

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

**STATEMENT BY PRAVIN JAMNADAS GORDHAN
REGARDING TERMS OF REFERENCE 1.1 TO 1.3**

11 OCTOBER 2018

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I INTRODUCTION AND SCOPE OF STATEMENT

1. This statement is submitted to the Judicial Commission of Inquiry ("Commission") in terms of Rule 6.2 of the Rules of the Commission. It is prepared at the request of the Commission's Legal Team (as defined in Rule 1.4), following an initial meeting held on 13 August 2018 and subsequent engagements between my legal representative and the Commission's Legal Team.
2. In order to assist the Commission in its current proceedings, this statement addresses primarily the Commission's Terms of Reference 1.1 to 1.3. Specifically, this statement sets out the circumstances surrounding my appointment as Minister of Finance on 14 December 2015 and my removal, announced in the early hours of 31 March 2017, by former President Jacob Zuma ("former President Zuma" or "Mr Zuma"). Further events and issues that may be relevant to both the appointment and dismissal are also set out below. The details of each of these events may require further investigation by the Commission and, I believe, should be the subject of further evidence by other witnesses before the Commission.
3. This account is based on my recollection, as well as contemporaneous correspondence and media reports, and the recollections of officials, primarily in the National Treasury, which refreshed my memory of some of these events. Relevant documents referred to below will be provided together with this statement.

Political context to statement

4. I am a life-long activist and member of the African National Congress ("ANC").
5. I believe in the principles of the Freedom Charter and in our Constitution. I am committed to contributing to the achievement of constitutional democracy and the establishment of a democratic government guided by the preamble of the Freedom Charter, that *"South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people."*
6. The Preamble of our Constitution commits us to uplift the poor, as do the objectives of the ANC - to eliminate inequalities, promote economic development for the benefit of all and to create a society in which social justice and economic emancipation occur within a far-reaching transformation of our society.
7. This transformation is multi-dimensional: political, institutional, social, economic and cultural. But transformation and transitions also can unleash the forces of greed, corruption and new means of exploitation.
8. So participation in government as an ANC cadre is not just a technical or technocratic role, but one aimed at achieving the vision and goals of our leaders, such as Nelson Mandela, Walter Sisulu, Lillian Ngoyi, Bram Fischer and others.
9. In contrast, state capture and corruption are consequences of the unleashing of the worst human instincts – self-enrichment, neglect of the higher mission, placing one's self-interest before the community's interests.
10. Reflecting on the period 2009 to 2017 now, it would appear that I was witness to events, some of which are set out below, and it seems an unwitting member of an

Executive in the earlier part of this period, which was misled, lied to, manipulated and abused in order to:

- 10.1. Benefit a few families and individuals;
- 10.2. Release the worst forms of recklessness and corruption;
- 10.3. Rob ordinary people of schools, clinics, education;
- 10.4. Abuse and decimate key institutions of our democracy: including SARS, the Hawks, NPA, SOEs like Eskom, Denel, Transnet etc.; and
- 10.5. Damage the economy, increasing joblessness, forsaking the youth, and increasing the marginalisation of women.

11. State capture became a sophisticated scheme or racket that:

- 11.1. Advanced false narratives, including racist pejoratives;
- 11.2. Used external agencies, like Bell Pottinger, and the services of professional advisors, including management consulting firms, auditors and lawyers, to entrench itself;
- 11.3. Marginalized and dismissed honest public servants and replaced them with compromised or incompetent individuals; and
- 11.4. Allowed a climate of impunity in respect of crime and corruption.

12. The ANC at its most recent elective conference in December 2017 noted and resolved as follows:

“ANC CREDIBILITY AND INTEGRITY: DEALING WITH CORRUPTION

Noting

An increase in corruption, factionalism, dishonesty, and other negative practices that seriously threaten the goals and support of the ANC.

That these practices contradict and damage our mission to serve the people and use the country's resources to achieve development and transformation.

That corruption robs our people of billions that could be used for their benefit.

That the lack of integrity perceived by the public, has seriously damaged the ANC image, the people's trust in the ANC, our ability to occupy the moral high ground, and our position as leader of society.

That current leadership structures seem helpless to arrest these practices, either because they lack the means or the will, or are themselves held hostage by them.

At times we do things that are not according to ANC or government policy, or not legal or constitutional, and wait for courts to correct our actions.

Our association with, and the closeness of our leaders to, business people facing allegations of corruption.

That the ANC is endangered to the point of losing credibility in society and power in government.

That our leadership election processes are becoming corrupted by vote buying and gatekeeping

That the state investigative and prosecutorial authorities appear to be weakened and affected by factional battles, and unable to perform their functions effectively

RESOLVES

That the 2015 NGC resolutions plus other existing and new measures are implemented urgently by the NEC and PECs to:

- 1. Strengthen our understanding of our values, ethics and morality and the demands that the people, the constitution and the rule of laws place on us as the guardians of the state, and its resources*
- 2. Demand that every cadre accused of, or reported to be involved in, corrupt practices accounts to the Integrity Committee immediately or faces DC pro- cesses. (Powers of IC under constitutional changes)*

3. Summarily suspend people who fail to give an acceptable explanation or to voluntarily step down, while they face disciplinary, investigative or prosecutorial procedures.

4. We publicly disassociate ourselves from anyone, whether business donor, supporter or member, accused of corruption or reported to be involved in corruption

5. All ANC members and structures should cooperate with the law-enforcement agencies to criminally prosecute anyone guilty of corruption

6. The ANC should respect the Constitution of the country and the rule of law and ensure that we get the best possible legal advice in government to ensure our compliance wherever possible, rather than waiting to defend those who stray.

7. The ANC deploys to Cabinet, especially Finance, Police and Justice, should strengthen the state capacity to successfully investigate and prosecute corruption and account for any failure to do so

8. Secretaries at all levels will be held accountable for any failure to take action or refer matters of corruption or other negative conduct (in terms of ANC code of conduct) to the relevant structures.

9. Within the ANC nomination and election process: Ban all slates and enforce the ANC code of conduct and disciplinary procedures. Investigate and prosecute all cases of vote or support buying, or membership or branch gatekeeping.

10. Implement the NEC resolution on state capture, including the expeditious establishment of a Judicial Commission of Enquiry."

13. Congruent with these resolutions, and with the dictates of my conscience, I provide this statement to the Commission in the hope that it assists the Commission in its important work to uncover the truth of state capture, and to ensure that it can never occur again.

14. I must emphasise that my knowledge and my understanding of state capture – like that of the rest of the country - evolved over time. What I know now to have been significant events did not appear to be so at the time. The significance and the

inter-relationship of such events were revealed progressively and often only in hindsight. Repeated changes to Cabinet, to the Boards of State-Owned Companies, and in the leadership of key institutions and organs of state, often without rational explanation, were done to take control of such institutions. This would be followed by the plunder of resources within those institutions, without the risk of prosecution.

15. It is in this context that the events I recount, between 2009 and 2017, should be viewed. Further, I hope to assist the Commission in some way by “connecting the dots” represented by:

- 15.1. Executive appointments and dismissals;
- 15.2. Persecution and campaigns of harassment and intimidation;
- 15.3. Major public procurement projects; and
- 15.4. Commandeering and neutralising key state law enforcement agencies.

16. A useful conceptual framework for understanding events and the phenomenon of state capture has been developed by the group of academics who published the *Betrayal of Promise* report and the recent book, *Shadow State: The politics of state capture*. It envisages various groupings that perform different roles in state capture and patronage networks. Briefly, as explained by these academics (see p 57 of the *Betrayal of Promise* report), it comprises of:

- 16.1. Controllers – strongmen who secure access to and maintain control over resources. They are the “patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are . . . directly responsible for predation and exploitation”;

- 16.2. Elites – who are in networks that can attract resources with controllers, and who establish and maintain patronage networks that facilitate the distribution of benefits;
- 16.3. Brokers – who have access to resources that can facilitate the trade of resources;
- 16.4. Mobility controllers – who have the ability to control the movement of and access to resources, working closely with Brokers; and
- 16.5. Dealers – who are responsible for managing and hiding financial transactions and laundering money.
17. This analytical framework is useful to keep in mind when evaluating the evidence before the Commission.
18. Similarly, the South African Council of Churches, released its *Unburdening* report in May 2017 which documents the accounts of corruption and state capture from members and whistle-blowers in their different congregations.
19. I hope that this statement will assist in exposing some elements of state capture and of the syndicates and sub-groupings that both engineered this sad period in our history, and benefitted enormously at the expense of the wellbeing of millions of poor, unemployed and underprivileged South Africans.
20. National Treasury is placed at the centre of the state by our Constitution and by the applicable legal framework that regulates the management of public finances, state procurement, revenue collection, tax administration, protection of the financial and banking system, and forensic analysis and input into decision-making

with significant financial and fiscal consequences. For this reason, I believe that the capture of National Treasury was an essential objective of state capture, along with the weakening of law enforcement and the capture of State Owned Enterprises.

21. Several key individuals within National Treasury leadership over the past decade displayed admirable determination and commitment to following the law. National Treasury was, however, placed under enormous pressure and was targeted in a vicious, personalised and relentless campaign that played out in the courts, the criminal justice system, through illegitimate intelligence reports, on social media and in some of the media.

22. The resolve and professionalism displayed by National Treasury officials during a difficult period is to be commended. Their commitment to follow the Constitution, comply fully with the applicable legal and regulatory frameworks, implement sound and sustainable policies and pursue the national interest ensured that there was at least some resistance to the state capture project.

23. In my six and a half years as Minister of Finance, I worked with the National Treasury, other institutions and colleagues towards realising the vision of the Constitution, recognising that South Africa needs transformation that opens a path to inclusive economic growth and development. Growth without transformation would only reinforce the inequitable patterns of wealth inherited from the past. Transformation without economic growth would be narrow and unsustainable.

24. Government's objective is not merely to transfer ownership of assets or opportunities to contract with the state to a small group of connected individuals: it is to change the structure of the economy. Broad-based transformation should

promote growth, mobilise investment, create jobs and empower citizens. It must create new resources to support social change, including assets and livelihoods for the majority, and strengthen South Africa's constitutional foundations.

25. This is the vision that was attacked by state capture, including by those at the highest levels of the executive.

II MY FIRST TERM AS MINISTER OF FINANCE

Introduction

26. I was a Member of Parliament in the first democratic Parliament from 1994 to 1997.

I was then the Commissioner of the South African Revenue Service ("SARS") from 1999 and I first held the position of Minister of Finance from 10 May 2009 until 25 May 2014.

27. The statement and documents already provided to the Commission by former Minister Nhlanhla Nene ("Mr Nene") outlines the constitutional, legal and regulatory role and functions of the National Treasury.

28. In addition, there needs to be a close and functional relationship between the President and his or her Minister of Finance. It also is important that, whoever is appointed the Minister of Finance, that person must enjoy the trust of --

28.1. the public -- that their funds are safe and will be spent efficiently and effectively;

28.2. taxpayers -- who pay their taxes; and

28.3. investors (both domestic and foreign) -- that the money that they lend to the Government every year will be paid back on time in the future. The more confidence this last group has that the Government will honour all of its financial commitments, the lower the cost of funding for Government, and hence the more resources it will have to deliver services to the people of this country.

Appointment of SARS Commissioner

29. When I became Minister of Finance, a top priority that I had to deal with was the continuing after-effects of the 2008 global financial crisis. This led to South Africa experiencing a recession in 2009, even though our financial sector proved to be safe and stable. As a result, Government had to stimulate the economy by running higher deficits, amongst other measures. Importantly, this crisis also affected our revenue collection by the SARS.

30. Following my appointment as Minister of Finance on 9 May 2009, Mr Oupa Magashula ("Mr Magashula"), was appointed as the Acting SARS Commissioner on 11 May 2009 (**see Annexure 1**), while the position for a SARS Commissioner was advertised soon thereafter.

31. As Minister of Finance, I initiated the process of receiving applications from candidates for this position, shortlisting these and convening a panel with other Cabinet colleagues to interview those on the shortlist.

32. After this process, a memorandum was submitted to Cabinet recommending that the President appoints Mr Magashula as the SARS Commissioner. Mr Magashula's appointment was announced on 30 June 2009 (**see Annexure 2**).

33. Mr Magashula resigned on or about 12 July 2013 (**see Annexure 3**). Mr Ivan Pillay was appointed as acting Commissioner from that date. The post of SARS Commissioner was advertised by the Ministry of Finance in the latter half of 2013 (**see Annexure 4**). The Ministry received more than 120 applicants.

34. I became aware that former President Zuma wished to exercise his powers to appoint the new Commissioner. I advised him that he may want to put his preferred

candidate through the usual process (i.e. the interview and Cabinet consultation process set out above). In the event, it would appear that he ignored this suggestion.

35. The issue remained unresolved by the time of the May 2014 elections, and I was appointed to a new Ministry. Mr Tom Moyane ("Moyane") was appointed as Commissioner of SARS by former President Zuma on or about 23 September 2014 (see Annexure 5).

The end of my first term as Minister of Finance

36. Whilst it is not possible to know what was in the former President's mind when appointing his Cabinet, I will point to a number of specific issues that were an early manifestation of the profound interest that the former President had in what should have been ordinary transactional matters subject to due diligence, affordability and feasibility studies.

37. To assist the Commission, I set out briefly events that preceded my deployment to the COGTA portfolio in May 2014 and which may also relate to the removal of Mr Nene in December 2015. The three projects identified below (nuclear procurement, PetroSA/Engen and Denel Asia) could be material to the Commission's inquiry.

37.1. I will outline relevant events during my tenure of which I was aware. The evidence of others who were more directly involved may be required before a complete picture of each of these projects is possible.

37.2. Suffice to state that at least two of these projects share similarities with respect to their size in monetary value and the level of personal interest showed by former President Zuma in them. They may be suggestive of a pattern that may be relevant to understanding the methodologies and aims of the state capture project.

"The Nuclear Deal" (Part I)

38. The Integrated Resource Plan (IRP2010) was promulgated in 2011. It projected that 9.6GW of nuclear power generating capacity would need to be added to the national grid between 2023 and 2030.

39. On 9 November 2011, Cabinet established the National Nuclear Energy Executive Coordinating Committee ("NNEECC") (see **Annexure 6**). The NNEECC was to provide oversight and make decisions regarding a nuclear energy policy and the new build programme, following investigations into costing, financing, technical and operational options.

40. Following the establishment of the NNEECC, it was evident that former President Zuma wished to procure the 9.6GW of nuclear power generating capacity for South Africa from Russia. Such a transaction has been estimated to cost in excess of R1 trillion, if not more. It became known as "the nuclear deal."

41. With regard to my interactions with the former President, expressly concerning the nuclear deal during my first term as Minister of Finance –

- 41.1. I attended one meeting with former President Zuma in the latter half of 2013 at the Presidential residence in Pretoria, Mahlamba Ndlopfu, in which he made it clear that he wished the nuclear deal to proceed.
- 41.2. The former Director-General of National Treasury, Mr Lungisa Fuzile ("Mr Fuzile") also was present at this meeting. I met him at Mahlamba Ndlopfu, following telephone calls asking us to urgently meet the former President. We were not advised by his office what the meeting was about. When we arrived, the former President was not yet there.
- 41.3. Present for that meeting was Mr Senti Thobejane, who I came to understand was a key advisor on energy matters to former President Zuma, on the proposal. He was also an advisor to then Minister of Energy, Mr Ben Martins ("Mr Martins"), and thereafter to his successor, Ms Joemat-Pettersson. It was reported in the media in mid-September 2015 that he had departed suddenly from this position (**see Annexure 7**).
- 41.4. While we waited for the former President's arrival, Mr Fuzile and I spoke with Mr Thobejane. Mr Thobejane's presence was the first inkling we had that the former President wished to discuss nuclear procurement with us that day. Mr Thobejane explained the technical details of the procurement of nuclear power generation capacity to Mr Fuzile and me. I asked him who the major players were in the field, and he explained that the United States, France, China, South Korea and Russia were all possible suppliers of the technology to South Africa.

41.5. I was struck by the fact that the then Minister of Energy (Mr Martins) and the then Director-General of the Department of Energy (Ms Nelisiwe Magubane) were not present at the meeting.

41.6. Eventually, the former President arrived and joined us. I explained to him that we had been talking to Mr Thobejane for some time, and that he had been explaining the nuclear technology and its possible suppliers to us. Mr Zuma indicated that South Africa needed nuclear power and that a process should be initiated to procure it.

41.7. I indicated to the former President that nuclear procurement was a complex issue, that there were lots of interested stakeholders, such as the various competing suppliers and environmentalists.

41.8. I indicated to Mr Zuma that the National Treasury could undertake an exercise to design a procurement process for such a significant project and to ensure that it complied with the applicable legal framework for public and energy procurement.

41.9. I made this undertaking after I indicated to the former President that it would be appropriate to follow lawful procurement procedures for such an expensive project to avoid becoming mired in scandal like the so-called "arms deal." I wanted to impress upon the former President that undertaking the nuclear procurement required careful consideration of its costs, the choice of supplier, due process and the likely challenges to any decision to proceed.

41.10. Finally, I indicated that Mr Fuzile and Mr Thobejane ought to exchange telephone numbers so that the former could explain procurement processes in

line with the Constitution and the applicable legal framework to the latter. To the best of my recollection, no further engagement regarding the nuclear deal occurred with Mr Thobejane and Mr Fuzile, nor between myself and former President Zuma.

42. To complete the chronology of work done by National Treasury on the nuclear procurement issue during my first term, I am advised by officials within National Treasury that, as part of its pre-procurement process and in preparation for the envisaged nuclear new build programme, the Department of Energy furnished officials at the National Treasury with an extensive set of documents in November 2013 (see **Annexure 8**). These included a draft feasibility study report, titled *Draft Feasibility for the Nuclear Programme of the Republic of South Africa*, together with a wide range of accompanying research papers and reports dealing, *inter alia*, with international experience in nuclear procurement, costing, licensing, localization, the fuel cycle, waste disposal, environmental impacts, skills development, international agreements and conventions and the power industry structure.

43. The so-called nuclear deal first came to the attention of officials at the National Treasury at some point in 2013 when a draft cooperation agreement, to be signed with Russia, was provided because it included a tax incentive structure. The Department of Energy approached National Treasury for input on this incentive structure and to consider and assess the implications under the Public Finance Management Act ("PFMA"). Officials within National Treasury raised concerns with this draft agreement and its clear objective of creating firm fiscal commitments to Russia by South Africa.

44. Officials at National Treasury strongly objected to the Department of Energy and undertook to prepare a commentary on the feasibility study and financing studies that were eventually received from the Department of Energy during 2014 and 2015. National Treasury also undertook a preliminary review of costing scenarios and financial aspects of a nuclear build programme. These reviews were continuously discussed with the Department of Energy.

45. In June 2014, the NNEECC was converted into the Energy Security Cabinet Subcommittee ("ESCS"), and was chaired from then on by former President Zuma in the place of then Deputy President Kgalema Motlanthe. The ESCS was responsible for oversight, coordination and direction of activities for the entire energy sector (**see Annexure 9**). The ESCS comprised the following members of the executive at that time:

45.1. Minister of Energy, Ms Tina Joemat-Pettersson ("Ms Joemat-Pettersson");

45.2. Minister of Public Enterprise, Ms Lynne Brown ("Ms Brown");

45.3. Minister of International Relations and Cooperation, Ms Maite Nkoana-Mashabane;

45.4. Minister of State Security, Mr David Mahlobo ("Mr Mahlobo");

45.5. Minister of Finance, Mr Nhlanhla Nene;

45.6. Minister of Trade and Industry, Dr Rob Davies;

45.7. Minister of Economic Development, Mr Ebrahim Patel;

- 45.8. Minister of Mineral Resource, Advocate Ngoako Ramatlhodi;
- 45.9. Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula.
46. The Commission should investigate the rationale for these changes and the activities undertaken by the ESCS in advancing “the nuclear deal.”
47. Once I was appointed as the Minister for COGTA, I was, in any event, no longer privy to the details of any further developments concerning nuclear procurement, though I was aware from media reports of litigation (that was ultimately successful in April 2017) which challenged the process that was followed to commence the procurement process. I also was aware of reports of the conclusion of an intergovernmental agreement with the Russian Federation relating to cooperation in the field of nuclear energy in or about September 2014, by the then Minister of Energy (**see Annexure 10**).
48. In sum, National Treasury, during my first term as Minister of Finance, insisted on sufficient and satisfactory evaluations of the true cost and attendant fiscal risks for the country of the proposed nuclear deal.
49. Details of the so-called nuclear deal was not sufficiently advanced at that time to require firm fiscal commitments from National Treasury.

PetroSA/Engen

50. Another contemplated transaction regarding which I interacted with former President Zuma during my first term as Minister of Finance related to the possible

purchase by PetroSA of the shareholding held by Malaysian oil company Petroliam Nasional Bhd ("Petronas") in Engen. I set out details regarding this contemplated transaction below (**see Annexure 11**).

51. Since at least 2012, I understand that the Ministry of Energy had engaged with Petronas regarding the acquisition of its stake in Engen by PetroSA. During former President Zuma's visit to Malaysia in August 2013, I believe that the transaction was confirmed as a high strategic priority for the South African government. By the first quarter of 2014, I became aware that those negotiations, facilitated by the Department of Energy, were at an advanced stage.

52. At around mid-March 2014, the former Minister of Energy, Mr Martins, applied to National Treasury for (i) approval in terms of section 54 of the Public Finance Management Act, No 1 of 1999, for the acquisition of the Petronas shareholding by PetroSA and (ii) a government guarantee for the proposed value of the acquisition.

53. I understood from the Department of Energy that the value of the acquisition of all of Engen's issued share capital was R18.68 billion. It became clearer as the transaction evolved that its true value was closer to between R12 and R14 billion. This raised red flags for me as to why there was a possible difference of up to R6 billion in possible valuations of the Engen stake, and who may stand to benefit from that difference. SONANGOL, Angola's national oil company, had been selected as a strategic equity partner in the transaction, which would see it end up with 49% of Engen. The proposal was that PetroSA and SONANGOL would provide around 80% of the purchase price, with the balance funded privately. However, a

government guarantee of PetroSA's portion was required in order for the transaction to proceed.

54. With respect to former President Zuma's involvement in this proposed transaction:

54.1. I am reminded by former National Treasury officials that, on 31 March 2014, I was at the offices of SARS. Every year, on 1 April, SARS and National Treasury make a public announcement of the tax revenue collected in the preceding tax year.

54.2. While at the SARS offices, I received enquiries from former President Zuma about the status of the applications lodged by Mr Martins.

54.3. I indicated that various technical issues were being discussed by National Treasury with representatives of the Department of Energy and PetroSA. As set out below, those engagements continued into April 2014.

54.4. In response to Mr Zuma's telephone calls, a meeting was held the following day (1 April 2014) at the SARS offices with Mr Martins and myself. The meeting was relatively short in duration, and I recall explaining again the need for further information and the need to conduct a detailed due diligence on the transaction before any guarantee could be approved by National Treasury. A due diligence is a comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish the value of its assets and liabilities, and in order to evaluate its future commercial potential. SONANGOL's participation in the transaction was conditional on the successful completion of a due diligence on Engen (**see Annexure 12**).

54.5. It remained curious that such a huge transaction would even be attempted without an appropriate due diligence being conducted. The reluctance and even avoidance of conducting a due diligence is suspicious in and of itself. I hope that the Commission will be able to investigate this transaction further.

55. I was informed that during late March and continuing into April 2014, technical teams at National Treasury met repeatedly with representatives of the Department of Energy and PetroSA. As a result of those engagements, National Treasury eventually provided a conditional guarantee for the transaction on 25 April 2014 of up to R9.5 billion, though the guarantee was subject to several onerous but necessary financing conditions being met, and the satisfactory completion of the necessary due diligence.

56. Ultimately, the transaction did not proceed because Petronas withdrew from the deal after PetroSA failed to fulfil the financing conditions and a due diligence was not performed. As a result, I understand that the guarantee was withdrawn by my successor, Mr Nene, on or about 9 March 2015.

My appointment to COGTA

57. In the evening of 24 May 2014, after the inauguration ceremony, I received a message to meet with former President Zuma at Mahlamba Ndlopfu, as is the tradition in making appointments to Cabinet following an election. I was informed of my appointment as Minister of Cooperative Governance and Traditional Affairs ("COGTA") by the former President.

58. I was told by the former President that I was being deployed to the COGTA portfolio due to my familiarity with local government matters and given the preparation for the upcoming local government elections in 2016. There was speculation in political and media circles that I would be moved from the post of Finance Minister.

59. Mr Nene was appointed Minister of Finance in the same Cabinet. Prior to that, he had held the position of Deputy Minister of Finance since November 2008.

III REMOVAL OF MIN NENE

60. I turn next to the dismissal of Mr Nene, and my eventual re-appointment for a second stint as Minister of Finance. Several issues relating thereto occurred within the confines of Cabinet that should be pursued by the Commission.

Denel Asia

61. While I am unaware of the reasons why the former President removed Mr Nene on 9 December 2015, media reports subsequently revealed that on or about 30 October 2015, a pre-notification was received from Denel alerting the Director-General of the National Treasury of its intent to establish a joint venture between Denel (led by a Board, largely appointed in July 2015 by Ms Brown), and a Gupta-affiliated entity, VR Laser Asia (**see Annexure 13**).

62. VR Laser Asia is a company owned by Mr Salim Essa ("Essa"), a Gupta business associate, as its sole shareholder, and which has a relationship with VR Laser RSA, owned by Duduzane Zuma and Rajesh Gupta. The joint venture was contemplated purportedly to exploit Denel's intellectual property and proprietary information in India. The joint venture was to be known as Denel Asia.

63. This pre-notification is not a formal requirement under the framework established under the PFMA, but has been developed by the Department of Public Enterprises as a procedure to facilitate considerations of applications by SOCs to undertake major transactions in terms of section 54 of the PFMA.

64. According to media reports on the information contained in the #Guptaleaks, one day after Denel submitted its PFMA application to National Treasury on 30 October 2015, the Denel Chair, Mr Daniel Mantsha ("Mr Mantsha"), forwarded the confidential document to Mr Ashu Chawla ("Mr Chawla"), a senior Gupta executive and the Chief Executive Officer of Sahara Computers, a company owned by the Gupta family.
65. On or about 23 November 2015, Ms Brown provisionally approved the initiative and set out various issues that needed to be covered in the formal PFMA application. As the pre-notification was not a formal PFMA application, there was no requirement for National Treasury to respond, nor did National Treasury usually respond to such pre-notifications.
66. Emails contained in and reported on by the media following the #Guptaleaks, show that on 7 December 2015, Mr Chawla emailed a copy of Ms Brown's in-principle approval, and a briefing document, directly to the personal assistant of Mr Nene.
67. Before Mr Nene was removed as Finance Minister, no formal PFMA application had been submitted seeking his approval of the establishment of Denel Asia. Therefore, Mr Nene had not approved the joint venture.
68. However, days later, Mr Nene was removed. On 10 December 2015, Mr David "Des" van Rooyen ("Mr Van Rooyen") was appointed Minister of Finance.
69. By 11 December 2015, the formal PFMA application seeking approval for the establishment of Denel Asia was submitted, addressed to the newly installed Minister. Mr Van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Minister of Finance on 13 December 2015.

70. Legal advice obtained by the National Treasury indicated that, based on the conditions attached to the government guarantees, the explicit approval of both the Ministers of Finance and of Public Enterprises in terms of Section 54(2) of the PFMA, in addition to a decision under Section 51(1)(g) of the PFMA by the Minister of Finance, were required prior to the formal establishment of Denel Asia. This information was communicated both verbally and in writing on several occasions to Denel as well as the then Minister of Public Enterprises, Ms Brown.

71. Extraordinarily belligerent attacks were made on me personally and Treasury more broadly by Mr Mantsha, the Chairperson of the Denel Board. He demanded that I retract, in writing to the Denel Board, comments and statements I had made regarding the lawfulness and desirability of the joint venture, and apologise to the Denel board. He also wanted me to acknowledge that National Treasury had failed to discharge its duties in a diligent and responsible manner, even though the reverse was actually the case. It is unheard of for a Chairperson of an SOC to attack a Minister of Finance in public, and for the Minister of Public Enterprises responsible for that SOC to take no steps to reign in such attacks, to the best of my knowledge (**see Annexure 14**).

72. In addition, litigation was launched by Denel against the Minister of Finance and National Treasury. Specifically, an application for a declaratory order was made by Denel on 24 March 2017, in the week before I was eventually dismissed as Finance Minister (**see Annexure 15**).

73. I turn next to address the extraordinary events that occurred between 9 and 13 December 2015.

Wednesday, 9 December 2015

74. Following a Cabinet meeting held on 9 December 2015, former President Zuma announced the removal of Mr Nene as Minister of Finance, and his replacement, Mr van Rooyen, in a media statement issued at approximately 20h00 that day (see **Annexure 16**).

75. I was unable to attend the Cabinet meeting held that day. I learnt later that the so-called nuclear deal had been approved by Cabinet.

Thursday, 10 December and Friday, 11 December 2015

76. On Thursday 10 December and Friday 11 December, the announcement of Mr Nene's removal caused economic and financial market turmoil and a sharp depreciation in the value of the Rand. Once markets closed for the weekend, there were ongoing fears that the situation would worsen when they re-opened on Monday, 14 December 2015.

Thursday, 10 December to Sunday, 13 December 2015

77. Over these four days, the removal of Mr Nene and his replacement by Mr van Rooyen also resulted in a widespread public outcry. Civil society, organised labour and organised business groups criticised the decision, and demanded urgent corrective action by former President Zuma (see **Annexure 17**).

78. Over this period, I engaged with Ms Lakela Kaunda ("Ms Kaunda"), the Chief Operations Officer in the Presidency at the time, regarding my concerns, in the national interest, about the economic turmoil and its adverse impact on the country and citizens that followed the removal of Mr Nene. I suggested that a team consisting of the Presidency, the South African Reserve Bank, Treasury and the private sector meet with investors to reassure them before the markets opened for trading on Monday, 14 December 2015. My primary concern was the need for urgent measures to address the economic and financial harm caused since the announcement of Mr Nene's removal, while at the same time remaining conscious that such matters related to Treasury and were not within the brief of COGTA.

79. The devastating impact of this unexpected announcement on the South African economy is estimated to be approximately R500 billion. As commentators and market analysts had described, over two days, the market value of the country's 17 biggest financial and property shares fell by R290 billion. This figure excludes the remainder of the equities market that also was hard hit by the decision. South African bonds lost 12% of their capital value (R216 billion). The Rand depreciated sharply from R13.40 to R15.40/USD overnight.

80. The decision also ushered in a period of close scrutiny of institutional stability and policy certainty by global ratings agencies.

Sunday, 13 December 2015

81. In the late afternoon of Sunday, 13 December 2015, I received a message from Ms Kaunda requesting my attendance at a meeting with former President Zuma to be held at Mahlamba Ndlopfu later that evening.

82. At around the same time, Ms Jessie Duarte, the Deputy Secretary-General of the African National Congress ("ANC"), contacted me explaining that I was going to be asked to do something by former President Zuma, and that I should not refuse the request.

83. I received a similar message from the Deputy President of the ANC and the country at the time, Mr Cyril Ramaphosa.

84. I believe Ms Duarte and then Deputy President Ramaphosa had met with former President Zuma over the weekend regarding his surprise removal of Mr Nene and the appointment of Mr van Rooyen.

85. I arrived at Mahlamba Ndlopfu at approximately 18h30 that evening and met with former President Zuma.

85.1. During that conversation, former President Zuma indicated that he was of the view that Mr van Rooyen was suitable for the Finance Minister position, but others felt that the turmoil when markets re-opened on Monday could be even more serious if Mr van Rooyen was retained, than that experienced on the previous Thursday and Friday.

85.2. Former President Zuma indicated that he wanted me to take up the position in order to calm the markets.

85.3. I responded that there were other qualified individuals that the former President could consider for the post, such as Messrs Mcebisi Jonas and Jabu Moleketi.

85.4. Former President Zuma indicated that neither of these suggestions were acceptable to him, and that he thought that I should accept the position.

86. I indicated that I needed to consult with my family and called my home to discuss these developments.

87. Following that conversation, I accepted my re-appointment as Minister of Finance, although I was enjoying my role at COGTA.

88. In agreeing to serve again as Minister of Finance, I indicated to the former President that there were three matters at that time which concerned me. I indicated that these must be discussed by us and resolved as soon as possible. The three matters were:

88.1. The ongoing dire financial predicament of SAA and, specifically, the role of the Chair of the Board, Ms Dudu Myeni ("Ms Myeni");

88.2. The proposed nuclear procurement deal; and

88.3. Mr Tom Moyane's role at the SARS as its Commissioner.

89. I then assisted with the drafting of a media statement that was issued by the Presidency later that evening, which announced my re-appointment to the position of Minister of Finance, and the appointment of Mr van Rooyen to the vacated post of Minister of COGTA (**see Annexure 18**).

90. The statement also sought to provide reassurances regarding fiscal discipline and prudence, financial sector stability and the ongoing prioritisation of strategies for economic growth and employment creation.

91. Given that I was already sworn in as a member of Cabinet, no further swearing-in formalities were required for me to take up the position of Minister of Finance for the second time.

Monday, 14 December and Tuesday, 15 December 2015

92. Upon my re-appointment, I urgently convened meetings on Monday, 14 December and Tuesday, 15 December 2015, with:

92.1. Deputy Minister of Finance, Mcebisi Jonas ("former Dep Min Jonas") to discuss the urgent and significant tasks we faced;

92.2. The National Treasury team, so that I could be briefed on the preparations for the 2016 Budget of the Republic;

92.3. Mr Moyane at SARS, regarding 10 issues that I considered important to immediately address the situation at SARS (**see Annexure 19**); and

92.4. Mr Van Rooyen to facilitate the handover of the COGTA portfolio.

IV RELEVANT EVENTS IN MY SECOND TERM AS MINISTER OF FINANCE

South African Airways

93. The financial and governance challenges experienced by SAA in recent years are no doubt well known to the Commission. At the time that I was re-appointed Minister of Finance, an immediate priority was dealing with the proposed restructuring of a deal that had been approved by Mr Nene and Airbus in terms of which SAA could swap the purchase of ten A320 aircraft for a lease of five A330-300 aircraft from Airbus.

94. Then Chairperson of SAA, Ms Myeni, however, wished to amend the swap transaction to allow SAA to purchase the aircraft and enter into a sale and lease back deal with local businesses. The proposed pre-delivery payments (of approximately USD40 million or approximately R603 million at the time) under that proposal would likely have triggered debt defaults by SAA due to the pressure these payments would have placed on SAA's cash resources. Cross-defaults on other leasing arrangements and the probable triggering of government-guaranteed debt obligations would likely have followed. This would have had severe consequences for SAA and the country as a whole.

95. In late December 2015, while driving on the N2 highway in Cape Town, I received a telephone call from former President Zuma enquiring whether we could do what Ms Myeni wanted with respect to the Airbus deal. I explained that we could not, since the fiscus could not afford the pre-delivery payments and penalties that would

follow if we undertook her proposal. It was clear to me that Ms Myeni had contacted the former President and that that had prompted his call to me.

96. I afforded SAA the opportunity to make further representations to National Treasury regarding Ms Myeni's proposal, following which I decided, in late December 2015, that the swap transaction should go ahead as had been approved by Mr Nene in July 2015.

97. Prior to my reappointment as Minister of Finance, the National Treasury had been working on the process for appointing a new SAA Board (as outlined in Mr Nene's statement to the Commission). Progress was slow, and I understand that eventually the engagements between officials from the Presidency and from National Treasury produced a list of individuals to be appointed to the Board. A compromise was reached that Ms Myeni would only continue as Chairperson of the Board for a further year.

2016

98. During January and February 2016, I was part of South Africa's delegation to the annual World Economic Forum meetings held in Davos, Switzerland ("WEF Davos") and worked on the finalisation of the Budget, which was presented to Parliament on 24 February 2016.

99. I was approached by South African business leaders at the WEF Davos for urgent discussions on how to avoid a sovereign credit rating downgrade and how to inspire confidence in the South African economy and government, after the drastic and damaging changes at the Treasury. This resulted in an urgent meeting

convened with business leaders upon my return to South Africa from the WEF Davos. The CEO Initiative was formed out of these engagements.

100. This was followed by an investment roadshow by labour, government and business representatives, to overseas investors who are invested in our economy and in particular in South Africa's debt, during March 2016.

101. In addition, the CEO Initiative launched a fund of R1,5 billion for supporting small business, particularly black-owned small businesses, as well as the Youth Employment Service (as proposed and championed by then Deputy President Ramaphosa), which will ensure that big business provide work and entrepreneurial opportunities to a million young people over a three-year period. Further possibilities for additional investment in the South African economy were explored during these various initiatives.

27 Questions

102. Shortly before my budget speech in Parliament, Major General Mthandazo Berning Ntlemeza ("Gen Ntlemeza"), head of the Directorate for Priority Crime Investigation, known as the "Hawks", requested and attended a brief meeting at the Treasury. Gen Ntlemeza advised me then that two investigations were ongoing: into SAA and SARS. No details as to the substance, scope or progress of either investigation was shared with me by Gen Ntlemeza in this short conversation.

103. I believe that the capture of the Hawks under Gen Ntlemeza was central to the state capture project. This capture enabled the Hawks to be abused for political

objectives through malicious law enforcement action and without regard for the impact that abuse of power would have on the integrity of the country, the economy or personally on the individuals, such as myself, who were targeted in this orchestrated campaign.

104. On or about 19 February 2016, in the week before my Budget speech, an envelope was hand-delivered to the Treasury at Gen Ntlemeza's insistence. This envelope contained 27 questions addressed to me from the Hawks, and demanding that they be answered by 2 March 2016. The questions related to the High Risk Investigations Unit within SARS, formed years earlier. Charges against me relating to that unit had been filed by Moyane on 15 May 2015 (SAPS Brooklyn Case No. 427/05/15).

105. I arranged to visit the then President later that day to present the correspondence and questions from the Hawks to him and to ask him whether he was aware of, and agreed with, this law enforcement action against me.

106. During that meeting, I objected strongly about this persecution and asked former President Zuma whether political activists like myself must now prepare to be eliminated during the democratic era even though we had survived the oppression of the Security Police in the apartheid era.

107. In response to my objection, he merely flipped through the pages of the letter. He said he would discuss the matter with the then Minister of Police, Mr Nkosinathi Nhleko ("Mr Nhleko").

108. I received no information from the former President in this regard subsequent to this meeting.

109. However, on Monday 22 February 2016, I was requested to attend a meeting with the Secretary General (Mr Gwede Mantashe) ("Mr Mantashe"), Deputy Secretary General (Ms Jessie Duarte) ("Ms Duarte") and Treasurer General (Mr Zweli Mkhize) of the ANC. I interrupted preparation for the Budget and flew to Johannesburg from Cape Town to meet them that afternoon. The 27 questions and this abuse of law enforcement powers for political objectives was discussed with them. I was assured that a political solution will be found to this political problem.

110. The 27 questions were leaked to the media the day after the Budget (**see Annexure 20**).

111. State Security Minister, Mr David Mahlobo, and Min Nhleko held a joint press conference on 2 March 2016, defending the investigation and the timing of the questions posed to me by the Hawks (**see Annexure 21**).

112. Following an extension on the deadline, I answered all 27 questions on legal advice and provided my responses to the Hawks (**see Annexure 22**).

113. This set of events, combined with what is set out below, was the beginning of what appeared to be a campaign to force me to resign as Minister of Finance and continue the efforts to capture the National Treasury thereafter. I believe that my re-appointment had thwarted these efforts and I believe Mr Nene was removed from the national executive for the same reason – to obtain full control of the Treasury.

114. In this regard,

114.1. I refer the Commission to the contents of subsequent media reports that revealed that shareholders in Gupta-linked consultancy group Trillian, allegedly were warned in advance that Mr Nene would be fired as Finance Minister, and that Trillian planned to exploit access to the Treasury under Mr Nene's replacement, Mr van Rooyen. Mr Eric Wood, Trillian's Chief Executive Officer at the time ("Wood"), denied the allegations, and suggestions that he, Trillian and other Gupta-connected individuals had profited from the market turmoil that followed Mr Nene's removal. Evidence provided by a Trillian whistleblower to the parliamentary inquiry into Eskom, established that Wood may have profited thanks to his prior knowledge of the removal of Mr Nene (**see Annexure 23**).

114.2. Upon returning to the Treasury, I learnt of a related controversy regarding the appointment of two individuals who accompanied Mr van Rooyen to the Finance Ministry following his appointment, namely Messrs Ian Whitley ("Whitley") (appointed as chief of staff) and Mohamad Bobat ("Bobat") (appointed as a special advisor) (**see Annexure 24**).

114.3. Messrs Whitley and Bobat also were reported to have been present with Mr van Rooyen at the Gupta family compound located in Saxonwold, in the days immediately preceding his appointment as Minister of Finance. A third individual, Malcolm Mabaso ("Mabaso") (said to be associated with the Guptas through former Minister of Mineral Resources, Mr Zwane) was also present with Mr Van Rooyen at Treasury, though his precise role was unclear.

114.4. Media reports also revealed that Whitley and Bobat shared a confidential Treasury document containing a Nine-Point Plan for South Africa's economic

recovery, growth and development, with Gupta associates and executives, including Messrs Essa, Wood and Mabaso, on or about 12 December 2015, prior to Mr Van Rooyen's removal. The email forwarding the Treasury document stated, "Gents, finally..." (see **Annexure 25**)

114.5. All of these reports may be relevant to explaining the removal of Mr Nene.

New Age Budget Breakfast Cancellation

115. Another decision which I believe may have contributed to my eventual removal as Minister of Finance in March 2017, was revealed on 21 February 2016, three days before the Budget was presented to Parliament, when the *Sunday Times* newspaper reported that the National Treasury had cancelled the Gupta-owned *The New Age* newspaper's sponsorship of, and participation in, the post-Budget breakfast briefing. This event was set to take place the morning following delivery of the Budget speech in Parliament (i.e. 25 February 2016). Ultimately, the broadcast rights for the breakfast briefing were allocated to two other media institutions, namely the SABC and ENCA, in an effort to rotate the opportunity to carry the broadcast.

Offer To Jonas

116. At around this time, on 16 March 2016, former Dep Min Jonas issued a statement confirming media reports that, in October 2015, he had been offered the

position of Minister of Finance to replace Mr Nene, prior to Mr Nene's removal in December 2015. Former Dep Min Jonas stated that the offer was made at a meeting at the Gupta family's Saxonwold compound by a member of the Gupta family, accompanied by Mr Duduzane Zuma, former President Zuma's son, and Mr Fana Hlongwane.

117. In this regard,

117.1. Mr Jonas contacted me on Friday, 23 October 2015, wishing to see me upon his return from the Eastern Cape that weekend. He seemed upset by something but did not discuss any details regarding why he wanted to see me.

117.2. I was visited by Mr Jonas on or about Sunday, 25 October 2015, at my Pretoria home. Mr Jonas appeared extremely distraught, upset and emotional. He seemed unable, or hesitant, to disclose specific detail about what had caused this (perhaps due to the presence of my wife), and said he found the situation intolerable and that he wanted to resign.

117.3. I tried to calm him down and to prevent him from making any drastic decisions given his state of mind. I dissuaded him from resigning, advising him that it would not be in the best interests of the country for him to leave his position.

117.4. I understood that he also was planning to discuss his situation with Mr Nene.

117.5. Following my re-appointment as Minister of Finance, I became aware of more details of the offer made to former Dep Min Jonas at the Gupta compound, as were later confirmed by him in his media statement, and

elaborated on further in his statement and evidence already provided to the Commission.

My interactions with Gupta family members

118. For the record, I have been asked by the Commission's legal team whether I ever met members of the Gupta family.

119. I have never been to the Gupta family compound located in Saxonwold.

120. I was invited to the infamous Gupta family wedding at Sun City, but declined the invitation.

121. I can recall the following further instances where I was in the same place as them.

121.1. I attended a cricket test match also in the 2009 to 2014 period (I cannot recall which year) and one of the Gupta brothers (I cannot recall which one) was present in the Presidential box. We greeted but did not speak to each other.

121.2. Ministers accompanied the former President to various functions, including breakfast briefings following the State of the Nation address. I recall that one or more of the Gupta brothers would be present at such events. I would see them, but not interact with them.

122. I can recall one meeting where the former President introduced me to Mr Ajay Gupta.

122.1. Early on in my first term as Minister of Finance, though I cannot recall precisely when, I went to the Presidential guest-house in Pretoria, Mahlamba Ndlopfu, for a meeting with former President Zuma. When I was called into the meeting room, former President Zuma introduced me to a man who I believe is Mr Ajay Gupta. Mr Zuma introduced him as “my friend” and told me that the man had expertise in regard to small business and finance. I recall us exchanging generalities for a couple of minutes, but I do not recall the details of what was a very cursory exchange. Mr Gupta then excused himself and left me and the former President to continue our meeting.

123. I had forgotten of another instance where one of the Gupta brothers may have been present at a meeting I had with billionaire Indian businessman Anil Ambani of the Reliance group of companies in or about June 2010. I stress that I do not recall the details set out below since it proved to be a meeting of little significance at the time, but have been assisted in this regard by my former Chief of Staff, Mr Dondo Mogajane.

123.1. I am told that the Presidency put Mr Rajesh “Tony” Gupta in touch with Mr Mogajane. Mr Gupta called Mr Mogajane repeatedly, asking for a meeting with me. However, he never advised Mr Mogajane who would be at such a meeting or what the agenda for the meeting was to be. We were even asked to attend the meeting at the Gupta family compound in Saxonwold. I refused to schedule a meeting with the Gupta family, whether at their residence or anywhere else.

123.2. Eventually, Mr Gupta told Mr Mogajane that one of the Ambani brothers, from the Reliance group of companies in India, wished to meet me and that it

was concerning a possible MTN transaction. Bharti Airtel had called off merger talks with MTN in 2008 and again in 2009, and Reliance Communications was reported also to have been interested in pursuing the acquisition of MTN during 2009. We were advised that Mr Ambani was in South Africa for the 2010 Soccer World Cup and that he would like to meet me regarding the possible MTN transaction (**see Annexure 26**).

123.3. I agreed to a meeting with Mr Ambani, who had the potential to be a significant investor in South Africa.

123.4. The meeting was held at a hotel in Pretoria, Villa Sterne, on a Sunday morning.

123.5. I attended the meeting, together with Mr Mogajane, who advises me that:

123.5.1. The meeting lasted less than an hour;

123.5.2. Discussions in the meeting were between Mr Ambani and I;

123.5.3. It commenced with general conversation about the World Cup, the Ambani family's visits to the Kruger National Park, and Indian and global politics;

123.5.4. Eventually, Mr Ambani asked about the legal and regulatory processes that would be required to obtain approval for a transaction such as the purchase of MTN and we spoke in general terms of what processes would need to be followed, and the role of the National Treasury; and

123.5.5. The meeting ended inconclusively and we parted ways and left.

123.6. Mr Mogajane has advised me that he recollects that Mr Ajay Gupta was present at the meeting. I do not recall him being present.

123.7. I wish to refer the Commission to **Annexure 27**, which is my response to a Parliamentary question from the Democratic Alliance. It is apparent in my written response that I do not make mention of the 2010 meeting with Mr Ambani of the Reliance Group, which a Gupta brother may or may not have attended. This is simply because, at the time of submitting the written response, I had no recollection of the 2010 meeting with Mr Ambani.

Public attacks and Presidential inaction

124. Returning to the events of 2016, it was a year marked by ongoing harassment and attempted distraction of me by law enforcement agencies, some media houses and a persistent social media campaign of fake news and personal attacks that appeared antagonistic towards me and the work being done by Treasury. I was the target of an orchestrated campaign that appeared aimed at forcing me to resign as Minister of Finance. The role of the public relations agency Bell Pottinger was central to this orchestrated campaign and I am sure it is well known to the Commission.

125. This orchestrated campaign against me and National Treasury caused immense stress for myself, former Dep Min Jonas, senior officials and our families. In response, we were repeatedly advised by our comrades that we should not resign but that we should continue to serve the national interest and to "hang in there." Comrades would tell us that, ultimately, all one had was one's integrity and

that it was worth fighting for. The sentiment seemed to be that we should not "make it easy for them" to get rid of those of us who were seen as obstacles to the state capture project and the looting of our public resources.

126. It was a difficult and challenging period. Throughout, I tried to focus on the national interest and what was best for our country, and to do my work and fulfil my constitutional obligations with that as the guiding principle.

127. First to occur was the blatant refusal by Mr Moyane to account to me as Minister of Finance on material issues (such as the operating model of SARS). He even refused to acknowledge my authority on what may appear to be petty matters such as his applications for personal leave would not be submitted to the Ministry (although during Mr Nene's time as Minister they were). He would claim that he obtained permission for leave from the Presidency, which officials there would deny.

127.1. Mr Moyane made serious allegations against me and continued to refuse to accept that as Minister of Finance, he is accountable and answerable to me for the performance of SARS. However, the former President did nothing to intervene in this deteriorating relationship, to facilitate adjudication of the dispute, or to resolve it in any other less formal way. It festered for many months, with Mr Moyane writing further letters about me to the President.

127.2. I faced further ongoing personal and institutional attacks, antagonism and an evident lack of accountability from Mr Moyane, the Commissioner of SARS. Indeed, the Commission is respectfully referred to the affidavit filed in the ongoing disciplinary proceedings against Mr Moyane for further detail regarding the deterioration of my relationship with him (**see Annexure 28**).

127.3. declaration of an inter-governmental dispute in terms of section 41 of the Inter-governmental Relations Framework Act, 13 of 2005, by Mr Moyane at SARS against me as Minister of Finance on or about 14 April 2016 (**see Annexure 29**).

127.4. Michael Hulley attempted to mediate the dispute on behalf of former President Zuma. However, he (Mr Zuma) appeared reluctant to personally intervene and end the hostility and lack of accountability from Mr Moyane evident in our relationship.

128. Second, in or about 12 June 2016, then Minister of Social Development, Bathabile Dlamini ("Min Dlamini"), wrote a lengthy letter to Mr Zuma seeking his intervention with regard to National Treasury's scrutiny of, and objections raised regarding the various systems for the payment of social grants and the implementation of policy by the Social Development Department (**see Annexure 30 - CONFIDENTIAL**).

129. In addition, the important work that National Treasury was doing to amend the Financial Intelligence Centre Act caused acrimonious and personally insulting attacks on me and the officials of the Department from those opposed to the amendments.

129.1. These amendments related to the improvement and strengthening of various aspects of South Africa's financial intelligence capabilities. The Financial Intelligence Centre ("FIC") receives information from the banking sector, which it analyses and shares with domestic and international law enforcement agencies to identify the proceeds of crime, combat money laundering, terrorism funding and tax evasion, among other crimes. South

Africa is a member of the Financial Action Task Force, which is an intergovernmental organisation that develops standards for all countries to combat these illegal activities and facilitates international cooperation in these efforts. In order to enhance the integrity of the financial system and to comply with developing international standards its best practices, South Africa needed to amend its legislation regarding the FIC Act and the powers and functions of the FIC.

129.2. Most controversially, the amendments introduced additional scrutiny of the personal finances and transactions of so-called Politically Exposed Persons ("PEPs") (which in the Act are termed Prominent Influential Persons ("PIPs") (and their families and associates), as well as a requirement to record the Beneficial Owners (the natural persons) of bank accounts.

129.3. This amendment process saw a concerted effort by other members of the executive in the Security Cluster to undermine National Treasury's oversight of the FIC. There appeared to be an effort to move the FIC, and presumably access to its highly sensitive personal information, to the Security Cluster (**see Annexure 31**). This was concerning since the FIC plays such an important role in the fiscal and banking regulatory environment overseen by National Treasury.

129.4. Former President Zuma also delayed signing the amendments into law until litigation was commenced to force him to do so. No meaningful engagement occurred between the Presidency and National Treasury regarding any reservations that the former President may have had regarding the Bill. Media reports noted that he was lobbied to not sign it into law by critics

and those that seemed opposed to National Treasury at the time (**see Annexure 32**). Eventually it was referred back to Parliament by the President in November 2016.

129.5. Media outlets owned by the Gupta family (ANN7 in particular) launched several determined attacks on the amendments. Commentators such as Mr Mzwanele Manyi and Mr Tshepo Kgadima of the Progressive Professionals Forum and Ms Danisa Baloyi of the Black Business Council were vocal critics of the amendments, and the provisions relating to PEPs in particular.

129.6. At the Parliamentary hearings held in January 2017, these same critics objected to the Bill. My Cabinet colleagues in the Security Cluster also met with officials from National Treasury to raise their objections to the amendments as well.

129.7. The Amendment Bill was eventually passed in May 2017 under my successor.

130. In sum, the orchestrated campaign against me and other leaders of National Treasury raged within the Cabinet, the institutions of state and on certain media and social media platforms. It shifted to yet another front later in the year, when I became the target of malicious and seemingly politically-motivated criminal charges.

Charges

131. On 11 October 2016, the former National Director of Public Prosecutions, Adv Shaun Abrahams ("Adv Abrahams"), announced that charges were to be brought

against me, as well as former SARS Commissioner, Mr. Oupa Magashula and former deputy SARS Commissioner, Mr. Ivan Pillay. The charges alleged fraud, relating to Pillay's early retirement, which had been approved by myself and Magashula in 2010 (**see Annexure 33**).

132. Subsequent media reports revealed that Adv Abrahams had met President Jacob Zuma, Mr Mahlobo, Justice Minister Michael Masutha and Social Development Minister Bathabile Dlamini at Luthuli House the day before his announcement, 10 October 2016. Adv Abrahams explained the meeting as being held to discuss student protests with ANC leaders, but it is unusual that the ministers of higher education, finance and police were not present if that was the subject of the discussion (**see Annexure 34**).

133. Markets reacted to the announcement of Adv Abrahams as follows:

133.1. The Rand weakened by 3.9% against the US Dollar;

133.2. Yields on South African government bonds due rose to their highest level since 2 September 2016 ;

133.3. The cost of insuring against non-payment of debt for five years using credit-default swaps, rose to the highest since July 2016; and

133.4. Bank stocks fell, wiping off almost R34 billion in value on the FTSE/JSE Africa Banks Index.

134. On 26 October 2016, in the midst of facing these charges, I delivered the Medium Term Budget Policy Statement (MTBPS) in Parliament.

135. In an about-turn days later, Adv Abrahams announced the withdrawal of all of the charges on 31 October 2016, stating that he was then satisfied that the three accused did not have the intention to act unlawfully (**see Annexure 35**). This was a few days before my first scheduled court appearance. Various civil society organisations had mobilised in protest against the charges and in support of me and my fellow accused.

136. Both announcements were made amid allegations in the public domain that political motives were at play in the decisions to question and charge me and my fellow accused, in what appeared to be yet another attempt to force me to resign, to create uncertainty and instability and ultimately, to enable the capture of the Treasury.

137. Following the withdrawal of the criminal charges, I then turned to preparation of the 2017 Budget, which I delivered to Parliament on 22 February 2017.

The closure of the Gupta bank accounts

138. In or about April 2016, Oakbay Investments (Pty) Ltd ("Oakbay"), controlled at that time by the Gupta family, announced that its bank accounts had been closed (**see Annexure 36**).

138.1. At around the same time, Mr Nazeem Howa, the Chief Executive Officer of Oakbay, began to correspond with me seeking my intervention to reverse these account closures. I obtained legal advice that confirmed that it would be unlawful and improper for me to intervene in the private contractual relationship

between a bank and its client. I conveyed this advice to Mr Howa, but he appeared undeterred and continued to request a meeting with me.

138.2. Together with officials from National Treasury, I held a meeting with representatives of Oakbay (including Mr Howa and Ms Ronica Ragavan) on or about 24 May 2016 in which we explained the highly-regulated environment in which banks operate and the requirements that they closely monitor and report on suspicious transactions in order to combat money laundering. We also explained the legal impediments to me, or anyone else, intervening in the private contractual relationship between a bank and its clients. I urged him to approach the courts for relief. I knew his father as a highly principled person and asked him directly if he believed his father would be proud of his behaviour.

139. Following a Cabinet meeting on 13 April 2016, at which I was not present, a Ministerial task team (which should not be confused with an Inter-Ministerial Committee ("IMC")), was established to look into the issue of the closure of the Gupta bank account. Mr Zwane, Labour Minister Mildred Oliphant and myself were nominated for this task.

140. Following correspondence received from Mr Zwane purporting to schedule a meeting of the task team (seemingly expanded to include the then Minister of Communications, Faith Muthambi) with the banking institutions, I questioned the purpose and seeming aim of the task team with my colleagues who were nominated to it. I explained the extensive global and domestic legal and regulatory framework that governs the financial sector, and cautioned that this framework needed to be understood and considered prior to any engagements with the

banking institutions. My concerns were not addressed by the members of the task team (**see Annexure 37**).

141. I chose not to attend the meetings of the task team nor to participate in its actions, because I was of the view, confirmed in legal advice, that members of the executive cannot interfere in the contractual relationships between banks and their customers.

142. I do recall further events in Cabinet that I cannot publicly disclose but which I have indicated to the Commission should be investigated, that indicated to me that Mr Zwane had the full backing and support of former President Zuma in pursuing the task team's objective of undermining and maligning the stance adopted by myself and National Treasury to the closure of the bank accounts, this included three reports from the task team, two of which were distributed in Cabinet.

143. On or about 1 September 2016, Mr Zwane issued a media statement, purportedly on behalf of the task team and, I believe, based on its first report, announcing that it, through Cabinet, would recommend to former President Zuma that a judicial inquiry be established into the closure of the bank accounts of several Gupta companies by the major commercial banks in South Africa. This statement was effectively abandoned in the days that followed, with a statement issued by the Presidency, to clarify that no such decision had been endorsed as a decision by Cabinet (**see Annexure 38**).

144. On or around 14 October 2016, I launched a court application to seek declaratory relief regarding the limitations of my available powers to intervene in various decisions taken by several commercial banks to close the accounts held by Gupta-related firms (**see Annexure 39**).

144.1. This application attracted further hostility towards me from supporters of the former President and the Guptas.

144.2. Attached to the application as an annexure was a certificate issued by the Financial Intelligence Centre certifying that it had received 72 Suspicious Transaction Reports from the various banks relating to suspicious account activity and transactions conducted using the bank accounts that had been closed. This was the first public acknowledgement of suspicions regarding the business affairs of the Gupta entities since the Public Protector's State of Capture report was only released to the public on 2 November 2016 (following litigation aimed at interdicting its release launched by former President Zuma, Mr Zwane and Mr van Rooyen.

145. I submit to the Commission that it should "follow the money" and request a full account of all transactions by any Gupta-related company and related individuals that has gone through bank accounts. By doing so it will be better placed to determine which activities were related to criminality and malfeasance. This will assist State Owned Enterprises and taxpayers to recover funds lost in this process.

"The Nuclear deal" (Part II)

146. Following Cabinet's decision on 9 December 2015 that the Department of Energy ("DoE") issue the Request for Proposal ("RFP") for the nuclear programme, the engagements between National Treasury and the DoE during 2016 largely centred on the procurement process to be followed.

147. The Office of the Chief Procurement Officer (“OCPO”) sought two legal opinions. Initially the DoE intended to undertake a closed government-to-government procurement, but this would have violated the Constitution, which requires that state institutions procure goods or services using a system that is fair, equitable, transparent, competitive, and cost-effective. Having reached agreement that a competitive process must be followed, the DoE continued to insist that the “pre-engagement” activities they had already undertaken (relating to the signing of the cooperation agreements) served to prequalify those bidders. There were several other unresolved issues, including aspects that would have required exemption from the Preferential Procurement Policy Framework Act. Moreover, the RFP documentation that had been prepared had many flaws and gaps, identified not only by the National Treasury officials, but also in reports produced by the advisors working on behalf of the DoE.

148. In June 2014, Eskom had written to the DoE indicating that the Board had decided not to provide funding for any new build projects beyond Medupi, Kusile and Ingula power stations due to the funding constraints Eskom was facing. As a consequence, the DoE had sought Cabinet approval for the South African Nuclear Energy Corporation SOC (“NECSA”) to replace Eskom as the implementing agent, i.e. the institution that would own and operate the nuclear power plants, with the DoE serving as the procuring agency.

149. Despite the fact that Eskom was experiencing severe financing challenges, warranting that government decide to appropriate R23 billion of funding to the company during the 2015/16 financial year, in September 2016, Eskom, through its then chief executive officer, Mr Brian Molefe, indicated its willingness and

commitment to participate in the nuclear build programme (**see Annexure 40**).

The Commission will be familiar with the centrality of Eskom's capture to the state capture project. In November 2016, Cabinet approved that Eskom assume responsibility for procuring, owning and operating the nuclear power stations. In December 2016, Eskom issued a watered-down and non-binding general request for information ("RFI") instead of the originally intended RFP.

150. Around the same time, the non-governmental organisations Earthlife Africa and the Southern African Faith Communities' Environment Institute launched legal proceedings against the Minister of Energy, the President and Eskom (among others) challenging the determinations in terms of Section 34 of the Electricity Regulation Act that had been made by the Minister of Energy in 2013 and 2016, and the constitutionality of the tabling by the Minister before Parliament of three intergovernmental agreements during 2015. This stalled progress on the nuclear programme.

151. Shortly after my replacement as Minister of Finance, the Cape High Court ruled that the nuclear cooperation agreements with the USA, Russia and South Korea were unconstitutional and unlawful, and that the ministerial determination for a 9.6 GW nuclear new-build in South Africa was invalid (**see Annexure 41**).

Maseko and DGs response

152. I have been asked by the Commission's legal team to respond to the evidence of Mr Themba Maseko regarding a memorandum calling for a commission of inquiry into state capture that a group of former Directors-General addressed to

the President, Deputy President, other Cabinet members and myself. One of the signatories to that memorandum, Mr Dipak Patel, provided me with a copy of the document. We had a brief conversation about it, during which I encouraged the group to "do their bit" to resist state capture and ensure accountability for those implicated in it. At this time, civil society also was active regarding state capture and corruption. The former Directors-General's concerns regarding the circumventing and undermining of procurement processes, professionalism and integrity within the public service were all concerns that I shared. I understand that the group demobilized following the failure of the ANC's own initiative to deal with state capture that came about at around the same time. I understand that only Mr Maseko lodged a submission with the ANC following its call for information. Nothing further came of the initiative, as far as I am aware.

V MY REMOVAL AS MINISTER OF FINANCE

153. As is customary, I planned and led an investor roadshow to London and the USA in late March 2017, following the Budget. As also is the usual practice, the Presidency approved the roadshow and the participation of myself, former Dep Min Jonas and the Director-General of the Treasury, Mr Fuzile. This approval involves the preparation of a memorandum setting out our proposed itinerary, details of the meetings to be held on the roadshow and details of the South African business people accompanying us on the roadshow.

154. According to that itinerary, Mr Fuzile and I traveled to London overnight on Sunday, 26 March 2017. Former Dep Min Jonas was due to fly to New York overnight on Tuesday, 28 March 2017 and Mr Fuzile was to travel from London to New York to join him. I would then return to South Africa overnight on that Tuesday.

155. Once the airplane touched down at Heathrow Airport on the morning of Monday, 27 March 2017, I turned on my mobile phone and received an SMS from Dr Cassius Lubisi, the Director-General in the Presidency. The message requested that I, former Dep Min Jonas (who had not left South Africa yet) and Mr Fuzile return to South Africa immediately.

156. Mr Fuzile and I discussed the message, and decided to proceed with the meetings scheduled for that day, including with two of the global ratings agencies and to schedule a teleconference call for Monday afternoon with the ratings agency with which we were scheduled to meet on Tuesday. We made this decision so as to provide these important players with the same information on the same day. This was the most cost-effective option to return to South Africa. My office

investigated purchasing a one-way ticket to fly home during the day on Monday, 27 March 2017, but I considered it too costly.

157. Also on Monday 27 March 2017, former President Zuma reportedly informed senior leaders of the South African Communist Party ("SACP") that he intended to remove me and former Dep Min Jonas, and referenced a purported "intelligence report" accusing me and others of conspiring with foreign forces against him as President. Of course, I reject and deny these allegations. I never saw this "intelligence report".

158. Following a day of meetings that formed part of the planned investor roadshow, I flew back to South Africa that evening, arriving back on Tuesday morning, 28 March 2017.

159. Tuesday, 28 March 2017 was the day that the court application regarding the closure of the Gupta businesses' bank accounts in South Africa by several of the major banking institutions was set to commence argument in the Pretoria High Court. It is of course possible that had I been removed as Minister of Finance by that time my successor would have withdrawn the application.

160. It was also the day that revered anti-apartheid activist, Mr. Ahmed Kathrada, passed away.

161. Immediately after landing at O R Tambo, on Tuesday 28 March 2017, Mr Fuzile and I met with the former Secretary-General of the ANC, Mr Mantashe, at Luthuli House to obtain clarity about our positions. None was forthcoming. Mr Mantashe had contacted me while I was still in London and we had agreed to meet upon my return to South Africa.

161.1. During that meeting with Mr Mantashe, he informed me that former President Zuma had met with the ANC's Top 6 officials on the previous day, Monday, 27 March 2017. The same fake "intelligence report" had been presented to them, but it had been rejected by those in the meeting.

161.2. Mr Mantashe then told me that Mr Zuma told them that, regardless of the "intelligence report", his relationship with me had irretrievably broken down. Since this was not my impression of my relationship with former President Zuma, I asked Mr Mantashe if he had indicated why he felt that our relationship had irretrievably broken down. Mr Mantashe indicated that he did not.

161.3. Mr Mantashe recounted that Mr Zuma had indicated that it was unusual that the Minister, Deputy Minister and Director-General were all out of the country at the same time. I corrected him, saying that former Dep Min Jonas had not yet left South Africa. Mr Mantashe seemed shocked by this fact.

161.4. I believe that Mr Zuma had mentioned Brian Molefe as a possible replacement as Minister of Finance, but that this suggestion was rejected by the members of the Top 6 in the meeting.

161.5. As an aside, I note that, on 23 February 2017, Mr Brian Molefe, who had resigned as the Eskom CEO in November 2016, following the Public Protector's *State of Capture* report, was sworn in as a Member of Parliament for the ANC. Speculation at the time was that this was a precursor to his appointment as my replacement as Minister of Finance. Almost a year earlier, in April 2016, Mr Sifiso Buthelezi also, was sworn in as a Member of Parliament for the ANC. Speculation suggested that he was earmarked to be Mr Molefe's Deputy Minister.

161.6. Mr Mantashe indicated to me that Mr Zuma would prefer it if I would resign, rather than him having to fire me. He spoke to me about leaving with my integrity or honour intact. As explained above, I had no plans to resign but would continue to serve the national interest. My position was that the former President could fire me if he wanted to get rid of me.

161.7. I understood from Mr Mantashe that I was likely to be removed, but that the issue of my replacement was to be discussed again by Mr Zuma at the next Top 6 meeting the following week (Monday, 3 April 2017). Mr Fuzile was distraught at the turn of events and was himself considering resigning.

161.8. I returned to my office at National Treasury that afternoon.

162. The next day, Wednesday, 29 March 2017, a funeral was held for Ahmed Kathrada at West Park Cemetery in Johannesburg.

163. On Thursday, 30 March 2017, the SACP issued a media statement recording that it had been informed on Monday, 27 March 2017 by Mr Zuma that I was to be replaced as Minister of Finance (**see Annexure 42**). The statement recorded that the SACP objected to this intended reshuffle. It also noted that it had laid a complaint with the Inspector General of Intelligence and the Minister of State Security regarding "a rogue intelligence unit that in our view gathers data illegally, produces false reports and feeds them into the political and public domain to smear comrades." I do not know the status of that complaint.

164. That evening, former President Zuma announced that both myself and former Dep Min Jonas, and several others including Ministers Hanekom and Ramathlodi, were removed from our positions (**see Annexure 43**). We were replaced by

Messrs Malusi Gigaba and Buthelezi, respectively. I became aware of my removal when the President made his announcement of the reshuffle, which was broadcast on television while I watched.

165. I had no contact with the former President regarding his decision to remove me as Minister of Finance.

166. The global ratings agencies expressed their immediate concern at these developments. For example,

166.1. On Monday, 3 April 2017, Moody's Investors Services announced that it had placed the Baa2 long-term issuer and senior unsecured bond ratings of the government of South Africa on review for downgrade. That review was said to be prompted by "the abrupt change in leadership of key government institutions" and would "allow Moody's to assess these risks and if the changes in leadership signal a weakening in the country's institutional, economic and fiscal strength."

166.2. The same day, Standard & Poor's, downgraded South Africa's ratings to 'BB+' from 'BBB-' and the long-term local currency rating to 'BBB-' from 'BBB' in a reflection of their "view that the divisions in the ANC-led government that have led to changes in the executive leadership, including the finance minister, have put policy continuity at risk. This has increased the likelihood that economic growth and fiscal outcomes could suffer."

166.3. On 7 April 2017, Fitch Ratings also downgraded South Africa's Long-Term Foreign- and Local-Currency Issuer Default Ratings to 'BB+' from 'BBB'. These downgrades were made in light of its view that "the cabinet

reshuffle, which involved the replacement of the finance minister, Pravin Gordhan, and the deputy finance minister, Mcebisi Jonas, is likely to result in a change in the direction of economic policy. The reshuffle partly reflected efforts by the out-going finance minister to improve the governance of state-owned enterprises (SOEs). The reshuffle is likely to undermine, if not reverse, progress in SOE governance, raising the risk that SOE debt could migrate onto the government's balance sheet. Differences over the country's expensive nuclear programme preceded the dismissal of a previous finance minister, Nhlanhla Nene, in December 2015 and in Fitch's view may have also contributed to the decision for the recent reshuffle."

VI RETURN TO PARLIAMENT

167. Following my removal as Minister of Finance, I remained an ANC Member of Parliament. I was a member of the Portfolio Committee on Public Enterprises that held an inquiry into state capture at various SOCs, including Eskom, Transnet, PRASA and Denel. The disclosures and submissions made to the Committee will doubtlessly be relevant to this Commission's other terms of reference. I do not provide that detail in this statement.

168. My experience in the Portfolio Committee's inquiry into Eskom, in particular, revealed the extent of manipulation of the Boards of SOCs, their management, and the abuse of the contracts and procurement processes for corrupt and unlawful ends. This pillage was replicated and became prevalent in other SOCs as well. I believe that this hollowing out of the governance structures of SOCs was a direct consequence of the state capture project and was aimed at facilitating their plunder. One can observe how the methodology was perfected at one SOC and then replicated at others as the state capture project was rolled out.

VII RETURN TO CABINET

169. Following Mr Zuma's resignation on 14 February 2018, President Ramaphosa announced a cabinet reshuffle on 26 February 2018. I was appointed Minister of Public Enterprises.

170. In my current position, the investigation of the damage done in the past decade to South Africa's SOCs is ongoing. So too are efforts to restore good corporate governance, procurement framework compliance and accountability for implicated members of the Boards and management of SOCs. The details of the state of our SOCs and these "re-capturing" efforts also are relevant to this Commission's other terms of reference. The Department of Public Enterprises will be providing the Commission with information in this regard.

VIII CONCLUSION

171. The Commission's legal team has requested that I reflect on possible lessons and recommendations arising from my evidence relating to its Terms of Reference 1.1 to 1.3.

172. I believe that South Africa requires what I call a "whole of society transformation." By this I mean we need deep reflection on our chosen and shared values and priorities. On issues of integrity and corruption, South African business, and professionals or advisors in particular, need to reflect on their role in state capture. The Commission's investigation of these issues should lead to a genuine and deep transformation of business ethics and culture in our country.

173. I believe that meaningful reflection and transformation also is required in respect of the need for greater transparency and effective oversight with regard to major public procurement processes. New checks and balances on executive power – at all levels and in all spheres of government, not just the national executive or the Presidency – are required.

174. I believe that these lessons will promote unity and the national interest, and enhance development and inclusive growth.

175. The work currently being done with SOEs shows that they are and were seriously compromised in terms of the scale of financial losses, the undermining of good corporate governance, their operational capability, and the dearth of competent and courageous leadership in the face of serious fiscal risk.

176. The Commission should consider releasing interim reports or measures that could expose and help put a stop to ongoing malfeasance.

177. "Consequences management" is required: criminal charges should be pursued by our restored law enforcement agencies, individuals should have their services terminated, demoted, declared to be delinquent directors or ordered to pay back the money pillaged and looted from our state.

178. It must be recognised that those constituencies who would have liked the status quo to remain are engaged in a determined and vigorous fight back taking place across our state.

179. The real cost of state capture is the damage it has done to the institutional fabric of our state. Good people lost their jobs, families were put through trauma and vilification for standing up, and the lasting impact of the past decade weakened and hollowed out our state. A culture of malfeasance was legitimised and tolerated with increasing impunity and a lack of accountability. SOCs were distracted from their intended purpose of providing services, supporting economic development and creating inclusive growth in service of transformation.

180. People, including myself, who are appearing before the Commission continue to be subjected to harassment and racist abuse in frivolous and vexatious litigation, in the media and on social media. Decisions taken to clean up are stalled when they are challenged, whether internally or through litigation.

181. The misuse and abuse of public powers for suspicious objectives, including intimidation and harassment, also continues.

181.1. For example, recently on 1 October 2018, I was subpoenaed to appear before the Public Protector in regard to an investigation she is undertaking into the approval of an early retirement package offered to Mr Ivan Pillay. This was

the same issue regarding which I was charged criminally in 2016. The complaint was lodged on 18 November 2016 by Mr Lebogang Hoveka, who was then a speechwriter in the Presidency.

182. I believe that the fight back is aimed at countering the work done this year by public servants and political office bearers to “re-capture” the state and deliver on its constitutional mandate.

183. As I hope is clear from my statement, there were many who have resisted state capture at every opportunity, including activists, civil society, political leaders, journalists, businesspeople, labour, and lawyers. Our insistence on following the constitutional mandate given to the executive, and to follow the legal and regulatory frameworks over which we were responsible ensured that we could resist and oppose improper and unlawful schemes. Following the law and our consciences has been, and will continue to be, our chosen path. The cost of being honest is high for me personally, as well as for my family and my colleagues. It is a price paid to ensure that South Africa transforms from its apartheid past and its recently captured state into the nation for all South Africans promised in the Constitution.



PJ GORDHAN

11 October 2018

ANNEXURE 1

69

Media Releases 2009

Appointment of Acting SARS Commissioner

Pretoria, 11 May 2009 – Mr. Oupa Magashula will assume the duty as Acting SARS Commissioner from 3pm today.

The out-going Commissioner Mr. Pravin Gordhan, will be sworn in as South Africa's Minister of Finance with his Cabinet colleagues this afternoon.

Mr. Magashula has been with SARS since 2006.

On the recommendation of the Minister of Finance, the President and Cabinet will appoint the next SARS Commissioner in due course.

About Oupa Magashula--

Mr. Magashula is a Deputy Commissioner at SARS. Until today, he headed an operational division responsible for contact centres, processing centres and delivery enablement services such as process engineering and information management.

Prior to this he was head of Human Resources and other Corporate Services. He has created an advanced platform for people management and development.

In the early eighties he worked for a trade union, studied for a BSc at the University of Cape Town and later management courses at the UCT Business School. He has worked in the private sector both in operations and HR – Nampak, Sun International and Anglo Vaal Industries.

Prior to SARS, he was HR Director at Telkom.

ENDS.

ANNEXURE 2

71

Media Releases 2009**Appointment of a new Commissioner for the South African Revenue Service**

Pretoria, 30 July 2009 – Cabinet today announced the appointment of Mr. Oupa Magashula (47) as the new SARS Commissioner. Magashula has been the Acting SARS Commissioner since 12 May 2009 when Mr. Pravin Gordhan was appointed as South Africa's new Minister of Finance.

About Oupa George Magashula

He has been with SARS since 2006 when he was appointed as the head of Human Resources and Corporate Services and served on the SARS executive committee. He later took charge of an operational division within SARS responsible for contact centres, processing centres and delivery enablement. Prior to SARS, he was HR Director at Telkom.

In the early eighties he worked as a trade unionist. In 1991 he completed a BSc (Oceanography and Chemistry) at the University of Cape Town and later completed business management courses at the UCT Business School. He has worked in the private sector both in operations and HR – Nampak, Sun International and Anglo Vaal Industries.

Magashula is married with 2 children.

ENDS

ANNEXURE 3

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Individuals

Businesses and Employers

Tax Practitioners

[SARS Home](#) > [Media](#) > [Media Releases](#) > 12 July 2013 - Media Statement by Finance Minister Pravin Gordhan

MEDIA STATEMENT BY FINANCE MINISTER PRAVIN GORDHAN

SARS Commissioner Oupa Magashula Resigns

On 24 March 2013 I said I would institute a thorough investigation into allegations against the Commissioner of the South African Revenue Service (SARS), Mr Oupa Magashula, published in the media on that day. Following the outcome of a fact-finding inquiry into these allegations, Mr Magashula has resigned with effect from 12 July 2013.

The media reports were based on a telephone conversation during which Mr Magashula was recorded offering a Chartered Accountant a job at SARS. The conversation was facilitated by a Mr Timothy Marimuthu whom media reports alleged had influence over Mr Magashula. The effect of these reports was to raise questions about the integrity of staff recruitment processes at SARS.

To protect the integrity of this vital fiscal institution, reassure the South African public and ensure a rapid process of establishing the facts relating to the events as reported by the media, I appointed retired Constitutional Court judge, Justice Zak Yacoob, and Advocate Muzi Mkhahane.

Justice Yacoob's committee was mandated:

1. To establish whether the event referred to in media reports of 24 March 2013 had resulted in any breach of SARS processes or good governance;
2. To report on the nature of any possible indiscretion by the SARS Commissioner;
3. To report on the influence that Mr Marimuthu is alleged to have had over the Commissioner.
4. To advise the Minister on any appropriate remedies where breaches may have occurred.

The committee did not have powers to subpoena witnesses. People who gave evidence before the committee did so voluntarily. This means that all the people who gave evidence to the committee, especially those who are named in the report, had to give consent for publication of those sections of the report that relate to their evidence. For this reason, the report will be published on the websites of National Treasury (www.treasury.gov.za) and SARS (www.sars.gov.za) at 17h00 today.

The committee submitted its report to the Minister on Monday, 8 July 2013. (You will notice that the published report is dated the 12th. This is because the published version was submitted to the Minister on Friday the 12th as the committee had to seek the consent of all the witnesses as explained above).

In summary, the key findings are as follows.

1. In relation to the terms of reference number 1 and 2, the key findings are that Mr Magashula:
 1. Had by his conduct placed the reputation and credibility of SARS at risk;
 2. Was much less frank with the committee than the committee would have expected of the person who had the integrity essential to his position;
 3. Caused the Minister to make an incorrect statement to the public with regards to the CA's CV not having been sent to SARS. An interview had been arranged, but the CA cancelled because she preferred a job based in Durban, which did not meet SARS' requirements.
 4. Interacted with Mr Marimuthu more times than he had initially admitted to the Minister and the committee; and that
 5. He told the Minister and the committee (during his first appearance before it) that he had had no further communication with the CA. It later transpired that she had sent five emails to the Commissioner's private SARS email address.
2. The allegations of Mr Marimuthu's influence over Mr Magashula could not be probed because Mr Marimuthu did not respond positively to the request for an interview.

3. The committee was unable to pronounce on the precise number of people who may have been involved in what the committee sees as the attempt to blackmail the SARS Commissioner.
4. The committee found no evidence that Mr Magashula committed a crime.

Mr Magashula was given a copy of the report on Tuesday, 09 July 2013. The following day, 10 July 2013, he admitted to the Minister and the Deputy Minister of Finance that his actions constituted failure to promote and maintain a high standard of professionalism and ethical behaviour that is expected of the Commissioner of SARS.

After considering the report and its recommendations, the Minister will do the following:

1. Accept Mr Magashula's resignation with effect from 12 July 2013.
2. Instruct the Audit Committee of SARS to investigate whether the Commissioner's behaviour breached any of the tax and cust processes at SARS.
3. Appoint a committee to review SARS's governance and ethical standards, especially as they pertain to the office of the Commissioner.
4. In addition, the Minister will ask the public to also review the code and recommend improvements. Submissions from the pub be considered by the review committee.

Further details on the committee to review SARS' governance and ethical standards as well public participation in the review will be announced shortly.

I would like to reassure South Africans that the SARS management team and employees are committed to:

- The highest level of integrity;
- Best service to South Africans; and
- Fair implementation of tax and customs laws.

"The South African Revenue Service is one of the key pillars of our fiscal order, and therefore, our democratic dispensation. It is an institution whose very foundations are built on the trust and credibility that South African taxpayers have in it. It is therefore critical that to whom the stewardship of this vital fiscal institution is entrusted conduct themselves, during and after working hours, in a manner that ensures that they are above question," the Minister said.

I would like to thank Mr Magashula for his contribution to SARS during his tenure as Commissioner since 2009.

Mr Ivan Pillay, currently the Deputy Commissioner at SARS, has been appointed acting Commissioner until the appointment of a new of SARS.

Issued by: Ministry of Finance

Date 12 July 2013

For media enquiries, please contact Jabulani Sikhakhane on 078-097-8003 or via email: media@treasury.gov.za.

For more information:

- [Report of the fact-finding inquiry into allegations against SARS Commissioner](#)

Annexures:

- [Annexure A - Transcript](#)
- [Annexures B,C & D - Correspondence to Marimuthu and Mba](#)
- [Annexure E - SARS Code of Conduct](#)
- [Annexure F - Revised SARS Code of Conduct](#)
- [Annexure G - Practical Guide for Conduct for SARS Managers](#)
- [Annexures H,I,M & N - Mba's emails to Commissioner](#)
- [Annexures J, K & L - Affidavits by Mr Magashula, Mr Pillay and a SARS official](#)

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ANNEXURE 4

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MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA



South African Revenue Service

Commissioner for the South African Revenue Service

We require an individual who reflects the highest professional standards of propriety and probity, to include: • Integrity and Honesty • Accountability • Professionalism • Ensuring superior quality service to all South African citizens.

Job Profile: Formulate, lead and direct the business strategy for the South African Revenue Service in order to deliver on its mandate.

Responsibilities include: • The development and implementation of business strategy to fulfil its mandate • Ensuring effective management of the operations of SARS • Ensuring the strategic positioning of SARS with public service leaders and national, regional and international stakeholders • Leading the development, implementation of and adherence to enterprise control, risk and compliance frameworks • Ensuring effective financial budgeting and controls, cost management and corporate governance across the organisation • Fostering high engagement levels to enable employees to perform at their peak • Demonstrating exemplary leadership behaviour through personal involvement, commitment and dedication in support of the values of SARS.

Technical competencies required will include, but not be limited to: • General management experience • Service delivery innovation • Business acumen • Decisiveness • Efficiency improvement • Execution, implementation and follow-through.

Behavioural competencies required will include, but not be limited to: • Honesty and integrity • Professionalism • Fairness • Championing the mandate • Accountability • Building sustainability • Conceptual thinking • Diplomacy • Leveraging diversity • Macro-environmental influence and partnership relations • Responsibility for societal impact.

Requirements: • A recognised three-year qualification and a minimum of 10 years' managerial experience.

For a detailed job description about the position, visit www.treasury.gov.za

Enquiries on the position may be made to Mr Dondo Mogajane on (012) 315-5052

Closing date: 13 September 2013

Please forward your application, quoting reference number CSARS/2013 and the name of the publication in which you saw this advertisement, to Mr Dondo Mogajane, National Treasury, Private Bag X115, Pretoria 0001 or e-mail: exec.recruit@treasury.gov.za

ANNEXURE 5

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President Zuma announces appointment of new SARS Commissioner

23 September 2014

The President of the Republic of South Africa, Mr Jacob Zuma, has in terms of section 6 of the South African Revenue Services Act, 1997, appointed Mr Thomas (Tom) Swabihi Moyane as a Commissioner of the South African Revenue Services. Mr Moyane's appointment is with effect from 27 September 2014.

Mr Moyane, a development economist, recently served as the advisor on turnaround and security strategies at the State Information Technology Agency (SITA).

His qualifications include a BSc Economics from the Eduardo Mondlane University in Mozambique, Diploma in consulting to small Business from the University of the Witwatersrand, and certificates in Strategic Management, Managing Markets from Henley, Micro-economics from London School of Economics and Mastering Finance from GIBS.

Mr Moyane will bring more than 30 years' experience to the position, having worked as a senior executive in various government and private sector entities.

Mr Moyane has served as National Commissioner at the Department of Correctional Services, as Chief Executive Officer for the Government Printing Works, as managing director for Engen Mozambique as well as regional coordinator for the regional spatial development initiatives and as chief director for industry and enterprise development at the department of trade and industry. During his period in exile he worked for government departments in Mozambique and Guinea Bissau.

The President has wished Mr Moyane well in his new responsibility of steering SARS to the future.

Mr Moyane said: I thank the President and the Minister of Finance, Mr Nhlanhla Nene for the confidence they have bestowed upon me. I look forward to working with the successful team at SARS to assist to take forward all priority development programmes and policies.

Enquiries: Mac Maharaj on 079 879 3203 or macmaharaj@icloud.com

Issued by: The Presidency
Pretoria



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Mr Moyane, a development economist, recently served as the advisor on turnaround and security strategies at the State Information Technology Agency (SITA).

His qualifications include a BSc Economics from the Eduardo Mondlane University in Mozambique, Diploma in consulting to small Business from the University of the Witwatersrand, and certificates in Strategic Management, Managing Markets from Henley, Micro-economics from London School of Economics and Mastering Finance from GIBS.

Mr Moyane will bring more than 30 years' experience to the position, having worked as a senior executive in various government and private sector entities.

Mr Moyane has served as National Commissioner at the Department of Correctional Services, as Chief Executive Officer for the Government Printing Works, as managing director for Engen Mozambique as well as regional coordinator for the regional spatial development initiatives and as chief director for industry and enterprise development at the department of trade and industry. During his period in exile he worked for government departments in Mozambique and Guinea Bissau.

The President has wished Mr Moyane well in his new responsibility of steering SARS to the future.

Mr Moyane said: I thank the President and the Minister of Finance, Mr Nhlanhla Nene for the confidence they have bestowed upon me. I look forward to working with the successful team at SARS to assist to take forward all priority development programmes and policies.

Enquiries: Mac Maharaj on 079 879 3203 or macmaharaj@icloud.com

Issued by: The Presidency
Pretoria

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ANNEXURE 6

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**government
communications**

Department:
Government Communication and Information System
REPUBLIC OF SOUTH AFRICA



Statement on Cabinet meeting of 9 November 2011

10 November 2011

Cabinet held its ordinary meeting in Cape Town on 9 November 2011.

1. Current Affairs

1.1 International Agenda

Cabinet noted the President's upcoming two-leg visit to the Arabian/Persian Gulf Region, including the United Arab Emirates and Oman from 12 to 16 November 2011. South Africa's relations with the Gulf are primarily of an economic nature and are focussed on increasing trade and investment.

1.2 COP17

The President of the Republic of South Africa, Mr Jacob Zuma and his Cabinet call on all South Africans to "Play your Part" in welcoming the world as we approach the COP17 conference and encourage South Africans to wear green to show support for the conference. The President further calls on media to partner with government to mobilise the nation in boosting its "green" economy and reducing the country's carbon footprint as we count down 18 days to the COP17 Conference in Durban.

1.3 Census 2011

The Cabinet expressed its appreciation to the entire nation who participated in the Big Count which officially ended on 31 October 2011 and commended Statistics South Africa for the success of the monumental undertaking of Census 2011. Cabinet urges individuals who have not been counted to call the Census toll free number 0800 110 248 immediately to make arrangements to be counted before Monday, 14 November 2011.

Cabinet further calls on all individuals in the country to cooperate with Census officials in the next step of Census 2011, where a Post Enumeration Survey will be undertaken from 15 November to 15 December 2011, to determine Census coverage and measure undercount.

1.4 Safety and Security related issues

Cabinet condemns the senseless and brutal acts of criminality that have been coined "corrective rape". The South African Police Service's and National Prosecuting Authority's respective sexual offences and community affairs units are investigating reported cases. Perpetrators who are found guilty will be met with the full might of the law. Victims continue to receive assistance and support from the Department of Justice and the Department of Social Development.

1.5 Labour Force Survey

Cabinet noted the cause for some optimism from the latest Quarterly Labour Force Survey which indicates that during the recent economic recession there was an increase in employment. It is reported that this survey shows that unemployment declined to 25% from 25.7%. These findings point to the fact that our economy continues to remain resilient in the face of difficult conditions facing the domestic and world economy.

1.6 National Accords

Cabinet welcomes and supports the various accords that have been signed by business, labour and government on local procurement, basic education and skills development which reflect a national plan of action to meet the goal of creating 5 million jobs by 2020.

2 Key strategic decisions included the following:

2.1 National Waste Management Strategy (NWMS)

Cabinet approved the National Waste Management Strategy for implementation. The NWMS has eight key goals:

- Promoting waste minimisation, re-use, recycling and recovery of waste;
- Ensuring effective and efficient delivery of waste services;
- Growing the contribution of the waste sector to the green economy;
- Ensuring that people are aware of the impact of waste on their health, well-being and the environment;
- Achieving integrated waste management planning;
- Ensuring sound budgeting and financial management for waste services;
- Providing measures to rehabilitate contaminated land; and
- Establishing effective compliance with and enforcement of the Waste Act.

An action plan that sets out how to meet the goals and targets is part of the strategy, and the actions include roles and responsibilities for different spheres of government, industry and the civil society.

2.2 Turkey's proposal for a Free Trade Agreement (FTA)

Cabinet approved that South Africa advances a mutually beneficial, cooperative and balanced approach to building trade and investment relations with Turkey and avoid destructive competition that could result from ineffective management of a Free Trade Agreement (FTA).

The South African Government has carefully considered how best to build bilateral trade and investment relations with Turkey, which is an increasingly important partner in the global economy. Government recognises that both Turkey and South Africa as emerging economies have similar challenges and trajectories for economic growth and development. It also recognises that current levels of trade and investment are comparatively low, offering scope for growth. In view of this, a mutually beneficial relationship would best be served by collaboration that builds complementarities in our economies and our trade and investment links. These should be structured to support the priorities of our respective economic development strategies and objectives. An FTA

does not allow for such a nuanced mutually beneficial approach to building economic relations and, instead, encourages destructive competition that will undermine our industrial and employment objectives.

2.3 Hosting of the Annual Meeting of the Global Forum on the Transparency and Exchange of information for Tax Purposes in South Africa during the 2012/2013 financial year.

As part of the fight against corruption, money laundering and aggressive structuring, Cabinet approved the hosting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in South Africa during the 2012/2013 financial year.

The benefits for South Africa in hosting a meeting of the Global Forum include:

- Providing South Africa with an opportunity to underscore the importance of tax compliance in support of economic and social development.
- An opportunity for South Africa and its counterparts to initial or sign Tax Information Exchange Agreements that have been negotiated but not signed as yet. The signing of these agreements would allow for the sharing of information for tax purposes and counter tax avoidance activities.
- With the exception of Africa, every geographic region in the world has had the opportunity to host an annual meeting of Global Forum. South Africa will become the first African country to host a meeting of the global Forum.
- Hosting may lead to the establishment of greater networks for the exchange of tax information between African countries and their international partners
- The South African economy will benefit from the presence of foreign visitors.

2.4 South Africa's chairing of the Southern African Development Community (SADC) organ on Politics, Defence and Security Cooperation

Cabinet approved the proposed strategy for South Africa's terms of chairship of the South African Development Community (SADC) Organ on Politics, Defence and Security Cooperation. South Africa will collectively be responsible for policy guidance and oversee the implementation of decisions between the Summits.

Cabinet noted that active South African leadership at Executive level is required at the SADC Election Observer Missions (Democratic Republic of Congo (DRC), Zambia, Lesotho and possibly Zimbabwe and Madagascar). Cabinet further noted that full engagement is required to improve management systems and procedures in the SADC Secretariat and supports the establishment of an interdepartmental core group under the leadership of the Department of International Relations and Cooperation (DIRCO).

2.5 Establishment of the South African Council on International Relations (SACOIR)

Cabinet noted the establishment of the South African Council on International Relations (SACOIR) and the terms of reference.

This forum will serve as a consultative forum for South African non-state actors and government experts to interact with DIRCO on development and implementation of South Africa's foreign policy. Its main objectives are:

- To provide a platform for the generation of public debate on foreign policy;
- To provide a consultative forum for the regular review of South Africa's foreign policy. And;
- To advise the Minister of International Relation and Cooperation.

2.6 Feasibility study for the acquisition of new rolling stock for the commuter services of the Passenger Rail Agency of South Africa (PRASA)

Cabinet noted the conclusion of the feasibility study for the procurement, financing and maintenance of new rolling stock for the Metrorail services of the Passenger Rail Agency for South Africa (PRASA). The feasibility study has found that the acquisition of new rolling stock is an economically viable project.

Cabinet further noted that local industry will be stimulated through involvement in the manufacturing and/or assembly of the new rolling stock. This will be implemented to a progressively greater degree over the procurement period in line with the intention of the second Industrial Policy Action Plan (IPAP II) to ensure the greatest possible local content. This acquisition will require the development of local rail engineering skills and capacity to support the substantial number of job opportunities that will be created.

2.7 Transnet National Ports Authority (TNPA) for interim operations by Transnet Port Terminal (TPT) at the Port of Ngqurha container terminal

Cabinet approved the decision to direct the Transnet National Ports Authority (TNPA) to licence Transnet Port Terminal to operate the Port of Ngqura for a limited period of 3 years, subject to the TNPA beginning a competitive process for the licensing of the Port of Ngqura in accordance with section 56 of the National Ports Act, 2005.

2.8 Implementation plan for the approved Minerals Beneficiation Strategy

Cabinet approved the implementation plans for both the iron and steel value chains and energy commodities value chains. Cabinet further approved the interdepartmental structure that will manage the process.

2.9 Establishment of the National Nuclear Energy Executive Coordination Committee

Cabinet approved the establishment of the National Nuclear Energy Executive Coordination Committee (NNEECC) to implement a phased decision making approach to the nuclear programme. Cabinet further approved the establishment of the nuclear energy technical committee (NETC) to support the NNEECC.

3 Bill approved

3.1 National Environmental Management: Integrated Coastal Management Amendment Bill, 2012

Cabinet approved the National Environmental Management Integrated Coastal Management Amendment Bill, 2012 be published for public comment.

The amendment Bill seeks to:-

- Ensure that coastal public property does not impact on assets and operations of other organs of State. It clarifies the protection of the sea and the sea-bed without limiting the functions of other organs of State in performing their duties, and supporting sustainable management of the coastal environment;
- Align certain sections of the Act with the provisions in the National Environmental Management Act, 1998.
- Close the gaps that were identified presented themselves during the implementation of the provisions of the Act and,
- Make textual corrections and tighten up the offences and penalty provisions.

4 Appointments

Cabinet approved the following appointments:

4.1 Prof. Anthony David Mbewu was appointed Chief Executive Officer (Director-General Level) of Government Printing Works.

4.2 Mr Nkosiyethu Henrick Thulani Mkhwanazi was appointed Deputy Director-General: Economic Development, Trade and Marketing in the Department of Agriculture, Forestry and Fisheries.

4.3 Mr Oupa Jacob Komane was appointed to serve as a member of the National Energy Regulator of South Africa (NERSA) replacing Mr Nkateko Nyoka.

