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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 105 **09 FEBRUARY 2018**

by the

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

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

(a) declare that the provisions of the said Act shall be applicable to the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State established in terms of Proclamation No.3 of 2018 published in Gazette No. 41403 dated 25 January 2018; 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 CAPE TOWN on this 8TH day of FEBRURY Two Thousand and Eighteen.

PRESIDENT

By Order of the President-in-Cabinet:

MINISTER OF THE CABINET

SCHEDULE
REGULATIONS

1. Definitions

In these regulations, unless the context otherwise indicates -

"Chairperson" means Deputy Chief Justice who heads the Commission and appointed by the President after selection by the Chief Justice;

"Commission" means the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including organs of state established in terms of Proclamation No.3 of 2018 published in Gazette No. 41403 dated 25 January 2018;

"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;

"Inquiry" means the inquiry conducted by the Commission;

"Minister" means the Minister of Justice and Correctional Services;

"Officer" means any person appointed by the Chairperson and any other person in the service of the State who has been duly seconded to the Commission to provide administrative support to the Commission; and

"Secretary" Means a person appointed by the Chairperson who, under the direction of the Chairperson, assists the Commission in the performance of its functions.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.

3. The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.

4. (1) The Chairperson shall, in accordance with applicable legislation, appoint the Secretary of the Commission and such other persons and officers as may be required to assist the Commission in carrying out its functions.

(2) The Chairperson may in writing delegate, to the Secretary, the authority to appoint certain categories of staff of the Commission.

(3) A person or an officer appointed by the Chairperson or the Secretary shall be appointed additional to the establishment of the Department of Justice and Constitutional Development for the period of such appointment or the duration of the Commission as the case may be.

(4) The Minister must, at the request of, and on such conditions as may be determined by the Chairperson, second such officers from the public service as may be required to assist the Commission in the execution of its mandate: Provided that to the extent that an official identified for secondment to the Commission is in the employ of a department or State entity under another Minister, the Minister shall consult with the Minister concerned to facilitate such secondment.

5. The National Treasury will, in consultation with the Minister, ensure that adequate funds are made available to the Commission to realise its mandate.

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

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

8. (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) No evidence regarding questions and answers contemplated in sub-regulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, 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), or regulation 12.

(3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he 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 witnesses during his or her examination.

9. Where, at the time of any person appearing during or at any aspect or stage of the inquiry, or presenting information to or giving evidence to or before the Commission, members of the general public are or have been excluded from attendance at any stage or aspect of the inquiry or at the proceedings of the Commission, the Chairperson may, on the request of such a person, 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.

10. (1) The Chairperson or any 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 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 area of jurisdiction within which the premises are situated.

(4) A warrant referred to in sub-regulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, 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) For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated , and may examine such person.

11. (1) Every person employed in the execution of the functions of the Commission shall help to 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 in connection with the said functions, 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 Chairperson, 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 Chairperson 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 Chairperson –

(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 Chairperson 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.

12. (1) Any person who insults, disparages or belittles the Chairperson or any member of the Commission or prejudice 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 -

(a) contravenes regulation 9;

(b) wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10; or

(c) contravenes a provision of regulation 11,

is guilty of an offence and liable on conviction -

(i) in the case of an offence referred to in paragraph (a) to a fine, or to imprisonment for a period not exceeding six months; and

(ii) in the case of an offence referred to in paragraph (b) or (c), to a fine, or to imprisonment for a period not exceeding 12 months.

13. (1) The Chairperson 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 Chairperson where he considers it appropriate to do so.

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

15. The Commission may determine its own procedures.

16. These shall be called the regulations of the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State and shall come into effect on publication in the Gazette.

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. 105 **09 FEBRUARIE 2018**

deur die

PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

GEREGTELIKE KOMMISSIE VAN ONDERSOEK NA BEWERINGS VAN STAATSKAPING, KORRUPSIE EN BEDROG IN DIE OPENBARE SEKTOR, MET INBEGRIP VAN STAATSORGANE

Kragtens die bevoegdhede by my opgelê ingevolge artikel 1 van die Kommissiewet (Wet No. 8 van 1947)—

(a) verklaar ek hierby dat die bepalings van genoemde Wet van toepassing is op die Kommissie van Ondersoek wat ingestel is ten einde ondersoek in te stel na bewerings van staatskaping, korrupsie en bedrog in die Openbare Sektor, met inbegrip van Staatsorgane wat ingestel is ingevolge Proklamasie Nr. 3 van 2018 wat in *Staatskoerant* Nr. 41403 op 25 Januarie 2018, gepubliseer is; en

(b) maak ek die regulasies in die Bylae, met verswying na genoemde Kommissie.

