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Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 568 Cape Town 2 October 2012

No. 35741

THE PRESIDENCY

No. 800

2 October 2012

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 11 of 2012: Judicial Matters Amendment Act, 2012



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 1 October 2012)

ACT

To amend the Special Investigating Units and Special Tribunals Act, 1996, so as to further regulate the litigation functions of a Special Investigating Unit; to provide for the secondment of a member of a Special Investigating Unit to another State institution; to empower a Special Investigating Unit to charge and recover fees for performing any of its functions; and to authorise any such fees previously levied; to amend the National Prosecuting Authority Act, 1998, so as to further regulate the remuneration of Deputy Directors and prosecutors; and to regulate the continued employment and conditions of service of persons employed by the National Prosecuting Authority as financial investigators and analysts; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 2 of Act 74 of 1996, as amended by section 36 of Act 12 of 2004

1. Section 2 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution in subsection (1)(b) for the words preceding the proviso of the following words:

“establish one or more Special Tribunals to adjudicate upon **[justiciable]** civil **[disputes]** proceedings emanating from any investigation of any particular Special Investigating Unit.”

Amendment of section 3 of Act 74 of 1996, as amended by section 1 of Act 2 of 2001

2. Section 3 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the addition of the following subsection:

“(6) The Head of a Special Investigating Unit may, on such conditions as he or she may deem fit, second a member, if the member consents, either for a particular task or for a specified period, to the service of a State institution on condition that the rights, privileges and service benefits and conditions of the member are not adversely affected by such secondment.”

Amendment of section 4 of Act 74 of 1996

3. Section 4 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs, respectively: 5
- “(b) to collect evidence regarding acts or omissions which are relevant to its investigation [and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned];
- (c) to [present evidence in] institute and conduct civil proceedings [brought before] in a Special Tribunal or any court of law for— 10
- (i) any relief to which the State institution concerned is entitled, including the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by such a State institution;
- (ii) any relief relevant to any investigation; or 15
- (iii) any relief relevant to the interests of a Special Investigating Unit;” and
- (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:
- “(f) from time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned or any court of law;” 20

Amendment of section 5 of Act 74 of 1996, as amended by section 31 of Act 62 of 2000 and section 2 of Act 2 of 2001

4. Section 5 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended— 25

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Subject to this Act and the regulations, the Head of a Special Investigating Unit may—
- (a) determine the procedure to be followed in conducting an investigation; and 30
- (b) charge and recover fees and expenses from a State institution for anything done in terms of this Act in respect of that State institution or a State institution identified by that State institution, together with legal costs relating to the institution and conducting of civil proceedings in terms of this Act, and interest, calculated at the rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), from the date of demand.”; 35
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) (a) A State institution which is unable to pay the fees, expenses or legal costs or any part thereof, charged or to be recovered in terms of subsection (1)(b) for a specific financial year or any part thereof, may apply to the National Treasury or, when applicable, the relevant provincial treasury as contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), to be exempted from the payment of such fees, expenses or legal costs or any part thereof. 40
- (b) The National Treasury or relevant provincial treasury, which receives an application in terms of paragraph (a) must, after consultation with the Head of the Special Investigating Unit and after considering the financial position of the State institution— 45
- (i) make a finding regarding the ability of the State institution to pay the fees, expenses or legal costs or any part thereof charged or to be recovered in terms of subsection (1)(b) for a specific financial year or any part thereof; and 50
- (ii) inform the Head of the Special Investigating Unit and the State institution concerned of the outcome of the application. 55

- (c) A State institution which applies for an exemption in terms of paragraph (a), is liable to pay the fees, expenses or legal costs as provided for in terms of subsection (1)(b) to the extent determined by the National Treasury or relevant provincial treasury in terms of paragraph (b)(i).”;
- (c) by the substitution for subsection (5) of the following subsection:
“(5) [A] Notwithstanding anything to the contrary in any law and for the performance of any of its functions under this Act, a Special Investigating Unit may institute and conduct civil proceedings in its own name or on behalf of a State institution in a Special Tribunal or any court of law [if, arising from its investigation, it has obtained evidence substantiating any allegation contemplated in section 2(2)].”;
- (d) by the substitution for subsection (7) of the following subsection:
“(7) [If] Without limiting the provisions of subsection (5), if, during the course of an investigation, any matter comes to the attention of the Head of the Special Investigating Unit which, in his or her opinion, justifies the institution of [legal] civil proceedings by a State institution against any person, he or she may bring such matter to the attention of the state attorney or the State institution concerned, as the case may be.”; and
- (e) by the substitution for subsection (9) of the following subsection:
“(9) (a) Any member of a Special Investigating Unit who is qualified and admitted as an advocate or an attorney, may perform such work in a Special Tribunal or any court of law on behalf of a Special Investigating Unit or a State institution as is by law, custom or practice performed by advocates and attorneys.
(b) The rights, privileges and duties of any member lawfully performing functions described in paragraph (a), shall, except as is specifically provided for by this Act, include any of the rights, privileges and duties possessed by or imposed on an attorney or an advocate practising in any court of law where such functions are being performed.”.

Amendment of section 8 of Act 74 of 1996, as amended by section 32 of Act 62 of 2000

5. Section 8 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“A Special Tribunal shall have jurisdiction to adjudicate upon any civil [dispute] proceedings brought before it by a Special Investigating Unit in its own name or on behalf of a State institution or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—”.

Amendment of section 11 of Act 74 of 1996

6. Section 11 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:
“(1) The Minister of Justice may, after consultation with the Heads of such Special Investigating Units and Special Tribunals as may be in existence at that stage, make regulations regarding any matter not in conflict with this Act, which is reasonably necessary in order to promote the efficiency of Special Investigating Units and Special Tribunals established in terms of this Act, including fees and expenses recoverable for services rendered in terms of this Act.”.