4.4 Legal Aid Board: Ms Marcella Naidoo, Prof Yousuf Vawda and Ms Nonhlanhla Mgadza were reappointed to the Legal Aid Board for a period of three (3) years.

4.5 South African National Accreditation System (SANAS) Board: Mr Vernon Seymour and Mr Phakamisa Zonke were appointed as Non-Executive Directors to the South African National Accreditation System (SANAS) Board for a period of 3 years.

4.6 Adv Catherine Letele was appointed Non-Executive Director to the National Metrology Institute of South Africa (NMISA) Board for a period of three years.

4.7 South African National Biodiversity Institute (SANBI) Board: Mr Steven Thomas Cornelius, Dr Bernard Fanaroff, Mr Joseph Moemise Matjila, Ms Busisiwe Duduzile Ngidi, Mr Thamsanqa Sokutu, Mr Antony Frost, Mr Godfrey Mashamba and Ms Nana Magomola were appointed to serve on the Board of the South African National Biodiversity Institute (SANBI) for a term of three years.

4.8 iSimangaliso Wetland Park Authority (iSimangaliso) Board: Ms Karin Mathebula, Mr Allan Lax, Mr Paul Ndukuzempi Buyani Zwane, Ms Thobile Ethelfrida Mhlono, Mr Zwelinzima Thwalizwe Gumede, Dr Antonia Thandi Nzama, Ms Poppy Senelisiwe Dlamini and Mr Mavuso Msimang were appointed to serve on the Board of iSimangaliso for a term of three years.

Cabinet congratulates the new appointees and wishes them well in their new responsibilities.

Enquiries

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Issued by Government Communications (GCIS)

Cabinet statements

Year: 2011

Media Statement date: Thursday, November 10, 2011

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ANNEXURE 7

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Minister fires point man on nuclear

Senti Thobejane's removal may slow down contested power plan

- Business Day
- 15 Sep 2015
- CAROL PATON Writer at Large patonc@bdlive.co.za

THE key figure in the government's bid to secure a 9.6GW nuclear energy programme, nuclear physicist Senti Thobejane, has been fired by Energy Minister Tina Joemat-Pettersson, raising new questions on the future of the project.

Mr Thobejane, who was nuclear adviser to Ms Joemat-Pettersson, also advised President Jacob Zuma, which, with his knowledge and skills, placed him in a unique position to broker the large nuclear procurement, of which Mr Zuma has been an enthusiastic supporter.

He was the key figure in discussions with vendor countries and played a central role in the Cabinet's energy security subcommittee that is led by Mr Zuma himself.

His sudden departure comes as the Treasury is finally getting to grips with the feasibility of the nuclear procurement, which until recently had been kept under wraps by the Department of Energy. The department has repeatedly assured Parliament and the public that the procurement of 9.6GW of nuclear energy was affordable and viable. However, it has refused to make public the studies which it says support this.

The reasons for the termination of Mr Thobejane's contract are not publicly known. However, he had repeatedly clashed with Ms Joemat-Pettersson who had resisted attempts to have him installed as her head of department.

Ms Joemat-Pettersson, who was in Austria attending a meeting of the International Atomic Energy Agency was not available for comment.

However, aside from Mr Thobejane's departure, there are other signs that the programme may be losing momentum. Six weeks ago Ms Joemat-Pettersson denied that the government had ever said it would build 9.6GW of nuclear power, describing the number as "a thumb-suck".

This follows her insistence on several occasions, including in both budget speeches over the past two years, that the government would build 9.6GW of nuclear power. Similar assertions were made by Mr Zuma in his state of the nation address.

But while it appears that Ms Joemat-Pettersson may compromise on the scale of the nuclear project in the short term, in the long term her department is pushing for a greater share of nuclear energy in the future.

A new integrated resource plan that projects energy demand for the next 30 years and plans the future energy mix is being drafted by her department. Officials say that it is likely to include a higher share for nuclear energy than the 9.6GW already planned. This is in order to meet climate mitigation targets, they say.

In reply to questions submitted by Democratic Alliance MP David Maynier, Finance Minister Nhlanhla Nene said yesterday that the Treasury was still in the process of assessing both the financial costs and economic effects of the nuclear build programme.

"This work is currently not finalised yet as there is an interactive process under way with the Department of Energy on the scale of the programme and possible financing scenarios that have a bearing on the modelling work and its results. The recommendations from this work are expected to be submitted to the Cabinet as soon as the work is completed," said Mr Nene.

There are other signs that the programme may be losing momentum

ANNEXURE 8

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**NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 3192 [NW3790E]
DATE OF PUBLICATION: 29 AUGUST 2015**

3192. Mr D J Maynier (DA) to ask the Minister of Finance:

- (1) Whether any organ of state furnished the National Treasury with any document(s) relating to the (a) feasibility, (b) financing and/or (c) procurement of the nuclear build programme; if not, what is the position in this regard; if so, (i) what is the title of each specified document, (ii) when was each specified document furnished and (iii) which organ of state furnished the specified document in each specified case;
- (2) Whether the National Treasury (a) conducted an assessment and/or (b) commented on any specified document; if so, (i) what is the title of each specified document produced by the National Treasury in this regard, (ii) when was each specified document produced by the National Treasury and (iii) (aa) to which organ(s) of state was each specified document provided and (bb) when was each specified document provided to the specified organ of state?

NW3790E

REPLY:

- 1) Yes, as part of its pre-procurement process and in preparation for the envisaged nuclear new build programme, the Department of Energy furnished the National Treasury with an extensive set of documents in November 2013. These included a draft feasibility study report, titled Draft Feasibility for the Nuclear Programme of the Republic of South Africa, together with a wide range of accompanying research papers and reports dealing inter alia with international experience in nuclear procurement, costing, licencing, localization, the fuel cycle, waste disposal, environmental impacts, skills development, international agreements and conventions and the power industry structure.
- 2) (a) National Treasury conducted a preliminary internal study titled Nuclear Costing Overview during 2012. (b) National Treasury has prepared a commentary on the feasibility study and financing studies received from the Department of Energy during 2014 and 2015, and has undertaken a preliminary review of costing scenarios and financial aspects of a nuclear build programme. These reviews are still in progress and are under discussion with the Department of Energy. These pieces of work, though very clearly related, are different from the more detailed work currently underway. The more detailed work is to inform the final decision on the estimated cost financing model and risk associated therewith, a matter which is currently under discussion between Department of Energy and the National Treasury.

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Republic of South Africa

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President Jacob Zuma: Reply to parliamentary questions

27 Mar 2015

The Leader of the Opposition Mmusi Maimane (DA) to ask the President of the Republic:

(1). Whether, with reference to his reply to question 2251 on 24 November 2014, he can provide the (a) agendas and (b) minutes for the National Nuclear Energy Executive Coordination Committee (NNEECC) meetings held on (i) 10 October 2013, (ii) 20 May 2014, (iii) 22 July 2014, (iv) 30 July 2014 and (v) 5 September 2014;

(2). whether he can also provide the agendas and minutes for any of the NNEECC meetings that may have taken place since 5 September 2014?

REPLY:

The National Nuclear Energy Executive Coordination Committee (NNEECC) was established by Cabinet in November 2011. The NNEECC is tasked with providing oversight and decision making on the nuclear policy and new build programme.

In June 2014, the National Nuclear Energy Executive Coordination Committee (NNEECC) was converted into the Energy Security Cabinet Subcommittee (ESCS) responsible for oversight, coordination and direction for the activities for the entire energy sector.

I chair this committee and it is comprised of the following members:

1. Minister of Energy, Ms Tina Joemat-Pettersson;
2. Minister of Public Enterprise, Ms Lynne Brown;
3. Minister of International Relations and Cooperation, Ms Maite Nkoana-Mashabane;
4. Minister of State Security, Mr David Mahlobo;
5. Minister of Finance, Mr Nhlanhla Nene;
6. Minister of Trade and Industry, Dr Rob Davies;
7. Minister of Economic Development, Mr Ebrahim Patel;
8. Minister of Mineral Resources, Advocate Ngoako Ramatlhodi;
9. Minister of Environmental Affairs, Ms Edna Molewa;
10. Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula.

This committee reports to Cabinet and its proceedings and documents are classified under the Minimum Information Security Standard Act (MISS Act) as TOP SECRET. As a result I am unable to share the agenda and minutes of the meetings held by the Energy Security Cabinet Subcommittee.

Mr J. S. Malema (EFF) to ask the President of the Republic:

In light of the fact that the country is on a verge of an economic collapse as a result of the electricity crisis, what exactly does he mean when he says the electricity crisis is caused by apartheid, even after Eskom pointed to scientific and technical challenges caused by the current government, including doubling the costs for the construction of the new power stations?

REPLY:

The end of apartheid and the election of a new democratic Government in 1994 provided the impetus for all policy and institutional shifts underpinning the electrification programme. These shifts were necessary to address the historical racially-based disparity in the provision of key infrastructure.

In 1994, only 34% of South Africans had access to electricity, the majority of which were white people and only 12% of that was rural electrification.

With the dawn of democracy came the added responsibility to connect every household which was denied access to the national grid under the Apartheid regime. This required that additional transmission and distribution infrastructure be made available to cater to the increased demand of connecting millions of households to the grid. This demand continued to increase without the requisite supply options being secured as the new democratic Government had to balance the cost of delivering many key priorities for a democratic South Africa including the provision of adequate health, education infrastructure and basic services to cater for the many millions of South Africans previously not catered for.

Since 1994, over 89% of households now have access to electricity, and universal access remains a key priority. The historic disparity in delivering key infrastructure projects to the majority of South Africans has a significant bearing on the energy challenges experienced today. During apartheid, Eskom's focus was in meeting the demand of only 5 million citizens. Post-apartheid, this number has grown considerably to over 12, 2 million citizens reducing the reserve margin levels that had been created. Eskom's technical challenges, in particular, failure to maintain its plants further constrained the power system.

I have not denied that there are challenges in the electricity industry and within Eskom. The Cabinet's Eskom financial support package of September 2014 attests to that. During the State of the Nation Address I further reiterated that resolving energy was the number one priority to enable economic growth. What I focussed on is that, under the democratic dispensation, Eskom has had to meet a demand which had deliberately not been met under Apartheid. Naturally, this led to an extraordinary increase in demand which the successive Democratic Administrations have done everything possible to meet.

Mr J.S. Malema (EFF) to ask the President of the Republic:

In the light of the fact that he has visited Angola a number of times since he assumed office in 2009,

- (a) What was the purpose of these visits and
- (b) What do ordinary South Africans stand to benefit from these visits?

REPLY:

(a) The Honourable Member is correct. I have visited the Republic of Angola several times since 2009. The main purpose of the visits was to discuss not only bilateral cooperation between South Africa and Angola but also and most importantly it was to discuss issues of peace, stability and security in the Region as well as in the Continent.

For instance, I paid a State Visit to Angola from 19 to 21 August 2009. A year later, President Dos Santos paid his first ever State Visit to South Africa from 13 to 16 December 2010. During these visits, several sectoral bilateral agreements and memoranda of understanding in the fields of trade, industry, energy, transport, culture, among others, were signed.

A number of our visits to the Republic of Angola were also to attend regional meetings convened to discuss peace, stability and security issues in the Great Lakes Region.

(b) The people of South Africa benefit immensely from such visits. The signing of the legal instruments mentioned above, have ensured that there has been a noticeable increase in economic cooperation between South Africa and Angola to the extent that Angola has now become South Africa's top trading partner in the Continent. We are also pleased that there been an improved security situation in the Great Lakes Region.

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ANNEXURE 10

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Media Release

Russia and South Africa sign agreement on Strategic Partnership in Nuclear Energy

Pretoria, 22 September 2014 - On September 22, 2014 in Vienna, on the margins of the 58th session of the International Atomic Energy Agency General Conference, the Russian Federation and the Republic of South Africa signed an Intergovernmental Agreement on Strategic Partnership and Cooperation in Nuclear Energy and Industry. On behalf of the Russian Government the document was signed by the Director General of State Corporation "Rosatom" Mr Sergey Kirienko, on behalf of the South-African Government – by the Minister of Energy Ms Tina Joemat-Pettersson.

The Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9,6 GW (up to 8 NPP units). These will be the first NPPs based on the Russian technology to be built on the African continent. The signed Agreement, besides the actual joint construction of NPPs, provides for comprehensive collaboration in other areas of the nuclear power industry, including construction of a Russian-technology based multipurpose research reactor, assistance in the development of South-African nuclear infrastructure, education of South African nuclear specialists in Russian universities and other areas.

The joint implementation of this programme implies a broad localization of equipment for the new NPPs, which will provide for brand-new development of various areas of South-African high-tech industries, contribute to creation of a new highly skilled workforce and will allow South-African companies to further participate in Rosatom's projects in third countries.

"I am convinced in cooperation with Russia, South Africa will gain all necessary competencies for the implementation of this large-scale national nuclear energy

development programme. Rosatom seeks to create in South Africa a full-scale nuclear cluster of a world leader's level – from the front-end of nuclear fuel cycle up to engineering and power equipment manufacturing. In future this will allow to implement joint nuclear power projects in Africa and third countries. But from the very start this cooperation will be guided at providing the conditions for creation of thousands of new jobs and placing of a considerable order to local industrial enterprises worth at least 10 billion US dollars", Rosatom's Director General Mr. Sergey Kirienko noticed.

According to Ms Tina Joemat-Pettersson, "South Africa today, as never before, is interested in the massive development of nuclear power, which is an important driver for the national economy growth. I am sure that cooperation with Russia will allow us to implement our ambitious plans for the creation by 2030 of 9,6 GW of new nuclear capacities based on modern and safe technologies. This agreement opens up the door for South Africa to access Russian technologies, funding, infrastructure, and provides a proper and solid platform for future extensive collaboration."

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ANNEXURE 11

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**MINISTER
ENERGY
REPUBLIC OF SOUTH AFRICA**

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**Tan Sri Dato' Shamsul
Azhar Abbas
President and CEO
PETRONAS
Tower 1, PETRONAS Twin Towers
Kuala Lumpur
Malaysia**

**PetroSA'S BINDING PROPOSAL TO ACQUIRE ALL OF THE ORDINARY ISSUED SHARE
CAPITAL OF ENGEN**

Dear Mr Tan Sri Dato' Shamsul Azhar Abbas

Our various correspondence relating to the above mentioned transaction have informed

I, once again, wish to thank you for having granted PetroSA the opportunity to make a revised offer to acquire 100% of the issued share capital of Engen. Having reviewed and analysed the additional information provided, PetroSA is now in a better position to make a much improved offer with regard to the transaction. The price now being offered is R 17.35 billion, which amount is fully explained in the revised Binding Proposal letter from PetroSA. Further to this amount, the negotiating team has, if so required, been given further leverage to conclude this transaction.

As I have indicated previously, this transaction still remains one of strategic importance and national interest to South Africa. Therefore, the position of the South African Government with regard to its support for the transaction remains unchanged.

In line with our Government's position to allow private sector participation in the funding of transactions of this nature, we have secured both local and foreign funding. We are currently engaging with these parties to finalise the terms and conditions of the proposed funding. In addition to the debt funding, both PetroSA and the Public Investment Corporation (the investment arm of the South African Government's Employees Pension Fund) will make an equity contribution

of no less than R 8.6 billion. The South African Government will, if necessary, provide the required guarantees and funding. We are still confident that PetroSA together with the South African Government will be able to fund this transaction.

In support of this transaction, I have given the required approvals in terms of section 54(2)(c) and (e) of the Public Finance Management Act, 1998.

Having regard to the tight schedule we have agreed for the conclusion of this transaction, we would appreciate a response to the Bidding Proposal by 20 January 2014. This will allow PetroSA to select and conclude discussions with potential bidders by 31 January 2014.

Sincerely,



DIKOBÉ BEN MARTINS, MP
MINISTER OF ENERGY

DATE: 09.01.2014



MINISTER
ENERGY
REPUBLIC OF SOUTH AFRICA



From SA's 1st to 19th 2017 Treasury Calendar. The Treasury Calendar is a key document for the public sector. It provides a clear and concise overview of the government's financial activities over a period of 12 months. The calendar is divided into 12 sections, each representing a month. Each section contains a list of the government's financial activities for that month, including the amount of money spent and the amount of money received. The calendar is a valuable tool for the public to understand the government's financial activities and to hold the government accountable for its spending.

Mr Pravin Gordan

Minister of Finance

PO Box X115

Pretoria

0001

Dear Pravin

ACQUISITION OF ALL THE ORDINARY SHARES IN EGEN (PTY) LTD BY PETROSA

In 1996 Petronas, the Malaysian National Oil Company, acquired Engen SA (Pty) Ltd from Mobil. This was one of the first foreign direct investments in the post - Apartheid South Africa. It has always been the intention of Petronas (the vendor) to, at the appropriate time, dispose of ENGEN in favour of South Africa. Since 2012, PetroSA, with the support of the Department of Energy, has been engaged with Petronas with a view to acquiring all the ordinary shares in Engen. PetroSA has made the binding proposal and the vendor has accepted the offer. The purchase consideration for all the issued share capital of Engen is R 18.68 billion.

Since Petronas has accepted PetroSA's binding offer, negotiations on all the transaction related agreements have commenced. The negotiations in this regard have reached an advanced stage. This process must be concluded by no later than 31 March 2014.

in order to promote regional integration, lighten the financial burden of the transaction on PetroSA and based on its downstream experience and expertise, SONANGOL, the national oil company of Angola, has been selected as the Strategic Equity Partner.

It is expected that both PetroSA and Sonangol will provide funding for 80% of the purchase price, while the balance will be financed through debt and mezzanine funding from local and international banks that have already expressed their irrevocable interest to participate in the transaction. As such, at this stage, the acquisition of Engen by a consortium consisting of PetroSA and Sonangol will not require any direct financial assistance from the fiscus. The Department of Energy is in the process of seeking your concurrence with regards to a possible sovereign guarantee, if necessary.

However, in order for PetroSA to finalise this transaction, the vendor seeks a letter of comfort and support from the South African Government through the Ministers of Finance and of Energy, as proof that PetroSA has and enjoys the full support of the South African Government. In this regard I would appreciate if you could, please, address a letter to the vendor indicating National Treasury's support for the transaction.

I look forward to receiving your letter of support so that I can forward same to the Vendor.

Sincerely



DIKOBÉ BEN MARTINS

MINISTER OF ENERGY

DATE: 11.03.2014

SUPPORT FOR PETROSA'S ACQUISITION OF ALL THE ORDINARY SHARES IN ENGEN

The Ministry of Finance of the Republic of South Africa takes note of the progress achieved in the negotiations for PetroSA to acquire all the ordinary shares in Engen SA (Pty) Ltd. The National Treasury is engaged with the Department of Energy with regards to the State Guarantee. A decision on this matter will be taken on the 26th of March 2014.

We support this transaction and express our desire that it be concluded successfully.

Sincerely

Pravin Gordhan

Minister of Finance

Mr Pravin Gordhan
Minister of Finance
National Treasury
120 Plein Street
Cape Town
South Africa

13 March 2014

Engen

Thank you for calling me yesterday for my perspectives regarding PetroSA's intended purchase of Engen, Petronas's wish to reinvest with PetroSA in a new South / Southern African lubricants venture and Petronas's offer of a two year transitional support services agreement.

Substantial progress has indeed been made since our meetings in February and September last year – the latter following your President's and members of his Government's official visit to Malaysia last August when:

- the acquisition of Engen by PetroSA was confirmed to be a high strategic priority for the SA government; and
- the Minister of Energy and Tan Sri Shamsul (President and CEO of Petronas) jointly agreed a process and timetable culminating in a completed and financed transaction by the end of March 2014.

On the strength of this, and written confirmation from the Minister of Energy that "the South African Government will, if necessary, provide the requisite guarantees and funding", a major amount of work has been undertaken to settle the price and other terms of the transaction. This has involved both principals and a host of advisors and the senior management and staff of Engen such that there is now reasonable confidence of being able to announce a transaction on the 31st March subject to the review and approval of the South African Competition Tribunal and certain more minor regulatory issues.

Throughout this process the management and staff of Engen have provided a significant amount of support (data room, management presentations, site visits and early stage post-merger integration analysis) as have the independent board members of Engen. However, it has always been a key concern of Petronas – and of their BEE partner, Pembani – that this process, which started almost two years ago, should be concluded by the end of March to avoid further uncertainty and damage to the business.

A critical part of this has naturally been confirmation of a fully financed transaction. A letter setting how this would be accomplished was awaited yesterday – indeed after our call. However, what has since emerged is sadly at odds with what had been anticipated not least in introducing for the first time another un-named national oil company as a partner for PetroSA which would make it impossible to conclude a transaction between now and the end of March.

While it is obviously not for Morgan Stanley to say how this issue should be managed what we had been anticipating was a combination of a cash payment from PetroSA's resources and a bridge loan of, say, twelve months guaranteed by the South African Government.

This would enable the transaction to be announced to the original timetable and give PetroSA sufficient time to assemble the optimal longer term financing based on the various expressions of interest and other ideas that they and their advisors have been developing.

I hope this is a helpful summary. It goes without saying that I and Petronas remain available to work with National Treasury and the Ministry of Energy / PetroSA and their advisors to work out a mutually acceptable solution.

Simon Parker
Vice Chairman



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 6911, Fax: +27 12 323 3262
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Ref. M3/15/11 (591/14)

**Mr DB Martins, MP
Minister of Energy
Private Bag X19
ARCADIA
0007**

Dear Colleague

ACQUISITION OF 100% OF ENGEN BY PETROSA

I confirm that we have met this morning to discuss the above acquisition.

The National Treasury understands that the acquisition of Engen by PetroSA, appropriately structured, offers immense strategic potential to South Africa.

From our discussion at the meeting of 1 April 2014, I am now aware of the various steps that are being urgently taken to put together a financing package including equity participation, bank loans and a capital contribution from PetroSA. I am also aware that negotiations on some, if not all of the aspects of the financing package are at an advanced stage.

As it transpired at our meeting, it would assist us a great deal if all or some of these were to be concluded before we take a view on the actual support that PetroSA would need to conclude the transaction. In the meantime I am applying my mind to the application for a guarantee.

I would encourage continuous and intense engagement between our teams on all outstanding issues so that as the negotiations on each of the potential sources of funding are concluded, we can evaluate the implications of each for the support that PetroSA needs from government. The process will be assisted considerably if the National Treasury is kept fully informed of all relevant developments on the matter.

I assure you that the National Treasury is seized with this matter. Once the necessary governance processes have been concluded, I will get back to you.

Kind regards

**PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 01 - 04 - 2014**



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref. M3/15/11 (591/14)

**Mr D B Martins, MP
Minister of Energy
Private Bag X 96
PRETORIA
0001**

Dear colleague

**RE: THE PROPOSED ACQUISITION OF 100% OF ENGEN SOUTH AFRICA (PTY)
LTD (ENGEN) BY PETROSA.**

I refer to your letter of 11 March 2014 wherein you requested a letter of comfort and support for the Engen acquisition on behalf of the South African Government through the Minister of Finance and of Energy.

Officials from the National Treasury met with representatives from PetroSA and the Department of Energy on 28 March 2014; 7 April 2014 and 22 April 2014 to discuss and clarify issues relating to the proposed transaction. Moreover, my department has reviewed all the supporting information that has been submitted relating to this transaction.

In terms of Sections 66 (2) (a) and 70 of the Public Finance Management Act of 1999 (PFMA), I am willing to concur to your issuance of a Government guarantee for the maximum sum of R9.5 billion subject to all of following conditions being fully met:

1. PetroSA pays R5.6 billion in respect of the Consideration and any Adjustment Amount as defined in the Sale Agreement by the due dates on which these amounts become payable;
2. Pembani Group (Pty) Ltd. provide an irrevocable commitment that their stake be converted into a loan equivalent to 20% of the Consideration with a tenor of at least 6 months after the Completion Date;
3. By the Completion Date as defined in the Sale Agreement, Strategic Equity Partner provide an irrevocable commitment to purchase a minority stake valued at least R5.4 billion without the support of a government guarantee;

4. By the Completion Date as defined in the Sale Agreement, lenders approved by the PetroSA board provide an irrevocable commitment to provide financing of at least R4.1 billion without the support of a government guarantee;
5. The guarantee remains in force until the Completion Date as defined in the Sale Agreement, if not all the suspensive conditions have been fulfilled or waived until the Long Stop Date as defined in the Sale Agreement; and
6. The guaranteed amount reduces as irrevocable financing commitments are received by the amount of the commitments received.

From the documentation, it is evident that the potential equity investors and financiers have indicated that, as a precondition to providing an irrevocable commitment, a comprehensive due diligence will need to be undertaken. It will be necessary for Petronas to make available the necessary documentation and provide access to key personnel as well as to allow adequate time for these investors and financiers to undertake the due diligence they require.

One of the issues where I would like to get a deeper understanding is the exclusion of the lubricants business from the purchase. Could you please provide me with some insight into the reasons for the exclusion.

In addition, PetroSA will be required to report monthly to the National Treasury and the Department of Energy and a Monitoring Task Team will be established to oversee the performance of PetroSA. Please note that PetroSA will be required to pay a guarantee fee on the full amount of the facility for the period whilst the guarantee is in force.

I will send you additional correspondence relating to how we can jointly facilitate this matter further.

I trust you will find the above to be in order.

Kind regards



PRAVIN J GORDHAN
MINISTER OF FINANCE

Date: 25-6-2014

Morgan Stanley

Mr Pravin Gordhan
Minister of Finance
National Treasury
120 Plain Street
Cape Town
South Africa

31 March 2014

Dear Minister,

Engen

Thank you for telephoning me this afternoon. I look forward to receiving your further reflections on the matter of financing when we speak tomorrow at about 3pm SA time.

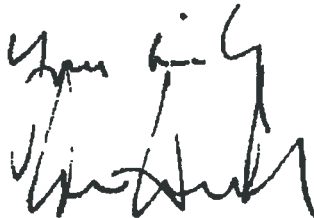
Meanwhile, I attach for your ease of reference a copy of the letter I sent you on the 13th March 2014 and (in confidence) a letter sent by the Minister of Energy to the President and CEO of Petronas on the 9th January 2014 regarding the financing of the acquisition of Engen.

You also raised the matter of price. This was finally settled with Petronas in January following due diligence, management presentations and site visits over the past three months.

As I understand it, PetroSA were advised by Norton Rose, PwC, KBC Technical Consultants, Rothschild and four former Senior Executives of Engen (CEO, CFO, Head of Refining and Head of Marketing).

An abridged summary of my colleagues' perspectives on valuation are attached. As you will be aware Engen is a unique asset with a leading market share in South Africa and a strong brand. I understand it is also now one of the three largest refining and marketing companies in Africa.

I hope these perspectives are helpful. I also remain available for a fuller discussion on these and other issues when we speak tomorrow if that would be helpful to you.



Simon Parker
Vice Chairman



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref. M3/15/11 (591/14)

Ms Tina Joemat-Pettersson, MP
Minister of Energy
Private Bag X 96
PRETORIA
0001

Dear Minister Joemat-Pettersson

THE ACQUISITION OF ENGEN BY PETROSA

I refer to my predecessor's letter dated 25th April 2014 regarding the above mentioned matter.

The previous Minister of Energy, Mr DB Martins, requested in a letter dated 11 March 2014 that concurrence be considered for the issuance of a government guarantee of R13.42 billion to PetroSA to fund the acquisition of 100% of Engen (Pty) Ltd. After substantive consultation between our predecessors, the then Minister of Finance concurred with a government guarantee of R9.5 billion subject to various conditions. The quantum and conditions attached to the guarantee were very specific to the structure of the transaction that had been negotiated by PetroSA.

It has been reported to me that PETRONAS has subsequently withdrawn from the deal after PetroSA failed to raise the required funding. If this is indeed the case, the government guarantee issued by your predecessor should be withdrawn and I will recall the letter of concurrence issued by my predecessor. It is evident that it will not be possible for PetroSA to fulfil the conditions which were linked to the transaction. The withdrawal will assist in ensuring that redundant guarantees are not maintained as part of government's guarantee portfolio. Should a similar deal be contemplated in the future and a guarantee is required, reconsideration will given at that time.

I trust you will find the above to be in order.

Kind regards



**NHLANHLA M NENE, MP
MINISTER OF FINANCE**

Date: 9/3/2015

ANNEXURE 12

— 114



Sociedade Nacional de Combustíveis de Angola

Gabinete do Presidente do Conselho de Administração

To:

Hon. Dikobe Ben Martins, MP
Minister of Energy
7th Floor, Matimba House
197 Vissagie Street
Pretória
Republic of South Africa

PRETORIA

Our/Ref.: **300/PCA/2014** Your/Ref: Date: 17th April 2014

Subject: **Acquisition of 100% Shares of ENGEN by PetroSA**

Excellency

Following our follow on meeting on this matter between executives of PetroSA and SONANGOL, a draft agreement was developed and negotiated between the two parties. The final draft MOU Agreement was then sent through the approval system of our government and I am today please to write to you and provide the final outcome of our consultation and consideration of your invitation to join efforts to acquire ENGEN and develop a regional focused oil company.

1. Acceptance of the Invitation

The Angolan Government has approved the request for SONANGOL to participate as a strategic equity partner in a joint venture company that shall acquire the 100% shares of ENGEN from the current owners (PETRONAS and PEMBANI Group).

2. Investment Consideration

Following consideration of the amount of investment, SONANGOL is happy to contribute with its share of capital to be used as equity, of which the exact amount shall be determined after the required due diligence, according to the international practice.



Sociedade Nacional de Combustíveis de Angola

3. Equity Consideration

It is our intention to secure a participation of 49% equity in the proposed Joint Venture we should form. We are very much aware of the regulation in South Africa that requires that Significant ownership should vest in historically disadvantaged groups and therefore, we shall within the first year of acquisition sell up to 19% of our shares. In the meantime, we shall dilute further our equity position up to 15% to retain a final share position of 15% of the Joint Venture.

4. Transaction Structure

The structure of the transaction should be that parties, namely, PetroSA, the South Africa Government and SONANGOL, should set up a joint team, which in turn should negotiate and conclude the transaction.

5. Joint Venture Company

Upon conclusion of our Memorandum of Agreements and related agreements, PetroSA and SONANGOL should establish a Joint Venture Company (or Holding Company) which should be internationally registered preferably in Singapore and/or Dubai. This Joint Venture Company should have its Board of Directors appointed by the parties so as to drive the strategic direction of the business of ENGEN.

6. Underwriting and Transaction Sponsoring Bank

It is our view that this transaction and the Joint Venture Company should have a solid financial and accounting systems starting with a sound and solid bank to underwrite the transaction. This bank should come from a pool of the world's top 20 banks, and our proposition is the joint team is empowered to suggest the one, best positioned to provide all the services customary in these transactions.

7. Way Forward

As way forward, we are ready to sign the MOA and Confidentiality Agreement as they become available and ready for execution. We note your invitation to come to South Africa, and at your earliest convenience, we would be more than happy to come to South Africa for a return visit and to take the discussion forward.

Your Sincerely,


Francisco de Lencastre Jose Maria
 Chairman and CEO

CC: Ms Nosizwe Marama,
 Chief Executive Officer

PETROSA (SOC)
 South Africa

Rua 1º Congresso do MPLA, nº 8/16 - C. Postal 1316 Luanda / República de Angola TeleFax: (002442) 747728 - Telefone: (002442) 672100

ANNEXURE 13

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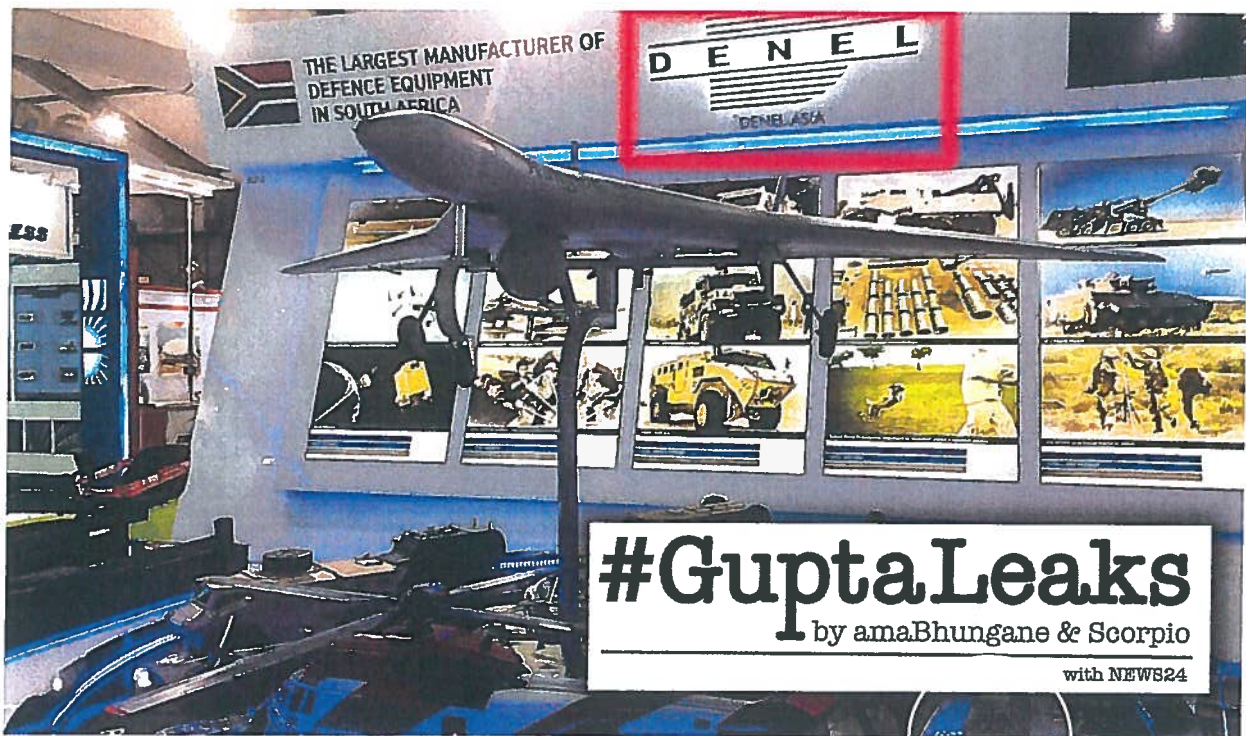
SOUTH AFRICA ([HTTPS://WWW.DAILYMAVERICK.CO.ZA/SECTION/SOUTH-AFRICA/](https://www.dailymaverick.co.za/section/south-africa/))
([HTTPS://WWW.DAILYMAVERICK.CO.ZA/SECTION/SCORPIO/](https://www.dailymaverick.co.za/section/scorpio/))



(<https://www.dailymaverick.co.za/author/amaBhungane-scorpio/>)
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amaBhungane and Scorpio #GuptaLeaks: How the Guptas screwed Denel

By amaBhungane & Scorpio • 9 June 2017



473 Reactions

Leaked records from the heart of the Gupta business empire help solve the mystery behind Denel Asia, the controversial arms marketing partnership that national treasury has tried to block. By AMABHUNGANE and SCORPIO.

amaBhungane & Scorpio

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(<https://www.dailymaverick.co.za/author/amaBhungane-scorpio/>)

More

The #GuptaLeaks show:

- *The Guptas tried to sell Denel's intellectual property to India, while watering the state arms company's stake down by half.*

- *Acting as middlemen, they took the biggest stake for themselves and cut in a powerful Indian tycoon – close to Prime Minister Narendra Modi – for his “influence”.*
- *They primed, wined and dined Denel’s then new chairman, Dan Mantsha, who sent them confidential government documents.*

The Gupta family set themselves up to sell state arms manufacturer Denel’s weapons to India in a deal involving a shady Indian fixer and a powerful tycoon close to prime minister Narendra Modi.

The Guptas arranged to sideline Denel and take the biggest share for themselves even though it was Denel’s proprietary technology that was to be sold.

These details are revealed in the #GuptaLeaks, a trove of electronic data sourced from the heart of the Guptas’ business empire.

In January 2016, Denel announced the formation of Denel Asia, a Hong Kong-based joint venture that it controlled, holding 51%. The rest belonged to a company registered to Gupta lieutenant Salim Essa.

Defending themselves against criticism at the time, Denel and the Guptas claimed that the Gupta family had no interest in the Essa company, VR Laser Asia, and by implication in Denel Asia.

The #GuptaLeaks show they were misleading South Africans.

Emails in the trove show Denel officials knew the overriding purpose of setting up Denel Asia was to sell arms to India – targeting more than US\$8-billion in deals there – via a second joint venture called Denel India.

In Denel India, Denel’s participation was watered down to just 25%.

The Guptas, who brought little to the table besides their political connectivity in South Africa and India, planned to wield a controlling 42% stake – exercised via Essa and their brother-in-law, Anil Gupta.

Anil, a former minister in the Indian state of Uttarakhand, is married to Achla, the Gupta brothers' sister. The controversial Gupta wedding at Sun City celebrated the marriage of Anil and Achla's daughter, Vega.

The files contain emails and draft contracts that show that as Denel Asia was being established in Hong Kong, the Guptas were putting together a second-tier company in India called Denel India, in which their Indian brother-in-law would hold a significant stake.

They also show the Guptas had a direct involvement in the establishment of Denel Asia, suggesting Essa was little more than their proxy.

Denel India was to be owned by Denel (25%) and Essa (24%) via Denel Asia, as well as Anil Gupta (18%) and the Indian multinational Adani Enterprises (33%).

Thus, Denel's participation was to be diluted significantly – and the emails show Denel executives were well aware the company would enjoy only a minority stake in the Indian venture.

Adani was key to the plan, the emails suggest.

Its billionaire founder and chairman, Gautam Adani, is often reported to be close to Modi, the prime minister.

Much like the Guptas and President Jacob Zuma in South Africa, commentators link the rise of Adani's business empire to the political rise of Modi, starting in the early 2000s when Adani supported Modi when he was politically weak.

In one 2016 email, the CEO of the Gupta-owned VR Laser in South Africa, Pieter van der Merwe, objected to a draft contract in which Adani suggested it use nominee shareholders.

Van der Merwe made Adani's role clear:

"We are entering into an agreement with [Adani] as a result of their name, history and connections. If it means they are going to appoint an affiliate who doesn't have any know-how or influence, we do not need a partnership."

Companies in the Adani group have been accused by Indian authorities of money laundering and tax avoidance to the tune of about US\$750-million.

Adani did not respond to an emailed request for comment.

But it was another controversial Indian businessman who appeared to introduce the Guptas to Adani: Kolkata businessman Parasmal Lodha.

Indian authorities recently arrested Lodha for money laundering. He was released on bail last week.

Lodha is very close to the Guptas, the #Guptaleaks show.

They attend each other's family weddings and holidays and a senior Gupta manager once used contacts in the department of home affairs to arrange a South African visa for Lodha.

It was Lodha who in 2013 emailed Tony Gupta, asking him to invite Gautam Adani, among "a few friends", to another Gupta wedding, this time of Anil Gupta's son.

In 2015, as the Guptas were assembling their partnership with Denel and Adani, Lodha reviewed an Adani Enterprises contract within the Denel India structure and emailed comments to Tony Gupta.

Around the same time, Lodha twice helped to arrange for Gautam Adani to visit South Africa.

Lodha did not respond to questions.

The involvement of tainted figures such as Lodha and politically exposed persons such as Adani – along with Essa and the Gupta family – suggest Denel was willing to pursue a recklessly high-risk strategy.

Denel was previously blacklisted from selling arms to India because it had used commissioned agents, a banned practice there.

However, the Denel Asia and Denel India structures circumvented this by including the Guptas – effectively Denel's agents – within the company structures.

After amaBhungane first wrote about Denel Asia in early 2016 (<https://www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked/>), the national treasury confirmed that it viewed the partnership to be illegal.

It said it had not approved the deal under the Public Finance Management Act (PFMA).

Denel publicly disagreed and is now suing treasury and the finance minister.

In a court affidavit, former treasury head Lungisa Fuzile said that in its PFMA application, Denel “discusses two potential partners in India: Adani Group and PIPAVAV, both of which are leading Indian conglomerates expanding into the defence industry. It is not clear why these companies were overlooked by [Denel] in their review of the market and what led [Denel] to the conclusion that VR Laser Asia was the most suitable partner.”

The implication seems to be that he too was concerned that the Guptas were simply inserted as agents – although it was via taking a stake in a Denel subsidiary, rather than receiving a fee.

A Denel spokesperson said:

“We have been advised that the Hawks are carrying out an investigation on the matters pertaining to the #GuptaLeaks emails. We would rather give space to the Hawks to undertake their investigations on all these matters fully before making any comments.”

Gupta lawyer and regular spokesperson Gert van der Merwe has refused to comment on #GuptaLeaks claims, saying: “I have no documents or context or instructions. It is inappropriate.”

The #Guptaleaks suggest the Guptas pursued an intricate plan to push their Denel project through, involving inside information and the positioning of sympathetic decision-makers, including four-day finance minister Des van Rooyen.

They contain a number of email threads in which intricate details of the Denel Asia joint-venture are discussed between October 2015 and February 2016.

Inevitably, these lines of correspondence ended up on Tony Gupta’s or Gupta managers’ desks.

For example, the PFMA required Denel to get permission from the ministers of public enterprises and finance before it can strike up a public-private partnership like Denel Asia, which consisted of state-owned Denel on the one hand, and privately owned VR Laser on the other.

One day after Denel submitted its PFMA application to treasury on 30 October 2015, Denel chairman Dan Mantsha forwarded the confidential document to Ashu Chawla, a senior Gupta executive.

The #GuptaLeaks have already exposed how the Guptas hosted Mantsha on lavish trips to Dubai.

But the timing of his meetings and communications with the family and their factotums adds to the impression he was their cats-paw.

On 24 July 2015, Public Enterprises Minister Lynne Brown announced sweeping changes to Denel's non-executive board, leaving only Gupta beneficiary Nkopane "Sparks" Motseki in place and removing experienced directors in favour of relative unknowns.

Key among them was Mantsha, appointed as the new chair of Denel, despite that fact he was struck off as an attorney in 2007 and only re-admitted in 2011.

Just days after his appointment, on 3 August, Mantsha forwarded a copy of his outstanding municipal account for R14,238 to Gupta lieutenant Ashu Chawla.

The same account was again forwarded to Mr. Chawla in October. Both were marked "for your urgent attention."

By 5 August the emails show Mantsha was listed to join Tony Gupta and others on a flight from Johannesburg to Mumbai aboard the Guptas' private jet ZS-OAK.

It is not clear if he was aboard, but he was booked a room with the family at the ITC hotel in Mumbai for 6 and 7 August and he was listed as a passenger for the subsequent Mumbai-Delhi and Delhi-Johannesburg legs.

A few weeks after his return from this jaunt, the new Denel board moved against the existing Denel executive.

On 24 September, the board suspended chief executive Riaz Saloojee, financial director Fikile Mkhontlo, and company secretary Elizabeth Africa. (Since then their supposed disciplinary infractions have all melted away and they have been paid severance packages.)

By 29 September, Chawla was handling the application for a Dubai visa for Mantsha and by the next day the Guptas' travel agent had booked a business class ticket from Dubai to Johannesburg for him, invoiced to a Gupta company for R33,280.

Mantsha failed to respond to detailed questions about his relationship with the Guptas.

But Mantsha was also not the only source the Guptas had providing top-level intelligence on the Denel project.

On 23 November, Public Enterprises Minister Lynne Brown provisionally approved Denel's negotiations with VR Laser Asia to form Denel Asia. One day later, the emails show, Chawla had a copy of her approval.

A few days later, Denel chairman Mantsha sent the same confidential document to Chawla.

To its PFMA application to Minister Brown, Denel attached a spreadsheet of "opportunities that Denel feels confident will be secured jointly with VR Laser Asia". This detailed US\$9.3-billion worth of potential weapons deals in the region. Of this, US\$8.2-billion would be sourced from India.

From November 26 to 29, the Guptas' chosen Indian partner, Adani, was their guest in South Africa.

Mumbai fixer Lodha was instrumental in the arrangements and the emails show his assistant wrote to an Adani staffer noting:

"Meeting with the [South African] President, Ministers and CEOs of mining, power and port has been arrange (sic) on 27th and 28th... Car and necessary security will be arrange (sic) by Mr Gupta."

By this time the Guptas were already shopping for a new finance minister, according to evidence provided to the public protector, and it seems they wanted the Denel Asia joint venture PFMA application to be on his desk when he landed.

Although Brown at public enterprises had given provisional approval, the law required the finance minister to approve the joint venture too.

The #Guptaleaks show that on 7 December, Chawla emailed a copy of Brown's in-principle approval and briefing document directly to the finance minister's personal assistant.

On that day, the minister was still Nhlanhla Nene, but three days later, on 10 December, it was Des van Rooyen.

The very next day Denel submitted its formal PFMA application for Denel Asia to the new finance minister, according to an affidavit delivered in the high court dispute between Denel and treasury over the establishment of the Hong Kong joint venture.

Van Rooyen was removed on 13 December before he could approve Denel Asia – and the status of the joint venture has been in dispute ever since.

That didn't stop the Guptas from trying to forge ahead.

After Van Rooyen's sacking, Mantsha joined a procession of influential figures in a pilgrimage to the Oberoi hotel in Dubai and an audience with the Guptas at their new R325-million pad.

Invoices from the #Guptaleaks show he stayed at the Oberoi between 3 and 6 January 2016 at the expense of the Guptas' Sahara Computers and was chauffeured to their home at L35 Emirates Hills.

Mantsha failed to respond to questions about the purpose of the visit, but presumably it was to regroup.

During this time VR Laser SA chief executive Van der Merwe, Tony Gupta and others continued to exchange thoughts on draft contracts with Adani Enterprises, the emails show.

In one instance, Van der Merwe forwarded to Tony Gupta a chain of correspondence between himself and Denel officials in which they debated whether or not Denel India, the Denel Asia joint venture with Adani, was separately subject to the PFMA.

He said Denel and VR Laser had previously agreed that when Denel applied to the ministers of finance and public enterprises for consent, their planned new Indian company should be disclosed so “as to play open cards with what the parties intend to do”.

And to Tony Gupta, Van der Merwe complained:

“They are missing the point and the reason why we entered into this transaction. In the private sector, time is of the essence. This is the basis on which we have decided to invest in a funding facility.”

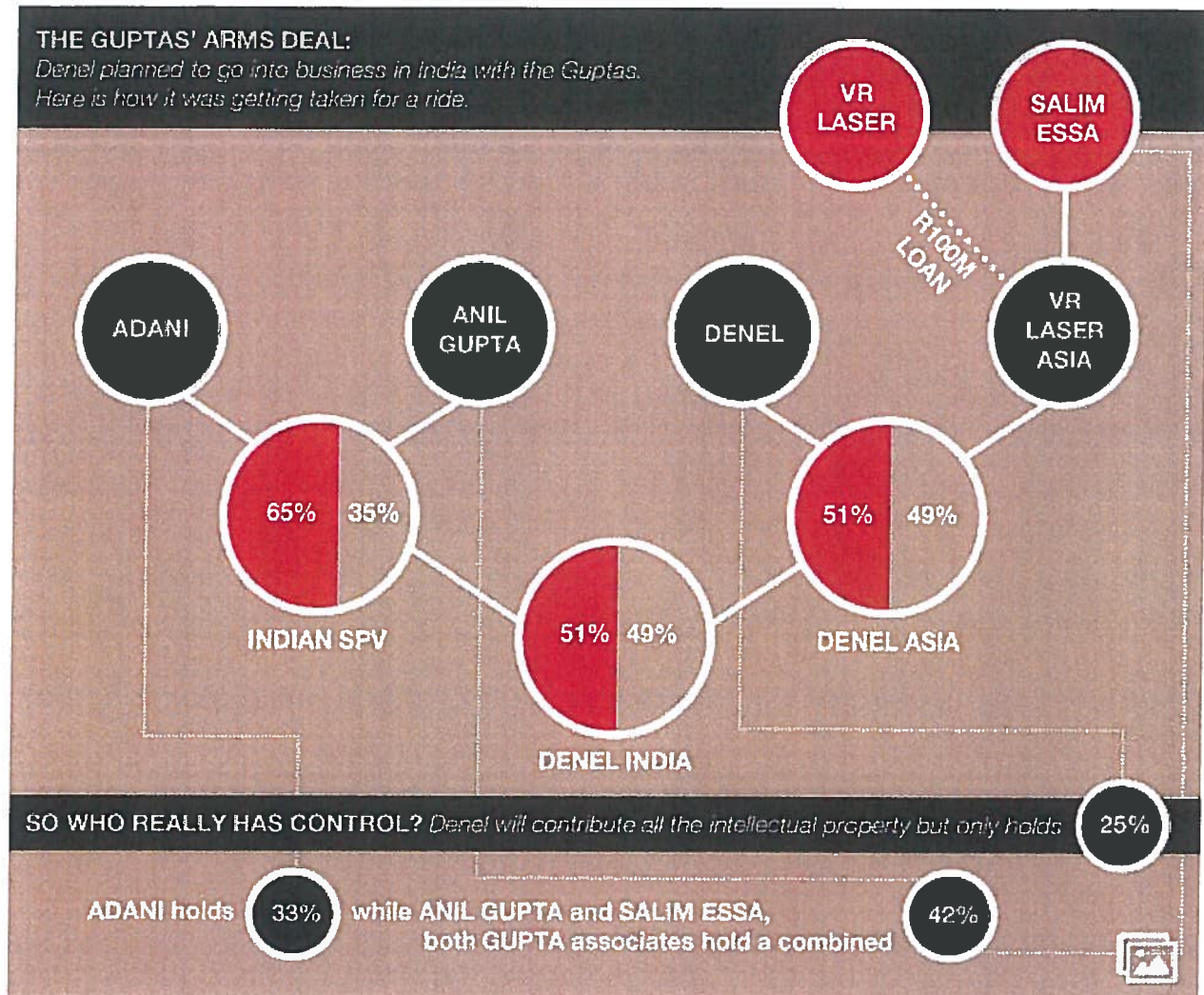
In a February 2016 email to colleagues – after they received questions from amaBhungane – VR Laser CEO Van der Merwe explained that the SA VR Laser was going to loan Denel Asia R20-million a year for five years to cover certain costs.

The terms of this loan have never been explained, but it is clear from the #GuptaLeaks and court records that the plan was for Denel Asia to repay it.

On 5 February 2016 amaBhungane broke the story of the Guptas’ involvement in Denel Asia and treasury began issuing the first of a series of statements questioning the legality of the joint venture.

Denel appeared undaunted.

On 24 February Denel's acting chief executive Zwelakhe Ntshepe signed a board memorandum recording Denel's approval to negotiate the formation of Denel India, in which Denel Asia would have 49% and Adani Enterprises 51%.



Two days later he jetted off on another Gupta jet, ZS-AKG, bound for the Indian city of Goa, which was hosting the 2016 Defexpo, a defence trade show.

Denel's exhibition stand was confidently hosted under the banner of "Denel Asia" – a company that barely existed but promised a turn-over of billions.

Now those dreams are shattered. **DM**

Photo: Denel as an exhibitor at DefExpo 2016.

(Photo: StratPost – South Asian Defence and Strategic Affairs)

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By Greg Nicolson

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amaBhungane: How Denel was hijacked

By amaBhungane • 29 May 2016



4 Reactions

An amaBhungane investigation has revealed how the capture of Denel was orchestrated via a boardroom coup executed by Public Enterprises Minister Lynne Brown – contrary to the advice of her own department – followed by the premeditated axing of its top executives. By SAM SOLE for AMABHUNGANE.

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The investigation also shows how the state-owned defence giant is being ushered into the arms of a Gupta-aligned company, VR Laser, despite a due diligence report from law firm ENSafrica, which allegedly raised multiple red flags about the joint venture between Denel and VR Laser Asia.

At stake is Denel's lucrative Asian market — above all, it appears, a potential \$4-billion (R62 billion) tender to deliver long-range artillery to the Indian army.

Four sources who sat on the previous board, but asked not to be named, have confirmed being told that a month before a new board took over on July 26 last year, chief executive Riaz Saloojee was warned that he would be pushed out.

The warning allegedly came from Denel board member Nkopane "Sparks" Motseki, who was allocated a significant personal stake in the Guptas' Shiva uranium mine in 2010. The stake, if he still has it, now has a market value of tens of millions of rands.

Motseki is alleged to have called Saloojee just ahead of a board meeting in June 2015 and told him he and others were to be removed, because Saloojee had been asked to do certain things and had been "too weak" and had not complied or had been blocked by chief financial officer Fikile Mhlontlo, who was "too strong".

Saloojee, Mhlontlo and company secretary Elizabeth Africa were suspended three months later for unspecified infractions.

At the June board meeting, the sources said, then-acting chair Martie Janse van Rensburg approached Motseki informally with a group of co-directors to ask about the allegation, and he allegedly confirmed what he had told Saloojee.

A source familiar with subsequent events told amaBhungane that Van Rensburg was so concerned about the perceived threat to the executives that she repeatedly attempted to arrange a meeting with Public Enterprises Minister Lynne Brown, who cancelled on more than one occasion.

Van Rensburg, the source said, eventually met with deputy minister Bulelani Magwanishe on July 2, 2015 and personally conveyed her concern about the rumours of the executives being removed.

Van Rensburg did not dispute any of the details of the account put to her, but declined to comment.

Brown has refused to comment on any of the detailed allegations put to her by amaBhungane.

Denel confirmed receipt of detailed questions, including those directed at specific directors, including Motseki, but failed to respond.

Key to the executives' suspensions in September 2015 was the wholesale replacement of the board chaired by Van Rensburg. On July 24, Brown announced the "rotation" of the board, sweeping out all the previous non-executive directors but Motseki.

In doing so, Brown abandoned a list of proposed directors prepared for her by the department of public enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

AmaBhungane understands that in about June 2015 the entire board file was uplifted from the department by Brown's ministerial office and the department was thereafter excluded from the selection process.

The list eventually presented to cabinet bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was not a single engineer and the majority had never served on a corporate board before, never mind of a highly technical group like Denel.

A number of the new directors also have a chequered past. First among these is the new chair, Dan Mantsha, who is also the legal adviser to communications minister Faith Muthambi.

Mantsha was struck off the roll of attorneys in 2007 for acting in a "dishonest and deceitful manner". While Mantsha was readmitted in 2011, one might imagine this integrity deficit would be a barrier for access to the country's defence sector jewels.

However, a well-placed source at Denel said it was rumoured that Mantsha's particular recommendation was the positive impression he made on the Gupta family. Mantsha was said to have been introduced to the Guptas by Muthambi in July 2014. Muthambi's office declined to respond to questions about the alleged introduction or whether it had taken place at Saxonwold, noting: "We are not in the business of responding to unsubstantiated allegations and innuendos."

Gupta family spokesman Gary Naidoo did not respond to detailed questions. Mantsha did not respond to questions sent to him via Denel.

Once appointed, Mantsha's board lost no time. In late September last year, barely two months after they took office, the new board suspended Saloojee, Mhlontlo and Africa.

The reason cited was a concern over aspects of Denel's R855-million purchase of armoured vehicle manufacturer BAE Land Systems.

However, the previous board, despite being out of office, has recently taken the unusual step of publishing a joint statement affirming that the Land Systems deal made strategic and financial sense and was scrutinised and approved by both Brown's department and Treasury.

And there are other hints that plans to sideline the three executives were premeditated: one source told amaBhungane that Denel's acting CEO, Zwelakhe Ntshepe, and its Land Systems boss, Stephan Burger, told colleagues that they had been interacting with certain members of the new board three months before the new board members' appointment.

And when a forensic investigation into the three executives' conduct failed to incriminate them, the same source alleged, Mantsha, the board chair, sought to have the investigation report withdrawn.

Neither of these claims could be independently verified as neither the Denel board nor the executives responded to questions.

Editor's note: **Burger has since issued a categorical denial (<https://www.dailymaverick.co.za/documents/document/Stephan-Burger-Letter-To-Daily-Maverick-06062016.pdf>): "I was not and**

could never have been privy to the process of appointing the new Denel Board members nor have I met any one or more of them prior to a formal announcement by Denel's shareholder... The allegation that I told colleagues that I "had been interacting with certain members of the new board three months before the new board members' appointment" is wholly denied.

The firm that conducted the probe, Dentons, refused to confirm or deny the claim, citing client confidentiality.

Then, in January this year, came the bombshell: Denel acting chief executive Zwelakhe Ntshepe announced the formation of Denel Asia, a company in which Denel would own 51% and a Hong Kong letterbox company, VR Laser Asia, 49%.

VR Laser Asia is wholly owned by Gupta business partner Salim Essa and is an associate company of VR Laser Services, a South African steel cutting business in which the Guptas have an interest.

Denel Asia's directors are Ajay Gupta's 25-year-old son, Kamal Singhala, Pieter van der Merwe, a lawyer who serves in several Gupta-linked companies, and Denel's Ntshepe and Burger.

Burger is alleged to have told colleagues about a number of visits he made to Saxonwold to see the Guptas and to have expressed the view that the Guptas opened doors in India and provided very high-level contacts. Neither he nor the Gupta's spokesperson responded to questions about this claim.

Editor's note: Burger has now denied this: "The allegations contained in this statement are refuted as false as I have never been to Saxonwold to visit the Guptas... The article has caused severe and possible irreparable damage to my reputation, which is founded on, inter alia, integrity, honesty and accountability."

By March 2016 Denel was touting its products at India's DefExpo (<http://www.defexpoindia.in/>) under the banner of "Denel Asia" (*see main picture*) although neither Brown, nor finance minister Pravin Gordhan had given the necessary authority for the formation of the joint venture.

In fact, according to two well placed sources, Brown is sitting with a due diligence report from law firm ENSafrica warning against the joint venture. The report apparently cites red flags about VR Laser's proximity to so-called "politically exposed persons" and concerns about the company's solvency.

The Denel board has continued vigorously to punt the VR Laser tie-up and push back against Treasury, which has described the formation of Denel Asia as illegal.

In the volatile Indian market, the reliance on the marketing skills of Salim Essa and company may be especially risky.

As the board itself has noted, Denel was blacklisted in India for nearly ten years while a tortuous investigation ensued of a 2005 deal to sell sniper rifles to the Indian army (<http://www.engineeringnews.co.za/print-version/india-ends-ban-on-denel-2014-08-19>), which involved payments to "agents" in an offshore tax-haven.

The Indian Central Bureau of Investigation filed a closure report in 2013, as the charges could not be proved.

The Denel board has said the Denel Asia joint venture was undertaken "to minimise the business risks associated with agents in some of the countries we have identified for business expansion".

According to a source with insight into the transaction, Denel has offered its intellectual property in the Denel Asia in return for a promise of R100 million marketing contribution from VR Laser. Both Denel and Essa failed to answer questions as to whether any of that money has been forthcoming.

Denel also failed to answer questions about what has become of its tie-up with the Indian conglomerate Tata, with whom it produced a prototype truck-mounted howitzer (<http://defenceforumindia.com/tatas-155-mm-howitzer-mounted-gun-system-1072>) for display at Defexpo 2014.



Photo: Tata's 155 mm Howitzer / Mounted Gun System (Defence Forum India)

India plans to secure around 1400 towed guns, 400 truck-mounted guns and 100 tracked (tank-mounted) guns at a total cost of more than \$4-billion, but the country has laid down stringent local content conditions.

The Denel board presumably thinks bringing marketing agents “in-house” will pass muster, but the Indian defence media has already picked up on the controversy over Denel Asia – and the Indian howitzer competition is already littered with shattered reputations.

The Bofors scandal (https://en.wikipedia.org/wiki/Bofors_scandal), which dogged the previous round of artillery purchases, dragged on for more than two decades. **DM**

Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

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By Greg Nicolson

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(https://www.dailymaverick.co.za/article/2018-10-10-barbie-deployed-to-close-dream-gap-for-young-girls/?utm_source=homepagify)

NEWSDECK

US Open, PGA winner Koepka voted PGA Tour Player of Year

AFP • 18 hours ago

(https://www.dailymaverick.co.za/article/2018-10-09-us-open-pga-winner-koepka-voted-pga-tour-player-of-year/?utm_source=homepagify)

PARLIAMENT

Budget office is director-less 4 months after contract extended and R265,000 bursary recipient is also departing

(https://www.dailymaverick.co.za/article/2018-10-10-budget-office-is-director-less-4-months-after-contract-extended-and-r265000-bursary-recipient-is-also-departing/?utm_source=homepagify)

Marianne Merten • 2 hours ago

(https://www.dailymaverick.co.za/article/2018-10-10-budget-office-is-director-less-4-months-after-contract-extended-and-r265000-bursary-recipient-is-also-departing/?utm_source=homepagify)

A medium popcorn & soft drink combo is the nutritional equivalent of three quarter-pounders and 12 pieces of butter.

OPINIONISTA

Patriarchal procedure — the hidden problems with criminalising the identification of suspects in sexual matters

Jameelah Omar • 16 hours ago

(<https://www.dailymaverick.co.za/opinionista/2018-10-10-patriarchal-procedure-the-hidden-problems->

OPINIONISTA

Patriarchal procedure — the hidden problems with criminalising the identification of suspects in sexual matters

Jameelah Omar • 16 hours ago

with-criminalising-the-identification-of-suspects-in-sexual-matters/?utm_source=homepagify)

(https://www.dailymaverick.co.za/article/2018-10-10-known-

quantity-mboweni-welcomed-if-not-necessarily-warmly-as-
fifth-finance-minister-in-three-years/?
utm_source=homepagify)

THE
MARKETS
SWING
BAND

'Known
quantity'

Mboweni Merten
welcomed

16 hours ago

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sutherlands-judgment-in-the-khumalo-case-radically-narrows-
the-scope-of-hate-speech/?utm_source=homepagify)

OPINIONISTA
Sutherland's
judgment
in
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Khumalo
case
radically
narrows

Pierre De Vos

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denies-any-gupta-wrongdoing-but-squirms-under-
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PARLIAMENT
Gigaba
denies
any
Gupta
wrongdoing

—
but
Rebecca Davis
squirms

14 hours ago

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another-train-burns-in-cape-town-mps-ask-what-are-prasas-
TRAIN
CRIME
plans-for-today/?utm_source=homepagify)

As
another
train
burns
Sune Payne
in

146

16 hours ago

LOAD MORE

ANNEXURE 14

- 147



MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: *"Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:*

- (a) establishment or participation in the establishment of a company;*
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;*
- (c) acquisition or disposal of a significant shareholding in a company;*
- (d) acquisition or disposal of a significant asset;*
- (e) commencement or cessation of a significant business activity; and*
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"*

**national treasury**Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to *"assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority"*.

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to *"promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment"*. The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

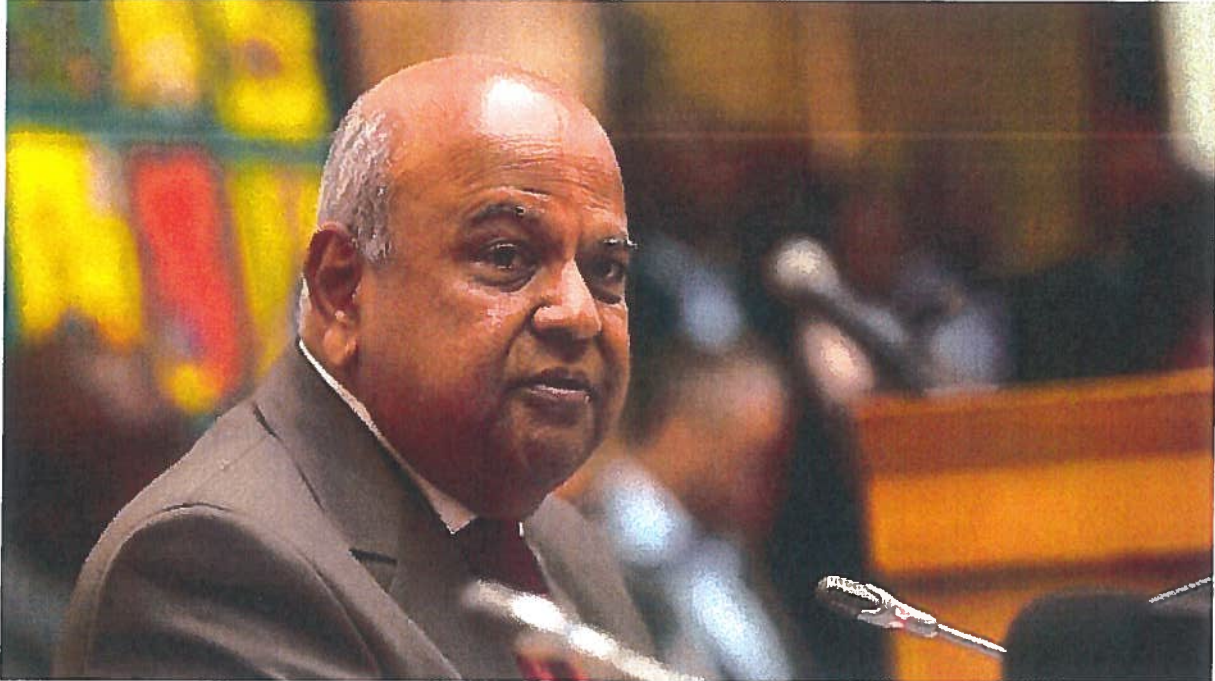
Issued on behalf of National Treasury

Date: 13 April 2016



Gordhan slams Denel after it pleas for R3 billion lifeline

POLITICS / 6 FEBRUARY 2018, 2:05PM / EMSIE FERREIRA



Former finance minister Pravin Gordhan said State arms manufacturer Denel dire financials were linked to dealings with the Gupta family. Picture: Bongani Shilubane

Parliament - State arms manufacturer Denel on Tuesday pleaded for an equity injection as it briefed MPs on its results for the past year, but former finance minister Pravin Gordhan flatly countered that the company's dire financials were linked to its dealings with the Gupta family believed to have corrupted key parastatals.

Gordhan said these allegations had dented business confidence around Denel, and cash alone could not fix the problem.

"The story of state capture has impacted on confidence," Gordhan said as members of Parliament's portfolio committee on public enterprises responded to the financial report.

"A new board needs to be appointed with no emails linked to them, or visits to Dubai. Otherwise we keep asking the CFO and the CEO to do the impossible," he said, adding that in the current financial climate it was hard to see where the funds for a bailout would be found.

Earlier Gordhan remarked that the defiance shown towards him in his capacity as finance minister by Denel chairperson Daniel Mantsha around a partnership with close Gupta associate Salim Essa had been unprecedented.

"Mr Mantsha was very vocal in 2016-17, precisely at the time when the Gupta emails indicated he had a close relationship with the Guptas, particularly at the time when Denel Asia was at play," he said.

 Gordhan was referring to a joint venture Denel sought to pursue with Denel-Asia, its unit by Essa, in the absence of approval from National Treasury, which eventually shut down the deal.

"No CEO has ever challenged a sitting minister as he did, and that was as a result of his relationship with the Gupta family, which impacts on his credibility."

Documents submitted to the committee by Denel said it needed a R3 billion capital injection.

Chief financial officer Odwa Mhlwana said the company's cash flow crisis was due in part to lenders cancelling agreements, forcing it to repay R756 million "in the last few months" that had been designed as five-year loans.

It severely hampered its ability to pay suppliers, who were now demanding cash transfers before delivery, he added.

African News Agency/ANA

Denel slams Treasury over Gupta venture threat

NEWS / 31 AUGUST 2016, 09:45AM / SIYABONGA MKHWANAZI



Pravin Gordhan

*** This article has been edited to remove a picture of Talib Sadik as he was not the GCEO of Denel at the time the venture was pursued. We apologise to Mr Sadik for the error.**

Johannesburg - Denel has become the latest State-Owned Entity to fire a broadside at the National Treasury after it accused it of political grandstanding over its threats to legally block the joint venture with a Gupta-associated company.

The state arms manufacturer also challenged Finance Minister Pravin Gordhan to show leadership and defence of the economy by stopping the court threats. It said Gordhan was disingenuous in his legal threats and had failed to approve the deal to frustrate Denel. The Treasury had indicated it was going to court to stop the Denel joint venture with VR Laser, which is linked to the Guptas.

The state arms manufacturer on Tuesday said it would oppose the court challenge by the Treasury. "It is strange that National Treasury is frustrating the Denel Asia joint venture when Denel is not putting up a capital investment," it said.

"Only VR Asia is putting up R100 million to fund the business with Denel to share 51 percent of the profit," it said.

The treasury and Gordhan have been caught up in simmering battles with State-Owned Entities.

The ANC on Tuesday came out in support of the treasury in its investigations of Denel's coal contracts with the Gupta-owned Tegeta. The contract is said to be worth millions of rand.

This is the latest battle between Denel and Gordhan, after an earlier ugly fight where the finance minister described Denel as belligerent. Denel said it informed the Treasury of a decision to establish Denel Asia in October 29, but said nothing. It said despite the urgency of the matter both the treasury and the department of public enterprises remained silent.

Denel said treasury sprang into action when the name of the Guptas was linked to the deal. "The allegations that Denel is 'captured by the Guptas' are unfounded and politically motivated," said Denel.

"The Gupta family has no business joint venture with Denel and none of the Gupta family members or relatives are shareholders in Denel Asia," it said.



ANNEXURE 15

- 154



Case no: 20749/17

In the matter between:

DENEL SOC LIMITED

Applicant

and



MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

NOTICE OF MOTION

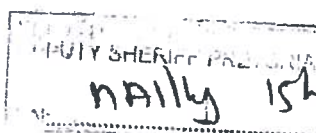
TAKE NOTICE that the applicant intends making application to the above Honourable Court for an order in the following terms:-

1. An order declaring that:

- 1.1. that the applicant obtained approval, *alternatively*, is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016 from the second respondent for the conclusion and forming of its joint venture with VR Laser Asia ("the joint venture agreement") by virtue of Section 54(3) read with 51(g) of the Public Finance Management Act, 1999 ("the PFMA");



the applicant acted in accordance and compliance with the provisions of sections 51(1), 52(2)(a),



54(2)(b) and 54(2)(e) of the PFMA in concluding and forming the joint venture agreement; and

- 1.3. the applicant acted lawfully in concluding and forming its joint venture with VR Laser Asia in terms of the joint venture agreement.
2. Costs payable by any respondent that opposes the application, jointly and severally, with any other respondent that opposes the application.
3. Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **ZWELAKHE NHLANGANISO NTSHEPE** together with the annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed Khampha Incorporated Attorneys Incorporated as its attorneys of record and nominated address set out below as the address at which they will accept notice and service of all process in these proceedings in terms of Rule 6(5)(b).

TAKE NOTICE FURTHER that if you intend opposing this application you are required:-

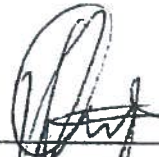
- (a) to notify the applicant's attorneys in writing of such intention within 10 (ten) days of service of the application;
- (b) to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in

these proceedings; and

- (c) file your answering affidavit within 15 days of the date on which you serve and file any notice of intention to oppose this application.

TAKE NOTICE that in the event that no such notice of opposition is received, the application will proceed unopposed at **10h00 on 02 May 2017** or so soon thereafter as counsel may be heard.

Signed at **PRETORIA** on this the 23 day of **MARCH 2017**.



KHAMPHA ATTORNEY'S INC
Applicant's Attorneys
C/O T.M CHAUKE INC
2nd floor Eastwing, Sammy Marks Square
314 Church Street,
PRETORIA
Tel: (011) 234 1735
Fax: 086 500 0945
E-mail: azwi@khamphainc.co.za
Ref: AK/Denel/NT01

To:

The **REGISTRAR** of the High Court
PRETORIA

And to:

DEPARTMENT OF NATIONAL TREASURY
First Respondent
40 Church Square, Pretoria
C/O Office of the State Attorney
SALU Building
316 Thabo Sehume Street
(Cnr Thabo Sehume & Francis Baard Streets)
PRETORIA
GAUTENG PROVINCE

SERVICE BY SHERIFF

And to:

MINISTER OF FINANCE

Second Respondent

40 Church Square, Pretoria

C/O Office of the State Attorney

SALU Building

316 Thabo Sehume Street

(Cnr Thabo Sehume & Francis Baard Streets)

PRETORIA

GAUTENG PROVINCE

SERVICE BY SHERIFF

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

159

Case no:

In the matter between:

DENEL SOC LIMITED

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

FOUNDING AFFIDAVIT

I the undersigned,

ZWELAKHE NHLANGANISO NTSHEPE

hereby declare under oath as follows:

1. I am an adult male Acting Chief Executive Officer of the applicant ("Denel").
2. I am duly authorised to depose to this affidavit and to launch this application on behalf of Denel.
3. Unless the context indicates otherwise, the facts contained in this

KJ



affidavit fall within my personal knowledge. Such facts are furthermore to the best of my knowledge and belief both true and correct.

4. To the extent that I lack personal knowledge of any facts in this affidavit, I refer this honourable Court to the confirmatory affidavits attached hereto.

THE PARTIES

5. The applicant is **DENEL SOC LIMITED**, a state-owned company registered and incorporated as such in terms of the company laws of South Africa, read with Public Finance Management Act No 1 of 1999, with its registered office at Nellmapius Drive, Irene, Pretoria ("**Denel**").
6. The first respondent is the **MINISTER OF FINANCE**, a member of the National Cabinet who is cited herein in his official capacity as the executive head of the Treasury who carries out his duties as such from 40 Church Street, Old Reserve Bank Building, 2nd Floor, Pretoria.
7. The second respondent is the **DEPARTMENT OF NATIONAL TREASURY**, a national department established in terms of section 5 of the Public Finance Management Act, 1 of 1999 read with Section 216 of the Constitution of the Republic of South Africa, 1996, with its principal place of business at 240 Madiba Street, Pretoria ("**Treasury**").
8. The Minister of Finance is the head of, and performs an oversight role over, the Treasury. In terms of sub-section 2 of the Public

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Finance Management Act, 1 of 1999 ("the PFMA"), the Minister takes responsibility for the decisions of the Treasury.

9. The respondents are cited herein only insofar as they may have an interest in the outcome of this application and as such no relief is sought against them save for costs in the event of opposition.

PURPOSE OF THE APPLICATION

10. The purpose of the application is to seek a declaratory order declaring that:

10.1. Denel obtained approval, *alternatively*, is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016, from the second respondent, for the conclusion and forming of its joint venture with VR Laser Asia ("the joint venture agreement") by virtue of Section 54(3) read with 51(g) of the PFMA;

10.2. Denel acted lawfully and in accordance, and compliance, with the provisions of Sections 51(1)(g), 54(2)(b) and 54(3) of the PFMA in concluding and forming the joint venture agreement.

INTRODUCTION

11. Denel:

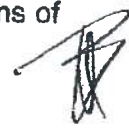
11.1. is a state owned commercially-driven company and strategic asset for innovative defence, security and related

K.J



technology solutions whose sole shareholder is the South African Government;

- 11.2. is the largest manufacturer of defence equipment in Africa and operates in the military aerospace and landward defence environment;
- 11.3. is ranked among the world's top 100 global defence manufacturers and is the second largest defence company in the southern hemisphere;
- 11.4. provides turn-key solutions of defence equipment to its client by designing, developing, integrating and supporting artillery, munitions, missiles, aero structures, aircraft maintenance, unmanned aerial vehicle systems and optical payloads based on high-end technology;
- 11.5. has, over the years, built a reputation as a reliable supplier to its many international clients. It supplies systems and consumables to end users as well as sub-systems and components to its industrial client base;
- 11.6. is an important strategic defence contractor in its domestic market and a key supplier to the South African National Defence Force ("SANDF"), both as original equipment manufacturer ("OEM") and for the overhaul, maintenance, repair, refurbishment and upgrade of equipment in the SANDF's arsenal; and
- 11.7. groups together several defence and aerospace divisions and associated companies, provides turn-key solutions of


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defence equipment to clients by designing, developing, integrating and supporting artillery, munitions, missiles, aero structures, aircraft maintenance, unmanned aerial vehicle systems and optical payloads based on high-end technology.

12. The Minister for Public Enterprises has executive authority over Denel and as such appoints an independent Board of Directors (the "Board") which oversees the executive management team responsible for the day-to-day management of Denel.
13. Denel has several equity partnerships, joint ventures and co-operation agreements with various companies in the defence industry.
14. Denel has the following divisions:
 - 14.1. Denel Dynamics – this division house the sovereign technologies and capabilities for the SANDF;
 - 14.2. Denel Vehicles Systems – Strategic;
 - 14.3. Denel Aviation – Strategic;
 - 14.4. Denel Aerostructures – Strategic;
 - 14.5. Denel Land Systems - Strategic;
 - 14.6. Pretoria Metal Pressings (PMP) – Strategic;



14.7. Denel Integrated Systems and Maritime – Strategic; and

14.8. Overberg Test Range (OTR) – Strategic.

DENEL'S SOURCES OF FUNDING

15. Denel:

15.1. is currently not funded through government grants but from a combination of debt and capital markets;

15.2. is funded mainly through interest bearing borrowings which are backed by government guarantees in the amount of R1.85 billion; and

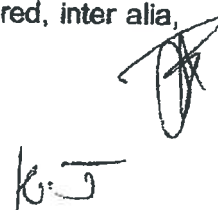
15.3. has a R3 billion Domestic Medium Term Note ("DMTN") Programme which allows for short and long term debt issuance to fund the group.

16. Treasury has guaranteed a portion of the bonds and the commercial paper issued by Denel under the R3 billion DMTN programme.

DENEL ASIA JOINT VENTURE

17. In line with its strategic objectives, Denel concluded a joint venture agreement with VR Laser Asia, which joint venture involves the marketing and sale of armaments in the Asian market ("the joint venture").

18. In concluding the joint venture, Denel has considered, inter alia,

Handwritten signature and initials, possibly "K. J.", located at the bottom right of the page.

the following advantages of partnering with VR Laser Asia in the region:

- 18.1. VR Laser Asia's provision of further design, manufacturing and fabrication skills;
 - 18.2. that VR Laser Asia's is already established in the market / region;
 - 18.3. VR Laser Asia's deeper understanding of the local market and industrial landscape;
 - 18.4. VR Laser Asia's ability to align with local business networks;
 - 18.5. the provision by VR Laser Asia of quick access to local potential production and development partners;
 - 18.6. VR Laser Asia's ability to increase visibility in the market / region;
 - 18.7. further access to operational funding for Denel;
 - 18.8. the growth of the business in a sustainable manner; and
 - 18.9. Denel and VR Laser Asia's ability to share all demonstration costs proportionately to their shareholding.
19. The joint venture agreement is not attached to this affidavit for reasons of the confidentiality provisions contained therein. The



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respondents are in possession of a copy of the agreement and Denel will make a copy of the agreement available to the Court with appropriate confidentiality mechanisms in place.

20. VR Laser Asia's entire shareholding is owned by Mr Salim Essa.
21. The parties formed a new joint venture company (or special purpose vehicle) which is registered in Hong Kong under the name Denel Asia Co. Ltd ("**Denel Asia**").
22. Denel owns 51% of the issued share capital in Denel Asia while VR Laser Asia owns the remaining 49%.
23. Prior to the formation of the joint venture, Denel complied with all its obligations under, and in terms of, the provisions of the PFMA by seeking the approval of Treasury and the Minister of Public Enterprises for the formation of a joint venture.
24. The process followed and chronology of events leading to the formation of the joint venture was as follows:-
 - 24.1. 10 September 2015 – the Board resolved to explore partnering a suitable equity joint venture partner for the Asia Pacific markets with ability to fund the joint venture as Denel did not have the budget for such. In the past, Denel had invested about R500 million in its attempts to establish itself in that market without making any return on such investment.
 - 24.2. 28 October 2015 – Denel submitted its pre-notification on the proposed formation of Denel Asia to the Minister of

K.S



Public Enterprises. A copy of this pre-notification and proof of delivery are annexed hereto as **FA1**;

- 24.3. 29 October 2015 – Denel submitted its pre-notification on the proposed formation of Denel Asia to the Minister of Finance and the Director General: National Treasury ("**the Director General**") in compliance with section 51(1)(g). A copy of the pre-notification and proof of delivery are annexed hereto as **FA2**;
- 24.4. 22 November 2015 – a presentation was made of the Denel Asia business case to the Denel audit and risk committee;
- 24.5. 23 November 2015 – the Minister of Public Enterprises granted in principle approval for Denel to continue discussions with VR Laser Asia and for Denel to submit a Section 54(2) PFMA application to both the Treasury and the Minister of Finance. A copy of the approval is attached hereto as **FA3**;
- 24.6. 7 December 2015 – the Board approved the PFMA application subject to certain conditions and regulatory approval;
- 24.7. 9 December 2015 – a meeting was held between Denel, the Department of Public Enterprises (the "**DPE**") and Treasury. During this meeting, Denel explained the urgency of the matter and informed Treasury and the DPE that it would file the PFMA application immediately and requested that it should be treated as urgent. Both



K-J

Treasury and DPE agreed to the urgency of the matter. Treasury did not raise any objection with the formation of the said joint venture on this date and had not done so since it was notified through the pre-notification application on the 28 October 2015.

- 24.8. 11 December 2015 – Denel submitted its formal PFMA applications in terms of Sections 51 and 54 of the PFMA to the Ministers of Public Enterprises and Finance ("the **PFMA applications**") and receipt of the delivery of the applications was acknowledged in writing. A copy of the formal PFMA application and proof of delivery are attached hereto as **FA4.1** and **FA4.2** respectively;
- 24.9. The 30 day period as stipulated in Section 54(3) of PFMA expired on 10 January 2016 and the applicant deemed, as it is entitled in law, the approval to have occurred as per the deeming provisions in, *inter alia*, Section 51(g) read with Section 54(3) of the PFMA.
- 24.10. Denel Asia was registered on 29 January 2016.
- 24.11. On 5 February 2016, a letter was addressed from the National Treasury Chief Director: SCM Governance, Monitoring & Compliance to Denel requesting information in order to determine whether "*government prescripts*" were followed in the formation of Denel Asia. A copy of the letter is attached hereto as **FA5**. This letter was sent by Treasury almost a month after it was notified of the formation of Denel Asia and two months after the meeting referred to above was held on 9 December 2015 between



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Denel, Treasury and DPE to discuss, *inter alia*, the formation of Denel Asia.

- 24.12. 4 April 2016 – the South African Reserve Bank gave its approval for the joint venture.
25. It is common cause that neither the Minister of Public Enterprises nor the Minister of Finance (and their respective departments) reacted or responded to either the Section 51(1)(g) or 54(2) applications.
26. Only after the announcement of the formation of the joint venture and the appointment of Mr Pravin Gordhan in the position of Minister of Finance, curiously, Treasury issued a press statement on 13 April 2016 stating that the transaction was not approved and in contravention of the provisions PFMA and that the Denel board has breached corporate governance principles. This is patently not correct. A copy of the Treasury media statement marked as annexure **FA6**.
27. It is obvious that this unwarranted statement which makes baseless but serious allegations received wide negative media coverage for Denel. As an example, annexures **FA7** and **FA8** are some of the media articles covering the story.
28. On 14 April 2016, Denel issued a press statement disputing that the transaction was "*illegal*" and confirming the formation of the joint venture was lawful. In addition, Denel cited the obligations contained in Chapter 3 of the Constitution which enjoins all spheres of government, including all organs of state to co-operate with one another in mutual trust and good faith. A copy


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of the applicant's statement is attached hereto as **FA9**.

29. On 15 April 2016, a meeting was held between representatives of Denel and Treasury at Denel's request, *inter alia*, to clarify the process it followed prior to conclusion of the joint venture and to allay the spurious concerns of Treasury. It is important to point out that (at paragraph of 3.d. of the minute) Treasury, represented by the officials at the said meeting, placed on record at the meeting that "*Denel freeze/put on hold all business operations of the Joint Venture until National Treasury issues their decision on the PFMA application.*" The parties further undertook to work together to resolve any misunderstanding around this matter. A copy of the minutes of this meeting are attached hereto marked annexure **FA10**.
30. On 26 June 2016, Denel addressed correspondence to the Minister of Finance in which it indicated, *inter alia*, that there is no justification for Treasury to have chosen to conduct itself in the manner that it had, that its statement of 13 April 2016 was issued without consultation and was inaccurate and that it is inappropriate to have publically accused Denel and the Board of having committed financial misconduct. A copy of the letter is annexed hereto as **FA11**.
31. On 4 May 2016 during the Treasury budget vote in Parliament, the Minister of Finance made the following statement regarding the Denel Board:

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they are not supposed to do, they begin to display a level of



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arrogance and belligerence that does not befit the right kind of corporate governance, and the board at Denel needs to take that message".

32. As an example, attached is a copy of a media article confirming the Minister of Finance's statement in parliament marked annexure **FA12**. This statement also received prominent media coverage. An example of such coverage is annexed hereto as **FA13**.
33. On 6 May 2016, Denel issued a statement attempting to correct the false, misleading and defamatory statement made by the Minister of Finance and appealed to Minister of Finance and the Director General to refrain from making baseless public accusations against Denel and the Board (especially not in the media and without proper engagement and consultation). A copy of the statement is annexed hereto as **FA14**.
34. On 29 May 2016, amaBhungane published an article titled "*How Denel was Hijacked*" effectively repeating the allegations by the Minister of Finance. This article is attached as annexure **FA15**.
35. During June 2016, Denel prepared and submitted the requested information to Treasury and confirmed that the submission was made for information purposes only since the approval occurred as per the deeming provisions of the PFMA.
36. Despite Denel's attempts to clarify the matter directly with Treasury, the Minister of Finance and the Director General, in Parliament and other forums, the Minister of Finance and the Director General have continued to state that the joint venture

KJ

transaction was concluded "*illegally*" and this despite, as we understand, having taken legal advice which says the contrary.

37. In this regard, I believe that the Minister of Finance and the Director General have sought, and obtained, legal opinion from senior counsel which is contrary to their views and the position adopted by them (i.e. which opinion supports Denel's contention that it has obtained deemed approval for the joint venture).
38. Despite this, the Minister of Finance and the Director General have publicly persisted with their erroneous views regarding the legality (or otherwise) of the joint venture and have sat idly back having taken no further steps to resolve the matter since having made the unsubstantiated public statements referred to above.
39. I submit that this shows bad faith on the part of Treasury, the Minister of Finance and the Director General and demonstrates the dire need for this Court to bring certainty to the matter.
40. Based on the events described above and the spurious allegations of Treasury, the Minister of Finance and the Director General, Treasury has on a number of occasions indicated that it shall only provide the required support to Denel on dissolution of the joint venture. This is clearly improper pressure. A copy of an email confirming the above is attached marked annexure **FA16**.
41. In an attempt to resolve the *impasse*, Denel formally proposed (**FA11**) to have the dispute resolved through application of the Intergovernmental Relations Framework Act 13 of 2005 and Chapter 3 of the Constitution. This proposal was not considered or accepted by Treasury, the Minister of Finance and the Director



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General and they did not propose an alternative dispute resolution mechanism. On the contrary, they have persisted with their decision not to provide any assistance to Denel until the joint venture was terminated and Denel Asia has been "de-registered."

42. In this regard, Denel initiated a meeting and met with the Treasury on the 17 November 2016. The purpose of the meeting was for Denel to request the support of Treasury in respect of its roadshow to investors in order for Denel to renew its existing facilities. At that stage, Treasury informed Mr Odwa Mhlwana, Denel's Acting Chief Financial Officer, that it would only join and support Denel on condition that the joint venture is terminated and Denel Asia is "de-registered." A copy of the confirmatory affidavit of Mr Mhlwana is attached marked **FA17**.
43. The Minister of Finance and Treasury have, on several occasions, been invited by Parliament to present their views regarding the formation of Denel Asia and the joint venture and on each occasion they have failed to attend Parliament or any such meetings scheduled for this purpose.

THE ROLE OF THE TREASURY, THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL

44. Section 216 of the Constitution, 108 of 1996 ("the Constitution"), provides for the promulgation of national legislation to establish the Treasury.
45. The Treasury, *inter alia*:



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- 45.1. was established in terms of Section 5 of the PFMA;
 - 45.2. is the national department responsible for financial and fiscal matters; and
 - 45.3. is responsible for managing South Africa's national government finances and in so doing supporting efficient and sustainable public financial management which is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans.
46. The Constitution (Chapter 13) mandates the Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.
47. The Minister of Finance is the head of the Treasury. In terms of sub-section 2 of the PFMA, the Minister takes responsibility for the policy (and other) decisions of the Treasury.
48. Section 6 of the PFMA deals with the functions and powers of the Treasury, which include assisting *"departments and constitutional institutions in building their capacity for efficient, effective and transparent financial management."*
49. As mandated by the executive and Parliament, the Treasury must support the optimal allocation and utilisation of financial resources in all spheres of government to reduce poverty and vulnerability among South Africa's most marginalised.
50. The regrettable conduct of the Treasury, the Minister of Finance

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and the Director General towards Denel and referred to, inter alia, below, is a violation of their statutory and constitutional duties.


REGRETTABLE CONDUCT BY TREASURY, THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL TOWARDS DENEL

51. Proceeding on the basis of a deemed approval is not uncommon, as an example -
- 51.1. during 2012 Denel submitted an application to Treasury in terms of Section 51(1)(g) of the PFMA for approval of the proposed "*Tawazun Dynamics*" transaction ("**the Tawazun transaction**");
 - 51.2. despite the lapse of about a 4 year period, no response has ever been received from Treasury to such a PFMA application and/or the Tawazun transaction;
 - 51.3. Denel has proceeded with the Tawazun transaction and has traded on the basis of a deemed approval from Treasury in terms of the provisions of the PFMA;
 - 51.4. Neither Treasury, the Minister of Finance nor the Director General have ever raised concerns regarding the Tawazun transaction and the deemed approval.
52. In the circumstances, Denel can only assume that the reason that Treasury, the Minister of Finance and the Director General have deliberately and publically taken issue with the joint venture agreement with VR Laser Asia is because of the acrimonious

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and personal public dispute that is currently playing itself out between Treasury, the Minister of Finance and the Director General and any entity that the former perceive to be related to, or associated with, the Gupta family (i.e. such as VR Laser Asia through its shareholder, Mr Salim Essa, who is perceived to be associated with the Gupta family).

53. It is clear from the above that Treasury, the Minister of Finance and the Director General have failed (and continue to fail) to discharge their constitutional duties in a professional and responsible manner.
54. It is also obvious that the public statements uttered by Treasury, the Minister of Finance and the Director General have had serious adverse reputational consequences for Denel, have impacted upon Denel's credibility in the market and with various financiers and lenders and that Denel has been obviously and manifestly prejudiced thereby. The widespread perception in the market is that Denel has contravened the PFMA, has concluded an "illegal" transaction and is being led by a board which has no regard for good corporate governance principles.
55. The prejudice and uncertainty caused by this negative perception which has been created by Treasury, the Minister of Finance and the Director General, is borne out by the fact that Denel has had to convince and placate its current and prospective lenders and financiers that such public utterances and perceptions are false, unsubstantiated and incorrect. This has been difficult for Denel to achieve and has created much uncertainty for it in the market.
56. There have also been media reports referring to a threat of

K. J. 

litigation to be initiated by Treasury, Minister of Finance and the Director General against Denel regarding the formation of the joint venture and these reports have not been contradicted by both the Minister of Finance and Treasury. However, neither Treasury, the Minister of Finance nor the Director General have taken any steps in this regard (other than to obtain the legal opinion referred to above).

57. It is a pity that the Treasury, the Minister of Finance and the Director General have sat idly back and have not made any efforts or taken any positive steps to properly resolve the uncertainty and *impasse* caused by them and their public utterances and pronouncements regarding the legality of the joint venture. It is with this in mind that the only reasonable inference to be drawn by such conduct (and their inactivity) is that the current uncertainty and negative perception suits their ulterior purpose and, *inter alia*, their ongoing public battle with the Gupta family.
58. Because of what is set out above, Denel has had serious difficulties in renewing **essential facilities** that are currently in place and in raising further funding that is required for optimal running of its commercially driven operations. Treasury, the Minister of Finance and the Director General:
- 58.1. are acutely aware (and have been for several months and as far back as the latter half of 2016) that a possible reason for creditors not wanting to extend such facilities is because of the perception created by the public disagreement between Treasury, the Minister of Finance and the Director General and Denel regarding Denel Asia

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and the joint venture; and

- 58.2. have themselves identified that it is important to bring the matter of the joint venture and Denel Asia to a close in a manner that would allow for Treasury, the Minister of Finance, the Director General, the DPE and Denel to talk to financiers and lenders with one unified voice.
59. Despite this knowledge, Treasury, the Minister of Finance and the Director General have done precious little to resolve the issues and change this erroneous public perception which is clearly prejudicing and harming Denel. It is with this in mind that Denel is compelled to seek certainty and clarity from this Court on the basis set out in this application.
60. It is in these circumstances that Denel has had no alternative but to approach this Court for, *inter alia*, a declarator that the formation of the joint venture was lawful.

DENEL'S ATTEMPTS TO RESOLVE THE IMPASSE

61. As stated previously, Denel sent a letter (FA11), to the Minister of Finance and suggested that the matter be referred for resolution through intergovernmental relations process as set out in Section 42 of the Intergovernmental Relations Act.
62. In this letter Denel, *inter alia*, stated that:
- 62.1. It has become apparent from the meetings of the Denel Executives and Treasury officials that Denel and Treasury have a different interpretation and understanding of the

KS [Signature]

legislative framework and thus it would seem, the parties have reached a deadlock;

- 62.2. breaking this deadlock is the first step in resolving the current *impasse* between the parties. Denel re-iterated the proposal made by its Executive Authority (the Minister of Public Enterprises) of convening a bilateral meeting on the matter which would satisfy the prerequisite before a dispute is formally declared in terms of Section 42 Intergovernmental Relations Act.
63. Denel's proposal was simply ignored and the Minister of Finance has thus refused Denel's every reasonable attempt to resolve the *impasse*.
64. Further, a number of attempts have been made to have the dispute resolved through the intervention of Parliament. On more than one occasion when meetings were scheduled with Parliament, the Minister of Finance and Treasury chose to make themselves unavailable. An example of this was on 7 September 2016 when both Denel, Treasury and the Minister of Finance were invited to parliament but Treasury and the Minister of Finance failed to attend.
65. The Treasury, the Minister of Finance and the Director General have disregarded Parliamentary requests to appear to discuss this matter.
66. As recently as 8 March 2017, the Minister of Public Enterprises was invited to, and attended, a Parliamentary Portfolio

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Committee Meeting regarding Denel's liquidity issues and its over reliance on foreign markets. At this meeting the Minister of Public Enterprises stated as follows, *"That brings me to Denel Asia. I signed off on Denel Asia on the PFMA section 54 because this falls under that section. The National Treasury have not signed off on this section 51(g)... I have not heard from National Treasury on this, we don't know whether they agree or not. I have told Denel not to trade on this company..."*

67. This once more demonstrates that Denel is hamstrung by the Treasury's, the Minister of Finance's and the Director General's refusal to co-operate and find resolution all while the uncertainty persists.

THE MOTIVATIONS OF THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL

68. As I have already said, it is no secret that Treasury, the Minister of Finance and the Director General have waged a personal and public war on any entity that they perceive to be associated with the Gupta family. It is Denel's view that it has been swept up, for no good reason, in this war to its prejudice and to the detriment of all South Africans.
69. Treasury, the Minister of Finance and the Director General have sought to rely on populist narratives created and supported by them to further their war and for an ulterior purpose. This is especially so in circumstances where they have:
- 69.1. ignored Denel's attempts to resolve the *impasse* through the intergovernmental framework and through a

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Parliamentary Process;

- 69.2. allowed other transactions such as the Tawazun transaction to proceed without query when not being associated with, or related to, the Gupta family.