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

PRESIDENT

By Las van die President-in-Kabinet:

MINISTER VAN DIE KABINET

BYLAE

REGULASIES

1. Woordomskrywing

In hierdie regulasies, tensy uit die samehang anders blyk, beteken—

"Beampte" 'n persoon wat deur die Voorsitter aangestel is en enige ander persoon in diens van die Staat wat na behore gesekondeer is aan die Kommissie om administratiewe steun aan die Kommissie te verleen;

"Dokument" ook, hetsy in elektroniese formaat of andersins, enige boek, pamflet, rekord, lys, omsendbrief, plan, plakkaat, publikasie, tekening, foto, prent, data, skyf, hardeskyf of opname;

"Kommissie" die Kommissie van Ondersoek om ondersoek in te stel na bewerings van staatskaping, korrupsie en bedrog in die Openbare Sektor, met inbegrip van staatsorgane way ingestel is ingevolge Proklamasie Nr. 3 van 2018 wat in *Staatskoerant* Nr. 41403 op 25 Januarie 2018, gepubliseer is;

"Minister" die Minister van Justisie en Korrektiewe Dienste;

"Ondersoek" die ondersoek wat deur die Kommissie onderneem word;

"Sekretaris" 'n Persoon deur die Voorsitter aangestel wat, onder aanwysing van die Voorsitter, die Kommissie in die verrigting van die Kommissie se werksaamhede bystaan; en

"Voorsitter" die Adjunk-Hoofregter wie aan die hoof van die Kommissie staan en wie deur die President aangestel nadat hy deur die Hoofregter gekies is.

2. Die verrigtinge van die Kommissie sal op sodanige wyse opgeneem word as wat die Voorsitter bepaal.

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3. Die Voorsitter kan een of meer kundige of ervare persone aanwys om die Kommissie in die verrigting van sy werksaamhede, in sodanige hoedanigheid as wat die Voorsitter bepaal, by te staan.

4. (1) Die Voorsitter stel die Sekretaris van die Kommissie en sodanige ander persone en beamptes aan as wat mag nodig mag wees om die Kommissie behulpsaam te wees om sy werksaamhede ooreenkomstig toepaslike wetgewing, uit te voer.

(2) Die Minister moet aan die Voorsitter en die Sekretaris sodanige bevoegdhede en werksaamhede met betrekking tot die aanstelling van persone en personeel om die Kommissie by te staan, delegeer.

(3) ‘n Persoon of beampte wat deur die Voorsitter of die Sekretaris aangestel word, word bykomend tot die diensstaat van die Departement van Justisie en Staatkundige Ontwikkeling vir die tydperk van sodanige aanstelling of vir die duur van die Kommissie, na gelang van die geval, aangestel.

(4) Die Minister moet, op versoek van, en op die voorwaardes wat deur die Voorsitter bepaal mag word, sodanige beamptes van die Staatsdiens sekondeer wat nodig mag wees om die Kommissie in die uitvoering van sy mandaat by te staan: Met dien verstande dat in die mate wat ‘n beampte wat vir sekondering aan die Kommissie geidentifiseer is, in diens van ‘n Staatsdepartement onder ‘n ander Minister is, moet die Minister met die betrokke Minister oorleg pleeg om sodanige sekondering te vergemaklik.

5. Die Nasionale Tesourie moet, in oorleg met die Minister, verseker dat voldoende fondse aan die Kommissie beskikbaar gestel word ten einde sy mandaat uit te voer.

6. Enige persoon wat voor die Kommissie verskyn mag deur ’n advokaat of ‘n prokureur bygestaan word.

7. Die Voorstitter of ‘n beampte in die algemeen of wat in besonder daartoe deur die Voorsitter gemagtig is kan, indien nodig, ‘n eed afneem of ‘n bevestiging aanvaar van enige persoon wat voor die Kommissie verskyn.

