

CIVIL PROCESSES TO COMBAT CORRUPTION

JUDGE W. H. HEATH

INTRODUCTION:

Traditionally in many countries in the world the recovery of State assets and State money is left to the traditional body which is called in South Africa the Office of the State Attorney. It has different names in other countries but the role and function is basically the same.

This body in South Africa has no investigative powers and is dependent on information made available to it by State bodies. In South Africa the Office of the State Attorney is flooded with other work and has not succeeded in becoming involved in major asset or money recoveries or the protection or saving thereof. The State Attorney take action through the normal civil courts.

SPECIAL INVESTIGATING UNIT:

In terms of the provisions of Section 2 of Act 74 of 1996 the South African Government took the novel step to establish a Special Investigating Unit with the following powers:

- (a) Serious maladministration in connection with the affairs of any State institution;
- (b) Improper or unlawful conduct by employees of any State institution;
- (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) Corruption in connection with the affairs of any State institution;
- (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.

Section 4(1) provides for the following functions:

- (a) To investigate all allegations regarding the matter concerned;
- (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 proceedings brought before a Special Tribunal;
- (d) To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
- (e) To perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
- (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;
- (g) Upon the conclusion of the investigation, to submit a final report to the President;
- (h) To at least twice a year submit a report to Parliament on the investigations by and the activities, composition and expenditure of such Unit.

The provisions of Section 2 covers any possible act or omission which can lead to the loss of State assets or State money but also to take action with regard to maladministration as such, corruption as such, etc.

Cases are referred to the Unit officially by the President in terms of a Proclamation issued to become involved in an investigation within the framework of Section 2(2).

The operation of the Unit can be summarised as follows:

1. To find documents or to give notice in terms of Section 5(2)(b) to people in possession of documents relevant to investigation to produce the documents to the Unit which any person is obliged to do and punitive measures are provided for in Section 12 should a person fail to do so.
2. In terms of the provisions of Section 5(2)(c) the Unit is entitled to serve a notice on any person (including a Defendant) to answer all questions relevant to the investigation. Again the punitive measures of Section 12 apply.
3. In terms of Section 6 the Unit can apply for a Warrant from the Special Tribunal to enter and search premises, to attach documents or other objects and to remove such

documents or items.

4. The typical investigative powers apply which means tracing documents, tracing objects or tracing witnesses.
5. The Unit applies a multi-disciplinary approach and a team preparing for an investigation and conducting an investigation consists of senior and junior Investigators, Auditors and Accountants, Lawyers and if necessary experts from our Information Technology Team. In addition to these experts already employed by the Investigating Unit the Head of the Unit is entitled to appoint any other expert to assist in a case.

All investigations are conducted with the view of a civil court action before the Special Tribunal. A Special Tribunal with Judges appointed in the same manner and the same status as Judges of the High Court, was established in terms of the same legislation. The Unit institutes a typical civil action in the Tribunal or brings an application for an order, which procedures are similar, but shorter procedures, to those instituted in the High Court.

INTERDICTS AND ATTACHMENT ORDERS:

A major percentage of the cases dealt with by the Unit consist of action to prevent the loss of State assets or the protection of State assets or money. The Unit has the power to apply to the Special Tribunal for an interdict or an Attachment Order to intervene and stop the loss of State assets (about to occur) or to freeze assets already misappropriated and which are out of the possession of State Institutions.

An example of an order interdicting a transaction is where the State has entered into a contract without complying with the procurement requirements and the implementation of such a contract is then stopped pending an investigation. An example of an Attachment Order is where a person has stolen a State cheque, has cashed it and has deposited the money into a Bank Account. The money is then frozen or attached pending the outcome of the investigation. This has become a very useful weapon in the case of money laundering.

In cases of extreme urgency the Head of the Unit, who is a Judge is entitled to issue an Suspension Order or an Interdict but such an Order must be confirmed within 48 hours after it has been issued by a Judge of the Special Tribunal.

STATISTICS:

The Special Investigating Unit has been stretched beyond normal human resources to deal with the number of cases referred to it and to deal with them effectively. I quote a few examples of the activities the Unit is involved in:

- During the period January 1998 to March 1999 the Unit has saved, protected or recovered State assets or State money to the value of R1,35 billion.
- The Unit has under investigation at present approximately 220 000 cases.
- The Unit consists of Lawyers, Accountants, Investigators, Auditors, Computer Experts and Support Staff. We have 55 Investigators who with the assistance and on the advice of the other experts investigate all the cases under investigation by the Unit.
- The Unit acquires thousands of Acknowledgements of Debt from people or institutions under investigation and who concede that they have unlawfully acquired State money. In terms of the Acknowledgement of Debt signed by them they pay back the amount misappropriated by them either in a single cash amount or in instalments.

INTERNATIONAL RECOGNITION:

The Special Investigating Unit enjoys widespread international recognition and I have been invited to address International Conferences on numerous occasions. The concept of the Unit to recover and protect State assets from a civil point of view is unique in the world and its achievements has shown that the concept is an enormous success.

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