PREJUDICE TO DENEL

70. In the absence of this application for a declarator, manifest uncertainty prevails and Denel is prejudiced, *inter alia*, as follows:

- 70.1. Denel has been unable to proceed with the implementation of the joint venture agreement in circumstances where one of the conditions precedent is the requisite PFMA approval;
- 70.2. Denel's reputation and credibility in the market has been severely impacted by the negative public perception created by Treasury, the Minister of Finance and the Director General regarding the joint venture;
- 70.3. Denel has experienced extreme difficulty in extending existing credit facilities and securing new credit facilities in circumstances where the lenders and financiers have expressed serious concern regarding the negative public perception created by Treasury, the Minister of Finance and the Director General regarding the joint venture and their public dispute with Denel. The respondents have created this situation by contending that Denel has behaved illegally by not obtaining PFMA approval when, to their knowledge, this is untrue but moreover they have

K.J. [Signature]

not acted expeditiously and diligently to resolve the matter as is required by the PFMA and principles of good governance;

70.4. Because of the unresolved dispute between Treasury, the Minister of Finance and the Director General and Denel regarding the joint venture and the resultant uncertainty, Denel Asia has lost out on potential profitable business deals in the Asia Pacific region including, inter alia, not being in a position to tender for the lucrative "*RFI artillery contract*" worth approximately U\$1 billion;

70.5. In acting in this manner and frustrating the operation of the joint venture, the respondents have frustrated the proper and effective operation of Denel and indeed, in the case of the Minister of Finance, he has sabotaged the proper functioning of a parastatal and sacrificed Denel's interest to further his own political war with the Gupta family. Apart from creating massive and unnecessary uncertainty in the sphere in which Denel operates, his conduct runs contrary to what one would expect of a Minister who is behaving impartially and in strict fulfilment of his statutory and constitutional duties. However, aside from the political and constitutional imperative for the Minister to behave properly there is an urgent commercial need for the Court to end the uncertainty created by Treasury, the Minister of Finance and the Director General because this has cast doubt on Denel's rights and obligations in relation to the joint venture agreement and its current and future legal position.

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- 70.6. Denel has suffered reputational damage and its credibility in the defence market has been impacted as a consequence of the public dispute with it and Treasury, the Minister of Finance and the Director General – it is obvious that potential business deals are negatively impacted when a potential customer, business partner or associate is confronted with this negative perception and public dispute between two State entities;
- 70.7. Denel is left without certainty regarding its existing, future or contingent rights and/or obligations in terms of, and under, the joint venture agreement. In addition, Denel's joint venture partner suffers similar prejudice in that it is left without certainty regarding its existing, future or contingent rights and/or obligations in terms of, and under, the joint venture agreement.
71. In addition to the prejudice referred to above, Treasury's, the Minister of Finance's and the Director General's regrettable conduct towards Denel has a potential to:
- 71.1. place undue pressure on Denel's liquidity position to execute its contracts;
 - 71.2. negative investor sentiment and the public perception of Denel;
 - 71.3. impact negatively upon Denel being able to discharge its obligations as set-out in the Defence Review;
 - 71.4. result in destabilising Denel's service to the SANDF as it is

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mandated to do, which in turn will ultimately compromise South Africa's defence capability and national security.

72. There clearly exists a dispute between Treasury, the Minister of Finance and the Director General and Denel regarding the status of the deemed PFMA approval of the joint venture. The former is of the view that there is no such deemed approval and Denel is of the view that it has obtained the necessary deemed PFMA approval. This dispute requires determination by this Court in circumstances where it is necessary for the parties to establish whether the condition precedent of PFMA approval, as contained in the joint venture agreement, has been fulfilled.

73. In addition, I submit that this Court ought to exercise its discretion and enquire into and determine the existing, future or contingent rights and obligations of Denel and VR Laser Asia, in respect of the joint venture agreement and to resolve the uncertainty as described above and that currently prevails.

WHEREFORE the applicant prays for an order in terms of the Notice of Motion to which this affidavit is affixed.



DEPONENT

SIGNED before me at Nelson SABS on this the 23rd day of **MARCH 2017**, the deponent having sworn that the contents of this affidavit are both true and correct, acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath and that the deponent considers the prescribed oath to be binding on the deponent's conscience.

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 72163607
K. S. Muvundla
S/Asst

COMMISSIONER OF OATHS

Full names: Justice Katlego Muvundla

Business address: Basden & Gerhard str

Designation: S/Asst

Capacity: S/Asst

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2017 -03- 23
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE



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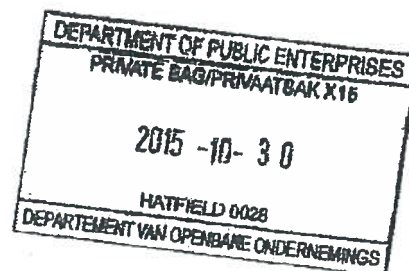
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DENEL GROUP

29 October 2015
 Tel +27 12 671 2858
 Fax +27 12 671 2751
 zwelakhen@denel.co.za

Minister L. Brown
 Minister of Public Enterprises
 Department of Public Enterprises
 Private Bag x15
 HATFIELD
 0028



Dear Minister Brown

PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA

This letter serves as a PFMA Section 54 (2) pre-notification informing the Department of Public Enterprises (DPE) of Denel SOC Limited ("Denel") intention to establish an incorporated joint venture company in Hong Kong for purposes of exploiting opportunities in the Asia defense market.

Rationale

The Asia Pacific region is perceived to be the leading global (excluding USA) defense market and a potent force in defense technology innovation. This has resulted in increased defense spending i.e. by 2018 defense budgets across Asia Pacific (excluding USA) are expected to grow by over 19% to about USD 612 billion; the procurement budgets are expected to increase by 28%; research and development projected growth is between 28 and 29% from 2014 to 2018.

Denel's growth strategy as set out in its corporate plan, is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's with minimal success.

Denel SOC Ltd, Reg No 1992/001337/30, Nellmapius Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Seloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Mandindi, Mr Z Mhlontlo¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (retd),
 Ms K P S Ntshavheni.

¹Executive Director
 Group Company Secretary Ms E M Africa

COPY

Countries such as India, Indonesia, Singapore, Thailand, Brunei, Philippines and Vietnam are considered to be primary target markets for Denel whilst markets such as Myanmar, Sri Lanka and Bangladesh, form secondary target markets.

India uses defense spending to develop its domestic industrial base to create high value jobs. India's government dominated defense industrial base has been open to private sector participation only since 2001 and is highly dependent on imports limiting the contribution of defense spending to economic development. To address this limitation, the government has increased foreign direct investment to 49% ownership of a defense company. This has given rise to the "Buy Make India" program. This seems to be a growing trend in the region.

In analysing the Denel business in the Asia Pacific region, the following emerged as barriers to entry into this fast growing market:

- lack of multilateral defense relationships;
- inability to provide funding solutions;
- inability to source local production and development partners (particularly in India);
- frequent engagement with end user and industry from a distance not feasible;
- company visibility in the market place/region from a distance is limited;
- need for a conduit for developing/Aligning with local business networks; and
- active participation in regional initiatives from a distance are not feasible.

Given the above barriers, it makes commercial sense for Denel to enter into a joint venture with a company that is already established in the region and which has an established network of potential business sources that will provide immediate and urgent solutions to the barriers raised above.

Rationale for the formation of Denel Asia

VR Laser Asia approached Denel with a business proposition. After careful consideration, Denel recognised the synergies that exist and the ability to jointly take advantage of existing opportunities.

The advantages of Denel entering the Asia market with VR Laser Asia include:

- the provision of quick access to local potential production and development partners
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- access to operational funding
- the ability to increase visibility in the market/region

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For the above reasons it is proposed that a company, Denel Asia, be registered in Hong Kong in partnership with VR Laser Asia. Therefore, Denel can leverage on VR Laser Asia's infrastructure and presence in the region.

Financing:

- VR Laser Asia will be responsible for all operational costs for a period of 5 years estimated at a R100 million
- Project funding as and when required will be provided by shareholders.

Financial viability

- In light of the R100 million investment by VR Laser Asia into Denel Asia over a 5 year period for operating costs, the operational financial risks to Denel are minimal.
- Overall there is currently potential business amounting to USD 9.2 billion over the next 5 years that offers Denel lucrative opportunities within this region. These opportunities will be concluded on a commercially viable basis

(See Appendix 2 representing opportunities that Denel feels confident will be secured jointly with VR Laser Asia).

Technology transfer and protection of Denel's IP

- Denel will not alienate its Intellectual Property and technology transfer will be done by way of a licencing agreement between Denel and Denel Asia.
- Applicable royalties of third parties including those of Denel will be addressed.

Risks and mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • No agents will be involved • Denel has a controlling share

2.	Guarantees	<ul style="list-style-type: none"> Reduced balance sheet exposure due to partnering
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Laser Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred
4.	Legal Exposure	<ul style="list-style-type: none"> Denel SA exposure (Indemnities and no liability in terms of current proceedings and future-transactions to be addressed)
5.	PFMA Conditions	<ul style="list-style-type: none"> Adhere to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.

Governance Structure:

The salient features of the transaction agreed to in principle with VR Laser Asia and as set out in a co-operation agreement, which remains subject to regulatory approval, are as follows:

Company Structure

A new limited liability company (Denel Asia) is to be registered in Hong Kong. It should be noted that the company will be established and managed in line with corporate governance best practices to reflect an independent organisation accountable to its shareholders.

- Denel, will hold 51% of the issued share capital of Denel Asia with the remaining 49% to be held by VR Laser Asia.
- Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level.
- Upon incorporation, a board of directors will be constituted comprising Denel and VR Laser Asia representatives (with Denel appointing the first Chairman).
- Subject to relevant approvals, the Shareholders agreement, Memorandum of Incorporation (MOI) in relation to Denel Asia as well as a licence agreement are to be concluded,

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finalised and signed between Denel and Denel Asia. These will regulate the terms on which Denel will make certain intellectual property available to Denel Asia. Upon execution of the shareholders' agreements, the co-operation agreement will terminate.

Suspensive Condition

- The co-operation agreement is subject to internal and regulatory approvals.

WAY FORWARD

The following activities will take place towards the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the cooperation agreement	Completed and remains subject to board and PFMA approval.
The formation of Denel Asia has been tabled at the Denel Board	10 September 2015
PFMA pre-notification	30 October 2015
Statutory and Regulatory approvals	November 2015
PFMA submission	November 2015

Recommendation

Denel will keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals.

I trust that you will find the above in order and remain at your disposal for any further clarification that may be required.

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Yours faithfully



Mr L. D. Mantsha

CHAIRMAN OF THE DENEL BOARD

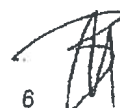
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cc. Ms Matsietsi Mokholo – Acting **Director-General** Department of Public Enterprises
Mr Zwelakhe Ntshepe – Acting GCEO: Denel

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Estimated Project Income




Country	Products	Quantities	Turnover	Expected Order Date	Probability	Status
USD'm						
India						
(20 year market presence)	Turrets/Vehicles (Infantry Fighting Vehicle Program)	DLS 1000	2 000.000	2018	30%	Strong market requirement but no interaction yet
	T6 Artillery Turrets	DLS 200	760.000	2017	50%	Historical investment of ~\$200m. Evaluations, Technical & commercial negotiations completed.
	T5-52 Truck Mounted Artillery Gun	DLS 834	2 849.000	2018	60%	Limited trials completed in India by Tata. Influence required to tighten specification.
	G6-52 Wheeled Artillery Gun	DLS 300	2 100.000	2017	60%	Historical investment of ~\$200m. Evaluations, Technical & commercial negotiations completed.
	5577 Machine Gun	DLS 9500	344.000	2016	60%	Quotation submitted.
	85mm Air Defence Cannon	DLS 450	140.000	2017	50%	Informal RFI received. Discussion in process.
	Autocannon: Grenade Launcher	DLS 3000	135.000	2016	30%	Unexplored opportunity
	NTW20 Anti-Material Rifle	DLS 700	28.700	2016	65%	Signed contract to be submitted.
	Unmanned Aerial Vehicle	Deed 0	-	-	-	To be explored
	155mm Ammo	RDM 0	-	-	-	ToT completed for EWFB. Opportunity for Asegi TOT.
	B1-Modular Charges	RDM 0	-	-	-	Detpack already transferred.
Bangladesh			\$ 156.700			
	105mm Towed Artillery Gun	DLS 35	64.800	2017	30%	RFI issued.
	155mm Towed Artillery Gun	DLS 35	90.000	2017	30%	RFI issued.
	105mm Ammo	RDM 0	-	-	-	RFI issued.
	155mm Ammo	RDM 0	-	-	-	RFI issued.
	B1-Modular Charges	RDM 0	-	-	-	RFI issued.
Singapore			154.800			
	G12 Naval Cannon Systems	DLS 25	24.100	2016	60%	Follow on order expected.
Thailand			24.100			
	G12 Naval Cannon Systems	DLS 40	4.000	2016	70%	Follow on order expected.
	G130 Naval Cannon	DLS 25	75.000	2016	50%	Explore opportunity.
	105mm Towed Howitzer	DLS 32	165.600	2018	50%	Requirement exists. Opportunity to be explored.
	155mm Towed Howitzer	DLS 28	45.000	2020	50%	Requirement exists. Opportunity to be explored.
	155mm Self-Propelled Howitzer	DLS 6	41.000	2022	30%	Requirement exists. Opportunity to be explored.
	35mm DPG Naval Cannon	DLS 10	50.000	2016	30%	Technical presentation made. Budgetary price submitted.
Indonesia			835.600			
	PK-20 Turret	DLS 342	89.460	2016	60%	Product Certified. Explore ToT.
	MT 105mm Armour Turret	DLS 138	372.600	2017	50%	Opportunity exists for medium tank. Explore co operation with Rheinmetall.
Philippines			462.050			
	G12 Naval Cannons	DLS 18	17.010	2017	40%	RFI issued. Explore opportunity
	G130 Naval Cannon	DLS 12	36.000	2018	50%	RFI issued. Explore opportunity
Vietnam			62.000			
	35mm DPG Naval Cannon	DLS 10	50.000	2017	30%	Technical presentation made.
Myanmar			50.000			
	35mm DPG Naval Cannon. Manufacturing license.	DLS 1	10.000	2016	70%	Technical Presentation made. Negotiation invitation awaited.
			20.800			
TOTAL			\$ 296.230			

Probability level	Definition
0-30%	Requirement identified. Opportunity to be explored.
30-60%	Requirement confirmed. Discussions/exploration ongoing.
>60%	Negotiations in process.

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ACKNOWLEDGEMENT OF RECEIPT




Letter re. Pre-Notification – PFMA Application


	Name (Print)	Signature	Date and time
Minister L Brown Minister of DPE	Keromang		30/10/2015 16:00
Minister N Nene Minister of Finance			30/10/15

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ACKNOWLEDGEMENT OF RECEIPT

Letter re. Pre-Notification – PFMA Application

	Name (Print)	Signature	Date and time
Minister L Brown Minister of DPE	Kemomang		30/10/2015 16:00
Minister N Nene Minister of Finance			30/10/15

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DENEL GROUP

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29 October 2015

The Honourable Mr Nhlanhla Nene
Minister of Finance
Department of National Treasury
Private Bag X115
PRETORIA
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Dear Minister Nene

PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA

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Denel's growth strategy as set out in its corporate plan, is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's with minimal success. Countries such as India, Indonesia, Singapore, Thailand, Brunei, Philippines and Vietnam are considered to be primary target markets for Denel whilst markets such as Myanmar, Sri Lanka and Bangladesh, form secondary target markets.

India uses defense spending to develop its domestic industrial base to create high value jobs. India's government dominated defense industrial base has been open to private sector participation only since 2001 and is highly dependent on imports limiting the contribution of defense spending to economic development. To address this limitation, the government has increased foreign direct investment to 49% ownership of a defense company. This has given rise to the 'Buy Make India' program. This seems to be a growing trend in the region.

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Ms P M Mahlangu, Ms N Mandindi, Mr Z Mhlontlo¹, Ms R Mokoena, Mr N J Molseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd),
Ms K P S Ntshavheni,

¹Executive Director
Group Company Secretary: Ms E M Africa

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In analysing the Denel business in the Asia Pacific region, the following emerged as barriers to entry into this fast growing market:

- lack of multilateral defense relationships;
- inability to provide funding solutions;
- inability to source local production and development partners (particularly in India);
- frequent engagement with end user and industry from a distance not feasible;
- company visibility in the market place/region from a distance is limited;
- need for a conduit for developing/Aligning with local business networks; and
- active participation in regional initiatives from a distance are not feasible.

Given the above barriers, it makes commercial sense for Denel to enter into a joint venture with a company that is already established in the region and which has an established network of potential business sources that will provide immediate and urgent solutions to the barriers raised above.

Rationale for the formation of Denel Asia

VR Laser Asia approached Denel with a business proposition. After careful consideration, Denel recognised the synergies that exist and the ability to jointly take advantage of existing opportunities.

The advantages of Denel entering the Asia market with VR Laser Asia include:

- the provision of quick access to local potential production and development partners
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- access to operational funding
- the ability to increase visibility in the market/region

For the above reasons it is proposed that a company, Denel Asia, be registered in Hong Kong in partnership with VR Laser Asia. Therefore, Denel can leverage on VR Laser Asia's infrastructure and presence in the region.

Financing:

- VR Laser Asia will be responsible for all operational costs for a period of 5 years estimated at a R100 million
- Project funding as and when required will be provided by shareholders.


Financial viability

- In light of the R100 million investment by VR Laser Asia into Denel Asia over a 5 year period for operating costs, the operational financial risks to Denel are minimal.
- Overall there is currently potential business amounting to USD 9.2 billion over the next 5 years that offers Denel lucrative opportunities within this region. These opportunities will be concluded on a commercially viable basis

(See Appendix 2 representing opportunities that Denel feels confident will be secured jointly with VR Laser Asia).

Technology transfer and protection of Denel's IP

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- Denel will not alienate its Intellectual Property and technology transfer will be done by way of a licencing agreement between Denel and Denel Asia.
- Applicable royalties of third parties including those of Denel will be addressed.

Risks and mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • No agents will be involved • Denel has a controlling share
2.	Guarantees	<ul style="list-style-type: none"> • Reduced balance sheet exposure due to partnering
3.	Penalties	<ul style="list-style-type: none"> • Both Denel and VR Laser Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred
4.	Legal Exposure	<ul style="list-style-type: none"> • Denel SA exposure (Indemnities and no liability in terms of current proceedings and future transactions to be addressed)
5.	PFMA Conditions	<ul style="list-style-type: none"> • Adhere to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.

Governance Structure:

The salient features of the transaction agreed to in principle with VR Laser Asia and as set out in a co-operation agreement, which remains subject to regulatory approval, are as follows:

Company Structure

A new limited liability company (Denel Asia) is to be registered in Hong Kong. It should be noted that the company will be established and managed in line with corporate governance best practices to reflect an independent organisation accountable to its shareholders.

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- Denel, will hold 51% of the issued share capital of Denel Asia with the remaining 49% to be held by VR Laser Asia.
- Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level.
- Upon incorporation, a board of directors will be constituted comprising Denel and VR Laser Asia representatives (with Denel appointing the first Chairman).
- Subject to relevant approvals, the Shareholders agreement, Memorandum of Incorporation (MOI) in relation to Denel Asia as well as a licence agreement are to be concluded, finalised and signed between Denel and Denel Asia. These will regulate the terms on which Denel will make certain intellectual property available to Denel Asia. Upon execution of the shareholders' agreements, the co-operation agreement will terminate.

Suspensive Condition

- The co-operation agreement is subject to internal and regulatory approvals.

WAY FORWARD

The following activities will take place towards the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the cooperation agreement	Completed and remains subject to board and PFMA approval.
The formation of Denel Asia has been tabled at the Denel Board	10 September 2015
PFMA pre-notification	30 October 2015
Statutory and Regulatory approvals	November 2015
PFMA submission	November 2015

Recommendation

Denel will keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals.

I trust that you will find the above in order and remain at your disposal for any further clarification that may be required.

Yours faithfully

Mr L. D. Mantsha
CHAIRMAN OF THE DENEL BOARD

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- cc. Ms Matsietsi Mokholo – Acting **Director-General** Department of Public Enterprises
Mr Lungisa Fuzile – Director General: National Treasury
Mr Zwelakhe Ntshepe – Acting GCEO: Denel
Mr Odwa Mhlwane – Acting Group Financial Director: Denel

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MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Mr Lungisani Daniel Mantsha
Chairperson of the Denel Board
Denel SOC Ltd
P O Box 8322
Centurion
0046

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E-mail: dan@lungisanimantshaattorneys.co.za / info@lungisanimantshaattorneys.co.za /
fortune@denel.co.za / tanvay@denel.co.za

Dear Mr Mantsha

Re: PFMA Section 54 (2) Pre-Notification on the Proposed Formation of Denel Asia

The above matter has reference.

I concur with yourself that Pacific Asia defence market will remain on upward trajectory for the foreseeable future. It would therefore make strategic business sense for Denel to position itself to take advantage of the envisaged growth.

However, accessing the Asian market is likely to be daunting for the new entity. Global defense original equipment manufacturers (OEMs) are targeting the growing Asian defence market to compensate for the stagnation at their home markets. They bring with them substantial offset and funding proposals which small companies such as Denel may not be able to provide. The value proposition of VR Laser Asia wanting a tie up with Denel is not clear especially on how it plans to break into this highly competitive market given its own limited global reach.

Given the strategic importance of the Asia-Pacific defence market, I hereby grant in-principle approval for Denel to continue discussions with VR Laser and Denel can submit a section 54 (2) PFMA application to both myself as the Executive Authority and the Minister of Finance.

In order to protect Denel's status as the holding company, the application should include, amongst other things:

- a) a comprehensive detailed business case to enable the Minister to express an opinion on the joint venture transaction;
- b) a comprehensive due diligence report on the financial regulatory legal requirement and regulatory laws governing foreign owned entities in Hong Kong;
- c) funding plans, all the transaction documents (including the MOU and Cooperation agreements);
- d) the process followed to select VR Laser as a partner of choice;

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- e) the proposed structure of the proposed new company and breakdown of estimated operational costs (five year horizon budget indicating clear cost allocation of both parties);
- f) a comprehensive due diligence of VR Laser which includes its financial standing, capabilities and ownership, defence and security product/service range and client base in Asia;
- g) registration details of the company and shareholding of VR Laser Asia;
- h) the reason(s) for a Continent specific versus a Country specific arrangement and indicate the preference of Hong Kong as a preferred domicile;
- i) any studies that were undertaken by the SOC that led to the conclusion that this partner is the most suitable, after VR Laser approached Denel with this business proposition; and
- j) reason(s) why this transaction or similar to it is not proposed in the 2015/16 Corporate Plan.

Thereafter, Denel is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed.

The Board must also ensure that there is adequate governance oversight regarding the processes that underpin transaction discussions. Issues of conflict of interest, real or perceived, should be adequately monitored. All efforts should be made to minimise risk exposure to both Denel and the Shareholder.

Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
 DATE: 23/4/2015

cc Mr Nhlanhla Nene, MP
 .. Minister of Finance

Tel: (012) 315-5559
 Email: minreg@treasury.gov.za

cc Mr Zwelakhe Ntshope
 .. Acting Group Chief Executive Officer
 Denel SOC Ltd

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DENEL GROUP

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Ref: Ltr/DPE/Denel Asia/2015

10 December 2015

The Honourable Ms Lynne Brown (MP)
Minister of Public Enterprises
Department of Public Enterprises
Private Bag X15
HATFIELD
0028

PER HAND

Dear Honourable Minister

**FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 54(1) AND 54 (2) OF THE
PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999
RE PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED**

We refer to the pre-notification letter dated 29 October 2015, addressed to the Honourable Minister, which pre-notification served to inform the Department of Public Enterprises in terms of Section 54(2) of the Public Finance Management Act 1 of 1999 ("PFMA") of the proposed establishment of a joint venture company in Hong Kong.

We hereby submit the formal application required in terms of the PFMA, more particularly sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e). In this regard, we shall simultaneously address the queries raised by the Honourable Minister re: the pre-notification letter. We shall equally inform the National Treasury of the proposed establishment of a joint venture company in Hong Kong and its limited financial impact on Denel SOC Limited.

Should any further information be required, please do not hesitate to contact either the Denel Executive Management or myself.

Yours faithfully


Mr L. D. Mantsha
CHAIRMAN OF THE DENEL BOARD
11/12/2015

cc. Mr Richard Seleke Director-General Department of Public Enterprises
Mr Zwelakhe Ntshope Acting CEO: Denel

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Directors: Mr L D Mantsha (Chairman), Mr R Saloojee* (Group Chief Executive Officer), Ms M Kgomoengoe, Mr T D Mahumapelo,
Ms P M Mahlangu, Ms N Mandindl, Mr Z Mhlonllo*, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd),
Ms K P S Ntshavheni.

*Executive Director
Group Company Secretary: Ms E M Africa

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APPLICATION IN TERMS OF SECTION 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) OF THE PFMA

1. EXECUTIVE SUMMARY

This document has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the Public Finance Management Act No. 1 of 1999 ("PFMA"), as the intention of Denel SOC Ltd ("Denel") is to increase its international footprint and capabilities in line with its growth strategy.

The said application seeks to, inter alia, present a comprehensive business case for the establishment of "Denel Asia SOC Limited" ("Denel Asia") which would be a new subsidiary limited liability company in Hong Kong, with a view to exploiting opportunities in the Asia Pacific defence market.

It is intended that Denel Asia itself will, subject to applicable local legal requirements, in the future also establish further subsidiaries and/or joint venture companies in the Asia region.


2. BACKGROUND

Denel's growth strategy is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's.

2.1. Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan

The proposed establishment of Denel Asia was not included in the 2015-2016 Corporate Plan, for inter alia, the following reasons:

- (i) The Asia Pacific market did not play a significant role in Denel's order cover for the 2015/2016 financial year because Denel was excluded from business in India, one of Asia Pacific's largest markets. The reasons for Denel's exclusion from India are fully detailed in paragraph 5.4 below. The opportunity to re-enter Asia-Pacific presented itself when the Indian Ministry of Defence (MOD) lifted its blacklisting against Denel as prior to the upliftment of the blacklisting, Denel could not contemplate the opportunity for doing business in India.
- (ii) Further, the new Board of Directors of Denel, which was appointed only in July 2015, sought to extend Denel's participation in the Asia Pacific market as a way of increasing the order book. This emanated from the fact that there are immediate opportunities that Denel can take advantage of.

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2.2. Governance Process: Denel Internal Approvals

ACTION	TIMELINE
Approval by Denel Board to explore a suitable equity partner for the Asia Pacific region	10 September 2015
Final approval by the Denel Board of the identified equity partner together with the draft PFMA application subject to, inter alia, Denel obtaining the requisite regulatory approvals and subject to certain conditions, which conditions have been dealt with in paragraph 10.1 below.	7 December 2015

2.3. The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong

- (i) Hong Kong is strategically located for business in Asia and can really be seen as the best gateway for doing business in that jurisdiction.
- (ii) Conducting general business in Hong Kong is simple and setting up offices and structures are quick and inexpensive.
- (iii) Foreigners can own 100% of a Hong Kong company and are free to be the sole directors and shareholders of a Hong Kong company. There are no local resident requirements and there are no restrictions on nationality.
- (iv) A Hong Kong company offers global recognition and is very stable. Hong Kong is one of the world's major trading, finance and service centres.
- (v) To open a Hong Kong company, you don't need a physical address in Hong Kong and your physical presence in Hong Kong is not required
- (vi) Hong Kong adopts a territorial source principle of taxation meaning that all profits generated outside of Hong Kong are tax free and profits generated inside Hong Kong are taxed at 16.5%.
- (vii) The legal system in Hong Kong is still ruled by British law.

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3. REGIONAL STRATEGY

3.1. Studies Undertaken

Rapid and uneven economic development across 25 countries and regions of the Asia-Pacific region both enables and demands new approaches to national defence. By 2018, as global defence spending increases by 5.5 percent, defence budgets across the Asia-Pacific (excluding the US) are expected to grow by over 19 percent (Asia Pacific Defence Outlook 2015 – Deloitte report).

Rapid economic development has also created new sources of vulnerability. While the advancements are essential for developed economies, they require governments to plan for their defence, driving defence budgets and technical requirements upwards and increasing security threats have led to substantial increases in defence spending.

Increasing Global terrorism is also playing a major role in this region. Five Asia-Pacific countries – Pakistan, Philippines, India, Thailand and Bangladesh – accounted for 36 percent of the rise in global terrorist incidents between 2004 and 2013, and 97 percent of the increase within Asia-Pacific. While actual incidents of terrorism remain concentrated in a few nations, regional concerns about terrorism are increasing as Islamic State-related attacks and propaganda proliferate. This also leads to increased defence spending.

Asia-Pacific defence budgets increasingly emphasize procurement and research and development, as nations develop indigenous defence industrial bases and pursue advanced defence technology. Procurement and R&D are projected to grow by 29 and 28 percent respectively from 2014 to 2018, reflecting plans for major new acquisitions in most countries in the region.

Procurement Budget Increases by country

Country	% Increase (2014-2018)	Growth Focus
India	25	Develop Industrial base. Land Based systems Artillery and Infantry weapon systems. Air Defence programs
Singapore	18+	Technology Partners
Cambodia	18+	R&D and Industry development focus.
Indonesia	18+	R&D and Industry development focus. Land Based systems
Pakistan	11	Not Publicly published. Based on current requests. Air Defence and Artillery focus
Vietnam	18+	R&D and Industry development focus. Land Based systems and Air Defence
Philippines	85	R&D and Industry development focus. Land Based systems and Air Defence.

By 2018, rapidly-developing Asia-Pacific nations will command more than half of non-US global defence procurement and two-thirds of non-US defence research and development, making the region a key defence market, and a potent force in defence technology innovation and advancement. Therefore, Denel needs to be in this space.

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3.2. Strategic Relevance of Asia

Countries such as India, Indonesia, Singapore, Thailand, Vietnam and China are considered to be primary target markets for Denel whilst markets such as the Philippines, Myanmar, Sri Lanka and Bangladesh form secondary target markets.

In analysing the Denel business in the Asia Pacific region, the following emerged to Denel management as barriers to entry into this fast growing market:

- o lack of multilateral defence relationships;
- o inability to provide funding solutions;
- o inability to source local production and development partners (particularly in India);
- o frequent engagement with end user and industry from a distance not feasible;
- o company visibility in the market place/region from a distance not possible;
- o need for a lawful conduit for developing/Aligning with local business networks; and
- o active participation in regional initiatives from a distance are not feasible.

3.3. Hong Kong as the Country of Incorporation for a Private Limited Company

The salient business requirements for Hong Kong particularly with respect to undertaking business in this jurisdiction is set out in paragraph 4 below. In essence, the financial, regulatory and legal requirements are substantially similar to that applicable to companies in South Africa.

4. COMPREHENSIVE DUE DILIGENCE REPORT ON THE FINANCIAL REGULATORY LEGAL REQUIREMENTS AND REGULATORY LAWS GOVERNING FOREIGN OWNED ENTITIES IN HONG KONG

Denel has been advised that:

- o Hong Kong is situated in the south-eastern coast of China. With a total area of 1104km². The territory comprises Hong Kong Island, Kowloon Peninsula, and the New Territories, which also includes 262 outlying islands.
- o Hong Kong became a Special Administration Region of the People's Republic of China on 1 July 1997, after a century and a half of British colonial administration. Under the "one country, two system" policy and constitutional documents, the Basic Law, Hong Kong's existing economic, legal and social systems will be maintained for at least 50 years. Hong Kong does however enjoy a high degree of autonomy except in defence and foreign affairs.
- o While the People's Republic of China follows a civil law system, Hong Kong's legal system is based on the traditions of its former colonial master, England. As such, English common law continues to have sway. As in the British system, lawyers are either solicitors (handling paperwork, negotiations, and settlements) or barristers (who can appear in court). The Hong Kong "Basic Law" functions as Hong Kong's constitution, subject to interpretation by the Standing Committee of the National People's Congress.
- o The Basic Law of Hong Kong ensures Hong Kong's autonomy in its executive, legislative, and judicial systems, as well as certain foreign relations. It protects freedom of expression, assembly, and religion, forbids torture and unwarranted searches, seizures, and arrest. Furthermore, Hong Kong is ardently capitalist, in spite of Mainland China's (nominal) adherence to socialism.

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- Every year since 1995 to about 2013, Hong Kong was voted the world's most free economy by the Heritage Foundation and the Wall Street Journal's Index of Economic Freedom. It also has one of the lowest tax rates in the world. According to studies conducted by PricewaterhouseCoopers and the World Bank Group, Hong Kong is the fourth-easiest place in the world to pay taxes, just behind three countries in the Middle East.
- Hong Kong is ideally located in the heart of Asia and serves as a gateway to and from Mainland China amongst others. These advantages make Hong Kong an attractive place for foreign investors.
- The Companies Ordinance (the "CO") is the main piece of legislation governing companies in Hong Kong.
- Types of Permitted Operations in Hong Kong

Depending on the scope of operations, foreign companies seeking to operate in Hong Kong have three alternative permitted forms of business presence:

- Representative Office

A representative office is suitable for a foreign company that intends to conduct only minimal activities in Hong Kong. A representative office cannot conduct any trade, professional, or business activities or transactions in Hong Kong and cannot enter into any contracts in Hong Kong. A representative office is appropriate, for example, for acting as a liaison office without creating any binding business obligations.

- Branch Office

If a foreign company establishes a place of business in Hong Kong, it will require registration as a foreign company under the CO. A "place of business" includes a place used by a company to transact any business that creates legal obligations. The foreign company is liable for the debts and liabilities of its Hong Kong branch, and a branch office cannot take full advantage of Hong Kong's tax benefits.

- Hong Kong Subsidiary

Due to the limitations of a representative office and branch office as described above, foreign companies usually favour establishing a Hong Kong-incorporated company as a subsidiary to operate in Hong Kong. **This is generally the preferred type of business structure because the entity may be sued only to the extent of the limited assets of the Hong Kong subsidiary.**

- Classification of a Company

- Under the CO, a "private company" is a company that restricts the right to transfer its shares, prohibits public subscription for its shares or debentures, and limits the number of shareholders to 50. Any company which cannot satisfy all three requirements is a public company. A public company can be listed on a stock exchange or unlisted.
- A company can also be classified by whether it is limited by shares or by guarantee, or is an unlimited company. We have limited our discussion to a company limited by shares, which is the most common type and is usually referred to as a "limited company." A company limited by guarantee in Hong Kong is usually a non-profit organization.

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- The CO makes it clear that there are five types of companies that can be set up under the CO:
 - a public company limited by shares;
 - a private company limited by shares;
 - a public unlimited company with a share capital;
 - a private unlimited company with a share capital; and
 - a company limited by guarantee without a share capital.

▪ Requirements for a Hong Kong Private Company

At a minimum, a Hong Kong private limited company must have the following:

- one shareholder;
- one director;
- a company secretary;
- a registered office address in Hong Kong;
- an auditor; and
- a business registration certificate.

▪ Director

- A director must be at least 18 years of age, must not be an undischarged bankrupt, must not be subject to a disqualification order, must comply with any share qualification requirement, and must consent to act. There is no restriction on the nationality of a director.
- A private company can have a director that is a corporation but at least one director must be a natural person.

▪ Company Secretary

A company secretary must either be an individual resident in Hong Kong or a company with a registered office or place of business in Hong Kong.


• Business Registration Certificate

- A one-stop Company and Business Registration Service has been launched by the Companies Registry and the Inland Revenue Department. Applications for both incorporation and business registration are undertaken simultaneously.
- In addition to the business registration certificate, certain types of businesses may need additional forms of licensing. For example, a company conducting regulated financial services activity (such as asset management, dealing in securities, or advising on securities) in Hong Kong requires licenses from the Securities and Futures Commission.

▪ Generally

- There is no prescribed minimum paid-up capital. Under the CO, the concept of nominal or authorized share capital and nominal or par value was abolished. Instead, the articles of the company with a share capital must include a statement of capital containing some prescribed information and the initial shareholdings.
- The same person can be the secretary, director, and shareholder of a company, except that the sole director of a company cannot also be the secretary of the company.
- A company's statutory records must be kept at its registered office. If they are kept at a different place, a notice must be filed with the Companies Registry.

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Under the CO, the articles of association are the sole constitutional document of the company.

- Information Available to the Public
Compared to other jurisdictions (e.g., the British Virgin Islands and the Cayman Islands), Hong Kong companies are much more transparent in terms of information that is available to the public. In addition to basic information, one can search for all the documents filed with the Companies Registry in relation to a particular company. One can also search for the registered charges (securities in favour of third parties) of a company and disqualification orders made. Moreover, one can search for all the companies in which an individual has directorships and the particulars of that director, such as his or her identity number and residential address.

o Establishing a Private Company

There are two ways of establishing a private company in Hong Kong which is either by incorporating a new company or buying a shelf (or existing) company.

- Incorporation involves applying to the Companies Registry, which then issues a certificate of incorporation within four working days after submission of the application by post (online applications may be processed within an hour). The newly incorporated company then needs to be activated by holding its first board meeting and a shareholders' meeting, if necessary.
- Buying a shelf company is useful when a company is urgently needed. One just needs to acquire a shelf company and then activate it by effecting a change of shareholders and directors and holding a board meeting (and a shareholders' meeting, if necessary).

o Continuing Compliance Requirements

- A company should hold an annual general meeting (AGM) each year, and not more than 15 months from the previous AGM, unless everything that is required to be done at the meeting is done by written resolution and the relevant documents are provided to each member.
- The following matters are usually dealt with at the AGM:
 - adoption of audited accounts comprised of the balance sheets, directors' report, and auditors' report;
 - declaration of dividends;
 - election of directors; and
 - appointment of auditors.
- The CO provides that a company is not required to hold an AGM if it has only one member or the AGM is dispensed with by unanimous members' consent.
- Other compliance requirements include, among others, the following:
 - a company should keep a register of members and a register of directors and secretaries;
 - various returns have to be filed with the Companies Registry within stipulated deadlines for changes in relation to the company, such as changes in directorship and secretary, registered office, share capital, etc.;
 - a company must file an annual return;
 - a company must have annual audited accounts. The CO prescribes detailed requirements regarding the types of accounts to be prepared. A directors' report must also be prepared in conjunction with the annual accounts;
 - shareholders' or board meetings should be held as may be necessary or required under the CO. The minutes or written resolutions should be filed in

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a minute book and resolutions or notices should be filed with the Companies Registry as required under the CO; and

- a company also needs to renew its business registration certificate before it expires and file profit tax returns for the company and the employer's return for its employees with the Inland Revenue Department.
- If a company fails to comply with these requirements, the company and every officer of the company who is in default may be liable for a fine and/or imprisonment.

o Tax Issues

▪ Profits Tax

- Hong Kong adopts a territorial corporate tax system. Corporations are taxed on profits at a rate of 16.5% percent. Profits tax is charged on Hong Kong-sourced profits and is collected by the Inland Revenue Department. The tax rate on profit derived in Hong Kong is the same for Hong Kong and foreign companies.
- Specifically, domestic and foreign entities meeting the following three criteria are subject to profits tax:
 - the entity carries on a trade, profession, or business in Hong Kong;
 - the profits are from such trade, profession, or business carried on by the entity in Hong Kong; and
 - the profits arose in, or were derived from, Hong Kong.
- A Hong Kong resident may derive profits from abroad that are not subject to Hong Kong profits tax; conversely, a non-resident may be liable for tax on profits arising in Hong Kong. The question of whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong is largely one of fact. Profits arising from activities conducted abroad, even if they are remitted into Hong Kong, are not subject to profits tax.

▪ General Tax Benefits

- Dividends or overseas branch profits repatriated to Hong Kong are not subject to Hong Kong tax. In addition, dividends paid by a Hong Kong company to its shareholders are not subject to Hong Kong tax in the hands of shareholders (tax already having been paid by the company on the profits underlying those dividends), nor is there any withholding tax on dividends paid to shareholders outside Hong Kong.
- Capital gains are also tax-exempt. A stamp duty is imposed on certain documents such as share transfers, leases of real property, and sale of real property. There is no sales tax, value-added tax, or estate tax in Hong Kong.

5. SELECTION OF PARTNERS

With a focus on Asia, Denel's approach is to immediately re-enter the India market through Denel Asia as a way of building a business profile in the region. The details of the India strategy and its rationale are discussed below. The choice of partner has mainly been influenced by the plan to use India as an entry point into the Asia market.

5.1. Denel's History in India

Denel entered the India market during 1994 with a wide range of products. During the period 1998 and 2005, Denel participated in tenders issued by the Indian MOD and was successfully awarded contracts for various products including ammunition and land systems products.

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These contracts were for the supply of ammunition, explosives, anti-materiel rifles, fuses and other munitions components such as base bleeds and modular charge systems totaling circa US\$ 282 623 768.00.

Some of these transactions included the transfer of technology for the relevant products sold to the Government of India.

A contract for a significant artillery program for a tracked self-propelled gun resulted in a successful trial being concluded during July 1999 to February 2000 which included the introduction of the G6. The costs of these trials exceeded R500 million. Contract negotiations commenced in February 2003 and were concluded in December 2003 with a contract value of US\$ 1,180,744,682.

On 17 April 2005, an article appeared in the Cape Argus newspaper alleging that Denel had contravened specific Indian legislation. Notwithstanding the lack of proof thereof and Denel's denial that it was in breach of the MOD contracts, the MOD issued a notice of termination of the defence programs and instituted legal proceedings against Denel which resulted in, *inter alia*, protracted arbitrations. Contracts to the value of US\$ 77,3 million were adversely affected by these actions. Denel was effectively treated in India as if it were blacklisted notwithstanding no formal blacklisting being in force.

In 2007 Denel sought to re-enter the India market as a subcontractor on a tracked gun program where Rheinmetall was the prime contractor. Successful trials for the gun took place during July 2010 and March 2011. However, in 2012, Rheinmetall was recommended for blacklisting which resulted in a termination of the said program. Denel incurred a further loss of a R11 million as a result of this termination.

This confirmed that Denel competing on its own in India on major programs is very high risk.

Since Denel's absence from the market, the procurement rules changed significantly on major programs. In particular, it introduced the requirement for a local Indian industry partner/s based on the "Buy Make India" procurement program. This mandatory requirement combined with Denel's previous unsuccessful attempts to access and remain successful in the Indian market reconfirmed the need for Denel to identify and rather proceed with a local partner in India as opposed to its own.


5.2. Buy Make India

The India "Buy Make Program" requires that local content should be more than 50% as well as inclusion of technology transfer from the foreign Original Equipment Manufacturer (OEM).

Denel is positioning itself for major programs in India which programs are premised on the 'Buy Make India' concept. This means that only Indian Companies that can prove that they have partnered with "foreign technology companies" are allowed to bid as prime contractors.

The Indian procurement process demands a strenuous and protracted product evaluation process which can become extremely costly (as detailed in **paragraph 5.1** above and experienced first-hand by Denel).

5.3. India Remains a Lucrative Market

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Despite Denel's previous lack of success in the India market, due largely to circumstances outside its control, the Asia Pacific region and specifically the Indian market remains a lucrative market as more fully set out in **paragraph 3.1** above.

5.4. Possible Partners Explored

As detailed in **paragraph 5.1** above, Denel was inactive in the India market for a significant length of time until verbal notification was received late in 2014 from the Indian Embassy in South Africa informing Denel that the investigation was completed and that we may proceed to conduct business in India.

It must be pointed out that the defence industry is a niche market and the norm in this industry is that a competitor can easily become a strategic partner and vice versa depending on the type of opportunity being explored by the parties.

As Denel needed to finalise a partner in light of a Request for Information (RFI) to be issued on the mounted artillery gun program, an industry visit took place during February 2015 wherein Denel visited the following potential business partners. Securing a suitable partner proved to be unsuccessful as most of the potential business partners that Denel considered were already aligned to other companies. For example, Denel considered the following companies:

- a) *Bharat Forge*
They have a large forging capability and are a well-established defence contractor. They were however already committed to ELBIT (Israel Company) on artillery programs.
- b) *Larsen and Toubro*
They are a well-established defence contractor but were already committed to NEXTER (French company) on artillery programs.

Given the significant changes in the procurement process as well as Denel's previous unsuccessful experiences coupled with our own internal strengths and weaknesses, a decision was taken not to participate in major programs in India unless there was a distinct advantage that presented itself and which would increase the possibility of us successfully participating in the Indian market.

VR Laser presented to Denel, on an unsolicited basis, a value proposition that was worth considering. The value proposition, more fully set out in **paragraph 5.2** below, was attractive to Denel as it was based on VR Laser Asia's experience as well as market studies conducted during the planning phase of re-entry into India. VR Laser Asia's value proposition allows for Denel to enter into the India market as well as the wider Asia Pacific market.

In the past, Denel has incorporated similar joint venture companies in other countries with some of its suppliers as in the case of Tawuzan Dynamics, a joint venture company incorporated in the UAE. Denel has seen and continues to see significant benefits in the incorporation of this joint venture.

Key aspects of the Tawazun Dynamics Joint Venture are, inter alia:

- o It is a risk sharing model; and
- o Intellectual Property (IP) is licenced in Tawazun Dynamics in order to discharge offset obligations.

5.5. Value proposition of VR Asia

As previously indicated, a decision was initially taken (prior to VR Laser Asia's approach) not to re-enter the India market given the informal blacklisting and having not been in the market for a significant length of time.

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It is evident that, in order to be successful on any major defence program in the world, there needs to be a balanced strategy which encompasses, inter alia, the following:

- (i) **A defence solution that supports national objectives**
The VR Asia proposition brought an understanding on national objectives at an industry level and industry knowledge in the form of a well-established, highly respected and highly successful India partners being PIPAVAV and the Adani Group. The Adani Group is an Indian multinational conglomerate company. It has a diversified business portfolio covering resources, logistics, agribusiness and energy supply. The company was founded in 1988 as a commodity trading business. The founder and Chairman, Mr Gautam Adani is a well established business man and has vast knowledge of setting up significant programs. Similarly, PIPAVAV is a reputable Indian company which operates in the armament industry with knowledge of the Indian market.
- (ii) **Compliance to the user specification with a competitive value proposition**
The VR Asia proposition at this level is again Industry knowledge, setting up the not so obvious contenders in a business venture. As indicated above, Denel's initial evaluation of possible partners was unsuccessful as the main contenders were already committed or not willing to share the risk. Through, for example, the Adani business partners in India as well as risk sharing by Indian partners such as PIPAVAV during the pre-contracting phase of the program, participation will be possible. The value proposition in the bidding process will be an Indian solution with local content growing new contenders and establishing new technologies as directed by policy.
- (iii) **A competitive technical solution**
The VR Asia proposition at this level is technical skills in VR South Africa as well as operational funding.


5.6. **VR Laser Asia as a partner of choice**

Denel has thus concluded that VR Laser Asia Limited, a company incorporated in Hong Kong ("VR Asia"), and aligned with one of Denel's local fabrication specialists (VR Laser South Africa Proprietary Limited ("VR RSA")), as a suitable partner to form a joint venture company. VR RSA, on behalf of VR Asia has presented a suitable business model to Denel for consideration. VR RSA has also undertaken to fund VR Asia in order to enable VR Asia to meet its funding commitments to Denel Asia.

Denel's traditional strength lies in the areas of concept, design, prototyping and weapons integration. In partnering with VR Asia, Denel obtains access to VR RSA's strong capability in industrialisation, production and support of armoured and specialised vehicles.

The advantages of Denel entering the Asia market with VR Asia includes:

- the provision of design, manufacturing and fabrication skills
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- the provision of quick access to local potential production and development partners
- the ability to increase visibility in the market/region
- access to operational funding
- the ability to grow the business in a sustainable manner
- the ability to share all demonstration costs proportionately to its shareholding

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For the above reasons the partnership with VR Asia, who has satisfied Denel that it is familiar with the landscape of Denel's primary and secondary target markets, makes commercial sense.

Further, it makes commercial sense for Denel to establish a footprint in the market. In order to mitigate the costs and risk of a new market entry, Denel management are of the view that a risk sharing model be adopted. This entails that Denel enter into a joint venture with VR Asia to form Denel Asia.

It is reiterated that VR Asia is a partner of choice for Denel for reasons, which include, details as set out in this **paragraph 5**, the unsolicited approach made by VR Asia together with, inter alia, its value proposition and the commercial relationship enjoyed between VR Laser RSA and Denel Land Systems (a Denel entity) which has resulted in mutual trust and recognition between the respective parties.

6. ADVANTAGES OF PARTNERING WITH VR LASER ASIA

6.1. Registration Details and shareholding of VR Laser Asia

The registration details of VR Laser Asia are: **VR LASER ASIA LIMITED**, (Company No. 2111273) whose registered office is at Block A, 15/F, Hillier Comm Building, 65-67 Bonham Strand East, Sheung Wan, Hong Kong.

The sole shareholder of VR Laser Asia Limited is Mr Salim Aziz Essa, a South African national with passport no. M00073786. Mr Essa is via the entity Elgasolve Proprietary Limited, the controlling shareholder of VR Laser South Africa Proprietary Limited.

6.2. Networking Capability Expanded

As mentioned in **paragraph 5.2** above, VR Laser Asia's network includes, but is not limited to, the following reputable Indian businesses:

6.2.1 Adani's Profile

Mr Gautam Adani, the Chairman and Founder of the Adani Group, has more than 33 years of business experience. Under his leadership, Adani Group has emerged as a global integrated infrastructure player with interests across Resources, Logistics and Energy verticals.


Mr Adani's success story is extraordinary in many ways. His journey has been marked by his ambitious and entrepreneurial vision, coupled with great vigour and hard work. This has not only enabled the Group to achieve numerous milestones but also resulted in creation of a robust business model which is contributing towards building sound infrastructure in India.

Quoted from the Chairman message:

"The government's call for 'Make in India' shall get a fillip with a robust infrastructure that is world class and facilitates the manufacturing industry. It is our endeavour to narrow the energy demand and supply gap, build world class ports so that India becomes a shipping hub and operates mines across the globe with environmental concerns addressed most optimally.

We look forward to make inroads into new sectors of infrastructure and aim to excel in all our initiatives."

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Adani's Vision

As part of preparing the Group for the next phase of our growth, we have re-formulated our 2020 vision:

"To be a globally admired leader in integrated infrastructure businesses with a deep commitment to nation building. We shall be known for the scale of our ambition, speed of execution and quality of operation."

(Source: Adani website)

6.2.2 PIPAVAV's Profile

Reliance Infrastructure, together with its wholly owned subsidiary Reliance Defence Systems Private Limited, acquired in March 2015, a controlling share from the promoters of Pipavav Defence.

Reliance Infrastructure Limited (RInfra) is amongst the largest Infrastructure Companies in India, developing Special Purpose Vehicles (SPVs) in several high growth sectors within the Infrastructure space.

PIPAVAV Defence is India's first world class company integrated Defence production company. PIPAVAV was the first private sector company to get a license and contracts to build frontline warships for the Indian Navy.

PIPAVAV has strong partnerships with Global players such as:

- SAAB Technology AG, Sweden on technology transfer for the manufacturing of missiles, underwater systems and Aero-structures for fighter jets
- DCNS (France) Government owned company on Naval programs
- Rosoboron Export Russia on Naval programs
- Atlas Electronica on torpedoes and Sonars for the Indian Navy
- Sagem Defence Securite, part of the Sagem Group on long range air borne multi sensor multi spectral electro optical systems

PIPAVAV has been participating in several land system projects such as:

- Upgrade of several vehicle programs such as BMP2 and tank projects
- Manufacturing and supply of Armour Personnel Carriers
- Several UAV programs

Having regard to the fact that Denel has come in as a late entry competitor on the main programs in India, our partnering options were very limited as the traditional partners that Denel could have considered were in most instances already paired with other major industry players (See paragraph 5.1 above).

In support of India's national objective of developing local privately owned defence companies, partnering with (either one or both) Adani and PIPAVAV will bring major advantages in terms of industry knowledge, manufacturing capability, setting up manufacturing partners, business knowledge and investment capital on major programs. Expanding into the Defence Business forms part of both companies growth vision and both have a history of success.

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6.3. Financial Commitment

VR Laser Asia via VR Laser RSA has committed R100 million in terms of a shareholder loan on an arms-length basis with interest (being at normal market rates).

Denel intends to negotiate a higher amount to be paid at the outset and should this be unsuccessful, it will be referred back to the Denel Board.

Should the joint venture be unsuccessful within the first 5 years of incorporation of the company, VR Asia will not have recourse to Denel to repay the loan but shall bear this risk in totality. This is articulated in the Shareholders Agreement.

7. BUSINESS MODELS

As indicated in paragraph 5,2 above, Denel can best position itself for programs based on the 'Buy Make India' concept. In addition, if there are any similar requirements within the Asia Pacific region, it will be easier to leverage on these opportunities from the India base.

Set out in paragraph 8 below are the 2 main business / contracting models that may arise from identified opportunities in the Asia Pacific region hereafter referred to as Scenario 1 (No Production Scenario) and Scenario 2 (Production Scenario) respectively.

8. CONTRACTING MODEL

8.1. Joint Venture Governance

In order to implement Denel's chosen risk mitigation strategy, Denel has elected that a new limited liability company be registered in Hong Kong (Denel Asia). This ensures that Denel does not inherit any legacy concerns and ensures a speedier due diligence process.

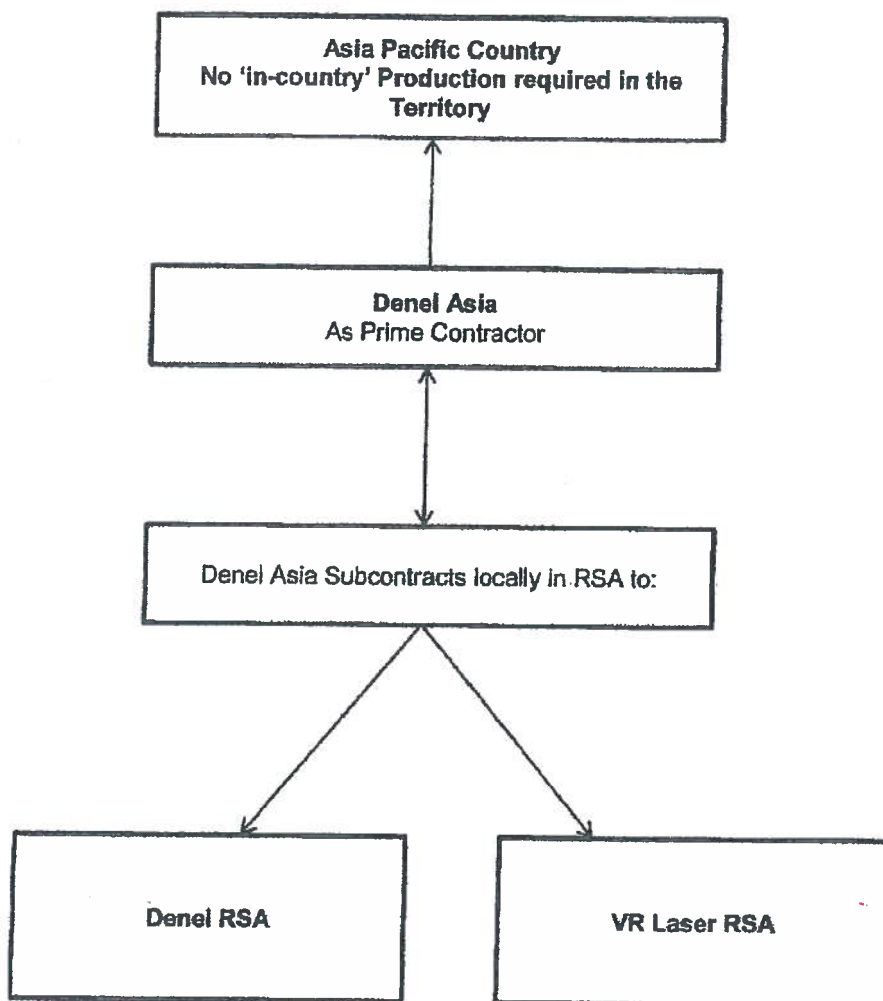
Notwithstanding the fact that Denel Asia will be incorporated in Hong Kong, Denel has to ensure that Denel Asia will be established and managed in line with its status as a state owned company, reflecting Denel's own corporate governance best practices and standards. In this regard, Denel has negotiated a favourable shareholders' agreement entrenching its rights and providing a contractual framework which will ensure Denel Asia's effective governance.

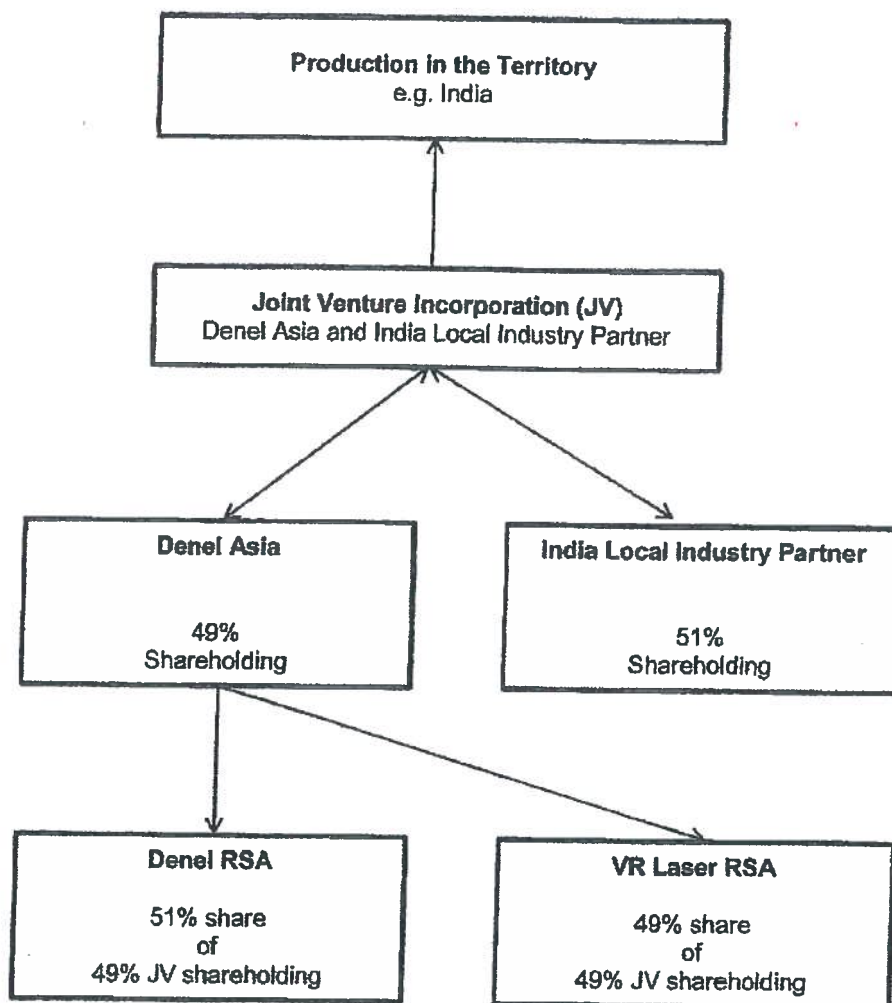
8.2. Contributions by the Parties

Denel management have recognised that the intended shareholders of Denel Asia have differing strengths and capabilities. In this regard, it is envisaged (and the Denel Asia shareholders' agreement provides) that:

- o Denel, will be the technology partner and will hold 51% of the issued share capital and control of Denel Asia. The remaining 49% minority is to be held by VR Asia who will be the networking and industrial partner.
- o Other than standard minority protections, Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level as shareholder matters require approval by a simple majority.
- o Denel Asia will pursue opportunities in Asia, and, specifically in India using the network of VR Asia. Once an opportunity translates into a firm order:

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Scenario 1:

Scenario 2:

- (i) It is not envisaged that any production will take place in Hong Kong as this office is essentially a marketing office.
- (ii) Tawazun Dynamics conducts business in accordance with Scenario 2 above.

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8.5. Financing

One of the key supporting drivers for the formation of Denel Asia, is Denel's limited finance obligations. VR Asia has undertaken to invest an amount of R100 million (One Hundred Million Rand) into Denel Asia for operational costs, payable in amounts of R20 million a year for a period of five years.

Thereafter, Denel Asia will, to the extent that external funding is required, source such funding from third party funders. The shareholders (Denel and VR Asia) will also be able to provide funding by way of shareholder loans pro-rated according to their respective shareholding but they are not obliged to provide funding. Denel does not have any definitive finance obligations or exposure to Denel Asia (save for ordinary supply arrangements).

9. INTELLECTUAL PROPERTY (IP) AND LICENCING

9.1. Technology transfer and protection of Denel's IP

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture subject to paragraph 9.1 (i) above. This is consistent with the Tawazun Dynamics joint venture model referred to in paragraph 5.7 above.
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company.

10. RISKS AND MITIGATION

Key risks were considered during the assessment of the business and relevant risks taken into account in the negotiation process and contractual framework. Appropriate financial and legal due diligence reviews were performed to identify and mitigate any further risks and the recommendations emanating therefrom have and/or will be adopted and implemented. Appendix B, Appendix C and Appendix D refers.

10.1. Transaction risks and its mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> Denel has undertaken a due diligence investigation and the recommendations thereof will be implemented. No agents will be involved.


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Risks		Mitigation/Remarks
		<ul style="list-style-type: none"> Denel has a controlling share and thus can control the direction of Denel Asia.
2.	Guarantees/ Finance Risk	<ul style="list-style-type: none"> VR Asia is funding Denel Asia in the amount of R100 Million (R20 million a year for 5 years). Denel is to engage with VR Asia to secure a greater cash injection in the first 2 years. Denel previously unsuccessfully engaged with VR Asia on this issue. The Board has requested that a re-engagement with VR Asia on this issue is to take place. Reduced balance sheet exposure due to partnering. Denel has limited credit exposure to its subsidiary for normal supply arrangements on preferential terms.
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred.
4.	Legal Exposure	<ul style="list-style-type: none"> Denel exposure is seen by the Denel board as limited.
5.	PFMA Conditions	<ul style="list-style-type: none"> Denel will ensure that Denel Asia abides, to the extent applicable to the PFMA, the Denel Shareholder Compact and the Denel Risk and Compliance Frameworks. Adherence to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.
6.	Cooperation Agreement	<ul style="list-style-type: none"> The Shareholders Agreement, once signed, will supersede the Cooperation Agreement (Appendix E).
7.	Protection afforded in terms of the Shareholder Agreement	<ul style="list-style-type: none"> The agreement only becomes effective upon the fulfilment of the suspensive conditions (Clause 4). Control vests in Denel which has a 51% shareholding (Clause 5). There are certain reserved matters which require a 75% majority vote with other matters requiring a simple majority of 51%

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Risks		Mitigation/Remarks
		<p>in order for the resolution to be passed (Annexure B for reserved matters).</p> <ul style="list-style-type: none"> • There is specific provision for the implementation of anti-bribery, anti-money laundering and anti-corruption policies in the joint venture (Clause 6). • In the event of the joint venture being wound up/dissolved prior to full repayment of the shareholders loan, no liability will accrue to Denel to settle the loan (Clause 16.2). • Denel has the right to investigate the directors and ultimate beneficiaries and shareholders of VR Asia to ensure that such persons have sufficient standing and if not satisfied, Denel has the right to demand that VR Asia repurchases the shares from that person thereby removing the person from being a shareholder of VR Asia (Clause 18.3). • The termination clause (Clause 21) relates to termination on material breach (as opposed to termination for convenience). • Provision is made for termination in circumstances where the Government directs that Denel ceases to be a shareholder for reasons of national security or otherwise (Clause 25.1) • Termination can take place by mutual agreement (Clause 25.1.3). • Termination can also take place where a party frustrates the performance of the other party by making performance impossible or unreasonably expensive or difficult, materially alters the rights and obligations of the parties or materially interferes with the benefits (Clause 25.1.4).
8.	Exit Clause: Termination for convenience	<ul style="list-style-type: none"> • Initial discussions with VR Asia resulted in a rejection of a clause for termination for convenience. • Denel is to engage with VR Asia and address the Board's requirement that such a clause is to be included in the agreement.
9.	Due Diligence	<ul style="list-style-type: none"> • The key risk identified is the potential for bribery and corruption. This is alleviated in the shareholders agreement by the obligation to abide by anti-money laundering (AML) and anti-bribery and anti-corruption (ABC) policies. • Financial viability of VR Laser Asia raising the loan – in the absence of the loan being furnished by VR Asia to the joint venture, it

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Risks		Mitigation/Remarks
		<p>will constitute a material breach and is a ground for termination.</p> <ul style="list-style-type: none"> Denel is satisfied that the loan can be legitimately be raised by VR Laser Asia via its shareholders.
10.	Double Taxation Agreement	<ul style="list-style-type: none"> There are currently discussions between India and Hong Kong re a double tax agreement. The risk of the lack of a double taxation agreement is outweighed by the lucrative opportunities that can be realised in India.

11. DUE DILIGENCE

Denel had procured that a due diligence investigation be undertaken in respect of each of the following areas, which due diligence reports are attached hereto as follows:

1. Regulatory Due Diligence – **Appendix B**
2. Legal Due Diligence – **Appendix B and Appendix C**
3. Financial Due Diligence – **Appendix D**

There were some findings of concern that was raised by the due diligence which are acknowledged. Denel management is however confident that it is able to incorporate the recommendations of the report and will adopt corrective measures in particular related to an anti-corruption policy and compliance framework coupled with rigorous monitoring thereto. See **paragraph 10.1** above.

In addition, Denel is satisfied that the shareholder loan can be legitimately raised by VR Laser Asia via its shareholders falling which the breach provision in the Shareholder Agreement will be invoked.

12. FINANCIALS


12.1. Capital Contribution

There will be a capital contribution of 1000 shares issued at USD 1 with Denel taking up 590 shares and VR Laser Asia taking up 490 shares.

12.2. Financial viability

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. to provide funding solutions.

Initially potential business amounting to USD 9.2 billion was identified. This has been tested and evaluated again and based on a realistic probability matrix on the latest marketing intelligence, the potential business is approximately USD 5.8 billion over the next 5 years which Denel could take advantage of (See **paragraph 12.3** below).

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12.3. Markets and Opportunities

Denel Asia's forecasted capabilities and market interests are promising.

The business opportunity at a reduced risk via partnering constitutes a logical next step by Denel for entry into a new market. See **Appendix F** which sets out markets and opportunities.

12.4. Income Statement

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	309	617	874	1,203	1,405	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost	11	14	19	22	27	35	35	35	35
Labour	6	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	5
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	46	54	55	127	184	266	316	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	655	902	1,054	1,125

Notes

¹ The rate of exchange used was R12.50/USD.

² The normal yearly operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.

The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.

The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively. The IT costs will be typically be part of this.

This calculation is based on foreign offices cost structures that are managed by Denel over a very long term.

³ The additional operating costs would mainly be used to do big system demonstrations to the potential clients. Any one big full in client country demonstrations could cost between R10m – R20m. This is based on various system demonstrations done in foreign countries.

12.5. Business Funding

Denel is satisfied that it has limited financial exposure in terms of Denel Asia due to the fact that VR Asia will be assuming the primary finance obligations of Denel Asia. Forecasted cash flows are in the view of Denel management sufficient to meet Denel Asia's obligation to VR Asia, which is without recourse to Denel.

- (i) The R100m investment from the Denel partner will fund the basic office operational costs for the first few years until sales are realised. The sales from operations will cover the direct cost and increased operational costs associated with the business case.
- (ii) The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.
- (iii) No substantial capital spend will be incurred before an order is obtained and the capital investment will be recovered on the orders obtained.

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12.6. Cash Flow Impact

- (i) The cash shortfall in the first year would have to be financed from either a 12 month short term loan at reasonable international rates negotiate with the partner. Subsequently, the business would be self-funding and sustainable over the medium to long term.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	463	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

12.7. Pricing Policy

- (i) There is currently a Memorandum of Agreement that specifies rates which were negotiated and agreed between VR Laser RSA and Denel Land Systems (a trading division of Denel) which provides a basis to the pricing.
- (ii) **Paragraph 8.3** above refers.

13. BENEFITS

13.1. Local Manufacturing Development

By concluding a contract manufacturing agreement with VR RSA (an established provider to Denel), Denel Asia ensures the sustainability of local manufacturing expertise.

13.2. Skills Development

Due to the technological partnering between Denel, Denel Asia and VR RSA, Denel serves its obligation and desire of fostering the development of core skills and technology competencies with black owned and/or black controlled South African entities. A proposition that satisfies a number of key Denel policies.

13.3. Job Creation


By facilitating a black owned and/or controlled South African company (VR RSA), Denel Asia seeks to maintain South African jobs in the skilled and semi-skilled industry sectors. In addition, based on the projected income, significant work will result from Denel Asia contracting with both Denel and VR RSA.

13.4. Human Capital Development / Transformation

We refer the Honourable Minister to our comments contained in paragraphs 13.113.1 and 13.2 above.

14. CONCLUSION

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Asia is one of the fastest growing defence markets. Of the top ten worldwide defence importers in 2014, four were from Asia (India, China, Indonesia and Vietnam) with Singapore and Pakistan making 11 and 12 slots respectively. (Stockholm International Peace Research).

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. provide funding solutions.

15. IMPLEMENTATION PLAN

The following activities will take place towards contract implementation and the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the shareholders agreement	Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval.
Establishment of the Joint Venture Company	
• PFMA pre-notification	Delivered on 30 October 2015
• Draft Shareholders Agreement	Circulated herewith
• Regulatory due diligence, Legal and Financial due diligence	Completed as at 27 November 2015
• Denel Board Approval	7 December 2015
• PFMA submission	10 December 2015
• PFMA Approval expected	January 2016
Approval from the financial surveillance department of the RSA Reserve Bank for establishing a subsidiary outside the common monetary jurisdiction	January 2016
Conclusion of final shareholders agreement and adoption of memorandum of incorporation.	January 2016
Joint Venture Company business activation and procuring all relevant approvals and/or registrations	January / February 2016

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RECOMMENDATION

It is requested that the Honourable Minister notes and approves of Denel's intention to:

1. establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and
2. establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.

The Denel Board has approved of such establishment subject to the receipt of Ministerial approval in terms of section 51(1)(g), section 54(1) and 54 (2) of the PFMA.

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LIST OF QUERIES RE PRE-NOTIFICATION LETTER

Denel's responses to the specific queries raised by the Honourable Minister has been addressed in the preceding business case. For the sake of completeness, the queries and the paragraph references in the business case to our responses are set out below.

RESPONSES TO SPECIFIC QUERIES

In response to the Honourable Minister Brown's specific queries as contained in her letter to Denel SOC Limited ("Denel"), dated 23 November 2015, we advise as follows:

1. **Comprehensive detailed business case:**
Paragraphs 1 to 14 refers.
2. **Comprehensive due diligence report on the financial regulatory legal requirements and regulatory laws governing foreign owned entities in Hong Kong:**
Paragraph 4 refers.
3. **Funding Plans and Transaction Documents:**
Paragraph 12 refers.
4. **Process followed to select VR Laser as partner of choice:**
Paragraph 5 refers.
5. **Proposed structure of new subsidiary limited liability company in Hong Kong, to be known as "Denel Asia SOC Limited" ("Denel Asia"):**
Paragraph 8.2 above refers.
6. **Comprehensive Due Diligence of VR Laser:**
Paragraph 11 refers.
7. **Registration Details of the company and shareholding of VR Laser Asia:**
Paragraph 6.1 refers.
8. **The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong:**
Paragraph 2.3 refers.
9. **Studies undertaken by Denel to establish VR Laser as a suitable Partner:**
Paragraphs 5 and 6 refers.
10. **Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan:**
Paragraph 2.1 refers.

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K. J. [Signature]

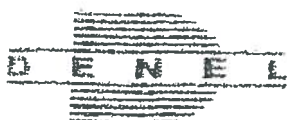
ACKNOWLEDGEMENT OF RECEIPT

FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 64(1) AND 54 (2) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1989 RE PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED

	Name (Print)	Signature	Date and time
Minister L. Brown	Mahlati	L. Mahlati	11/12/15 12h50
Minister of DPE	F. Evans	F. Evans	11/12/15 13:18
Minister D Van Rooyen	F. Evans	F. Evans	11/12/15 13:18
Minister of Finance	F. Evans	F. Evans	11/12/15 13:18
Mr Lungisa Fuzile Director General National Treasury			
Mr Richard Seleke Director General DPE	Mahlati	L. Mahlati	11/12/15 12h50

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DENEL GROUP

Tel: +27 12 671 2938
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 Ref: LIR/NT/Denel Asia/2015

10 December 2015

The Honourable Minister D Van Rooyen (MP)
 Minister of Finance
 Department of National Treasury
 Private Bag X115
 PRETORIA
 0001

PER HAND

Dear Honourable Minister

FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED

We refer to the pre-notification letter dated 29 October 2015, addressed to the Honourable Minister Nene, which pre-notification served to inform the Department of Finance in terms of Section 51(1)(g) of the Public Finance Management Act 1 of 1999 ("PFMA") of the proposed establishment of a joint venture company in Hong Kong.

We hereby submit the formal application required in terms of the PFMA. In this regard, we shall simultaneously herewith advise the Department of Public Enterprises of the proposed establishment of a joint venture company in Hong Kong and its limited financial impact on Denel SOC Limited.

Should any further information be required, please do not hesitate to contact either the Denel Executive Management or myself.

Yours faithfully

Mr L. D. Mantsha
 CHAIRMAN OF THE DENEL BOARD
 11/12/2015

cc. Honourable Minister L. Brown (MP) Minister of Public Enterprises
 Mr Richard Seleke Director-General: Department of Public Enterprises
 Mr Lungisa Fuzile Director General: National Treasury
 Mr Zwelakhe Ntshope Acting CEO: Denel

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 Ms P M Mahangu, Ms N Mandindi, Mr Z Mhlontlo*, Ms R Mokoena, Mr N J Motseki, Mr T J Msemi, Lt Gen T M Nkabinde (rtd)
 Ms K P S Ntshavheni

*Executive Director
 Group Company Secretary: Ms E M Africa

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APPLICATION IN TERMS OF SECTION 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) OF THE PFMA

1. EXECUTIVE SUMMARY

This document has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the Public Finance Management Act No. 1 of 1999 ("PFMA"), as the intention of Denel SOC Ltd ("Denel") is to increase its international footprint and capabilities in line with its growth strategy.

The said application seeks to, inter alia, present a comprehensive business case for the establishment of "Denel Asia SOC Limited" ("Denel Asia") which would be a new subsidiary limited liability company in Hong Kong, with a view to exploiting opportunities in the Asia Pacific defence market.

It is intended that Denel Asia itself will, subject to applicable local legal requirements, in the future also establish further subsidiaries and/or joint venture companies in the Asia region.

2. BACKGROUND

Denel's growth strategy is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's.

2.1. Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan

The proposed establishment of Denel Asia was not included in the 2015-2016 Corporate Plan, for inter alia, the following reasons:

- (i) The Asia Pacific market did not play a significant role in Denel's order cover for the 2015/2016 financial year because Denel was excluded from business in India, one of Asia Pacific's largest markets. The reasons for Denel's exclusion from India are fully detailed in paragraph 5.4 below. The opportunity to re-enter Asia-Pacific presented itself when the Indian Ministry of Defence (MOD) lifted its blacklisting against Denel as prior to the upliftment of the blacklisting, Denel could not contemplate the opportunity for doing business in India.
- (ii) Further, the new Board of Directors of Denel, which was appointed only in July 2015, sought to extend Denel's participation in the Asia Pacific market as a way of increasing the order book. This emanated from the fact that there are immediate opportunities that Denel can take advantage of.

2.2. Governance Process: Denel Internal Approvals

ACTION	TIMELINE
Approval by Denel Board to explore a suitable equity partner for the Asia Pacific region	10 September 2015
Final approval by the Denel Board of the identified equity partner together with the draft PFMA application subject to, inter alia, Denel obtaining the requisite regulatory approvals and subject to certain conditions, which conditions have been dealt with in paragraph 10.1 below.	7 December 2015

2.3. The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong

- (i) Hong Kong is strategically located for business in Asia and can really be seen as the best gateway for doing business in that jurisdiction.
- (ii) Conducting general business in Hong Kong is simple and setting up offices and structures are quick and inexpensive.
- (iii) Foreigners can own 100% of a Hong Kong company and are free to be the sole directors and shareholders of a Hong Kong company. There are no local resident requirements and there are no restrictions on nationality.
- (iv) A Hong Kong company offers global recognition and is very stable. Hong Kong is one of the world's major trading, finance and service centres.
- (v) To open a Hong Kong company, you don't need a physical address in Hong Kong and your physical presence in Hong Kong is not required
- (vi) Hong Kong adopts a territorial source principle of taxation meaning that all profits generated outside of Hong Kong are tax free and profits generated inside Hong Kong are taxed at 16.5%.
- (vii) The legal system in Hong Kong is still ruled by British law.

3. REGIONAL STRATEGY

3.1. Studies Undertaken

Rapid and uneven economic development across 25 countries and regions of the Asia-Pacific region both enables and demands new approaches to national defence. By 2018, as global defence spending increases by 5.5 percent, defence budgets across the Asia-Pacific (excluding the US) are expected to grow by over 19 percent (Asia Pacific Defence Outlook 2015 – Deloitte report).

Rapid economic development has also created new sources of vulnerability. While the advancements are essential for developed economies, they require governments to plan for their defence, driving defence budgets and technical requirements upwards and increasing security threats have led to substantial increases in defence spending.

Increasing Global terrorism is also playing a major role in this region. Five Asia-Pacific countries – Pakistan, Philippines, India, Thailand and Bangladesh – accounted for 36 percent of the rise in global terrorist incidents between 2004 and 2013, and 97 percent of the increase within Asia-Pacific. While actual incidents of terrorism remain concentrated in a few nations, regional concerns about terrorism are increasing as Islamic State-related attacks and propaganda proliferate. This also leads to increased defence spending.

Asia-Pacific defence budgets increasingly emphasize procurement and research and development, as nations develop indigenous defence industrial bases and pursue advanced defence technology. Procurement and R&D are projected to grow by 29 and 28 percent respectively from 2014 to 2018, reflecting plans for major new acquisitions in most countries in the region.

Procurement Budget Increases by country

Country	% Increase (2014-2018)	Growth Focus
India	25	Develop Industrial base. Land Based systems Artillery and Infantry weapon systems. Air Defence programs
Singapore	18+	Technology Partners
Cambodia	18+	R&D and Industry development focus.
Indonesia	18+	R&D and Industry development focus. Land Based systems
Pakistan	11	Not Publicly published. Based on current requests. Air Defence and Artillery focus
Vietnam	18+	R&D and Industry development focus. Land Based systems and Air Defence
Philippines	85	R&D and Industry development focus. Land Based systems and Air Defence.

By 2018, rapidly-developing Asia-Pacific nations will command more than half of non-US global defence procurement and two-thirds of non-US defence research and development, making the region a key defence market, and a potent force in defence technology innovation and advancement. Therefore, Denel needs to be in this space.

3.2. Strategic Relevance of Asia

Countries such as India, Indonesia, Singapore, Thailand, Vietnam and China are considered to be primary target markets for Denel whilst markets such as the Philippines, Myanmar, Sri Lanka and Bangladesh form secondary target markets.

In analysing the Denel business in the Asia Pacific region, the following emerged to Denel management as barriers to entry into this fast growing market:

- o lack of multilateral defence relationships;
- o inability to provide funding solutions;
- o inability to source local production and development partners (particularly in India);
- o frequent engagement with end user and industry from a distance not feasible;
- o company visibility in the market place/region from a distance not possible;
- o need for a lawful conduit for developing/Aligning with local business networks; and
- o active participation in regional initiatives from a distance are not feasible.


3.3. Hong Kong as the Country of Incorporation for a Private Limited Company

The salient business requirements for Hong Kong particularly with respect to undertaking business in this jurisdiction is set out in paragraph 4 below. In essence, the financial, regulatory and legal requirements are substantially similar to that applicable to companies in South Africa.

4. COMPREHENSIVE DUE DILIGENCE REPORT ON THE FINANCIAL REGULATORY LEGAL REQUIREMENTS AND REGULATORY LAWS GOVERNING FOREIGN OWNED ENTITIES IN HONG KONG

Denel has been advised that:

- o Hong Kong is situated in the south-eastern coast of China. With a total area of 1104km². The territory comprises Hong Kong Island, Kowloon Peninsula, and the New Territories, which also includes 262 outlying islands.
- o Hong Kong became a Special Administration Region of the People's Republic of China on 1 July 1997, after a century and a half of British colonial administration. Under the "one country, two system" policy and constitutional documents, the Basic Law, Hong Kong's existing economic, legal and social systems will be maintained for at least 50 years. Hong Kong does however enjoy a high degree of autonomy except in defence and foreign affairs.
- o While the People's Republic of China follows a civil law system, Hong Kong's legal system is based on the traditions of its former colonial master, England. As such, English common law continues to have sway. As in the British system, lawyers are either solicitors (handling paperwork, negotiations, and settlements) or barristers (who can appear in court). The Hong Kong "Basic Law" functions as Hong Kong's constitution, subject to interpretation by the Standing Committee of the National People's Congress.
- o The Basic Law of Hong Kong ensures Hong Kong's autonomy in its executive, legislative, and judicial systems, as well as certain foreign relations. It protects freedom of expression, assembly, and religion, forbids torture and unwarranted searches, seizures, and arrest. Furthermore, Hong Kong is ardently capitalist, in spite of Mainland China's (nominal) adherence to socialism.

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- Every year since 1995 to about 2013, Hong Kong was voted the world's most free economy by the Heritage Foundation and the Wall Street Journal's Index of Economic Freedom. It also has one of the lowest tax rates in the world. According to studies conducted by PricewaterhouseCoopers and the World Bank Group, Hong Kong is the fourth-easiest place in the world to pay taxes, just behind three countries in the Middle East.
- Hong Kong is ideally located in the heart of Asia and serves as a gateway to and from Mainland China amongst others. These advantages make Hong Kong an attractive place for foreign investors.
- The Companies Ordinance (the "CO") is the main piece of legislation governing companies in Hong Kong.
- Types of Permitted Operations in Hong Kong

Depending on the scope of operations, foreign companies seeking to operate in Hong Kong have three alternative permitted forms of business presence:

- Representative Office
A representative office is suitable for a foreign company that intends to conduct only minimal activities in Hong Kong. A representative office cannot conduct any trade, professional, or business activities or transactions in Hong Kong and cannot enter into any contracts in Hong Kong. A representative office is appropriate, for example, for acting as a liaison office without creating any binding business obligations.
- Branch Office
If a foreign company establishes a place of business in Hong Kong, it will require registration as a foreign company under the CO. A "place of business" includes a place used by a company to transact any business that creates legal obligations. The foreign company is liable for the debts and liabilities of its Hong Kong branch, and a branch office cannot take full advantage of Hong Kong's tax benefits.
- Hong Kong Subsidiary
Due to the limitations of a representative office and branch office as described above, foreign companies usually favour establishing a Hong Kong-incorporated company as a subsidiary to operate in Hong Kong. This is generally the preferred type of business structure because the entity may be sued only to the extent of the limited assets of the Hong Kong subsidiary.

- Classification of a Company

- Under the CO, a "private company" is a company that restricts the right to transfer its shares, prohibits public subscription for its shares or debentures, and limits the number of shareholders to 50. Any company which cannot satisfy all three requirements is a public company. A public company can be listed on a stock exchange or unlisted.
- A company can also be classified by whether it is limited by shares or by guarantee, or is an unlimited company. We have limited our discussion to a company limited by shares, which is the most common type and is usually referred to as a "limited company." A company limited by guarantee in Hong Kong is usually a non-profit organization.

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- The CO makes it clear that there are five types of companies that can be set up under the CO:
 - a public company limited by shares;
 - a private company limited by shares;
 - a public unlimited company with a share capital;
 - a private unlimited company with a share capital; and
 - a company limited by guarantee without a share capital.

- Requirements for a Hong Kong Private Company

At a minimum, a Hong Kong private limited company must have the following:

- one shareholder;
- one director;
- a company secretary;
- a registered office address in Hong Kong;
- an auditor; and
- a business registration certificate.

- Director

- A director must be at least 18 years of age, must not be an undischarged bankrupt, must not be subject to a disqualification order, must comply with any share qualification requirement, and must consent to act. There is no restriction on the nationality of a director.
- A private company can have a director that is a corporation but at least one director must be a natural person.

- Company Secretary

A company secretary must either be an individual resident in Hong Kong or a company with a registered office or place of business in Hong Kong.


- Business Registration Certificate

- A one-stop Company and Business Registration Service has been launched by the Companies Registry and the Inland Revenue Department. Applications for both incorporation and business registration are undertaken simultaneously.
- In addition to the business registration certificate, certain types of businesses may need additional forms of licensing. For example, a company conducting regulated financial services activity (such as asset management, dealing in securities, or advising on securities) in Hong Kong requires licenses from the Securities and Futures Commission.

- Generally

- There is no prescribed minimum paid-up capital. Under the CO, the concept of nominal or authorized share capital and nominal or par value was abolished. Instead, the articles of the company with a share capital must include a statement of capital containing some prescribed information and the initial shareholdings.
- The same person can be the secretary, director, and shareholder of a company, except that the sole director of a company cannot also be the secretary of the company.
- A company's statutory records must be kept at its registered office. If they are kept at a different place, a notice must be filed with the Companies Registry.

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Under the CO, the articles of association are the sole constitutional document of the company.

- **Information Available to the Public**
Compared to other jurisdictions (e.g., the British Virgin Islands and the Cayman Islands), Hong Kong companies are much more transparent in terms of information that is available to the public. In addition to basic information, one can search for all the documents filed with the Companies Registry in relation to a particular company. One can also search for the registered charges (securities in favour of third parties) of a company and disqualification orders made. Moreover, one can search for all the companies in which an individual has directorships and the particulars of that director, such as his or her identity number and residential address.

o **Establishing a Private Company**

There are two ways of establishing a private company in Hong Kong which is either by incorporating a new company or buying a shelf (or existing) company.

- Incorporation involves applying to the Companies Registry, which then issues a certificate of incorporation within four working days after submission of the application by post (online applications may be processed within an hour). The newly incorporated company then needs to be activated by holding its first board meeting and a shareholders' meeting, if necessary.
- Buying a shelf company is useful when a company is urgently needed. One just needs to acquire a shelf company and then activate it by effecting a change of shareholders and directors and holding a board meeting (and a shareholders' meeting, if necessary).

o **Continuing Compliance Requirements**

- A company should hold an annual general meeting (AGM) each year, and not more than 15 months from the previous AGM, unless everything that is required to be done at the meeting is done by written resolution and the relevant documents are provided to each member.
- The following matters are usually dealt with at the AGM:
 - adoption of audited accounts comprised of the balance sheets, directors' report, and auditors' report;
 - declaration of dividends;
 - election of directors; and
 - appointment of auditors.
- The CO provides that a company is not required to hold an AGM if it has only one member or the AGM is dispensed with by unanimous members' consent.
- Other compliance requirements include, among others, the following:
 - a company should keep a register of members and a register of directors and secretaries;
 - various returns have to be filed with the Companies Registry within stipulated deadlines for changes in relation to the company, such as changes in directorship and secretary, registered office, share capital, etc.;
 - a company must file an annual return;
 - a company must have annual audited accounts. The CO prescribes detailed requirements regarding the types of accounts to be prepared. A directors' report must also be prepared in conjunction with the annual accounts;
 - shareholders' or board meetings should be held as may be necessary or required under the CO. The minutes or written resolutions should be filed in

a minute book and resolutions or notices should be filed with the Companies Registry as required under the CO; and

- a company also needs to renew its business registration certificate before it expires and file profit tax returns for the company and the employer's return for its employees with the Inland Revenue Department.
- If a company fails to comply with these requirements, the company and every officer of the company who is in default may be liable for a fine and/or imprisonment.

o Tax Issues

▪ Profits Tax

- Hong Kong adopts a territorial corporate tax system. Corporations are taxed on profits at a rate of 16.5% percent. Profits tax is charged on Hong Kong-sourced profits and is collected by the Inland Revenue Department. The tax rate on profit derived in Hong Kong is the same for Hong Kong and foreign companies.
- Specifically, domestic and foreign entities meeting the following three criteria are subject to profits tax:
 - the entity carries on a trade, profession, or business in Hong Kong;
 - the profits are from such trade, profession, or business carried on by the entity in Hong Kong; and
 - the profits arose in, or were derived from, Hong Kong.
- A Hong Kong resident may derive profits from abroad that are not subject to Hong Kong profits tax; conversely, a non-resident may be liable for tax on profits arising in Hong Kong. The question of whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong is largely one of fact. Profits arising from activities conducted abroad, even if they are remitted into Hong Kong, are not subject to profits tax.

▪ General Tax Benefits

- Dividends or overseas branch profits repatriated to Hong Kong are not subject to Hong Kong tax. In addition, dividends paid by a Hong Kong company to its shareholders are not subject to Hong Kong tax in the hands of shareholders (tax already having been paid by the company on the profits underlying those dividends), nor is there any withholding tax on dividends paid to shareholders outside Hong Kong.
- Capital gains are also tax-exempt. A stamp duty is imposed on certain documents such as share transfers, leases of real property, and sale of real property. There is no sales tax, value-added tax, or estate tax in Hong Kong.

5. SELECTION OF PARTNERS

With a focus on Asia, Denel's approach is to immediately re-enter the India market through Denel Asia as a way of building a business profile in the region. The details of the India strategy and its rationale are discussed below. The choice of partner has mainly been influenced by the plan to use India as an entry point into the Asia market.

5.1. Denel's History in India

Denel entered the India market during 1994 with a wide range of products. During the period 1998 and 2005, Denel participated in tenders issued by the Indian MOD and was successfully awarded contracts for various products including ammunition and land systems products.

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These contracts were for the supply of ammunition, explosives, anti-materiel rifles, fuses and other munitions components such as base bleeds and modular charge systems totaling circa US\$ 282 623 768.00.

Some of these transactions included the transfer of technology for the relevant products sold to the Government of India.

A contract for a significant artillery program for a tracked self-propelled gun resulted in a successful trial being concluded during July 1999 to February 2000 which included the introduction of the G6. The costs of these trials exceeded R500 million. Contract negotiations commenced in February 2003 and were concluded in December 2003 with a contract value of US\$ 1,180,744,682.

On 17 April 2005, an article appeared in the Cape Argus newspaper alleging that Denel had contravened specific Indian legislation. Notwithstanding the lack of proof thereof and Denel's denial that it was in breach of the MOD contracts, the MOD issued a notice of termination of the defence programs and instituted legal proceedings against Denel which resulted in, inter alia, protracted arbitrations. Contracts to the value of US\$ 77,3 million were adversely affected by these actions. Denel was effectively treated in India as if it were blacklisted notwithstanding no formal blacklisting being in force.

In 2007 Denel sought to re-enter the India market as a subcontractor on a tracked gun program where Rheinmetall was the prime contractor. Successful trials for the gun took place during July 2010 and March 2011. However, in 2012, Rheinmetall was recommended for blacklisting which resulted in a termination of the said program. Denel incurred a further loss of a R11 million as a result of this termination.

This confirmed that Denel competing on its own in India on major programs is very high risk.

Since Denel's absence from the market, the procurement rules changed significantly on major programs. In particular, it introduced the requirement for a local Indian industry partner/s based on the "Buy Make India" procurement program. This mandatory requirement combined with Denel's previous unsuccessful attempts to access and remain successful in the Indian market reconfirmed the need for Denel to identify and rather proceed with a local partner in India as opposed to its own.


5.2. Buy Make India

The India "Buy Make Program" requires that local content should be more than 50% as well as inclusion of technology transfer from the foreign Original Equipment Manufacturer (OEM).

Denel is positioning itself for major programs in India which programs are premised on the 'Buy Make India' concept. This means that only Indian Companies that can prove that they have partnered with "foreign technology companies" are allowed to bid as prime contractors.

The Indian procurement process demands a strenuous and protracted product evaluation process which can become extremely costly (as detailed in paragraph 5.1 above and experienced first-hand by Denel).

5.3. India Remains a Lucrative Market

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Despite Denel's previous lack of success in the India market, due largely to circumstances outside its control, the Asia Pacific region and specifically the Indian market remains a lucrative market as more fully set out in paragraph 3.1 above.

5.4. Possible Partners Explored

As detailed in paragraph 5.1 above, Denel was inactive in the India market for a significant length of time until verbal notification was received late in 2014 from the Indian Embassy in South Africa informing Denel that the investigation was completed and that we may proceed to conduct business in India.

It must be pointed out that the defence industry is a niche market and the norm in this industry is that a competitor can easily become a strategic partner and vice versa depending on the type of opportunity being explored by the parties.

As Denel needed to finalise a partner in light of a Request for Information (RFI) to be issued on the mounted artillery gun program, an industry visit took place during February 2015 wherein Denel visited the following potential business partners. Securing a suitable partner proved to be unsuccessful as most of the potential business partners that Denel considered were already aligned to other companies. For example, Denel considered the following companies:

- a) *Bharat Forge*
They have a large forging capability and are a well-established defence contractor. They were however already committed to ELBIT (Israel Company) on artillery programs.
- b) *Larsen and Toubro*
They are a well-established defence contractor but were already committed to NEXTER (French company) on artillery programs.

Given the significant changes in the procurement process as well as Denel's previous unsuccessful experiences coupled with our own internal strengths and weaknesses, a decision was taken not to participate in major programs in India unless there was a distinct advantage that presented itself and which would increase the possibility of us successfully participating in the Indian market.

VR Laser presented to Denel, on an unsolicited basis, a value proposition that was worth considering. The value proposition, more fully set out in paragraph 5.2 below, was attractive to Denel as it was based on VR Laser Asias' experience as well as market studies conducted during the planning phase of re-entry into India. VR Laser Asia's value proposition allows for Denel to enter into the India market as well as the wider Asia Pacific market.

In the past, Denel has incorporated similar joint venture companies in other countries with some of its suppliers as in the case of Tawazun Dynamics, a joint venture company incorporated in the UAE. Denel has seen and continues to see significant benefits in the incorporation of this joint venture.

Key aspects of the Tawazun Dynamics Joint Venture are, inter alia:

- o It is a risk sharing model; and
- o Intellectual Property (IP) is licenced in Tawazun Dynamics in order to discharge offset obligations.

5.5. Value proposition of VR Asia

As previously indicated, a decision was initially taken (prior to VR Laser Asias approach) not to re-enter the India market given the informal blacklisting and having not been in the market for a significant length of time.