8 (1) Niemand wat voor die Kommissie verskyn mag weier om enige vraag te beantwoord op enige gronde anders as dié soos in artikel 3(4) van die Kommissiewet, 1947, (Wet No. 8 van 1947), bedoel nie.

(2) Geen getuienis aangaande vrae en antwoorde beoog in subregulasie (1), en geen getuienis aangaande enige feit of inligting wat na vore kom na aanleiding van enige sodanige vrae of antwoorde, is in strafregtelike verrigtinge toelaatbaar nie, behalwe in strafregtelike verrigtinge waar die betrokke persoon van 'n misdryf ingevolge artikel 6 van die Kommissiewet, 1947 (Wet No. 8 van 1947), of regulasie 12 aangekla word.

(3) Enige getuie wat voor die Kommissie verskyn mag deur 'n persoon kruisondervra word mits die Voorsitter sodanige kruisondervraging toelaat indien hy dit as noodsaaklik en in die belang van die werksaamhede van die Kommissie nodig ag.

(4) Enige getuie mag deur sy of haar regsverteenwoordiger her-ondervra word vir die doel om die getuienis wat deur die getuie tydens sy of haar ondervraging afgelê is, te verduidelik.

9 Waar, ten tye 'n persoon voor of by enige aspek of stadium van die ondersoek verskyn, of wat inligting voordra aan of wat getuienis aanbied aan, die Kommissie, lede van die publiek uitgesluit is of was van bywoning van enige stadium of aspek van die ondersoek of by die verrigtinge van die Kommissie, kan die Voorsitter op versoek van sodanige persoon, gelas dat geen persoon, op watter wyse ookal, die naam of adres van sodanige persoon of enige ander inligting wat moontlik die identiteit van die persoon kan openbaar, bekend maak nie.

10. (1) Die Voorsitter of enige beampte kan, met 'n lasbrief, vir doeleindes van die ondersoek, te alle redelike tye en sonder vooraf kennisgewing of met sodanige kennisgewing as wat hy of sy na behore ag, enige perseel betree en inspekteer en enige dokument of artikel wat op die perseel is aanvra en op beslag lê.

(2) Enige betreding of deursoeking ingevolge hierdie regulasie van enige perseel of persoon daarop moet met streng agting tot welvoegligheid en orde, met inbegrip van—

(a) ‘n persoon se reg tot, respek vir en die beskerming van sy of haar menswaardigheid;

(b) die reg van die persoon tot vryheid en sekuriteit; en

(c) die reg van die persoon tot sy of haar persoonlike privaatheid,

uitgevoer word.

(3) Die perseel bedoel in subregulasie (1) kan, onderhewig aan subregulasie (4), slegs betree word op grond van ‘n lasbrief wat in kamers deur ‘n regter van die area van jurisdiksie waarbinne die perseel geleë is, uitgereik is.

(4) ‘n Lasbrief bedoel in subregulasie (1) kan deur ‘n regter uitgereik word ten opsigte van ‘n perseel wat in ‘n ander area van jurisdiksie geleë is, indien hy of sy dit na behore ag.

(5) ‘n Lasbrief bedoel in subregulasie (1) kan uitgereik word slegs indien dit aan die regter blyk, uit inligting wat onder eed of plegtige verklaring, wat die noodsaak, met betrekking tot die ondersoek vir ‘n deursoeking en beslaglegging ingevolge hierdie subregulasie aan die lig bring, dat daar redelike gronde is om te glo dat enige dokument of artikel bedoel in subregulasie (1) op of by sodanige perseel is of vermoed word om op of by sodanige perseel te wees.

(6) Vir doeleindes van die voer van ‘n ondersoek kan die Voorsitter enige persoon gelas om ‘n beëdigde of plegtige verklaring oor te lê of om voor die Kommissie te verskyn ten einde getuienis aan te bied of om enige dokument in sy of haar besit of onder sy of haar beheer wat van belang is op die aangeleentheid wat ondersoek word, oor te lê en kan sodanige persoon ondervra.

