Institutions' suppliers and service providers—
 - (i) prematurely;
 - (ii) despite non-performance, uncertified, incomplete or poor quality performance or defective performance;
 - (iii) despite late performance; or
 - (iv) in excess of amounts agreed or tendered or at rates disproportionate to the value, nature or scope of the goods, works or services supplied or rendered;
 - (c) payments made for goods not supplied or works or services not rendered; or
 - (d) duplication of payments.
- 5. Losses or prejudice actually or potentially suffered by the Institutions as a result of unlawful conduct or irregular practices of the personnel or agents of the Institutions, the Institutions' suppliers and service providers or third parties in respect of the ICT systems/projects, including any premature, false or inflated claims for payment.
- 6. The incurrence of unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure or expenditure not due, owing and payable, as a result of payments which were made by the Institutions to agents of the Institutions, the Institutions' suppliers and service providers or third parties for or in respect of the ICT systems/projects.
- 7. Fraud, corruption or maladministration regarding the affairs of the Institutions in respect of the ICT systems/projects in respect of —
 - (a) budget preparations, the allocation, implementation or use of the applicable budgets or budget items, including but not limited to any overspending or misappropriation of the applicable budgets or budgeted items;
 - (b) supply chain management policies;
 - (c) procurement processes;
 - (d) contract management, including but not limited to—
 - (i) contracting for the ICT systems/projects or any goods, works or services in respect of the ICT systems/projects;
 - (ii) the monitoring, management or verification of goods delivery, services rendered or works performed or any failure in this regard;
 - (iii) the monitoring, management or verification of the quality and/or quantity of goods delivered, services rendered or works performed or any failure in this regard;
 - (iv) any breach of contract, late performance, enforcement of contracts or cancellation of contracts; or
 - (e) logistics management, including the causes of such fraud, corruption or maladministration and any loss, damage or prejudice actually or potentially suffered by the Institutions or the State.
- 8. The failure of the Institutions to—
 - (a) recover premature or excessive payments made to agents of the Institutions

or the Institutions' suppliers and service providers; or
(b) collect monies due, owing and payable to the Institutions,
for or in respect of the ICT systems/projects.

9. Unlawful or irregular conduct by agents of the Institutions, the Institutions' personnel, suppliers and service providers or third parties relating to any one or more of the allegations set out in paragraphs 2 to 8, above, and any loss, damage or prejudice actually or potentially suffered by the State or Institutions as a result thereof.