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It is evident that, in order to be successful on any major defence program in the world, there needs to be a balanced strategy which encompasses, inter alia, the following:

- (i) **A defence solution that supports national objectives**
The VR Asia proposition brought an understanding on national objectives at an industry level and industry knowledge in the form of a well-established, highly respected and highly successful India partners being PIPAVAV and the Adani Group. The Adani Group is an Indian multinational conglomerate company. It has a diversified business portfolio covering resources, logistics, agribusiness and energy supply. The company was founded in 1988 as a commodity trading business. The founder and Chairman, Mr Gautam Adani is a well established business man and has vast knowledge of setting up significant programs. Similarly, PIPAVAV is a reputable Indian company which operates in the armament industry with knowledge of the Indian market.
- (ii) **Compliance to the user specification with a competitive value proposition**
The VR Asia proposition at this level is again Industry knowledge, setting up the not so obvious contenders in a business venture. As indicated above, Denel's initial evaluation of possible partners was unsuccessful as the main contenders were already committed or not willing to share the risk. Through, for example, the Adani business partners in India as well as risk sharing by Indian partners such as PIPAVAV during the pre-contracting phase of the program, participation will be possible. The value proposition in the bidding process will be an Indian solution with local content growing new contenders and establishing new technologies as directed by policy.
- (iii) **A competitive technical solution**
The VR Asia proposition at this level is technical skills in VR South Africa as well as operational funding.

5.6. VR Laser Asia as a partner of choice

Denel has thus concluded that VR Laser Asia Limited, a company incorporated in Hong Kong ("VR Asia"), and aligned with one of Denel's local fabrication specialists (VR Laser South Africa Proprietary Limited ("VR RSA")), as a suitable partner to form a joint venture company. VR RSA, on behalf of VR Asia has presented a suitable business model to Denel for consideration. VR RSA has also undertaken to fund VR Asia in order to enable VR Asia to meet its funding commitments to Denel Asia.

Denel's traditional strength lies in the areas of concept, design, prototyping and weapons integration. In partnering with VR Asia, Denel obtains access to VR RSA's strong capability in industrialisation, production and support of armoured and specialised vehicles.

The advantages of Denel entering the Asia market with VR Asia includes:

- the provision of design, manufacturing and fabrication skills
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- the provision of quick access to local potential production and development partners
- the ability to increase visibility in the market/region
- access to operational funding
- the ability to grow the business in a sustainable manner
- the ability to share all demonstration costs proportionately to its shareholding

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For the above reasons the partnership with VR Asia, who has satisfied Denel that it is familiar with the landscape of Denel's primary and secondary target markets, makes commercial sense.

Further, it makes commercial sense for Denel to establish a footprint in the market. In order to mitigate the costs and risk of a new market entry, Denel management are of the view that a risk sharing model be adopted. This entails that Denel enter into a joint venture with VR Asia to form Denel Asia.

It is reiterated that VR Asia is a partner of choice for Denel for reasons, which include, details as set out in this paragraph 5, the unsolicited approach made by VR Asia together with, inter alia, its value proposition and the commercial relationship enjoyed between VR Laser RSA and Denel Land Systems (a Denel entity) which has resulted in mutual trust and recognition between the respective parties.

6. ADVANTAGES OF PARTNERING WITH VR LASER ASIA

6.1. Registration Details and shareholding of VR Laser Asia

The registration details of VR Laser Asia are: **VR LASER ASIA LIMITED**, (Company No. 2111273) whose registered office is at Block A, 15/F, Hillier Comm Building, 65-67 Bonham Strand East, Sheung Wan, Hong Kong.

The sole shareholder of VR Laser Asia Limited is Mr Salim Aziz Essa, a South African national with passport no. M00073786. Mr Essa is via the entity Elgasolve Proprietary Limited, the controlling shareholder of VR Laser South Africa Proprietary Limited.

6.2. Networking Capability Expanded

As mentioned in paragraph 5.2 above, VR Laser Asia's network includes, but is not limited to, the following reputable Indian businesses:

6.2.1 Adani's Profile

Mr Gautam Adani, the Chairman and Founder of the Adani Group, has more than 33 years of business experience. Under his leadership, Adani Group has emerged as a global integrated infrastructure player with interests across Resources, Logistics and Energy verticals.


Mr Adani's success story is extraordinary in many ways. His journey has been marked by his ambitious and entrepreneurial vision, coupled with great vigour and hard work. This has not only enabled the Group to achieve numerous milestones but also resulted in creation of a robust business model which is contributing towards building sound infrastructure in India.

Quoted from the Chairman message:

"The government's call for 'Make in India' shall get a fillip with a robust infrastructure that is world class and facilitates the manufacturing industry. It is our endeavour to narrow the energy demand and supply gap, build world class ports so that India becomes a shipping hub and operates mines across the globe with environmental concerns addressed most optimally.

We look forward to make inroads into new sectors of infrastructure and aim to excel in all our initiatives."

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Adani's Vision

As part of preparing the Group for the next phase of our growth, we have re-formulated our 2020 vision:

"To be a globally admired leader in integrated infrastructure businesses with a deep commitment to nation building. We shall be known for the scale of our ambition, speed of execution and quality of operation."

(Source: Adani website)

6.2.2 PIPAVAV's Profile

Reliance Infrastructure, together with its wholly owned subsidiary Reliance Defence Systems Private Limited, acquired in March 2015, a controlling share from the promoters of Pipavav Defence.

Reliance Infrastructure Limited (RInfra) is amongst the largest Infrastructure Companies in India, developing Special Purpose Vehicles (SPVs) in several high growth sectors within the Infrastructure space.

PIPAVAV Defence is India's first world class company integrated Defence production company. PIPAVAV was the first private sector company to get a license and contracts to build frontline warships for the Indian Navy.

PIPAVAV has strong partnerships with Global players such as:

- SAAB Technology AG, Sweden on technology transfer for the manufacturing of missiles, underwater systems and Aero-structures for fighter jets
- DCNS (France) Government owned company on Naval programs
- Rosoboron Export Russia on Naval programs
- Atlas Electronica on torpedoes and Sonars for the Indian Navy
- Sagem Defence Securite, part of the Sagem Group on long range air borne multi sensor multi spectral electro optical systems

PIPAVAV has been participating in several land system projects such as:

- Upgrade of several vehicle programs such as BMP2 and tank projects
- Manufacturing and supply of Armour Personnel Carriers
- Several UAV programs

Having regard to the fact that Denel has come in as a late entry competitor on the main programs in India, our partnering options were very limited as the traditional partners that Denel could have considered were in most instances already paired with other major industry players (See paragraph 5.1 above).

In support of India's national objective of developing local privately owned defence companies, partnering with (either one or both) Adani and PIPAVAV will bring major advantages in terms of Industry knowledge, manufacturing capability, setting up manufacturing partners, business knowledge and investment capital on major programs. Expanding into the Defence Business forms part of both companies growth vision and both have a history of success.

6.3. Financial Commitment

VR Laser Asia via VR Laser RSA has committed R100 million in terms of a shareholder loan on an arms-length basis with interest (being at normal market rates).

Denel intends to negotiate a higher amount to be paid at the outset and should this be unsuccessful, it will be referred back to the Denel Board.

Should the joint venture be unsuccessful within the first 5 years of incorporation of the company, VR Asia will not have recourse to Denel to repay the loan but shall bear this risk in totality. This is articulated in the Shareholders Agreement.

7. BUSINESS MODELS

As indicated in paragraph 5.2 above, Denel can best position itself for programs based on the 'Buy Make India' concept. In addition, if there are any similar requirements within the Asia Pacific region, it will be easier to leverage on these opportunities from the India base.

Set out in paragraph 8 below are the 2 main business / contracting models that may arise from identified opportunities in the Asia Pacific region hereafter referred to as Scenario 1 (No Production Scenario) and Scenario 2 (Production Scenario) respectively.

8. CONTRACTING MODEL

8.1. Joint Venture Governance

In order to implement Denel's chosen risk mitigation strategy, Denel has elected that a new limited liability company be registered in Hong Kong (Denel Asia). This ensures that Denel does not inherit any legacy concerns and ensures a speedier due diligence process.

Notwithstanding the fact that Denel Asia will be incorporated in Hong Kong, Denel has to ensure that Denel Asia will be established and managed in line with its status as a state owned company, reflecting Denel's own corporate governance best practices and standards. In this regard, Denel has negotiated a favourable shareholders' agreement entrenching its rights and providing a contractual framework which will ensure Denel Asia's effective governance.

8.2. Contributions by the Parties

Denel management have recognised that the intended shareholders of Denel Asia have differing strengths and capabilities. In this regard, it is envisaged (and the Denel Asia shareholders' agreement provides) that:

- o Denel, will be the technology partner and will hold 51% of the issued share capital and control of Denel Asia. The remaining 49% minority is to be held by VR Asia who will be the networking and industrial partner.
- o Other than standard minority protections, Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level as shareholder matters require approval by a simple majority.
- o Denel Asia will pursue opportunities in Asia, and, specifically in India using the network of VR Asia. Once an opportunity translates into a firm order:

- Denel Asia may establish a subsidiary in India in order to satisfy Indian legal requirements;
- Denel Asia will pursuant to a preferential supply agreement with Denel, procure product for delivery to an Indian end-consumer; and
- If and to the extent required, VR RSA will contract, manufacture, and produce for Denel Asia for delivery to an Indian end-user.

Subject to relevant approvals, a Shareholders agreement in relation to Denel Asia has been negotiated. The current draft of the shareholders' agreement is attached hereto as **Appendix A**. The Denel Board has considered the same and taken advice thereon. They are satisfied that Denel has adequately protected itself in relation to Denel Asia.

8.3. Transaction Structure

The cooperation agreement referenced in the pre-notification letter to Minister Brown dated 29 October 2015 is to be superseded by the shareholders' agreement. In addition, Denel, VR RSA and VR Asia are to conclude:


- A standard form Denel supply agreement in relation to the supply of product by Denel to Denel Asia, which will entitle Denel Asia (as a subsidiary of Denel) to preferential pricing and procurement status; and
- A contract manufacturing agreement between Denel Asia (as customer) and VR RSA (as supplier) in terms whereof, amongst other things:
 - Denel Asia will appoint VR RSA as its preferred contract manufacturer for specialized vehicles and related products in India;
 - VR RSA will supply specialized vehicles and related products at a preferential price, given its indirect interest via VR Asia; and
 - Denel will make available to VR RSA, certain IP on a limited licensed use basis, to enable VR RSA to manufacture/fabricate product.

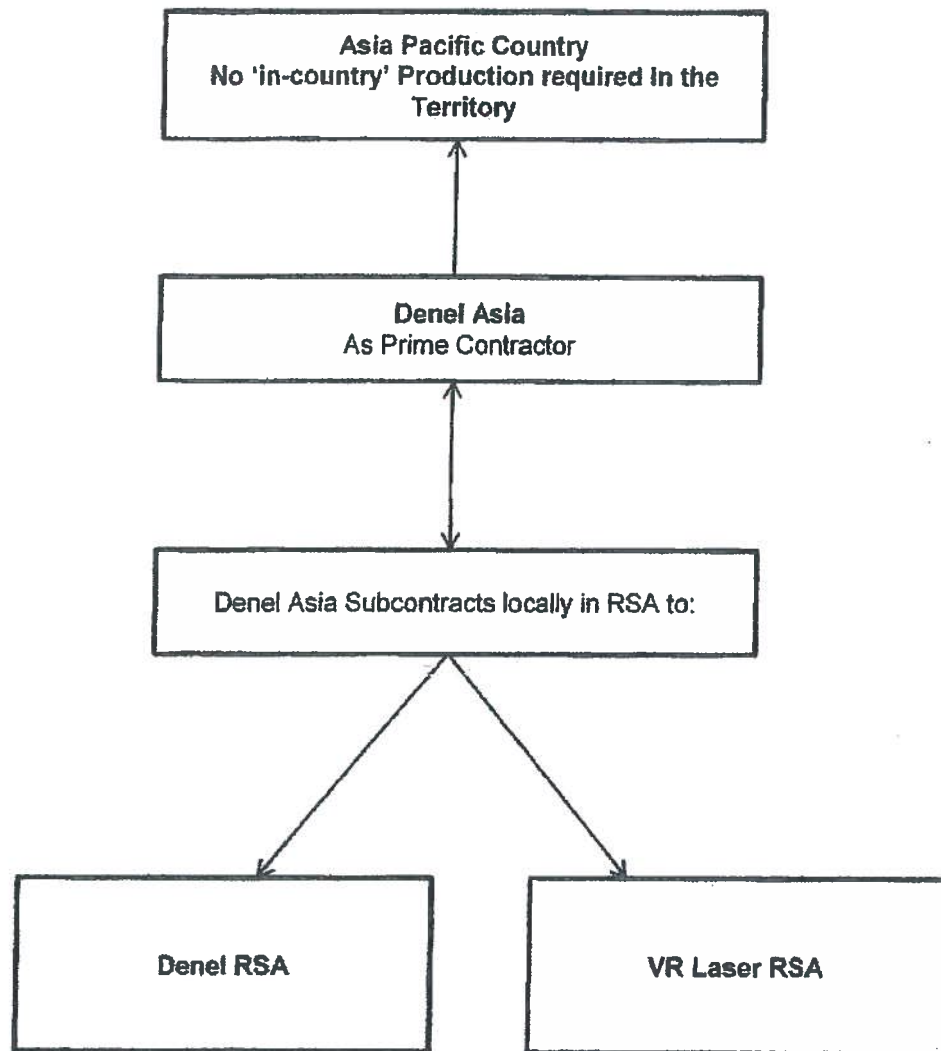
See paragraph 12.7 below.

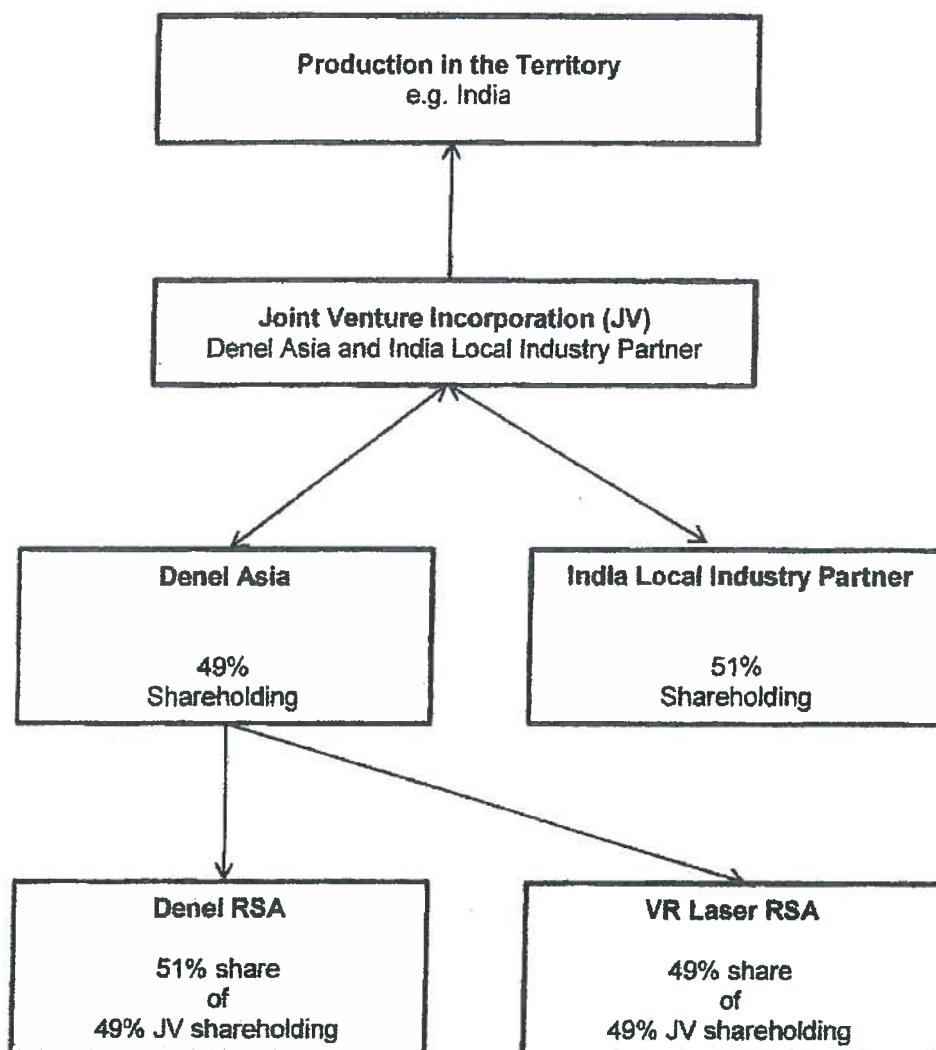
8.4. Schematic representation of the contracting models

8.4.1 Scenario 1 – No Production envisaged in country

8.4.2 Scenario 2 – In country Production is envisaged

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Scenario 1:*Company Confidential*K.J. ¹⁷

Scenario 2:

- (i) It is not envisaged that any production will take place in Hong Kong as this office is essentially a marketing office.
- (ii) Tawazun Dynamics conducts business in accordance with Scenario 2 above.

8.5. Financing

One of the key supporting drivers for the formation of Denel Asia, is Denel's limited finance obligations. VR Asia has undertaken to invest an amount of R100 million (One Hundred Million Rand) into Denel Asia for operational costs, payable in amounts of R20 million a year for a period of five years.

Thereafter, Denel Asia will, to the extent that external funding is required, source such funding from third party funders. The shareholders (Denel and VR Asia) will also be able to provide funding by way of shareholder loans pro-rated according to their respective shareholding but they are not obliged to provide funding. Denel does not have any definitive finance obligations or exposure to Denel Asia (save for ordinary supply arrangements).

9. INTELLECTUAL PROPERTY (IP) AND LICENCING

9.1. Technology transfer and protection of Denel's IP

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture subject to paragraph 9.1 (i) above. This is consistent with the Tawazun Dynamics joint venture model referred to in paragraph 5.7 above.
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company.


10. RISKS AND MITIGATION

Key risks were considered during the assessment of the business and relevant risks taken into account in the negotiation process and contractual framework. Appropriate financial and legal due diligence reviews were performed to identify and mitigate any further risks and the recommendations emanating therefrom have and/or will be adopted and implemented. Appendix B, Appendix C and Appendix D refers.

10.1. Transaction risks and its mitigation


Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • Denel has undertaken a due diligence investigation and the recommendations thereof will be implemented. • No agents will be involved.

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Risks		Mitigation/Remarks
		<ul style="list-style-type: none"> Denel has a controlling share and thus can control the direction of Denel Asia.
2.	Guarantees/ Finance Risk	<ul style="list-style-type: none"> VR Asia is funding Denel Asia in the amount of R100 Million (R20 million a year for 5 years). Denel is to engage with VR Asia to secure a greater cash injection in the first 2 years. Denel previously unsuccessfully engaged with VR Asia on this issue. The Board has requested that a re-engagement with VR Asia on this issue is to take place. Reduced balance sheet exposure due to partnering. Denel has limited credit exposure to its subsidiary for normal supply arrangements on preferential terms.
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred.
4.	Legal Exposure	<ul style="list-style-type: none"> Denel exposure is seen by the Denel board as limited.
5.	PFMA Conditions	<ul style="list-style-type: none"> Denel will ensure that Denel Asia abides, to the extent applicable to the PFMA, the Denel Shareholder Compact and the Denel Risk and Compliance Frameworks. Adherence to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.
6.	Cooperation Agreement	<ul style="list-style-type: none"> The Shareholders Agreement, once signed, will supersede the Cooperation Agreement (Appendix E).
7.	Protection afforded in terms of the Shareholder Agreement	<ul style="list-style-type: none"> The agreement only becomes effective upon the fulfilment of the suspensive conditions (Clause 4). Control vests in Denel which has a 51% shareholding (Clause 5). There are certain reserved matters which require a 75% majority vote with other matters requiring a simple majority of 51%

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Risks		Mitigation/Remarks
		<p>in order for the resolution to be passed (Annexure B for reserved matters).</p> <ul style="list-style-type: none"> • There is specific provision for the implementation of anti-bribery, anti-money laundering and anti-corruption policies in the joint venture (Clause 6). • In the event of the joint venture being wound up/dissolved prior to full repayment of the shareholders loan, no liability will accrue to Denel to settle the loan (Clause 16.2). • Denel has the right to investigate the directors and ultimate beneficiaries and shareholders of VR Asia to ensure that such persons have sufficient standing and if not satisfied, Denel has the right to demand that VR Asia repurchases the shares from that person thereby removing the person from being a shareholder of VR Asia (Clause 18.3). • The termination clause (Clause 21) relates to termination on material breach (as opposed to termination for convenience). • Provision is made for termination in circumstances where the Government directs that Denel ceases to be a shareholder for reasons of national security or otherwise (Clause 25.1) • Termination can take place by mutual agreement (Clause 25.1.3). • Termination can also take place where a party frustrates the performance of the other party by making performance impossible or unreasonably expensive or difficult, materially alters the rights and obligations of the parties or materially interferes with the benefits (Clause 25.1.4).
8.	Exit Clause: Termination for convenience	<ul style="list-style-type: none"> • Initial discussions with VR Asia resulted in a rejection of a clause for termination for convenience. • Denel is to engage with VR Asia and address the Board's requirement that such a clause is to be included in the agreement.
9.	Due Diligence	<ul style="list-style-type: none"> • The key risk identified is the potential for bribery and corruption. This is alleviated in the shareholders agreement by the obligation to abide by anti-money laundering (AML) and anti-bribery and anti-corruption (ABC) policies. • Financial viability of VR Laser Asia raising the loan – in the absence of the loan being furnished by VR Asia to the joint venture, it

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Risks		Mitigation/Remarks
		<p>will constitute a material breach and is a ground for termination.</p> <ul style="list-style-type: none"> Denel is satisfied that the loan can be legitimately be raised by VR Laser Asia via its shareholders.
10.	Double Taxation Agreement	<ul style="list-style-type: none"> There are currently discussions between India and Hong Kong re a double tax agreement. The risk of the lack of a double taxation agreement is outweighed by the lucrative opportunities that can be realised in India.

11. DUE DILIGENCE

Denel had procured that a due diligence investigation be undertaken in respect of each of the following areas, which due diligence reports are attached hereto as follows:

1. Regulatory Due Diligence – Appendix B
2. Legal Due Diligence – Appendix B and Appendix C
3. Financial Due Diligence – Appendix D

There were some findings of concern that was raised by the due diligence which are acknowledged. Denel management is however confident that it is able to incorporate the recommendations of the report and will adopt corrective measures in particular related to an anti-corruption policy and compliance framework coupled with rigorous monitoring thereto. See paragraph 10.1 above.

In addition, Denel is satisfied that the shareholder loan can be legitimately raised by VR Laser Asia via its shareholders failing which the breach provision in the Shareholder Agreement will be invoked.

12. FINANCIALS


12.1. Capital Contribution

There will be a capital contribution of 1000 shares issued at USD 1 with Denel taking up 590 shares and VR Laser Asia taking up 490 shares.

12.2. Financial viability

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. to provide funding solutions.

Initially potential business amounting to USD 9.2 billion was identified. This has been tested and evaluated again and based on a realistic probability matrix on the latest marketing intelligence, the potential business is approximately USD 5.8 billion over the next 5 years which Denel could take advantage of (See paragraph 12.3 below).

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12.3. Markets and Opportunities

Denel Asia's forecasted capabilities and market interests are promising.

The business opportunity at a reduced risk via partnering constitutes a logical next step by Denel for entry into a new market. See Appendix F which sets out markets and opportunities.

12.4. Income Statement

Rm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	309	617	874	1,203	1,405	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost:	11	14	19	22	27	35	35	35	35
Labour	6	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	5
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	46	54	55	127	184	266	316	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	655	902	1,054	1,125

Notes

¹ The rate of exchange used was R12.50/USD.

² The normal yearly operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.

The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.

The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively. The IT costs will be typically be part of this.

This calculation is based on foreign offices cost structures that are managed by Denel over a very long term.


³ The additional operating costs would mainly be used to do big system demonstrations to the potential clients. Any one big full in client country demonstrations could cost between R10m – R20m. This is based on various system demonstrations done in foreign countries.

12.5. Business Funding

Denel is satisfied that it has limited financial exposure in terms of Denel Asia due to the fact that VR Asia will be assuming the primary finance obligations of Denel Asia. Forecasted cash flows are in the view of Denel management sufficient to meet Denel Asia's obligation to VR Asia, which is without recourse to Denel.

- (i) The R100m investment from the Denel partner will fund the basic office operational costs for the first few years until sales are realised. The sales from operations will cover the direct cost and increased operational costs associated with the business case.
- (ii) The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.
- (iii) No substantial capital spend will be incurred before an order is obtained and the capital investment will be recovered on the orders obtained.

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12.6. Cash Flow Impact

- (i) The cash shortfall in the first year would have to be financed from either a 12 month short term loan at reasonable international rates negotiate with the partner. Subsequently, the business would be self-funding and sustainable over the medium to long term.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	463	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

12.7. Pricing Policy

- (i) There is currently a Memorandum of Agreement that specifies rates which were negotiated and agreed between VR Laser RSA and Denel Land Systems (a trading division of Denel) which provides a basis to the pricing.
- (ii) Paragraph 8.3 above refers.

13. BENEFITS

13.1. Local Manufacturing Development

By concluding a contract manufacturing agreement with VR RSA (an established provider to Denel), Denel Asia ensures the sustainability of local manufacturing expertise.

13.2. Skills Development

Due to the technological partnering between Denel, Denel Asia and VR RSA, Denel serves its obligation and desire of fostering the development of core skills and technology competencies with black owned and/or black controlled South African entities. A proposition that satisfies a number of key Denel policies.

13.3. Job Creation

By facilitating a black owned and/or controlled South African company (VR RSA), Denel Asia seeks to maintain South African jobs in the skilled and semi-skilled industry sectors. In addition, based on the projected income, significant work will result from Denel Asia contracting with both Denel and VR RSA.

13.4. Human Capital Development / Transformation

We refer the Honourable Minister to our comments contained in paragraphs 13.1, 13.2 and 13.3 above.

14. CONCLUSION

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Asia is one of the fastest growing defence markets. Of the top ten worldwide defence importers in 2014, four were from Asia (India, China, Indonesia and Vietnam) with Singapore and Pakistan making 11 and 12 slots respectively. (Stockholm International Peace Research).

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. provide funding solutions.

15. IMPLEMENTATION PLAN

The following activities will take place towards contract implementation and the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the shareholders agreement	Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval.
Establishment of the Joint Venture Company	
<ul style="list-style-type: none"> PFMA pre-notification 	Delivered on 30 October 2015
<ul style="list-style-type: none"> Draft Shareholders Agreement Regulatory due diligence, Legal and Financial due diligence Denel Board Approval PFMA submission PFMA Approval expected 	<p>Circulated herewith</p> <p>Completed as at 27 November 2015</p> <p>7 December 2015</p> <p>10 December 2015</p> <p>January 2016</p>
Approval from the financial surveillance department of the RSA Reserve Bank for establishing a subsidiary outside the common monetary jurisdiction	January 2016
Conclusion of final shareholders agreement and adoption of memorandum of incorporation.	January 2016
Joint Venture Company business activation and procuring all relevant approvals and/or registrations	January / February 2016

RECOMMENDATION

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It is requested that the Honourable Minister notes and approves of Denel's intention to:

1. establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and
2. establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.

The Denel Board has approved of such establishment subject to the receipt of Ministerial approval in terms of section 51(1)(g), section 54(1) and 54 (2) of the PFMA.





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ACKNOWLEDGEMENT OF RECEIPT

FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 54(1) AND 54 (2) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 RE PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED

	Name (Print)	Signature	Date and time
Minister L Brown Minister of DPE	Mahlaku		11/12/15 12h50
Minister D Van Rooyen Minister of Finance	Frans		11/12/15 13:18
Mr Lungisa Fuzile Director General National Treasury	Frans Fuzile		11/12/15 13:18
Mr Richard Seleke Director General DPE	Mahlaku		11/12/15 12h50

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001

Enquiries: Vukani Ndaba Tel: (012) 315 5070 Fax: (012) 326 5445 Email: vukani.ndaba@treasury.gov.za

Ref: 43/12/5/1

Mr Z. Ntshope
Acting Group Chief Executive Officer
Denel SOC (Ltd)
P O Box 8322
PRETORIA
0046

Dear Mr Ntshope

JOINT VENTURE BETWEEN DENEL SOC (LTD) AND VR LASER

The Office of the Chief Procurement Officer received information that Denel SOC (Ltd) entered into joint venture agreement with VR Laser in order to find market for world class product in Asia

It is not clear whether government prescripts were complied with when finalizing this joint venture agreement.

In order for National Treasury to verify compliance with relevant prescripts, you are requested to submit the following documents for review:

- Board approval to pursue the deal;
- Advert and proposals received;
- Minutes of the relevant committees;
- Board resolution;
- Minister's approval;
- Joint venture agreement; and
- Any other relevant document.

Kindly ensure that the requested documents are submitted to National Treasury by not later than 10 February 2016.

Kind regards.

SOLLY TSHITANGANO

CHIEF DIRECTOR: SCM GOVERNANCE, MONITORING & COMPLIANCE

DATE: 5/2/2016

CC: Mr M.R. Seleke
Director-General: Department of Public Enterprise

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: *"Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:*

- (a) establishment or participation in the establishment of a company;*
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;*
- (c) acquisition or disposal of a significant shareholding in a company;*
- (d) acquisition or disposal of a significant asset;*
- (e) commencement or cessation of a significant business activity; and*
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"*

Enquiries: Communications Unit
Email: media@treasury.gov.za
Tel: (012) 315 5944



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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to *"assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority"*.

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to *"promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment"*. The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

Issued on behalf of National Treasury

Date: 13 April 2016

Enquiries: Communications Unit
Email: media@treasury.gov.za
Tel: (012) 315 5944



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 (/) [Daily News \(/Dailynews\)](#) [News \(/Dailynews/News\)](#)

Gupta deal block wins Gordhan praise

NEWS / 14 April 2016, 12:07pm

 Mogomotsi Magome and Bernadette Wolhuter




Finance Minister Pravin Gordhan will not meet with the Hawks to answer questions relating to the probe into claims of a rogue spy unit with Sars. File picture: Leon Lestrade

Johannesburg/Durban - Finance Minister Pravin Gordhan's scuppering of a controversial Gupta-linked deal by state-owned arms manufacturer Denel, has been welcomed by leading political analysts.

Analysts Daniel Silke and Dr Somadoda Fikeni hailed the move for its fiscal prudence and common sense.

Both said Gordhan's action enjoyed wide support within the factionally divided ANC.

Gordhan said on Wednesday that due processes were not followed in the deal,

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thus making the transaction illegal.

Denel and VR Laser Services – a company in which the Gupta family and President Jacob Zuma's son Duduzane Zuma hold a 25% stake – formed a joint venture, Denel Asia, which would sell Denel products to the Asian market.

Silke, director of the Political Futures Consultancy, said there was a concerted effort from Gordhan and treasury to begin a process of questioning the broader role and performance of state-owned enterprises and related institutions.

He said there was an attempt being made to clean up the "messy" activities of these enterprises.

"We are going to see more scrutiny of these deals that are undertaken by state-owned enterprises in future."

He saw this as part of Gordhan beginning to respond to the rating agencies' requests to tighten performance standards in South Africa.

"It is the beginning of a more concentrated effort by government to focus on what should be the core business of state owned enterprises and review the deals that have plagued the sector and contributed to its inefficiency."

He said Gordhan had "substantial support" from the ruling party.


"He has successfully conveyed a sense of urgency when it comes to turning around what he can and putting a positive spin on the requests of the rating agencies."

It looked like "the penny had dropped" and that people were starting to realise the country needed to do all it could to avoid a downgrade, he said.

Fikeni, a policy and political analyst at Unisa, said: "When the economy is not doing well and ratings agencies are likely to be negative, you can't go out borrowing more money to secure deals until you're on safer ground."

It stood to reason that any minister would be more cautious and stop to ask for the motivation behind the deal and see if there existed any linkages to the economic needs that were pressing for the country.

Gordhan enjoyed strong support from the mainstream of the ruling party, Fikeni said. "A few might have been eyeing the deal out but the general mood is against State capture."

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Fikeni said treasury had been placed in a position of power now.

"The hands of ministers close to the Guptas have been weakened because almost all of them have to go through treasury now."

Wednesday's announcement by Gordhan is part of a wider drive by the minister to stamp his authority on state-owned enterprises and head off questionable deals since his return in December.

He has stalled any movement on the state's R1 trillion-nuclear power plans, making the Gupta acquisition of a uranium mine look like an expensive gamble that might well not pay off.

Gordhan also forced SA Airways to honour an existing aircraft leasing deal with French company Airbus.

Gordhan's statement hinted at the motives and timing of December's axing of Nhlanhla Nene from the Finance Ministry.

The deal is believed to be at the centre of the suspension of three Denel executives, who insiders allege were moved to make way for the controversial transaction after a new board was appointed by Public Enterprises Minister Lynne Brown last year.

Denel announced the joint venture in January this year, but Gordhan said on Wednesday the establishment of the company was not approved by him or Brown. "State-owned entities are required to obtain approval from the minister of finance and/or minister of public enterprises before establishing companies, in terms of the PFMA (Public Finance Management Act)," said Gordhan.

He added that in terms of the conditions attached to the R1.85 billion in guarantees provided by the government to Denel, any significant transaction that Denel entered into required the approval of both the ministers of finance and of public enterprises.

Zuma removed Nene on the night of December 9, by means of an after-hours media statement. He was replaced by alleged Gupta pick, Des van Rooyen.

Denel submitted its application for approval the very next morning, seemingly expecting quick acquiescence from the new minister.

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A political backlash coupled with a financial markets meltdown brought a quick end to Van Rooyen's tenure. He was replaced by Gordhan four days later. Given what the National Treasury is now saying about the status of the deal, this was before he could sign off on the Gupta deal.

But this didn't stop Denel, now under the control of a new board and with its top executive management suspended, from announcing the establishment of Denel Asia as a done deal in January.

The controversial transaction is said to be behind the suspension of Denel's top three executives – chief executive Riaz Salojee, chief financial officer Fikile Mhlonto and company secretary Elizabeth Africa.

Denel has refused to divulge details of the charges faced by them.

"The investigation of the three senior officials has not been finalised yet," said company spokeswoman, Vuyelwa Qinga.

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Almost 50 000 KZN matrices get second chance

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Guptas' Denel deal illegal

POLITICS / 14 April 2016, 06:55am

 MOGOMOTSI MAGOME



Finance Minister Pravin Gordhan will not meet with the Hawks to answer questions relating to the probe into claims of a rogue spy unit with Sars. File picture: Leon Lestrade

Johannesburg - The controversial Gupta-linked deal by state-owned arms manufacturer Denel is close to collapse because due processes were not followed, Finance Minister Pravin Gordhan said on Wednesday, thus making the transaction illegal.

Denel and VR Laser Services - a company in which the Gupta family and President Jacob Zuma's son Duduzane Zuma hold a 25 percent stake - formed a joint venture known as Denel Asia which would sell Denel products to the Asian market.

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Denel then hit back, implicitly accusing the minister of acting in bad faith and against the principle of co-operative governance.

Gordhan also said in response to concerns over ailing national airline SAA that while the goal remained to find a minority equity partner, the first priority was to get it "on its feet" and ensure it was well managed and governed.

Deputy Finance Minister Mcebisi Jonas said earlier this would include the appointment of a full board, which would then have to fill the vacancies left in key executive positions.

SAA has requested a bailout of R5bn and has been unable to table its annual report because of auditor concerns over its status as a going concern, amid reports it is insolvent.


Gordhan said, however, work on SOE reform was making progress in an interministerial committee chaired by Deputy President Cyril Ramaphosa.

In the written version of his speech, which he didn't complete, Gordhan said the Treasury was helping to develop a framework for private sector participation and for explicitly costing the developmental mandates of SOCs.

"Good progress" had been made and proposals were under discussion in the committee.

"As part of this reform process, work is in progress on a holistic resolution of the governance and financial issues affecting our state-owned airlines. A Terms of Reference for advice on the realignment of these enterprises and an appropriate group corporate structure has been developed," he said.

Political Bureau

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Fuss about Guptas misguided, says Brown

(<http://www.iol.co.za/news/politics/fuss-about-guptas-misguided-says-brown-2014714>)

ACDP MP Steve Swart cited Denel, which has forged ahead with a joint venture with a company linked to the Gupta family despite lacking the necessary approval from Gordhan, as an example of the finance minister being undermined.

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they're not supposed to do, they begin to display a level of arrogance and belligerence that doesn't befit the right kind of corporate governance, and the board at Denel needs to take that message," Gordhan said in response.

Irked Denel takes swipe at Gordhan

(<http://www.iol.co.za/news/politics/irked-denel-takes-swipe-at-gordhan-2009852>)

The Denel board was to have appeared before Parliament's public enterprises oversight committee on Tuesday to explain events at the company, where two executives remain on suspension pending disciplinary proceedings and the CEO has been removed, allegedly over their resistance to the joint venture.

The company was required in terms of the Public Finance Management Act to get approval from Gordhan and Public Enterprises Minister Lynne Brown before proceeding, which both have said it did not.

However, in a media briefing on her budget last week, Brown said it was possible the deal was technically legal since the Treasury was supposed to have responded to the request for approval within a reasonable period, failing which the entity could assume it had been given.

The question hinged on the interpretation of a "reasonable period", Brown said, but added she had asked for the joint venture company, Denel Asia, not to trade in the meantime.

The row took an ugly turn last month, after Gordhan had issued a statement making it clear that as far as he was concerned approval had not been given because the Treasury had asked Denel to provide more information before it could finalise the request.

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DENEL GROUP

DENEL MEDIA STATEMENT ON NATIONAL TREASURY PRONOUNCEMENTS

14 April 2016

Denel has noted media reports with regards to the National Treasury (NT) views on the new venture company Denel has entered into as a vehicle to penetrate the Asia-Pacific markets.

Chapter 3 of the Constitution enjoins all spheres of government, including organs of state like the NT and Denel SOC, to co-operate with one another in mutual trust and good faith. That includes an expectation to always deal with matters of mutual interest internally and underpinned by principles of cooperative governance and inter-governmental relations.

Denel SOC will continue to engage with NT directly to ensure that any misunderstanding between Denel and the NT about the Denel Asia joint venture is resolved amicably.

For further information, contact:

Vuyelwa Qinga (Ms)

Group Executive: Communication & Public Affairs

Cell: +27 (0) 82 686 2198

email: pamm@denel.co.za

K.T. [Signature]

EXTRACT OF THE MEETING HELD ON THE 15TH APRIL 2016 STARTING AT 14H30 BETWEEN NATIONAL TREASURY (NT) AND DENEL SOC LIMITED (Denel).

VENUE: Pretoria – National Treasury Building at 40 Church Street.

ATENDEES: Zwelakhe Ntshepe -Denel Group Chief Executive Officer (Acting)

Odwa Mhlwana – Denel Group Chief Financial Officer (Acting)

Ismail Momoniat – Acting Director General - National Treasury

Other National Treasury Officials (Please fill in the names)


SUBJECT: Following the recent media statements suggesting that Denel might have violated the PFM act 1 of 1999 in its endeavours to establishing Denel Asia (Joint Venture between Denel SOC Limited and VR Laser Asia), the meeting was to discuss how Denel it is that Denel believes that no law was violated when NT had not provided specific approval to the transaction in terms of section 51(g) and 54(2) of the PFMA.

EXTRACT: Mr Momoniat, opened the meeting with an introduction that highlighted the following:

1. It is not NT's intention to deal with other organs of state through the media, however given that this specific issue was deemed to be of public interest as well as the media enquiries received by NT on this issue since the media launch by Denel of its Asia joint venture on the 28th January 2016, A media statement was issued by National Treasury on the 14th April 2016.
2. NT's statement was not saying that Denel had violated any act but carefully crafted in response to the media releases observed in the past both from Denel and DPE given that no approval had been given by NT, that Denel MIGHT have violated the act, stating the process to be followed in the event that this was to be proven. This meeting is thus a first step to establishing whether the PFMA has been violated or not.
3. Emphasised the fact that NT has special powers (no specifics of what powers) to act against organs of state that violated governance prescripts.
4. Requested Denel to explain its actions as it relates to whether approvals had been granted or not regarding this Asia Joint Venture.

Mr Ntshepe started articulating Denel's historic involvement in Asia with specific emphasis on India as follows:

1. Denel had been out of India for about 13 years, blacklisted on allegations of misconduct with regards to its partnerships in that market

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which were later (around February 2016) thrown out of court and Denel cleared.

2. At the time, prior to being blacklisted, Denel spent in the region of R350m on business development activities for which no return was ever realised on such investment.
3. Emphasised the importance of the Indian market to Denel's growth strategy and the fact that after the USA, India is the next biggest defence market globally.
4. That at the time Denel got Clearance and lifting of the blacklisting, there were major opportunities which Denel had to play catch up on urgently to stay in the race to winning the contracts with very limited time.
5. India's Defence rules specifically require that defence articles are "Made" in India thus eliminating an opportunity of Denel selling directly from RSA into India.
6. Emphasised that VR Laser South Africa is a business that Denel had business dealings with for a very long time (+/- 10 yrs) and that this business is now under new ownership that found the business relationship already in existence between VR Laser RSA and Denel.
7. Introduced Mr Mhlwana to take the meeting through the governance element of the transaction.

Mr Mhlwana went on to explain the compliance regime that governed the transaction and how Denel obtained compliance assurance.

1. Two sections of the PFMA as well as the conditions to the approval of the government guarantee issued to Denel, were considered in progressing through this transaction and these pieces emphasised the following
 - a. In essence, Section 54(2) required that this transaction be subject to the approval by the executive authority with notification of the National Treasury. This section further stipulates that if no response is received from the executive authority in 30 days, the applicant may deem the application as approved.
 - b. In essence, Section 51 (1)(g) required that the National Treasury be notified of this transaction and be granted reasonable time to provide its approval.
 - c. The condition to the approval of the government guarantee issued to Denel required that for all 54(2) approval requests, National Treasury is not only informed/notified but is also an approver similar to the executive authority.

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2. The governance compliance regime in concluding the formation of Denel Asia was explained in detail to the National Treasury Officials highlighting the following:
 - a. Section 54(2) as it relates to the approval by the executive authority and notification of the National Treasury was fully complied with given the expiry of the 30 day period as stipulated in the act.
 - b. Section 51(1)(g) as it relates to the reasonable time to be afforded to National Treasury in seeking their approval was also complied to fully given that this section read together with section 54(2) does provide clear guidance on how long the reasonable time is which National Treasury has to provide its approval decision. Denel Stressed the fact that the 30 day period expired on the 12th of January 2016 with the joint venture only established on the 29th January 2016 and that during this time no response was ever received from National Treasury.
 - c. The approval condition to the government guarantee elevated National Treasury to approval status in line with the executive authority in all matters relating to section 54(2) approval requests. This was therefore complied to fully as stipulated in (a) above.
3. National Treasury's reaction to Denel's position articulated in 2 above was as follows:
 - a. Further meetings with the National Treasury Director General on his return are necessary as well as a separate meeting with the Minister of Finance attended amongst others by Denel's executive authority and the chairperson of the board will be necessary to discuss this matter further. These meetings will be arranged by National Treasury urgently.
 - b. All future media statements on the matter to be co-ordinated between the National Treasury, Denel and DPE.
 - c. A letter to Denel will be issued on Monday, requesting additional information on the transaction for National Treasury to review the PFMA application and make their final decision
 - d. That Denel Freeze/put on hold all business operations of the Joint Venture until National Treasury issues their decision on the PFMA application
 - e. Strong concerns on Denel's legal interpretation as stipulated in 2(b) above. National Treasury's submission was that there is

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case law on the definition of reasonable time and that it constitutes taking strong consideration of the specific circumstances such as the December holidays, historic time taken by National Treasury in approving similar applications.

Other than the notion that Denel freezes all operations of Denel Asia and that the joint venture is not valid and all operations must wait for a another review process, point (a) and (b) above was agreed to by Denel. Denel's position as articulated in point 2 above remains and that the transaction is valid and Denel has fully complied with all legislative requirements.

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The Office of the Chairperson of the Denel Board

Fax: +27 (12) 671 2751

~~Denel SOC Ltd~~

TO: Mr P Gordhan, MP
Minister of Finance
Private Bag X115
PRETORIA
0001

TO: Ms L Brown, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Dear Minister Gordhan and Minister Brown,

**DENEL'S APPLICATION IN TERMS OF SECTIONS 54 AND 51(1) (g) OF THE
PUBLIC FINANCE MANAGEMENT ACT REGARDING ESTABLISHMENT OF
DENEL ASIA**

1. INTRODUCTION

I refer to your letter dated 10 June 2016 regarding the above matter which we have also discussed with our shareholder representative, the Department of Public Enterprises and have noted the contents thereof. This letter is our response to your letter in your capacity as the Head of National Treasury. We have also noted that your letter contain some inaccuracies relating to certain critical dates and fails to refer to certain important communication between the Denel Executives and National Treasury officials relating to this matter.

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¹Executive Director

Group Company Secretary: Ms E M Africa

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The Board of Denel SOC Limited ("Denel") agrees that Denel and National Treasury ought to work towards a speedy resolution of this matter with a view to protect the reputation of both institutions and Government as a whole.

2. REQUEST FOR ADDITIONAL INFORMATION

With regard to the National Treasury's request for information, I have been advised that Denel's executives are engaging with National Treasury officials with a view to provide the requested information and that such shall be received by National Treasury soon. However, we would like to put it on record that such requested information is being provided not for purposes of approving the transaction in question but merely to comply with your request as it is our view that the transaction has the necessary approval.

3. COMPLIANCE WITH THE PFMA

As regards Denel's compliance with the relevant provisions of the PFMA with respect to the Denel Asia transaction, it is clear that this has become a question of different legal interpretation of the applicable provisions of the legislation. From Denel's perspective, the salient facts and circumstances to be taken into account in determining "reasonable time" in this matter are as follows:

3.1 On 29 October 2015, Denel submitted its pre-notification on the proposed formation of Denel Asia to the Honourable Minister Nene (the then Minister of Finance);

3.2 On 23 November 2015, the Minister of Public Enterprises granted in principle approval for Denel to continue discussions with VR Laser and for Denel to submit a Section 54(2) PFMA application to both the Ministers of Public Enterprises and Finance, respectively.

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Executive Director
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3.3 A copy of the above in principle approval to Denel was also provided to National Treasury at the same time as it was provided to us by the Minister of Public Enterprises.

3.4 On 7 December 2015, the Board of Denel resolved to give final approval of the equity partner (VR Laser) and the draft PFMA application subject to certain conditions and regulatory approval;

3.5 On 9 December 2015, a meeting was held at Protea Hotel Hatfield, between Denel, Department of Public Enterprises and National Treasury represented by Mr Mogorosi Lebethe, Mr Lloyd Ramakobya, Mr Silondwe Nkosi and Ms Tsholofelo Marotholi in which the Denel Asia Pre-notification and the application were discussed;

3.6 On 10 December 2015, Denel and VR Laser concluded a shareholders agreement subject to certain suspensive conditions including Denel obtaining approval, *inter alia*, in terms of Sections 51 and 54 of the PFMA;

3.7 On 11 December 2015, Denel submitted its formal PFMA applications in terms of Sections 51 and 54 of the PFMA to the Minister of Public Enterprises and the Minister of Finance and receipt of the delivery thereof was acknowledged in writing ("the PFMA applications");

3.8 That National Treasury did not respond, adversely or otherwise, to the 29 October 2015 pre-notification and to the 11 December 2015 applications;

3.9 On 10 January 2016, a 30 day period had expired from the date of delivery of the PFMA applications;

3.10 That it is not obligatory for National Treasury to respond when it does not wish to object and/or oppose a particular application;

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- 3.11 The deeming provisions contained in Section 54(3) of the PFMA (i.e. where approval is deemed after the lapse of 30 days since submission of the application);
- 3.12 On 29 January 2016, Denel Asia was formed and incorporated in Hong Kong and the formation thereof was announced in the media;
- 3.13 On 5 February 2016, a letter was addressed from the National Treasury Chief Director: SCM Governance, Monitoring & Compliance to Denel requesting information in order to determine whether "*government prescripts*" were followed in the formation of Denel Asia;
- 3.14 On 19 February 2016, the Chairman of the Board of Denel addressed a letter to National Treasury indicating that the response to National Treasury's 5 February 2016 letter would be forthcoming once sign off from the Board has been obtained.

It is worth repeating Denel's understanding of the legislative framework that governs the transaction in relation to the facts as set out above.

Section 54(3) of the PFMA provides that a public entity may assume that approval has been given if it receives no response from the executive authority on a submission made under Section 54(2), within 30 days from date of submission of the PFMA application.

Denel submitted PFMA application to both the Ministers of Public Enterprises and Finance on 11 December 2015 and the 30-day period consequently expired on 10 January 2016 on which date the application was deemed to have been approved and Denel was thereafter entitled to proceed in respect of the Section 54 application, as it did.

Section 51(1)(g) of the PFMA requires that Denel must promptly inform National Treasury of a new entity which it intends to establish and allow

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National Treasury a "reasonable time" to submit its decision prior to formal establishment. The Board of Denel has been advised that since the PFMA does not define what a "reasonable time" for National Treasury to give its decision [prior to implementation and formal establishment as referred to in Section 51(1)(g)] the period that constitutes a "reasonable time" depends on the facts and circumstances of each case.

We are advised that on a purposive interpretation of Section 51(1)(g) as well as an approach to interpretation which considers Section 51(1)(g) in the context of a holistic reading of the PFMA that guidance as to what constitutes a "reasonable time" for the purposes of Section 51(1)(g) is to be found in Section 54(3). This is so, because the event envisaged in Section 51(1)(g) i.e. the formation of a new entity is one which in many circumstances would be subsumed in Section 54(2).

Put differently the intention to establish a new entity could well also come under Section 54(2)(a) [the establishment of a company]; Section 54(2)(c) [the acquisition of a shareholding in a company]; 54(2)(d) [the acquisition of a significant asset]; or 54(2)(e) [the commencement of a significant business activity] or be part of a transaction which is inextricably linked with these activities. Once this is appreciated it would be untenable that Section 54(3) would allow for the transaction to proceed if no response is received within 30 days whilst the period under Section 51(1)(g) (to obtain a decision from National Treasury) would exceed 30 days for the very same event or a composite transaction also involving that event.

In addition, it should be noted that Section 54(2) of the PFMA deals with the conclusion of the transactions identified, whilst Section 51(1)(g) is triggered by the mere intention to establish a new entity. Regard was had to the fact that the mere establishment of a new entity may not in, and of itself, result in the potential incurring of financial liabilities or obligations whereas many of the activities envisaged by Section 54(2) would by their very nature probably

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involve the incurring of potential financial liabilities and obligations. For these further reasons we are advised that it could hardly be the intention of the legislature that Section 51(1)(g) would permit National Treasury to take a longer period to consider the formation of a new entity than that envisaged in Section 54(3).

Also, if Section 51(1)(g) continues to apply after there has been a deemed approval under Section 54(3) it could lead to absurd results. It cannot be that the same matter requires separate approval. Thus, we were of the view (and remain of this view) that National Treasury had 30 days to convey its decision if it was against the formal establishment of the joint venture or Denel Asia.

In any event, on 29 October 2015 Denel addressed a pre-notification notice to the Minister of Finance and to Mr Lungisa Fuzile (Director General: National Treasury). Although it is described as a pre-notification in terms of Section 54, it meets the requirements of notice under Section 51(1)(g). This is so, because this notice clearly serves the purpose of informing the National Treasury of the new entity which Denel intended to form as the notice expressly informs that it is intended that a company (Denel Asia) is to be registered in Hong Kong in partnership with VR Laser Asia. It was open to National Treasury on receipt of the pre-notification notice to raise any objection it may have had.

At all material times, National Treasury and Denel have always been aware of the pre notification, the actual application and the urgency in respect of the transaction.

On 23 November 2015 when the Minister of Public Enterprises granted an in principle approval, National Treasury were made aware of this and yet elected not to do anything.

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On 9 December 2015 in a meeting between Denel, National Treasury and the Department of Public Enterprises, Denel informed both parties that it was in the process of concluding the application for submission in terms of the PFMA. The meeting addressed the basis for urgency during this meeting after Denel raised a concern regarding delays from Department of Public Enterprises and National Treasury relating to approval of applications.

It is significant to point out National Treasury thus had almost 70 days to revert with its objection (i.e. from 29 October 2015 to 10 January 2016). National Treasury recorded no such objection and indeed only raised a query after the period for the deemed consent under Section 54(2) had expired (in fact almost a month after the deemed consent).

For, *inter alia*, these reasons the Board was satisfied that the "reasonable time" envisaged in Section 51(1)(g) of the PFMA is not greater than 30 days.

We would like to put it on record that Denel has never been made aware of the condition attached to the guarantee which requires the approval by the Minister of Finance as set out in your letter. This has only been brought to our attention after receipt of your letter referred to above.

However, it is my understanding of the conditions attached in terms of Section 70(1) of the PFMA to the government guarantee that permission must be obtained from the respective Ministers in terms of the provisions of the PFMA. It would be absurd that approval for the same transaction is required to be obtained, from the same Minister, and on the same terms, on more than one occasion.

Given what is set out above, Denel remains of the view that there was full compliance with the requirements as set out in the PFMA and consequently the conditions attached to the provision of the government guarantee.

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4. MEDIA STATEMENTS

It is not unusual for parties to have a diametrically different understanding and/or interpretation of a particular legislative framework and that difference, in my view, can never justify the manner in which National Treasury chose to handle this matter in the public space, especially in circumstances where the parties are constitutionally obliged to foster good relations.

On 13 April 2016, without engaging Denel any further and despite the Constitutional imperatives of good intergovernmental relations, National Treasury issued a startling, inaccurate and entirely inappropriate media statement, amongst other things, accusing the Denel Board of having committed "*financial misconduct*" through non-compliance with the PFMA, threatening investigation by the Executive Authority and disciplinary action. The adverse consequences for the business of Denel and its reputation in the market are quite obvious.

Needless to say, the Board of Denel had no alternative but to issue its own press statement noting the National Treasury statement, urging for co-operation between the parties in mutual trust and good faith to ensure that the matter was resolved.

- On 3 May 2016, during a Parliamentary sitting during a debate on budget vote, you were quoted as making the following concerning and compromising remarks:

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they are not supposed to do, they begin to display a level of arrogance and belligerence that does not befit the right kind of corporate governance, and the board at Denel needs to take that message".

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I believe that it will also help this process a great deal for you to either substantiate by providing factual basis your alleged statement that the Denel board is "arrogant and belligerent" and; if such could not be substantiated, to retract such statement in writing to the Denel Board and through the media as inaccurate and lacking factual basis to support it.

5. PROPOSED RESOLUTION

What has become apparent from the meetings of the Denel Executives and National Treasury officials, the letter under reply and what is set out above is that Denel and National Treasury have a different interpretation and understanding of the legislative framework and thus it would seem, have reached a deadlock.

It is my view that breaking this deadlock is the first step in resolving the current *impasse* between the parties. It is the Intergovernmental Relations Act which enjoins the parties to break the deadlock and settle this intergovernmental dispute in accordance with Chapter 4 thereof. In an attempt to resolve this deadlock, I would like to re-iterate the proposal made by my Executive Authority of convening a bilateral meeting on this matter. Such a bilateral meeting will also satisfy the prerequisite before a dispute may be formally declared in terms of Section 42 Intergovernmental Relations Act.

I trust that you will find the above in order.

Kind regards.


Mr Daniel Lugisani Mantsha

Chairman of the Denel Board

Date:

28/6/2016

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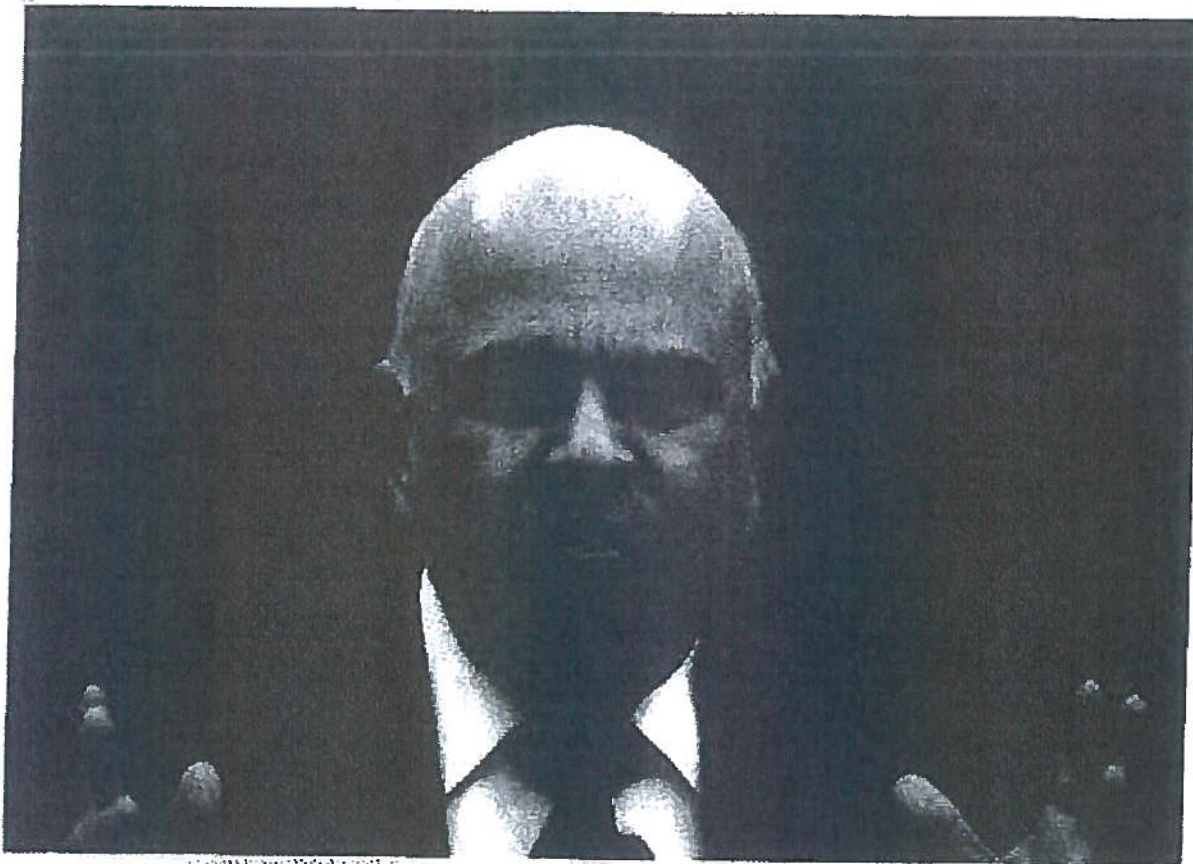
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🏠 (/) Companies (/Business-Report/Companies)

Gordhan slams 'arrogant' Denel

COMPANIES / 4 May 2016, 1:54pm


👤 Craig Dodds



Both the Hawks and the National Prosecuting Authority have denied the pending arrest of Finance Minister Pravin Gordhan. File picture: Siphwe Sibeko

Parliament - Finance Minister Pravin Gordhan has slammed the "arrogance and belligerence" of boards of some state-owned companies, saying arms maker Denel, in particular, should heed his message.

Gordhan was responding to the debate on the Treasury budget vote in Parliament on Wednesday, in which a number of MPs questioned the government's commitment to follow through on promised reforms, suggesting Gordhan did not have the full backing of the cabinet in his efforts to stave off a looming ratings downgrade.

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Fuss about Guptas misguided, says Brown

(<http://www.iol.co.za/news/politics/fuss-about-guptas-misguided-says-brown-2014714>)

ACDP MP Steve Swart cited Denel, which has forged ahead with a joint venture with a company linked to the Gupta family despite lacking the necessary approval from Gordhan, as an example of the finance minister being undermined.

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they're not supposed to do, they begin to display a level of arrogance and belligerence that doesn't befit the right kind of corporate governance, and the board at Denel needs to take that message," Gordhan said in response.

Irked Denel takes swipe at Gordhan

(<http://www.iol.co.za/news/politics/irked-denel-takes-swipe-at-gordhan-2009852>)


The Denel board was to have appeared before Parliament's public enterprises oversight committee on Tuesday to explain events at the company, where two executives remain on suspension pending disciplinary proceedings and the CEO has been removed, allegedly over their resistance to the joint venture.

The company was required in terms of the Public Finance Management Act to get approval from Gordhan and Public Enterprises Minister Lynne Brown before proceeding, which both have said it did not.

However, in a media briefing on her budget last week, Brown said it was possible the deal was technically legal since the Treasury was supposed to have responded to the request for approval within a reasonable period, failing which the entity could assume it had been given.

The question hinged on the interpretation of a "reasonable period", Brown said, but added she had asked for the joint venture company, Denel Asia, not to trade in the meantime.

The row took an ugly turn last month, after Gordhan had issued a statement making it clear that as far as he was concerned approval had not been given because the Treasury had asked Denel to provide more information before it could finalise the request.

k.s. 

Denel then hit back, implicitly accusing the minister of acting in bad faith and against the principle of co-operative governance.

Gordhan also said in response to concerns over ailing national airline SAA that while the goal remained to find a minority equity partner, the first priority was to get it "on its feet" and ensure it was well managed and governed.

Deputy Finance Minister Mcebisi Jonas said earlier this would include the appointment of a full board, which would then have to fill the vacancies left in key executive positions.

SAA has requested a bailout of R5bn and has been unable to table its annual report because of auditor concerns over its status as a going concern, amid reports it is insolvent.

Gordhan said, however, work on SOE reform was making progress in an interministerial committee chaired by Deputy President Cyril Ramaphosa.

In the written version of his speech, which he didn't complete, Gordhan said the Treasury was helping to develop a framework for private sector participation and for explicitly costing the developmental mandates of SOCs.

"Good progress" had been made and proposals were under discussion in the committee.

"As part of this reform process, work is in progress on a holistic resolution of the governance and financial issues affecting our state-owned airlines. A Terms of Reference for advice on the realignment of these enterprises and an appropriate group corporate structure has been developed," he said.

Political Bureau

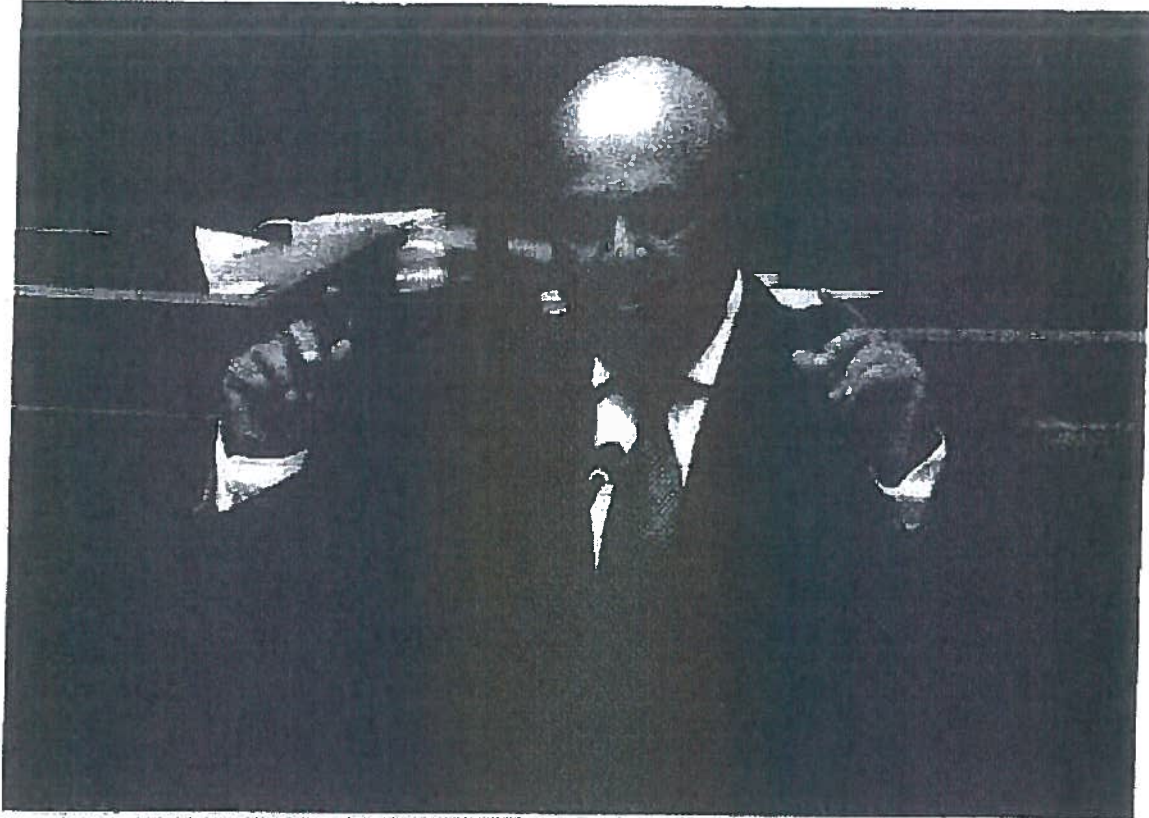
KJ A

 (/) News (/News) Politics (/News/Politics)

War of words between Gordhan, Denel heats up

POLITICS / 6 May 2016, 09:24am

 **Craig Dodds**




Minister of Finance Pravin Gordhan delivering his Budget speech in Parliament, Cape Town. 24/02/2016 Kopano Tlape GCIS

Parliament - The public spat between Finance Minister Pravin Gordhan and the board of Denel has erupted again after he accused it of arrogance, with the board hitting back on Thursday and effectively telling the minister to keep quiet.

In his reply to the debate on the National Treasury budget on Wednesday, Gordhan said he had noticed a trend of "arrogance and belligerence" among boards of state-owned companies when they began to "do things they're not supposed to do".

He singled out Denel, saying the board should take note of the message.

Instead, the board issued a statement denying "categorically" that it or the Denel

KS 

executive were arrogant and belligerent.

"The minister's accusations are unsubstantiated, baseless and unfounded," said spokeswoman Pam Malinda.

She said the executive had met Treasury officials twice in recent weeks to address "the misunderstanding relating to the establishment of Denel Asia".

The "misunderstanding" refers to Denel's position, which it reiterated in the statement, that it had complied with the requirements of sections 51(1)g and 54(2) and (3) of the Public Finance Management Act (PFMA), in terms of which it must seek approval from the public enterprises and finance ministers for the establishment of a new company.

Both ministers - Lynne Brown and Gordhan - have denied that this permission was ever granted.


Denel Asia is a joint venture with a company - VR Laser Asia - with ties to the controversial Gupta family.

Gordhan had previously warned Denel that failure to comply with the PFMA amounted to financial misconduct, potentially attracting disciplinary charges, after which the board implicitly accused him of acting in bad faith by speaking on the matter in public while the firm was in discussions with the Treasury to clarify the matter.

Yesterday, Malinda said Denel and the Treasury had agreed in their discussions not to make unilateral public statements while the talks continued.

"The Denel board is taken aback by the minister's statements, which are a clear violation of the undertakings given by National Treasury and also a flagrant violation of chapter 3 of our constitution," Malinda said, referring to the principle of co-operative governance.

While Gordhan said on Wednesday the Denel board's attitude was not in keeping with "the right kind of corporate governance", Malinda said it would "continue to observe the highest standards of governance, and will above all ensure that applicable legislation like the PFMA is complied with to in full, not only its letter but also its spirit".

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A meeting between Denel and Parliament's oversight committee on public enterprises to allow it to explain events at the company has been postponed, possibly until next week.

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K.T. 



FA 14

DENEL GROUP

Dated: 05 May 2016

DENEL BOARD MEDIA STATEMENT

The Denel board has noted the Media statements attributed to Minister Pravin Gordhan, and wishes to categorically deny that the Denel board or its executives are arrogant and belligerent.

The Minister's accusations are unsubstantiated, baseless and unfounded. Denel executives have in recent weeks met with National Treasury officials twice, addressing the misunderstanding relating to the establishment of Denel Asia. During the two meetings, amongst other things it was agreed that neither National Treasury nor Denel would unilaterally make public statements on these matters until such time discussions are concluded.

The Denel board is taken aback by the Minister's statements which are a clear violation of the undertakings given by National Treasury and also a flagrant violation of chapter 3 of our constitution. We appeal to the Minister to refrain from making such comments and allow the engagement between Denel and National Treasury to reach its finality.

The Denel board will continue to observe the highest standards of governance, and will above all ensure that applicable legislation like the PFMA is complied to in full, not only its letter but also its spirit. The establishment of Denel Asia was done in compliance with section 51(1) (g) and section 54 (2) and (3) of the PFMA.

Issued by: Denel SOC Board of Directors

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Business

amaBhungane: How Denel was hijacked

• AMABHUNGANE

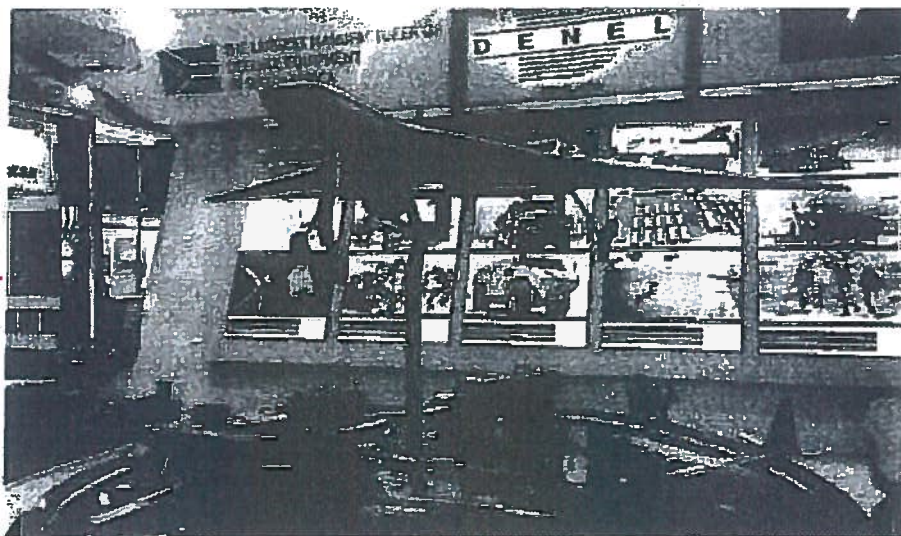
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• 29 May 2016 09:54 (South Africa)

Reactions



Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

(<https://www.dailymaverick.co.za/article/2016-05-29-amaBhungane-how-denel-was-hijacked/>)

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An amaBhungane investigation has revealed how the capture of Denel was orchestrated via a boardroom coup executed by Public Enterprises Minister Lynne Brown – contrary to the advice of her own department – followed by the premeditated axing of its top executives. By SAM SOLE for AMABHUNGANE.

The investigation also shows how the state-owned defence giant is being ushered into the arms of a Gupta-aligned company, VR Laser, despite a due diligence report from law firm ENSafrica, which allegedly raised multiple red flags about the joint venture between Denel and VR Laser Asia.

At stake is Denel's lucrative Asian market -- above all, it appears, a potential \$4-billion (R62 billion) tender to deliver long-range artillery to the Indian army.

Four sources who sat on the previous board, but asked not to be named, have confirmed being told that a month before a new board took over on July 26 last year, chief executive Riaz Saloojee was warned that he would be pushed out.

The warning allegedly came from Denel board member Nkopane "Sparks" Motseki, who was allocated a significant personal stake in the Gupta's Shiva uranium mine in 2010. The stake, if he still has it, now has a market value of tens of millions of rands.

Motseki is alleged to have called Saloojee just ahead of a board meeting in June 2015 and told him he and others were to be removed, because Saloojee had been asked to do certain things and had been "too weak" and had not complied or had been blocked by chief financial officer Fikile Mhlontlo, who was "too strong".

Saloojee, Mhlontlo and company secretary Elizabeth Africa were suspended three months later for unspecified infractions.

At the June board meeting, the sources said, then-acting chair Martie Janse van Rensburg approached Motseki informally with a group of co-directors to ask about the allegation, and he allegedly confirmed what he had told Saloojee.

A source familiar with subsequent events told amaBhungane that Van Rensburg was so concerned about the perceived threat to the executives that she repeatedly attempted to arrange a meeting with Public Enterprises Minister Lynne Brown, who cancelled on more than one occasion.

Van Rensburg, the source said, eventually met with deputy minister Bulelani Magwanishe on July 2, 2015 and personally conveyed her concern about the rumours of the executives being removed.

Van Rensburg did not dispute any of the details of the account put to her, but declined to comment.

Brown has refused to comment on any of the detailed allegations put to her by amaBhungane.

Denel confirmed receipt of detailed questions, including those directed at specific directors, including Motseki, but failed to respond.

Key to the executives' suspensions in September 2015 was the wholesale replacement of the board chaired by Van Rensburg. On July 24, Brown announced the "rotation" of the board, sweeping out all the previous non-executive directors but Motseki.

In doing so, Brown abandoned a list of proposed directors prepared for her by the department of public enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

AmaBhungane understands that in about June 2015 the entire board file was uplifted from the department by Brown's ministerial office and the department was thereafter excluded from the selection process.

The list eventually presented to cabinet bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was not a single engineer and the majority had never served on a corporate board before, never mind of a highly technical group like Denel.

A number of the new directors also have a chequered past. First among these is the new chair, Dan Mantsha, who is also the legal adviser to communications minister Faith Muthambi.

Mantsha was struck off the roll of attorneys in 2007 for acting in a "dishonest and deceitful manner". While Mantsha was readmitted in 2011, one might imagine this integrity deficit would be a barrier for access to the country's defence sector jewels.

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However, a well-placed source at Denel said it was rumoured that Mantsha's particular recommendation was the positive impression he made on the Gupta family. Mantsha was said to have been introduced to the Guptas by Muthambi in July 2014. Muthambi's office declined to respond to questions about the alleged introduction or whether it had taken place at Saxonwold, noting: "We are not in the business of responding to unsubstantiated allegations and innuendos."

Gupta family spokesman Gary Naidoo did not respond to detailed questions. Mantsha did not respond to questions sent to him via Denel.

Once appointed, Mantsha's board lost no time. In late September last year, barely two months after they took office, the new board suspended Saloojee, Mhlontlo and Africa.

The reason cited was a concern over aspects of Denel's R855-million purchase of armoured vehicle manufacturer BAE Land Systems.

However, the previous board, despite being out of office, has recently taken the unusual step of publishing a joint statement affirming that the Land Systems deal made strategic and financial sense and was scrutinised and approved by both Brown's department and Treasury.

And there are other hints that plans to sideline the three executives were premeditated: one source told amaBhungane that Denel's acting CEO, Zwelakhe Ntshepe, and its Land Systems boss, Stephan Burger, told colleagues that they had been interacting with certain members of the new board three months before the new board members' appointment.

And when a forensic investigation into the three executives' conduct failed to incriminate them, the same source alleged, Mantsha, the board chair, sought to have the investigation report withdrawn.

Neither of these claims could be independently verified as neither the Denel board nor the executives responded to questions.

Editor's note: Burger has since issued a categorical denial

(<https://www.dailymaverick.co.za/documents/document/Stephan-Burger-Letter-To-Daily-Maverick-06062016.pdf>): "I was not and could never have been privy to the process of appointing the new Denel Board members nor have I met any one or more of them prior to a formal announcement by Denel's shareholder... The allegation that I told colleagues that I "had been interacting with certain members of the new board three months before the new board members' appointment" is wholly denied.

The firm that conducted the probe, Dentons, refused to confirm or deny the claim, citing client confidentiality.

Then, in January this year, came the bombshell: Denel acting chief executive Zwelakhe Ntshepe announced the formation of Denel Asia, a company in which Denel would own 51% and a Hong Kong letterbox company, VR Laser Asia, 49%.

VR Laser Asia is wholly owned by Gupta business partner Salim Essa and is an associate company of VR Laser Services, a South African steel cutting business in which the Guptas have an interest.

Denel Asia's directors are Ajay Gupta's 25-year-old son, Kamal Singhal, Pieter van der Merwe, a lawyer who serves in several Gupta-linked companies, and Denel's Ntshepe and Burger.

Burger is alleged to have told colleagues about a number of visits he made to Saxonwold to see the Guptas and to have expressed the view that the Guptas opened doors in India and provided very high-level contacts. Neither he nor the Gupta's spokesperson responded to questions about this claim.

Editor's note: Burger has now denied this: "The allegations contained in this statement are refuted as false as I have never been to Saxonwold to visit the Guptas... The article has caused severe and possible irreparable damage to my reputation, which is founded on, inter alia, integrity, honesty and accountability."

By March 2016 Denel was touting its products at India's DefExpo (<http://www.defexpoindia.in/>) under the banner of "Denel Asia" (see main picture) although neither Brown, nor finance minister Pravin Gordhan had given the necessary authority for the formation of the joint venture.

In fact, according to two well placed sources, Brown is sitting with a due diligence report from law firm ENSAfrica warning against the joint venture. The report apparently cites red flags about VR Laser's proximity to so-called "politically exposed persons" and concerns about the company's solvency.

The Denel board has continued vigorously to punt the VR Laser tie-up and push back against Treasury, which has described the formation of Denel Asia as illegal.

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In the volatile Indian market, the reliance on the marketing skills of Salim Essa and company may be especially risky.

As the board itself has noted, Denel was blacklisted in India for nearly ten years while a tortuous investigation ensued of a 2005 deal to sell sniper rifles to the Indian army (<http://www.engineeringnews.co.za/print-version/india-ends-ban-on-denel-2014-08-19>), which involved payments to "agents" in an offshore tax-haven.

The Indian Central Bureau of Investigation filed a closure report in 2013, as the charges could not be proved.

The Denel board has said the Denel Asia joint venture was undertaken "to minimise the business risks associated with agents in some of the countries we have identified for business expansion".

According to a source with insight into the transaction, Denel has offered its intellectual property in the Denel Asia in return for a promise of R100 million marketing contribution from VR Laser. Both Denel and Essa failed to answer questions as to whether any of that money has been forthcoming.

Denel also failed to answer questions about what has become of its tie-up with the Indian conglomerate Tata, with whom it produced a prototype truck-mounted howitzer (<http://defenceforumindia.com/tatas-155-mm-howitzer-mounted-gun-system-1072>) for display at Defexpo 2014.



Photo: Tata's 155 mm Howitzer / Mounted Gun System (Defence Forum India)

India plans to secure around 1400 towed guns, 400 truck-mounted guns and 100 tracked (tank-mounted) guns at a total cost of more than \$4-billion, but the country has laid down stringent local content conditions.

The Denel board presumably thinks bringing marketing agents "in-house" will pass muster, but the Indian defence media has already picked up on the controversy over Denel Asia – and the Indian howitzer competition is already littered with shattered reputations.

The Bofors scandal (https://en.wikipedia.org/wiki/Bofors_scandal), which dogged the previous round of artillery purchases, dragged on for more than two decades. **DM**

Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

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🔗 Share Your Thoughts

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Marius Potgieter

From: Avril Halstead <Avril.Halstead@treasury.gov.za>
Sent: 19 November 2016 01:00 PM
To: Merinda Dartnall
Cc: Theo Kleynhans; Marius Potgieter; Unathi Ngwenya; Mercy Magadze
Subject: Re: Denel meeting with NT_17_11_2016.docx1

Hello

Just to record that there are a few factual errors in the notes from the meeting. Inter alia, whilst I indicated I would be briefing my principles on the meeting, I did not commit to check whether it would be acceptable if Denel confirmed that the company was dormant. Nevertheless, based on the feedback I provided, I can confirm that National Treasury require that the company be unwound.

Avril

Sent from my iPhone

On 19 Nov 2016, at 12:13 PM, Merinda Dartnall <MerindaD@denel.co.za> wrote:

Dear Avril

In our meeting on Thursday, I did promise that I would get in touch with Denel board members in an effort to obtain their position on the proposal that you presented to us. I would like to confirm that I'm still busy with the board members and will be providing you an update on Monday. For ease of reference I have attached the notes relating to the meeting we had.

Kind Regards
Odwa

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[Handwritten signature]
KJ

Case no:

In the matter between:

DENEL SOC LIMITED

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

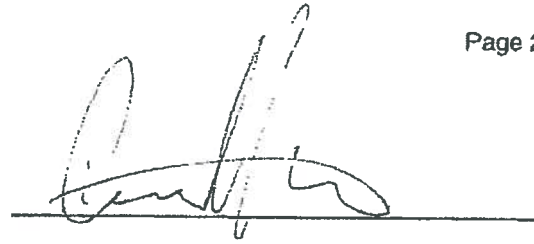
CONFIRMATORY AFFIDAVIT

I the undersigned

ZIPHIWO MADODODWA MHLWANA

do hereby make oath and state that:

1. I am an adult male acting Chief Financial Officer of the applicant.
2. I have read the founding affidavit of **MR ZWELAKHE NHLANGANISO NTSHEPE** and confirm that to the best of my knowledge and belief such contents to be true and correct to the extent that they relate to me.

**DEPONENT**

Thus done and sworn to, before me, at
Lyttelton SAPS on this the 23rd day of
March 2017, by the Deponent who has acknowledged that
he knows and understands the contents of this affidavit, which contents
are true and correct, that he has no objection to taking the prescribed
oath, which he considers as binding on his conscience.


72163607
K S Mavundla
S/est**COMMISSIONER OF OATHS**

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTTELTON
2017 -03- 23
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

STATE ATTORNEY
DX 298 PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 20749/17

In the matter between:

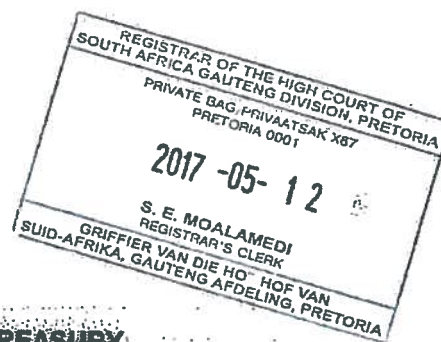
DENEL SOC LIMITED

Applicant

and

MINISTER OF FINANCE

DEPARTMENT OF NATIONAL TREASURY



1st Respondent

2nd Respondent

FILING SHEET

BE PLEASED TO TAKE NOTICE THAT the respondents hereby file their answering affidavit.

DATED at PRETORIA this 11th day of MAY 2017.

FILED BY:


THE STATE ATTORNEY

(Attorneys for the Respondents)

SALU BUILDING

255 Francis Baard Street

(Schoeman Street)

Cnr Thabo Sehume (Andries) &

Francis Baard (Schoeman Streets)

PRETORIA, 0001

Ref: 2152/16/Z32

Enq: T. Nhlanzi/ T Ndhlovu

Tel: (012) 309 1575/1504

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE
HIGH COURT
PRETORIA**

AND TO: **KHAMPHA ATTORNEYS INC
ATTORNEYS FOR THE APPLICANT**

C/O T.M. CHAUKE INC.

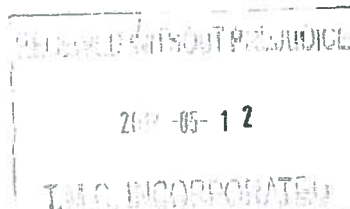
2nd Floor Eastwing, Sammy Marks Square**PRETORIA**

Tel: 011 234 1735

Fax: 086 500 0945

E-mail: azwi@kamphainc.co.za

Ref: AK/Denel/NT01



eglwj

Zingisa Zenani

From: Microsoft Outlook
To: azwi@kamphainc.co.za; Nhlanzi Thembelihle; TNdhlovu@justice.gov.za
Sent: 11 May 2017 08:14 PM
Subject: Relayed: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER

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azwi@kamphainc.co.za (azwi@kamphainc.co.za)

Nhlanzi Thembelihle (TNhlanzi@justice.gov.za)

TNdhlovu@justice.gov.za (TNdhlovu@justice.gov.za)

Subject: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER

Zingisa Zenani

From: Zingisa Zenani
Sent: 11 May 2017 08:14 PM
To: 'azwi@kamphainc.co.za'
Cc: Nhlanzi Thembelihle; TNdhlovu@justice.gov.za; Thandeka Ncala
Subject: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER
Attachments: S041000657_1705111552000.pdf; SKM_C55817051120040.pdf

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	TNdhlovu@justice.gov.za	
	Thandeka Ncala	Delivered: 2017/05/11 08:14 PM

Your Ref: AK/DENEL/NT01

Dear Azwi,

On behalf of the state attorney, please find attached, copies of the Respondents' filing sheet and answering affidavit for your kind attention.

Kind regards

Zingisa Zenani (for Ms T. Nhlanzi)
National Treasury

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case no: **20749/17**

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

LUNGISA FUZILE

do hereby make an oath and state that:

A. INTRODUCTION

1. I am the Director-General in the Department of National Treasury, the second respondent herein ("**National Treasury**"). I am duly authorised to oppose this matter on behalf of the first and second respondents.
2. My primary responsibilities as Director-General of National Treasury include managing the department, producing a sound and sustainable national budget, managing government's financial assets and liabilities, overseeing government accounting policies and standards, regulating public sector procurement through

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L.F.

policy formulation, developing appropriate fiscal policy and financial management, and improving financial management throughout government.

3. I am therefore the appropriate person to depose to this affidavit.
4. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
5. Any legal submissions that I may make are so made on the advice of the legal representatives of National Treasury and I believe them to be correct.
6. In this application, the applicant seeks an order declaring that:
 - 6.1. the applicant obtained approval *alternatively* is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016 from National Treasury for the conclusion and forming of the joint venture with VR Laser Asia by virtue of section 54(3) read with section 51(1)(g) of the Public Finance Management Act, 1 of 1999 ("**the PFMA**");
 - 6.2. the applicant acted in accordance and compliance with the provisions of section 51(1), 52(2)(a), 54(2)(b) and 54(2)(e) of the PFMA in concluding and forming the joint venture agreement with VR Laser Asia ("**the JV Agreement**"); and
 - 6.3. the applicant acted lawfully in concluding and forming its joint venture with VR Laser Asia in terms of the JV Agreement.

B. THE SCHEME OF THIS AFFIDAVIT

7. I have read the applicant's founding papers and propose to deal with it as follows:

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- 7.1. Firstly, I shall set out the factual background to this matter;
- 7.2. Secondly, I provide a brief synopsis of the grounds on which this application is opposed;
- 7.3. Thirdly, I shall set out the relevant legislative framework in terms of section 51(1)(g) and section 54(2) of the PFMA for the establishment of a joint venture company. I shall show how the applicant's case fits within that legislative framework thereby demonstrating that:
 - 7.3.1. there was no approval or deemed approval for the conclusion and forming of the joint venture, Denel Asia Co. Ltd ("the JV"); and
 - 7.3.2. the applicant failed to act in accordance with the PFMA in concluding the JV Agreement and thus failed to act lawfully.
- 7.4. Finally, and to the extent necessary, I shall deal sequentially with the specific averments that the applicant makes in its founding affidavit.

C. SYNOPSIS OF THE RESPONDENTS' OPPOSITION

8. In summary, the respondents oppose this application on, amongst others, the following grounds:
 - 8.1. There is a material non-joinder in that the applicant ought to have joined the following parties who have a direct and material interest in the outcome of this application:
 - 8.1.1. The Minister of Public Enterprises;
 - 8.1.2. Denel Asia; and
 - 8.1.3. VR Laser Asia.

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8.2. The legal position set out in section 51(1)(g) of the PFMA is clear and unambiguous. There can be no reasonable doubt about the proper interpretation of this section. In these circumstances, in exercising its discretion under section 21(1)(c) of the Superior Courts Act 10 of 2013, this Court should decline to grant the declaratory relief sought by the applicant;

8.3. The interpretation of section 51(1)(g) contended for by the applicant is clearly untenable:

8.3.1. The applicant provides absolutely no basis for contending that the words "a reasonable time" used in section 51(1)(g) should be interpreted to mean 30 days;

8.3.2. If the applicant's argument is that in this case, a reasonable time must be interpreted to mean 30 days, then the proper remedy open to the applicant was to approach a Court for an order compelling the Minister to decide the application. It is not competent for the applicant to appropriate unto itself the power to decide the application by purporting to invoke a non-existent deeming provision;

8.3.3. Even if, for the purposes of argument, one was to accept that "reasonable time" means 30 days, section 51(1)(g) quite plainly does not contain a deeming provision which deems that approval is granted after the expiry of the 30 days. Furthermore, the language used in the section does not permit this court to read such a deeming provision into section 51(1)(g). The only way in which this Court is empowered to read such words into the section is if this court finds that section 51(1)(g) is inconsistent with the Constitution. In such a case, this Court may exercise its constitutional remedial power to read words into the section to

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cure the unconstitutionality. Given that the constitutionality of section 51(1)(g) is not an issue before this Court, this Court does not have the power to read words into the PFMA. To do so would infringe on the doctrine of separation of powers;

- 8.4. It is a condition of the government guarantee issued to the applicant that it has to get the explicit approval of both the Minister of Public Enterprises and the Minister of Finance in terms of section 54 of the PFMA. This has not happened. Hence the suspensive conditions to the agreement have not been met.

D. MATERIAL NON-JOINDER

9. In this application, the applicant seeks declaratory relief relating to the legality of the JV Agreement entered into with VR Laser Asia. On this basis alone, the applicant was obliged to join the other party to the agreement, VR Laser Asia, as a party to these proceedings.
10. At the heart of this case is the question of whether Denel Asia has been lawfully established. Denel Asia ought to have been joined as a party.
11. In order to succeed in obtaining the relief sought in its notice of motion, the applicant must demonstrate approval by the Minister of Finance as well as the Minister of Public Enterprises. The Minister of Public Enterprises ought to thus have been joined as a party.

E. FACTUAL BACKGROUND

12. The applicant is a state owned entity and was incorporated as a private company in 1992 in terms of the South African Companies Act, 62 of 1973. Its sole shareholder is the South African Government.

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13. On 30 October 2015, the applicant addressed a letter to National Treasury titled *"PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA"*. A copy of the letter is annexed to the founding affidavit as "FA2". As appears from the recommendation on page 6 of the letter, the applicant undertook to *"...keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals."* It should be noted that the submission of pre-notifications is an administrative practice that was introduced by the Department of Public Enterprises in order to streamline the consideration of applications under section 54(2). Whilst National Treasury receives copies of these and reviews them, it does not consider these to be formal applications and therefore does not respond formally. It is only once there has been a final submission that the Minister of finance will engage formally with it in line with the provisions of the PFMA.
14. On 23 November 2015, the Minister of Public Enterprises informed the applicant, amongst other things, that the applicant *"...is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed."* A copy of the letter is annexed hereto marked "LF1".
15. On 9 December 2015, the Department of Public Enterprises held its monthly monitoring committee meeting. Officials from National Treasury were also in attendance. A copy of the minute of that meeting is annexed hereto marked "LF2". I also annex hereto a confirmatory affidavit from Lloyd Ramakobya, marked "LF3" who attended the meeting on behalf of National Treasury and who confirms that "LF2" is an accurate recordal of the meeting. As appears from paragraph 2 of the

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minute under the heading "Discussion", National Treasury sought clarity from the applicant on whether the applicant would make an application in terms of section 51(1)(g) of the PFMA or section 54(2) of the PFMA. The applicant responded that the application would be submitted in terms of section 51(1)(g). The applicant was advised to refer to the Practice Note on Applications under section 54 of the PFMA by Public Entities in drawing up its application.

16. The date of 9 December 2015 is also significant because on that day President Zuma removed then Minister of Finance, Mr Nhlanhla Nene, from his position as Minister and head of National Treasury. Former Minister Nene was replaced by Minister Van Rooyen. Minister Van Rooyen remained in this position for four days before he was replaced by former Minister Pravin Gordhan. Former Minister Gordhan occupied the position of Finance Minister until he was removed from the position on 30 March 2017.
17. On 11 December 2015, the applicant submitted its application to then Minister of Finance, Mr Van Rooyen, for the establishment of a joint venture in Hong Kong ("**the application for approval**"). The application for approval was received by the Ministry: Finance on 11 December 2015. A copy of the application for approval is annexed to the founding affidavit as "**FA4.2**".
 - 17.1. The covering letter to the application for approval is signed by the Chairman of the Board of the applicant and is addressed to the then Minister of Finance, D. Van Rooyen. It is headed:

"FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED"

- 17.2. The Executive Summary of the application for approval states that the document *"has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e)"* of the PFMA.
- 17.3. Clause 5.6 on page 12 of the application for approval states that the applicant concluded that VR Laser Asia, a company incorporated in Hong Kong was a suitable partner to form a joint venture company.
- 17.4. Clause 15 on page 25 of the application for approval sets out the 'Implementation Plan'. It states, amongst other things, that the *"Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval"*.
- 17.5. The recommendation made by the applicant on page 26 of the application for approval states that:

"It is requested that the Honourable Minister notes and approves of Denel's intention to:

1. *establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and*
2. *establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.*

The Denel Board has approved of such establishment subject to the receipt of the Ministerial approval in terms of section 51(1)(g), section 54(1) and 54(2) of the PFMA."

18. On 27 January 2016 a meeting was held between officials of National Treasury, the applicant and DPE. A copy of a minute of the meeting is attached marked "LF4". I also annex hereto a confirmatory affidavit from Ms Tsholofelo Morotholi, marked

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"LF4 B' who attended the meeting on behalf of the National Treasury and who confirms that "LF4" is an accurate record of what transpired at the meeting. The meeting was one of the regular monthly meetings convened by National Treasury and DPE to monitor Denel as a result of the R1.85 billion government guarantee that has been issued to support the company. At these monthly technical meetings compliance with the guarantee conditions, the financial performance and position of Denel and any other matters that may impact on this position are discussed.

19. At that meeting the parties discussed, *inter alia*, the application by the applicant for approval of the Denel Asia transaction. There was consensus that the application was a complex one. The applicant was informed by National Treasury as well as the DPE that they had concerns about the venture. Some of the issues traversed include:
 - 19.1. The parties agreed that the period of 30 days was inadequate to properly assess the application for PFMA approval;
 - 19.2. The DPE mentioned that the business case was weak;
 - 19.3. National Treasury indicated that they were still processing the application, before submitting it for consideration by the Minister. However they needed additional information in order to complete this process.
20. On 29 January 2016, there were media reports that the applicant had already announced the alleged establishment of the JV saying it had partnered with VR Laser Asia. A copy of one such media report is annexed hereto marked "LF5".
21. A few days later, on 5 February 2016, the Office of the Chief Procurement Officer ("OCP"), which has specific responsibility for ensuring adherence to procurement related legal prescripts, wrote a letter (annexed to the founding affidavit marked "FA5") to the applicant stating that :

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- 21.1. it was not clear whether government prescripts were complied with when finalising the JV agreement; and
- 21.2. in order for National Treasury to verify compliance with relevant prescripts, the applicant was requested to provide National Treasury with all relevant documents, including, the Minister's approval.

The applicant responded on 10 February 2016 indicating that they are in the process of studying the requirements set out in "FA5" and that they would revert by Friday, 19 February 2016. A copy of this letter is annexed marked "LF6". No response was received by 19 February 2016. Instead on 13 April 2016, the applicant responded by purporting to provide the information sought by the OCP. In relation to approval by the Minister of Finance, the letter stated that "*Section 51(g) of the PFM Act 1 of 1999 further requires that the National Treasury be allowed a **REASONABLE TIME** to submit its decision prior to formal establishment of the joint venture. Section 51(g) read together with section 54(2) defines a reasonable time as 30 days from the date of submission which in this particular case was 11 December 2015, 30 days thus expiring on 11 January 2016. This led to Denel assuming approval by both the Executive Authority as well as National Treasury which then lead to the establishment of the joint venture.*" A copy of the applicant's response is annexed hereto marked "LF7".