11. (1) Elke persoon wat in die uitvoering van die werksaamhede van die Kommissie in diens is moet help om geheimhouding in stand te hou met betrekking tot enige aangeleentheid of inligting wat tot sy of haar kennis kom in die uitvoering van sy of haar pligte met betrekking tot sodanige werksaamhede, behalwe vir soverre die

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openbaarmaking van sodanige aangeleentheid of inligting nodig is vir doeleindes van die verslag van die Kommissie, en elke sodanige persoon, behalwe die Voorsitter, enige lid of enige beampte, moet alvorens enige plig in verband met die Kommissie uitgevoer word, 'n eed van getrouheid of geheimhouding voor die Voorsitter in die volgende vorm aflê:

> Ek, A.B, verklaar onder eed/verklaar plegtig dat, behalwe vir soverre dit noodsaaklik is in die uitvoering van my pligte in verband met die werksaamhede van die Kommissie of op grond van 'n bevel van 'n bevoegde hof, sal ek nie aan enige persoon enige aangeleentheid of inligting wat tot my kennis kom in verband met die ondersoek openbaar maak nie, of enige persoon veroorloof of toelaat om toegang tot die rekords van die Kommissie te bekom nie, met inbegrip van enige aantekeninge, rekord of transkripsie van die verrigtinge van die Kommissie wat in my besit of onder beheer van die Kommissie of enige beampte is.

(2) Geen persoon sal aan enige ander persoon enige aangeleentheid of inligting wat tot sy of haar kennis gekom het in verband met die ondersoek openbaar maak nie, of enige ander persoon veroorloof of toelaat om toegang tot die rekords van die Kommissie te bekom nie, behalwe vir soverre dit noodsaaklik is in die uitvoering van sy of haar pligte in verband met die werksaamhede van die Kommissie of op grond van 'n bevel van 'n bevoegde hof.

(3) Geen persoon sal sonder die skriftelike toestemming van die Voorsitter—

(a) enige dokument wat aan die Kommissie deur enige persoon in verband met die ondersoek voorgelê is, versprei of die inhoud of enige gedeelte van die inhoud van sodanige dokument openbaar maak nie; of

(b) enige dokument, met inbegrip van enige verklaring, wat bestem is om aan die Voorsitter voorgelê te word bestudeer of sodanige dokument onderskep terwyl dit na die Voorsitter geneem of aangestuur word nie.

(4) Geen persoon sal, behalwe vir soverre dit noodsaaklik is in die uitvoering van die opdrag van Kommissie, die verslag of enige tussentydse verslag van die Kommissie of 'n afskrif of n gedeelte daarvan of inligting met betrekking tot die

oorweging van getuienis deur die Kommissie, openbaar maak of aan ‘n ander persoon verskaf nie.

12. (1) Iemand wat die Voorsitter of enige lid van die Kommissie beledig, oneer aandoen of verkleineer nie of die ondersoek of verrigtinge of bevindinge van die Kommissie benadeel, is skuldig aan ‘n misdryf en is by skuldigbevinding strafbaar met ‘n boete, of met gevangenisstraf van hoogstens ses maande.

(2) Enige persoon wat—

(a) opsetlik die Voorsitter, enige lid of enige beampte in die uitvoering van enige bevoegdheid beoog in regulasie 9, belemmer;

(b) ‘n bepaling van regulasie 13, 14, 15 of 16 oortree; of

(c) ‘n bepaling van regulasie 17 oortree,

is skuldig aan ‘n misdryf en by skuldigbevinding—

(i) in die geval van ‘n oortreding bedoel in paragraaf (a) strafbaar met ‘n boete, of met gevangenisstraf vir ‘n tydperk van hoogstens ses maande; en

(ii) in die geval van ‘n oortreding bedoel in paragraaf (b) of (c), strafbaar met ‘n boete, of met gevangenisstraf vir ‘n tydperk van hoogstens 12 maande.

13. (1) Die Voorsitter stel die setel van die Kommissie by kennisgewing in die *Staatskoerant* vas.

(2) Die Kommissie kan, vir doeleindes van vergemakliking van toegang tot die Kommissie, verrigtinge voer by enige ander plek waar hy dit na behore ag om so te doen.

14. Hierdie regulasies kan van tyd tot tyd aangevul, aangepas of gewysig word.

15. Die Kommissie bepaal sy eie prosedures.

16. Hierdie regulasies heet die regulasies van die Geregtelike Kommissie van Ondersoek na bewerings van staatskaping, korrupsie en bedrog in die Openbare Sektor,

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Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

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