Insertion of sections 13A, 13B and 13C in Act 74 of 1996

7. The following sections are hereby inserted in the Special Investigating Units and Special Tribunals Act, 1996, after section 13:

“Funding of Special Investigating Units

13A. (1) The funds of a Special Investigating Unit consist of—

- (a) money appropriated by Parliament;
- (b) money lawfully accruing from any other source, including fees and expenses recoverable for services rendered; 5
- (c) donations or contributions: Provided that—
 - (i) the donation or contribution will not result in a conflict of interests; and
 - (ii) the donation or contribution will be accepted as the Minister of Justice may, in consultation with the Minister of Finance, determine; and 10
- (d) money otherwise becoming available to a Special Investigating Unit.

(2) The Head of a Special Investigating Unit must open an account with a financial institution and deposit into that account money received by the Special Investigating Unit in terms of this Act. 15

(3) Anything done in terms of an agreement entered into and concluded between a Special Investigating Unit and a State institution, prior to the commencement of section 4 of the Judicial Matters Amendment Act, 2012, where that agreement provides for a Special Investigating Unit to recover expenses or to charge fees incurred in the course of or in connection with an investigation from a State institution, shall be deemed and dealt with as if— 20

- (a) section 4 of the Judicial Matters Amendment Act, 2012, had, at the time of that agreement being entered into and concluded, been in operation; and
- (b) the Minister of Justice had regulated the fees and expenses recoverable for services rendered in terms of section 11, as amended by section 6 of the Judicial Matters Amendment Act, 2012. 25

Accountability

13B. Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Head of a Special Investigating Unit— 30

- (a) is the accounting authority for that Special Investigating Unit;
- (b) is charged with the responsibility of accounting for monies received by or payments made by that Special Investigating Unit; and
- (c) must cause the necessary accounting and other related records to be kept. 35

Audit

13C. The accounts, financial statements and records of a Special Investigating Unit must be audited annually, as provided for in the Public Audit Act, 2004 (Act No. 25 of 2004).”

Substitution of long title of Act 74 of 1996 40

8. The following long title is hereby substituted for the long title of the Special Investigating Units and Special Tribunals Act, 1996:

“To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public[,] and of instituting and conducting civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of State institutions; to provide for the revenue and expenditure of Special Investigating Units; to provide for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.” 45 50

Amendment of section 18 of Act 32 of 1998

9. Section 18 of the National Prosecuting Authority Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) Subject to the provisions of this section, any *Deputy Director* or *prosecutor* shall be paid a salary in accordance with the scale determined from time to time for his or her rank and grade by the *Minister* after consultation with the *National Director* and the Minister for the Public Service and Administration, and with the concurrence of the Minister of Finance, by notice in the Gazette: Provided that such determination is not required in respect of any cost-of-living adjustment of such scale. 5
- (b) Cost-of-living adjustments of the scale determined by the *Minister* in terms of paragraph (a) shall be effected in accordance with the cost-of-living adjustments determined for legally qualified personnel in the Public Service.”. 10

Insertion of section 43B in Act 32 of 1998

10. The following section is hereby inserted in the National Prosecuting Authority Act, 1998, after section 43A: 15

“Transitional arrangements relating to financial investigators and analysts

- 43B.** (1) In this section *employee* means any person—
- (a) appointed in terms of Chapter 3A of this Act prior to the repeal of that Chapter by section 5 of the National Prosecuting Authority Amendment Act, 2008 (Act No. 56 of 2008); and 20
- (b) employed in the *Office of the National Director* to perform functions as a financial investigator or analyst in any financial investigation or process relating to the proceeds of unlawful activities or the civil recovery of property contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998). 25
- (2) Notwithstanding the repeal of Chapter 3A of this Act by section 5 of the National Prosecuting Authority Amendment Act, 2008 (Act No. 56 of 2008), after the commencement of the National Prosecuting Authority Amendment Act, 2008— 30
- (a) an *employee* referred to in subsection (1) shall continue to be so employed and to perform the said functions; and
- (b) the remuneration, allowances, service benefits and conditions of service of such *employee* shall continue to apply in respect of such *employee* or a person appointed in terms of subsection (4). 35
- (3) Financial investigators or analysts shall exercise the powers and perform the functions—
- (a) as may be necessary or expedient for, or incidental to, any financial investigation or process relating to the proceeds of unlawful activities or the civil recovery of property contemplated in— 40
- (i) Chapter 5 or 6 of the Prevention of Organised Crime Act, 1998; and
- (ii) any other law; or
- (b) further conferred or imposed upon them by regulations made by the *Minister* in terms of section 40 of the Act as may be necessary or expedient for, or incidental to, the achievement of their objects and functions referred to in paragraph (a). 45
- (4) The *National Director* or a member of the prosecuting authority designated for that purpose by the *National Director* may, whenever necessary, appoint any fit and proper person to perform functions as a financial analyst in any financial investigation or process relating to the proceeds of unlawful activities or the civil recovery of property contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, 1998. 50

(5) An annual cost-of-living adjustment by the Minister for the Public Service and Administration in respect of employees who are employed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), shall, with the necessary changes, apply to an *employee* referred to in subsection (1) and a person appointed in terms of subsection (4).

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(6) All other conditions of service of an *employee* referred to in subsection (1) and a person appointed in terms subsection (4), are governed and regulated by the provisions of the Public Service Act, 1994.”

Short title

11. This Act is called the Judicial Matters Amendment Act, 2012.

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