- 22. On 13 April 2016, National Treasury issued a statement that the applicant's application for approval was still being considered by the Minister of Finance and no decision had yet been made. Furthermore, that further information had been requested from the applicant. The statement also outlined the legal prescripts that apply to applications in terms of Section 54 and Section 51 of the PFMA. A copy of the statement is annexed hereto marked "LF8".

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23. At the insistence of National Treasury an urgent meeting took place with the applicant on 15 April 2016. In that meeting Denel confirmed that the JV had been established. National Treasury, represented by the Acting Director General at the time, Deputy Director-General Mr Ismail Momoniat, reiterated Treasury's stance that the Minister of Finance had not granted the requisite approval and that therefore the JV agreement was not valid. At the meeting, the applicant reiterated their interpretation of the PFMA, in line with that captured in the letter of 13 April 2016 and claimed that they had a legal opinion supporting this position. Denel was requested to provide National Treasury with a copy of such legal opinion which they agreed to do, but which has still not been forthcoming. A confirmatory affidavit by Mr Momoniat is annexed marked "LF9".
24. On 18 April 2016, the applicant wrote a letter to National Treasury in terms of which it purported to record elements of the discussion that took place at the meeting of 15 April 2016. A copy of the letter is annexed hereto marked "LF10". This letter included as an attachment a purported recordal of the meeting but which has not been approved as a true reflection of proceedings by both parties. This document is attached to the founding affidavit as "FA10".
25. On 18 April 2016, National Treasury responded to the applicant's letter. A copy of this response is annexed marked "LF11". National Treasury advised the applicant, amongst other things, that:
- 25.1. It would revert on the accuracy of the recordal of the meeting (i.e. "FA10");
 - 25.2. the application for approval was still under consideration and that the required approval from National Treasury had not been granted as yet;
 - 25.3. National Treasury differed with the applicant's interpretation of the law that the applicant could assume that the application was approved after the expiry of 30 days;

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- 25.4. National Treasury is of the view that there was no compliance with the provisions of the PFMA, in particular section 51(1)(g) thereof in that no decision has been taken by National Treasury in terms of the section;
- 25.5. A follow up meeting to determine a way forward should be urgently convened;
- 25.6. In order for National Treasury to properly assess the application for approval, the applicant must submit additional information itemised in paragraph 6 of the letter;
- 25.7. Pending a decision on whether to approve or not, the applicant may not proceed with the JV;
- 25.8. Whilst the application for approval is under consideration, all operations under the JV be ceased with immediate effect pending National Treasury's decision. The aim being to limit the negative consequences which may arise from potential non-compliance with the PFMA.
26. On 19 April 2016, a further meeting was held with the applicant. I attended that meeting in which the applicant was again informed that the approval had not been granted and that further information was needed in order to finalise the application.
27. On 21 April 2016, the applicant sought clarity from National Treasury as regards the additional information National Treasury requested in order to assess the application for approval. A copy of the letter is annexed hereto marked "LF12".
28. On 26 April 2016, I responded on behalf of National Treasury to the applicant's letter providing the clarity which the applicant sought. A copy of the letter is annexed hereto marked "LF13".
- 28.1. I emphasised that most of the information requested is standard in relation to applications of the kind and that the information is intended to enable

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National Treasury to evaluate the likely financial impact of the proposal. The attention of the applicant was once again drawn to the Practice Note on Applications under section 54 of the PFMA by Public Entities. A copy of the practice note is attached marked "LF14".

- 28.2. The information that had been requested was aimed at enabling National Treasury to comprehensively assess the application for approval, including evaluating the financial impact of the proposal, assessing any risks that might arise from the transaction and that appropriate mitigations are in place, and ensuring that there is full compliance with all relevant statutes and regulations. Such an evaluation is especially important in the case of the applicant given the guarantees the South African government has extended to the company to enable it to maintain its going concern status. Several rating agencies have highlighted government's contingent liability exposure to state owned companies as a risk for the sovereign credit rating.
29. The additional information was however not forthcoming from the applicant. Accordingly, on 11 May 2016 I sent the applicant an email informing them that without the additional information, National Treasury will not be in a position to comprehensively assess all aspects of the application before reaching a decision. A copy of the email is annexed hereto marked "LF15".
30. Having still not received the requested information, on 10 June 2016, the Minister of Finance addressed a formal request for information (in terms of section 54 (1) of the PFMA) to the applicant. The Minister of Finance further indicated in the letter that there could be no assumption of deemed approval. A copy of the letter is annexed hereto marked "LF16". In that letter the Minister indicated amongst others that:

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- 30.1. Government wanted to work with Denel to resolve the matter in a way that protects the reputation of Denel as well as Government as a whole;
- 30.2. This was especially important at a time when the country is under close scrutiny, inter alia, by rating agencies;
- 30.3. A downgrade in the sovereign credit rating would have negative repercussions for government's capacity to deliver on its objectives to promote growth, development and job creation;
- 30.4. National Treasury does not agree with Denel's interpretation of the PFMA and detailed the legal basis for disagreeing with Denel's interpretation;
- 30.5. There was no legal or factual basis to conclude that a 'reasonable time' as contemplated in section 51(1)(g) was no more than 30 days;
- 30.6. Denel should have contacted National Treasury to ascertain the status of its application rather than assume that approval had been granted.
31. On 28 June 2016, the applicant requested an extension of time within which to respond to the letter dated 26 April 2016. A copy of the applicant's letter is annexed hereto marked "LF18". I granted the extension on 29 June 2016. A copy of this letter is annexed hereto marked "LF 19".
32. The response by the applicant dated 28 June 2016 is annexed to the founding affidavit marked "FA11". In that response the applicant maintains that its interpretation of section 51(1)(g) of the PFMA is correct, but fails to provide further supporting arguments or arguments to counter National Treasury's legal interpretation as outlined in the Minister's letter. It also pointed out that it would provide National Treasury with the additional information requested but that the information was provided not for the purposes of the approval but merely to comply with the request.

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33. As appears from the letter, the applicant states that the applicant's compliance with the relevant provisions of the PFMA has become a question of different legal interpretation of the applicable provisions and that on "*a purposive interpretation of Section 51(1)(g)...in the context of a holistic reading of the PFMA that guidance as to what constitutes a "reasonable time" for the purposes of Section 51(1)(g) is to be found in Section 54(3). This is so, because the event envisaged in Section 51(1)(g) i.e. the formation of a new entity is one which in many circumstances would be subsumed in Section 54(2)*".
34. On 14 July 2016, the applicant addressed a letter to me in terms of which it responded to the request for additional information but stated that in its view, the approval process has been concluded and that the requested information is purely for information purposes and not for any approval process. A copy of the letter is annexed hereto marked "LF20".
35. In considering application, National Treasury had identified a number of key areas of concern, for which the information that had been requested by National Treasury was fundamental to be able to properly assess the application. In this regard the information provided in the application did not comprehensively address all the issues that had been requested by National Treasury. In addition new issues which were emerging, making it difficult to finalise the application.
- 35.1. The applicant has not provided us with any written legal opinion to support their interpretation of the deemed approval.
- 35.2. In its application for approval, the applicant indicated that the establishment of the JV would enable the Denel Group to re-enter the Indian defence market and exploit other defence opportunities in the Asian Pacific region.

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- 35.3. The applicant initially entered the Indian defence market in 1994. However from 2005, the applicant was effectively blacklisted on allegations of misconduct with regards to its partnerships in the Indian market.
- 35.4. The applicant was fined USD77.3 million for contravention of India's legislation and in 2007 the applicant recognised further losses amounting to USD11 million where the applicant acted as a subcontractor of Rheinmetall, whilst Rheinmetall was blacklisted. The applicant had indicated that the allegations that had resulted in the applicant's blacklisting were thrown out of court and in 2014, it received a note verbale from the Indian Embassy highlighting that the applicant may proceed to conduct business in India again.
- 35.5. In its 2015/2016 Corporate Plan, the applicant had not contemplated entry back into the Asia Pacific market. It is not clear what resulted in the change of heart and no explanation is provided. The applicant has only the importance of the Indian market to the applicant's growth strategy. In the application for approval, the applicant outlined that the Denel Group had explored the Indian market. Local partners were required in order to operate in India. The applicant indicated that they gave consideration to Bharat Forge and Larson and Turbo, however, the applicant indicated that they found that most of the potential partners were already linked to other Original Equipment Manufacturers. Subsequently, VR Laser South Africa approached the applicant to form the JV. The application for approval discusses two potential partners in India: Adani Group and PIPAVAV, both of which are leading Indian conglomerates expanding into the defence industry. It is not clear why these companies were overlooked by the applicant in their review of the market and what led the applicant to the conclusion that VR Laser Asia was the most suitable partner.

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- 35.6. In the application for approval, the applicant indicated that its contribution to the JV will be in the form of its Intellectual Property, which will enable the applicant to hold a majority shareholding of 51% in the JV. The remaining 49% shall be held by VR Laser Asia via its R100 million contribution which will be made over a period of 5 years (R20 million per annum). VR Laser Asia was to fund its contribution through a shareholder loan from VR Laser South Africa.
- 35.7. Notwithstanding the request, only a high level income statement for the JV has been provided in the application for approval. The cash flow statement provided by the applicant was not comprehensive and was insufficient to allow for a proper analysis. No balance sheet was provided. From the little financial information provided it appears that there will be a significant cash shortfall in the current year 2016/17 and it is not clear how this will be met. The applicant failed to provide the additional required information as per National Treasury's request. Moreover the applicant failed to provide a scenario demonstrating the impact on the performance of the JV should Hong Kong and India fail to conclude a double taxation agreement was also not provided.
- 35.8. According to the application for approval, the Board of the applicant had required the applicant to negotiate a higher amount be paid up front otherwise the matter was to be referred back to the Board. This was to secure financial viability of the JV during the first two years of operation. No indication has been provided of whether such agreements took place and whether there has been any amendment to the timing of the cash injections. In the absence of an amendment, the applicant needs to provide clarity on how the cash shortfall will be met.

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35.9. The applicant stated that it will fund the JV with a "preferential and secured loan" of R100 million. Should the JV be unsuccessful the Group may have an incentive to repay VR Laser in order to avoid losing the assets that were used as collateral for the loan or in order to protect their brand. This may worsen the Group's liquidity situation which, according to National Treasury, is fragile.

35.10. The applicant in its application for approval states that no funds will be allocated by the Denel Group to the JV. However, the applicant in its exchange control application requested permission from the South African Revenue Bank to make a capital investment in the JV.

35.11. The applicant appointed Singania and Partners as well as ENS Africa Forensics to conduct a due diligence on the JV. The reports were included in the application for approval. Key issues which emerge from the reports include, amongst others, the following:

35.11.1. VR Laser South Africa is currently in a technically insolvent position. It appears not to be in a position to raise the money required to advance VR Laser Asia so as to enable the establishment of the JV.

35.11.2. The last few sets of signed Annual Financial Statements of VR Laser South Africa were issued with qualified audit opinions.

35.11.3. VR Laser South Africa funds its business operations and capital commitments through loan financing raised from its shareholders. The shareholders have been identified as politically exposed persons.

35.11.4. VR Laser Asia is a shell company that is registered in Hong Kong and is yet to commence trading. ENS Africa held the view that the

statement that "VR Asia has an established network of potential business sources which continue to expand" may be unfounded.

35.12. With regard to VR Laser Asia's track record and/or international networks including capacity in assisting the applicant to secure business in Asia, the applicant referred National Treasury to the initial application for approval. No additional information regarding the competitive landscape, business strategy and marketing plan was provided as had been requested.

35.13. In conclusion, the analysis of the application for approval highlighted a number of issues which would need to be appropriately resolved before the application could be supported, which included the following:

35.13.1. In its 2015/2016 Corporate Plan, the applicant had indicated that it will be pursuing additional capabilities and diversifying its operations with the aim of attaining financial sustainability in the long term. No significant Asian focus was contemplated.

35.13.2. There appeared to be no sound basis for selecting VR Laser Asia as a partner;

35.13.3. The rationale for establishing a JV in Hong Kong as opposed to other jurisdictions had not been provided.

35.13.4. Part of the motivation for the transaction is that it will enable job creation and the advancement of broad-based black economic empowerment in South Africa however, this appeared to be misaligned with India's requirements.

35.13.5. The proposal for the applicant to sell products at preferential terms to the JV is not in the best interests of the applicant or Government.

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35.13.6. There were discrepancies between the PFMA applications and the exchange control application, specifically with respect to the proposal to establish a further company, Denel India, and the requirement for the applicant to contribute funds to the establishment of the JV. No application for the establishment for Denel India had been submitted.

35.13.7. A comprehensive business case and detailed financial projections had not been provided to enable a thorough assessment of the impact of the JV on the applicant's financial positions. However, the information provided indicated that there will be a substantial cash shortfall in the current year.

36. On 24 November 2016, I received a letter from the Acting Group CEO of the applicant providing an undertaking that Denel Asia will remain dormant until such time that the Minister of Finance and the Minister of Public Enterprises have reached consensus and Denel receives an instruction to proceed from the Department of Public Enterprises. A copy of this letter is annexed marked "LF21".

F. THE PFMA

37. As set out above, the applicant submitted an application to National Treasury for approval in terms of section 51(1)(g) of the PFMA for the establishment of the JV.
38. The applicant contends that the application was made not only in terms of section 51(1)(g) of the PFMA but also in terms of section 54(2) of the PFMA.
39. The significance of this contention relates to the time period for approval in respect of the two sections. While section 51(1)(g) of the PFMA provides for a "reasonable period" for approval, section 54(2) (read with section 54(3)) of the PFMA provides

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for approval within 30 days failing which it will be assumed that approval has been given (unless agreed otherwise) by the executive authority.

40. It appears that, instead of bringing two applications: one under section 51(1)(g) of the PFMA and the other under section 54(2), the applicant conflated the two applications and brought one application which was filed under both sections. This notwithstanding the fact that the PFMA envisages two distinct applications which, as demonstrated below, are brought under distinct statutory provisions and directed at different decision-makers. These applications would also elicit separate approvals from the respective Departments.

The section 51(1)(g) process

41. Section 51 of the PFMA provides for the general responsibilities of accounting authorities. Section 51(1)(g) reads as follows:

"51 General responsibilities of accounting authorities

(1) An accounting authority for a public entity-

(g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; ..."

42. Section 54 of the PFMA provides for the information that needs to be submitted by accounting authorities. Section 54(2) and 54(3) provides that:

"54 Information to be submitted by accounting authorities

...

(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in

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writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) acquisition or disposal of a significant shareholding in a company;
- (d) acquisition or disposal of a significant asset;
- (e) commencement or cessation of a significant business activity; and
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

(3) A public entity may assume that approval has been given if it receives no response from the executive authority on a submission in terms of subsection (2) within 30 days or within a longer period as may be agreed to between itself and the executive authority.

(4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2)."

43. From an ordinary reading of section 51(1)(g) and section 54(2) of the PFMA, it is evident that there are key differences between the two sections. These include the following:

43.1. Section 51(1)(g) falls under the heading "General responsibilities of accounting authorities" and requires that an accounting authority timeously

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inform National Treasury on any new entity which it intends to establish and allow National Treasury a reasonable time to submit its decision prior to formal establishment. Section 54(2) on the other hand appears under the heading "Information to be submitted by accounting authorities" and requires that Treasury be informed of the transaction and that the relevant Executive Authority approve the transaction.

- 43.2. It is evident that section 54(2) provides for the oversight role of National Treasury and the relevant executive authority over the relevant institution. This is clearly distinguishable from the role played by National Treasury and the Minister of Finance as the custodians of fiscal policy and public finance management catered for in section 51(1)(g).
- 43.3. Section 51(1)(g) requires that the decision to approve be taken by National Treasury and that National Treasury be given a reasonable time to submit its decision. Section 54(2) on the other hand requires that National Treasury be informed of the decision but provides for the executive authority to approve the transaction.
- 43.4. Section 54(2) read with section 54(3) contains a deeming provision which states that an entity may assume that approval has been given if the entity receives no response from the executive authority within 30 days. In sharp contrast, section 51(1)(g) does not contain such a deeming provision. While it provides that National Treasury has to respond within a reasonable time, it fails to provide that approval must be assumed should Treasury not revert within a reasonable time.
- 43.5. Section 51(1)(g) specifies that National Treasury be allowed a reasonable time to submit its decision. On the other hand, section 54(2), read with section 54(3), expressly provides for a specific time (that is within 30 days) in respect of the executive authority.

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44. Given the key textual differences between section 51(1)(g) and section 54(2), and on application of the *expressio unius est exclusio alterius* principle, the proper interpretation of two sections is the following:

44.1. The specified time period contained in section 54(2) cannot be incorporated into section 51(1)(g) for the following reasons:

44.1.1. This is not consistent with the express language of these provisions; and

44.1.2. This is inconsistent with the clear legislative intention to have a 30 day period apply to section 54(2) and a "reasonable period" apply to section 51(1)(g).

44.2. In any event, even should the 30 day period apply to section 51(1)(g), there is no assumption incorporated into this section that with the effluxion of the prescribed period, approval for the transaction is deemed. Put differently, even should this Court accept that the words "reasonable period" used in section 51(1)(g) should be interpreted as incorporating a 30 day period for consideration by National Treasury (which is denied), there is no provision in the PFMA which provides that on the expiry of this period, approval is assumed. There is no basis in law for this Court to, through an interpretative exercise, introduce such a provision into section 51(1)(g). This would do violence to the language of the PFMA by placing upon it a meaning of which it is not reasonably capable.

What is a 'reasonable period'?

45. What constitutes a *reasonable period* is a question of fact. It is a measure which can be given meaning only within the context of the circumstances which prevail at a point in time. It is thus incorrect for the applicant to seek to impose a rigidity by providing that the reasonable period must be construed as 30 days.

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46. In assessing the reasonableness of the period in question, much depends upon the nature of the particular application, the enquiries that need to be made, the volume of similar applications that needs to be dealt with, the administrative capacity that is available for processing such applications, and other matters of that nature. In the present matter, the following are some of the relevant facts:
- 46.1. On 9 December 2015 (two day before the application for approval was submitted), a new Minister of Finance, Minister Van Rooyen was appointed;
 - 46.2. By 13 December 2015, Minister Van Rooyen was replaced by another Minister;
 - 46.3. As a result thereof, the markets were affected and the Minister of Finance and National Treasury had to concentrate its efforts on restoring market confidence;
 - 46.4. National Treasury closed during the Christmas and New Year period and its staff were on holiday;
 - 46.5. January and February are the busiest months for the Minister of Finance and National Treasury because of the preparations for the Minister's budget speech in the National Assembly which took place on 24 February 2016.
47. In light of the above, a reasonable period could not be assumed to be the 30 day period envisaged in section 54 of the PFMA. In any event, as evident from the correspondence between National Treasury and the applicant, all of National Treasury's concerns relating to the application had not been addressed. Engagement between the parties was therefore ongoing.
48. In these circumstances it is clear that there is no approval from National Treasury under section 51(1)(g). The applicant has therefore not complied with the PFMA in establishing the JV.

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G. THE EFFECT OF THE GOVERNMENT GUARANTEE THAT WAS GIVEN TO THE APPLICANT

49. The applicant has long been experiencing serious liquidity challenges.
50. In light of these challenges, Government support was and continues to be required.
51. In 2012, the applicant requested National Treasury to renew the applicant's R1,85 billion guarantees from Government for a 5 year term.
52. The Minister of Finance concurred to the renewal of the R1,85 billion government guarantee issued to the applicant subject to the following conditions ("**the Guarantee Conditions**"):
- 52.1. National Treasury to approve the terms of the financing raised against the guarantee before any agreements are concluded;
 - 52.2. Any transactions undertaken in terms of section 54 of the PFMA to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
 - 52.3. The applicant to indicate its strategy for returning the Group to a business that is able to break even without recapitalisation and demonstrate the method gradually reducing its reliance on government support;
 - 52.4. The applicant to forward monthly progress reports on the turnaround strategy, deliverables in the implementation of the strategy to the Ministry of Finance, Department of Public Enterprises, Department of Defence and Military Veterans and the Department of Trade and Industry;
 - 52.5. A monitoring committee chaired by the Department of Public Enterprises and comprising of National Treasury, Department of Defence and Military Veterans and the Department of Trade and Industry to be established to

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monitor progress on the turnaround of the applicant and implementation of the strategy;

- 52.6. The Department of Public Enterprises to provide a plan which includes the option of ring fencing/disposing of the Denel Aerostructures as it is the only consistently loss making entity within the Group; and
- 52.7. The applicant to provide its historical conversion rate in terms of its order pipeline from indicative into firm secure orders as well as the strategies it intends to implement to ensure that the corporate plan targets are met and the mitigation strategies should the desired conversion rates not be achieved.
53. A copy of the letter of guarantee is annexed hereto as "LF22".
54. The effect of the Guarantee Conditions is that the Minister of Finance requires that every transaction undertaken in terms of section 54 of the PFMA must be subject to the approval of the Minister of Finance as well as the Minister of Public Enterprises.
55. This approval which is provided for in the Guarantee Conditions stands distinct from the approvals required under section 51 and section 54 of the PFMA.
56. The Guarantee Conditions qualify the terms of the guarantee and therefore have full legal effect. They create a distinct legal obligation on the applicant to obtain the Minister of Public Enterprises' and the Minister of Finance's approval prior to entering into the types of transactions envisaged in section 54(2) of the PFMA. The implication of this is that:
- 56.1. Even if the applicant is correct in its interpretation of section 51(1)(g) and Section 54(2) of the PFMA, it still has to obtain approval under the Guarantee. This approval is not subject to any express time bar; and

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56.2. There is no provision which deems that approval is granted after the lapse of a specified period of time.

57. The legal effect of the Guarantee Condition is the following:

57.1. Section 70 of the PFMA provides for guarantees, indemnities and securities by Cabinet members. Section 70(1) in particular provides that:

"70 Guarantees, indemnities and securities by Cabinet members

(1) A Cabinet member, with the written concurrence of the Minister (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds-

(a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or

(b) a national public entity referred to in section 66

(3) (c) in respect of a financial commitment incurred or to be incurred by that public entity."

57.2. Section 1 of the PFMA defines "Minister" as the Minister of Finance.

58. The effect of this is that the conditions qualify the terms of the guarantee and therefore have full legal effect. Moreover, the imposition of conditions by the Minister (referred to in section 70 as the 'approval of conditions') form part and parcel of the decision by the Minister to concur with the issuing of the guarantee. The conditions, once approved by the Minister, qualify the concurrence by the Minister and therefore forms an intrinsic part of the decision to issue the guarantee in terms of section 70(1) of the PFMA.

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59. The conditions of the guarantee create a distinct legal obligation on Denel to obtain the Minister's approval prior to entering into the types of transactions envisaged in section 54(2) of the PFMA.

60. The Minister of Finance has not provided the approval envisaged in the Guarantee Conditions. The applicant has therefore failed to comply with the Conditions.

H. THE JV AGREEMENT

61. The JV Agreement contains various suspensive conditions.

62. Clause 4 of the JV Agreement states that the entire agreement (save for the "immediately operative provisions" that is clauses 1, 2, 4 and 28 to 32) is subject to fulfilment of, amongst others, the following suspensive conditions:

62.1. approval under section 51(1)(g) of the PFMA;

62.2. approval under section 54(2) of the PFMA;

62.3. approval under section 66 of the PFMA; and

62.4. The applicant obtaining the relevant approvals required of it from the National Treasury for the execution and implementation of the agreement.

63. I have already set out above that the applicant was required to obtain the approval of National Treasury and the Minister of Finance under

63.1. section 51(1)(g) of the PFMA; and

63.2. the Guarantee Conditions.

64. These approvals were not obtained and hence the conditions set out in the JV Agreement were not fulfilled. The effect of the suspensive conditions is that the operation of the obligations flowing from the contract is suspended pending the occurrence or non-occurrence of the particular specified event. Since the conditions

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were not fulfilled, the JV Agreement becomes *void ab initio*. In terms of the JV Agreement, these suspensive conditions may not be waived nor may they be deemed to be fictionally fulfilled.

65. In light of the conditions precedent set out in clause 4 of the JV Agreement, it is evident that these were not met and therefore no valid agreement came into being.

I. RESPONSE TO SPECIFIC AVERMENTS IN THE FOUNDING AFFIDAVIT

66. I now turn to deal with the specific averments in the founding affidavit to the extent necessary. Any factual allegation or legal submission which I do not specifically deal with in this affidavit is deemed to be denied.

67. Ad paragraph 3

As I demonstrate throughout this affidavit, I deny that all the contents of the founding affidavit are true and correct.

68. Ad paragraph 4 to 9

These allegations are noted.

69. Ad paragraph 10

For the reasons demonstrated in this affidavit, I deny that the applicant is entitled to the relief sought.

70. Ad paragraph 11 to 14

These allegations are noted.

71. Ad paragraphs 15 to 16

71.1. The applicant has long been experiencing serious liquidity challenges.

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71.2. In light of these challenges, Government's financial support was and continues to be required.

71.3. In 2012, the applicant requested National Treasury to renew the applicant's R1,85 billion guarantees from Government for a 5 year time. The guarantee was issued by the Minister of Public Enterprises acting with the concurrence of the Minister of Finance.

71.4. The Minister of Finance concurred to the renewal of the issuance of the R1,85 billion government guarantee to the applicant subject to the Guarantee Conditions dealt with earlier in this affidavit.

71.5. Save as is inconsistent with what is stated above, these allegations are admitted.

72. Ad paragraphs 17 to 20

The application for approval of the JV agreement is still being considered by National Treasury. In the circumstances, I can neither confirm nor deny these allegations. In any event, given that this is not a review of a decision by the Minister (or the failure to take a decision) the merits of the application for approval are not relevant. To the extent that it is relevant, I put the applicant to the proof of these allegations.

73. Ad paragraphs 21 to 23

73.1. As indicated above, there was no approval by the Minister for the conclusion of the JV agreement. In any event, the suspensive conditions provided for in the JV agreement were not met. Hence the agreement has not come into force and effect.

73.2. These allegations are accordingly denied.

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74. Ad paragraphs 24 to 24.12

74.1. On 9 December 2015, the Department of Public Enterprises held its monthly monitoring committee meeting. Officials from National Treasury were also in attendance. As appears from paragraph 2 of the minute ("LF2" hereto) under the heading "Discussion", National Treasury sought clarity from the applicant on:

74.1.1. What rendered the proposed transaction urgent; and

74.1.2. Whether the applicant would make application in terms of section 51(g) of the PFMA or section 54(2) of the PFMA.

74.2. The response from the applicant was that the application would be submitted in terms of section 51(g). The applicant also indicated that the matter was urgent because the deadline for the submission of the RFP/RFPS is due in January 2016 and that there was an opportunity for a major air defence gun contract in an Asian country.

74.3. National Treasury did not agree that the proposed transaction was urgent. It would not have been in a position to do so simply because the application had at that stage not been submitted. The proposed JV transaction has significant financial and governance implications. It is imperative that the matter be properly assessed with due regard to the applicable legal and government prescripts. This weighty process cannot be truncated on tenuous grounds of urgency. The "deemed approval" is denied for the reasons demonstrated elsewhere in this affidavit. The application for approval is still being considered by National Treasury and no approval has been granted.

74.4. Save as aforesaid, these allegations are denied.

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75. Ad paragraph 25

These allegations are denied. The matter was duly considered (and is still being considered) by National Treasury on behalf of the Minister of Finance.

76. Ad paragraph 26

76.1. This is denied.

76.2. As indicated above, on 27 January 2016, officials of National Treasury and DPE met with the applicant's representatives to discuss the application for approval.

76.3. Furthermore, as demonstrated by "FA5" to the founding affidavit, on 5 February 2016 officials from National Treasury expressed disquiet about the applicant's handling of the JV agreement. This letter was in response to media reports on the establishment of Denel Asia. A copy of one such report dated 29 January 2016 is attached marked "LF4".

77. Ad paragraph 27

I deny that the statement was unwarranted and that the allegations are baseless.

78. Ad paragraph 28

While I note that the applicant issued a statement, I dispute the contents thereof.

79. Ad paragraph 29

79.1. At the heart of the concerns raised by Treasury are the interests of the fiscus and the financial viability of the initiative. It is unfathomable how these can be described as "spurious" by the applicant.

79.2. I deny that "FA10" is an accurate record of the meeting.

79.3. The remaining allegations are denied.

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80. Ad paragraph 30

Save for admitting that "FA11" was sent by the applicant to the Minister on 26 June 2016, the remaining allegations are denied.

81. Ad paragraphs 31 to 34

81.1. I deny the alleged statements were false, misleading and defamatory.

81.2. The remaining allegations are noted.

82. Ad paragraphs 35 and 36

This is denied. The approval has still not been granted. Hence the JV transaction has been concluded illegally.

85. Ad paragraphs 37

Save for stating that any opinion obtained by the respondents is privileged the contents hereof are denied

86. Ad paragraphs 38 to 39

86.1. The allegations that we acted in error or in bad faith are so outrageous that they do not even merit a response.

86.2. Furthermore, as demonstrated above, we have entered into protracted engagement with the applicant in order to obtain sufficient information to enable us to take a decision on the approval application. The correspondence between National Treasury and the applicant bear testimony to the extent to which we have gone in order to be as accommodating as possible in order to resolve this matter. The applicant has however been intransigent in its stance. This notwithstanding the fact that its interpretation of the PFMA is palpably flawed.

86.3. The remaining allegations are denied.

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87. Ad paragraph 40

87.1. It is correct that the position of National Treasury is that Denel Asia has been established unlawfully in that, in terms of section 51(1)(g) of the PFMA, the applicant is obliged to obtain the approval of National Treasury prior to formally establishing a new entity.

87.2. The implication of this straightforward application of section 51(1)(g) is that while the application for approval is under consideration, the company should be dissolved. The aim behind this is to limit the negative consequences which may arise from potential non-compliance with the PFMA if the requisite approval is not granted and the JV agreement is ultimately set aside.

88. Ad paragraph 41

88.1. National Treasury did not approve the establishment of Denel Asia, any "deadlock breaking mechanism" had to involve the deregistration of this entity at least until the approval process had been completed.

88.2. It is false to claim that National Treasury did not provide assistance to the applicant. On the contrary, National Treasury was actively involved in engaging with the applicant with a view to procuring all the relevant information needed to properly assess the application.

88.3. The remaining allegations are denied.

89. Ad paragraph 42

89.1. The purpose of the meeting held on 17 November 2016 was to discuss the applicant's liquidity challenges relating to the lack of appetite from capital markets on the term note and how National Treasury can assist the applicant.

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89.2. At that meeting, National Treasury was represented by Ms Avril Halstead and two others. Ms Halstead indicated that the position of National Treasury was that it would assist with the road shows and supporting the applicant with obtaining support from investment houses on condition that the applicant unwinds its established Denel Asia joint venture.

89.3. The reasoning behind this was quite simply that the Denel Asia transaction was still in dispute. As National Treasury and Denel were not in accord on this matter, it would be more likely to damage investor confidence and appetite should National Treasury accompany Denel on its road show. Investors were aware of the dispute between National Treasury and Denel regarding the lawfulness of the transaction and would seek clarity on the details of the dispute. It would be unlawful to mislead investors. Unwinding the transaction would ensure that there was no longer a matter a dispute.

90. Ad paragraph 43

This is denied. On one occasion the Minister and I addressed a letter asking to be excused from attending a meeting of the Portfolio Committee on Public Enterprises which was held on 7 September 2016 due to the fact that we were attending the G20 Summit in China with the President therefore did not have time to prepare a presentation for the portfolio committee.

91. Ad paragraphs 44 to 50

91.1. I have explained, at length, the approach adopted by National Treasury to the establishment of Denel Asia and the rationale for this approach. I deny that our approach is 'regrettable' or in any way untoward.

91.2. We have self-evidently acted in strict compliance with the Constitution and the PFMA.

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91.3. The remaining allegations are denied.

92. Ad paragraph 51

- 92.1. The parallel drawn by the applicant between the Tawazun transaction and the present one is unfortunate and misleading. It is false to claim that there was no response from National Treasury to the Tawazun transaction. As demonstrated below, the interaction between National Treasury and the applicant lasted for well over six months after the application for approval was filed.
- 92.2. The Tawazun transaction was an application by the applicant for the establishment of a new company ("Newco") in the United Arab Emirates and acquisition of a 49% shareholding in Newco. This application was received by the Minister of Finance on 19 December 2011.
- 92.3. On 9 February 2012, a meeting was held between the applicant, National Treasury and the Department of Public Enterprises to clarify issues relating to the transaction. One of the officials representing National Treasury at the meeting was Ms Leona Mlauli. A confirmatory affidavit from Ms Mlauli is annexed marked "LF23".
- 92.4. In March 2012, there were email exchanges between Ms Mlauli from National Treasury and representatives of the applicant regarding the Tawazun transaction. A copy hereof is attached marked "LF24". As is evident from the attached emails, National Treasury was still considering the application and sought further clarification on the enforcement of call and put options under UAE law.
- 92.5. A second meeting took place on 12 April 2012 to address additional legal issues. Ms Mlauli was one of the representatives of National Treasury who attended the meeting. The details of the issues discussed are intricate. In

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order to avoid prolixity I do not intend to burden this Court with this extraneous information. However, should the applicant dispute this, National Treasury will apply for leave to place these facts before this Court.

92.6. By June 2012, following a cabinet reshuffle, the Minister of Defence had not yet approved the transaction. Similarly, the Minister of Finance was still considering the application for approval. At this stage, there was ongoing engagement between National Treasury (represented by Ms Mlauli and others) and the applicant on the Tawazun application. Copies of emails which demonstrate this are attached marked "LF25". As is evident from these emails, the engagement between the applicant and National Treasury was still ongoing in June 2012. By that stage the Minister had not yet taken a decision to approve the transaction.

92.7. After a process of engagement that spanned a period of over six months, all of the concerns raised by National Treasury had been addressed by the applicant. The applicant was well aware that there were no remaining concerns and that queries had been adequately addressed.

92.8. In any event, the Tawazun transaction differed substantially from the transaction at hand. In that transaction:

92.8.1. The applicant gave an indication that the bank facilities amounting to USD 173 million for phase 1 in the joint venture was secured. This was included in Denel Dynamics Plan for 2012/2013.

92.8.2. The applicant indicated that its financial exposure to the joint venture is capped as there is no on-going obligation from the Group to fund the business.

92.8.3. There are no negative tax implications.

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92.8.4. The applicant provided financial statements and the financial impact of phase 1 in the Denel Dynamics Plan.

92.8.5. The Denel Group indicated that it had carried out all the commercial, technical, operational and legal aspects pertaining to the applicant's participation in the JV.

92.8.6. The applicant indicated that the transaction would assist in creating jobs. An estimated number of 40 positions would be created within Denel Dynamics.

92.9. In the current transaction on the other hand:

92.9.1. The applicant was required to seek approval from both the Minister of Finance and Minister of Public Enterprises in terms of the Guarantee Conditions.

92.9.2. The applicant indicated that its contribution to the JV will be in the form of its Intellectual Property which will enable the applicant to hold a majority shareholding of 51% in the JV. The remaining 49% was to be held by VR Laser Asia via its R 100 million contribution, which will be made over a period of 5 years (R 20 million per annum). VR Laser Asia was to fund its contribution through a loan from its shareholder company, VR Laser South Africa. However, VR Laser South Africa's ability to advance the loan to VR Laser Asia is questionable as the due diligence reports conducted by Singania and Partners as well as ENS Africa Forensics on the JV indicated that VR Laser South Africa is technically insolvent in that the company's liabilities exceed its assets by approximately R 22 million.

92.9.3. The Board of the applicant, in its approval of the transaction, had required the applicant to negotiate a higher amount to be paid up

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front otherwise the matter was to be referred back to the Board. This was to secure the financial viability of the JV during the first two years of operation. No indication has been provided by the applicant when requested to do so on whether such engagements took place and whether there has been any amendment to the timing of the cash injections.

- 92.9.4. The applicant clearly states in its application for approval that no funds will be allocated by the Denel Group to the JV. However, the applicant in its exchange control application has requested permission from the South African Reserve Bank to make a capital investment in the JV. The applicant requested permission to make capital investments as a start-up capital for the JV and Denel India. This contradicts what the applicant had communicated to National Treasury in the application for approval.
- 92.9.5. The applicant in the application for approval indicates that there were discussions underway between India and Hong Kong with respect to a double tax agreement. The applicant further pointed out that the lack of a double tax agreement is outweighed by the lucrative opportunities that can be realised in India. The applicant was requested to provide a scenario illustrating the impact on the performance of the JV should no double tax treaty be agreed to. The applicant failed to provide this information.
- 92.9.6. The applicant provided a snap shot Income Statement and demonstrated a cash flow impact, which National Treasury did not view as comprehensive to enable a thorough assessment of the impact of the JV on the applicant's financial position. From the little financial information that was provided, National Treasury

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found that there will be a substantial cash shortfall in the current year.

92.9.7. The due diligence reports attached to the application for approval revealed a number of concerns.

92.9.8. The motivation that the transaction will enable job creation and the advancement of broad-based black economic empowerment in South Africa appears to be misaligned with the India's requirements which require that 30% on a cost basis be manufactured in India as per the Defence Procurement Procedures undertaken by its Minister of Defence in India.

92.10. Hence Tawazun is distinguishable from the present matter.

92.11. The remaining allegations are denied.

93. Ad paragraph 52

93.1. I deny that there is a "personal public dispute" between National Treasury and any entity associated with the Gupta family. In terms of section 216 of the Constitution, National Treasury has a crucial constitutional role to play in ensuring both transparency and expenditure control in state entities. National Treasury also has the constitutionally assigned function of ensuring compliance by state entities and state owned entities with the PFMA. has tried, unsuccessfully, to resolve this matter.

93.2. Furthermore, in terms of section 6 of the PFMA, National Treasury is statutorily obliged to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of entities like the applicant and to enforce compliance with the PFMA.

93.3. National Treasury's handling of the application for approval is strictly in compliance with applicable statutory and government prescripts. In view

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hereof, it is an indictment on the applicant and its business dealings that it perceives the enforcement of the law as an attack on a particular family or an associate company.

94. Ad paragraph 53

I reject these spurious allegations. The applicant seems determined to personalise this dispute instead of focussing on ensuring that the constitution and the law is upheld and that decisions are made in a lawful manner in the interests of Denel as an entity and the country as a whole.

95. Ad paragraphs 54 to 60

95.1. If the applicant has suffered any adverse reputational consequences, then this is as a result of its unlawful conduct in establishing Denel Asia without the requisite Ministerial approval.

95.2. Regrettably, the current application is bound to aggravate the situation in that it exposes the applicant's flawed interpretation of the applicable statutory and governance regime.

95.3. The remaining allegations are denied.

96. Ad paragraphs 61 to 67

96.1. I have already dealt with the allegations in this paragraph. The application for approval has not been finalised because the applicant has failed to furnish all the information needed to do so.

96.2. These allegations are accordingly denied.

97. Ad paragraphs 68 and 69

The allegations contained in these paragraphs have already been dealt with. They are denied.

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98. Ad paragraphs 70 to 73

Any alleged prejudice the applicant has suffered is of the applicant's own making. It has unlawfully proceeded to establish Denel Asia in the absence of the required Ministerial consent.

98.1. The allegations that National Treasury and/or the erstwhile Minister have acted for improper motives is scandalous and devoid of any truth. As I have been at pains to demonstrate, the handling of this approval application was done in strict compliance with the law. It bears repeating that the purpose of ensuring compliance with the PFMA is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the PFMA applies.

98.2. National Treasury is responsible for managing South Africa's national government finances. The Constitution of the Republic of South Africa mandates National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.

98.3. My responsibility as the Director-General of National Treasury includes managing government's financial assets and liabilities, overseeing government accounting policies and standards, regulating public sector procurement through policy formulation, developing appropriate fiscal policy and financial management, and improving financial management throughout government.

98.4. National Treasury is therefore statutorily obliged to rigorously scrutinise the application in order to ascertain that it is sound. Any allegation of malfeasance on the part of the former Minister of Finance and National Treasury officials is unwarranted.

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98.5. For the reasons set out in this affidavit this Court should not grant the relief sought. In any event -

98.5.1. The applicant has not made out a case for a declaratory order;

98.5.2. The applicant's interpretation of the legislation is implausible. It requires that this Court read words into section 51(1)(g) of the PFMA. This is not permissible in the absence of a declaration of constitutional invalidity; and

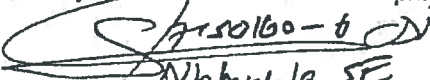
98.5.3. This Court should be slow to prevent National Treasury from properly carrying out its vital constitutional and statutory functions.

J. CONCLUSION

99. For all these reasons, I submit that the application falls to be dismissed with costs, such costs to include the costs consequent upon the employment of two counsel.


LUNGISA FUZILE

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Pretoria on this 11 day of May 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.


Nhlantla SE



COMMISSIONER OF OATHS

Name: Sibusiso E Nhlantla

Address: 231 Pretorius street

Capacity: Constable

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MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

MINISTER OF FINANCE
23 NOV 2015
M4/1/4

2335/15

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Mr Lungisani Daniel Montsha
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Dear Mr Montsha

Re: PFMA Section 54 (2) Pre-Notification on the Proposed Formation of Denel Asia

The above matter has reference.

I concur with yourself that Pacific Asia defence market will remain on upward trajectory for the foreseeable future. It would therefore make strategic business sense for Denel to position itself to take advantage of the envisaged growth.

However, accessing the Asian market is likely to be daunting for the new entity. Global defence original equipment manufacturers (OEMs) are targeting the growing Asian defence market to compensate for the stagnation at their home markets. They bring with them substantial offset and funding proposals which small companies such as Denel may not be able to provide. The value proposition of VR Laser Asia wanting a tie up with Denel is not clear especially on how it plans to break into this highly competitive market given its own limited global reach.

Given the strategic importance of the Asia-Pacific defence market, I hereby grant in-principle approval for Denel to continue discussions with VR Laser and Denel can submit a section 54 (2) PFMA application to both myself as the Executive Authority and the Minister of Finance.

In order to protect Denel's status as the holding company, the application should include, amongst other things:

- a comprehensive detailed business case to enable the Minister to express an opinion on the joint venture transaction;
- a comprehensive due diligence report on the financial regulatory legal requirement and regulatory laws governing foreign owned entities in Hong Kong;
- funding plans, all the transaction documents (including the MOU and Cooperation agreements);
- the process followed to select VR Laser as a partner of choice;

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- e) the proposed structure of the proposed new company and breakdown of estimated operational costs (five year horizon budget indicating clear cost allocation of both parties);
- f) a comprehensive due diligence of VR Laser which includes its financial standing, capabilities and ownership, defence and security product/service range and client base in Asia;
- g) registration details of the company and shareholding of VR Laser Asia;
- h) the reason(s) for a Continent specific versus a Country specific arrangement and indicate the preference of Hong Kong as a preferred domicile;
- i) any studies that were undertaken by the SOC that led to the conclusion that this partner is the most suitable, after VR Laser approached Denel with this business proposition; and
- j) reason(s) why this transaction or similar to it is not proposed in the 2015/16 Corporate Plan.

Thereafter, Denel is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed.

The Board must also ensure that there is adequate governance oversight regarding the processes that underpin transaction discussions. Issues of conflict of interest, real or perceived, should be adequately monitored. All efforts should be made to minimise risk exposure to both Denel and the Shareholder.

Yours sincerely



MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
 DATE: 23/4/2016

cc Mr Nhlanhla Nene, MP
 .. Minister of Finance

Tel: (012) 315-5559
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 .. Acting Group Chief Executive Officer
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Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Monthly Monitoring Committee Meeting

Wednesday, 09 December 2015

14:00 – 16H00

Venue: Protea Hotel, Hatfield

The Chairperson (Mr Kgathatso Tlhakudi) opened the meeting and welcomed all present.

Mr Kgathatso Tlhakudi

Mr Weekend Bangane

Ms Vuyo Tlale

Mr Xolile Mahlangu

Department of Public Enterprises

Mr Zwelakhe Ntshope

Mr Jan Wessels

Mr Odwa Mhlwana

Ms Marina Uys

Denel

Mr Mogorosi Lebethe

Mr Lloyd Ramakobya

Mr Silondwe Nkosi

Ms Tsholofelo Marothodi

National Treasury

APPOINTEES

Mr Sedipa Senoamadi-DPE

Ms Phumzile Maseko-DPE

Ms Gloria Mabindisa-DPE

Ms Thembi Mapheto-Denel

Mr Gawie van Zyl-Denel

1.1. The agenda was adopted without any additions.

1.2. The minutes of the previous meeting (19 November 2015) were adopted s.

2.1. Denel Asia PFMA Pre-Notification

2.1.1. Denel informed the Department that it is in the process of concluding the following processes with regards to the PFMA pre-notification submission:

2.1.1.1. Finalisation of the submission of the formal application to the Department;

2.1.1.2. Completion of the due diligence;

2.1.1.3. Conclusion of the business case;

2.1.1.4. Board is expected to sign all the necessary documentation for submission;

2.1.1.5. Board requested management to add additional information.

2.1.2. DPE and NT asked Denel what prompted a sense of urgency concerning this application;

2.1.3. Denel responded that the deadline for submission of RFP/RFPS is due in January 2016 and that there is also an opportunity for a major air defence gun contract in one of the Asian countries.

2.1.4. Denel indicated that India has also introduced a new policy regarding business trading. The new policy requires the company selling arms to India to establish the manufacturing plant in the country.

2.1.5. Denel raised a concern regarding delays from DPE and NT in approving PFMA's e.g. LSSA took nine months to approve.

2.1.6. NT sought clarity on whether the application will be submitted in terms of s 51 (g) or s 54 (2). Denel responded that the application will be submitted in terms of s 51 (g).

2.2. 2015 October Monthly Report

- 2.2.1. Denel shared the October monthly report presentation. The presentation is hereby attached and marked as Annexure "A".

2.3. Liquidity Requirements

- 2.3.1. Denel is developing a funding model which is aimed at addressing liquidity challenges. It will focus on:
- A relook of the Denel group and its structure particularly cash burn;
 - Secondly, the relationship that Denel has with Armscor particularly contract arrangements and formalisation of acquisitions.
- 2.3.2. Denel indicated that it is on the knife-edge in terms of supplier payments. Cash is only available for operations. Supplier payments are adjusted every month. Some of the suppliers have also renegotiated payment arrangements.
- 2.3.3. DPE advised Denel to utilise proceeds from the sale of the Phillipi land to help alleviate some of the challenges.

2.4. Working Capital Management

- 2.4.1. DPE requested Denel to prepare a presentation on Work In Progress which will be discussed at the 2016/17 SHC meeting.

2.5. 2016/17 Shareholder Compact

- 2.5.1. It was agreed amongst all the parties to defer the discussion to a separate meeting.

2.6. Landwards Cluster Strategic Position

- 2.6.1. Denel is engaged in a process to deregister DVS and consolidate the business into DLS to form landwards business.
- 2.6.2. An assurance was given by Denel that the proposed merger will be transparent.
- 2.6.3. The process will merge the combat and turret business, the vehicle business (DVS + Mechem business) and Mechem demining and DVS Gear ratio.

2.7. LSSA Post Transaction Due Diligence Report

2.7.1. DPE reminded Denel that the report is due on 11 December 2015.

2.7.2. Denel committed to meet the deadline.

3.1 Set-up of the shareholder compact (SHC) meeting.

3.2 Submission by Denel of the C2 PFMA letter to DPE.

3.3 Working capital management presentation to be presented by Denel at the SHC meeting.

3.4 Discussion on DVS transformation.

3.5 Submission of the LSSA post transaction due diligence report on or before 11 December 2015.

The meeting was adjourned at 16H00.

APPROVED BY:

MR KGATHATSO TLHAKUDI (CHAIRPERSON)

DATE:

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LLOYD RAMAKOBYA

do hereby make an oath and state that:

1. I am a Director: Investment Analysis in the Asset and Liability Management Division in the Department of National Treasury the second respondent herein ("**National Treasury**"). I am duly authorised to depose to this affidavit.

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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.



DEPONENT


I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Brooklyn* on this the *09th* day of *May* 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.



[Signature]
COMMISSIONER OF OATHS
HE. MASCHAYI

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 <p>public enterprises Department Public Enterprises REPUBLIC OF SOUTH AFRICA</p>	<p>Denel Asia PFMA and Monthly Monitoring Committee</p> <p>Wednesday, 27 January 2016 14:00 – 16H00</p> <p>Venue: Legae Boardroom, DPE Offices</p>
<p>MINUTES OF THE MEETING HELD ON 27 JANUARY 2016</p> <p>OPENING AND WELCOME</p>	
<p>The Chairperson (Mr Kgathatso Tlhakudi) opened the meeting and welcomed all present.</p>	
<p>ATTENDANCE</p>	
<p>Mr Kgathatso Tlhakudi Mr Sedipa Senoamadi Ms Phumzile Maseko Ms Gloria Mabindisa Mr Xolile Mahlangu</p>	<p>Department of Public Enterprises</p>
<p>Mr Mogorosi Lebethe Mr Silondiwe Nkosi Ms Tsholofelo Marotholi</p>	<p>National Treasury</p>
<p>AGENDA</p>	
<p>Mr Weekend Bangane- DPE Ms Vuyo Tiale- DPE</p>	
<p>1. ADDITION OF THE MINUTES</p>	
<p>1.1. The minutes of the previous meeting (09 December 2015) was postponed to the next meeting..</p>	

2. DISCUSSION

2.1. Denel Asia PFMA Pre-Notification

2.1.1. The parties were of the view that the 30 day period for the Denel Asia PFMA application was rather short to have gone through submitted documents in order to make an informative decision DPE mentioned that the business case was weak in that;

2.1.1.1. Strategy to get into India is not convincing as VR Laser has no proven experience or business operations in Asia,

2.1.1.2. Suitability of VR Laser to fund the joint venture while the due diligence suggests that the entity is surviving on shareholder loans; and

2.1.1.3. Conclusion of the business case;

2.1.1.4. Red flags on characters that are politically exposed were highlighted in the due diligence;

2.1.1.5. Board requested management to add additional information.

2.1.2. National Treasury (NT) advised that they have not yet concluded on a position on the application. However, there were issues that they wanted to raise with Denel. Among these issues, National Treasury pointed out;

2.1.2.1. That Denel reported as having been blacklisted in India, however, without (formal) written communication to this regard;

2.1.2.2. Denel's questionable majority ownership of the joint venture while not contributing to the R100m to be issued by VR Laser, with the latter taking all the risk;

2.1.2.3. The question of whether the oversight role by the shareholder and National Treasury remains the same or affected by the laws governing Hong Kong, if the latter is true, how the two departments are planning to work around this.

2.1.2.4. As a result, NT will request additional information and seek clarity. NT's intention is to issue a letter to Denel to request the above.

2.1.3. Furthermore, NT advised that their principals were cautious in approving PFMA applications with set conditions for compliance but prefer that all conditions be met

before approval. Denel raised a concern regarding delays from DPE and NT in approving PFMA's e.g. LSSA took nine months to approve.

2.1.4. Also, NT is concerned about the credibility risk portrayed by a trend of acquisitions by Denel that had not been included in the Corporate Plan.

2.1.5. NT requested that DPE share their views of the Denel Asia PFMA application.

2.1.6. DPE finds it odd that Denel is pursuing the Asia PFMA considering that it failed to conclude the C2 PFMA acquisition due to limited cash resources. NT indicated that it will request a letter from Denel which confirms the unsuccessful acquisition of C2 PFMA.

2.2. General Matters

2.2.1. The parties agreed to include the following agenda items in the February 2016 monthly meeting:

2.2.1.1. Presentation on working capital management and work in progress;

2.2.1.2. Presentation on liquidity;

2.2.1.3. Oversubscription of the R850 million coupon bond.

3. WAY FORWARD

3.1 NT to issue a letter to Denel concerning additional information and clarity on the Asia PFMA.

3.2 Inclusion as agenda items presentations on working capital, liquidity and work in progress.

4. CLOSING

The meeting was adjourned at 16H00.

APPROVED BY:

MR KGATHATSO TLHAKUDI (CHAIRPERSON)

DATE:

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

TSHOLOFELO MOROTHOLI

do hereby make an oath and state that:

1. I am a Senior Analyst: General Sector in the Asset and Liability Management Division in the Department of National Treasury, the second respondent herein ("**National Treasury**"). I am duly authorised to depose to this affidavit.

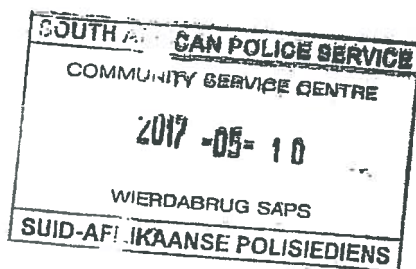
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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.

[Handwritten Signature]

DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at _____ on this the _____ day of _____ 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.



[Handwritten Signature]
COMMISSIONER OF OATHS.

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Denel expands its horizons

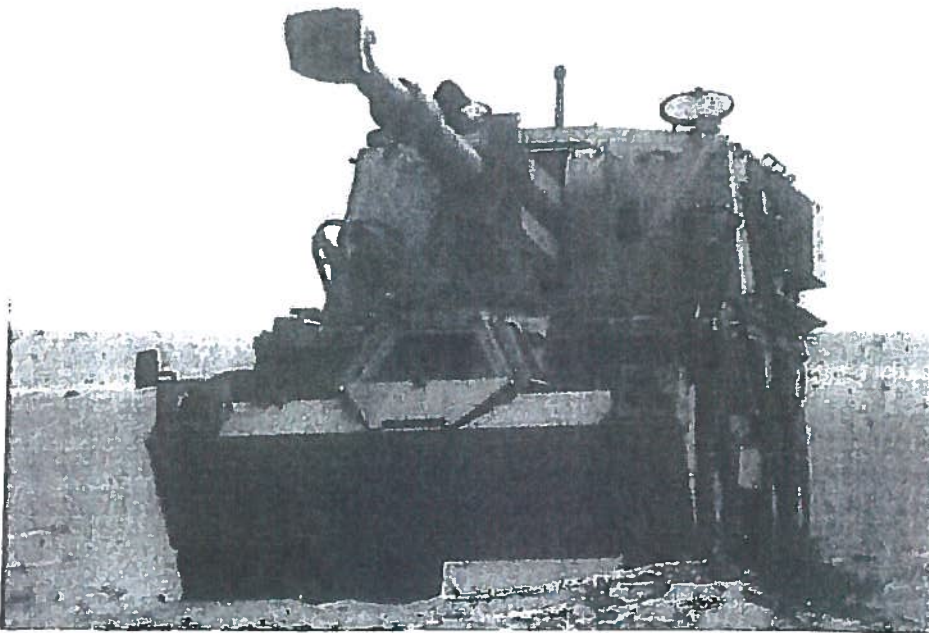
Companies | 29 January 2016
Siphelele Dlodla

Johannesburg - South African defence and technology group Denel is extending its footprint into the Asia-Pacific defence markets with the establishment of a joint-venture company in Hong Kong.

The arms producer announced the establishment of Denel Asia in a statement on Friday, saying it has partnered with VR Laser, another South African defence and technology company.

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SA defence and technology company Denel produces armoured vehicles, among other things. File picture: Supplied

This partnership is also earmarked to give Denel access to VR Laser's capabilities in fabrication, production and support of armoured vehicles which will now be combined with Denel's strengths in the areas of design and systems integration.

Zwelakhe Ntshepe, the acting group CEO of Denel, said in the statement that there are a number of opportunities opening up in Asian countries, where defence budgets are increasing.

"This is a vitally important region for Denel to expand its business and find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles," Ntshepe said.

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The arms producer said Denel Asia will focus its marketing attention on countries such as India, Singapore, Cambodia, Indonesia, Pakistan, Vietnam and the Philippines, which have all announced their intentions to embark on major new defence acquisitions and grow their research and development budgets in the next four years.

Denel said research shows that by 2018 the Asia-Pacific nations will command more than half of global defence procurement outside of the US and two-thirds of non-US defence research.

"We need a firm foothold in this region and the establishment of Denel Asia with its headquarters in Hong Kong will give us a strong presence and the ability to pursue opportunities that will soon arise," Ntshepe added.

Peter van der Merwe, the CEO of VR Laser, in the same statement on Friday said his company welcomes the opportunity to work with Denel and to make inroads into new regional markets.

"Denel is a trusted name in the global defence industry, as one of the top 100 industry companies in the world. VR Laser has expertise in defence technology and understanding of the south-east Asia defence markets," Van der Merwe said.

Denel showed a sustained annual growth in revenue of 28 percent and a projected order book of more than R35 billion at the end of the 2015 financial year.

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Source: <http://www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303#>

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Denel expands its horizons

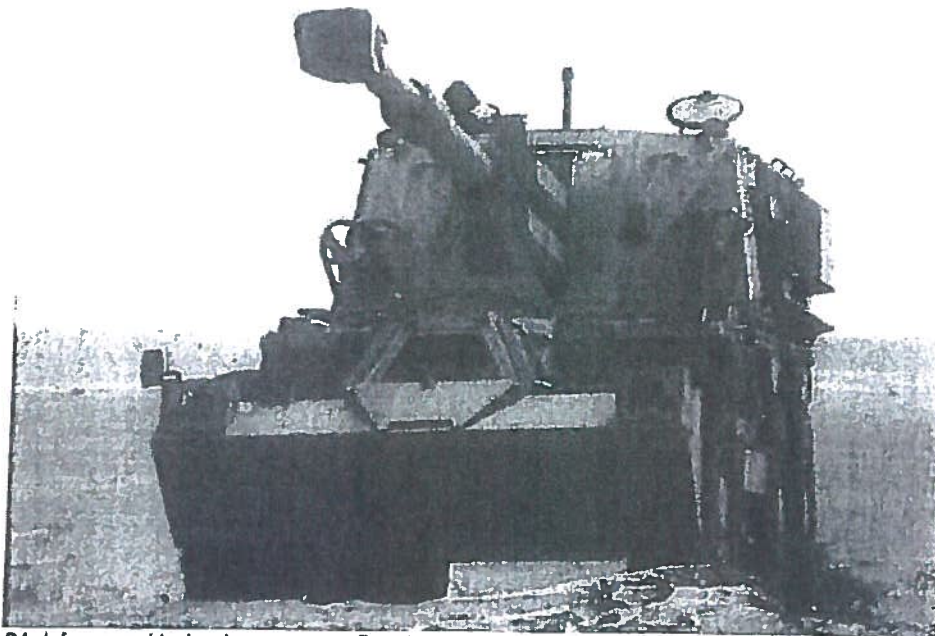
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ANA

Source: <http://www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303#>

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DENEL GROUP

10 February 2016
Tel: +27 12 671 2758
Fax: +27 12 671 2751
zwelakhen@denel.co.za

Mr Solly Tshitangano
Department of National Treasury
Chief Director: SCM Governance, Monitoring &
Compliance
Private Bag X115
Pretoria
0001

Dear Mr Tshitangano

JOINT VENTURE BETWEEN DENEL SOC (LTD) AND VR LASER

We hereby acknowledge receipt of your letter received on the 9th of February, reference 43/1/2/5/1.

We are in the process of studying your requirements and will revert back on Friday the 19th of February 2016.

Kind regards

Zwelakhe Ntshope
Group Executive Officer (Acting)

Denel SOC Ltd, Reg No 1992/00183730, Mafikeng Drive, Asees
P O Box 8222, Centurion, 0048, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
Directors: Mr L D Mardisa (Chairman), Mr R Galonja (Group Chief Executive Officer), Ms M Kgonangone, Mr T D Mahumapelo, Ms P M Mahlangu, Ms N Mardisa, Mr Z Mthembu, Ms R Mokoena, Mr N J Motake, Mr T J Msoni, U Gon TM Nkabinde (td), Ms K P S Ntshweni,

Executive Director
Group Company Secretary: Ms E M Africa

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DENEL GROUP

Tel: +27 12 671 2758
 Fax: +27 12 671 2839
 Email: ZwelekeN@denel.co.za
 Ref: Ltr/NT/Denel/VR Laser Asia/18Apr16

13 April 2016

Mr Solly Tshitangano
 Chief Director: SCM Governance, Monitoring and Compliance
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Solly,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

Your letter dated 5 February 2016 has reference.

Please find attached hereto the information as requested:

- 1) Board approval to pursue the deal. Refer to Annexure 1.
- 2) Adverts and proposals received:
 - As stated in the business case submitted to National Treasury on 11 December 2015 as part of the application in terms of section 51(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the PFMA we highlighted in detail in paragraph 5 the selection method of the partner. In short, as part of Denel's common business practise in establishing strategic partners in the global market we do not send out adverts to identify partners but do evaluate a shortlist of key specific potential partners based on market intelligence. Examples of joint ventures incorporated in the past following same process are Tawazun Dynamics incorporated in the UAE. Two other companies that were considered for potential partnership was Bharat Forge as well as Larsen & Toubro, the both of which had already partnered with other international QEMs.
- 3) Minutes of relevant committees and board resolutions. Refer to Annexure 2.
- 4) Minister's approval. Refer to Annexure 3:
 - Section 51(g) of the PFM Act 1 of 1999 further requires that the National Treasury be allowed a **REASONABLE TIME** to submit its decision prior to formal establishment of the joint venture. Section 51(g) read together with section 54(2) defines a reasonable time as 30 days from the date of submission which in this particular case was 11 December 2015, 30 days thus expiring on 11 January 2016. This lead to Denel assuming approval by both the Executive Authority as well as National Treasury which then lead to the establishment of the joint venture.
- 5) Joint venture agreement and other relevant documents:
 - These were all submitted to National Treasury on 11 December 2015 as part of the formal PFMA application for approval.

Denel SOC Ltd, Reg No 1988001937/30, Nelmapius Drive, Irene
 P O Box 6322, Centurion, 0048, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Marikha (Chairman), Mr R Seloojee (Group Chief Executive Officer), Ms M Kgomogoe, Mr T D Mahumapelo,
 Ms P M Mahangu, Ms N Mandlil, Mr Z Mhlonlo, Ms R Mokoena, Mr N J Motseki, Mr T J Moomi, Lt Gen T M Nkabinde (rtd),
 Ms K P S Ntshavheni,

Executive Director
 Group Company Secretary: Ms E M Africa

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Please do not hesitate to contact me should you require any further information.

Yours faithfully



Zwelakhe Ntshope
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Mogokare Richard Seleke – Director General: Department of Public Enterprises
Mr Lugisani Daniel Mantsha – Chairman of the Denel Board
Mr Odwa Mhlwana – Acting Group Chief Financial Officer: Denel

Company Confidential

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: *"Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:*

- (a) establishment or participation in the establishment of a company;*
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;*
- (c) acquisition or disposal of a significant shareholding in a company;*
- (d) acquisition or disposal of a significant asset;*
- (e) commencement or cessation of a significant business activity; and*
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"*



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**national treasury**

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to *"assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority"*.

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to *"promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment"*. The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

Issued on behalf of National Treasury

Date: 13 April 2016

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ISMAIL MOMONIAT

do hereby make an oath and state that:

1. I am the Deputy Director-General: Tax and Financial Sector Policy in the Department of National Treasury, the second respondent herein ("**National Treasury**"). I am duly authorised to depose to this affidavit.

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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.


DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Pretoria* on this the *11* day of *May* 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.


COMMISSIONER OF OATHS

DAVID TLOTI
PRACTISING ATTORNEY
COMMISSIONER OF OATHS (Ex Officio)
Suite 547, Van Erkom Building,
217 Pretorius, Pretoria
Tel: 086 100 0529 Cell: 072 574 9211
Fax: 086 100 0526 / 086 558 2721
Email: lokisang@mketsu.co.za

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DENEL GROUP

Tel: +27 12 671 2758

Fax: +27 12 671 2833

Email: ZwelekeN@denel.co.za

Ref: Ltr/NT/Denel/VR Laser Asia/13Apr16

18 April 2016

DIRECTOR-GENERAL National Treasury Pretoria 2016-04-22 Ref No Received by: H. Maphangwa

Mr Ismail Momoniat
Acting Director-General
National Treasury
Private Bag X115
PRETORIA
0001

Dear Mr Momoniat,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

The meeting of the 15th April 2016 between Denel SOC Limited and National Treasury regarding the approval status of the recently established Denel Asia joint venture has reference.

We are always appreciative of engagements of this nature as it is our strong belief, as supported by the constitution that organs of the state should never have to deal with one another through the media but endeavour to resolve issues amongst themselves.

To avoid any potential misunderstanding and as part of the normal governance processes, we deemed it necessary that we reduce the key elements of our discussion into writing considering that this meeting is only the start of a process to still unfold.

I have attached our transcription as per our understanding of the key discussion and decisions taken in that meeting. I humbly request that you review this attachment and please revert back to me should you wish to add any elements you might view as significant as per our discussion.

Please do not hesitate to contact me should you require any further information.

Yours faithfully

Zweleke Ntshepe
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Lungisa Fuzile - Director General: National Treasury
Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
Mr Odwa Mhlwana - Acting Group Chief Financial Officer: Denel

Denel SOC Ltd, Reg No 1992/001337/30, Nelmapius Drive, Irene
P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
Directors: Mr L D Mentsha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
Ms P M Mahangu, Ms N Mendi, Mr Z Mhloni¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd),
Ms K P S Ntshavheni,

¹Executive Director
Group Company Secretary: Ms EM Africa

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EXTRACT OF THE MEETING HELD ON THE 15TH APRIL 2016 STARTING AT 14H30 BETWEEN NATIONAL TREASURY (NT) AND DENEL SOC LIMITED (Denel).

VENUE: Pretoria – National Treasury Building at 40 Church Street.

ATENDEES: Zwelakhe Ntshepe -Denel Group Chief Executive Officer (Acting)

Odwa Mhlwana – Denel Group Chief Financial Officer (Acting)

Ismail Momoniat – Acting Director General - National Treasury

Other National Treasury Officials (Please fill in the names)

SUBJECT: Following the recent media statements suggesting that Denel might have violated the PFM act 1 of 1999 in its endeavours to establishing Denel Asia (Joint Venture between Denel SOC Limited and VR Laser Asia), the meeting was to discuss how Denel it is that Denel believes that no law was violated when NT had not provided specific approval to the transaction in terms of section 51(g) and 54(2) of the PFMA.

EXTRACT: Mr Momoniat, opened the meeting with an introduction that highlighted the following:

1. It is not NT's intention to deal with other organs of state through the media, however given that this specific issue was deemed to be of public interest as well as the media enquiries received by NT on this issue since the media launch by Denel of its Asia joint venture on the 28th January 2016, A media statement was issued by National Treasury on the 14th April 2016.
2. NT's statement was not saying that Denel had violated any act but carefully crafted in response to the media releases observed in the past both from Denel and DPE given that no approval had been given by NT, that Denel MIGHT have violated the act, stating the process to be followed in the event that this was to be proven. This meeting is thus a first step to establishing whether the PFMA has been violated or not.
3. Emphasised the fact that NT has special powers (no specifics of what powers) to act against organs of state that violated governance prescripts.
4. Requested Denel to explain its actions as it relates to whether approvals had been granted or not regarding this Asia Joint Venture.

Mr Ntshepe started articulating Denel's historic involvement in Asia with specific emphasis on India as follows:

1. Denel had been out of India for about 13 years, blacklisted on allegations of misconduct with regards to its partnerships in that market

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which were later (around February 2016) thrown out of court and Denel cleared.

2. At the time, prior to being blacklisted, Denel spent in the region of R350m on business development activities for which no return was ever realised on such investment.
3. Emphasised the importance of the Indian market to Denel's growth strategy and the fact that after the USA, India is the next biggest defence market globally.
4. That at the time Denel got Clearance and lifting of the blacklisting, there were major opportunities which Denel had to play catch up on urgently to stay in the race to winning the contracts with very limited time.
5. India's Defence rules specifically require that defence articles are "Made" in India thus eliminating an opportunity of Denel selling directly from RSA into India.
6. Emphasised that VR Laser South Africa is a business that Denel had business dealings with for a very long time (+/- 10 yrs) and that this business is now under new ownership that found the business relationship already in existence between VR Laser RSA and Denel.
7. Introduced Mr Mhlwana to take the meeting through the governance element of the transaction.

Mr Mhlwana went on to explain the compliance regime that governed the transaction and how Denel obtained compliance assurance.

1. Two sections of the PFMA as well as the conditions to the approval of the government guarantee issued to Denel, were considered in progressing through this transaction and these pieces emphasised the following
 - a. In essence, Section 54(2) required that this transaction be subject to the approval by the executive authority with notification of the National Treasury. This section further stipulates that if no response is received from the executive authority in 30 days, the applicant may deem the application as approved.
 - b. In essence, Section 51 (1)(g) required that the National Treasury be notified of this transaction and be granted reasonable time to provide its approval.
 - c. The condition to the approval of the government guarantee issued to Denel required that for all S54(2) approval requests, National Treasury is not only informed/notified but is also an approver similar to the executive authority.

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2. The governance compliance regime in concluding the formation of Denel Asia was explained in detail to the National Treasury Officials highlighting the following:
 - a. Section 54(2) as it relates to the approval by the executive authority and notification of the National Treasury was fully complied with given the expiry of the 30 day period as stipulated in the act.
 - b. Section 51(1)(g) as it relates to the reasonable time to be afforded to National Treasury in seeking their approval was also complied to fully given that this section read together with section 54(2) does provide clear guidance on how long the reasonable time is which National Treasury has to provide its approval decision. Denel Stressed the fact that the 30 day period expired on the 12th of January 2016 with the joint venture only established on the 29th January 2016 and that during this time no response was ever received from National Treasury.
 - c. The approval condition to the government guarantee elevated National Treasury to approval status in line with the executive authority in all matters relating to section 54(2) approval requests. This was therefore complied to fully as stipulated in (a) above.
3. National Treasury's reaction to Denel's position articulated in 2 above was as follows:
 - a. Further meetings with the National Treasury Director General on his return are necessary as well as a separate meeting with the Minister of Finance attended amongst others by Denel's executive authority and the chairperson of the board will be necessary to discuss this matter further. These meetings will be arranged by National Treasury urgently.
 - b. All future media statements on the matter to be co-ordinated between the National Treasury, Denel and DPE.
 - c. A letter to Denel will be issued on Monday, requesting additional information on the transaction for National Treasury to review the PFMA application and make their final decision
 - d. That Denel Freeze/put on hold all business operations of the Joint Venture until National Treasury Issues their decision on the PFMA application
 - e. Strong concerns on Denel's legal interpretation as stipulated in 2(b) above. National Treasury's submission was that there is

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case law on the definition of reasonable time and that it constitutes taking strong consideration of the specific circumstances such as the December holidays, historic time taken by National Treasury in approving similar applications.

Other than the notion that Denel freezes all operations of Denel Asia and that the joint venture is not valid and all operations must wait for a another review process, point (a) and (b) above was agreed to by Denel. Denel's position as articulated in point 2 above remains and that the transaction is valid and Denel has fully complied with all legislative requirements.

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**national treasury**

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 - Tel (+27 12) 315 5111 - Fax (+27 12) 323 1783

Mr. Z Ntshepe
Acting Chief Executive Officer
Denel SOC Ltd
P O Box 8322
PRETORIA
0001



**DENEL'S APPLICATION IN TERMS OF SECTION 51(g) AND 54 OF THE PUBLIC FINANCE
MANAGEMENT ACT ("PFMA") FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED**

The abovementioned matter refers.

The National Treasury would like to express its appreciation and gratitude to the acting CEO and the acting CFO ("the executives") of Denel SOC Ltd for availing themselves at short notice for the urgent meeting with the Acting DG: Mr. Ismail Momoniat and the National Treasury team on Friday 15 April 2016. The National Treasury further acknowledges Denel's letter dated 18 March 2016, the contents of which is still being reviewed. The National Treasury may respond thereto at a more opportune time.

The National Treasury would like to confirm that:

- 1 The purpose of the aforementioned meeting was to clarify the status of the PFMA application made by Denel on 11 December 2015;
- 2 The National Treasury advised the executives present that the application was still under consideration and that no approvals by the National Treasury had been granted as yet;
- 3 The National Treasury differed with Denel's interpretation of the law (as stated by the two executives) which had led Denel to assume that the application was approved after the expiry of 30 days;
- 4 The National Treasury is of the view that there was no compliance with the provisions of the PFMA, in particular section 51((1)g) thereof in that no decision has been taken by the National Treasury in terms of the aforementioned section;

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- 5 The National Treasury proposed that a follow up meeting to determine a way forward be urgently convened on Tuesday, 19 April 2016; and
- 6 The National Treasury will proceed with its consideration of the application.

In order for the National Treasury to properly assess the application, Denel is requested to submit the following:

- (a) Denel's previously incurred millions of Rands in losses with no formal blacklisting in force and the entity's re-entry into the Indian market appears to be based on a verbal notification from the Indian Embassy. Provide clarity on how this regulatory risk will be managed going forward;
- (b) The procurement process that was followed in order to identify VR Laser Asia as the preferred partner as well as the assessment of other potential partners that were considered;
- (c) Clarity on the track record and ownership of VR Laser Asia and its capacity to contribute to assisting Denel in securing business in Asia;
- (d) The valuation and rationale that informed the proposed shareholding structure of the JV: Denel Asia;
- (e) Clarity regarding the funding source(s) post the 5 year period, including written confirmation that VR Laser Asia shall not have recourse to Denel in the event the JV is unsuccessful within the first 5 years as stated in the application;
- (f) Clarity on whether the JV would have the exclusive right to market Denel products in the targeted countries;
- (g) Detailed financial projections for each of the respective years, which would include, but not limited to:
 - i. Projected Financial performance, Positions and Cash-Flow, including assumptions driving the projected performance and cash-flows;
 - ii. Projected management accounts and assumptions for all capital and operational expenditure;
 - iii. Net Present Value (NPV) calculations and assumptions for any capital assets to be acquired (if any);
 - iv. Accounting policies to be adopted for the JV, including how Denel's Intellectual Property will be recognised, measured and disclosed in the accounting records of the JV;
 - v. Dividend policies relating to the JV;
- (h) Additional information pertaining to competitive landscape, business strategy and marketing plan;

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- (i) Information pertaining to the final decision between India and Hong Kong on the outstanding double tax agreement. Moreover, should India and Hong Kong fail to reach consensus on the matter, Denel should illustrate the impact of this scenario on the performance of the JV;
- (j) With respect to the Intellectual Property (IP) that belongs to other parties (Armcor and third parties), has Denel engaged with the respective parties regarding the licencing of the IP? Should the parties not agree to licence their IP to the JV, does Denel have mitigating strategies in place to ensure that the operations of the JV are not negatively impacted;
- (k) Alternative options that Denel shall explore should VR Laser Asia reject Denel's Exit Clause: Termination of Convenience;
- (l) An overview of the strategies that Denel shall put in place to ensure that it's operations and reputation are not compromised; and
- (m) Clarity on how the proposed transaction will impact on the existing corporate plan.

In addition to providing this information, Denel is requested to avail itself for engagements on the PFMA application with the designated officials of the National Treasury should these be required. The information already submitted in response to the letter of 5 February 2016 from the Chief Director: Supply Chain Management Governance, Monitoring and Compliance is acknowledged.

Please note that, pending a decision on whether to approve or not, Denel may not proceed with the Joint Venture. For this reason, the National Treasury requested that whilst the application is under consideration, all operations under the Joint Venture be ceased with immediate effect pending the National Treasury's decision. The aim is to limit the negative consequences which may arise from potential non-compliance with the PFMA. Kindly confirm as a matter of extreme urgency whether the operations have been ceased as requested.

I trust that the above is in order.

Kind regards


ISMAIL MOMONIAT

ACTING DIRECTOR-GENERAL

DATE: 18-4-2016

cc. Mr MR Seleke

Director-General: Department of Public Enterprises

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DENEL GROUP

Tel: +27 12 671 2758
 Fax: +27 12 671 2833
 Email: ZwelakheN@denel.co.za
 Ref: Ltr/NT/Denel/VRLaserAsia/21Apr16

21 April 2016

Mr Ismail Momoniat
 Acting Director-General
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Mr Momoniat,

DENEL'S APPLICATION IN TERMS OF SECTION 51(g) AND 54 OF THE PUBLIC FINANCE MANAGEMENT ACT ("PFMA") FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED

Denel hereby acknowledges receipt of your letter dated 18 April 2016 regarding the matter referred to above.

Without prejudice to Denel's position on this matter as articulated in the meeting of the 15th April 2016, we are in the process of collating the information as requested in your letter and will be responding to this fully as a matter of urgency.

We would like to clarify a few of those questions to ensure that our response is addressing your specific issues:

- | | |
|------------------------|---|
| Question (a) | Please clarify what "regulatory risk" referred to in this questions relate to? |
| Question (g)(iii)&(iv) | Please confirm how the information requested in these two questions will assist the department in its evaluation of the application. |
| Question (h) | Please specify what additional information you are looking for in this question. |
| Question (i) | Please provide us with details on the "pending final decision" on double tax agreement between India and Hong Kong as referred to in this question. |

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 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Marisha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomogoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Marudindi, Mr Z Mhlonlo¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (retd),
 Ms K P S Ntshavheni,

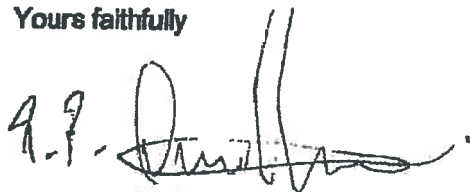
¹Executive Director
 Group Company Secretary: Ms E M Africa

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Please do not hesitate to contact me should you require any further information.

Yours faithfully



Zwelakhe Ntshhe
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

- cc. Mr Lungisa Fuzile - Director General: National Treasury
Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
Mr Lugisani Daniel Mantsha - Chairman of the Denel Board
Mr Odwa Mhlwana - Acting Group Chief Financial Officer: Denel

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 Tel: +27 12 315 5904 Fax: +27 12 328 5145

Mr Z Ntshepe
Group Executive Officer (Acting)
Denel SOC Ltd (Denel)
P O Box 8322
PRETORIA
0001

Dear Mr Ntshepe

DENEL'S APPLICATION IN TERMS OF SECTIONS 51(1)(g) AND 54 OF THE PUBLIC FINANCE MANAGEMENT ACT (PFMA) FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED

1. I refer to your letter dated 21 April 2016, in respect of the abovementioned matter.
2. In terms of your letter, you seek clarification on certain issues raised in our letter dated April 2016.
3. In light of the urgency of this matter and our discussions held at the meetings of 15 and 16 April 2016, I had indicated that matters on clarification should be dealt with expeditiously through liaising with the relevant official/s. Nevertheless, I am taking the time to acknowledge your letter formally.
4. The additional information relating to the matters where you requested clarity is outlined below.

Questions raised by Denel:	National Treasury response:
Question (a): Please clarify what "regulatory risk" referred to in this questions relate to?	Clarify on how Denel will ensure that the Joint Venture will meet all regulatory requirements both in India and Hong Kong to mitigate against the possibility of financial losses being incurred similar to those Denel realised when it was blacklisted in India during 2005. In particular, Denel should provide clarity on whether the company has written confirmation regarding the lifting of the blacklisting in India enabling the company's re-entry into the Indian market.
Question (h): Please specify what additional information you are looking for in this question.	In the application, Denel highlighted that one of the reasons for establishing the Joint Venture was to leverage VR Laser Asia's marketing network. However, the due diligence conducted by ENSAfrica indicated that it was unable to comment on the ability of VR Laser Asia to establish business links/relationships in Asia. Additionally, the due diligence report highlighted that VR Laser Asia is a shell company that is yet to commence trading. Denel should detail VR Laser Asia's knowledge of Asia's competitive

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Questions raised by Denel:	National Treasury response:
	landscape, its networks and experience operating in the Asian market. Furthermore, Denel should give an indication on how the expertise of VR Laser and its marketing networks in particular will contribute to Denel delivering on this strategy to compete and market itself successfully in the Asian market.
Question (1): Please provide us with details on the "pending final decision" on the double tax agreement between India and Hong Kong as referred to this question.	In the PFMA application, Denel has stated that there are discussions between India and Hong Kong with respect to a double tax agreement. Denel should provide clarity on whether the two parties have reached consensus with respect to this matter and the potential implications on the performance of the Joint Venture should the countries fail to reach consensus.

5. The detailed financial information is required to evaluate the impact that the proposed subsidiary could have on Denel given that it will need to be consolidated in the company's financial accounts. This is in line with the information requirements set out in the Practice Note on Applications under Section 54 of the PFMA by Public Entities which was shared with you during the meetings. As I highlighted, the Practice Note outlines the information to be included in Section 54 and Section 51 applications. Until all the required information has been submitted the National Treasury cannot properly assess the applications and make a decision.

6. I appreciate your commitment to collating and submitting the required information.

I trust that you find the above in order.


LUNGISA FUZILE
DIRECTOR-GENERAL

DATE: 26/4/2016

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LF 14



**NATIONAL TREASURY
REPUBLIC OF SOUTH AFRICA**

Enquiries: **Higgo Du Toit** Ref: **Tel: 315 5758** Fax: **323 1783**
E-mail: higgo.dutoit@treasury.gov.za

**TO : ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS;
: ACCOUNTING AUTHORITIES OF ALL PUBLIC ENTITIES; AND
: HEADS OF PROVINCIAL TREASURIES**

**PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC
FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY
PUBLIC ENTITIES**

1 BACKGROUND

In terms of section 54(2) of the PFMA, before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) Establishment or participation in the establishment of a company;
- (b) Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) Acquisition or disposal of a significant shareholding in a company;
- (d) Acquisition or disposal of a significant asset;
- (e) Commencement or cessation of a significant business activity; and
- (f) A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

In addition, section 51(1)(g) requires the Accounting Authority for a public entity to promptly inform the National Treasury on any new entity it intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment.

Furthermore, in terms of Treasury Regulation 28.3.1 of the PFMA, a public entity must develop and agree a significance framework with that entity's Executive Authority.

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**PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE
MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES**

NB This Practice Note is directed at approvals pertaining to section 54(2) and section 51(1)(g) of the PFMA only. Each public entity must still obtain all other legal approvals necessary, for example, the Companies Act and Exchange Control requirements, regulatory approvals, etc.

2 PURPOSE

This document seeks to provide guidance to public entities on the following:

- The development of the aforementioned significance framework;
- The information that should be submitted by an Accounting Authority to its Executive Authority in support of a section 54(2) application.

3 SIGNIFICANCE FRAMEWORK – GUIDING PRINCIPLES

3.1 Section 54(2)(a) [Establishment or participation in the establishment of a company]:

- 3.1.1 Any transaction of this nature that causes any interest (equity or loans) to be taken by the public entity in the company to be established, requires approval from the Executive Authority irrespective of its materiality or significance.
- 3.1.2 Concerning participation in the establishment of a company, where an interest (equity or loans) is to be taken by the public entity in the company to be established, any involvement by a particular public entity in the establishment process will necessitate an application for approval, regardless of the degree of involvement by that public entity.
- 3.1.3 Following from 3.1.1 and 3.1.2 above, where no interest (equity or loans) is to be had by the public entity in the company to be established, for example the public entity is only facilitating the formation on behalf of or with other parties in pursuance of a social objective, such participation need not necessitate an application.
- 3.1.4 It must be noted that the establishment (or participation in the establishment) by a public entity of any company that is domiciled outside the Republic of South Africa also falls under this subsection.
- 3.1.5 For purposes of establishment of an entity as envisaged under section 51(1)(g), the above principles will also apply.

3.2 Section 54(2)(b) [Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement]:

- 3.2.1 Any transaction involving the above that entails incorporation under the Companies Act (or similar foreign legislation) should be dealt with under 3.1 above.
- 3.2.2 For transactions not entailing incorporation, significance is determined by a rand amount derived from the parameters outlined in 3.7 below.
- 3.2.2.1 However, participation in any partnership, trust, unincorporated joint venture or similar arrangement that is located outside the Republic of South Africa is to be regarded as significant, thus necessitating an application for approval, irrespective of the rand amount involved.

**PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE
MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES**

3.2.3 For purposes of establishment of an entity as envisaged under section 51(1)(g), transactions not regarded as significant in terms of 3.2.2. and 3.2.2.1 above need not require an application.

3.3 Section 54(2)(c) [Acquisition or disposal of a significant shareholding in a company]:

3.3.1 Where any of the following occurs, the transaction is to be regarded as significant:

- 3.3.1.1** Where ownership control is affected; or
- 3.3.1.2** Where the public entity's right to pass or block a special resolution is affected; or
- 3.3.1.3** There is a change in shareholding of at least 20%; or
- 3.3.1.4** For an acquisition, any transaction that results in a shareholding of at least 20% in a company.

The Executive Authority is at liberty to specify a lower percentage on a case-by-case basis where it deems necessary, e.g. where the company concerned is domiciled in a foreign country.

3.4 Section 54(2)(d) [Acquisition or disposal of a significant asset]:

- 3.4.1** Although the acquisition or disposal of shares or of an interest in an unincorporated vehicle, as envisaged by sections 54(2)(b), (c) and (f), would also be an acquisition or disposal of an asset, such transactions are more appropriately dealt with under the guidelines for those subsections.
- 3.4.2** Assets classified as current assets according to generally accepted accounting practice need not be regarded as falling under this subsection.
- 3.4.3** The acquisition / disposal of all assets other than those referred to in 3.4.1 and 3.4.2 above should be regarded as significant if its rand value falls within the parameters outlined in 3.7 below.
- 3.4.4** Regarding the acquisition of assets through a finance lease, the principles in both 3.4.2 and 3.4.3 will apply.

3.5 Section 54(2)(e) [Commencement or cessation of a significant business activity]:

- 3.5.1** A business activity that falls within a public entity's core business need not be regarded as falling under this subsection.
- 3.5.2** A business activity that falls outside of a public entity's core business should be regarded as significant if its rand value falls within the parameters outlined in 3.7 below.

3.6 Section 54(2)(f) [A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement]:

- 3.6.1** The significance of a change in interest as envisaged in this subsection, and thus the guidance per 3.6.2 to 3.6.4 below, should only be considered if the participation in the partnership, trust, unincorporated joint venture or similar arrangement was originally regarded as significant per 3.2 above.
- 3.6.2** Any change in interest the rand value of which exceeds the significance limits as determined per 3.7 below, should be regarded as significant.

PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES

- 3.6.3 Where the nature changes between any of the vehicles (that is, between a partnership, trust, unincorporated joint venture or similar arrangement), this should be regarded as significant.
- 3.6.4 Any transaction that results in a cumulative interest of at least 20% in the vehicle (partnership, trust, unincorporated joint venture or similar arrangement) should be regarded as significant.
- 3.6.4.1 Any subsequent transaction that results in an increase of the cumulative interest by at least 10% in the vehicle (partnership, trust, unincorporated joint venture or similar arrangement) should be regarded as significant.

The Executive Authority is at liberty to specify a lower percentage on a case-by-case basis where it deems necessary, e.g. where the operations of the vehicle concerned is in a foreign country.

3.7 Guidance on setting the parameters for the rand value determination of significance for purposes of 3.2.2, 3.4.3, 3.5.2 and 3.6.2 above

It should be noted that in terms of Treasury Regulation 28.3.1, acceptable levels of significance must be agreed with the Executive Authority. In arriving at acceptable levels of significance, the guiding principles set out below should be applied.

- 3.7.1 The parameters are derived from the rand values of certain elements of the individual public entity's audited annual financial statements, as follows:

Element:	% range to be applied against R value
Total Assets	1% - 2%
Total Revenue	0,5% - 1%
Profit after tax	2% - 5%

The finalised rand amount to be applied for purposes of determining the significance threshold for each public entity will require sound judgment:

- The rand value of the above elements will differ from one public entity to the next;
- The most appropriate % chosen within the range is also entity-specific;
- The rand amounts calculated per element may require averaging in the interests of prudence;
- Qualitative factors, for example, where the transaction is likely to result in large-scale retrenchments should also be taken into account.

- 3.7.2 The latest available audited financial statements should be used to calculate the above.
- 3.7.3 The elements as well as % range selected should be consistent from one year to the next.
- 3.7.4 The finalised rand amount should be reviewed at least annually.

Mercy Magadze

LF 15

From: Avril Halstead
Sent: 20 May 2016 09:23 AM
To: Mercy Magadze
Subject: FW: Denel's PFMA application: Denel Asia
Importance: High

From: Lungisa Fuzile
Sent: 11 May 2016 06:42 PM
To: odwam@denel.co.za
Cc: Avril Halstead; Anthony Julies; Ismail Momoniat
Subject: Denel's PFMA application: Denel Asia
Importance: High

Dear Odwa,

It is just about two weeks since our meeting. As I had incited at the meeting, I believe we have the ability to resolve most challenges including the one relating to Denel's application. In this regard, it is important to keep the channels of communication between our institutions open. Notwithstanding media reports to the contrary, National Treasury would still like to work with Denel to resolve this matter in a way that protects the reputation of both institutions and government as a whole.

Following on from the meetings of 15 and 19 April 2016 between National Treasury and Denel, Denel was requested to provide additional information with respect to the Section 51(1)(g) and Section 54 applications. Further information was provided to Denel on the additional information requirements in the letter dated 26 April 2016.

As indicated in the meetings, National Treasury is still committed to fast-tracking consideration of the application. Indeed, most of the information requested is standard in relation to applications of this kind. It is intended to enable the Treasury to evaluate the likely financial impact of the proposal. In addition to making sure that the proposed deal/structure is in full compliance with all relevant statutes and regulation, such an evaluation is even more important in the case of Denel given the guarantees government has extended to the company to enable it to maintain its going concern status.

It was our understanding that there was urgency on Denel's side to resolve this matter quickly. Moreover, given the media attention that this transaction is continuing to receive, there is a need to swiftly conclude on this matter.

Without the additional information being provided, the National Treasury will not be in a position to comprehensively assess all aspects of the application before reaching a decision. After checking with my colleagues on the progress since our last meeting I was somewhat perturbed to learn that we are not very far from where we

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were the last time we met. This left me very concerned. In the spirit of cooperation, I am following up to find out when we can anticipate receiving the information. Are there perhaps some unanticipated obstacles that have been encountered? If such exist please advise me so that I can assist with resolving them.

Yours

Lungisa Fuzile

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MINISTER: FINANCE
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Ref. M4/1/4 (2335/15)

Mr LD Mantsha
Chairman of Denel
P O Box 8322
CENTURION
0046

Dear Mr Mantsha

**FORMAL REQUEST FOR INFORMATION IN TERMS OF SECTION 54(1) OF THE
PUBLIC FINANCE MANAGEMENT ACT WITH RESPECT TO THE FORMAL
APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC
FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL
ASIA**

I refer to your correspondence dated 10 December 2015 regarding the above mentioned matter.

Notwithstanding media reports to the contrary, government would like to work with Denel to resolve this matter in a way that protects the reputation of both the institution and government as a whole. This is especially important at a time when the country is under such close scrutiny, inter alia by rating agencies. A downgrade in the sovereign credit rating would have negative repercussions for government's capacity to deliver on its objectives to promote growth, development and job creation.

I am informed that two meetings have taken place on 15 and 19 April 2016 between the Denel executives and the National Treasury officials in an effort to resolve issues pertaining to the application. At these meetings, Denel confirmed that Denel Asia was established on 29 January 2016. Denel explained its position stating that it has fully complied with all legislative requirements and that the transaction is valid. Denel indicated that it had assumed that approval had been granted with respect to the application in terms of Section 54(2) of the Public Finance Management Act (PFMA) following the expiry of the 30 day period, as provided for in Section 54(3) of the PFMA. With respect to the Section 51(1)(g) application, Denel indicated that the 30 day period specified under Section 54 had been taken as guide of the reasonable time to be afforded to the National Treasury in reaching its decision on the application in terms of Section 51.

However, the National Treasury officials advised the executives that they do not concur with Denel's interpretation of the relevant sections of the PFMA and hold the view that there was not compliance with its provisions.

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The application in terms of section 51(1)(g) and Section 54(2) of the PFMA is under consideration and no approvals have been granted.

The conditions attached in terms of Section 70(1) of the PFMA to the R1.85 billion guarantee that has been issued to Denel included a requirement that "Any transactions undertaken in terms of Section 54 of the PFMA are subject to approval of the Minister [of Finance] as well as the Minister of Public Enterprises". I have been advised that the conditions create a distinct legal obligation on Denel to obtain both Ministers' approval prior to entering into the types of transactions envisaged in Section 54(2) of the PFMA. Moreover, the deeming provision contained in Section 54(3) of the PFMA is not imported.

In terms of Section 51(1)(g) of the PFMA, the period that constitutes a reasonable time depends on the circumstances of each case, which in this case included, amongst others, the following:

- On 10 December 2015, a new Minister was appointed;
- By 13 December 2015, that Minister was replaced by another;
- As a result thereof, the markets were affected and the Minister and the National Treasury had to concentrate their efforts on restoring market confidence;
- The National Treasury closed during the Christmas and New Year period and its staff were on vacation; and
- January and February are the busiest months for the Minister and the National Treasury because of the budget preparations.

In light of the above, a reasonable period could not be assumed to be the 30-day period envisaged in Section 54 of the PFMA. Moreover, there is no assumption of deemed approval incorporated into Section 51 as is provided for in Section 54: a decision from the National Treasury is required prior to the formal establishment of a company. In any event, in the spirit of cooperating in mutual trust and good faith, Denel should have contacted the National Treasury to ascertain the status of its application rather than assume that approval was granted.

The National Treasury officials informed Denel that they would proceed with consideration of the application and that in the meanwhile, all operations of Denel Asia should be ceased pending the decision. Denel was requested to submit additional information which was specified in a letter dated 18 April 2016. On 26 April 2016, the National Treasury responded to Denel's request for further clarity. As no response had been received from Denel by 11 May 2016, the Director-General of the National Treasury wrote to the Denel Chief Financial Officer enquiring about the delay and offering his assistance in resolving any unanticipated obstacles. Despite these several requests, Denel has failed to provide the information requested.

The information request is standard in relation to applications of this nature and is aimed at enabling the National Treasury to comprehensively assess the application, including evaluating the financial impact of the proposal, assessing whether any risks might arise from the transaction and that appropriate mitigations are in place, and ensuring that there is full compliance with all relevant statutes and regulations. Such an evaluation is especially important in the case of Denel given the guarantees which government has extended to the company to enable maintain ensure of its going concern status. Several rating agencies

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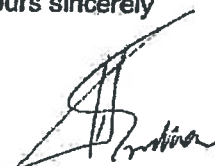
have highlighted government's contingent liability exposure to state owned companies as a risk for the sovereign credit rating.

I understand that the Denel executives underlined the importance of the Indian market for Denel's growth strategy and that there was urgency to re-enter the market in time to position the company for upcoming defense contracts. Moreover, given the negative media attention that this transaction is continuing to receive, there is a need to swiftly conclude this matter. The National Treasury is committed to fast-tracking consideration of the application but requires the additional information from Denel to complete a comprehensive assessment.

In view of the urgency of this matter and taking into account the time that has already elapsed, the National Treasury hereby formally requires, in terms of Section 54(1) of the PFMA, that the Board of Denel submits all the information that has been requested by no later than 31 May 2016. In the event that the Board fails to submit the information, the Board as the accounting authority of Denel, will be in breach of its duties under the PFMA and must report its inability together with its reasons for failing to comply by no later than 28 June 2016.

I trust that you will find the above in order.

Yours sincerely



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 10-06-2016

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DENEL GROUP

Tel: +27 12 671 2758
 Fax: +27 12 671 2844
 Email: ZwelakheN@denel.co.za
 Ref: Ltr/NT/28Jun16

28 June 2016

Mr Lungisa Fuzile
 Director General: NT
 Department of Finance
 Private Bag X115
 PRETORIA
 0001

Dear Mr Fuzile,

DENEL ASIA – INFORMATION REQUESTED BY NATIONAL TREASURY

Your letter dated 26 April 2016 has reference. We hereby request an extension to respond to the matters as raised in your letter to 4 July 2016. This will allow us to provide a more comprehensive response.

Your favourable response will be highly appreciated.

Yours faithfully


 1.2. Zwelakhe Ntshope
 ACTING GROUP CHIEF EXECUTIVE OFFICER

cc Mr Anthony Julles – DDG: Asset & Liability Management – NT

Denel SOC Ltd, Reg No 1982/00137/30, Nelimagius Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Mandind, Mr Z Mhlonjo¹, Ms R Mokoena, Mr N J Motseld, Mr T J Msomi, Lt Gen T M Nkabinde (rtd),
 Ms K P S Ntshavheni,
¹Executive Director
 Group Company Secretary: Ms E M Africa

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**national treasury**

Department
National Treasury
REPUBLIC OF SOUTH AFRICA

Mr Z Ntshepe
Acting Group Chief Executive Officer
Denel Group
PO Box 8322
Centurion
0046

Fax: 012 671 2944

Dear Mr Ntshepe

FORMAL REQUEST FOR INFORMATION IN TERMS OF SECTION 54(1) OF THE PUBLIC FINANCE MANAGEMENT ACT WITH RESPECT TO THE FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 - PROPOSED ESTABLISHMENT OF DENEL ASIA

Your letter of 28 June 2016 on the above mentioned matter has reference.

In the letter of 10 June 2016, the Minister of Finance had required, in terms of Section 54(1) of the Public Finance Management Act (PFMA), that Denel submit all the information that had been requested, failing which the Board would be in breach of its fiduciary duties.

Your request for an extension until 4 July 2016 to submit the required information, that had previously been requested by National Treasury, is approved.

I trust that you will find the above in order.

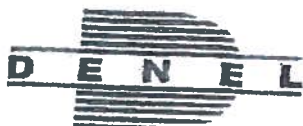
Yours sincerely

Acting
LUNGISA FUZILE
DIRECTOR-GENERAL
DATE: 27/6/2016

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DENEL GROUP

Tel: +27 12 671 2700
 Fax: +27 12 671 2751
 Email: ZwelakheN@denel.co.za
 Ref: Ltr/NT/Denel/VRLaserAsia/

14 July 2016

Mr Lungisa Fuzile
 Director-General
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Mr Fuzile,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

Your letters dated 18th and 26th April 2016 have reference.

We would like to draw your attention to the discussions previously held with you during the two meetings held with you and your team as well as all written communication to yours and the minister's office from both myself and our board chairman, wherein we made the fact that the establishment of DenelAsia was arrived at after duly following the relevant prescripts of the PFMA act.

Both your letters referred to above are requesting further information, purporting that such information will assist your office in evaluating Denel's application in terms of S51(g) and 54 of the PFMA towards a decision on whether to approve or not, the establishment of Denel Asia joint venture. I would like to put it on record that in Denel's view the approval process has been concluded as allowed for by the PFMA and thus provision of any information on the establishment of Denel Asia is purely for information purposes and not for any approval process.

Appendix A attached hereto provides additional information as requested in your letters.

Yours faithfully

Zwelakhe Ntshepe
 GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
 Mr Odwa Mhlwana - Acting Group Chief Financial Officer: Denel

Denel SOC Ltd, Reg No 1992/001337/30, Nellmapius Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsa (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Ms P M Mahlangu,
 Ms N Mandindi, Mr Z Mhlontlo¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rd), Ms K P S Ntshavheni

¹Executive Director
 Group Company Secretary: Ms EM Africa

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APPENDIX A

	Response
Question (a)	The re-entry into the Indian market is not based on "verbal" notification but on a "note verbale" See Appendix B. The fact that Denel holds 51% equity on the joint venture allows for Denel governance policies which had been updated since our previous experiences in India, to be applicable to ensure that the associated risks are actively managed.
Question (b)	As a norm with establishment of international business partnerships, the process of identifying a suitable partner is not a procurement process. Example to this is the Joint venture we have in UAE, Tawazun was the only potential partner considered. In this particular joint venture, a few potential industrial partners were considered and due to the late start we had in the race, these players had already partnered with global Original Equipment Manufacturers in competition with Denel. These potential partners considered are Bharat Forge and Larsen and Turbo discussed in section 5.4 of the PFMA application submitted.
Question (c)	Section 5.5, 5.6, 6.1 and 6.2 of the PFMA application provides a complete answer to this question.
Question (d)	Denel Asia is a start-up company and therefore the shareholding structure is not based on any valuation but the to enforce Denel's governance processes and manage the risks identified during the due diligence process, it was non-negotiable that Denel holds at least 51% equity in the venture. The value add by VR Asia is the business development funding of the R100m, Industrial networks in the region as well as the links to the steel cutting, bending and fabrication capability.
Question (e)	<ul style="list-style-type: none"> Paragraph 16.2 of the "Subscription and Shareholders Agreement" is the written confirmation that there will be no recourse to Denel from VR Asia in respect of the loans to the Joint venture in the event of the JV being unsuccessful. Post 5 years, if the business is successful in securing contracts, will be funded through commercial banking lines. Amongst the Denel board's conditions in approving the venture was the fact that the venture cannot be funded out of Denel and engagements should be held with VR to fund the business even beyond the agreed R100m and beyond the 5 year period. Should the business be unsuccessful in securing contracts, the parties can agree to wind down the business.
Question (f)	Yes, the JV will have exclusive rights to market in the region
Question (g)	Refer to Appendix C V – The dividend policy is contained in paragraph 15 of the "Subscription and Shareholders Agreement"
Question (h)	All prominent defence players particularly in India are either in direct competition or already partnered with international OEM's and thus already positioned to compete and thus not available to partner with Denel. VR Asia owners have very strong non-defence industrial links into India which can be leveraged to further partner with adjacent industries for in country transfer of technology and manufacturing. VR's networks are tabulated in section 6.2 of the "PFMA application"
Question (i)	Worst case scenario being that the 2 countries do not reach consensus on the DTA, the JV partners would individually benefit through subcontracts from the selling JV to supply either complete products, semi or completely knocked down kits on which full margins would be made and accept that to remain competitive, the JV would remain without necessarily making profit on profits (from subcontracting)

	Response
Question (j)	The establishment of a JV of this nature follows a precedence set a number of times before thus with well-established models behind it. No product whose IP belongs to a third party would be exploited without the consent of such third party and certainly compensation for such exploitation of IP. All imminent opportunities are for products whose IP is 100% owned by Denel.
Question (k)	Alternative option is the clause already agreed to that Denel's shareholder representing the Government of RSA directs Denel to cease being a shareholder on reasons of national security or otherwise
Question (l)	Denel has assumed the effective control of the venture, allowing application of all Denel policies related operations and reputation. The governance framework applicable to Denel will also be applicable to the JV including the internal audit assurance function.
Question (m)	<p>The impact of this JV to the current corporate plan will be all positive.</p> <p>As previously stated the JV will not be funded from Denel thus poised to instead provide the ever needed cash resources to Denel in two approaches:</p> <ol style="list-style-type: none"> 1. Denel subcontracted to supply either complete products, SKD's or CKD's. 2. Profit share and dividends from the JV. <p>The projected cash flows and profitability are reflected in section 12.4 and 12.6 of the PFMA application</p>

APPENDIX B

No. 311/2014

The High Commission of India presents its compliments to the Department of International Relations and Cooperation of the Republic of South Africa and has the honour to convey that in the matter relating to request for mutual legal assistance in the matter of Denel (Pty) Ltd., the concerned authorities in India have treated the matter as closed. Accordingly, the request for assistance in this case stands withdrawn. High Commission of India wishes to convey its deep appreciation for the cooperation extended by the South African authorities.

The High Commission of India avails itself of this opportunity to renew to the Department of International Relations and Cooperation of the Republic of South Africa the assurances of its highest consideration.

Pretoria, 20



Department of International Relations and Cooperation
Government of the Republic of South Africa
Pretoria
[Attn: Mr. J. Young, Acting Director (South Asia)]

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APPENDIX C

NT INFORMATION REQUEST DENEL ASIA

ITEM 6(G) (I) AND (II) FINANCIAL PROJECTIONS, ASSUMPTIONS, CASH AND OPERATING COSTS

1. ASSUMPTIONS

- Sales are based on a probability matrix of the latest marketing intelligence (Annexure A). The opportunities listed come from market intelligence and studies done over the past 20 years during contract negotiations with various potential clients. The \$9,2bn opportunities has been tested and evaluated and \$5,9bn was regarded as a realistic number.
- Gross profit is projected at a level that is market competitive and realistic, based on competitor analyses and pricing proposals discussed with potential clients.
- Reasonable lead times assumed from order intake to sales dates based on past experience. This is required for the development of the large systems. The development cycle to completion is well known per product family within the group.
- Denel contribute the product and product knowledge. Denel has invested more than R500m on development and demonstrations over the past 20 years.
- The major value add on the contracts will be in the client's country to address offsets. The manufacturing of products will be done in the country where the contract is finalised.
- Joint Venture on a 51/49 shareholding (Denel 51%).
- The R100m investment from the Denel partner will fund the office operational cost for the first few years until sales pick up.
- The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.

2. FINANCIAL PROJECTIONS

Rm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	309	617	874	1,203	1,405	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost	11	14	19	22	27	35	35	35	35
Labour	6	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	5
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	46	54	55	127	184	266	318	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	655	902	1,054	1,125

3. OPERATIONAL COSTS

This cost is based on foreign offices cost structures that are currently managed by Denel.

The annual operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.

The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.

The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively e.g. IT costs.

The additional operating costs would mainly be used to do big system demonstrations to the

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potential clients. Client country demonstrations typically cost between R10m to R20m. This is based on previous system demonstrations done in foreign countries.

4. CASH FLOW IMPACT

The first year cash shortfall would have to be financed from a one year short term loan at reasonable international rates, after this the business should be self-funded.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	463	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

ITEM 6(G) (III) NPV NET OF CAPITAL REQUIREMENTS

The joint venture company will facilitate the legitimate securing of contracts in the Asia-Pacific region. Denel Asia Management will adopt a risk sharing model which will entail Denel Asia entering into various joint venture companies in those primary and secondary target markets where the opportunities exists and subject to the local legislation in the different regions. In order to access opportunities in its primary target market, Denel Asia will partner with local industry partners initially contemplated in India but also in other primary and secondary target markets as required. It is therefore not envisaged that production and the resulting capital investment cost will be incurred in the Joint Venture. The expected cashflows net of investment is therefore projected as above.

ITEM 6(G) (IV) ACCOUNTING POLICIES AND INTELLECTUAL PROPERTY

The joint venture will be 51% owned by Denel and therefore subject to PFMA and Denel accounting policies.

No licence agreement has been finalised between the parties. Denel intends to be able to licence directly with the client where Denel Asia subcontracts Denel for transfer of technology. Alternatively Denel will enter into an agreement with Denel Asia that it will extend a licence agreement to Denel Asia to contract with the client directly if the client requires this. This is subject to client requirements and will be on a case by case basis. Denel will maintain full IP rights and will either licence to the client directly or to Denel Asia. There is to be no alienation of the IP to either Denel Asia or to the client.

5. In the PFMA application to DPE and Treasury, the following was indicated re INTELLECTUAL PROPERTY (IP) AND LICENCING:

"Technology transfer and protection of Denel's IP:

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture... This is consistent with the Tawazun Dynamics joint venture model...
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company."

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DENEL GROUP

Date: 24 November 2016

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 Fax: +27 12 671 2751
zwelakhen@denel.co.za

Mr Lungisa Fuzile
 Director-General
 National Treasury
 Private Bag X115
 Pretoria
 0001

Dear Mr Fuzile

DENEL ASIA JOINT VENTURE

The process relating to the establishment of Denel Asia has been a subject of lengthy deliberations which has now been agreed to be resolved between National Treasury and DPE.

Following the request from both DPE and NT that Denel must not trade through this joint venture until such time as consensus has been reached by the two departments, Denel has complied fully.

Denel Asia will remain dormant until such time the two Ministers have reached consensus and Denel received an instruction to proceed from DPE.

I trust that you will find this in order. Should you require any further information and/or clarification, please do not hesitate to contact me.

Yours faithfully

Mr Zwelakhe Ntshope
 Group CEO (Acting)
 Denel SOC Ltd

Denel SOC Ltd, Reg No 1992/001337/30, Nelmsplus Drive, Irene
 P O Box 8322, Centurion, 0048, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Ms P M Mahlangu,
 Ms R Mokoena, Mr N J Motsaki, Mr T J Msomi, Lt Gen T M Nkabinde (ret), Ms K P S Ntshavheni

¹Executive Director

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MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 28, Cape Town, 8000, Tel: +27 21 464 8100, Fax: +27 21 461 2834
Website: www.treasury.gov.za, e-mail: minreg@treasury.gov.za

Ref. M3/4/2/2 (2945/12)

Mr MKN Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Dear Malusi

RE: DENEL'S REQUEST TO RENEW ITS R1.85 BILLION IN GUARANTEES FOR A 5 YEAR TERM

I refer to your letter dated 20 August 2012 regarding the above mentioned matter which was received by my office on the 17th September 2012.

I note Denel's R1.85 billion in guaranteed debt comprising of three separate guarantees (R420 million, R880 million and R550 million) is maturing on 28 September 2012 and that the entity is not in a financial position to settle this debt. However, I am concerned that after three consecutive years of renewing these guarantees there is still only partial compliance to the conditions. I am also disappointed in the delay in submitting this request given that several months ago, it was evident that the guarantee would need to be extended when it expired on 28 September 2012.

Denel's pursuit of export initiatives to augment declining local spend is satisfying; however rigorous oversight is required to ensure that these are executed timeously to deliver on the entity's turnaround plan. Furthermore, I am still concerned that there remains no plan for the possible unbundling of the Denel Aerostructures business.

Given that Denel has insufficient liquidity to settle the R1.85 billion guaranteed debt which would result in the entity defaulting under its commercial paper programme, Government support is required. I am therefore willing to concur to consolidate the three separate guarantees into one guarantee of R1.85 billion for a 5 year period ending on 30 September 2017. This strategy will create certainty for both Denel and investors by mitigating against default and refinance risk by taking advantage and locking into the current lower interest rates for a longer period.

Moreover, my support for the renewal of Denel's R1.850 billion guarantees is subject to the following conditions:

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1. National Treasury (NT) to approve the terms of the financing raised against the guarantee before any agreements are concluded;
2. Any transactions undertaken in terms of Section 54 of the Public Finance Management Act (PFMA) to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
3. Denel to indicate its strategy for returning the Group to a business that is able to break even without recapitalisation and demonstrate the method of gradually reducing its reliance on government support;
4. Denel to forward monthly progress reports on the turnaround strategy, deliverables in the implementation of the strategy to the Ministry of Finance, DPE, Department of Defence and Military Veterans (DoDaMV) and the Department of Trade Industry (DTI);
5. A monitoring committee chaired by DPE and comprising of NT, DoDaMV and DTI to be established to monitor progress on the turnaround of Denel and implementation of the strategy;
6. DPE to provide a plan which includes the option of ring fencing/disposing of the Denel Aerostructures as it is the only consistently loss making entity within the Group; and
7. Denel to provide its historical conversion rate in terms of its order pipeline from indicative into firm secure orders as well as the strategies it intends to implement to ensure that the corporate plan targets are met and the mitigation strategies should the desired conversion rates not be achieved.

I trust that you will find the above to be in order.

Kind regards

P. J. Gordhan

PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 26-04-2012

SE U.F.

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LEONA MLAULI

do hereby make an oath and state that:

1. I am an Analyst: Transport and Defence in the Asset and Liability Management Division in the Department of National Treasury, the second respondent herein ("National Treasury"). I am duly authorised to depose to this affidavit.

J.S.M M

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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.


3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.



 DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Pretoria* on this the *10* day of *May*. 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.





 COMMISSIONER OF OATHS
Samuel Mphahlele
28 Uthmaniyah Square
Pretoria
011 551 5121

LSM

SE



LF24

Stephen Ralekwa

From: Thandeka Ncala
Sent: 05 May 2017 03:08 PM
To: Stephen Ralekwa
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: Leona Dukada
Sent: 05 May 2017 03:06 PM
To: Thandeka Ncala
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: Leona Dukada
Sent: 10 April 2017 04:08 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 20 March 2012 11:18 AM
To: Ravesh Rajlal
Cc: Faaiza Haffeejee; Leona Mlauli
Subject: RE: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Hi Ravesh

We will revert to you urgently.

Regards

John

From: Ravesh Rajlal [<mailto:Ravesh.Rajlal@treasury.gov.za>]
Sent: 20 March 2012 08:23 AM
To: John Morris
Cc: Faaiza Haffeejee; Leona Mlauli
Subject: RE: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Hi John,

Your urgent response in finalising this issue would be appreciated.

Kind regards,

Ravesh

From: Leona Mlauli
Sent: Monday, March 19, 2012 9:48 AM

To: JohnM@denel.co.za

Cc: Ravesh Rajlal; Faalza Haffeejee

Subject: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Good day Sir,

I trust that you are well this morning.

We would like to find out from you, with regards to the Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO, Denel does not indicate in what way the call or put option would be problematic as per your response from the consolidated issues document, won't you kindly help and expand what you meant by put and call options being problematic under the UAE law?

Thanks,

Regards

Leona Misokuhle Mlauli

Chief Directorate: Sector Oversight

Asset and Liability Management

Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

Pursuit of excellence in life will always, always yield to best achievements!!! – Author: Myself



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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LF 25

Stephen Ralekwa

From: Thandeka Ncala
Sent: 05 May 2017 03:08 PM
To: Stephen Ralekwa
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: Leona Dukada
Sent: 05 May 2017 03:08 PM
To: Thandeka Ncala
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: Leona Dukada
Sent: 10 April 2017 04:09 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 08 June 2012 04:51 PM
To: Leona Mlauli; Weekend Bangane
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

Hi Leona

The answers to the questions below are as follows:

1. Pamodzi entered the business at the end of 2011 and has paid the R15m for the Preference Shares.
2. Should Denel have failed to obtain PFMA approval for the subscription of Preference Shares and the exercise of the Call Option by 30 April 2012, Pamodzi (SPV) would have had the right to repay Denel's R12,75m pre-payment through the subscription of LMT Preference Shares and to take over Denel's 51% Call Option. If SPV did not acquire Denel's interests as aforesaid, then Denel would have retained its Call Option until the initial expiry date which is in June 2013. Bear in mind that, despite this provision in the transaction agreements, it was essential for Denel to enter the business to gain control of LMT as a strategic supplier.
3. The current overdraft facility with Standard Bank is at R3,8m. Standard Bank does not want to increase the facility and intended to terminate the facility at the end of May 2012 - we had to ask them to extend the facility for a short while. The shareholders resolved on 31 May 2012 to extend a R15m loan to LMT through Denel's facilities with FNB. Pamodzi Investment Holdings issued a corporate guarantee to Denel to underwrite 29% of the facility (pro-rata to shareholding) and LMT existing shareholders (Mr Nel et al) issued indemnities to Denel for 20% (pro-rata to shareholding) of the facility.
4. The IDC has also finalised its due diligence on the R20m working capital facility for LMT and we are expect a decision from the IDC within the next few weeks

Please contact us should you require any further information.

Regards

LF

SE

John

From: Weekend Bangane [<mailto:Weekend.Bangane@dpe.gov.za>]
Sent: 07 June 2012 11:29 AM
To: John Morris
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

Dear John

See the questions from Treasury.

Your assistance is highly sought.

Kind regards,

Weekend Bangane

ADDG: Denel & Alexkor, MANUFACTURING ENTERPRISES

+27 (0)83 327 4425 +27 (0)12 431 1127 +27 (0)12 342 7850 Weekend.Bangane@dpe.gov.za
 1090 Arcadia Street InfoTech Building Hatfield Pretoria Switchboard: +27 12 431 1000



public enterprises
 Department
 Public Enterprises
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From: Leona Mlauli [<mailto:Leona.Mlauli@treasury.gov.za>]
Sent: 07 June 2012 11:05 AM
To: Weekend Bangane
Cc: Mohlala Tabudi; Charmaine Yssel
Subject: Denel's Section 54(2)(c) PFMA application

Dear Sir,

I trust that you are well.

I am currently finalizing a Memo to the Minister on the LMT acquisition, I just would like to quickly ask you to help me understand the following:

- Has Pamodzi finalized the investment yet?
- What happens if Denel doesn't exercise the call option?
- The condition number 6 from the approval letter that was sent by DPE to Denel, does it talk to the LMT Products debt to Standard Bank for a bank facility of R9600,000 that was signed on the 4th June? If yes how has the merger addressed this?

Thank you Sir,

Leona Misokuhle Mlauli
 Chief Directorate: Sector Oversight
 Asset and Liability Management

Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

Pursuit of excellence in life will always, always yield to best achievements!!! – Author: Myself



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Stephen Ralekwa

Subject:

FW: URGENT

From: Leona Dukada
Sent: 10 April 2017 04:09 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: URGENT

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 20 June 2012 03:06 PM
To: Leona Mlauli
Subject: RE: URGENT

Hi Leona, I have asked DLS to answer this. As explained on the phone, the 3 year period is not correct and was not included in the PFMA application.

Always happy to assist.

Regards

John

From: Leona Mlauli [<mailto:Leona.Mlauli@treasury.gov.za>]
Sent: 20 June 2012 02:40 PM
To: John Morris
Subject: URGENT
Importance: High

Good day Sir,

I trust that you are this afternoon.

Won't you kindly please confirm the statement below, I doubt its correct?? It can't be R280 million over three years?

1. Commercially, the manufacturer of the Hoefyster platforms by a DLS/LMT merger has been agreed in principle with Patria. The acquisition of LMT will generate additional business of approximately R1.5 billion with potential profits of R262 million under the Hoefyster production contract over a period of three years (2013 – 2015). Combined with a savings of R18 million on the cost of the turret structures, the result is an amount of R280 million profits on Hoefyster.

Thanks,

Leona Misokuhle Mlauli
 Chief Directorate: Sector Oversight
 Asset and Liability Management
 Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

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Pursuit of excellence in life will always, always yield to best achievements!!! – Author: Myself

ANNEXURE 16

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Statement by President Jacob Zuma on the appointment of new Finance Minister

9 December 2015

I would like to announce changes to the Finance portfolio in Cabinet.

I have decided to remove Mr Nhlanhla Nene as Minister of Finance, ahead of his deployment to another strategic position.

Mr Nene has done well since his appointment as Minister of Finance during a difficult economic climate.

Mr Nene enjoys a lot of respect in the sector locally and abroad, having also served as a Deputy Minister of Finance previously.

I have decided to appoint a Member of Parliament, Mr David Van Rooyen, as the new Minister of Finance. Mr Van Rooyen serves as a Whip of the Standing Committee on Finance and as Whip of the Economic Transformation Cluster.

He is a former Executive Mayor of Merafong Municipality and a former North West provincial chairperson of the South African Local Government Association.

I wish Mr Van Rooyen all the best in this new appointment.

The new deployment of Mr Nene will be announced in due course.

Enquiries: Bongani Majola on 082 339 1993 or bonganim@presidency.gov.za

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ANNEXURE 17

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Presidency rejects reshuffle rumours

11 December 2015

The Presidency rejects the ongoing reports in some media houses about an alleged pending cabinet reshuffle.

The reports also mention certain ministers.

Misguided speculation of this nature is mischievous and misleading. We urge that Cabinet be afforded the necessary respect and space to work.

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Cabinet would not have known about reshuffle

11 December 2015

The Presidency has noted media reports stating that Cabinet was not informed about the appointment of a new Minister of Finance.

There is no obligation on the part the President of the Republic to inform or consult other members of Cabinet or the National Executive prior to making any new appointments or changes. The only people who are informed are those affected by the changes.

The President exercises his prerogative in making the appointments and then issues a public announcement.

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Media statement by President Jacob Zuma: South Africa to maintain prudent fiscal position

11 December 2015

On Wednesday, 9 December, I appointed Mr David Douglas van Rooyen as the new Minister of Finance.

His appointment as Minister of Finance does not signal a change in the government's fiscal stance.

Government will not abandon the fiscal path that we have chosen in the last few years. Maintaining a prudent fiscal position remains one of government's top priorities.

The new Minister will strengthen the path and continue to support all efforts aimed at improving the lives of ordinary South Africans.

Minister van Rooyen is supported by Deputy Minister Mcebisi Jonas who carries many years of experience in the economic cluster.

They are supported by the hard-working and capable National Treasury team, led by the Director-General, Mr Lungisa Fuzile.

I would like to thank the former Minister of Finance, Mr Nhlanhla Nene for his sterling contribution to the National Executive and to taking forward the goals of building a better life for all our people.

The urgency of the changes in the leadership of the National Treasury was occasioned by the need to send nominations to Shanghai, of the head of the African Regional Centre of the New

Development Bank/BRICS Bank, to be based in Johannesburg. Mr Nene is our candidate for this position.

We are fully backing his candidature, knowing full well that he will excel and make the nation proud in his next assignment.

Government remains committed to adhering to the set expenditure ceiling while maintaining a stable trajectory of our debt portfolio, as set out in the February 2015 Budget.

Our commitment to diversifying our economy, reduce the cost of doing business and utilizing resources much more efficiently to enable a more inclusive economic growth remains important.

We will continue to improve the budget process in order to maintain our international reputation as a global leader in budget transparency.

South Africa continually seeks to enhance the expansive information it provides to its citizens on how public resources are generated and used with the aim of improving budget participation.

To support the economy, government is committed to sustaining public sector capital investment, by attracting private sector capital into public infrastructure projects.

Government also remains committed to provide support to State Owned Companies in a fiscally sustainable manner, including South African Airways.

We assure the nation that nothing will be done, in supporting state owned entities, that runs contrary to the fiscal prudence that our country is renowned for.

No state-owned entity will dictate to government how it should be assisted.

The implementation of the National Development Plan remains the cornerstone of our economy. We will continue our actions in alleviating the most binding constraints to growth and we have set out a series of urgent economic reforms to build a more competitive economy.

These, among others include:

- Continued investment in economic infrastructure
- Reforming the governance of the State Owned Companies,
- Rationalizing state holding and encouraging private-sector participation.
- Address our energy challenges.
- Encouraging affordable, reliable and accessible broadband access.
- Promoting black ownership of productive industrial assets.
- Reviewing business incentive programmes in all economic sectors to ensure that resources support growth.

The economic cluster will meet on Tuesday, 15 December as announced by Minister Jeff Radebe to prepare for a special cabinet meeting on the economy, which will take place on Friday 18 December.

- This will enable us to focus specifically and exclusively on the current economic climate and on the country's response.

I thank you.

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Presidency corrects malicious rumours about SAA, National Treasury and Ministerial deployments

12 December 2015

The Presidency wishes to correct malicious rumours that have been circulating and which have been published by some media houses in relation to Ministerial deployments and the South African Airways Board chairperson Ms Dudu Myeni.

Rumour: Minister Gigaba did not finish his term as Minister of Public Enterprises at the request of the SAA Board Chair

A rumour has been circulated, and has also been published by some media products, that Mr Malusi Gigaba, now Minister of Home Affairs, was "removed" from his position a Minister of Public Enterprises due to an apparent fallout with Ms Myeni, and at her request to the President.

This is not true. Mr Gigaba served his full term as Minister of Public Enterprises until the elections in May 2014. All terms of office automatically lapse after elections. A newly-elected President appoints a brand new Cabinet immediately after being sworn in. The new President is under no obligation to re-appoint persons who had served before and there is also no requirement that he should re-appoint people to portfolios they had held before, should he or she decide to include them in his or her new Cabinet. In line with this principle, Mr Gigaba was appointed as Minister of Home Affairs in the fifth administration.

Rumour: SAA was transferred to the National Treasury because the SAA Board Chair demanded that it be so

Another rumour that has been doing the rounds and has been published as well by some media houses has it that the SAA was shifted from the Department of Public Enterprises to the National

Treasury because of a clash between Ms Myeni and the Minister of Public Enterprises, Ms Lynne Brown and that this was at the request or demand by Ms Myeni. This is grossly untrue. The SAA was moved to the National Treasury so that it can be intensively supported to get out of difficulties by the NT. That was the sole motivation.

As said by the President on 11 December, there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them. The President and government will be guided by the National Treasury on the response to the SAA challenges. Once the National Treasury advises that the SAA is on a better footing, it will be returned to the Department of Public Enterprises where it belongs.

Rumour: Mr Nene was redeployed because of the Airbus deal and Ms Myeni's displeasure

Media reports that Mr Nhlanhla Nene is being redeployed because the SAA Board chairperson was unhappy with the National Treasury directives to SAA with regards to the Airbus deal or any other matter is a malicious fabrication. Mr Nene as has been explained, is South Africa's candidate to head up the African Regional Centre of the New Development Bank/BRICS Bank.

The SAA receives directives from the Minister of Finance and works under the guidance of that Ministry. No member of the SAA Board is above the Minister of Finance or can operate outside of the mandate and direction provided by the Minister of Finance and the National Treasury.

Rumour: The President and the SAA Board Chair have a romantic relationship and have a son together

Ms Myeni is the chairperson of the Jacob Zuma Foundation. Her relationship with the President is purely professional, and is based on the running of the Foundation.

Rumours about a romance and a child are baseless and are designed to cast aspersions on the President.

Enquiries: Bongani Majola 082 339 1993 or bonganim@presidency.gov.za

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ANNEXURE 18

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Announcement of new Ministers of Finance and COGTA

13 December 2015

On the 9th of December 2015, I announced the appointment of a new Minister of Finance, Mr David van Rooyen.

I have received many representations to reconsider my decision.

As a democratic government, we emphasise the importance of listening to the people and to respond to their views.

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In this regard, I have, after serious consideration and reflection, taken the following decision;

FINANCE

I have appointed Mr Pravin Gordhan, the current Minister of Cooperative Governance and Traditional Affairs as the new Minister of Finance.

Minister Gordhan will return to a portfolio that he had held proficiently during the fourth administration.

He will lead government again in the following;

- Ensuring an even stronger alignment between the Budget and the Medium Term Strategic Framework (MTSF) in the interest of stimulating more inclusive growth and accelerated job creation while continuing the work of ensuring that our debt is stabilised over the medium term.
- Promoting and strengthening the fiscal discipline and prudence that has characterised our management of public finances since the dawn of freedom.
- Working with the financial sector so that its stability is preserved under the broad umbrella of the Twin Peaks reform.
- Ensuring that the National Treasury is more acceptable to all sections of our society.

- Adherence to the set expenditure ceiling while maintaining a stable trajectory of our debt portfolio, as set out in the February 2015 Budget.

COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

I have also decided to appoint the current Minister of Finance, Mr David van Rooyen, as the new Minister of Cooperative Governance and Traditional Affairs.

Mr Van Rooyen, a former Executive Mayor, will also be bringing to COGTA the finance and economic sector background gained in serving in the Finance Portfolio Committee and Economic Transformation Cluster as whip in National Assembly. He has been mandated to take forward the Back to Basics programme and further improve cooperation between the three spheres of government.

I wish both Ministers all the best in their new deployments.

Enquiries: Bongani Majola 082 339 1993 or bonganim@presidency.gov.za

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ANNEXURE 19

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From: Tom Moyane <TMoyane@sars.gov.za>
Date: Tuesday 15 December 2015 at 5:17 PM
To: Pravin Gordhan <gordhanp@cogta.gov.za>
Cc: Mcebisi Jonas <mcebisi.jonas@treasury.gov.za>
Subject: Meeting with Minister of Finance Pravin Gordhan

Dear Minister,

Thanks for visiting us immediately after your appointment and for the opportunity to have a brief discussions about the institution, mandate, and leadership.

You raised the following 10 points around which you expressed what your expectations are and how the marching orders should be.

1. SARS is accountable only to the Ministry of Finance under the stewardship of the Minister of Finance
2. Minister would like a **Review of the Ministry's Governance** over SARS affairs
3. Minister indicated that he would like to review the **New Operating Model** for discussion in the New Year and instructed that no further appointment must be made.
4. That the Commissioner impose strict discipline to stop information leaks
5. That SARS should not make any comments on anything excepts on matters related to their mandate (Taxes and Customs), on non-Tax and Customs issues, SARS should consult and seek the advise of the Deputy Minister of Finance.
6. The content and tone of the letter from the SARS Advisory Board to the Minister was raised with the Commissioner
7. That SARS should endeavour to put in place a strategy to regain Public Confidence
8. Minister sternly cautioned that all SARS officials must **NOT** and **NEVER** venture into the political space (play politics) but concentrate all their energies and efforts on their core mandate (collection of all revenue due) are
9. That SARS officials must familiarise themselves with the broad economic issues.
10. Minister emphasised the cardinality and importance of Institutional Integrity.

Kind Regards

Tom Moyane

Commissioner: SARS

Tel: +27 12 422 2006

Cell: +27 60 962 3990

Fax: +27 12 422 4397

Fax2Mail: 0124529676

E-mail: Tmoyane@sars.gov.za



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SOUTH AFRICA ([HTTPS://WWW.DAILYMAVERICK.CO.ZA/SECTION/SOUTH-AFRICA/](https://www.dailymaverick.co.za/section/south-africa/))

27 Hawks' questions to Gordhan – the complete list: All about 'Covert Unit', all facts out there already, so why are Hawks targeting Gordhan?

By Marianne Thamm • 28 February 2016



 [Reactions](#)

Thick files running into thousands of pages of comprehensive documents, on the establishment and work of a special investigations unit in SARS and dating back to its inception, have been handed to three panels and inquiries tasked with scrutinising the

legality of the unit. Why then would the Hawks – who have access to all this evidence – send a list of poorly-penned questions to the Minister of Finance, just days before he was due to deliver his budget speech? This current “investigation” by the Hawks has all the makings of a “witch hunt”. By MARIANNE THAMM.

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The 27 questions which the Hawks have now claimed are merely an attempt at seeking “clarification” on an alleged covert “rogue unit” in SARS and that was established under Gordhan’s watch as commissioner, read like an amateurish fishing expedition.

Considering copious and detailed documentation available to Hawks investigators – including minutes of meetings with State Security Agency officials, various signed agreements as well as statements by key players – which were all submitted to the Khanyane and Sikhakhane panels, as well as an inquiry headed by Judge Kroon, the charges would have been drawn up by now if a criminal case was to be made.

Particularly considering this is a matter of national and international importance and involves the country’s revenue collection service and its Minister of Finance. And even more so considering an apparent “war” brewing between opposing factions within the ruling party.

Instead, the gist of the Hawks questions, apparently personally handed to Minister Gordhan by Hawks head Lieutenant General Berning Ntlemeza, appear more a diversion tactic or outright harassment rather than a real attempt at obtaining legal clarification.

While the Khanyane and Sikhakhane panels, as well as the inquiry headed by Judge Kroon, all had access to these documents, none of those implicated, including Gordhan, former Commissioner Ivan Pillay or group executive Johan van Loggerenberg were called to give evidence or were cross-examined. The veracity of the allegations into the “rogue” unit and any role in this by senior officials can only be tested in an arena where they are subject to impartial and legal cross-examination and evaluation in a court of law.

In this light then the current “investigation” by the Hawks has all the makings of a “witch hunt”.

Not a single of the Hawks' 27 questions highlights or indicate which of the country's laws, or sections of laws, may have been breached or violated in the SARS establishment of a unit to investigate serious organised crime and tax evasion in South Africa. Nor does it offer Gordhan any indication where he might have acted illegally in relation to any legislation that was applicable to his mandate.

Here is a full list of the questions, verbatim:

1. Does the Minister have any knowledge about the disbandment of the National Research Group (NRG) in 2009 when you were the SARS Commissioner leading to the establishment of the High Risk Investigation Unit or the ‘Rogue Unit’?”
2. Were there any inputs you gave for the establishment of the NRG or HRIU?
3. Who were the stakeholders who would form part of this new unit?
4. Do you still remember yourself as the then Commissioner for SARS recommending the funding model to the then Minister of Finance Trevor Manuel in Feb 2007 for “funding of an intelligence capacity within NIA in support of SARS?
5. How were members of the Unit recruited/selected. Were SARS recruitment processes followed?
6. How possible is that you recruit even before funding approval is granted for such a capacity to exist?
7. Kindly share with us or provide a copy of the Agreement between NIA and SARS.
8. What were the aims and objectives (mandate) of the new Unit and subsequent operating environments as it changed its name?
9. Who was heading the Unit and to whom it was responsible and accountable to?
10. Who were Janse van Rensburg, Johan de Wall and Johan van Loggerenberg, Ivan Pillay and Helgard Lombard at SARS and what were their positions roles and responsibilities within the Unit.
11. As the Commissioner (Accounting Officer) for SARS at the time were you briefed about all key strategic operations.?
 - 11.1 Do you know anything about operation code named “Sunday Evenings?” The bugging or installation of sophisticated surveillance equipment the NPA Offices?

11.2 Who authorised it, is this in line with SARS mandate?

11.3 What was its objective and targets?

12. Do you know or still remember HRIU mandate or what was the mandate of the unit?
13. Did the Minister of Intelligence (Ronnie Kasrils) approve the establishment and identify members of NIA to work within the HRIU? Provide evidence?
14. Were there things at SARS (when you were commissioner) that would have happened without your knowledge?
15. Did members of the HRIU appear on SARS normal employees' payroll? Please why some if not all Unit members had 2 SARS identification cards (one with fake employee details)?
16. If this Unit was operating legitimately, why were they operating from Guesthouses, hotels, restaurants and their private dwellings? Further why were they not provided with SARS laptops to store confidential information?
17. How was the funding its operations managed, which cost centre(s) were employed?
18. Who was the Head of the unit and to whom was it reporting?
19. Where there any members of the HRIU who were not having personal files at SARS? Can you tell us why, if any?
20. Who authorised the procurement of the surveillance equipment to be utilised during the Unit's operations?
21. What were Ivan Pillay's functions at SARS from the period he started working until he retired? The functions must also include the period he was re-hired after submitting and early retirement from SARS and what are his academic qualifications?
22. Do you still remember which year Ivan Pillay took early retirement?
23. Is it normal in terms of Treasury or Pension Fund Regulations for any Department to exempt its employee from early retirement penalty?
24. Why did you authorise that SARS must pay Ivan Pillay early retirement penalty to the tune of R1.2 million?
25. Kindly explain why did SARS re-employ Pillay for three years and then extended his contract by five years? In short he was offered an additional 8 year employment contract. Why?

26. We believe you are aware of the KPMG forensic investigations into the existence of Rogue Unit at SARS. Do you perhaps have a clue as to why such an investigation is conducted?
27. Did the Minister of Finance receive KPMG report? If yes, have you read it since you took office or request to be briefed about its content by the Deputy Minister or the Commissioner? Have you made any contact with Judge Kroon, the chair of the SARS advisory Board on this matter who is supposed to advise both yourself and the Commissioner?"

A controversial KPMG forensic investigation into the same matter – and during which none of those fingered were interviewed or cross-examined – has been submitted to Commissioner Tom Moyane but with the proviso that it not be used “for the resolution or disposition of any disputes or controversies thereto and is not to be disclosed, quoted or referenced, in whole or in part”.

Commissioner Moyane instigated an apparent purge of senior SARS officials shortly after his appointment by Jacob Zuma, partly on the basis of leaked and untested reports to *The Sunday Times* newspaper about the “covert” or “rogue” unit. The paper was subsequently found to be in breach of several sections of the Press Code in that its reporting had been “inaccurate, misleading and unfair” and ordered that the paper apologise to Gordhan.

In his statement of support of Gordhan last week, ANC Secretary General, Gwede Mantashe, hinted at some in the party’s thinking with regard to the apparent Hawks investigation.

“In the event that the Hawks have anything to investigate related to the Minister and SARS, it would be in the best interest of our country if they did so professionally, using the correct channel and procedures and not seek to conduct a trial through the media,” said Mantashe.

That correct channel and those procedures would be through the country’s courts. **DM**

Photo: South Africa’s Finance Minister Pravin Gordhan delivers his 2016 budget address to the parliament in Cape Town, February 24, 2016.

REUTERS/Mike Hutchings

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By Greg Nicolson

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SARS Wars, The Phantom Menace: Nhleko and Mahlobo come out to bat for the Hawks

By Marianne Thamm • 3 March 2016



 [Reactions](#)

Just one day after SARS had been sent to mop up some of the fallout from the SARS wars saga between Commissioner Tom Moyane and Minister of Finance Pravin Gordhan, the Ministers of Police and State Security were sent out on Wednesday to bat for the Hawks. The most alarming takeout from a media briefing is Nhleko's claim that the Hawks don't need a particular law or charge to question suspects, this in

spite of the existence of a case number. As the two ministers addressed the media, Pravin Gordhan's attorneys dropped a letter to the Hawks asking exactly the nature of the offence they are investigating. By
MARIANNE THAMM.

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Press conference during which the second battalion (the first was SARS earlier this week), Ministers of Police and State Security, are dispatched in an attempt to clarify matters relating to an investigation by the Hawks the SARS "rogue" unit and succeed spectacularly in obfuscating matters even further.

In a game of poker you want Nathi Nhleko as an opponent. He's got a lot of tells. He sweated profusely delivering his Nkandla report complete with the diversion of a video of the President's firepool set to the soundtrack of Eduardo de Capua's *O Sole Mio*. Now, after having been thrown under the bus by Zuma, it seems Nhleko is back for more.

On Wednesday, dressed in a sharp cobalt blue suit, the minister rubbed his hands and cleared his throat nervously at a puzzling and long-winded press conference called to address "a number of articulations and statements that have been made in the previous week pertaining to the work that the Hawks is doing in reference to the investigation that is being conducted into the 'rogue unit' at the South African Revenue Services".

On the other hand, Minister of State Security, David Mahlobo, who sat next to Nhleko, was as cool as a cucumber. Inscrutable, as one would expect from a man who holds a lot of secrets, he calmly waited as the Minister of Police read out a patchy history of the apparent origin of the "rogue unit" saga, adding that Hawks' questions to Finance Minister Gordhan did not mean he himself is facing an investigation or is even being charged.

Of course, the timing of the delivery of the list of 27 questions to Gordhan by Hawks boss Mthandazo Ntlemenza on 19 February a few days before he was due to deliver his budget speech — described by Gordhan as an attempt to "intimidate and distract us from the work that we had to do to prepare the

2016 budget” — was a matter Nhleko also sought to address, providing a rather novel explanation of why the timing should not be viewed as “political”.

“Now when you come from different offices as a journalist, the fact of the matter is that it is possible that, before getting here, you might have crossed a red robot or traffic light. Therefore it would be strange to expect that a traffic cop shouldn’t give you a traffic fine for a traffic violation because you were rushing to this press conference and therefore it is natural for the cop to do that. That traffic cop would have been complicit in one form or the other or perhaps for that matter did not have the proper calibration around the question of time so it was you rushing to the press conference. The fact of the matter remains that any law enforcement agency deals with issues as they pertain to a particular matter before them and therefore they necessarily conduct what they do around an area,” said Nhleko.

Well, that clears that up then. Nothing to see here, just move along.

Of course Mahlobo knew that while his colleague Nhleko was talking about traffic cops and denying that Gordhan was facing specific charges in relation to the investigation, Hawks boss, Mthandazo Berning Ntlemenza, had earlier sent a secret “information note” to Mahlobo himself referencing a specific case number, Brooklyn CAS 427/5/2015, and relating to the “Contravention of the Regulation of Inception of Communications and the Provision of Communications Related Information Act 2002”.

While Nhleko sat addressing media in the Imbizo Media Centre in Cape Town, Finance Minister Gordhan, through his attorneys, Gildenhuis Malatji Inc, delivered a letter to the Hawks’ boss responding to a demand that he reply to the list of Hawks questions by 4pm on Wednesday. Gordhan’s attorney referenced the Brooklyn case in the letter to Ntlemenza.

Gordhan’s attorneys wrote: “You will have been aware that, at the time your letter of 19 February 2016 was delivered, the Honourable Minister was engaged in preparing the national Budget Speech for presentation to Parliament on 24 February 2016. This is particularly so since when you telephoned on 18 February in an attempt to speak to him you were requested

to contact him after the Budget Speech. You are aware of the national importance of the Budget Speech, and that he was not able to permit any distractions to jeopardise the Budget processes.”

In these circumstances, reads the letter to Ntlemeza, “he has only just been able to begin to consult with his legal representatives on the best way in which to respond to your letter, and the questions annexed to it. He is therefore unable to respond by 16h00 today as you have requested. He will respond in due course, once he has properly examined the questions and ascertained what information, of the information you request, he is able to provide. That said, we request the following information to assist him in preparing his response: On what authority do you rely on directing these questions to the Honourable Minister? Are you investigating any offence? If so, what is it? We look forward to your response at your earliest convenience.”

Shortly after the press conference, three ousted SARS officials, former deputy commissioner Ivan Pillay, strategic planning risk group executive Peter Richer, and group executive Johan van Loggerenberg all issued their own statements to the media.

Pillay and Richer said that comments by the Ministers of Police and State Security at the press conference were “a violation of our rights to dignity and reputation. We are left with no other option than to seek legal advice and to take appropriate action to defend ourselves”.

They said that so far all investigations that had been instituted, either by SARS or other state institutions “have never afforded us a fair opportunity to be heard or to have our side of the story represented. Allegations that the investigative units in SARS were unlawful and illegal, operated front companies including running a brothel, bugged President Jacob Zuma, spied on taxpayers and entered into illegal settlements for tax disputes, gave certain taxpayers preferential treatment, infiltrated taxpayers, broke into homes and planted listening devices and the like, are all false and unsubstantiated.”

They added that the allegation that SARS, during their tenure as managers, had purchased and used “sophisticated spyware” were “false and unsubstantiated” adding that the Ministers had relied on the Sikhakhane

report “which is flawed in fact and in law, and is eminently challengeable, and the Kanyane report, which bears no relevance to the lawfulness of or not of the investigative units in SARS”.

Van Loggerenberg said he had worked for SARS for 16 years in various capacities and that he had always done so “lawfully so and in the interests of SARS and South Africa”.

“I have no desire to speculate on the Hawks investigation at this stage, except to state that I have formally offered my full and complete co-operation to the Hawks via my attorneys some time ago when I became aware of these rumours. I did so in 2014 and then recently again. I deny that I have ever broken any law or done anything illegal (or allowed any unit or SARS official that reported to me to do so) whilst I was a SARS manager.”

He denied that SARS units, respectively known as the Special Projects Unit (SPU), the later National Research Group (NRG) and the High-risk Investigations Unit (HRIU), which he managed from March 2008 were illegally established or engaged in any illegal activity

“I have always maintained that these allegations were false and deliberately planted with the Sunday Times to justify a particular narrative. I believe it equally noteworthy that to date, it would appear that none of the past ‘investigations’ (Kanyane, Sikhakhane, Kroon commission, Inspector-General of Intelligence and KPMG) have reflected on the actual work conducted by these units over the years. It is my hope that the Hawks investigation does.”

Facing a barrage of tough questions from journalists, including whether anyone could believe him after the Nkandla report debacle, Nhleko offered no further clarity, saying the Hawks or the police did not need a charge in order to conduct an investigation.

“How do you investigate a charge? A charge is probably just about the final product. You can only be charged once an investigation has been conducted. An investigation leads to a situation perhaps where there are issues to be answered in law for example. That is where the issue of charges come in. I find this question of what is the charge strange. No one is investigating a

charge. Also the question of what legislation are we using. The South African police is governed by the Constitution and the Police Act to conduct their work. It is in that framework,” Nhleko replied, painting rather broad strokes.

Who needs specifics anyway?

In other words, police can question anyone in relation to anything without telling them why or which law they might have broken or where they might have acted criminally. Sounds a lot like how the cops went about their work in the bad old days of apartheid. But we digress.

Commenting on the credibility or the reputation of Lieutenant-General Ntlemenza, who was described by Judge Elias Matojane in March 2015 as “biased and dishonest” in a case relating to a bid to oppose a ruling in favour of Gauteng Hawks Head, Shadrack Sibiya, Nhleko replied, “The judge did not make a finding. That was only his opinion.”

The response by those seeking to justify or clarify the Hawks investigation has now become a matter of semantics, interpretation and opinion rather than focusing on the serious facts at hand. Nhleko said the original complaint about an apparent “rogue unit” had been lodged by SARS in March 2015. A year and four expensive inquiries later (one by the IGI, the Kanyane panel, the Sikhakane panel and the Kroon inquiry) no one is any closer to bumping up against the truth.

In this game of smoke, mirrors and wordplay, there is only one way to cut through the crap. A completely new, competent and credible judicial commission of inquiry. It is the only way, the stakes are far too high. No more press conferences, please. And no more obfuscation. **DM**

Photo: Ministers Nhleko and Mahlobo (3rd and 4th from the left) at the Wednesday's press conference. (eNCA frame grab)

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By Greg Nicolson

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MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

MINISTER OF FINANCE RESPONDS TO THE HAWKS

I have responded to the questions sent by the Hawks and I wish to state the following:

- a. My legal advice is that I am not obliged, under any law, to answer the questions sent to me by the Hawks but I believe it is in the public interest that I provide them with information I have at hand. Be that as it may, as a law abiding citizen I have decided to co-operate fully
- b. My legal advice is that the establishment Unit was lawful
- c. I am advised that the Sikhakhane Panel finding that the establishment of the Unit contravened the National Strategic Intelligence Act was wrong and based on a superficial and clearly mistaken reading of the aforementioned Act
- d. The Unit was an essential part of SARS' enforcement strategy as it is with most tax and customs administrations globally
- e. As far as I was aware, the unit lawfully performed its functions
- f. As far as I was aware, the funding of the unit was done through normal budgetary processes applicable to SARS.

ESTABLISHMENT OF THE INVESTIGATION UNIT

In respect of the legality of the investigation unit established during my time as Commissioner of the South African Revenue Service, I believed that the Unit was lawfully established to perform very important functions for and on behalf of SARS.

The unit did not initially have a name but was later successively known as the Special Projects Unit, the National Research Group and the High-Risk Investigations Unit. I participated in the decision to establish the Unit in February 2007.

BACKGROUND TO THE ESTABLISHMENT OF THE UNIT

In terms of Section 4 (1) (a) of the SARS Act, "SARS must "secure the efficient and effective, and widest possible, enforcement" of the tax laws listed in Schedule 1. Those tax laws have always vested SARS with wide powers for the investigation of tax matters including the investigation of crimes with tax implications.





MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

The wide scope of these powers is apparent from,

- sections 4 and 4A to 4D of the Customs and Excise Act 91 of 1964;
- sections 74 and 74A to 74D of the Income Tax Act 58 of 1962 (before its amendment by the Tax Administration Act);
- sections 57 and 57A to 57D of the Value-Added Tax Act 89 of 1991 (before its amendment by the Tax Administration Act); and
- sections 40 to 66 of the Tax Administration Act 28 of 2011.

SARS has thus always had its own investigation and enforcement units engaged in a wide range of investigations including criminal investigations with tax implications.

The Unit's establishment was in line with government's commitment to crack down on crime generally and organised crime in particular. This commitment was expressed in President Thabo Mbeki's State of the Nation address on 9 February 2007.

It became apparent to SARS that it had to enhance its capacity to gather intelligence (departmental intelligence) and investigate organised crime related to tax and customs legislation (for example cigarette smuggling). SARS decided in about February 2007 to set up the Unit to penetrate and intercept the activities of tax and customs related crime syndicates. Its initial intention was to employ and train the members of the Unit and then to transfer them to the National Intelligence Agency (NIA) where they would continue to function as a unit dedicated to SARS. The NIA, however, lost traction for the project as a result of which SARS decided to retain the Unit within its Enforcement Division but with an appropriate mandate.

LEGALITY OF THE UNIT

I am advised by my legal team that the Sikhakhane Panel was mistaken in its conclusion that the establishment of the Unit had contravened section 3 of the National Strategic Intelligence Act 39 of 1994. In its report on 5 November 2014, the Panel also said section 3 "*prohibits the conducting of covert intelligence gathering by structures other than the National Defence Force, the SAPS or the State Security Agency*".

There is no general prohibition in this section. It is merely a restriction imposed on those departments that are required by law to perform functions "*with regard to the security of the Republic or the combatting of any threat to the security of the Republic*."

SARS is clearly not such a department. It was never engaged in national security matters. It is accordingly not subject to the prohibition.

My legal team has found that the establishment of the Unit did not contravene section 3 of the National Strategic Intelligence Act and its activities were not subject to the provisions of section 3 at all.



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

The Sikhakhane finding that the establishment of the Unit contravened the National Strategic Intelligence Act was wrong and based on a superficial and clearly mistaken reading of section 3(1) of the National Strategic Intelligence Act.

THE UNIT AS PART OF SARS' ENFORCEMENT STRATEGY

This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world. In the South African societal and economic context, SARS had developed a compliance approach which consisted of good service to the compliant taxpayers, increased education about the importance of paying tax to those entering the economy, and different types of enforcement being utilised on the non-compliant taxpayers depending on the level of non-compliance.

Non-compliance could include non-submission of a tax return, incorrect information on a tax return, different types of debt collection, aggressive tax avoidance, abuse of trusts, tax evasion, smuggling across borders, cigarette and other forms of illicit trade, trafficking of drugs, round-tripping to avoid excise duties and VAT etc.

Enforcement actions are more effective when they are guided by good risk assessments and information from various stakeholders. Relatively few staff are engaged with risk assessments – some twenty-odd in the instance of the unit in question. It is in this context that the unit was core to the effectiveness of SARS to carry out its mandate of collecting revenue so that government can have the resources to fulfil its objectives.

ACTIVITIES OF THE UNIT

During my time as Commissioner, the chief executive officer of SARS, the Unit employed 26 odd people, a miniscule part of the 15 000 staff compliment of SARS. My knowledge of the Unit's day-to-day operations was consequently very limited. As far as I was aware, the Unit lawfully performed its functions. I was not personally involved in the recruitment of its members but I am told that the process was in accordance with SARS policy. If it or any of its members engaged in unlawful activities then they did so without my knowledge or consent. I have no knowledge of the operation code-named "Sunday Evenings".

BASIS FOR THE HAWKS QUESTIONS

The Hawks declined to answer my questions seeking clarity on what offence they were investigating and by what authority they were acting. They merely referred me to the powers conferred to them by chapter 6A of the South African Police Service Act 68 of 1995. None of the provisions of chapter 6A entitle the Hawks to demand answers, set deadlines and threaten me with retaliation if I fail to respond. The deadlines and threats of retaliation were accordingly unlawful.



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

CONCLUSION

I reiterate that:

- This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world
- The Hawks have no reason to investigate me
- All of us should be concerned about protecting our democratic institutions in a manner that assures public confidence that these institutions will not be arbitrarily tempered with. This is what the Constitution requires of all of us.

These are challenging economic times in South Africa and in the world. Our biggest challenge as a nation is to ensure that we are able to grow this economy so we can create jobs for our people and make inroads in addressing poverty. That is the work I would like to focus on with the National Treasury team.

SARS is an important fiscal institution. We cannot afford to let this key institution be distracted from its core mandate of revenue collection. The institution and its 15000 or so employees are a crucial pillar of our democracy. Let's all defend this critical institution.

Issued on behalf of the Ministry of Finance

Date: 30 March 2016

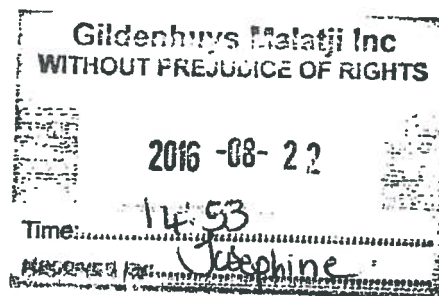


Private and Confidential: SAPS 1001, SILVERTON

Reference	Brooklyn CAS 427/05/2015
Enquiries	Maj Genl MS Ledwaba
Tel / Fax	012 401 3272 012 401 3235
E mail	LedwabaM2@saps.gov.za

THE HEAD: ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
HEAD OFFICE
PRETORIA

Gildenhuys Malatji Attorneys
Harlequins Office Park
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Groenkloof
0027



CONTRAVENTION OF PUBLIC FINANCE MANAGEMENT ACT, 1999, PREVENTION OF THE CORRUPT ACTIVITIES ACT, 2004 AND CONTRAVENTION OF NATIONAL STRATEGIC INTELLIGENCE ACT, 1994, ET AL: BROOKLYN CAS 427/5/2015

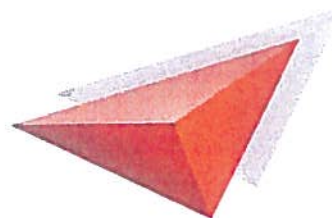
1. Kindly be advised that the above investigation is complete and your client Mr Pravin Gordan is hereby requested to give his version on the allegations as outlined here under in the form of warning statement.
2. The information at our disposal at the moment is that he in his capacity as then Commissioner of SARS and Minister of Finance,
 - approved that then Deputy Commissioner of SARS, Ivan Pillay could take early retirement at the age of 56 with full retirement benefits from the GEPI with effect from 1 August 2010 and that his employer, SARS should pay his early retirement penalty to the amount of R1 258 359 99 despite the early retirement being for personal considerations of the employee, when ordinarily the employee must pay the early retirement penalty in terms of the law.
 - approved that then Deputy Commissioner of SARS, Ivan Pillay be reappointed or retained in the same capacity as Deputy Commissioner and the same cost to SARS as his current package on contract basis for a period of three (3) years on the same day, 1 August 2010, that he goes on early retirement.
 - he facilitated the creation of a structure within SARS under the leadership of Janse van Rensburg which gathered, collected, evaluated, correlated intelligence contrary to section 3 of the National Strategic Intelligence Act 39 of 1994

CONTRAVENTION OF PUBLIC FINANCE MANAGEMENT ACT, 1999, PREVENTION OF THE CORRUPT ACTIVITIES ACT, 2004 AND CONTRAVENTION OF NATIONAL STRATEGIC INTELLIGENCE ACT, 1994, ET AL: BROOKLYN CAS 427/5/2015

3. It must be brought to his attention that the abovementioned actions amount to unauthorised expenditure in terms of sections 1 and 34 of the Public Finance Management Act 1 of 1999 and/or fruitless and wasteful expenditure in terms of sections 1 and 81(2) of the Public Finance Management Act 1 of 1999 and to corruption in terms of sections 3, 4 and/or 10 of the Prevention of Corrupt Activities Act, Act 12 of 2004 and section 3 of the National Strategic Intelligence Act 39 of 1994.
4. Kindly secure your client Mr Pravin Gordan to meet Brigadier Xaba (cell phone number 0798899582) for a warning statement without fail on the 25th August 2016, at 14:00, office number 240, second floor, General Piet Joubert Building, 218 Visagie street, Pretoria,.


MAJOR GENERAL
HEAD: ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
MS LEDWABA

Date: 2016-08-21



GILDENHUYS MALATJI
A T T O R N E Y S

OUR REF
T MALATJI

THE HEAD: ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
HEAD OFFICE
PRETORIA

24 August 2016

DIRECT TEL No
(012) 428 8687

DIRECT E-MAIL
tmalatji@gminc.co.za

DIRECT FAX
(012) 428 8787

ATT: MAJOR GENERAL M.S. LEDWABA

BY E-MAIL: ledwabam2@saps.gov.za

YOUR REF
Brooklyn
CAS:427/05/2015

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LEVEL TWO (AAA) BBBEE AND
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Dear General Ledwaba,

IN RE: MINISTER PRAVIN GORDHAN

INTRODUCTION

1. We act for Minister Pravin Gordhan. He has asked us to respond to your letter dated 21 August 2016 which was erroneously addressed to Messrs Allan Levin & Associates Attorneys but delivered to our offices.
2. Your request out of the blue, that the Minister give a warning statement on the matters listed in your letter, comes as a surprise for various reasons. First, the head of the Hawks, Lieutenant General Ntlemeza, assured us in his letter of 20 May 2016 that "*the Minister is not a suspect in this investigation*". Second, the Minister has already given his account of the matters listed in your letter. He did so on 18 May 2016 in his response to General Ntlemeza's questions. Third, the assertions of law in your letter under reply are wholly unfounded on any version of the facts.
3. Minister Gordhan has, however, instructed us to be as helpful as possible and to address your questions fully. We accordingly enclose a statement by the Minister giving his account of the facts relevant to the matters raised in your letter. He has asked us to address the assertions of law made in your letter. We do so below.
4. Minister Gordhan is unable to meet with Brigadier Xaba at 14h00 on Thursday 25 August 2016. He in any event has no more to say about the matters raised in your letter under reply. If you require further information, however, you are welcome to approach us again because the Minister has instructed us to assist wherever we can.

THE SARS INVESTIGATION UNIT

5. You say in paragraph 2 of your letter that the Minister facilitated the creation of the SARS investigation unit *"which gathered, collected, evaluated, correlated intelligence contrary to section 3 of the National Strategic Intelligence Act 39 of 1994"*. You are, however, mistaken in your assertion that the section prohibited all intelligence gathering.
6. The relevant part of s 3(1) of the Intelligence Act read as follows at the time when the SARS unit was established (before its amendment in 2013):

"If any law expressly or by implication requires any department of State, other than (the NIA) or (SASS), to perform any function with regard to the security of the Republic or the combatting of any threat to the security of the Republic, such law shall be deemed to empower such department to gather departmental intelligence, and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function; provided that such department of State –

 - (a) ...
 - (b) ...

shall not gather departmental intelligence within the Republic in a covert manner ..."
7. The establishment of the SARS investigation unit did not contravene this provision for the following reasons:
 - 7.1 Section 3(1) does not impose a general prohibition. It applies only to those departments of state that are required by law to perform functions *"with regard to the security of the Republic or the combatting of any threat to the security of the Republic"*. SARS is not such a department. It was never engaged in national security matters. It was accordingly not subject to the prohibition in s 3(1).
 - 7.2 Section 3(1) in any event does not prohibit all covert intelligence gathering. It only prohibits the gathering of *"departmental intelligence"* in a covert manner. The Act defined *"departmental intelligence"* as *"intelligence about any threat or potential threat to the national security and stability of the Republic"*. The SARS unit was never engaged in the gathering of intelligence of this kind. Its activities thus fell well beyond the scope of the prohibition because it was not in the business of gathering intelligence about any threat or potential threat to the national security and stability of the Republic.
 - 7.3 Your interpretation suggests that it is unlawful for anybody to engage in the covert gathering of crime intelligence. But such an interpretation is clearly absurd. Very many public bodies engage in the covert gathering of crime intelligence such as most metropolitan local authorities, SAA, Eskom and Prasa to name but a few.
8. The Minister in any event believed in good faith that the unit was perfectly lawful. So did his successors and all the other state agencies with whom the unit interacted for many years. The Minister was accordingly in any event entirely innocent of any *mens rea*.

MR PILLAY'S EARLY RETIREMENT AND RE-APPOINTMENT

9. We assume that paragraph 3 of your letter refers to Mr Pillay's early retirement and re-appointment. Please let us know if we are mistaken.
10. You seem to suggest that Mr Pillay's early retirement and re-appointment caused "*unauthorised expenditure*" or "*fruitless and wasteful expenditure*" within the meaning of s 1 of the Public Finance Management Act 1 of 1999 and thus contravened s 34 and s 81(2). You are, however, mistaken for the following reasons:
 - 10.1. The PFMA applies to national and provincial departments of state, the public entities listed in Schedules 2 and 3 and constitutional institutions. SARS is not a department of state. It is a public entity listed in Schedule 3A.
 - 10.2. Section 34 is part of chapter 4 of the PFMA that deals with "*national and provincial budgets*". It is not applicable to public entities at all. You are accordingly mistaken in your assertion that s 34 applies to SARS.
 - 10.3. Section 81(2) applies to officials of departments of state and constitutional institutions. SARS was never a department of state and the Minister was not an official of SARS when Mr Pillay took early retirement and was re-appointed. The section is accordingly not applicable at all.
 - 10.4. Neither s 34 nor s 81(2) in any event creates a criminal offence. Even if they were applicable, they would accordingly be none of your concern.
 - 10.5. Your assertion that the Minister's conduct contravened the criminal prohibitions of the PFMA is accordingly wholly unfounded.
11. You also assert without explanation that the Minister's approval of Mr Pillay's early retirement and re-appointment contravened ss 3, 4 and 10 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004. Your assertion is again unfounded for the following reasons:
 - 11.1. The offence of corruption under ss 3, 4 and 10 of the Corruption Act in the first place requires that the perpetrator "*gives or agrees or offers to give to any other person any gratification*". The Minister did not give or agree to give gratification to anybody. He merely gave official approval to the proposal of the Commissioner that SARS allow Mr Pillay to take early retirement and be re-appointed.
 - 11.2. The giving of gratification in any event does not amount to corruption in itself. It is corrupt only if the gratification is given to the recipient "*in order to act, personally or by influencing another person so to act*", in an unlawful manner. There has never been any suggestion that the Minister approved the Commissioner's proposal that Mr Pillay be allowed to take early retirement and be re-appointed to persuade him to act unlawfully in any way.

11.3. The Minister believed in good faith that the transaction was entirely lawful. It means that he in any event lacked any *mens rea*.

12. We trust that you find the above in order.

Yours faithfully

GILDENHUYS MALATJI INC

Per: Tebogo Malatji

W1251



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

MINISTER OF FINANCE RESPONDS TO THE HAWKS

I have responded to the questions sent by the Hawks and I wish to state the following:

- a. My legal advice is that I am not obliged, under any law, to answer the questions sent to me by the Hawks but I believe it is in the public interest that I provide them with information I have at hand. Be that as it may, as a law abiding citizen I have decided to co-operate fully
- b. My legal advice is that the establishment Unit was lawful
- c. I am advised that the Sikhakhane Panel finding that the establishment of the Unit contravened the National Strategic Intelligence Act was wrong and based on a superficial and clearly mistaken reading of the aforementioned Act
- d. The Unit was an essential part of SARS' enforcement strategy as it is with most tax and customs administrations globally
- e. As far as I was aware, the unit lawfully performed its functions
- f. As far as I was aware, the funding of the unit was done through normal budgetary processes applicable to SARS.

ESTABLISHMENT OF THE INVESTIGATION UNIT

In respect of the legality of the investigation unit established during my time as Commissioner of the South African Revenue Service, I believed that the Unit was lawfully established to perform very important functions for and on behalf of SARS.

The unit did not initially have a name but was later successively known as the Special Projects Unit, the National Research Group and the High-Risk Investigations Unit. I participated in the decision to establish the Unit in February 2007.

BACKGROUND TO THE ESTABLISHMENT OF THE UNIT

In terms of Section 4 (1) (a) of the SARS Act, "SARS must "secure the efficient and effective, and widest possible, enforcement" of the tax laws listed in Schedule 1. Those tax laws have always vested SARS with wide powers for the investigation of tax matters including the investigation of crimes with tax implications.





MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

The wide scope of these powers is apparent from,

- sections 4 and 4A to 4D of the Customs and Excise Act 91 of 1964;
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- sections 57 and 57A to 57D of the Value-Added Tax Act 89 of 1991 (before its amendment by the Tax Administration Act); and
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SARS has thus always had its own investigation and enforcement units engaged in a wide range of investigations including criminal investigations with tax implications.

The Unit's establishment was in line with government's commitment to crack down on crime generally and organised crime in particular. This commitment was expressed in President Thabo Mbeki's State of the Nation address on 9 February 2007.

It became apparent to SARS that it had to enhance its capacity to gather intelligence (departmental intelligence) and investigate organised crime related to tax and customs legislation (for example cigarette smuggling). SARS decided in about February 2007 to set up the Unit to penetrate and intercept the activities of tax and customs related crime syndicates. Its initial intention was to employ and train the members of the Unit and then to transfer them to the National Intelligence Agency (NIA) where they would continue to function as a unit dedicated to SARS. The NIA, however, lost traction for the project as a result of which SARS decided to retain the Unit within its Enforcement Division but with an appropriate mandate.

LEGALITY OF THE UNIT

I am advised by my legal team that the Sikhakhane Panel was mistaken in its conclusion that the establishment of the Unit had contravened section 3 of the National Strategic Intelligence Act 39 of 1994. In its report on 5 November 2014, the Panel also said section 3 "*prohibits the conducting of covert intelligence gathering by structures other than the National Defence Force, the SAPS or the State Security Agency*".

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SARS is clearly not such a department. It was never engaged in national security matters. It is accordingly not subject to the prohibition.

My legal team has found that the establishment of the Unit did not contravene section 3 of the National Strategic Intelligence Act and its activities were not subject to the provisions of section 3 at all.



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

The Sikhakhane finding that the establishment of the Unit contravened the National Strategic Intelligence Act was wrong and based on a superficial and clearly mistaken reading of section 3(1) of the National Strategic Intelligence Act.

THE UNIT AS PART OF SARS' ENFORCEMENT STRATEGY

This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world. In the South African societal and economic context, SARS had developed a compliance approach which consisted of good service to the compliant taxpayers, increased education about the importance of paying tax to those entering the economy, and different types of enforcement being utilised on the non-compliant taxpayers depending on the level of non-compliance.

Non-compliance could include non-submission of a tax return, incorrect information on a tax return, different types of debt collection, aggressive tax avoidance, abuse of trusts, tax evasion, smuggling across borders, cigarette and other forms of illicit trade, trafficking of drugs, round-tripping to avoid excise duties and VAT etc.

Enforcement actions are more effective when they are guided by good risk assessments and information from various stakeholders. Relatively few staff are engaged with risk assessments – some twenty-odd in the instance of the unit in question. It is in this context that the unit was core to the effectiveness of SARS to carry out its mandate of collecting revenue so that government can have the resources to fulfil its objectives.

ACTIVITIES OF THE UNIT

During my time as Commissioner, the chief executive officer of SARS, the Unit employed 26 odd people, a miniscule part of the 15 000 staff compliment of SARS. My knowledge of the Unit's day-to-day operations was consequently very limited. As far as I was aware, the Unit lawfully performed its functions. I was not personally involved in the recruitment of its members but I am told that the process was in accordance with SARS policy. If it or any of its members engaged in unlawful activities then they did so without my knowledge or consent. I have no knowledge of the operation code-named "Sunday Evenings".

BASIS FOR THE HAWKS QUESTIONS

The Hawks declined to answer my questions seeking clarity on what offence they were investigating and by what authority they were acting. They merely referred me to the powers conferred to them by chapter 6A of the South African Police Service Act 68 of 1995. None of the provisions of chapter 6A entitle the Hawks to demand answers, set deadlines and threaten me with retaliation if I fail to respond. The deadlines and threats of retaliation were accordingly unlawful.



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

CONCLUSION

I reiterate that:

- This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world
- The Hawks have no reason to investigate me
- All of us should be concerned about protecting our democratic institutions in a manner that assures public confidence that these institutions will not be arbitrarily tempered with. This is what the Constitution requires of all of us.

These are challenging economic times in South Africa and in the world. Our biggest challenge as a nation is to ensure that we are able to grow this economy so we can create jobs for our people and make inroads in addressing poverty. That is the work I would like to focus on with the National Treasury team.

SARS is an important fiscal institution. We cannot afford to let this key institution be distracted from its core mandate of revenue collection. The institution and its 15000 or so employees are a crucial pillar of our democracy. Let's all defend this critical institution.

Issued on behalf of the Ministry of Finance

Date: 30 March 2016

DRAFT STATEMENT OF MINISTER PRAVIN GORDHAN**INTRODUCTION**

1. I make this statement in response to the request for a *"warning statement"* made by Major General Ledwaba of the Directorate for Priority Crime Investigation in her letter of 21 August 2016. As I understand the letter, I am required to deal with two issues. The first is my role as the Commissioner of SARS in the establishment of an investigation unit in 2007. The second is my approval, as Minister of Finance, of Mr Ivan Pillay's early retirement and re-appointment to SARS in early 2010.
2. I shall deal with both these matters. I am advised that my conduct was at all times entirely lawful. I will however not address matters of law because I have requested my attorneys to do so.

THE SARS INVESTIGATION UNIT

3. I was the Commissioner of SARS from November 1999 until May 2009. I was Minister of Finance from May 2009 to May 2014, Minister of Co-operative Governance and Traditional Affairs from May 2014 to December 2015 and again Minister of Finance from December 2015.
4. Your questions relate to an investigation unit in SARS. This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world. In the South African societal and economic context, SARS had developed a compliance approach which consisted of good service to the compliant taxpayers, increased education about the importance of paying tax to those entering the economy, and different types of



enforcement being utilised on the non-compliant taxpayers depending on the level of non-compliance. Non-compliance could include non-submission of a tax return, incorrect information on a tax return, different types of debt collection, aggressive tax avoidance, abuse of trusts, tax evasion, smuggling across borders, cigarette and other forms of illicit trade, trafficking of drugs, round-tripping to avoid excise duties and VAT etc.

5. A few thousand staff could be engaged in these forms of enforcement activity. Enforcement actions are more effective when they are guided by good risk assessments and information from various stakeholders. Relatively few staff are engaged with risk assessments – some twenty-odd in the instance of the unit in question.
6. The unit did not initially have a name but was later successively known as the Special Projects Unit, the National Research Group and the High-Risk Investigations Unit. I participated in the decision to establish the Unit in February 2007. The manager of the Unit reported to Mr Ivan Pillay in his capacity as General Manager: Enforcement and Risk. Mr Pillay in turn reported to me for as long as I was Commissioner of SARS until May 2009.
7. I believed that the Unit was lawfully established to perform very important functions for and on behalf of SARS. As far as I was aware, the Unit lawfully performed its functions. If it or any of its members engaged in unlawful activities then they did so without my knowledge or consent.



8. SARS was established by the South African Revenue Service Act 34 of 1997. Section 3 provides that its objectives are *"the efficient and effective (a) collection of revenue; and (b) control over the import, export, manufacture, movement, storage or use of certain goods"* including those subject to customs and excise duty.
9. Section 4(1)(a) of the SARS Act provides that SARS must *"secure the efficient and effective, and widest possible, enforcement"* of the tax laws listed in Schedule 1. Those tax laws have always vested SARS with wide powers for the investigation of tax matters including the investigation of crimes with tax implications. The wide scope of these powers is apparent from:
- sections 4 and 4A to 4D of the Customs and Excise Act 91 of 1964;
 - sections 74 and 74A to 74D of the Income Tax Act 58 of 1962 (before its amendment by the Tax Administration Act);
 - sections 57 and 57A to 57D of the Value-Added Tax Act 89 of 1991 (before its amendment by the Tax Administration Act); and
 - sections 40 to 66 of the Tax Administration Act 89 of 1991.
10. SARS has thus always had its own investigation and enforcement units engaged in a wide range of investigations including criminal investigations with tax implications.
11. The Unit was established against the background of government's commitment to crack down on crime generally and organised crime in particular. President Mbeki mentioned this commitment in his state of the nation address on 9 February 2007 when he said that government would, amongst other things,
- "• *start the process of further modernising the systems of the South African Revenue Services, especially in respect of border control, and*



improve the work of the inter-departmental co-ordinating structures in this regard;

- intensify intelligence work with regard to organised crime, building on the successes that have been achieved in the last few months in dealing with cash-in-transit heists, drug trafficking and poaching of game and abalone".*

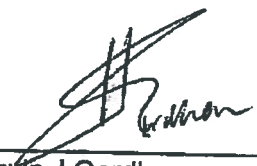
12. It became apparent to SARS that it had to enhance its capacity to gather intelligence of and investigate organised crime. It decided in about February 2007 to set up the Unit to penetrate and intercept the activities of tax and customs related crime syndicates. Its initial intention was to employ and train the members of the Unit and then to transfer them to the NIA where they would continue to function as a unit dedicated to SARS. The NIA, however, lost appetite for the project as a result of which SARS decided to retain the Unit within its Enforcement Division.
13. I was, in my capacity as Commissioner, the chief executive officer of SARS. Its staff complement at the time was about 15 000. The Unit with a staff complement of only 26 odd, was a miniscule part of SARS. My knowledge of its establishment, functions and operations was consequently very limited. Your questions moreover enquire about events of many years ago. My recollection of the detail of those events is inevitably patchy.
14. I firmly believed at all times that the establishment of the Unit was an entirely lawful extension of SARS's long-standing capacity to investigate tax-related crime. I still hold that belief and am advised that those who contend otherwise are mistaken.

MR PILLAY'S EARLY RETIREMENT AND RE-APPOINTMENT

15. Mr Pillay took early retirement and was re-appointed when I was Minister of Finance. I seem to recall that it happened in early 2010.
16. The then Commissioner of SARS, Mr Oupa Magashula, addressed a memorandum to me on 12 August 2010, seeking my approval for Mr Pillay's early retirement and re-employment on a fixed term contract. I was told that Mr Pillay sought in this way to gain access to his pension fund to finance the education of his children. I understood that Mr Magashula had established from enquiries made with the Department of Public Service and Administration that the terms of Mr Pillay's early retirement and re-employment were lawful and not unusual. I approved Mr Magashula's proposal because I believed it to be entirely above board and because I thought it appropriate to recognise the invaluable work Mr Pillay had done in the transformation of SARS since 1995.

CONCLUSION

17. I have nothing further to say in relation to these matters. If the Hawks however require any further assistance in good faith, I would be happy to assist.



Pravin J Gordhan
Minister of Finance
23 August 2016



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT BY THE MINISTER OF FINANCE

The recent media reports about my arrest - imminent or not - have been extremely distressing for my family and me.

I cannot believe that I am being investigated and could possibly be charged for something I am completely innocent of. I have answered the questions submitted by the Hawks, and have not heard from them. I was not aware of any impending charges or further investigations until the reports in the past weekend.

It is indeed true, that no one is above the law. But no one should be subjected to the manipulation of the law and agencies for ulterior motives.

Throughout my 45 years of activism, I have worked for the advancement of the ANC, our Constitution and our democratic government. I would never have thought that individuals within the very agencies of this government would now conspire to intimidate and harass me and my family.

I have met with my lawyers to obtain their advice. They will be approaching the leadership of both the Hawks and the National Prosecuting Authority for further information and clarity.

I worked together with over ten thousand staff for a decade to transform SARS into a world class revenue and customs administration. We built the revenue service into an efficient and effective institution that provided the increasing fiscal resources to enable government to provide social grants. SARS and the specialist investigative units therein operated within the law during my time as the Commissioner.

The malicious rumours and accusations about "espionage" activities are false and manufactured for other motives.

There have also been reports of businesspeople claiming inside knowledge of or influence over state institutions. If such reports are true, that alleged conduct will undermine the integrity and honesty within the Treasury or other key institutions.





**MINISTRY OF FINANCE
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It is particularly painful to me, and I'm sure to many earnest democrats, to witness this unrestrained attack on honest and hardworking people and the institutions meant to strengthen our democracy. Millions of people will pay the price (there will be less money to relieve poverty and support job creation programmes) if this subversion of democracy is left unrestrained and unchallenged.

I appeal to all South Africans to protect the National Treasury staff, who have diligently, honestly and skilfully served the national interest to the best of their ability. They are recognized worldwide for their professionalism and competence.

Issued on behalf of the Ministry of Finance

Date: 17 May 2016

ANNEXURE 23

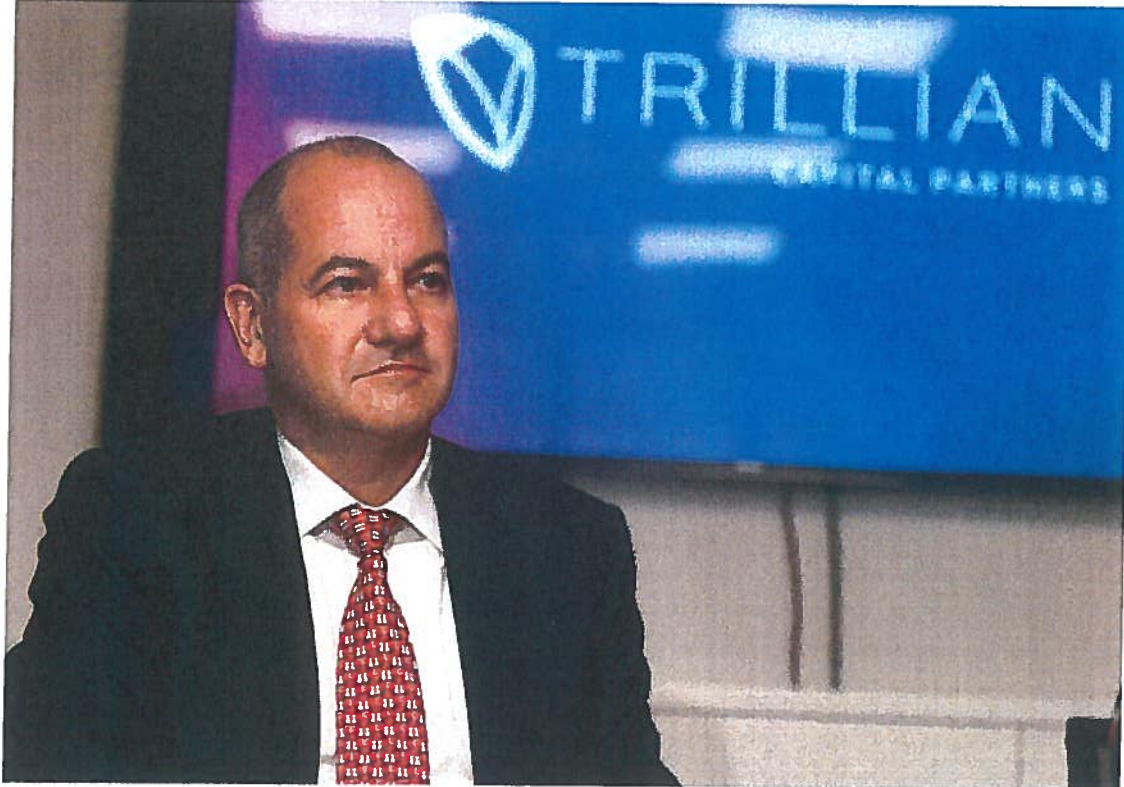
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Trillian CEO made a fortune on Nhlanhla Nene's axing, former employee tells MPs

'On Nenegate, I was told — but it's unconfirmed — that Wood and his people traded on the pre-knowledge'

31 October 2017 - 15:21 Bekezela Phakathi



Eric Wood. Picture: FREDDY MAVUNDA

A former Trillian employee says CEO Eric Wood made huge profits through knowing beforehand that Nhlanhla Nene would be sacked as finance minister in December 2015.

Mosilo Mothepu told Parliament's public enterprises committee on Tuesday that Wood knew as far back as October 2015 that Nene would be fired and replaced by Des van Rooyen.

The committee is probing the capture of Eskom and other parastatals.

Zuma's decision to sack Nene in 2015 sent the rand and other markets into a tailspin. Van Rooyen was swiftly replaced by Pravin Gordhan, who had been fired by Zuma earlier in 2015.

"On Nenegate, I was told — but it's unconfirmed — that Wood and his people traded on the pre-knowledge [that Nene would be fired]," Mothepu said.

"In November, Wood bought US dollars before the change of minister. He [Wood] knew that the announcement would affect the rand ... when our investments and the rand was crashing, he reverse-traded and made hundreds of millions of rand," said Mothepu.

She said she was also told of a plan for Gupta ally Mohamed Bobat to use his proximity to Van Rooyen to channel work and lucrative contracts from Treasury and state-owned entities to Trillian.

Wood and Bobat had hired a PR firm to write speeches for Van Rooyen.

Mothepe said Wood started working on a speech for Van Rooyen, but “but they ended up writing one for Cogta”, referring to the Department of Co-operative Governance and Traditional Affairs, where Van Rooyen became minister a few days after being made finance minister.

Mothepe was financial advisory CEO at Trillian and left the company in 2016. She provided evidence to the former public protector, which was cited in the State of Capture report.

Mothepe also provided a statement to Geoff Budlender SC for his investigation into Trillian.

In her testimony in Parliament, Mothepe detailed how Trillian made millions of rand from state-owned entities, including Eskom, Transnet, SA Express and Denel.

She said often Trillian was paid for work it did not do and without contracts in place. The company used its political connections to win lucrative deals.

Mothepe stated that suspended Eskom chief financial officer Anoj Singh had an “improper relationship” with Wood.

“While we were putting together proposals Singh would give us Eskom information ... to boost our proposals ... he would give us information on a memory stick, so that [Trillian and McKinsey] would have insider information that other people would not have.”

The information, which included Eskom’s turnaround strategy, corporate plan, minutes of board meetings and treasury policies, gave Trillian an edge over rival consultancy firms.

Earlier in October, Eskom said it had asked global consultancy McKinsey to return “unlawful” payments of about R1bn and Trillian R564m. Trillian was the purported supply development partner of McKinsey in an agreement it had to provide services to Eskom.

“The interim findings from Eskom investigations into the circumstances surrounding payments made to both the companies point to certain decisions by Eskom, and resultant payments, as being unlawful. It is in the public interest to do everything we can as Eskom to claw back all the fees which were unlawfully paid,” Eskom said at the time.

In October, the South African Federation of Trade Unions said it had laid charges against Trillian and its directors for “criminal wrongdoing in its dealings with Eskom and Transnet, including committing acts of fraud, theft, corruption and money-laundering”.

The inquiry continues.

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Trillian raked in money for nothing, knew Nene, Gordhan would be fired, Eskom inquiry hears

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Former Finance Minister Pravin Gordhan flanked by Director-General Lungisa Fuzile and former Deputy Minister Nhlanhla Nene arrive in Parliament ahead of the 2014 Budget Speech. (Photo: GCIS)

The Eskom inquiry is currently underway.

A former top executive of Trillian Capital Partners on Tuesday confirmed that the company did work for Eskom to the tune of R600 million without any formal contract with the power utility after earning R93 million from Transnet for no services rendered.

Mosilo Mothepo's testimony before Parliament's inquiry into state capture painted a picture of how the company, which is linked to the Gupta family, was placed in pole position for contracts with state-owned companies.

Its closeness to government was such that while working at the company, she received advance warning of the firing of first Nhlanhla Nene and then Pravin Gordhan as finance minister.

She said she learnt that Nene would be replaced six weeks before it happened.

On the day she was informed, Trillian CEO Eric Wood emailed her a document outlining "the new initiatives the minister was going to approve and the fees we could earn".

Mothepu went on to say that she had heard, though she did not have confirmation of this, that Wood had used his knowledge of Nene's impending sacking to speculate on the rand and make millions.

"I am told Eric Wood and his people traded on the pre-knowledge of Nene's sacking so he bought dollars in November and when our investments and the rand was crashing he reversed the trade and made hundreds of millions of rand," she said, drawing gasps from MPs.

— African News Agency (ANA)

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ANNEXURE 24

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These are the state capture questions Des van Rooyen couldn't answer

Staff Writer 14 October 2016



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Four-day finance minister Des van Rooyen has joined president Jacob Zuma in approaching the courts to interdict exiting Public Protector Thuli Madonsela from releasing her report on state capture.

Van Rooyen, Zuma and the controversial Gupta family have all been implicated in the Public Protector's report, and all parties have taken or threatened to take legal action against her should the report be released.

The report is investigating allegations that the Gupta family, through its personal relationship with president Zuma, had unduly benefitted in a number of business dealings with government, and also had a say in the appointment of senior government officials.

Van Rooyen is implicated through his appointment as finance minister, following the axing of former minister Nhlanhla Nene in December 2015. It is alleged that the Gupta family was involved with van Rooyen's appointment.

As part of his affidavit to interdict the release of the report, van Rooyen indicated that he could not answer the questions Madonsela had presented him, and needed more time.

This is what van Rooyen could not answer:

- Questions on whether the Gupta family knew about van Rooyen's appointment as finance minister beforehand;
- Questions about van Rooyen's "regular trips" to Saxonwold (where the Gupta family resides);
- Questions around taking the finance positions and bringing Ian Whitley and Mohammed Bobat – aligned with the Gupta family – as advisors to Treasury;

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- Questions around the procedure followed in appointing Whitley and Bobat;
- Questions on Whitley and Bobat's involvement in the SAA Airbus swap deal, among others.

Van Rooyen's interdict case is to be heard on Friday. Opposition parties, including the DA, EFF and COPE are opposing the interdict.

DA leader, Mmusi Maimane said: "The DA's legal team will be at the North Gauteng High Court today, and ready to oppose Des van Rooyen's interdict against the release of the Public Protector's report into State Capture, which I requested.

"The DA, however, does not want to in any way delay the release of the report, and therefore will first determine if the Court is willing to hear arguments on the matter before intervening.

"The first prize must be the immediate release of the report, and the dismissal of the interdict immediately.

"The DA submitted this complaint to the Public Protector because we are determined to end Jacob Zuma's state capture and crony-corruption.

"It is clear that Des van Rooyen is being used as a proxy in Jacob Zuma's battle to prevent this report from being made public.

"The DA will not let this go without a fight. We will do everything possible to ensure the report is released," Maimane said.

More on state capture

[Zuma blocks Madonsela from releasing report on state capture](#)

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'My son-in-law made a mistake' — Jessie Duarte

Gemma Ritchie (<https://mg.co.za/author/gemma-ritchie>), Sarah Smit (<https://mg.co.za/author/sarah-smit>) 05 Sep 2018 09:35



ANC deputy secretary general Jessie Duarte. (Felix Dlangamandla/Netwerk24)

(<https://mg.co.za/article/2018-09-05-duarte-admits-son-in-law-ian-whitley-made-a-mistake>)

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ANC deputy secretary general Jessie Duarte has admitted that her son-in-law, Ian Whitley, "made a mistake to accept" a position in the office of four-day former finance minister Des van Rooyen.

Duarte was responding to allegations by economist Lumkile Mondi that her children work for the controversial family. Mondi made the allegations during an interview on eNCA.

"I in fact asked my son-in-law not to go and work for national treasury because of the context that nobody works for national treasury unless you've actually been screened by a particular group of people," Duarte told eNCA on Tuesday.

Economist Lumkile Mondli has fired a salvo at Jessie Duarte



"I think my son-in-law made a mistake to accept the offer that was made to him to be a chief-of-staff in the office of Mr Des van Rooyen."

On December 9 2015 van Rooyen was appointed finance minister, bringing along two advisers with him. The advisers, Ian Whitley and Mohamed Bobat, were allegedly handpicked by the Guptas.

[BREAKING NEWS] ANC Deputy Secretary General #JessieDuarte (https://twitter.com/hashtag/JessieDuarte?src=hash&ref_src=twsrc%5Etfw) admits on @eNCA (https://twitter.com/eNCA?ref_src=twsrc%5Etfw) for the first time that "my son-in-law [Ian Whitley] made a mistake to accept [an] offer of Chief-of-Staff" in the office of former Finance Minister Des van Rooyen, during his 4-day stint in December 2015.
pic.twitter.com/6jxA8W8qVK (<https://t.co/6jxA8W8qVK>)

— Xoli Mngambi (@XoliMngambi) September 4, 2018

(https://twitter.com/XoliMngambi/status/1036986182180253696?ref_src=twsrc%5Etfw)

In a letter to *Business Day* (<https://www.businesslive.co.za/bd/opinion/letters/2017-11-09-letter-facts-about-dubai-clinic/>) last year, Duarte wrote that she had advised Whitley — who had called her for advice — "never to work in the Treasury because it was controlled by a cabal". Duarte said she regretted that Whitley did not follow her advice.

She took the *Mail & Guardian* to the press ombudsman in 2016 following an article (<https://mg.co.za/article/2016-03-24-the-gupta-owned-state-enterprises>) where the *M&G* had drawn connections with Duarte, her former husband and son-in-law and Gupta associates.

According to Duarte, these connections were "damaging" because the ordinary reader — even with the *M&G*'s warning on the article that the links were indisputable in some cases and circumstantial and minor in others — "would or could conclude that she was in business and could be susceptible to influence to benefit the Gupta family".

The ombudsman instructed the *M&G* to apologise to Duarte but the ruling was overturned (<http://presscouncil.org.za/Ruling/View/appeal-decision-mail--guardian-vs-duarte-jessie-2959>) on appeal by the appeals panel of the press council.

READ MORE: Van Rooyen lost no time in the treasury (<https://mg.co.za/article/2018-08-31-00-van-rooyen-lost-no-time-in-the-treasury/>)

Van Rooyen was plucked from relative obscurity to replace then finance minister Nhlanhla Nene.

He only held the position for four days before then-president Jacob Zuma rescinded his appointment, following strong political and market reaction to the move. At the time Whitley caused a stir with serious questions raised over how a mid-level banker had been appointed as an adviser to the minister.

Investigators for the Zondo commission of inquiry into state capture have been tasked to discover what exactly Van Rooyen did during his tenure as finance minister.

Last month the commission heard how in October 2015 Ajay Gupta allegedly offered the deputy finance minister Mcebisi Jonas the position at the helm of the finance ministry in exchange for his co-operation — two months before Nene was removed from office.

Whitley's counterpart, Bobat, had been employed by Gupta-linked Trillian. The Sunday Times had reported at the time that Bobat was the adviser who shared the confidential documents with Trillian chief executive Eric Wood — who would later share the documents with Gupta business associate Salim Essa.

Van Rooyen's appointment, as well as that of Whitley and Bobat, formed part of the key allegations investigated in former public protector Thuli Madonsela's state of capture report.

Madonsela's report noted that it was "worrying" that Van Rooyen could be placed in Saxonwold, the suburb where the Guptas resided at the time, on at least seven occasions, including on the day before he was announced as minister. Both Jonas and former MP Vytjie Mentor have alleged they were offered positions in Zuma's Cabinet during meetings at the Gupta compound.

Ajay Gupta denied that Van Rooyen had visited his residence.

Duarte told eNCA that it is well known that Whitley's appointment would be probed at the Zondo commission and that she is "happy about that". She said Mondi should testify at the Zondo commission if he has evidence of any of her children working for the Guptas.

When Van Rooyen was moved to the ministry of local and co-operative governance in December that year, Bobat and Whitley moved with him.

Duarte had denied any involvement in placing her son-in-law into the position of chief-of-staff for Van Rooyen's office. According to a *Star* (<https://www.iol.co.za/business-report/economy/duarte-didnt-get-son-in-law-a-job-1985618>) newspaper report at the time, Duarte had not introduced Whitley to Van Rooyen.



Gemma Ritchie

Gemma Ritchie works in the Mail & Guardian's online department. She majored in English Literature at a small liberal arts college in the USA.

- Read more from **Gemma Ritchie** (<https://mg.co.za/author/gemma-ritchie>)



Sarah Smit

Sarah Smit both subs and writes for the Mail & Guardian. She joined the M&G after completing her master's degree in English Literature from the University of Cape Town. She is interested in the literature of the contemporary black diaspora and its intersection with queer aesthetics of solidarity. Her recent work considers the connections between South African literary history and literature from the rest of the Continent.

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The mystery men who tried to take over the Treasury

19 February 2016 - 14:08 Fiona Forde & Rob Rose



Image: BUSINESS DAY

ANC deputy secretary-general Jessie Duarte — PICTURE: BUSINESS DAY

Mahommed Bobat, one of the two men hired as a mysterious “adviser” to blink-and-you-miss-it finance minister David van Rooyen, resigned from his position at an investment company weeks before Van Rooyen’s four-day tenure at national Treasury began.

The 46-year-old Bobat had worked at the politically connected black economic empowerment firm Regiments Capital for three years. But insiders say he told his bosses last October that he was leaving to work as a special adviser to Van Rooyen, when he was to become finance minister.

It was only weeks later, on December 9, that President Jacob Zuma shocked the country by firing Nhlanhla Nene and installing Van Rooyen, sparking a R169-billion plunge on the JSE.

This is likely to fuel speculation over why Zuma’s plan to axe Nene was well known among Van Rooyen’s cohorts weeks before it was announced.

Van Rooyen’s tenure was cut short when Zuma was strong-armed into reversing the controversial move, reappointing Pravin Gordhan and sending Van Rooyen to the co-operative governance & traditional affairs department (Cogta).

Deepening the mystery, it has now emerged the other “adviser” who arrived at treasury with Van Rooyen was Ian Whitley, who is married to the daughter of Jessie Duarte, the ANC deputy secretary-general and a Zuma confidante.

This week, Duarte told the Financial Mail that Whitley called her soon after Van Rooyen’s appointment and told her he had been asked to work in his private office.

“I advised him not to take the job, because my understanding was that national treasury has been reserved for the elite few, and you have to be known to have come through the ranks. I said ‘don’t do this, it’ll bring discomfort to you’,” she said.

Nonetheless, the 44-year-old Whitley took the job as Van Rooyen’s chief of staff. Even though Van Rooyen has since shifted departments, Whitley and Bobat still work for him.

Duarte adds: “I did not introduce them because, quite frankly, I didn’t know who Van Rooyen was. But my understanding is that they’ve known each other for a long time.”

This week, Bobat told the Financial Mail that he still works for Van Rooyen, describing his role as to “advise the minister on any other work” within the department.

“I have known [Van Rooyen] for some time, and have a good relationship with him.”

However, treasury insiders say that even within their few short days at the ministry, Whitley and Bobat raised the hackles of a number of senior ministry officials, who referred to the two as “thugs”.

During one meeting with senior officials, insiders say, Bobat told them they would be reporting to him directly — and not to the minister as was the norm.

News reports this week claim Whitley and Bobat insisted they would sign off all expenditure.

However, Bobat says he "never insisted" anyone report to him. "I work with the minister and any senior official reports to the minister," he said.

Nonetheless, the sudden emergence of the "advisers" has fuelled speculation that Van Rooyen's appointment was a bid by vested interests, such as the Gupta family, to "capture" the country's purse strings.

Treasury staff who spoke to the Financial Mail say both Bobat and Whitley are known as "Gupta boys".

Though there is no evidence of formal business relationships with the family, "we knew who they were," says one. "They are Gupta insiders. They are right in there."

While Whitley did not answer calls, Bobat vehemently denied having anything to do with the Guptas.

"It does not mean that any Indian person in SA is related to the Gupta family. If I was, I wouldn't have come to Cogta," he said.

But treasury officials say that if Bobat had stayed, a string of senior officials would have resigned.

Both Bobat and Whitley, whom Duarte describes as an "honest person with an incredible CV", have experience in the banking sector.

For Bobat, his new venture into the murky world of politics and public service is a first. His first job was at Deloitte, soon after graduating with a BCom. He then moved to Standard Bank in the late 1990s, before joining Investec.

In 2012, Bobat was headhunted by Regiments Capital, where he forged ties with a number of influential individuals and companies.

He was at Regiments when the firm advised Transnet on the awarding of the controversial R50bn tender to purchase locomotives and when it put together financing plans for state-owned enterprises.

Regiments is a controversial firm. It was embroiled in a scandal over a R1-million kickback to an ANC Gauteng official and implicated in the wrongful management of a City of Johannesburg fund before Bobat joined.

Whitley also worked at Standard Bank in the late 1990s. In 2006 he joined Absa, before moving to the troubled African Bank in 2012.

[This article first appeared in the Financial Mail](#)

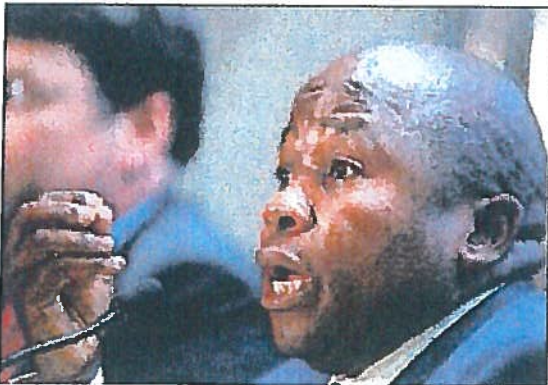
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Van Rooyen lost no time in the treasury

In just one day, a Cabinet document was leaked. The question is, what other damage was done?

- Mail & Guardian
- 31 Aug 2018
- Thanduxolo Jika & Sabelo Skiti



Answers: Investigators want to know what Des van Rooyen gave the Guptas' people in the few days he was finance minister. Photo: Oupa Nkosi

On December 9 2015, ANC backbencher Des van Rooyen was appointed finance minister. Four days later, after intense pressure, then president Jacob Zuma rescinded his appointment, shifted him to the cooperative governance and traditional affairs department and appointed Pravin Gordhan to control the nation's purse strings.

Those few days were the culmination of years of reports about the influence of the Gupta family in running South Africa. To many, Van Rooyen, who had visited the Guptas' Saxonwold compound seven days in a row before his appointment, represents the epitome of state capture.

Investigators for the Zondo commission of enquiry into state capture have been tasked to discover what exactly Van Rooyen did during his tenure as finance minister. He was at the helm of the treasury for just one day but reports indicate that it took mere hours for Van Rooyen to feed information to the Guptas.

He has repeatedly insisted that he signed "no deals" during his term as finance minister but of particular interest to investigators is to find out how a confidential presentation meant for the Cabinet ended up with Trillian chief executive Eric Wood, and was later passed on to Gupta business associate and lieutenant Salim Essa.

Van Rooyen received the presentation from former director general Lungisa Fuzile, who is one of four current and former treasury officials who have been approached by the commission's investigators to give statements and consider testifying.

"There will be a round that will be on Des van Rooyen and the commission's investigators are interviewing four people from treasury but might just want to take two to testify," a senior government official familiar with treasury matters said. "The officials will testify about that one Friday that Des van Rooyen was in office and the meeting he called and what he wanted from the officials."

This week, testimony from key witnesses before the commission detailed how unfettered access to key government information, including departmental budgets, sensitive government strategy and procurement spending plans was instrumental to state capture.

Former senior civil servant Themba Maseko and former ANC MP Vytjie Mentor revealed how the Gupta family seemed to have intimate knowledge of government information, including of the government's advertising budget, and used it to secure business deals with national departments and stateowned enterprises (SOEs).

Van Rooyen is a central figure in the allegations of state capture in both his capacity as short-lived finance minister and his longer tenure as co-operative governance and traditional affairs minister.

Van Rooyen, still a staunch Zuma supporter and defender, arrived at the treasury with two advisers, Ian Whitley and Mohamed Bobat, who were allegedly handpicked by the Guptas. At the time Whitley was ANC deputy secretary general Jessie Duarte's son-in-law.

Bobat was employed by Guptalinked Trillian at the time of Van Rooyen's appointment as finance minister. He later played a key role in drafting crucial proposals from Trillian to the department of co-operative governance to help tier-two municipalities to access debt on capital markets to pay for infrastructure projects, as well as the establishment of a national black bank with which the government would conduct all its business.

The Sunday Times previously reported that Bobat was the adviser who shared the confidential document with Wood.

This week, Fuzile would not say what the investigators wanted from him or whether he would testify about Van Rooyen.

Officials expected to testify at the commission have been sworn to secrecy and cannot divulge any information about their testimonies. But a government source

said the document Fuzile passed to Van Rooyen was not supposed to be shared even with his own advisers — it was confidential and meant for the Cabinet only. It was about how to turn around South Africa's economy and was going to be presented at a meeting on December 15 2015.

It detailed economic opportunities in Africa and South Africa, and addressed the effects of rating agencies' decisions. It also gave a breakdown of government expenditure, matters to do with state-owned companies, corruption and perceptions about it, beneficiation and mining, as well as South Africa's nine-point plan for an economic turnaround and each department's contribution to it.

"If this one [Van Rooyen] sent a presentation to Eric Wood, who is connected to the Guptas, how many other presentations and government information, whether from him or any other ministers, did they have access to?" an official said.

"Could it be that one of their modus operandi is to plant advisers and officials, if one of the things they said to [former deputy finance minister] Mcebisi Jonas [was that] they would give him officials."

Van Rooyen did not respond to calls and text messages asking for comment.

Previous media reports on state capture have detailed the role played by other ministers, including former communications minister Faith Muthambi, who shared a confidential Cabinet memo, and former minerals resources minister Mosebenzi Zwane, who travelled with the Guptas to Zurich, where the Gupta family and Essa met Glencore, the owner of Optimum Coal, to discuss its sale to the Guptas' Tegeta Exploration and Resources.

Last week the Mail & Guardian revealed that other treasury officials would appear at the commission to testify about the sustained resistance they encountered at major SOEs when they tried to investigate their alleged capture by the Gupta family and their associates.

The treasury has said it would hand over all reports relating to its investigations when it reviewed contracts worth more than R10million at Transnet, Eskom, Denel and other SOEs.

ANNEXURE 25

499

Attachments:

image.jpg; Economic Outlook presentation 12 December 2015.pptx

----- Forwarded message -----

From: "Ian Whitley" <iwhitley39@gmail.com>

Date: 12 Dec 2015 5:36 PM

Subject: Fwd: Feedback from Minister Nkwintini meeting

To: <mahommed.bobat@gmail.com>, "Malcolm Mabaso" <malcolm@opensbs.co.za>

Cc:

Gents finally....

Ian Whitley

Begin forwarded message:

From: "Marlon Geswint" <Marlon.Geswint@treasury.gov.za>

Date: 12 December 2015 at 4:38:39 PM SAST

To: <iwhitley39@gmail.com>

Subject: Fwd: Feedback from Minister Nkwintini meeting

Hi Ian

Attached as requested

Thanks

Financial company given confidential package prepared for Zuma's cabinet

• Sunday Times

• 20 Nov 2016

• THANDUXOLO JIKA and SABELO SKITI jikat@sundaytimes.co.za skitis@sundaytimes.co.za

JUST two days after Des van Rooyen's disastrous appointment as finance minister in December last year, his team leaked a confidential government document to close Gupta associates.

The cabinet's master plan to avoid a ratings downgrade was leaked to key Gupta friends — even before President Jacob Zuma and his ministers had seen the document.

The shocking details are revealed in a string of e-mails, which the Sunday Times has seen. They show how Van Rooyen's special advisers, Ian Whitley and Mohamed Bobat, began an audacious takeover of the National Treasury almost immediately after the new finance minister took up his position.

On October 30 the Sunday Times reported that Van Rooyen, until then an ANC backbencher, had visited the Gupta compound in Saxonwold, Johannesburg, every day for the seven days before his appointment by Zuma on December 9.

Whitley and Bobat are believed to have accompanied Van Rooyen on his many visits to the compound. Whitley is ANC deputy secretarygeneral Jessie Duarte's son-in-law.

Appointed after the controversial axing of respected finance minister Nhlanhla Nene, Van Rooyen lasted only four days in the job. The rand went into a perilous slide after Nene was sacked and Zuma was forced to replace Van Rooyen with Pravin Gordhan. Criminal charges were recently brought against Gordhan — and then withdrawn — in what was seen as a further attempt to gain control of the Treasury.

The e-mails have surfaced in a court battle between Gupta-aligned businessman Eric Wood and his former partners at Regiments Capital.

The legal battle emanates from Wood's departure from Regiments and his partnering with Salim Essa, a key business partner of the Guptas and Zuma's son Duduzane.

The e-mails include a document prepared by the Treasury's director-general, Lungisa Fuzile, for economics cluster chairman Gugile Nkwinti.

It details economic opportunities in Africa for South African companies, the effects of rating agencies' decisions, a breakdown of government expenditure, matters to do with state-owned companies, corruption and perceptions thereof, beneficiation and mining, as well as South Africa's nine-point plan for an economic turnaround and each department's contribution to it. Nkwinti had requested input from directors-general in the cluster to prepare for a meeting of ministers on Tuesday December 15 2015 on how to turn around South Africa's ailing economy. These would have then fed into an ongoing cabinet discussion on the topic.

On December 12, just hours after receiving the document, Whitley shared it with Bobat and Essa's former business partner Malcolm Mabaso, who was special adviser to Mineral Resources Minister Mosebenzi Zwane.

He began the e-mail simply: "Gents, finally . . ."

Bobat then forwarded the e-mail to Wood, his former boss in the private sector, as well as another, unknown nongovernment e-mail address. Wood is CEO of Trillian Capital Partners, a company owned by Essa.

A senior government official said the leak was a serious breach, as any documents known to be intended for cabinet consumption were treated as confidential, and received an even higher classification once they became cabinet memos.

"Even at that point already the documents are classified, so in the context of them being in the hands of the ministerial team [they] would be considered, at the very minimum, confidential."

Government Communication and Information System spokesman Donald Liphoko said it was "unusual for government documents to be circulated outside of senior government officials and advisers".

Cassius Lubisi, cabinet secretary and director-general in the Presidency, said via a text message that his department had "no knowledge of the matter".

The Sunday Times has reported previously how Wood shared with Essa eight initiatives he had prepped for Van Rooyen as the new finance minister.

These included a programme for the Treasury to help tier-two municipalities to access debt on capital markets to pay for infrastructure projects, as well as the establishment of a national black bank with which the government would conduct all its business.

On Friday December 11 — the day after Van Rooyen began his job at the Treasury and Fuzile delivered the presentation — the minister is said to have demanded to see all the Treasury's files on SAA.

At the time the airline's chairwoman, Dudu Myeni, another Zuma friend and business associate, was at loggerheads with the Treasury over her plans for the airline to abandon an aircraft lease deal with manufacturer Airbus and rather purchase aircraft outright.

Her proposed R6-billion deal, which involved a little-known local financier, would have cost the airline more than a billion in impairments it could not afford.

On Friday, Bobat said Mabaso had been copied on the e-mail for input from his director-general at the Department of Mineral Resources, while Wood's input was solicited as he was studying towards a doctorate on the South African economic climate and the success of entrepreneurship in the country.

"Minister Van Rooyen has engaged with various stakeholders across the local government sector, as is his responsibility and as do all ministers in the line of duty.

Minister had no interactions with Mr Wood. He became aware of him through me," he said.

Trillian Capital Partners said yesterday that the allegations that Wood had received the confidential e-mails formed part of a dispute into which its board chairman, Tokyo Sexwale, has ordered an investigation.

Sexwale announced this month that an investigation would be carried out by Advocate Geoff Budlender SC regarding allegations made against Wood and Trillian Capital and its alleged involvement in state capture.

"The scope of the investigation covers some of the questions you have sent to Dr Wood and Trillian, which are highly disputed, and therefore, being the subject of investigation, we would advise that these matters be left to Mr Budlender's investigation," said Trillian.

Last month the Sunday Times reported that Wood told a subordinate in October 2015 that Nene would be removed that December.

Wood and Essa, Trillian's majority shareholder, then reportedly conspired to influence Van Rooyen by suggesting eight initiatives he should champion as minister.

Ajay Gupta declined to comment and referred questions to spokesman Gary Naidoo, who had not responded by the time of going to press.

At that point the documents are classified . . . [they] would be considered, at the very minimum, confidential

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News

Exposed: Explosive Gupta e-mails at the heart of state capture

28 May 2017 - 02:05 By THANDUXOLO JIKA



The Gupta family has been caught up in a new controversy.
Image: MARTIN RHODES

A series of damning e-mails seen by the Sunday Times show that the Guptas run South Africa.

The explosive evidence comes as President Jacob Zuma fights for his political life amid mounting confirmation of state capture and growing opposition in his own party to his links with the family.

The e-mails show the extent of Gupta control over cabinet ministers and parastatal CEOs and board members. The correspondence also gives insight into the role of Zuma's son Duduzane in presidential matters. Duduzane is a close Gupta associate and is believed to have made billions through this partnership.

Another series of explosive e-mails show that the Guptas were central to a scheme for Zuma and his family to acquire residency in Dubai in the United Arab Emirates.

However, Zuma yesterday denied the claim, saying his only home was in Nkandla.

Along with Gupta brothers Ajay, Atul and Tony, Sahara CEO Ashu Chawla emerges as a key player in the intricate web of state capture.

On several occasions Zuma has asked his critics to come forward with proof that he has done something wrong. In December he asked "Tell me what is it that I have done wrong?" while addressing a youth league rally, adding that his removal would be a victory for white monopoly capital.

Two weeks ago, on May 14, Zuma reiterated his position: "If I am not told what I have done wrong, I cannot correct my mistakes because I don't know what I have done wrong."

WATCH: 9 things revealed from the Gupta e-mails

In the wake of Zuma's repeated denials of any wrongdoing, the Sunday Times today publishes evidence of the Gupta family's unprecedented control over government affairs.

Mr President, here is the proof!

The e-mails reveal that the Guptas:

- Were sent Mosebenzi Zwane's CV a month before he was appointed minister of mineral resources;
- Intervened to have the powers of the then communications minister, Faith Muthambi, strengthened and were forwarded a presidential proclamation detailing her powers by Muthambi herself before it was signed by Zuma;
- Received confidential information on cabinet meetings from Muthambi;
- Paid for Des van Rooyen's trip to Dubai after his appointment to the cabinet in December 2015;
- Arranged for Denel director Dan Mantsha to be chauffeured around Dubai;
- Paid for a deluxe suite for Matshela Koko - subsequently appointed acting CEO of Eskom - at the luxurious Oberoi Hotel in Dubai;
- Were asked by an SAA board member to get him onto the board of Transnet;
- Had staff coach Zwane on how to handle media conferences, including questions about his relationship with the Guptas. He flew on a Gupta jet to Dubai and they picked up the tab for his accommodation; and
- Had their company's CEO, Nazeem Howa, prepare notes for ANC Youth League president Collen Maine advising him on how to respond to media questions.

- **Here they are: The emails that prove the Guptas run South Africa**

HERE ARE SOME OF THE DETAILS UNCOVERED BY THE SUNDAY TIMES:

• A second home for Zuma in Dubai

On January 16 last year two draft letters were circulated from Tony Gupta to Chawla and then to Duduzane Zuma with subject lines: "JZ letter to Crown Prince AUH" and "JZ letter to Sheikh Mohammed".

In one of the letters prepared for Zuma, he writes to "His Highness Crown Prince of Abu Dhabi, General Sheikh Mohammed Bin Zayed Al Nahyan", congratulating him on initiatives for the developing and planning of Abu Dhabi. In the second letter Zuma commends "His Highness Vice President and Prime Minister, Sheikh Mohammed Bin Rashid Al Maktoum" for his "dynamic rule and visionary leadership".

He continues to sing both their praises and then requests their "guidance and direction" for making the United Arab Emirates his second home.

"It is with this sentiment that I am happy to inform you that my family has decided to make the UAE a second home. It will be a great honour for me and my family to gain your patronage during our proposed residency in the UAE."

Two months after the draft letters, Zuma added Dubai at the last minute to his Saudi Arabia state visit. There he met Sheikh Mohammed Bin Rashid Al Maktoum, to discuss a "number of regional issues".

At the time, the Sunday Times reported that sources close to the Presidency confirmed that the Dubai stopover was indeed added at the last minute.

• The ministers

Des van Rooyen

E-mail correspondence prove that Van Rooyen repeatedly lied when he said he paid for a private trip to Dubai shortly after his appointment to the cabinet in December 2015.

At a press conference in April 2016 Van Rooyen vehemently denied that his December 21 trip was done at short notice, saying it was planned long before his brief appointment as finance minister and later minister of cooperative governance and traditional affairs.

At the time he said: "It was a private visit, I paid for that myself. You know I didn't have enough [money]. I was supposed to stay for a week, but you know, it was in and out".

The e-mail correspondence, however, shows that the trip was sponsored by the Guptas and booked just a day before his departure on December 21.

Reservations e-mails from the luxurious five-star Oberoi Hotel to Chawla confirm that bookings were done by the Gupta-owned company.

Van Rooyen was chauffeur-driven with a Jaguar XJ L from the airport to the hotel and booked a deluxe suite, which costs about R6,000 a night. The room reservations from the e-mails indicate that the booking at the hotel was for two adults.

Chawla sent Van Rooyen's reservation confirmation to Salim Essa, a Gupta associate who owns shares in several of the family's companies.

The Sunday Times reported last year that Van Rooyen's advisers - two days after his appointment as finance minister - leaked confidential cabinet information to Essa, saying "Gents Finally".

It has been widely claimed that Van Rooyen's appointment as finance minister was influenced by the Guptas. He even arrived at the Treasury with two advisers said to be linked to the Guptas, Mohamed Bobat and Ian Whitley. The two moved with him to cooperative governance.

The Sunday Times also reported that Van Rooyen visited the Gupta compound in Saxonwold, Johannesburg, for seven consecutive days before his appointment as finance minister.

- **Gupta e-mail scandal: 'We've done no wrong'**

Mosebenzi Zwane

The Guptas hand-picked Zwane as mineral resources minister a month before Zuma appointed him to his cabinet in September 2015.

On July 31 2015, one France Oupa Mokoena, from Koena Consulting and Property Developers, e-mailed Tony Gupta to say: "Please find attached the CV of Mr Mosebenzi Zwane for your attention."

Three months after his appointment, Zwane stood up embassy officials when he left Zurich for Dubai in a Gupta-owned plane, on December 2.

Zwane, a staunch Gupta defender, was on a working trip in Zurich where he helped to facilitate the sale of the Optimum coal mine in Mpumalanga to a company owned by the Guptas and Duduzane Zuma.

E-mail correspondence between Chawla and the crew flying the Gupta plane reveal that Zwane flew out of Zurich with Essa, Tony Gupta and other people.

This was despite a flight ticket on an Emirates flight being booked by his department to fly him to Dubai.

E-mails from the Oberoi Hotel to Chawla confirm that Zwane's stay at the five-star hotel overlooking the Burj Khalifa was paid for by Sahara.

Zwane was chauffeured around in a BMW 7 Series. Chawla advised hotel reservations to charge the cost of the chauffeur services to a certain Mr Singh.

Further evidence of the Guptas' influence and hold over Zwane is contained in another e-mail last year.

With a subject line reading "Zwane questions", former Oakbay CEO Howa e-mailed Tony Gupta and Duduzane Zuma on February 2 last year.

"I need some help on some of the answers. I think we should also prepare for a question of his role around the Waterkloof landing.

"Perhaps I can sit with someone at his side to help me polish and add to the answers. Lets chat when you have a chance to review."

Howa drafted questions that included:

- "Given this perfect storm, you have been described as unsuited to the role of minister of mineral resources given your inexperience?"
- "Critics have slammed your appointment as proof of government's alarming lack of urgency in dealing with SA's ailing mining sector and its ambiguous regulatory framework?"
- "Your appointment seems to be really irregular? You were silently moved from MEC for Agriculture to mining minister. what do you think the president saw in you to give him the confidence to appoint you?"
- "Analysts say the mining industry is at its lowest ebb ever and this can be directly attributable to legislation, policies, ideology, corruption, inefficiency, political demagoguing, organisations not adhering to the constitution and draconian labour legislation. What is your comment?"
- "What about the rumours of your being captured by the Guptas and your appointment was made for you to do their bidding?"
- "What is your relationship with the Guptas?"

Howa then requested further information and asked for further input from Tony Gupta and Duduzane Zuma.

Zwane was one of the ministers at the forefront of trying to force South African banks to reopen closed Gupta accounts.

- **State capture bombshell: DA weighs up legal action**

Faith Muthambi

Former communications minister Faith Muthambi, now the minister in charge of the public service, corresponded directly with Tony Gupta, as well as his staff, on government policy.

A series of e-mails show that the minister, who is a close ally of the president, alerted the Guptas to various changes in government policies relating to her department - even before they had been officially approved by Zuma.

One e-mail sent to Tony Gupta in January 2014 contains a proclamation - which she says is to be signed by Zuma - transferring functions under other ministers to herself.

They include those under the Electronic Communications Act, the Sentech Act and the Broadband Infraco Act.

In July that year, she sent two e-mails to Chawla.

In the first e-mail, with the subject line "Proclamation New July 18", she writes: "These sections must be transferred to the Minister of Communications."

The regulations listed in the e-mail give the communications minister wide-ranging power over the Independent Communications Authority of South Africa, including the power to make policies and issue policy direction and oversee applications for electronic communications network licences, radio frequency plans and commercial broadcasting licences.

In a second e-mail sent minutes later, with the subject line "Responsibility for InfraCo and Sentech", she writes: "Sentech's signal distribution must rest with the Ministry of Communications."

Attached is a document transferring powers, functions and duties of the minister of public enterprises in the Broadband Infraco Act and the Sentech Act to herself. Both e-mails were subsequently forwarded by Chawla to Duduzane Zuma.

On July 29 2014, Muthambi sent an e-mail to Chawla, with an attachment containing a memo from Telecommunications and Postal Service Minister Siyabonga Cwele, in which he expresses concerns about proposed amendments to broadcasting digital migration policy.

In her message to Chawla - which was meant for Tony Gupta - Muthambi writes: "Despite my request, the cde is determined to table the matter in cabinet tomorrow ... He called me that he was coming to Cape Town this morning ... I hope he still on his way."

Chawla forwarded the e-mail to Tony Gupta the same day.

Muthambi was appointed public service and administration minister in March in a midnight cabinet reshuffle. As communications minister, she was accused of allowing the SABC to be plundered and run into the ground.

She was widely condemned for failing to halt former chief operating officer Hlaudi Motsoeneng's abuse of power at the broadcaster.

• Youth League

Collen Maine

The e-mails show that former Oakbay CEO Howa prepared notes for ANC Youth League president Maine advising him on how to respond to media questions.

Howa's notes, which were sent to Tony Gupta and Duduzane Zuma, detail how Maine should respond to questions about the anti-Gupta revolt within the ANC, state capture, his attacks on banks, #FeesMustFall, his relationship with North West premier Supra Mahumapelo, and an incident in which he allegedly shoved R200 notes down a journalist's cleavage.

In the e-mail, Howa writes: "Maybe I can sit with young man to work on this."

The Howa notes instruct Maine to sing the praises of the Guptas.

On his view on the anti-Gupta revolt in the ANC, Howa advises Maine to say: "I hold no brief for the Guptas, but I'm celebrating how they have entered areas previously closed to anyone other than the pre-94 controllers of our economy. Today, we have a progressive newspaper and tv channel thanks to their investment. I have been there to be interviewed and I have been impressed by the number of young African people employed there.

"Our country needs job creation and it looks like they are doing it."

• The CEO

Matshela Koko

Sahara Computers paid for Koko's accommodation at the Oberoi Hotel in Dubai last year. At the time he was the Eskom group executive in charge of generating power.

Koko was chauffeur-driven around Dubai during his one-day visit.

He checked in on Monday January 4 last year and left the hotel the following day.

The e-mails show the confirmation of his booking was sent to Sahara Computers CEO Chawla.

Koko's trip took place a month after another Gupta-owned company, Tegeta Exploration and Resources, took over operations at the Optimum coal mine - supplier of coal to Eskom power stations.

Koko - who took over as acting group CEO after Brian Molefe's controversial departure last year - is on suspension following allegations that Eskom awarded tenders worth R1-billion to a company where his stepdaughter was a director.

• The Directors

Dan Mantsha

On January 3 last year, Chawla confirmed travel arrangements for Denel board chairman Dan Mantsha.

Mantsha was booked into the Oberoi Hotel in Dubai and Chawla arranged a concierge service for Mantsha to an exclusive housing estate in Dubai.

Earlier this month Finance Minister Malusi Gigaba canned a multibillion-rand deal involving a Gupta-linked company.

The deal - in which the Guptas were expected to make billions - involved setting up a joint venture between Denel and VR Laser Asia to form a new company called Denel Asia.

Denel believed the joint venture would help it "find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles".

Gupta business associate Salim Essa is the sole shareholder of VR Laser Asia.

He is also a director of VR Laser RSA, a company owned by Duduzane Zuma and Tony Gupta through an entity called Westdawn Investments.

Ajay Gupta's son Kamal Kant Singhala was a director of VR Laser RSA but has resigned.

Rajesh Naithani

When Rajesh Naithani was dumped as an SAA board member in October 2014, he sent an e-mail to Chawla asking him to tell Tony Gupta to "get me in at Transnet".

Gigaba, who was then public enterprises minister, had appointed Naithani to the SAA board in September 2012.

Two years later it appears from e-mail correspondence that Naithani had caught wind that his days at the national airline were numbered.

In an e-mail to Chawla on September 26 2014, Naithani attaches his CV "for possible positions in boards". He adds "kindly make necessary changes".

On October 15, he writes: "I received a mail in which they have said that they will be removing seven directors from SAA which includes me.

"Please convey this to Tony Bhai [Bhai means brother in Hindi].

"Please also request him that if this does not work he may kindly get me in Transnet."

On November 19, he again e-mails Chawla: "I got the e-mail that presently I am no more a member at SAA. You may show it to Tony Bhai please."

THE PRESIDENT RESPONDS

President Jacob Zuma denied that he was planning to move to the United Arab Emirates but failed to respond to questions about his cabinet ministers' communications with the Guptas.

He said he had no plans to leave South Africa when he retires.

"I have my home in Nkandla and I have no intention of living anywhere else. When I retire I will go home to Nkandla. This is a pure fabrication. Duduzane has never spoken to me about living in any other country. He has never shown me any letter. It's shocking in the extreme. It's absolute mischief aimed at sowing confusion," said Zuma.

However, he had no explanation for why these claims were made in e-mails to Duduzane.

A spokesman for Mosebenzi Zwane, Martin Madlala, declined to answer pointed questions. He said the minister of mineral resources had travelled to promote investment.

"The visit came at a time when commodity prices were depressed, as well as responding to specific invitations from major investment companies, including Glencore. Engagements and road shows undertaken by the minister serve an important role of promoting mining in South Africa, as well as providing a platform to clarify policy and

regulatory issues within the mining and minerals sectors. The minister continues to hold meetings with key mining stakeholders as he has adopted an open-door policy," said Madlala.

Madlala did not answer questions about Zwane travelling in a Gupta aircraft with Rajesh "Tony" Gupta and Salim Essa, nor why he was being driven around in a luxury car paid for by a Gupta-owned company.

Legadima Leso, a spokesman for Minister of Co-operative Governance Des van Rooyen, said the minister would comment once he was back in the country today.

"Minister is out of the country attending a conference on disaster risk reduction," said Leso.

When contacted for comment Maine said: "That is rubbish, I don't respond to rubbish".

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ANNEXURE 26

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Bharti Airtel Woos MTN Again



Naazneen Karmali Forbes Staff
I write about India's wealth creators.

NEW DELHI - Exactly a year after he called off a merger between his flagship **Bharti Airtel**, India's leading mobile phone operator, and **MTN**, billionaire Sunil Mittal is having a second stab at adding the South African company to his global telecommunications empire.

In a press statement Monday, Bharti Airtel said it was exploring a potential deal to acquire 49% of MTN, which in turn would receive a 36% stake in Bharti.

Commenting on the proposal, Mittal said, "We see real power in the combination and we will work hard to unleash it for all our shareholders." Both sides have given themselves until July 31 to reach an agreement.

A merger would create a \$20 billion emerging market telecoms giant, with 200 million customers in India, Africa and the Middle East. "Three of the fastest growing wireless markets globally with no overlapping footprint," said Phuthuma Nhleko, CEO of MTN.

MTN is offering \$2.9 billion in cash and 25% of its own equity to acquire a quarter stake in Bharti. Other MTN shareholders would buy the remaining 11% of Bharti. Bharti, in turn, says it can pay 86 rand (\$10.32) per share in cash and give half a Bharti share for every MTN share in the form of global depositary receipts to be listed on the JSE, the South African securities exchange. That is far less generous than the 165 rand (\$19.80) it offered last year. MTN says it would reserves the right to increase its stake in Bharti in the future.

Bharti Airtel's shares rose initially on the Bombay Stock Exchange but later fell by 62 rupees or 7% to 796 rupees.

Bharti's attempt last year to strike a deal with MTN (see "Bharti Airtel Wants Africa's Ear") fell through because MTN insisted that Bharti become its subsidiary. In a statement issued at the time, Bharti slammed the proposal as a "convoluted way of getting indirect control of the combined entity," and one that would have "compromised the minority shareholders of Bharti Airtel and also would not capture the synergies of a combined entity."

That collapse in talks paved the way for Reliance Communications, controlled by rival billionaire Anil Ambani, to seek its own union with the South African corporation. (See "Another Suitor For South Africa's MTN.") That offer was withdrawn in July after Anil's estranged brother, Mukesh Ambani, objected.

With 100 million customers, Bharti Airtel is 31% owned by SingTel, which will remain as "significant shareholder" in the merged entity, the Indian company insisted. Telecom analysts said that SingTel is likely to support the deal as it would widen its customer base.

For Mittal, there is another upside to any merger. Joining with MTN would, analysts note, help him avoid the clutches of Indian telecom regulators. Rows over the matter of spectrum allocation remain unresolved and the rollout of 3G services is long delayed.

Communications and information technology minister, A. Raja, is also likely to retain his post after the recent election despite a patchy record, which doesn't bode well for efforts to deregulate the sector. "Sunil has tremendous tenacity," says Asim Ghosh, former chief executive of Bharti-competitor Vodafone Essar. "This is another example of it."

I am the India Editor of Forbes Asia and Mumbai bureau manager of Forbes. From Mumbai, I track the wealth of India's richest and also oversee the rich lists for Singapore and Thailand. Earlier, I was managing editor of Business India, among India's leading business magazines... MORE

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NEWS

Bharti Airtel and MTN Call Off Alliance Talks

Bharti Airtel, India's largest mobile services company, said Wednesday that it had called off talks for an alliance with MTN Group of South Africa.

By John Ribeiro

Bangalore Correspondent, IDG News Service

SEP 30, 2009 8:00 AM PT

Bharti Airtel, India's largest mobile services company, said Wednesday that it had called off talks for an alliance with MTN Group of South Africa.

The South African government did not approve the proposed alliance's structure, Bharti Airtel said in a filing to the Bombay Stock Exchange.

The South African government, which views MTN as a national champion, has insisted on keeping MTN's separate identity, according to reports.

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Perhaps to avoid government objections, the talks between the companies were described as leading to a partnership, though a merger at a later date was not ruled out.

The period for exclusive talks between the companies was scheduled to end Wednesday, after two earlier extensions.

The broad structure discussed had taken into account the sensibilities and sensitivities of both companies and their countries, including ensuring continuity of business in areas such as management, brand and stock listing, Bharti said.


The companies said in May that a full merger between them was a broad strategic objective, as soon as it was practicable, indicating that the immediate focus of the talks was on a loose partnership and cross-investments between the two companies.



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Under the terms for an arrangement announced in May, Bharti Airtel was to acquire 49 percent shareholding in MTN, while MTN and shareholders would acquire a 36 percent economic interest in Bharti Airtel through a stock and cash deal.

Together the two companies would have US\$20 billion in revenue and 200 million customers, Bharti Airtel said in May.



Under the arrangement, Bharti Airtel would have substantial and governance rights in MTN, enabling it to fully consolidate the accounts of MTN.

Bharti Airtel would be the primary vehicle for the expansion of both Bharti Airtel and MTN in Asia, while MTN would focus on expansion in Africa and the Middle East.

The South African government is said to have insisted on a dual listing of the combined entity after a merger, in order to protect the identity of MTN as a South African entity, according to informed sources. Dual listing of companies in India and another country is not allowed by Indian rules, which only allow depository receipts of Indian companies to be listed abroad under specific conditions.

This is the second time that alliance talks between Bharti Airtel and MTN fell through over the structure of the combined entity. Bharti Airtel, which has Singapore Telecommunications as a key shareholder, said last year that earlier talks fell through after disagreement on the structuring of the deal, particularly MTN's insistence that Bharti Airtel should be a subsidiary company of MTN after the deal.

Bharti will continue to explore international expansion opportunities, the company said in its statement on Wednesday. It hoped that the South African government would review its position on the proposed structure and allow the two companies an opportunity to re-engage.

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John Ribeiro covers outsourcing and general technology breaking news from India for the IDG News Service.

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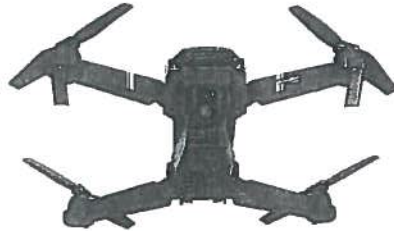
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Sunil Mittal

Bharti-MTN saga India's leading Telecom companies

India's telecom czar Sunil Mittal dreams of forging a transnational alliance with Africa's largest telco MTN. The deal was shattered for the second time in less than two years with Bharti Airtel and the South African company calling off talks a few hours before the expiry of the September 30 deadline after the South African government refused to soften its stance on the proposed deal structure.

Bharti and MTN have decided to disengage from their discussions when the exclusivity period ends on September 30, 2009. This (deal) structure needed an approval from the government of South Africa, which has expressed its inability to accept it in the current form. In view of this, both companies have taken a decision to disengage from discussion. Bharti Airtel said in a statement on

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India Inc feels let down by Bharti-MTN deal failure

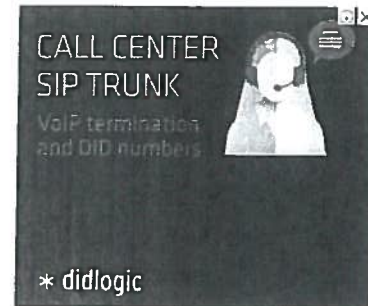
Statement from Bharti Airtel on deal being called off

Wednesday evening.

ET NOW, this paper's television channel, was the first to break the story at 7.25 pm, even ahead of the official statement from Bharti. (Watch)

The statement was issued in India even as the top management team of Bharti chairman Sunil Mittal along with top executives Manoj Kohli and Akhil Gupta was at an offsite in Thailand. The deal fell through, say sources, after two crucial meetings in South Africa on Wednesday in one of these, the key representatives of the government expressed reservations about the deal and refused to budge from its earlier stance on dual listing of companies or DLC. Thereafter, the MTN board met and formally called off the deal.

The announcement pulled down MTN's shares by 5.5% on the Johannesburg Stock Exchange (JSE) before the South African company requested a suspension of trade in the stock for the rest of the day. The JSE has been requested by MTN to suspend trading in its securities until the commencement of business on Thursday, October 1, 2009, the JSE said in a statement.



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World's 21 costliest Cars
 Codenamed Project Green by Bharti Airtel and MTN, the two companies and their numerous advisors and bankers had worked on the transaction since the beginning of the year. After over eight months of tortuous and complex discussions, both companies reached an agreement for a \$24-billion alliance to create the world's fourth largest telco spanning 24 countries and 200 million subscribers. But the South African government's refusal to budge from its demand that the Indian government amend laws to allow dual-listed companies as a precursor to the deal sealed its fate.

Dual listing allows companies retain their separate legal identities and listings on stock exchanges while entering into equalisation agreements to collectively run operations and share profits or losses. Such arrangements are also seen protecting the national identities of companies. ET was the first paper to flag off the issue of dual listing as a major stumbling block for the deal in its edition dated July 31, 2009.

Bharti has not given up yet

In the end, the politics of national pride derailed the deal as South Africa did not want MTN to lose its independent identity. It wanted an assurance from the Indian government that it would amend laws to allow DLCs. While Prime Minister Manmohan Singh assured South African President Jacob Zuma that the Indian government would discuss all issues, this was evidently not enough for the South Africans.

This also marks the seventh attempt by MTN to enter into a merger or strategic alliance with global communication majors. The South African giant has in the past been in failed discussions with the likes of Vodafone, China Mobile and Reliance Communications.

Pallavi Ambekar, analyst, Coronation Fund Managers, Cape Town, a shareholder in MTN, is relieved that the deal has been called off. "We are shareholders of MTN and we are quite positive that the deal has been called off. We felt that the deal in its initial format was quite complicated and felt that the price being offered undervalued MTN itself. I can't comment on any new deal because we haven't seen any new deal that was being presented. The deal was complicated. Several things would have come in the way of actually concluding the deal, not necessarily just the SA government," she said in an exclusive chat with ET NOW soon after the Bharti statement.

Naturally, friends and well-wishers of Sunil Mittal are disappointed. Dabur India chairman Anand Burman, Mr Mittal's close friend for over 20 years, castigated government officials for derailing what would have been the country's largest cross-border deal. "It is a bit of a setback for Sunil. But he's a go-getter. He will go for something bigger than MTN. It's rather sad that India's best company with the largest number of subscribers and the pioneer of the low-cost business model had to fall prey to the technicalities of some government babus somewhere," Mr Burman said.

Ironically, the transaction under discussion did not involve any loss of national identity for MTN. It was a cash-cum-stock deal which would have resulted in Bharti Airtel getting a 49% stake in MTN and the South African telco and its shareholders getting a 36% economic interest in Bharti. But the South Africans wanted assurances for the future, which the Indian government was not in a position to give as it said that allowing dual listing will need major amendments to key corporate laws and cannot be done in haste.

Finance ministry officials had earlier told ET that DLCs do not figure anywhere on the government and RBI's radar at the moment because that implied a situation close to full capital account convertibility, which the Indian government and RBI were unwilling to consider.

Following Bharti's statement, the South African government said: "When companies structure their relationships outside the current exchange control regulatory framework for such transactions, they require the approval of the minister of finance. This was the case with the proposed MTN-Bharti merger, which required certain exchange control and other approvals."

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Despite the South African government's failure to approve the deal, Bharti Airtel defended the proposed deal structure and said that the broad structure being discussed by the two sides had taken into account the sensibilities and sensitivities of both companies and both their countries.

The Indian telco also said that since both companies were the national champions in their respective countries, the proposed deal structure had taken into account their leadership in their respective geographies to ensure continuity of business including listing, tax residencies, management, brand etc.

This transaction would have been the single largest foreign direct investment into South Africa and one of the largest outbound FDIs from India. The deal would have been a significant step in promoting South-South cooperation a vision of the two countries, Bharti Airtel's statement added.

But the Indian company has not totally given up, if its statement has is anything to go by. We hope the South African government will review its position in the future and allow both companies an opportunity to re-engage. Bharti Airtel also added that it would continue to explore international expansion opportunities that are consistent with its vision and bring value to its shareholders.

The Indian telco even politely observed that it enjoyed its engagement with the MTN management and its board and wished them continued success.

Last month, Bharti Group chairman Sunil Mittal told ET NOW that the company's second attempt to forge an alliance with MTN was a well thought out move. I would not call it an audacious move. This is our second attempt at forging a deep and meaningful alliance with MTN. It is a very well considered move and there is a very strong rationale. Our business model is ready to go out and that's why I am exploring the MTN opportunity.

Over the past month, Mr Mittal had aggressively wooed the Indian political establishment to help Bharti clinch the deal. The Bharti Group head had met the prime minister three times and held discussions with finance minister Pranab Mukherjee as well as top government officials in a number of ministries.

Bharti also indicated its gratitude to the Indian government for its support: Bharti is grateful to the various Indian government authorities, in particular the minister of finance, the minister of commerce and industry and the minister of corporate affairs. We express our profound gratitude to the honourable prime minister of India for his strong support to what could have been a transformational partnership.

ET comment: We need to scale the Capital wall

It was clear from the beginning that regulatory barriers would be the biggest obstacle in consummating the Bharti-MTN deal. Looking ahead, the Indian government needs to think about the changes in our capital account regime that will facilitate the large cross-border transactions that Indian companies aspire to. Shares are a common currency for acquisition and Indian companies would be shut out of overseas buyout opportunities if they are not allowed to issue them.

While dual listing is a step towards capital account convertibility, it is not necessarily a giant one. The Indian capital account is open for FIIs and in case of FDI. The Companies Act will also have to be amended to take into account taxation and accounting implications for a dual-listed company. But the risks of capital outflows may not be huge.

We probably have more money flowing out due to over and under-invoicing on the trade account. As the government gradually opens up the capital account, issuing ordinary shares to overseas investors ought to be on the agenda.

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16 views | May 26, 2008, 09:36am

Another Suitor For South Africa's MTN



Shu-Ching Jean Chen Contributor ①
Forbes Asia

South Africa's largest mobile telecommunications operator, **MTN**, is proving to be hotter than any telecoms play one might find in the fast-growing markets in India and China: just look at the lineup of its suitors over recent years. **China Mobile, Vodafone, Telkom South Africa** and most recently **Bharti Airtel** have flirted with the company at one time or another. Now another Indian suitor has entered the picture.

On Monday, **Reliance Communications**, India's second-largest mobile telecoms operator, part of Indian billionaire Anil Ambani's corporate empire, announced in a terse statement that it is entering into a 45-day exclusive negotiation with MTN regarding "a potential combination of their businesses" and that "negotiations are currently taking place and a further announcement will be made when appropriate."

Ambani stepped in just days after India's largest wireless telecoms operator, Bharti Airtel, was forced to abandon an proposed acquisition for MTN , valuing it at about \$50 billion, at the eleventh hour, balking at an unexpected proposal from MTN to change the terms of acquisition to make Bharti MTN's subsidiary rather than the other way around.

No one knows what exactly was on the mind of MTN's powerful chairman, 55-year-old South African business mogul Cyril Ramaphosa. Ramaphosa, a former secretary-general of South Africa's ruling African National Congress, is an astute negotiator who was personally involved in the negotiations in ending apartheid in the early 1990s. He is now widely tipped as a possible successor next year to

President Thabo Mbeki, emerging as a more acceptable alternative to the controversial party chief, Jacob Zuma.

India's *Economic Times* newspaper quoted a source as saying Ramaphosa "was uncomfortable with a merger which would have resulted in MTN getting folded in [to] Bharti. He does not mind if the ownership of MTN changes, but for political reasons he wants the company to exist."

Ambani did not disclose what form a combination between Reliance Communications and MTN would take, saying only, "We are delighted to be engaged in exclusive negotiations with MTN Group to achieve a partnership, which would provide investors, customers and the people of both companies a unique and global platform for exponential growth, creating substantial long term shareholder value."

The news sent Reliance Communications shares down 5.0%, to 542.95 rupees (\$12.75), Monday in Mumbai.

Reliance Communications is smaller than either Bharti Airtel or MTN, with 48 million-plus subscribers, of which more than 1.5 million retail customers are overseas. By comparison, MTN had 68 million subscribers in 21 countries in Africa and the Middle East, and Bharti Airtel has slightly more than 62 million. Making it even more improbable that the firm could absorb MTN completely the way Bharti Airtel had planned, Reliance Communication uses a different wireless standard than the other two, code division multiple access instead of the global system for mobile communications, though a smaller affiliate, Reliance Telecom, has developed a GSM platform.

Bharti Airtel confirmed earlier in May that it was in talks to buy MTN, following newspaper leaks of its confidential talks with the South African telecom operator. (See: "Bharti Airtel Wants Africa's Ear").

I cover regional corporates and entrepreneurs for Forbes Asia magazine as a contributing correspondent. Previously, I was a staff writer with Forbes, producing stories for its global website and magazines that covered a wide spectrum of regional topics.

ANNEXURE 27

525

**NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 932 [NW1060E]
DATE OF PUBLICATION: 11 APRIL 2016**

932. Mr M Bagraim (DA) to ask the Minister of Finance:

Has he ever (a) met with any (i) member, (ii) employee and/or (iii) close associate of the Gupta family and/or (b) attended any meeting with the specified persons (i) at the Gupta's Saxonwold Estate in Johannesburg or (ii) anywhere else since taking office; if not, what is the position in this regard; if so, in each specified case, (aa) what are the names of the persons who were present at each meeting, (bb)(aaa) when and (bbb) where did each such meeting take place and (cc) what was the purpose of each specified meeting?

NW1060E

REPLY:

I have not attended any meeting with the Gupta family or anyone else at their Saxonworld Estate. I have encountered one or more members of his family at public events on a few occasions, eg a cricket match. I have met one of the Gupta brothers at Mahlamba Ndlovu around 2009/10 during which a brief discussion on small business finance took place.

ANNEXURE 28

527

IN THE DISCIPLINARY INQUIRY

Before A Bham SC

In the matter between:

**PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

SOUTH AFRICAN REVENUE SERVICE

and

TOM MOYANE

AFFIDAVIT IN SUBSTANTIATION OF CHARGES

I, the undersigned

PRAVIN JAMNADAS GORDHAN

state the following under oath:

- 1 I am a Member of Parliament and the Minister of Public Enterprises. I am based at the Department of Public Enterprises at 1090 Arcadia Street, Pretoria.
- 2 I am the former Minister of Finance, having been appointed to that position on 10 May 2009 by former President Zuma. I served as Minister of Finance until 25 May 2014. On 14 December 2014 I was



reappointed as the Minister of Finance. I served in that capacity until 30 March 2017, when I was removed by former President Zuma.

- 3 I accordingly have personal knowledge of the facts relevant to this matter up until 30 March 2017. Furthermore, the documents and correspondence relevant to this matter were within my custody and control during that time.
- 4 In respect of the period after 31 March 2017, I refer to the confirmatory affidavit of officials, inter alia, from National Treasury and the South African Revenue Service who had knowledge of the relevant events and custody of the relevant documents from that time.
- 5 The facts contained in this affidavit fall within my personal knowledge, alternatively they appear from documents under my custody and control, or from copies of documents that I have seen. To the best of my knowledge and belief the facts are both true and correct.
- 6 Where I make legal submissions, I do so on the basis of advice received from my legal representatives which advice I believe to be correct.
- 7 Where necessary, I have obtained confirmatory affidavits from individuals referred to in this affidavit. Their affidavits will be filed together with my affidavit.

INTRODUCTION



- 8 On 2 May 2018, the President of the Republic of South Africa, President Ramaphosa, served the Commissioner of the South African Revenue Service ("SARS") Mr Moyane, with notice of a disciplinary inquiry.
- 9 Mr Moyane was charged with having committed misconduct in violation of his duties and responsibilities as Commissioner of SARS in terms of the South African Revenue Service Act 34 of 1997 ("SARS Act"), the Public Finance Management Act 1 of 1999 ("PFMA") and the SARS Code of Conduct, as well as his fiduciary duties and his duty to act in accordance with the prescripts of section 195 of the Constitution.
- 10 The charge sheet listed four counts of misconduct, namely:
- 10.1 Gross mishandling of the Financial Intelligence Centre ("FIC") Report of 17 May 2018;
 - 10.2 Unauthorised bonus payments;
 - 10.3 Misleading Parliament; and
 - 10.4 Instructing a SARS employee not to co-operate with the KPMG investigation into the SARS High Risk Unit.
- 11 The charge sheet set out the key averments in respect of each charge and stated that the inquiry into Mr Moyane's misconduct would be conducted on paper and that an affidavit in substantiation of the charges would be delivered in due course.

A handwritten signature in black ink, appearing to be 'L.P.' with a stylized flourish above it.

- 12 This is the affidavit envisaged in the charge sheet. Its purpose is to set out the facts and evidence which form the basis of the charges against Mr Moyane.
- 13 Mr Moyane is no ordinary employee. His position as Commissioner of SARS entailed a raft of duties and responsibilities in terms of legislation, the SARS Code of Conduct and the Constitution itself. These are set out below and it is in this context that the charges against Mr Moyane must be considered.

THE DUTIES AND RESPONSIBILITIES OF THE COMMISSIONER OF SARS

THE SARS ACT

- 14 Section 2 of the SARS Act establishes the SARS as an organ of state, within the public administration, but outside the public service.
- 15 In terms of section 6 of the SARS Act, the President must appoint the Commissioner of SARS for an agreed term not exceeding five years.
- 16 Mr Moyane was appointed Commissioner of SARS by Presidential Minute dated 27 September 2014 for a period of five years.
- 17 Section 9 of the SARS Act sets out the responsibilities of the Commissioner. It provides that the Commissioner:
- 17.1 is responsible for the performance of SARS' functions;



17.2 takes all decisions in the exercise of SARS' powers;

17.3 is the chief executive officer of SARS; and

17.4 is the accounting authority of SARS.

18 The responsibilities of the Commissioner, as chief executive officer of SARS, are set out in section 9(2) of the SARS Act. They include responsibility for, amongst other things, the formation and development of an efficient administration, the organisation and control of staff, the maintenance of discipline, and the effective deployment and utilisation of staff to achieve maximum operational results.

19 The responsibilities of the Commissioner, as accounting authority of SARS, are set out in section 9(3) of the SARS Act. They include responsibility for all income and expenditure of SARS, all revenue collected by SARS, all assets and the discharge of all liabilities of SARS, and the proper and diligent implementation of the the PFMA.

20 Section 22 of the SARS Act reinforces the Commissioner's obligation, as accounting authority of SARS, to comply with the PFMA in respect of all income and expenditure of SARS, all assets and liabilities and financial transactions and all revenue collected by SARS.

THE PFMA APPLIES TO SARS A SCHEDULE 3A NATIONAL PUBLIC ENTITY

S L.R

- 21 Section 50 of the PFMA sets out the fiduciary duties of accounting authorities. They are required to act with utmost good faith, with honesty, fidelity and integrity and in the best interests of the public entity for which they are responsible. They are also required to disclose to the executive authority responsible for that public entity, all material facts which may influence the decisions or actions of the executive authority.
- 22 Section 51 of the PFMA sets out the general duties and responsibilities of accounting authorities. They are required to ensure that the public entity for which they are responsible establishes and maintains effective, efficient and transparent systems of financial and internal control.
- 23 In terms of section 83 of the PFMA, an accounting authority commits financial misconduct if he or she fails to comply with the requirements of sections 50 to 55 of the PFMA, which includes the failure to act in the best interests of the public entity concerned. Such financial misconduct is grounds for suspension and may be grounds for dismissal.

SECTION 195 OF THE CONSTITUTION

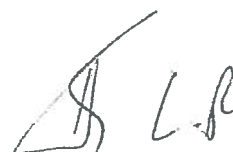
- 24 In terms of section 4(2) of the SARS Act, SARS must perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles set out in section 195 of the Constitution.

 L.R.

- 25 Section 195 of the Constitution sets out the basic values and principles underlying the public administration and provides that the public administration must be governed by, amongst other things, a high standard of professional ethics, accountability, transparency, and impartiality.

THE SARS CODE OF CONDUCT

- 26 The SARS Code of Conduct is binding on all SARS employees. Its purpose is to *"express the set of values and behaviours expected of all SARS employees in their work endeavours and socialisation that may relate to their status as SARS employees."*
- 27 The SARS Code codifies the values and principles governing the public administration set out in section 195 of the Constitution.
- 28 The SARS Code states that it is *"the integrity cornerstone of the SARS governance model and is essential for the effective administration of a tax and customs system that is anchored on voluntary compliance."*
- 29 The SARS Code sets specific standards of conduct that represent SARS' core values and the appropriate conduct expected of all SARS employees. These are *inter alia*:

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- 29.1 Fairness;
- 29.2 Accountability;
- 29.3 Integrity;
- 29.4 Respect;
- 29.5 Trust; and
- 29.6 Honesty.

30 The SARS Code sets additional specific standards of conduct that the Commissioner and SARS management are required to follow. It states that the Commissioner, members of the SARS Executive Committee and senior managers should, as the leadership of SARS, lead by example and champion the Code of Conduct by adhering to, *inter alia*, the following standards and principles:

- 30.1 perform their duties and exercise their powers with the utmost professionalism, diligence and honesty, and conduct themselves in a decent manner at all times;
- 30.2 fulfil all the obligations imposed upon them by the Constitution and law;
- 30.3 act in utmost good faith and in the best interests of good governance;

 L.R

- 30.4 at all times uphold the reputation of SARS and avoid in any form or manner causing reputational harm to SARS;
- 30.5 in all respects act in a manner that is consistent with the integrity of their office;
- 30.6 not use their position or any information entrusted to them to enrich themselves or improperly benefit any other person; and
- 30.7 not use information received in confidence in the course of their duties otherwise than in the discharge of their duties.

THE EXECUTIVE AUTHORITY RESPONSIBLE FOR SARS

- 31 While the Commissioner is appointed by the President, he is accountable to the Minister of Finance ("the Minister") as the Executive Authority responsible for SARS.
- 32 As the Executive Authority responsible for SARS the Minister has the following powers under the SARS Act:
 - 32.1 Under section 7(1) the Minister may designate a SARS employee to act as Commissioner when the Commissioner is absent or unable to perform the functions of office, or when the position is vacant.



- 32.2 Under section 11 the Minister may appoint one or more specialist committees to advise the Commissioner and the Minister on any matter concerning the management of SARS' resources, including asset management, human resources and technology.
- 32.3 Under section 13(1) the Minister may assign specific powers to the members of a specialist committee for the purposes of performing the functions assigned in terms of section 11.
- 32.4 Under section 18(3) the Minister must approve the terms and conditions of employment for employees in the management structure of SARS.
- 33 In terms of the PFMA, the Commissioner is subject to the authority of the Minister, as Executive Authority of SARS, in the following respects:
- 33.1 Under section 53(1) and (2) of the PFMA, the Commissioner must submit a budget of estimated revenue and expenditure for the financial year to the Minister for approval. Under section 53(4), once the Minister has approved the budget, the Commissioner must ensure that expenditure in SARS is in accordance with the approved budget.
- 33.2 Under section 55(1)(d), the Commissioner is required to submit SARS' audited financial statements, an annual report on SARS' activities during the financial year, and the report of the auditors

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on those financial statements to the Minister within five months of the end of a financial year.

34 Furthermore:

34.1 In terms of section 76(4) of the PFMA, National Treasury may make regulations or issue instructions to organs of state, including SARS, that are regulated by the PFMA.

34.2 The Minister, as head of National Treasury may make regulations or issue instructions to SARS concerning all matters listed in section 76(4) of the PFMA, financial management and internal control, and the administration of the PFMA.

CHARGE 1

THE FACTS

Financial Intelligence Centre Report of 17 May 2016

35 By way of a letter dated 17 May 2016, the director of the Financial Intelligence Centre ("FIC"), Mr Murray Michell, informed Mr Moyane, in his capacity as Commissioner of SARS that the FIC had flagged two SARS employees for suspicious financial transactions.

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- 36 The first employee was Mr Mashudu Jonas Makwakwa. Mr Makwakwa was a senior member of the SARS executive. He held the position of Chief Officer for Business and Individual Tax. As such he was tasked with controlling SARS' biggest revenue streams, income tax from corporates and individuals including high net worth individuals in South Africa. He was widely known to be Mr Moyane's second in command.
- 37 The second employee was Ms Kelly Ann Elskie. She was employed as a junior consultant in the Alternative Dispute Resolution division of SARS' Legal Department.
- 38 Mr Michell provided Mr Moyane with a report compiled by the FIC, which detailed suspicious and unusual cash deposits and payments made into the accounts of Mr Makwakwa and Ms Elskie ("the FIC Report").
- 39 The FIC Report is a confidential document and may not be released publicly without the approval of the Director of the FIC. Given its relevance to Charge 1, I am in the process of making the necessary arrangements to obtain the approval of the Director of FIC for the Report to be made available to the Presiding Officer on the understanding that he will maintain its confidentiality.
- 40 The FIC Report flagged a number of suspicious transactions in respect of Mr Makwakwa, including a number of substantial cash deposits into his personal bank account and irregular *ad hoc* payments from SARS and other entities, including an entity known as Biz Fire Worx (Pty) Ltd.



- 41 The FIC Report noted that the volume and value of the deposits and payments was highly unusual given that Mr Makwakwa was permanently employed.
- 42 The FIC Report flagged several suspicious cash deposits into the personal bank account of Ms Elskie and noted that the source of these funds was unknown and that the value of these deposits was suspicious and unusual given Ms Elskie's financial profile.
- 43 The Financial Intelligence Centre Act 38 of 2001 ("the FIC Act"), per section 40 thereof, requires the FIC to make information reported to or obtained by it available to, amongst others, SARS, if it believes that the information is required in order to investigate suspected unlawful activity.
- 44 The FIC Report was referred to SARS in terms of section 40 of the FIC Act for investigation to determine:
- 44.1 Whether Mr Makwakwa and Ms Elskie had committed acts of tax evasion and/or other contraventions of the Tax Administration Act 28 of 2011 ("the TA Act").
- 44.2 Whether the funds received by Mr Makwakwa and Ms Elskie constituted payment of the proceeds of crime arising from corrupt activities as defined in the Prevention and Combating of Corrupt Activities Act 12 of 2004 ("PRECCA").



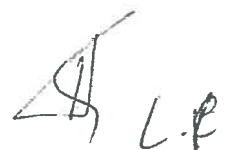
- 44.3 Whether Mr Makwakwa and Ms Elskie effected payments in contravention of internal policies and/or the PFMA.
- 44.4 Whether Mr Makwakwa and Ms Elskie were guilty of money laundering as defined in section 1 of the Prevention of Organised Crime Act 121 of 1998 ("POCA").
- 45 Importantly, section 41 of the FIC Act prohibits the disclosure of information held by or obtained from the FIC except in certain narrowly defined circumstances, namely:
- 45.1 within the scope of that person's powers and duties in terms of any legislation;
 - 45.2 for the purpose of carrying out the provisions of the FIC Act;
 - 45.3 with the permission of the FIC;
 - 45.4 for the purpose of legal proceedings; or
 - 45.5 in terms of an order of court.
- 46 On 20 May 2016, Mr Moyane acknowledged receipt of Mr Michell's letter of 17 May 2016 together with the FIC Report, in writing. In his letter, Mr Moyane stated:
- "I have taken note of the report, seriousness and sensitivity of the matters it refers to from your letter and hereby confirm SARS will do a further investigation into the matter."

A handwritten signature in black ink, appearing to be 'D.C.R.', is located in the bottom right corner of the page.

- 47 A copy of Mr Moyane's letter to Mr Michell is attached, marked "FA1".

Mr Moyane's actions in response to the FIC Report

- 48 On Friday 20 May 2016, Mr Moyane forwarded a copy of the FIC Report to Mr Makwakwa. He asked Mr Makwakwa to peruse the FIC Report and to meet with him first thing on Monday morning 23 May 2016. A copy of Mr Moyane's letter to Mr Makwakwa is attached, marked "FA2".
- 49 On or about 20 May 2016, Mr Moyane also forwarded a copy of the FIC Report to Ms Elskie.
- 50 On or about 30 May 2016, Ms Liesel David came on record as the attorney representing Mr Makwakwa and Ms Elskie. Mr Moyane had requested Mr Makwakwa and Ms Elskie to provide him with their written responses to the FIC Report by 1 August 2016. In response, Ms David requested extensions of time on behalf of her clients.
- 51 In a letter from Ms David to Mr Moyane dated 10 August 2016, almost three months after Mr Moyane had been furnished with the FIC Report, Ms David recorded that Mr Moyane had agreed to the following extensions of time:
- 51.1 30 August 2016 for Ms Elskie to provide her written response to the FIC Report; and

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51.2 30 September 2016 for Mr Makwakwa to provide his written response to the FIC Report.

52 In the same letter, Ms David demanded a raft of information and documentation from the FIC in order for Mr Makwakwa and Ms Elskie to produce their written responses to the FIC Report. This was the following:

52.1 whether the FIC's personnel conducting the investigation had the requisite security-screening certificate as required in terms of the provisions of section 12 of FICA. If so, copies of such certificates were requested;

52.2 whether the FIC personnel who examined and made copies of bank accounts held by Mr Makwakwa and Ms Elskie obtained copies thereof under a warrant properly issued by a Magistrate or a Judge in terms of section 26 (1) and (2) of FICA. If so, copies of such warrants were requested.

52.3 the reports filed in terms of section 28 and 29 of FICA.

52.4 details as to when the enquiry into the tax affairs of Mr Makwakwa and Ms Elskie commenced;

4 L.R

- 52.5 details pertaining to the first suspicious transaction in respect of Mr Makwakwa and Ms Elskie;
- 52.6 full particulars relating to each suspicious transaction involving Mr Makwakwa and Ms Elskie;
- 52.7 full particulars of suspicious transactions in respect of which Mr Makwakwa allegedly received payments from SARS;
- 52.8 whether the FIC was aware of any disclosure, in contravention of its Act by any of its personnel, of information pertaining to the Report being referred to unauthorised third parties. If so, the FIC was required to provide details as to when, full names and designation of the FIC's employees involved in making such disclosure, to whom and circumstances under which this disclosure was made;
- 52.9 whether the FIC had over the past three years received any report concerning any suspicious transaction involving a SARS employee, and if so, whether this has been reported to SARS. In this regard, full particulars were requested;
- 52.10 an explanation of the legal procedure followed by the FIC in obtaining Mr Makwakwa's January 2016 payslip;

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- 52.11 an explanation of the legal procedure followed by the FIC in obtaining copies of Mr Makwakwa and Ms Elskie's uncertified identity documents;
- 52.12 an explanation of the legal procedure followed by the FIC in obtaining copies of photo footage from banks (FNB and ABSA) pertaining to Ms Makwakwa and Ms Elskie;
- 52.13 an explanation of the legal process followed by FIC in obtaining the bank statements of Mr Makwakwa and Ms Elskie's personal bank accounts from FNB and ABSA.
- 53 A copy of the letter from Ms David to Mr Moyane is attached, marked **"FA3."**
- 54 On 22 August 2016, Mr Moyane wrote to Mr Michell of the FIC requesting, verbatim, the information and documentation requested by Ms David on behalf of Mr Makwakwa and Ms Elskie. A copy of this letter is attached, marked **"FA4."**
- 55 On 7 September 2016, Mr Moyane wrote a further letter to Mr Michell, again requesting the information and documentation set out above and requesting that it be provided by no later than close of business on 12 September 2016. A copy of this letter is attached, marked **"FA5."**
- 56 When the information was not forthcoming on 12 September 2016, Mr Moyane wrote a further letter to Mr Michell on 13 September 2016 in

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which he expressed his disappointment that the information and documentation had not been furnished. He did so in the following terms:

"The purpose of this correspondence is to duly communicate my sincere disappointment at the fact that, to date, your office, has not deemed it necessary to respond, substantively or otherwise, to the request for information/ and or documentation as per these two letters."

57 A copy of this letter is attached, marked "**FA6.**"

58 On 13 September 2016, Mr Michell responded to Mr Moyane in writing.¹

Mr Michell expressed grave concern over the manner in which the FIC Report was being handled by SARS. He took particular issue with the fact that the FIC Report had been disclosed to Mr Makwakwa and Ms Elskie and with the fact that the SARS was requesting information, to which Mr Makwakwa and Ms Elskie were clearly not entitled, on their behalf. The relevant portions of Mr Michell's letter read as follows:

"I am gravely concerned about the approach followed by the South African Revenue Service (SARS) in the pursuit of this matter. It is clear to me from the content of your letter dated 22 August 2016, in particular the detail of the request for information from Mr Makwakwa's and Ms Elskie's legal representatives, that the referral made to your office in terms of section 40 of the [FIC Act] was made available to the objects of the referral, Mr Makwakwa and Ms Elskie, or at the very least brought to their attention, subsequent to being handed over to your office.

The FIC has been providing SARS with financial intelligence since 2003. SARS' employees are well aware of the access, handling and terms and conditions of use of such sensitive information. I point out that the conduct mentioned above constitutes a serious criminal offence under section 60 of the FIC Act.

¹ The letter is erroneously dated 19 September 2016.

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....

The process followed by SARS in this matter also appears to be inconsistent with investigative practice and tradecraft. It is the FIC's experience that SARS does not give affected taxpayers copies of informer information when people blow the whistle on an errant taxpayer – a practice that would amount to 'tipping off' the taxpayer as to the possibility of a pending investigation against him or her. If such conduct was normal practice it would undermine the whistle blower mechanism and result in the collapse of whistle blowing as a source of information to enforce tax collection.

Against this background it should be clear that the legal representatives for Mr Makwakwa and Ms Elskie are not entitled to receive any of the information they have requested and providing them with any such information would exacerbate the contraventions of the FIC Act which have already occurred."

59 Mr Michell concluded his letter as follows:

"I strongly recommend you undertake a formal investigation into the gross mishandling of the FIC's referral to your office in this matter and take the necessary steps to restore confidence in the professional legal and investigative services within SARS so as to ensure that future co-operation between the SARS and the FIC is not jeopardised."

60 A copy of this letter is attached marked, "FA7."

The Sunday Times Article and its aftermath

61 On 11 September 2016, the Sunday Times newspaper published an article titled: *"Revenue Services number 2 probed for R1.2 million in suspicious cash deposits"*.

62 The Sunday Times article reported that Mr Makwakwa had been flagged by the FIC for suspicious and unusual cash payments into his bank account, and that a report compiled by the FIC had been handed to SARS commissioner Mr Tom Moyane. The article stated that sources had confirmed that the FIC Report had been handed to Mr Moyane in May 2016 and that, despite this, four months later, Mr Makwakwa and Ms Elskie remained in their positions at SARS. SARS spokesperson Mr Sandile Mamela had declined to comment.

63 A copy of the Sunday Times article is attached, marked "FA8."

64 Mr Moyane had not informed me of the existence of the FIC Report. I only became aware of the existence of the FIC Report upon the publication of the Sunday Times article 11 September 2016. I was shocked at the allegations contained in the FIC Report and at the fact that Mr Moyane had not informed me thereof.

65 On 12 September 2016, the day after the publication of the Sunday Times article, two things happened:

65.1 Mr Moyane gave Mr Makwakwa notice of SARS' intention to suspend him; and

65.2 I called Mr Moyane to an urgent meeting to account for his actions in light of the Sunday Times' revelation of the FIC Report.

A handwritten signature in black ink, appearing to be 'L.F.' with a stylized flourish above it.

66 I recorded the events of the meeting on 12 September 2016 in a letter to Mr Moyane dated 14 September 2016. This included Mr Moyane's account of the steps he had taken in response to the FIC Report. A copy of this letter is attached, marked "FA9."

67 **FA9** records, amongst other things, the following:

"On 12 September 2016, only after the matter had become public on the front page of the Sunday Times, you gave Mr Makwakwa a letter inviting him to provide reasons as to why he should not be suspended."

"You have not reported the matter to any law enforcement authority but state that you will do so in what you describe as due course."

"You indicated that you will initiate a disciplinary process against Mr Makwakwa in line with SARS policy."

"You undertook to provide me with a proper chronology of events, accompanied by all the relevant supporting documentation, by 13 September 2016, or the latest Wednesday 14 September 2016."

68 **FA9** also recorded my extreme concern and dissatisfaction over Mr Moyane's handling of the FIC Report expressed at the meeting:

"I further wish to record that I expressed my serious concern and dissatisfaction with the following:

1. You made no effort to alert me of the serious allegations made against a senior member of the SARS executive responsible for an important SARS portfolio. Common courtesy and the integrity of our entire financial system, of which revenue collection is a vital part, require that such a serious matter (especially having regard to the reputational damage to the organisation) should have been reported to me as the responsible member of the Executive, accountable to Parliament, as soon as you became aware of it.



2. The long delays and apparent lax manner in which this matter has been handled, given that it has taken almost four months for you to issue the letter of intention to suspend.
3. The public perception that you have only done so because the matter has become public."

69 As stated above, Mr Moyane gave Mr Makwakwa Notice of Intention to Suspend on 12 September 2016. The Notice is attached, marked "FA10". As is evident therefrom, the allegations of suspicious and unusual cash deposits and payments into Mr Makwakwa's personal bank account, made in the FIC Report, formed the basis of SARS' intention to suspend him.

70 The Notice of Intention to Suspend gave Mr Makwakwa until 13 September 2016 to provide reasons why he should not be suspended. This period was extended to 16 September 2016. Mr Makwakwa did not challenge his suspension. In fact, it appears from the Notice of Suspension, issued on 15 September 2016, that Mr Makwakwa conceded that, given the seriousness of the allegations against him, his continued presence at SARS, in the absence of his name being cleared, would be prejudicial to the reputation of the institution. The Notice of Suspension is attached, marked "FA11."

71 It is noteworthy that despite this, Mr Makwakwa had for a period of four months after the FIC Report was provided to SARS, continued in his position and continued to participate in the senior management structures of SARS. He had moreover, during this period, accompanied



Mr Moyane to meetings with me and to the parliamentary Standing Committee on Finance on 24 August 2016.

- 72 SARS suspended Ms Elskie on 20 October 2016.
- 73 On 15 September 2016 Mr Moyane responded to Mr Michell's letter of 13 September 2016, Annexure "FA7", quoted above. Mr Moyane stated as follows in the penultimate paragraph of his letter:

"Furthermore, I intend to urgently refer this matter to the South African Police Service ("SAPS") for criminal investigation against the aforesaid employees, as I am required by section 34 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA"). In order to avoid duplication, kindly advise if FIC has already made the referral to the SAPS."

- 74 A copy of this letter is attached, marked "FA12."
- 75 It is apparent from the above that, as at 15 September 2016, Mr Moyane had not referred the information contained in the FIC Report to the South African Police Service.

The Hogan Lovells Investigation

- 76 On 16 September 2016, Mr Moyane responded to my letter dated 14 September 2016, Annexure "FA9" quoted above. In his letter, Mr Moyane stated as follows:

"I have initiated a formal disciplinary enquiry in respect of the allegations contained in the Report. In this regard, SARS has appointed an independent and reputable international law firm, Hogan Lovells to draw a project implementation plan ('plan') with time lines and milestones with regard to the administration of the envisaged

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disciplinary proceedings. I will avail the plan to the Minister as soon as possible, and after receipt of same from Hogan Lovells.

I hereby reiterate my commitment to conduct a thorough and credible investigation into the allegations of impropriety, tax evasion, corruption, contravention of Public Finance Management Act and money laundering against the two employees. As an Accounting Authority vested with the responsibility to ensure the proper and diligent implementation of the PFMA, I am particularly obligated by section 84 of the PFMA to investigate allegations of financial misconduct against the aforesaid employees."

- 77 A copy of this letter is attached, marked "**FA13**."
- 78 It was not correct that Mr Moyane had initiated a formal disciplinary inquiry in respect of the allegations contained in the FIC Report.
- 79 Mr Moyane had at this stage merely requested Hogan Lovells to conduct an investigation into the allegations contained in the FIC Report. It appears, from Annexure "**FA17**" below, that Mr Moyane had made this request at a meeting held with Hogan Lovells on 15 September 2016. There is however no written record of this meeting.
- 80 On 29 September 2016, Hogan Lovells wrote to SARS setting out the scope of the investigation that could be conducted by it in respect of allegations contained in the FIC Report.
- 81 A copy of this letter is attached, marked "**FA14**."
- 82 Hogan Lovells began in **FA14** by defining the matters identified for investigation in the FIC Report as Requests A, B, C and D respectively:

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"Whether the funds received by Makwakwa and Elskie constitutes payment of proceeds of crime arising from corrupt activities as defined in the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA) ('Request A');

Whether Makwakwa and Elskie have committed acts of tax evasion and other contraventions of the Tax Administration Act (Tax Administration Act) ('Request B');

Whether Makwakwa and Elskie effected payments in contravention of internal policies and/or the Public Finance Management Act 1 of 1999 (PFMA) ('Request C'); and

Whether the aforementioned conduct of concealment and disguising the true source of these funds constitute acts of money laundering as defined in section 1 of the Prevention of Organised Crime Act 121 of 1998 (POCA) ('Request D')"

- 83 Hogan Lovells then defined the scope of the investigation that could be conducted by it in respect of each of these Requests as follows.

84 Requests A and D

84.1 In respect of Requests A and D, Hogan Lovells noted that the investigation of criminal offences ordinarily falls within the jurisdiction of the SAPS. It stated that *"In our view, criminal aspects of the allegations against these two employees (with the exception of offences in terms of tax legislation which Consultant would ordinarily investigate) should be referred to the SAPS for criminal investigation."*

84.2 Hogan Lovells noted that it appeared from correspondence from Colonel Heap of the DPCI's Serious Corruption Investigation Component dated 15 September 2016, that an investigation was

already underway and recommended that SARS co-operate with the DPCI in this regard.

- 84.3 Hogan Lovells stated that in the event that it was established that the employees had committed criminal offences then disciplinary action should be taken against them and *"at the appropriate stage the Firm shall assist with all disciplinary action subject to compliance with the Consultant's procurement policies."*

85 Request B

- 85.1 In respect of Request B, Hogan Lovells recommended that this investigation be undertaken by SARS, in the context of Mr Makwakwa and Ms Elskie as taxpayers, rather than employees.
- 85.2 Hogan Lovells noted that *"as part of its overall function and responsibilities, there exists a duty on Consultant to comply with the first request by the FIC and determine whether the alleged deposits and payments made and received by Makwakwa and Elskie have resulted in contravention of tax legislation and constitute a tax offence."*
- 85.3 Hogan Lovells stated that in the event that the investigation established that tax offences had been committed, then this would constitute misconduct and it would assist with the institution of disciplinary proceedings in relation thereto.


L.R

86 Request C

86.1 In respect of Request C, Hogan Lovells recommended that this investigation too be undertaken by SARS. This was because, according to Hogan Lovells, the basis of the payments made by Mr Makwakwa and Ms Elskie as set out in the FIC Report had to be established and this was best done by SARS.

86.2 Hogan Lovells stated that *"once the basis of the payments made is established, our offices will be in a position to determine if there has been a breach of Consultant's internal policies and/or the PFMA and recommend the manner in which the findings should be addressed."*

87 Mr Moyane accepted the scope of the investigation proposed by Hogan Lovells by signing **FA14** on 4 October 2016.

88 On 12 October 2016, Mr Moyane addressed a letter to Ms Refiloe Ramaphakela, SARS Group Executive: Internal Audit instructing that the tax affairs of Mr Makwakwa and Ms Elskie be audited. This instruction appears to have been given in order to give effect to "Requests B and C" which were, as per Annexure **FA14**, to be investigated by SARS. Thus, this letter makes reference to the FIC Report and the "terms of reference" entered into between SARS and Hogan Lovells in terms of



which SARS was required to independently conduct an internal investigation in order to determine:

88.1 whether Mr Makwakwa and Ms Elskie had committed acts of tax evasion and/or contraventions of the TA Act; and

88.2 whether Mr Makwakwa and Ms Elskie had effected payments in contravention of internal policies and/or the PFMA.

89 The letter stated further that:

89.1 As administrator the TA Act, SARS had an obligation to obtain full information in relation to anything that might affect the liability of a person for tax in respect of a previous, current or future tax period; determine the liability of a person for tax and investigate whether a tax offence had been committed.

89.2 As part of its overall functions and responsibilities, SARS had a duty to comply with the request by the FIC and determine whether the alleged deposits and payments made and received Mr Makwakwa and Ms Elskie amounted to contraventions of the tax legislation or a tax offence. In this regard, Mr Makwakwa and Ms Elskie were to be treated as taxpayers, and not employees.

90 A copy of this letter is attached, marked "FA15."

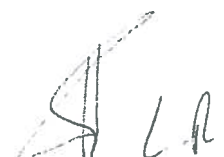
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- 91 Notwithstanding this letter, as will become apparent below, SARS did not conduct an internal investigation into Requests B and C in respect of Mr Makwakwa and Ms Elskie.
- 92 On 19 October 2016 I wrote to Mr Moyane recording that I had since 20 September 2016 been requesting the terms of reference for the investigation to be conducted by Hogan Lovells. I was eventually provided with Hogan Lovell's letter of 29 September 2016, Annexure **"FA14."**
- 93 My letter of 19 October 2016 is attached as Annexure **"FA16."** In it, I expressed my concern both over the manner in which the "terms of reference" had been formulated and their adequacy:

"On 16 September 2016, you advised me that you have appointed HL as investigator. You have not furnished me with the terms of reference you presumably provided to HL to underpin their appointment. Instead, it now appears that you requested HL to draft their own terms of reference as outlined in their letter dated 29 September, and you only did that after my request for the terms of reference on 20 September 2016.

It appears that you accepted the terms of reference as determined by HL; and there is no indication to me as to whether you applied your mind to the full scope of what needs to be investigated, which appears to have been determined by HL. In this regard, one of the aspects I am particularly concerned about is whether or not there are any settlements approved by Mr Makwakwa that may be affected by his alleged conduct and the current situation."

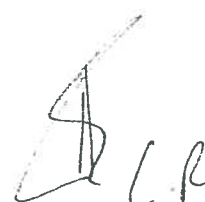
- 94 On 27 October 2016, Mr Moyane responded to my letter of 19 October 2016. The salient portions of his response are the following:

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- 94.1 In relation to the so-called terms of reference, Mr Moyane stated that SARS had issued the terms of reference to Hogan Lovells in a meeting on 15 September 2016 and that Hogan Lovells was thereafter instructed to reduce its understanding of the terms of reference to writing. Mr Moyane then stated that *"Consequently I applied my mind and satisfied myself that HL had fully comprehended what is required of them insofar as the investigation is concerned. I then proceeded to sign the terms of reference and by so doing I mandated HL to commence with the investigation."*
- 94.2 Mr Moyane stated that he had extended Hogan Lovell's terms of reference to include Mr Makwakwa's role in approving and/or concluding settlements with taxpayers pursuant to his appointment as Acting Chief Operation Officer and subsequently Chief Officer for Business and Individual Taxes.
- 94.3 Mr Moyane stated that the Hawks had commenced its criminal investigation into possible corruption, racketeering and money laundering by Mr Makwakwa and Ms Elskie and that SARS would co-operate with the investigation.
- 94.4 Mr Moyane stated that SARS had commenced its investigation into possible tax offences and violations of the PFMA on the part of Mr Makwakwa and Ms Elskie.



- 95 A copy of this letter is attached, marked "**FA17.**"
- 96 At some stage, SARS produced a document, titled "*Amended Terms of Reference: Investigation South African Revenue Service.*" This document is dated 4 October 2016 but was only signed by Mr Moyane on 27 October 2016.
- 97 The document is substantially similar in content to Annexure **FA14**, with the exception of the following:
- 97.1 Provision is made for the investigation by Hogan Lovells of an additional "Request E" which is described as follows:
- "It has come to SARS' attention that there are allegations of impropriety on the part of Makwakwa in relation to the conclusion of settlements with taxpayers from the time that he was appointed Acting COO to the date of his suspension. In the light thereof, SARS requires that all settlements in which Makwakwa was involved be reviewed to determine if there has been any impropriety.
- Your Firm is required to undertake such investigation."
- 97.2 Requests B and C were now to be referred for investigation to an "*external forensic audit firm by 28 October 2016.*"
- 98 A copy of the amended terms of reference is attached, marked "**FA18.**"
- 99 The external forensic audit firm to which Requests B and C were in fact referred for investigation was Price Waterhouse Coopers ("PWC").

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100 As a consequence of the referral of Requests B and C to PWC, SARS conducted no internal investigation in respect of those Requests.

101 It follows that Mr Moyane's statement in his letter to me, dated 27 October 2016, to the effect that SARS' investigation into Requests B and C had commenced, was false.

The Hogan Lovells Report

102 Hogan Lovells delivered to SARS its final report on 16 May 2017 ("the HL Report")² and it was provided to the National Treasury on 16 March 2018.

103 The HL Report commences by stating the following:

"At the outset it must be stated that, in line with our terms of reference, the determination of Request B falls within the sole purview of SARS and will not be dealt with in this report. Similarly Requests A and D are within the exclusive jurisdiction of the SAPS. We are instructed that the DPCI are already in the process of investigating the FIC allegations.

Our terms of reference are contained in the terms of reference signed by Commissioner Moyane on 4 October 2016.

As part of our mandate, SARS instructed us to brief PWC. PWC's mandate is to determine:

Whether Makwakwa and Elskie effected payments in contravention of internal SARS policies and/or the Public Finance Management Act 1 of 1999 (PFMA); and

Determine whether the payments made to Makwakwa by SARS other than his salary, which the FIC described as 'ad hoc and

² The Hogan Lovells Report is Item 1 in the Bundle of Documents that has been prepared at the request of the Presiding Officer ("Bundle of Documents").

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irregular' have resulted in SARS being defrauded and/or effected payments in contravention of internal policies and/or the PFMA.

PWC's mandate also includes investigation of Request B – Whether Makwakwa and Elskie have committed acts of tax evasion and other contraventions of the Tax Administration Act. This will require determination of whether the alleged deposits and payments made and received by Makwakwa and Elskie, as detailed in the FIC report, have resulted in contravention of tax legislation or constitute a tax offence. For this reason alone, the determination of Request B will not be dealt with this in this report."

104 The HL Report made the following findings:

104.1 The majority of cash deposits and payments identified in the FIC report remained unverified, and the explanations tendered by Mr Makwakwa in relation to the source of the deposits and payments was unsatisfactory.

104.2 In respect of the *ad hoc* payments made by SARS to Mr Makwakwa, R162 530.00 remained unaccounted for. Hogan Lovells recommended that SARS scrutinise each of the unaccounted for transactions.

105 SARS failed to act on this recommendation.

106 The HL Report recommended that SARS institute disciplinary action against Mr Makwakwa for *prima facie* contraventions of:

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106.1 SARS' Internal Ethics Policy – Conflict of Interest. Failure to disclose private business interests, properties and rental income.

106.2 SARS Internal Ethics Policy – Conflict of Interest - Failure to obtain permission to undertake outside employment for Biz Fire Worx;

106.3 Failure to co-operate and fully assist his employer in an investigation.

107 As will be seen below, the third recommended charge was not brought against Mr Makwakwa.

108 In respect of Ms Elskie, the HL Report concluded as follows:

108.1 It had not been possible to verify the source of the three cash deposits, totalling R450 200.00, into Ms Elskie's bank account.

108.2 Ms Elskie claimed that this money was received from her mother and was deposited in three separate transactions in order to avoid being "mugged."

108.3 It was not possible to substantiate the claim that the amount of R450 200.00 was indeed received by Ms Elskie from her mother.

108.4 There was however no basis to hold that Ms Elskie had committed misconduct in the employment context in respect of

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the three deposits and there was therefore no basis to pursue disciplinary action against her.

The PWC Report


109 The PWC Report was an annexure to the HL Report.³ It made the following findings:

109.1 In respect of the cash deposits in Mr Makwakwa's account the PWC Report found that the majority of these could not be verified *"due to inadequate supporting information and/or documentation."*

109.2 In respect of foreign currency the PWC Report concluded that *"due to inadequate supporting information and/or documentation the source and nature of an amount of R147 850.65 received by Mr Makwakwa from his father for the sale of 21 cattle could not be verified."*

109.3 In relation to credits in Mr Makwakwa's account, the PWC Report found that SARS credits amounting to R191 276.71 could not be verified by supporting documentation and that other credits amounting to R1 672 344.42 could not be accounted for.

³ The PWC Report is Item 2 in the Bundle of Documents.

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- 109.4 In relation to the payments received from Biz Fire Worx, the PWC Report also made no conclusive findings, noting that *"further information and/or documentation is required in order to enable us to verify the veracity of Mr Makwakwa's claims in this regard."*
- 109.5 In relation to Ms Elskie, the PWC Report found that *"the information and/or documentation provided to us in respect of these deposits is insufficient in order for us to confirm the nature and source of the cash."*
- 110 The findings of the PWC Report were then inconclusive. It is apparent from the PWC Report that this was due in large part to the fact that SARS failed to provide PWC with the information and documentation it needed in order to conduct an effective investigation. Thus, the PWC Report states that:
- 110.1 SARS refused to give PWC access to Mr Makwakwa and Ms Elskie's SARS issued computers and cell phones. As a consequence, PWC was denied access to potentially valuable information contained on their computers and cell phones.
- 110.2 PWC was not granted full access to Mr Makwakwa's bank accounts. This hampered their investigation. The result was that they could not verify the source and nature of credit transactions in the bank accounts identified as suspicious by the FIC.

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110.3 PWC was not given access to SARS declaration forms.

110.4 PWC requested confirmation of whether SARS permitted loans amongst staff members, more specifically from senior to junior staff. SARS failed to give a response to this.

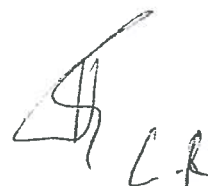
110.5 PWC required and was not granted access to SARS accounting records, documentation and systems to determine whether Mr Makwakwa and Ms Elskie had breached the PFMA.

110.6 PWC was not able to establish whether settlement agreements approved by Mr Makwakwa were compromised as a result of the allegations against him. To establish this, PWC required access to audit trails and related tax records of individuals with whom settlement agreements were concluded, which was not provided by SARS.

111 The PWC Report recommended:

111.1 that further investigation into possible contraventions of Foreign Exchange Regulations by Mr Makwakwa be considered; and

111.2 that the issue surrounding a lack of adequate supporting documentation as to the source and nature of credits into Mr Makwakwa's and Ms Elskie's accounts be reemphasised with

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these individuals, either as part of a disciplinary process or within the ambit of a disciplinary hearing.

112 SARS failed to act on either of these recommendations.

113 Notably, neither the HL Report nor the PWC Report reflects any investigation having been conducted in respect of Request E.

The Charges against Mr Makwakwa

114 The charges recommended against Mr Makwakwa in the HL Report have been set out above.

115 Mr Makwakwa was charged with the first two recommended charges. He was however not charged with the third, namely *"failure to co-operate and fully assist his employer in an investigation."*⁴

116 A disciplinary hearing was held in respect of the charges against Mr Makwakwa in July and August 2017. On 13 October 2017, Adv Terry Motau delivered his findings.⁵ He found Mr Makwakwa not guilty of the charges against him.

117 On 1 November 2017, Mr Moyane lifted Mr Makwakwa's suspension and allowed him to resume work in his position as Chief Officer for Business and Individual Taxes.

⁴ Mr Makwakwa was also charged with a number of charges arising out of the alleged breach of his suspension conditions. These are not relevant for present purposes.

⁵ Adv Motau's Findings are Item 3 in the Bundle of Documents.

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THE MISCONDUCT

118 Mr Makwakwa was a senior member of the SARS executive and Mr Moyane's second-in-command. His position as Chief Officer: Business and Individual Taxes tasked him with controlling SARS' biggest revenue streams.

119 In these circumstances, the allegations made in the FIC Report were extremely serious with the potential, if not handled correctly, to damage the credibility of SARS, tax morality and the collection of tax revenue.

120 In order to protect the integrity and reputation of SARS and ensure that public confidence in SARS remained intact, Mr Moyane, as SARS Commissioner, was required to ensure that the following steps were taken in response to the FIC Report:

120.1 that Mr Makwakwa and Ms Elskie were promptly placed on suspension pending an investigation into the allegations contained in the FIC Report;

120.2 that the Minister was promptly briefed on the FIC Report;

120.3 that appropriate senior managers within SARS were promptly briefed on the FIC Report; and

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120.4 that careful legal advice was obtained, where necessary, in relation to the handling of the FIC Report.

121 Mr Moyane failed to take these steps. He failed to brief me, the executive authority responsible for SARS, on the FIC Report at all. He only issued Mr Makwakwa and Ms Elskie with Notices of Intention to Suspend, four months after receipt of the FIC Report, and only after the contents thereof had become public on the front page of the Sunday Times.

122 In order to comply with the FIC's referral of its Report to SARS, Mr Moyane, as SARS Commissioner, was required to ensure that the following steps were taken timeously in response to the FIC Report:

122.1 that the allegations contained in the FIC Report were promptly reported to the Directorate of Priority Crimes Investigation ("DPCI") for an investigation into whether Mr Makwakwa and Ms Elskie were guilty of corruption. Importantly, section 34 of PRECCA requires any person who holds a position of authority who knows, or ought reasonably to know, that any person has committed an act of corruption to report this to the DPCI.

122.2 that the allegations contained in the FIC Report were promptly reported to the South African Police Service for an investigation into whether Mr Makwakwa and Ms Elskie were guilty of money laundering.

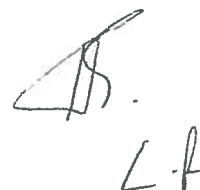
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122.3 that SARS immediately conduct investigations to determine whether Mr Makwakwa and Ms Elskie were guilty of tax evasion, the commission of tax offences under the TA Act, the contravention of internal SARS policies and/or the PFMA. Importantly, the administration of the TA Act falls within the mandate of the SARS. In terms of s 41 of the TA Act, SARS officials are authorised to conduct audits and criminal investigations. They have the power to inspect taxpayer documents, and to call on taxpayers to provide relevant information, including personal and confidential taxpayer information. Mr Moyane acknowledged, in Annexure “FA15” above that it was SARS’ responsibility to conduct the above investigations.

123 Mr Moyane failed to ensure that these steps were taken timeously. He made no contact with the DPCI or SAPS in relation to the FIC Report prior to its contents becoming public on the front page of the Sunday Times. He failed to ensure that SARS conducted investigations into whether Mr Makwakwa and Ms Elskie were guilty of tax evasion, contraventions of the TA Act, contraventions of internal SARS policies or contraventions of the PFMA or that any effective investigation was conducted into these issues.

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- 124 As stated above, section 41 of the FIC Act prohibits the disclosure of information held by or obtained from the FIC except in certain specified circumstances. Mr Moyane's disclosure of the FIC Report to Mr Makwakwa and Ms Elskie on 20 May 2016 did not meet the requirements for lawful disclosure in section 41 of the FIC Act and was accordingly unlawful.
- 125 Furthermore, section 29(4) of the FIC Act prohibits the disclosure of suspicious and unusual transactions to persons implicated in such transactions. In other words, section 29 specifically prohibited Mr Moyane from disclosing the details of the FIC Report to Mr Makwakwa and Ms Elskie.
- 126 Mr Moyane's unlawful disclosure of the FIC Report constituted an offence in terms of section 60 the FIC Act.
- 127 Mr Moyane's actions in this regard brought SARS into disrepute both as far as the FIC was concerned, as is evident from Mr Michell's letter of 13 September 2016, Annexure "FA7" and in the eyes of the public generally.
- 128 One would have expected Mr Moyane to have informed SARS senior management and SARS head of legal of the FIC Report and to have taken legal advice on the disclosure of the Report and the reporting requirements in relation thereto if he was unaware of his legal

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obligations in this regard. That Mr Moyane did none of these things reveals a profound lack of judgment on his part and dereliction of duty.

129 The same applies to Mr Moyane's acting as a conduit for Mr Makwakwa and Ms Elskie in requesting information on their behalf from the FIC. This action was grossly inappropriate and again reflected profound lack of judgment on Mr Moyane's part. At the very least, Mr Moyane ought to have taken legal advice on whether Mr Makwakwa and Ms Elskie were entitled to the information sought. His failure to do so constituted dereliction of duty.

130 Mr Moyane initiated an investigation into the contents of the FIC Report only after it became public on the front page of the Sunday Times. The investigation was therefore belated. It was also wholly inadequate and ineffective for the following reasons:

130.1 The "terms of reference" set out by Hogan Lovells in its letter of 29 September 2016, Annexure "FA14" above, were largely meaningless since Requests A and D were to be investigated by SAPS while Requests B and C were to be investigated by SARS. Despite this, Mr Moyane, signed off on them.

130.2 SARS did not conduct the investigations into Requests B and C but instead outsourced these investigations to PWC. This was unacceptable because SARS was legally obliged to conduct these investigations. It was also the only entity that could effectively conduct these investigations. In failing to ensure that

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these investigations were conducted by SARS and in allowing them to be outsourced to PWC, Mr Moyane, as Commissioner of SARS, committed gross dereliction of duty.

130.3 SARS failed to provide PWC with the information and documentation it required in order to conduct effective investigations into Requests B and C. In so doing it effectively sabotaged the PWC investigation. In the result the PWC investigation was largely meaningless and its findings inconclusive.

131 Despite the fact that the investigations were patently inadequate, Mr Moyane accepted the HL and PWC Reports without demur.

132 Despite having amended the terms of reference to make provision therefor, Mr Moyane failed to ensure that my concerns about the impact of Mr Makwakwa's conduct on the integrity of settlements concluded between SARS and taxpayers ("Request E") was investigated.⁶ Notably, it does not appear from the HL Report or the PWC Report that Request E was investigated at all.

133 To the extent that the HL Report and the PWC Report contained some recommendations they were not implemented by SARS. Thus, Mr Moyane failed to ensure:

⁶ This issue now forms part of the Terms of Reference of the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service, headed by retired Judge Robert Nugent. The Terms of Reference were published in the Government Gazette on 24 May 2018, under Proclamation No. 17 of 2018.

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133.1 that the recommendations made by HL and PWC and set out in paragraphs 101.1 and 108.1 and 108.2 were implemented by SARS; or

133.2 that all the charges recommended by HL were brought against Mr Makwakwa, including the important charge of *"failing to co-operate and fully assist his employer in an investigation."*

134 Finally, Mr Moyane lifted Mr Moyane's suspension and allowed him to resume his position as Chief Officer: Business and Individual Tax on 1 November 2017. He did this in circumstances in which:

134.1 the DPCI and SAPS investigations into possible PRECCA and POCA violations had not been concluded; and

134.2 there had been no effective investigation or conclusive findings in relation to the other matters raised in the FIC Report, namely tax evasion, violation of the TA Act, violation of internal SARS policies and violation of the PFMA.

135 The reasons for Mr Makwakwa's suspension therefore remained in existence. Mr Moyane's action in lifting the suspension was accordingly irrational and constituted a gross dereliction of duty.

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CHARGE 2

THE FACTS

Section 18 of the SARS Act

136 Section 18 of the SARS Act provides as follows:

18. Terms and conditions of employment.—(1) SARS employees, other than employees contemplated in subsection (3) are employed subject to terms and conditions of employment determined by SARS.

(2) (a) The terms and conditions of employment of employees contemplated in subsection (1) who are subject to any collective bargaining process in the SARS bargaining unit, must be determined after collective bargaining between SARS and the recognised trade unions has taken place.

(b) The collective bargaining referred to in paragraph (a) must be conducted in accordance with the procedures agreed on between SARS and the recognised trade unions.

(3) The Minister must approve the terms and conditions of employment for any class of employees in the management structure of SARS.

(4) The Commissioner must submit a copy of the terms and conditions of employment determined by SARS in terms of subsection (1) to the Minister.

137 As is evident therefrom, in terms of section 18(3) Ministerial approval is required in respect of the terms and conditions of employment of employees in the management structure of SARS. Employees in the management structure of SARS are those employed at levels 7 to 10 on SARS' salary scales.

138 The terms and conditions of employment for employees below level 7 are negotiated in the bargaining unit and determined through collective bargaining. For this reason, employees in the management structure of



SARS are sometimes also referred to as “non-bargaining unit employees.”

The SARS performance bonus framework

139 The SARS performance bonus framework for 2014/15 to 2016/17 was approved by the then Minister of Finance, Mr Nhlanhla Nene on 12 June 2015 (Annexure “FA19”). It was approved pursuant to a memorandum dated 31 March 2015 from Mr Moyane to Minister Nene. The purpose of the memorandum was:

139.1 to propose a way forward regarding the funding and determination of the SARS performance bonus pool for 2014/15 to 2016/17 financial years; and

139.2 to provide both the Minister and SARS with clarity and certainty regarding the payment of performance bonuses.

140 There appeared to be a need to further articulate clear principles for performance bonuses.

141 The memorandum sought to propose a framework to provide clarity and consistency in decision-making regarding performance bonuses for SARS.

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142 In terms of the new framework, the actual performance results in each financial year would be used to calculate the actual bonus pool to be paid. This would be implemented as follows:

"As the bonus pool provision is based on Total GTP [guaranteed total package] of SARS, the actual GTP as at the end of March each year will be used. This is due to the fact that the guaranteed pay for each employee is prorated for the actual period employed in the financial year.

The Commissioner will notify the Minister of the bonus pool percentage of GTP each year as per the framework above, together with the request for approval of the bonuses for the SARS Executive Committee members."

Memorandum dated 21 June 2016

143 On 21 June 2016, a memorandum was prepared by Teboho Mokoena, the Chief Officer: HCD of SARS. The memorandum was addressed to me and was titled *"Increase for Non-Bargaining Unit for 2016/17 to 2018/19, and Incentive Bonus for SARS Employees for 2015/16."*

144 The stated purpose of the memorandum was the following:

"The purpose of the memo is to request approval for annual salary increases for Non-Bargaining Unit employees in SARS for 2016/17 to 2018/19, and the Incentive Bonus Pool for all SARS employees for the 2015/16 cycle."

145 After motivating therefor, the memorandum made the following recommendation:

"4 RECOMMENDATION

- a. It is recommended that the Minister approves the annual salary increase of actual CPI (May) plus 1% for Non-Bargaining Unit

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employees for the next three years aligned with wage agreement for Bargaining Unit employees as outlined in 2 a – d above.

- b. It is further recommended that the Minister approves the incentive bonus pool for SARS employees of R561 419 799 (10% of GTP). The framework approved in 2015 provides for a bonus pool of 10% on achievement of the target. (The revised target of R1069 billion was marginally exceeded)."

146 The memorandum made provision for the recommendation to be approved by Mr Moyane, Mr Jonas, the Deputy Minister of Finance and the Minister.

147 The recommendation was approved by Mr Moyane 21 June 2016 and Mr Jonas on 28 June 2016.

148 On 1 August 2016, I indicated that I did not approve the recommendation and made certain amendments to it.

149 I amended the recommendation in writing on the face of the memorandum on 1 August 2016. The amendments read as follows:

- "1. The memo was received in my office on 29 June 2016.
2. The memo signed by Min Nene on 12 June 2015 is revoked as far as its applicability to 2016/17.
3. The above memo is erroneous in several respects – which I will discuss with management.
4. The country is in a serious fiscal and economic crisis. This must guide my decisions.
5. My decision takes full account of the great commitment of the staff on the ground.
6. Government has been and will continue to promote prudence and modesty in salary increases.
7. Accordingly, the salary increases of non-bargaining unit staff will be in line with the SMS in the public service.
8. This is an interim measure given present circumstances.
9. Performance Bonuses

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9.1 Given the fiscal circumstances, I am compelled to take this into account for the bonus as well.

9.2 The final decision on the bonus will be taken once the Performance Assessment takes place after you supply the information.

9.3 You will be informed of a date for 9.2."

150 A copy of the memorandum of 21 June 2016 is attached, marked "FA20."

151 Mr Moyane did not however wait for my response to the memorandum.

On 29 July 2016 Mr Moyane approved the identical recommendation in a memorandum dated 28 July 2016. The memorandum of 28 July 2016 was in identical terms to the memorandum of 21 June 2016 except that it made no provision for approval by the Minister or the Deputy Minister of Finance.

152 The memorandum dated 28 July 2016 is attached marked "FA21"

153 On 12 August 2016, Mr Moyane wrote to me in relation to the issue. Notably, Mr Moyane did not inform me of the memorandum of 28 July 2016. In his letter, Mr Moyane:

153.1 confirmed receipt of my decision with regard to the salary increases for 2016/17 to 2018/19 as well as the incentive bonuses pertaining to SARS employees for 2015/16 dated 1 August 2016.

153.2 stated that he had sought legal advice on the aforesaid decision.

The legal advice was to the effect that he (Mr Moyane) had exclusive administrative authority and operational control over all



SARS operational matters, including employees' bonuses and salary increments for any financial year.

153.3 stated that:

"In light of my acceptance of the aforementioned legal advice, I hereby inform the Minister that I have already taken the decision to effect payment of bonuses and salary increments to SARS employees. Therefore, it is unnecessary for the Minister to make any further decisions pertaining to the same as the Minister is not authorised by law to do so."

154 A copy of this letter is attached marked "FA22"

155 On 15 August 2016 a meeting was held between Mr Moyane and me at which discussion on the issue of the salary increments and bonuses commenced but was not concluded.

156 On 16 August 2016, Mr Moyane effected the payment of performance bonuses to managerial employees.

157 On 17 August 2016, I wrote to Mr Moyane. I referred to the meeting of 15 August 2016 and stated that *"It is unfortunate that you decided to effect payment of bonuses for 2015/16 and salary increases for 2016/17 prior to the finalisation of the discussions."*

158 I stated further as follows:

158.1 The power to approve the terms and conditions of employment of the non-bargaining unit staff (level 7 – 10 employees) vested in the Minister in terms of s 18(3) of the SARS Act;



158.2 Mr Moyane's decision to effect payment of salary increments and bonuses for senior managers, as indicated in Mr Moyane's letters of 12 and 15 August 2016 without the Minister's approval was inconsistent with s 18(3) of the SARS Act;

158.3 Such expenditure would constitute irregular expenditure in terms of the PFMA which Mr Moyane, as Accounting Authority of SARS, was obliged to prevent;

158.4 An accounting authority that makes or permits financial misconduct commits an act of financial misconduct, which is grounds for dismissal or suspension, in terms of section 83 of the PFMA.

159 I warned Mr Moyane that if he persisted in making salary increments and bonus payments for senior managers without my approval, I would be compelled to initiate an investigation and ensure appropriate steps in terms of Treasury Regulation 33.1.3. In the event of a finding of irregular expenditure, steps to recover the irregular expenditure would be required to be taken as required by s 55(2)(b) of the PFMA.

160 I urged Mr Moyane to adhere to the SARS Act and his obligations as accounting authority under the PFMA. I wrote:

"I urge you to adhere to the SARS Act and your obligations as accounting authority under the PFMA and implement my decision on the salary increases for senior managers and await my decision on the bonuses. Your contention that determining the same salary increases for non-bargaining unit staff of SARS as applicable to senior managers



in the public service is contrary to the SARS Act is not correct in that it is about alignment and not implementing the DPSA circular concerned. Should you wish to discuss any of the issues raised herein, please feel free to arrange a mutually convenient time."

161 As is apparent from this letter that while I was aware that Mr Moyane had made the decision to pay the salary increments and bonuses, I was not aware that payments had actually been effected.

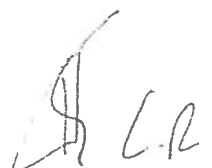
162 A copy of this letter is attached, marked "**FA23.**"

163 Mr Moyane responded to me in a letter dated 18 August 2016. In this letter he stated that I had misconstrued the scope and meaning of section 18(3) of the SARS Act. He stated as follows:

"You have misconstrued the scope and meaning of section 18(3) of the SARS Act 34 of 1997 ("the Act"), as amended. The provision of section 18(3) of the Act grants you the power to approve the terms and conditions of employment for any class of employees in the management structure of SARS. My decision to effect salary increment and payment of bonuses to SARS employees does not constitute an amendment and/or variation of the existing terms and conditions of employment for any class of employees in the management structure of SARS as contemplated in section 18(3) of the Act. For avoidance of doubt, salary increment and payment of bonuses does not constitute the terms and conditions of employment. Salary increment and payment of bonuses are subject to the discretion of my office. Therefore, your reliance on section 18(3) of the Act is misplaced."

164 In this letter Mr Moyane also referred to the fact that he had "*lodged a formal intergovernmental dispute with the President with regard to your interference in the administration of SARS.*"

165 My Moyane concluded the letter as follows:

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"In light of the above and as authorised by the aforementioned provisions of the Act and the PFMA, I will proceed to effect salary increment and payment of bonuses for all SARS employees irrespective of their grades."

166 Notably, payment of the bonuses had already been made on 16 August 2016. Mr Moyane did not inform me of this.

167 A copy of this letter is attached, marked "FA24."

The Auditor General Investigation and Findings

168 On 9 September 2016, I reported Mr Moyane's contravention of s 18(3) of the SARS Act to the Auditor General, Mr Makwetu. I stated that Mr Moyane had taken a unilateral decision to implement salary increases and bonus payments in contravention of s 18(3) of the SARS Act. I provided Mr Makwetu with copies of the relevant correspondence between myself and Mr Moyane on the issue.

169 I also attached a copy of an opinion from senior counsel regarding the powers of the Minister of Finance in respect of employees under section 18(3) of the SARS Act. The opinion concluded, amongst other things, as follows:

"The terms and conditions of employment contemplated in section 18(3) includes salary increments and performance bonuses, and the Minister must approve the annual salary increments and bonuses of section 18(3) employees."

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- 170 A copy of my letter to Mr Makwethu together with the annexures thereto, is attached, marked "**FA25**".
- 171 The Auditor-General conducted an audit of SARS' own accounts for the year ended 31 March 2017. In the course of the audit of SARS employment costs, the Auditor-General considered whether Mr Moyane's unilateral decision to effect salary increases and bonus payments to SARS managers complied with section 18(3) of the SARS Act.
- 172 The Auditor-General concluded that it did not, and that the resultant non-compliance with the SARS Act could result in irregular expenditure. The Auditor-General's findings were communicated to SARS on 19 July 2017 for a response.
- 173 SARS' response was that the Auditor General's findings in this regard were based on a fundamental error of law and thus subject to judicial review.
- 174 A copy of the Auditor-General's detailed audit findings and SARS' response is attached, marked "**FA26**" and "**FA27**".
- 175 On 20 July 2017, Mr Moyane addressed a strongly worded letter to the Auditor-General, in which he challenged the Auditor-General's findings. Mr Moyane wrote:



"The dispute and which dispute you have completely misconstrued, is whether once the Minister has approved terms and conditions of SARS' employees at the appointment stage, the subsequent increment in salaries and payment of bonuses constitute an amendment or variation of their original terms and conditions of employment as contemplated in the law so as to trigger Ministerial approval. SARS' position is that a decision to increase salaries and the payment of bonuses does not constitute an amendment or variation in the law and as such it does not trigger Ministerial approval."

176 Mr Moyane claimed that the Auditor-General had ignored two legal opinions, obtained by SARS, concerning who had the power to approve salary increases and bonuses of SARS managers. Mr Moyane urged the Auditor General to consider appointing a retired Constitutional Court judge to "address disputes of law."

177 Mr Moyane concluded his letter as follows:

"In the event of refusal to accept SARS' request and thereafter you proceed to make an adverse audit finding, SARS intends to lodge a judicial review so as to set aside the AG's finding. It is apparent that your decision is based entirely on an error of law. I hope it will not be necessary to approach a court for judicial intervention provided you reconsider SARS request."

178 A copy of this letter is attached marked "**FA28.**"

179 On 4 August 2017 the Auditor-General presented his Report to Parliament on the consolidated and separate financial statements of SARS as at 31 March 2017.

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180 SARS' non-compliance with s 18(3) of the SARS Act is recorded as an instance of internal control deficiency and irregular expenditure at paragraphs 18 and 22 of the Auditor General's Report.⁷

THE MISCONDUCT

181 Mr Moyane's unilateral approval of the performance bonuses and salary increments to SARS managerial employees amounted to:

181.1 a violation of the SARS Act and an act of financial misconduct in terms of section 83 of the PFMA;

181.2 gross misconduct in his capacity as Commissioner of SARS;

181.3 a violation of the SARS Code of Conduct; and

181.4 resulted in the Auditor General finding SARS guilty of internal control deficiency and irregular expenditure, thereby bringing SARS into disrepute and causing reputational harm to the institution.

182 To the extent that Mr Moyane may seek to rely on legal opinions obtained from counsel in an attempt to justify the position he took in relation to the payment of salary increments and performance bonuses, the following is noted:

⁷ The Auditor General's Report is Item 4 in the Bundle of Documents.

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182.1 Mr Moyane obtained legal opinions from counsel in January 2015 and in January and February 2016 in relation to the powers of Commissioner of SARS vis-à-vis the Minister of Finance generally.

182.2 Mr Moyane did not obtain a legal opinion on my decision in relation to the salary increments and performance bonuses taken on 1 August 2016, as he stated he had done in his letter of 12 August 2016, attached as annexure "FA22."

182.3 None of the legal opinions obtained by Mr Moyane bore out the contentions and interpretations pertaining to section 18(3) of the SARS Act expounded by Mr Moyane in his correspondence to me or the Auditor-General.

183 Mr Moyane was well aware of the correct interpretation of section 18(3) which is why the memorandum of 21 June 2016 (Annexure "FA20") made provision for my approval.

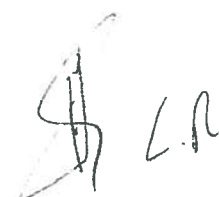
CHARGE 3

THE FACTS

Parliamentary question 1894 from the Democratic Alliance to the Minister of Finance about the FIC Report

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- 184 On 16 September 2016 the National Assembly published three questions from Mr Maynier of the Democratic Alliance ("DA") to the Minister of Finance.
- 185 The first question concerned whether SARS had received a report concerning alleged suspicious and unusual payments to Mr Makwakwa. If SARS had received such a report, the DA wanted to know when the report was received, and by which organ of state.
- 186 The second question concerned whether the allegations had been referred for further investigation. The DA wanted to know whether the report had been referred for further investigation, and if not, why not. If the report had been referred for further investigation, the DA asked for details about when this was done, and to which organ of state the report had been referred.
- 187 The third question was whether SARS had suspended Mr Makwakwa, including details of when and why he had been suspended.
- 188 The draft response was prepared by SARS and signed off by the acting Commissioner on 22 September 2018. My response was published by the National Assembly. A copy of the question and SARS' response is attached, marked "**FA29**".
- 189 I told Parliament that SARS had received a report concerning alleged suspicious and unusual payments relating to Mr Makwakwa from the FIC

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on 18 May 2018. Concerning whether the report had been referred for further investigation, I stated:

"The report was not referred for further investigation at that stage. SARS had adopted a two-pronged approach towards handling this matter. The first part entailed affording Mr Jonas Mashudu Makwakwa and Ms Kelly-Ann Elskie and opportunity to respond in writing to the allegations against them. This was part of the internal investigative process that SARS undertook. The second part involved engaging the FIC for purposes of seeking technical guidance, co-operation and assistance in relation to this matter, as per Section 4 of FICA.

(a) SARS has appointed the law firm, Hogan Lovells to investigate this matter, and to conduct disciplinary proceedings against the two employees on behalf of SARS. The matter was referred to Hogan Lovells on 15 September 2016.

(b) SARS is aware, based on correspondence received from Directorate of Priority Crime Investigation ("DPCI") dated 15 September 2016, that the matter has been reported to the DPCI. "

190 I stated further that Mr Makwakwa had been suspended on 15 September 2016 pending the investigation into the allegations contained in the FIC Report and that Ms Elskie was on maternity leave and SARS was in the process of seeking legal advice on the lawfulness of suspending her while on maternity leave.

Parliamentary question 1976

191 On 23 September 2016 the National Assembly published a further question from the DA to the Minister of Finance concerning the allegations against Mr Makwakwa.



192 My written response was prepared by SARS and approved by Mr Moyane on 6 October 2016. A copy of the question and SARS' response is attached, marked "FA30".

193 The relevant portions of the response are set out below:

" Yes, as stated above, SARS has appointed a law firm; Hogan Lovells to investigate and conduct disciplinary proceedings against Mr Makwakwa on behalf of SARS.

(a) Hogan Lovells is an independent, reputable law firm that also has operations in South Africa.

(b) As stated above, Hogan Lovells has been appointed to investigate the allegations contained in the report, as well as to conduct disciplinary proceedings against Mr Makwakwa on behalf of SARS.

(c) The scope of the disciplinary investigation pertains to the following:

(i) To determine whether the alleged deposits and payments made and received by Mr Makwakwa have resulted in contravention of tax legislation or constitute a tax offence. In this regard, it should be noted that contravention of tax legislation by a SARS employee constitutes a misconduct in the employment context;

(ii) To determine whether ad hoc payments to Mr Makwakwa by SARS were done in contravention of the SARS' internal policies and the PFMA. In this regard, identify and discipline the culprits including Mr Makwakwa. Further, recover any amount that was paid to Mr Makwakwa in contravention of the PFMA;

(iii) Assist the on-going criminal investigation by the SAPS and in particular the Directorate for Priority Crime Investigation ("DPCI") with regard to information pertaining to the following:

a. Whether the funds allegedly received by Mr Makwakwa constitute payment of proceeds of crime arising from corrupt activities as defined in the Prevention and Combating of Corrupt Activities act 12 of 2004 ("PRECCA");

b. Whether Mr Makwakwa has committed acts of tax evasion and other contraventions of the Tax Administration Act of 2011 (Tax Administration Act);

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- c. Whether Mr Makwakwa effected payment in contravention of internal policies and/or the Public Finance Management Act 1 of 1999 ("PFMA"); and
- d. Whether the aforementioned conduct of concealment and disguising of the true source of these funds constitute acts of money laundering as defined in section 1 of the Prevention of Organised Crime Act, 121 of 1998 ("POCA")"

Appointment of New Integrated Credit Solutions (Pty) Ltd

194 On 7 February 2018 the chairperson of SARS' National Bid Adjudication Committee recommended that Mr Moyane, in his capacity as SARS Commissioner, approve the appointment of eight service providers to conduct debt collection on behalf of SARS. New Integrated Credit Solutions (Pty) Ltd ("NICS") was one of the eight service providers recommended. The service providers were appointed for a period of eighteen (18) months at a projected total cost of R341 230 000.

195 Mr Moyane approved the recommendation on 15 February 2018. A copy of the National Bid Adjudication Report that served before Mr Moyane is attached, marked "FA31".

Standing Committee on Finance meeting of 13 March 2018

196 Mr Moyane attended the Parliamentary Standing Committee on Finance on 13 March 2018.

197 During the course of the meeting, Mr Moyane was asked to confirm whether:

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- 197.1 New Integrated Credit Solutions had been appointed to conduct debt collection;
- 197.2 there was any link between Mr Patrick Monyeki, the owner of New Integrated Credit Solutions, and Mr Makwakwa;
- 197.3 Mr Makwakwa served on the National Adjudication Committee;
- 197.4 Mr Makwakwa was present when New Integrated Credit Solutions was appointed; and
- 197.5 Mr Monyeki had been awarded any contracts by the Department of Correctional Services during the period that Mr Moyane served as Commissioner thereof.
- 198 Mr Moyane stated that he knew Mr Monyeki, and that they were friends. He also told the Standing Committee that the Department of Correctional services had not awarded any tenders to Mr Monyeki while he had served as Commissioner thereof.
- 199 In response to the relationship that existed between SARS and NICS, Mr Moyane said the following:
- " ... Certainly NICS has been doing work with SARS since 2004. They have been doing work with SARS on debt collection. That we have on record.

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Now the point that says we may have – the procurement processes at SARS are very clear. There is all the tender processes that are followed and then you have bid evaluation, the bid adjudication committee. The Commissioner does not sit in any of those committees, none at all. The bid adjudication committee which is the NBAC, which is the highest, comprises of all chief officers except the Commissioner and then they take a decision based on the presentation of the bid evaluation committee and they make an announcement and the award of the tender to the preferring tender, tender presenter.

I do not get involved and I do not get informed as to who the companies are, except when they indicate in a meeting that six, eight companies have been submitted and they have been awarded and this is what happens. I do not get involved."

- 200 The relevant portion of the Standing Committee meeting, as transcribed, is attached, marked "FA32". The above quotation is found pages 15 to 17 of "FA32".

THE MISCONDUCT

- 201 The responses to the parliamentary questions from the DA concerning the FIC Report were prepared by SARS.
- 202 I conveyed SARS' response to the questions to Parliament. I assumed, and was entitled to assume that SARS had responded truthfully and accurately to the questions.
- 203 The relevant facts in relation to FIC Report and Hogan Lovell's terms of reference in relation thereto have been set out above. It is clear that Hogan Lovell's terms of reference did not include investigations into alleged contraventions of POCA, PRECCA, the TA Act or the PFMA.



- 204 SARS' responses to the Parliamentary questions, which were published on 16 September 2016 and 23 September 2016 respectively, were accordingly factually incorrect, misleading, and concealed the true state of events.
- 205 Mr Moyane's statement that he played no role in approving the appointment of NICS to provide debt collection services for SARS was also false. As evidenced by "FA31", Mr Moyane approved the appointment of eight service providers, including NICS.
- 206 It is apparent that Mr Moyane provided Parliament with false information about the Hogan Lovells investigation, and concealed his role in approving the appointment of NICS.
- 207 Parliament has the Constitutional mandate to exercise oversight over the executive and to hold organs of state to account.
- 208 Clause 6.2 of SARS' Code of Conduct requires the Commissioner of SARS to perform his duties and exercise his powers with the utmost professionalism, diligence and honesty, and to conduct himself in a decent manner at all times.
- 209 Clause 6.3.4 of SARS' Code of Conduct requires all SARS employees, including the Commissioner, to avoid making misleading statements that might prejudice the reputation of SARS.

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210 Mr Moyane's conduct violated the SARS Code of Conduct. It also amounted to gross misconduct in his capacity as Commissioner of SARS.

CHARGE 4

THE FACTS

211 During the course of the evening on 6 May 2015, Mr Moyane contacted Mr Helgard Lombard, a technical manager in SARS' Anti Corruption and Security division.

212 Mr Lombard informed Mr Moyane that Mr Johan van der Walt, an employee at KPMG and one of the persons responsible for conducting the KPMG investigation into the SARS High Risk Investigative Unit, had scheduled an interview with him for the following day.

213 Mr Moyane asked Mr Lombard to call him about the matter the following morning.

214 On 7 May 2015 at approximately 07h30, Mr Lombard telephoned Mr Moyane as arranged. Mr Moyane told Mr Lombard that he must not attend the interview with Mr Van der Walt. Mr Moyane told Mr Lombard to feign illness in order to avoid attending the interview and stated that Mr Luther Lebelo, SARS' Group Executive Employment Relations at the

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time, would assist in this regard by informing Mr Van der Walt that Mr Lombard was unwell.

215 On the aforesaid instructions of Mr Moyane, Mr Lombard did not attend the interview.

216 Mr Lombard recorded his conversation with Mr Moyane. A transcript of the conversation is attached, marked "**FA33**". A copy of the recording is available and will be made available to the chairperson and to Mr Moyane at an appropriate time.

THE MISCONDUCT

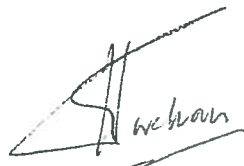
217 Mr Moyane's instruction to Mr Lombard to feign illness in order to avoid attending the interview with Mr Van der Walt constituted an abuse of the Office of the Commissioner of SARS and gross misconduct.

218 The KPMG investigation was initiated at Mr Moyane's instance. By instructing Mr Lombard not to attend the interview, Mr Moyane ensured that information, relevant to the investigation, was withheld from the investigation.

219 Mr Moyane's aforesaid conduct also violated the SARS Code of Conduct, in particular clause 6 which requires the Commissioner to, amongst other things:

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- 219.1 perform his duties and exercise his powers with the utmost professionalism, diligence and honesty, and to conduct himself in a decent manner at all times
- 219.2 fulfil all the obligations imposed upon him by the Constitution and law;
- 219.3 act in good faith and in the best interests of good governance; and
- 219.4 act in a manner that is consistent with the integrity of the Office of Commissioner and SARS.



PRAVIN JAMNADAS GORDHAN

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and solemnly affirmed before me at PRETORIA on this 13th day of JUNE 2018, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

LEKGOWA RONIE NYAMA
Commissioner of Oaths/Kommissaris van Ede
Practising Attorney/Praktiserende Prokureur RSA
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ANNEXURE 29

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Office of the
Commissioner



South African Revenue Service

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Mr PG Gordhan, MP
Minister of Finance

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Dear Minister

**REFERRAL FOR AN INTER-GOVERNMENTAL DISPUTE IN TERMS OF
SECTION 41 OF THE INTER-GOVERNMENTAL RELATIONS
FRAMEWORK ACT 13 OF 2005 ("IRFA")**

Attached for the Minister's information is the letter that has been sent to the
President.

Regards


THOMAS MOYANE
COMMISSIONER, SARS
DATE: 12 December 2016

**Office of the
Commissioner**



South African Revenue Service

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Cc: Mr PJ Gordhan
Minister of Finance

Dear Honourable President

**REFERRAL FOR AN INTER-GOVERNMENTAL
DISPUTE IN TERMS OF SECTION 41 OF THE INTER-
GOVERNMENTAL RELATIONS FRAMEWORK ACT
13 OF 2005 ("IRFA")**

1. I refer to the above subject matter and in particular the SARS' referral in terms of the provisions of Section 41 of the IRFA dated 14 April 2016. To this date, I am still awaiting the Honourable the President to provide guidance including the appointment of a retired judge to act as a facilitator for the adjudication of the dispute.
2. Since the declaration of the dispute by the SARS and whilst awaiting intervention by the Honourable the President, the working relationship between the Minister of Finance ("Minister") and the SARS has

deteriorated to unbearable levels as illustrated by the following events:

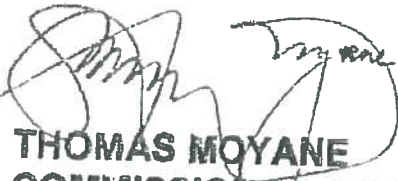
- 2.1. The Honourable Minister's unexplained failure to approve the terms and conditions of employment, for the appointment of the person for the position of Chief Officer for Digital Information System and Technology ("IT"), since July 2016. The Minister's failure to approve the aforesaid appointment without any reason whatsoever is in violation of Section 18 of the SARS Act 34 of 1997. It is without doubt that the Minister's failure to make the required appointment is debilitating for the SARS and is contrary to the constitutional principle of legality;
- 2.2. The Honourable Minister has rendered the leadership of the SARS immobile, late approvals for international travel leading to cancellation of visits and refusal to approve trip(s) to conferences and meetings in pursuance of the SARS' mandate;
- 2.3. The Honourable Minister has without any justification whatsoever accused the Leadership

of the SARS for lack of accountability in public and without adhering to the principle and spirit of co-operative governance as envisaged in chapter 3 of the Constitution of the Republic of South Africa; and

2.4. The Honourable Minister is directly interfering in the operation of the SARS including operational issues such as salary increment and payment of bonuses for the SARS employees.

3. It is within the aforesaid premise that the SARS request the Honourable the President's urgent intervention and in particular for the resuscitation of the already lodged inter-governmental dispute.

Yours sincerely



THOMAS MOYANE
COMMISSIONER: SARS
DATE: 12 December 2016

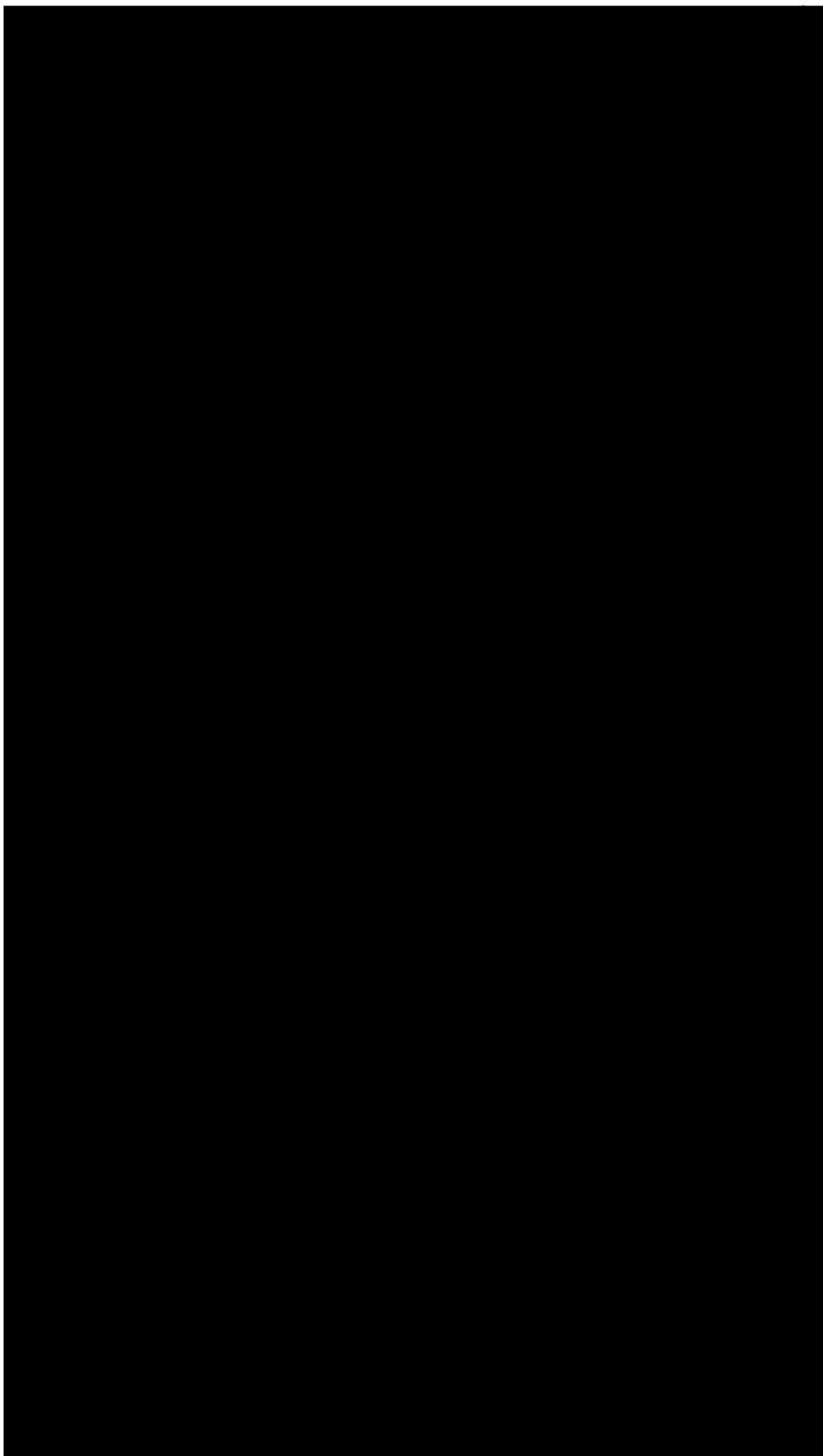
Attachment: Letter dated 14 April 2016 – Request for the appointment of a facilitator to adjudicate a formal intergovernmental dispute between the SARS Commissioner and the Minister of Finance

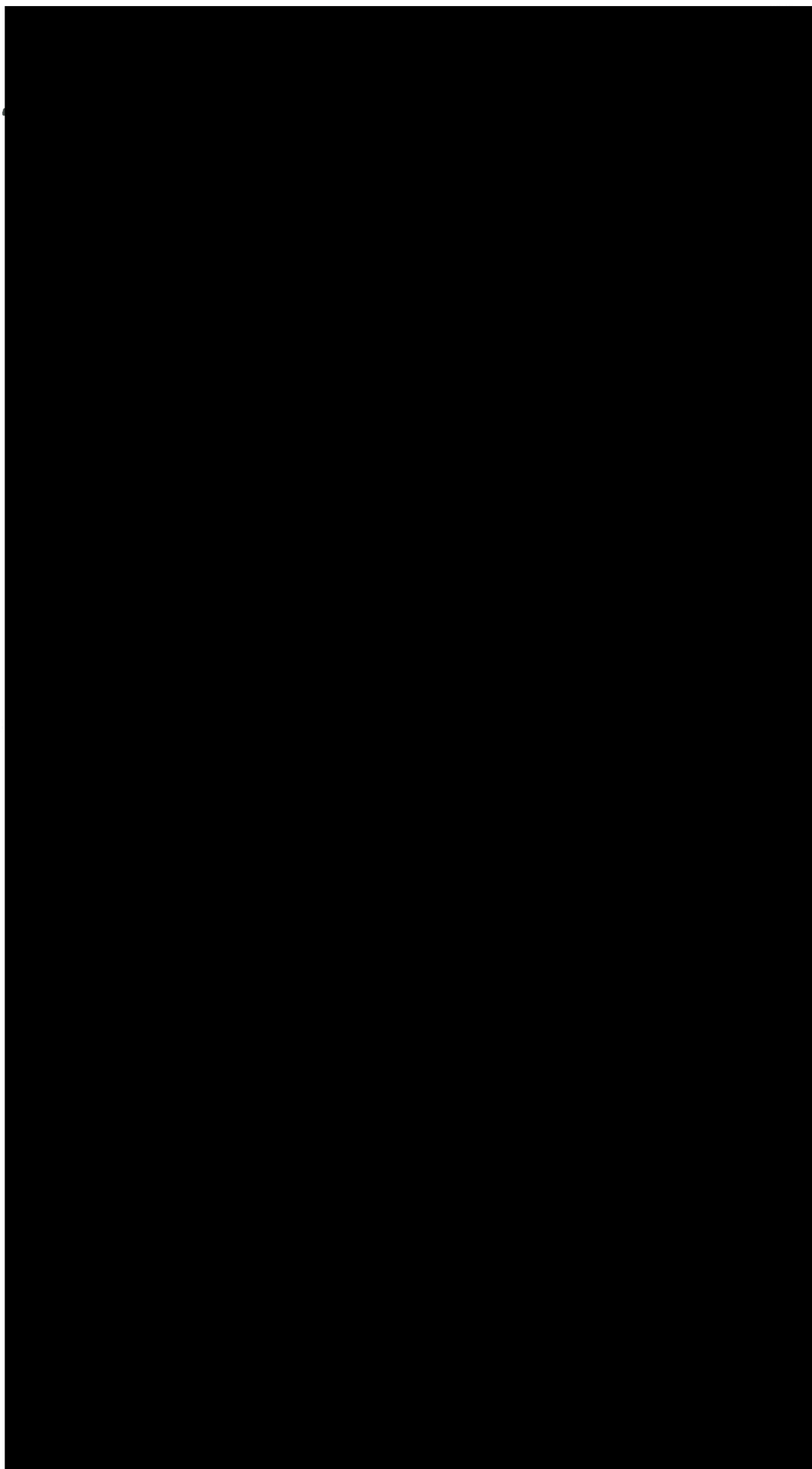
ANNEXURE 30

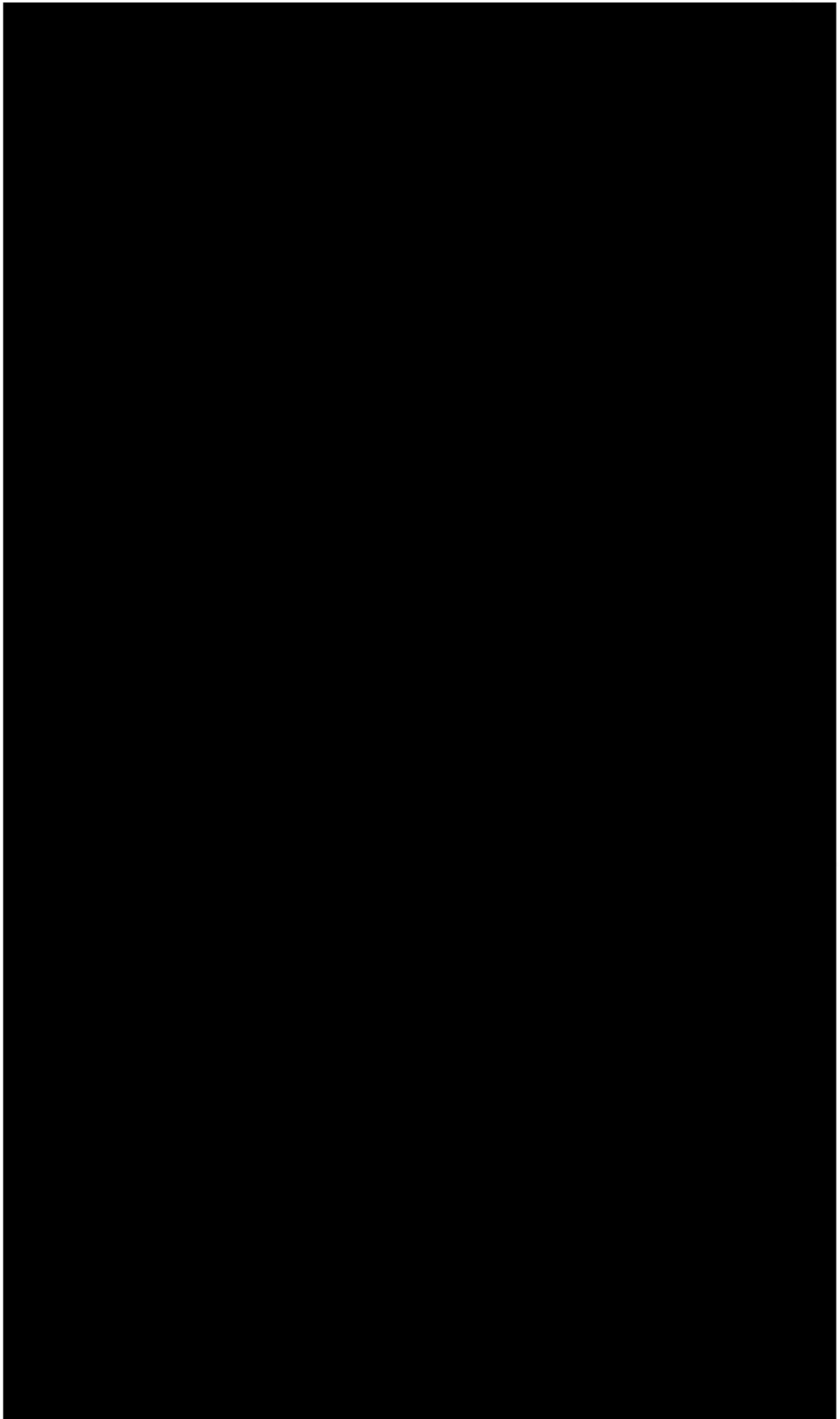
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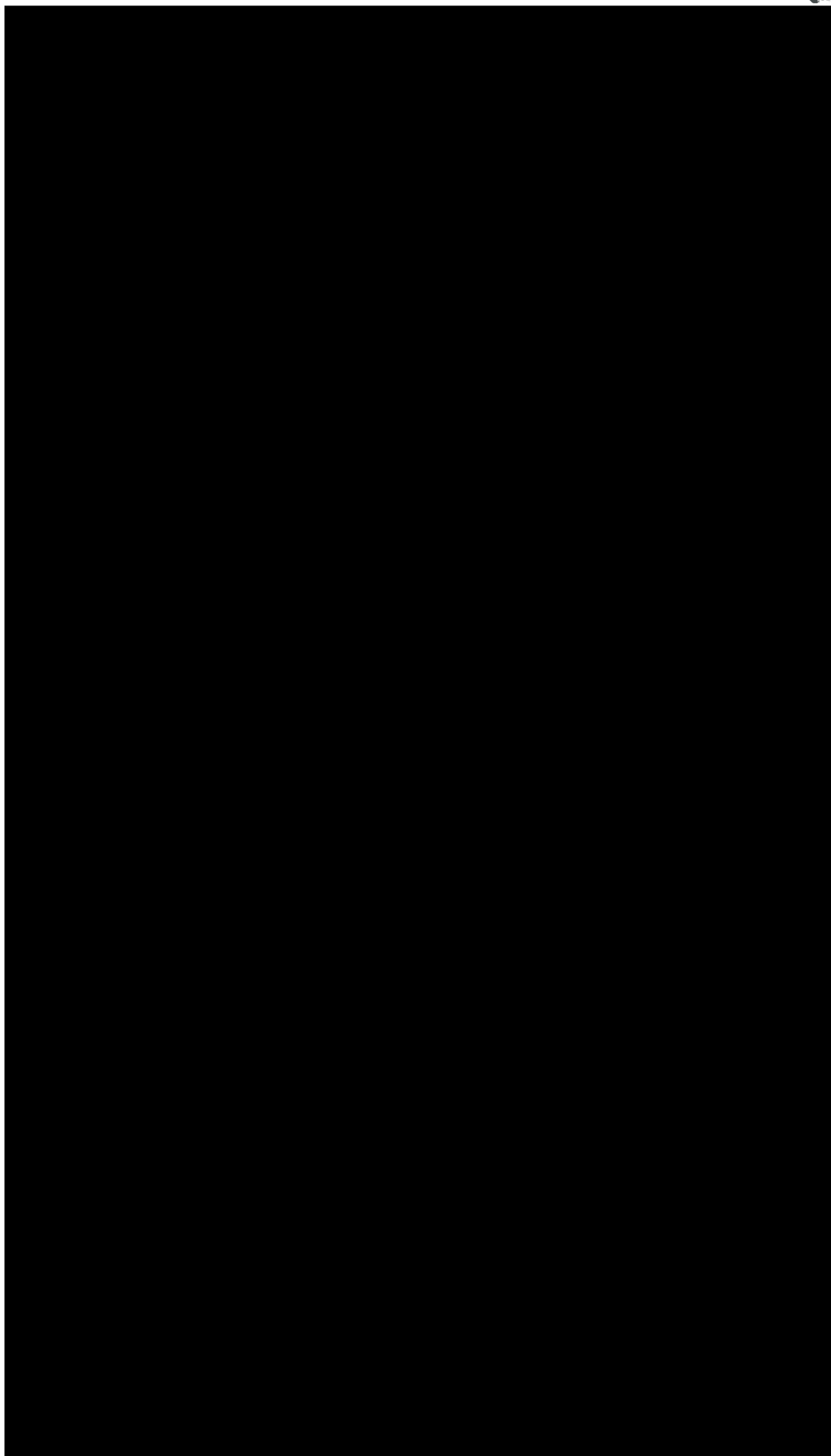
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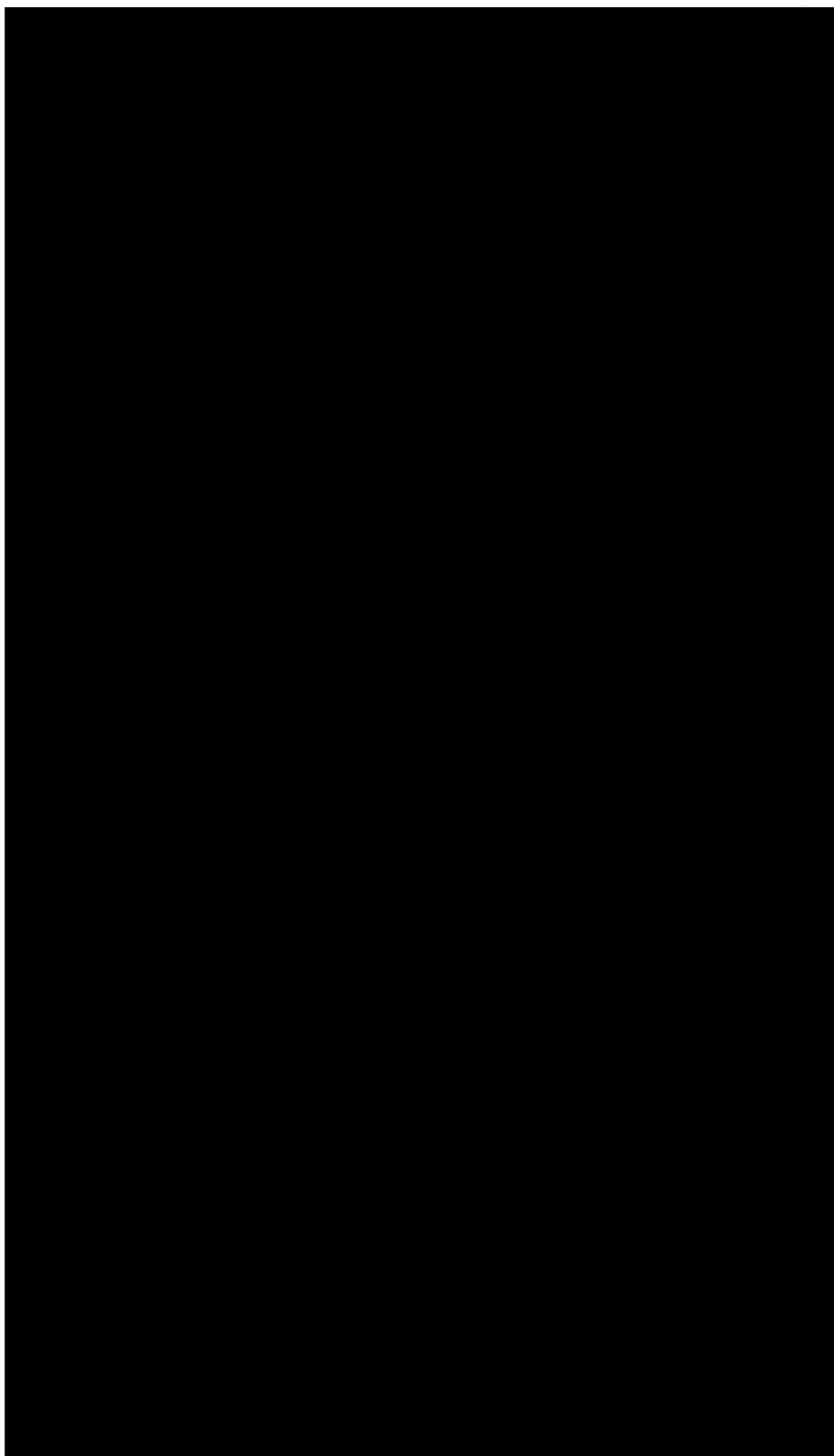
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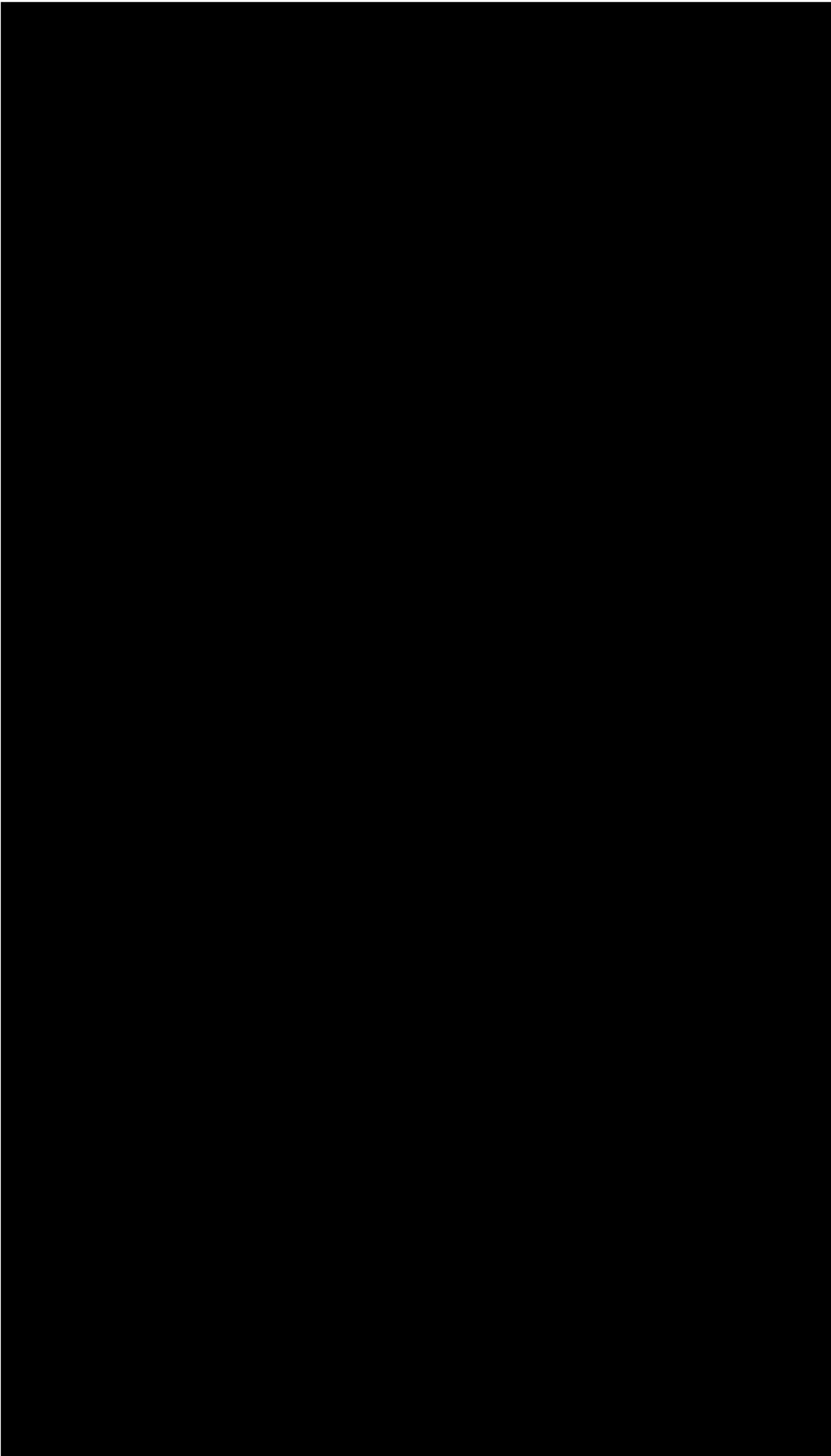


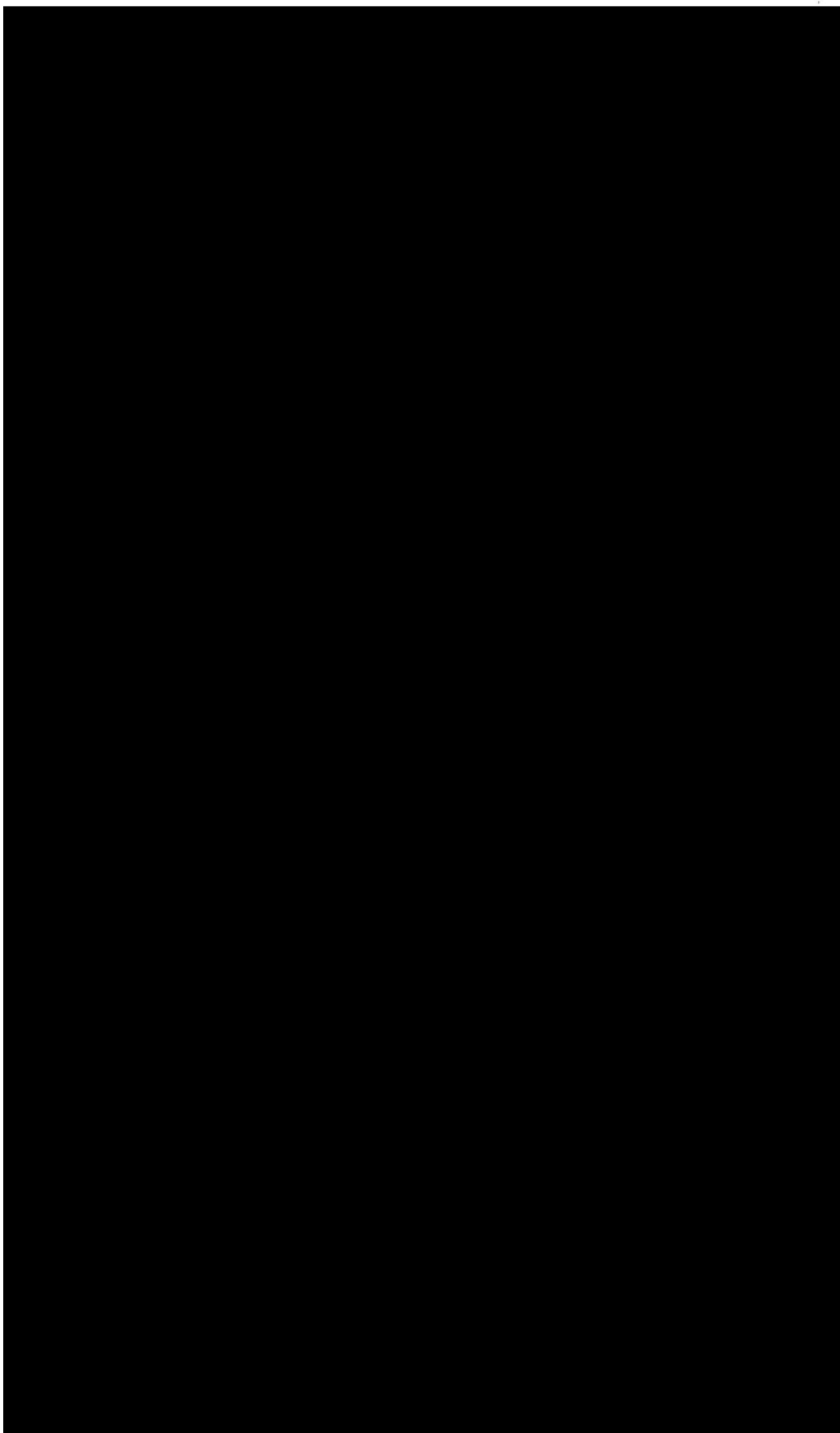


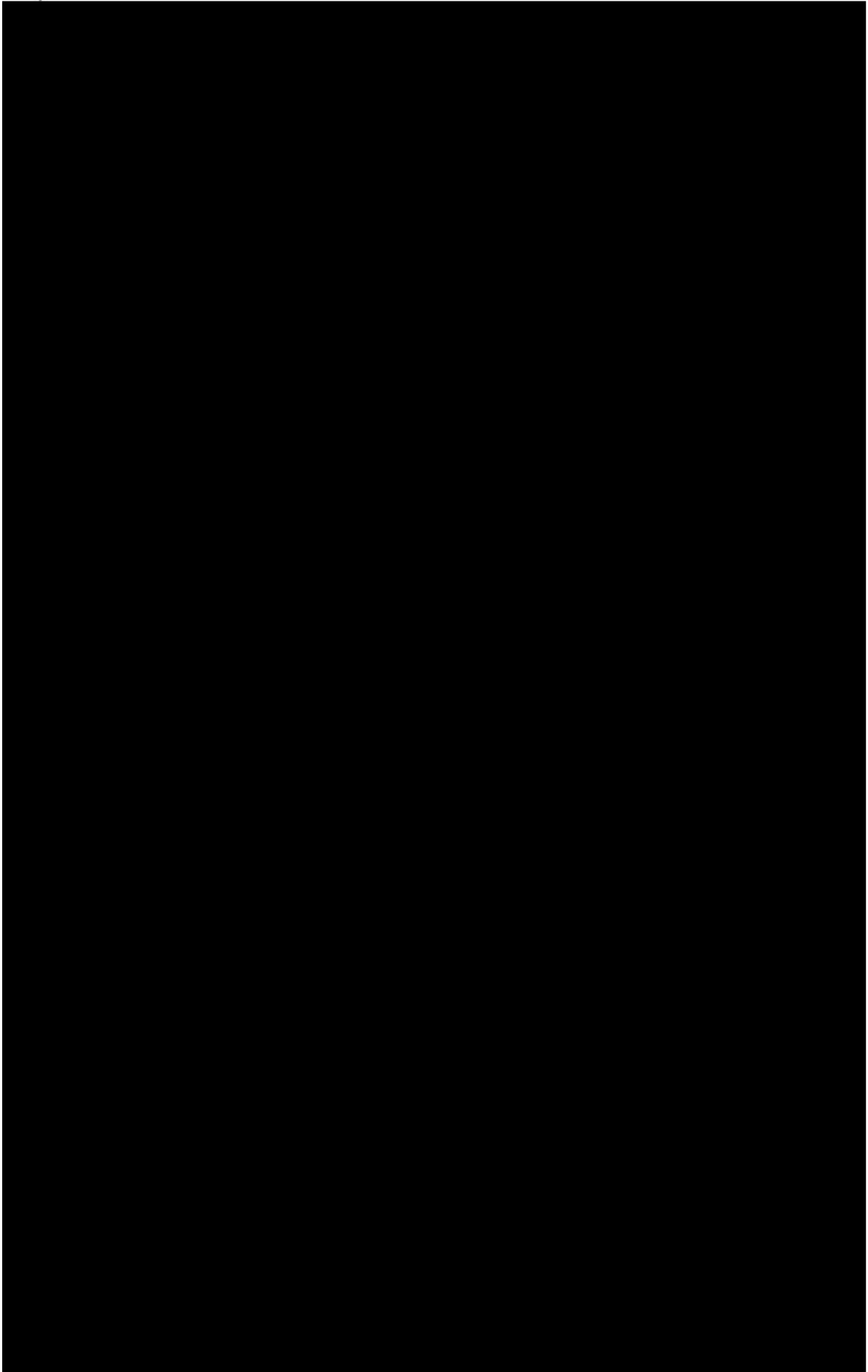




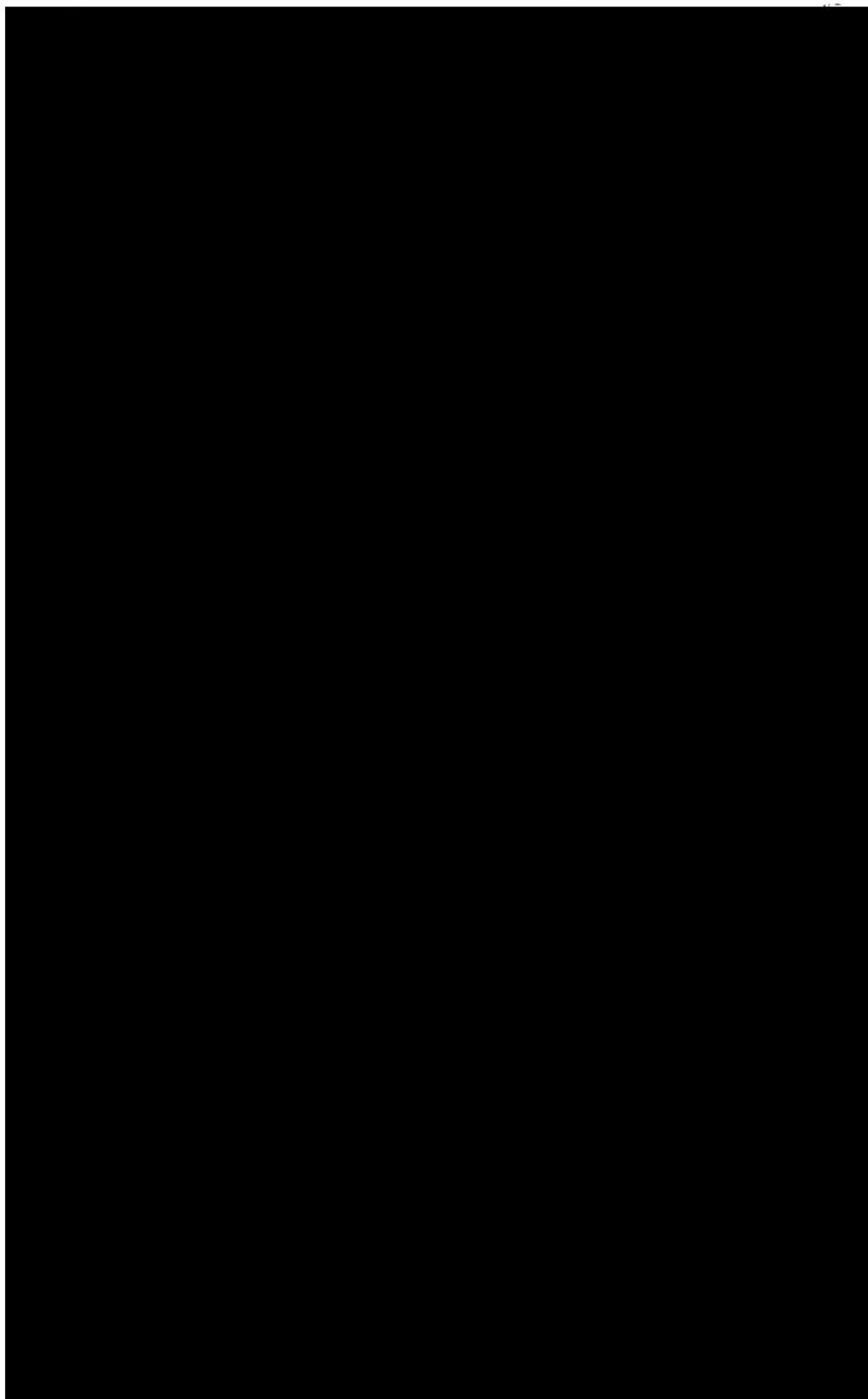


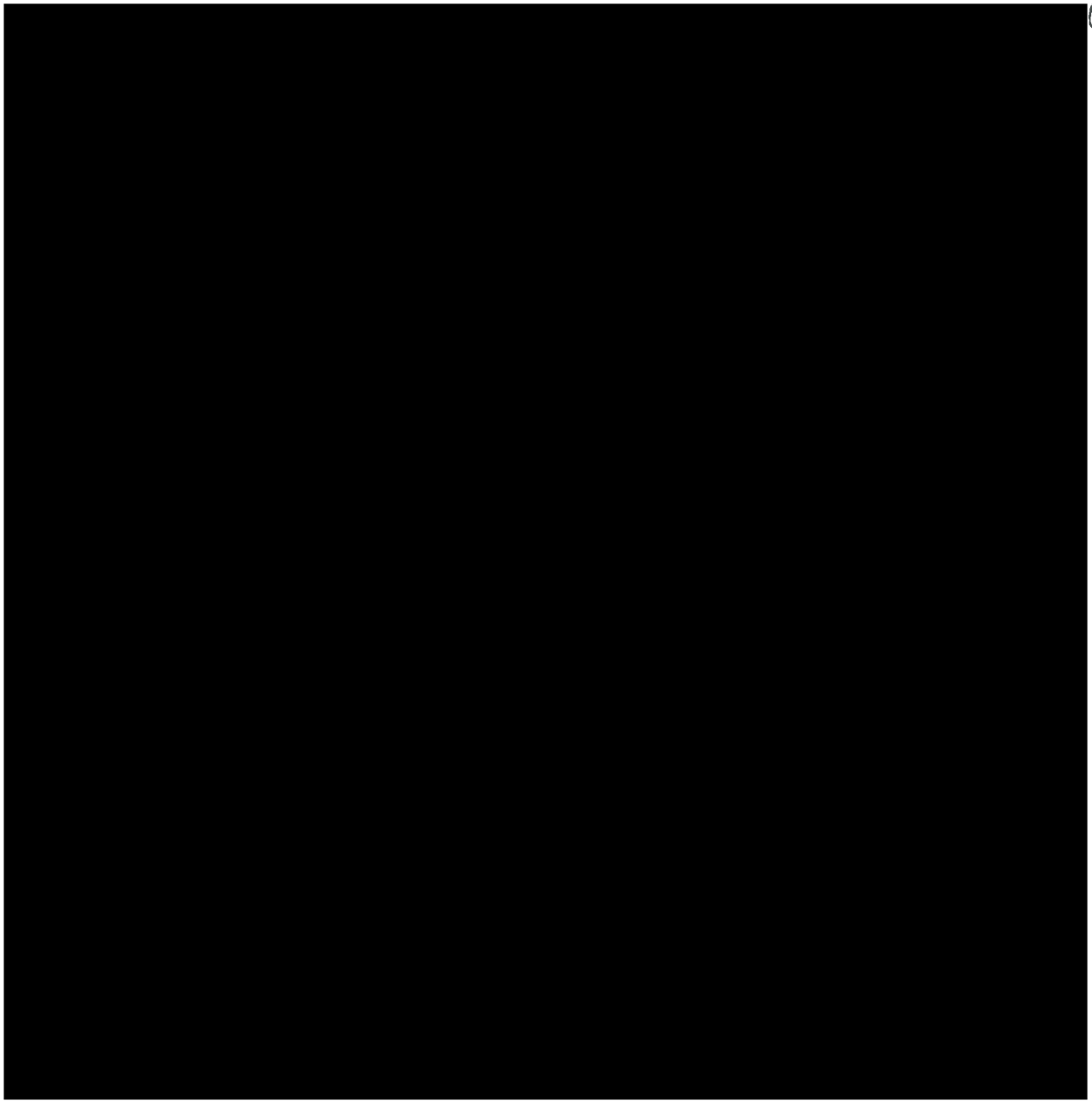












ANNEXURE 31

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**SUBMISSION ON THE FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001
AND AMENDMENT BILL [B 33B – 2015]**

PURPOSE

1. The submissions herein relate to the Financial Intelligence Centre Amendment Bill [B 33B – 2015] ("**the Bill**").
2. The Bill was passed by Parliament and referred to the Honourable President of the Republic for assent and to sign into law.
3. After duly considering the Bill and after applying his mind thereto, the President, in a letter dated 28 November 2016, referred the Bill back to the National Assembly in terms of section 79(1) of the Constitution as the President expressed reservation on the constitutionality of the Bill.
4. In particular, the President is concerned that the proposed section 45B(1C), in the Bill, which amends section 45B of the Financial Intelligence Centre Act, No 38 of 2001 ("**FICA**" or "**the principle Act**"), by introducing warrantless searches is unlikely to pass constitutional muster. The President is further concerned of the impact the aforementioned provisions would have on the rights of persons identified as foreign prominent public officials¹, domestic prominent influential person² and family members and known associates of the aforementioned persons.³
5. These submissions are in support of the notion that the Bill would be inconsistent with the Constitution if signed into law in its current form.
6. The Security Cluster ("**the Cluster**") departs from the premise that the Constitution is the supreme law of the Republic.⁴ This supremacy, together

¹ Proposed section 21 F of the Bill

² Proposed section 21 G of the Bill

³ Proposed section 21 H of the Bill

⁴ Section 2 of the Constitution

with the rule of law, constitute some of the founding values of a sovereign and democratic Republic of South Africa.⁵

7. Any law or conduct which is inconsistent with the Constitution is invalid and any obligations imposed by the Constitution must be fulfilled.⁶

BACKGROUND

8. In response to mounting concern over money laundering, the Financial Action Task Force ("**FATF**") was established by the G-7 Summit in Paris, 1989.
9. The G-7 Heads of State, Governments and the President of the European Commission convened a Task Force from the G-7 member States, the European Commission and eight other countries after recognising the threat posed to the banking system and to financial institutions.
10. The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.
11. In April 1990 FATF issued a report containing a set of Forty Recommendations, which were intended to provide a comprehensive plan of action needed to fight against money laundering.
12. In 2001, the development of standards in the fight against terrorist financing was added to the mission of FATF.
13. In October 2001 FATF issued Eight Special Recommendations to deal with the issue of terrorist financing.

⁵ Section 1 of the Constitution

⁶ Section 2 of the Constitution

14. That being said, the Republic's primary obligation to establish a Financial Intelligence Centre ("**FIC**"), is derived from its ratification of the United Nations ("**UN**") Convention against Transnational Organized Crime and the Protocols thereto and the International Convention for the Suppression of the Financing of Terrorism.
15. Article 18 of the Terror Financing Convention requires State Parties to implement measures requiring financial institutions to identify their customers and to pay attention to unusual or suspicious transactions and for such institutions to maintain records.
16. The Terror Financing Convention further requires State Parties to establish channels of communication between their agencies to ensure that all financial information relevant to criminal activity is properly acted on.
17. Article 7 of the Transnational Organized Crime Convention requires State Parties to institute a comprehensive, domestic, regulatory and supervisory regime for financial institutions. As such, State Parties are required to establish a *"financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering"*.
18. Hence, the primary focus would be on a centre that would gather financial intelligence relevant to the financing of terrorism and money laundering.
19. FICA came into operation on 1 February 2002.
20. The primary purpose of FICA was to establish the FIC and a Money Laundering Advisory Council ("**the Council**") in order to combat money laundering activities and terrorist funding and to impose obligations on institutions which may be used for money laundering and terror financing.
21. FICA was the product of a Task Team on Money Laundering that was appointed by the Minister of Finance to, among others, review the

appropriateness of a draft Bill that was prepared by the South African Law Reform Commission ("**the SALRC**") in August 1996.

22. The SALRC conducted an investigation and reported on administrative measures to combat money laundering.
23. In summary, the SALRC made the following recommendations in their Report on Money Laundering and Related Activities:
 - (a) The implementation of an administrative framework to facilitate the prevention, detection, investigation and prosecution of money laundering;
 - (b) The administrative framework should have a wide scope of application going beyond the banking sector and including among others attorneys, accountants, insurers, investment intermediaries, gambling institutions and totalisator betting services;
 - (c) Institutions must be required to identify their clients when business relationships are established or single transactions concluded with those clients. Institutions should also ascertain the identity of persons with whom transactions are concluded in the course of a business relationship;
 - (d) Institutions must keep records of the information obtained in respect of the identity of their clients and of information relating to transactions performed by their clients;
 - (e) Information on transactions exceeding a prescribed threshold must be reported. The amount of the threshold must be determined by the Minister responsible for the administration of the administrative framework in consultation with all interested parties. Institutions must also report information in respect of suspicious transactions;
 - (f) Adequate protection should be afforded to persons making reports in terms of the reporting structure. This includes protection against liability for breach of confidential relationships and protection of their identity;

- (g) A statutory body called the Financial Intelligence Centre must be established to receive all reports made in terms of the reporting structure;
 - (h) It will be the function of the Centre to analyse, investigate and disseminate the reported information;
 - (i) The Centre must also supervise the enforcement of the administrative scheme by means of appropriate administrative sanctions;
 - (j) The administrative scheme must be administered by the appropriate Ministry in consultation with the affected institutions;
 - (k) The institution of a statutory body called the Money Laundering Policy Board to represent all the relevant institutions and bodies. The main function of the Board should be to assist the Minister in developing and implementing an anti-money laundering policy; [This became known as the Counter Money Laundering Advisory Council].
 - (l) The creation of a range of offences, in addition to the above-mentioned administrative sanctions, to enable the administrative scheme to be enforced;
24. In this regard, the Financial Intelligence Centre Bill [B1 – 2001], reflected *“...the main proposals of the Task Team, which were accepted by the Minister of Finance, subject to certain amendments requested by the South African Police Service, the South African Reserve Bank, the South African Revenue Service, the Ministry for Intelligence Services, the Department of Justice and Constitutional Development and the National Prosecuting Authority”*.⁷
25. The SALRC pointed out that the establishment of a body that can record and manage the information obtained through the reporting system is an integral part of an administrative scheme to combat money laundering.

⁷ See paragraphs 1.1 to 1.3 of the memorandum on the objects of the Financial Intelligence Centre Bill [B1 – 2001], attached as Annexure “A”.

26. The FIC is hence required to be an integral part of an administrative scheme as it facilitates the communication between the persons or institutions reporting certain information and the authority whose responsibility it is to use that information in the course of the investigation of money laundering and other criminal activities.
27. The FIC should therefore be regarded as an information gathering entity which does not have any powers to investigate offences.
28. The investigating of crimes is the constitutional and legal mandate of the South African Police Service ("**SAPS**") and the gathering, correlating and analysing of intelligence falls within the constitutional and legal mandates of the various Intelligence Agencies established by the National Strategic Intelligence Act No 39 of 1994.
29. Significantly, the SALRC stated the following in its Report:⁸

"Emphasis should, however, be placed on fostering a culture of co-operation between the business community, the financial intelligence unit and the various law enforcement agencies. Experiences in other jurisdictions have shown that promoting such a spirit of co-operation is far more effective than strong handed enforcement in ensuring compliance with a regulatory framework."
30. The SALRC further stated that:⁹

"It must, however, be remembered that this is an aid to identify transactions that are sufficiently suspicious to warrant investigation, and is not aimed at replacing the investigating authority."
31. Section 3 of FICA deals with the objectives of the Act and, among others, requires that the Centre must inform, advise and cooperate with investigating

⁸ At page 21 of the SALRC Report

⁹ At page 23 of the SALRC Report

authorities, supervisory bodies, the South African Revenue Service and the intelligence services.

32. Section 36 of FICA requires that supervisory bodies or the South African Revenue Service that knows or suspects that money laundering activities are taking place to, among others, advise the Centre accordingly by providing all information and any applicable records.
33. Section 44 of FICA requires that the Centre, if the Centre has reasonable grounds to suspect that any person, has contravened or failed to comply with any provision of FICA refer the matter to a relevant investigating authority, or an appropriate supervisory body or other public body or authority affected by it.
34. South Africa only became a member of the FATF in 2003 and a member of the Eastern and Southern Africa Anti-Money Laundering Group ("**ESAAMLG**") as from August 2002.
35. The continued evolution of money laundering techniques led FATF to revise FATF standards comprehensively in June 2003.
36. In October 2004 FATF published a Ninth Special Recommendations, further strengthening the agreed international standards for combating money laundering and terrorist financing - the 40+9 Recommendations.
37. The objectives of FATF are to set standards/recommendations and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing or the financing of proliferation and other related threats to the integrity of the international financial system.
38. FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.

39. In collaboration with other international stakeholders, FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.
40. The FATF Recommendations set out the essential measures that countries should have in place to:
 - (i) identify the risks, and develop policies and domestic coordination;
 - (ii) pursue money laundering, terrorist financing and the financing of proliferation;
 - (iii) apply preventive measures for the financial sector and other designated sectors;
 - (iv) establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
 - (v) enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
 - (vi) Facilitate international cooperation.
41. FATF calls upon all countries to implement effective measures to bring their national systems for combating money laundering, terrorist financing and the financing of proliferation into compliance with the revised FATF Recommendations.
42. South Africa, as a member, albeit voluntary, is accordingly bound to comply with the standards and recommendations of the respective bodies.
43. Recommendation 29 regarding FIC's, inter alia, recommends that:

Countries should establish a FIC that serves as a national centre for the receipt and analysis of:

- (a) suspicious transaction reports; and
 - (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.
44. The Bill was introduced in 2015 with the amendments seeking to address the following areas which are of relevance for this submission:
- (i) The implementation of financial sanctions and administrative measures pursuant to the Resolutions adopted by the United Nations Security Council;
 - (ii) To enhance customer due diligence measures with regard to beneficial ownership and persons in prominent positions;
 - (iii) To abolish the Counter Money Laundering Advisory Council;
 - (iv) To provide access to information to supervisory bodies;
 - (v) To provide for warrants for certain inspections in light of the Constitutional Court decision in the *Estate Agencies Affairs Board v Auction Alliance (Pty) Ltd and others [2014] ZACC 3*. ("the Auction Alliance decision"); and,
 - (vi) To provide for administrative sanctions and further offences.
45. A glaring observation as contained in paragraph 4 of the Memorandum on the Objectives of the Bill, 2015¹⁰ is that consultations were conducted with organizations and individuals listed therein.
46. It is hence apparent that there was no consultation with institutions or persons listed as members of the Council, especially members of the Security Cluster

¹⁰ See page 47 of the Memorandum

who are seized with the detection, investigation and prosecution of money laundering and terror financing offences.¹¹

47. Consultation within this structure would have enabled the various agencies represented to assess where existing laws, policies, mandates and processes currently adhered to may have enabled the country to meet its international obligations without the need to legislate thereon.
48. FICA and the amendments have a bearing on the work on the South African Police Service ("**SAPS**"), the State Security Agency ("**SSA**") and the National Prosecuting Authority ("**NPA**").
49. The impugned provisions in the Bill empowers inspectors to enter premises of an accountable or reporting institution without a warrant and all other premises with a warrant for the purposes of determining compliance with FICA, an order, directive or determination made in terms of FICA.
50. Non-compliance with certain obligations may amount to an offence enjoying a penalty as well as an administrative sanction¹².
51. The conduct of the inspectors in these circumstances is tantamount to investigations which has the effect of discovering conduct and practices which amount to offences in terms of FICA but may also lead to the discovery of evidence related to money laundering or terror financing.
52. The amendments related hereto and the freezing of assets were not interrogated in relation to the work of the constitutional and legal mandates of the SAPS, the National Prosecuting Authorities ("**NPA**"), the State Security Agency ("**SSA**") and other agencies with investigative or intelligence functionalities.

CONSTITUTIONAL CONSIDERATIONS

¹¹ Section 19 of FICA

¹² See Clauses 41 to 50

53. The powers and functions provided for in FICA and the impugned proposed amendments go beyond mere policy formulation and regulation but in the form of security services which relate to financial intelligence, investigations and, the ability to impose sanctions directly or through the operations of supervisory bodies and/or accountable institutions.
54. Such sanctions are akin to that which is ordinarily meted out by courts of law.
55. Cumulatively, it is inescapable in relation to its mandate, function and operations, that the FIC can be classified as having firstly, a regulatory and policy function in relation to the financial sector and secondly, a law enforcement function in relation to its operations.
56. It is within this context that dictates of the supremacy of the Constitution and the Rule of law must be considered and due regard must be given to the constitutional mandates of the respective government entities and departments where the operations of FIC overlap.
57. Cognisance must therefore be had to the impact the impugned amendments will have on the usurping of the constitutional and legal mandates of SAPS and SSA, in particular, as well the potential impact the impugned amendments have on the rights of individuals as enshrined in the Chapter 2 of the Constitution.
58. Sight must also not be lost for the reasons advanced for the creation of the FIC and the promulgation of FICA, as outlined earlier above.

Intelligence Services

59. The FIC obtains financial intelligence from accountable and reporting institutions in order to perform its functions as it relates to the detection and investigation of money laundering, terror financing and other related offences.
60. Section 209 (1) of the Constitution solely enjoins the President as head of the national executive to establish "*any intelligence service, other than the*

intelligence division of the defence force or police service...and only in terms of national legislation."

61. Section 210 of the Constitution which relates to the powers, functioning and monitoring of intelligence services provides that "*National legislation must regulate the objects, powers and functions of intelligence services...and must provide for (a) the coordination of all intelligence services; and (b) civilian monitoring of those services by an inspector appointed by the President...*"
62. The National Strategic Intelligence Act, No 39 of 1994 ("***the NSI Act***") establishes the intelligence structures for the Republic.
63. The FIC has not been included.
64. Section 3 of the NSI Act provides for the functions of other departments of State with reference to National Security Intelligence. To this end, section 3(1) reads as follows:

*"If any law expressly or by implication requires any department of State, other than the agency or the service, to perform any function with regard to the security of the Republic or the combating of any threat to the security of the Republic, such law shall be deemed to empower such Department to gather departmental intelligence, and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function: **Provided that such department of State ... shall not gather departmental intelligence within the Republic in a covert manner** ..." [our emphasis]*

65. Financial intelligence ostensibly for the purposes of detecting and investigating terror financing would thus fall within the ambit of the NSI Act whilst such intelligence for the purposes of the detection and investigation of money laundering and other crimes would fall within the ambit of the operations of SAPS' Crime Intelligence Gathering Unit.

66. The FIC, unlike other departments and agencies within the intelligence community are not subject to civilian oversight as enjoined by the Constitution in sections 208 and 210(b) of the Constitution.
67. There is further no coordination as anticipated in the Constitution as such coordination would ordinarily resort within the operations of the statutory created body, namely the Counter Money Laundering Advisory Council, which the Bill abolishes in its totality.
68. In the face of this lack of co-ordination with other intelligence services, issues such as the vetting of information supplied by the FIC to foreign FIU's to assess the risk to State Security is a concern which is impacted upon by the disbandment of the Counter Money Laundering Council.

SAPS

69. Section 205(3) of the Constitution provides that *"the objects of the police service are to prevent, combat and investigate crime...to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."*
70. It is noteworthy that the Constitution does not empower any other government entity or body to perform such or similar services.
71. The impugned amendments proposed to section 45B as contained in Clause 32 of the Bill relates to the power of inspectors to enter premises for the purposes of monitoring compliance by an accountable or reporting institution with the provisions of FICA.
72. These provisions are akin to the search and seizure provisions as contained in the Criminal Procedure Act, No 51 of 1977 (*"the CPA"*).¹³
73. The courts have over the years pronounced on regulatory authorities use of provisions to gather evidence or information which otherwise ought to have been done under the auspices of the CPA.

¹³ See Chapter 2 of the CPA

74. This will however will be referred to in greater detail later herein.
75. Equally so, whilst the proposed amendment refers to monitoring compliance, offences in terms of FICA, money laundering or terror financing also find application.
76. This then is but a veiled form of investigation in light of the possibility that in the course of monitoring compliance, evidence may emerge of an offence either related to non-compliance or money laundering, terror financing or other related offences.
77. The Bill is silent on the process which is to be embarked upon should investigators happen upon evidence of a crime in the course of monitoring compliance.

SEARCH/INSPECTION PROVISIONS

78. The Constitutional Court in the case of *Estate Agencies Affairs Board v Auction Alliance (Pty) Ltd and others*, stated that the provisions of section 45B of the FICA, which allows an inspector to at any reasonable time and on reasonable notice to enter and inspect a premises without a warrant, is unconstitutional.
79. The court ruled that where the Board suspected that a criminal offence has been or is being committed by the person who is the subject of the search or where a private residence is to be searched that a warrant issued by a magistrate or judge be obtained.
80. The impugned amendment to section 45B of FICA as set out in Clause 32 of the Bill is premised on the declaratory order made.
81. The impugned amendment proposes that entry and inspection of an accountable institution or reporting institution for the purposes of monitoring compliance with the provisions of the Act be allowed to take place without a warrant whilst entry and inspection on private premises or premises other

than an accountable or reporting institution be permitted under a warrant authorised by a magistrate or judge.

82. It cannot be overstated that the nature of monitoring compliance may lead to the discovery of offences in terms of FICA, money laundering, terror financing or other offences.
83. The impact on the right to privacy¹⁴ and the right to a fair trial¹⁵ cannot be excluded.
84. The following decisions relates to searches conducted by regulatory authorities in terms of their empowering legislation:

(i) ***Mistry v Interim Medical and Dental Council of South Africa and Others***¹⁶

The court was called on to decide on the constitutionality of Section 28(1) of the Medicines and Related Substances Control Act 101 of 1965, which allowed an inspector to at all reasonable times enter any premises, place, vehicle, vessel or aircraft at or in which there is or is on reasonable grounds suspected to be any medicine or Scheduled substance. Only the applicant's surgery was searched *in casu* and not his residence.

The Court noted that these provisions permitted warrantless entry into private homes and search of intimate possessions as long as there was a reasonable suspicion of any medicine including non-prescription medication found in all homes.

¹⁴ Section 14 of the Constitution

¹⁵ Section 35 of the Constitution

¹⁶ 1998 (4) SA 1127 (CC)

The Court considered the right of privacy in relation to regulatory inspections and stated that regulated businesses possess a more attenuated right to privacy the more the business is public, closely regulated and potentially hazardous to the public.

The Court found that the impugned provision was too broad and unrestricted in its reach as to authorise inspectors to enter any person's home upon a reasonable suspicion that any medicine was contained within.

Accordingly, the Court held that the provision failed the constitutional limitation analysis.

(ii) ***Magajane v Chairperson, North West Gambling Board and Others***¹⁷

Section 65 of the North West Gambling Act, No 2 of 2001, inter alia, provides that an inspector shall for the purpose of this Act enter upon any licensed or unlicensed premises which are occupied or being used for the purposes of any gambling activities or any other premises on which it is suspected.

The Court concluded that section 65(1) limits the right to privacy entrenched in section 14 of the Constitution.

The Court found that the commercial property occupier's lower expectation of privacy is an important consideration for the extent of the limitation.

As recognised a person's privacy interest is more attenuated and as the individual has a lower reasonable expectation of privacy, the scope

¹⁷ [2006] ZACC 8; 2006 (5) SA 250 (CC); 2006 (10) BCLR 1133 (CC)

of that individual's personal space shrinks and the individual's right to privacy may be limited further by the rights accruing to other citizens.

The individual's expectation of privacy will vary, based on the particular context of the statutory provision and the information obtained and premises and objects searched.

The Court found that given the potential invasion of privacy permitted by section 65(1), the breadth of the provision and the availability of a warrant as a less restrictive means to achieve the purposes of the section, section 65(1) is not reasonable and justifiable in terms of section 36 and concluded, therefore, that section 65(1) is unconstitutional.

(iii) ***Gaertner and Others v Minister of Finance and Others***¹⁸

Section 4(a) of the Customs and Excise Act 91 of 1964 provides that an officer may, for purposes of this Act enter a premises and make such examination and enquiry as he deems necessary. Sec 6(a) allows an officer to break open any door or window or break through any wall on the premises for the purpose of entry and search.

The Court found that the provisions are broad as to the manner of conducting the searches. Searches may be conducted in private dwellings at any time, and officials may not only break in at the dwellings but, once inside, they may even break up floors, and they do not need a warrant to do all this.

The court concluded that sections 4(4)(a)(i)-(ii), 4(4)(b), 4(5) and 4(6) do limit the right to privacy. The court confirmed the declaration of

¹⁸ [2013] ZAWCHC 54; 2013 (4) SA 87 (WCC); 2013 (6) BCLR 672 (WCC)

constitutional invalidity of sections 4(4)(a)(i)-(ii), 4(4)(b), 4(5) and 4(6) of the Customs and Excise Act 91 of 1964 previously made by the Western Cape High Court.

(iv) ***Minister of Police and Others v Kunjana***¹⁹

This matter related to a warrantless search at a private residence in terms of the Drugs and Drug Trafficking Act 140 of 1992.

The court in relying on all the previously mentioned decisions including the case which resulted in the declaration of constitutional invalidity of section 45B of FICA declared section 11(1)(a) and (g) of the Drugs and Drug Trafficking Act 140 of 1992 unconstitutional and invalid.

85. The aforementioned decisions highlight the Court's approach to warrantless searches.
86. The guiding principles are that the courts will not permit the warrantless search of a private residence and secondly that the provisions of the CPA rather than the use of regulatory provisions where criminal conduct is suspected ought to be used.
87. The impugned amendment proposed in section 45B(1)²⁰ proposes to retain the provisions related to warrantless searches by couching the provisions in a manner which indicates that the purpose is to inspect the affairs of the accountable or reporting institution or supervisory body to monitor compliance with the provisions of FICA, an order or directive.
88. The impugned amendment however fails to recognise the critical purpose for which FICA was enacted which is the combatting of money laundering and terror financing.

¹⁹ [2016] ZACC 21

²⁰ See Clause 32 of the Bill.

89. The detection and investigation of activities related thereto is integral to a proper and effective functioning of the FIC and thus the premise for which the monitoring should occur.
90. It is respected that the amendment seek to lineate the role of FIC to regulation.
91. It however does not address the law enforcement role the FIC has which from its established purposes ordinarily means that criminal conduct may be suspected as the nature of it monitoring of compliance is linked to offences of money laundering and terror financing, nor does it effectively address a situation where in the inspection of the affairs of the entity or party that criminality is discovered.
92. The proposed impugned amendment thus, may not be effective in curing the defect in terms of the *Auction Alliance decision*.
93. Concerningly, the proposed impugned amendment does not address a situation where during the course of an inspection, evidence of a crime is discovered.

Co-operative Government

94. Chapter 3 of the Constitution provides for the principles of co-operative government and intergovernmental relations. Section 41(1) sets out the principles which are peremptory on all government departments.
95. It, inter alia, provides that all spheres of government and all organs of state within each sphere must: [our emphasis]
 - “(a) *preserve the peace, national unity and the indivisibility of the Republic;*
 - (b) *...;*
 - (c) *provide effective, transparent, accountable and coherent government for the republic as a whole;*
 - (d) *be loyal to the Constitution, the Republic and its people;*

- (e) *respect the constitutional status, institutions, powers and functions of government in the other spheres;*
 - (f) *not assume any power or function except those conferred on them in terms of the Constitution;*
 - (g) *exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*
 - (h) *co-operate with one another in mutual trust and good faith by –*
 - (i) *fostering friendly relations;*
 - (ii) *assisting and supporting one another;*
 - (iii) *informing one and another of, and consulting one another on matters of common interest;*
 - (iv) *co-ordinating their actions and legislation with one another;*
 - (v) *adhering to agreed procedures and*
 - (vi) *avoiding legal proceedings against one another.”*
96. In addition hereto, an Act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations.²¹
97. The Counter Money Laundering Advisory Council is the structure envisaged by section 41(2)(a) of the Constitution to promote and facilitate the operation of the principles set out above.
98. The long title to FICA inter alia provides for the establishment of both a FIC and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities.

²¹ Section 41(2)(a) of the Constitution

99. The Minister of Finance is obligated to appoint a member of the Council as Chairperson²² whilst FICA makes it peremptory for the Council to meet often, but at least once a year.²³
100. The Council is obligated to advise the Minister of Finance on policies and best practices in identifying the proceeds of unlawful activities and to combat money laundering of unlawful activities and on the Minister's powers entrusted to him in terms of FICA.²⁴ The Minister has never called on the Council to advise him on any policies and best practices in identifying the proceeds of unlawful activities and to combat money laundering of unlawful activities. Nor has the Minister called on the Council to advise him on his powers entrusted to him in terms of FICA.
101. The Council is further required to advise the FIC on the performance of its functions in terms of FICA. In this regard, the FIC is required to provide administrative and secretarial support and sufficient resources to the Council to function effectively.²⁵
102. Since the commencement of FICA on 1 February 2002 the Council has never been established nor has the Minister, nor the FIC, relied on the Council as provided for by FICA.²⁶
103. The failure to comply with these obligations during the consultation process regarding the Bill and the proposed disbandment of the Council flies in the face of the aforementioned constitutional obligations, is unconstitutional and should ordinarily invalidate the Bill.
104. The failure to consult with the Council on the impugned amendments is in violation of the Constitution and should result in the invalidation of the Bill.

²² section 19(2) of FICA

²³ section 20(2) of FICA

²⁴ section 18(1)(a) of FICA

²⁵ section 18(1)(b) of FICA

²⁶ We have been advised the Council has been convened to sit for the first time on 23 January 2017.

105. The reasons advanced in the Memorandum on the Objects of the FICA Bill for repealing Chapter 2 of FICA and thereby dissolving the Council goes against the spirit of the provisions of section 40(2), 41(1) and 41(2)(a) of the Constitution, is irrational and unconstitutional.

Right to equality

106. Everyone is equal before the law and has the right to equal protection and benefit of the law.²⁷
107. The Bill introduces the concept of persons in prominent positions. Schedule 3A and 3B of the Bill stipulates who is regarded as a "domestic prominent influential figure" and "foreign prominent public official" respectively.
108. The persons identified are limited to persons within the various spheres of government and business persons who conduct business with government limited to a specific threshold.
109. The Bill arbitrarily discriminates against persons who are in the employee of the State, do business with the State or are members of the various spheres of government which amounts to a violation of the individual's right to equality before the law.
110. The Bill is noticeably silent on persons who do not do any business with government and persons who are not prominent.
111. The proposed amendments creates a serious lacuna in our law and in respect of our international obligations as related to foreign bribery in international business transactions and anti-competitive behaviour which amounts to a form of corruption, fraud or cartel behaviour in that the conduct complained of is predominantly committed in the private sector.
112. It is recognised by the OECD's Working Group on Foreign Bribery in International Transactions that the conduct of business in foreign jurisdictions

²⁷ Section 9(1) of the Constitution

particular in vulnerable business sectors should be monitored to detect instances of foreign bribery.

113. This proposed amendment does not pass constitutional muster and is invalid.

Concluding Submissions

114. It is requested that the impugned provisions of the Bill, particularly, section 45B(1C), relating to search and seizures be removed as it not only usurps the powers of other law enforcement authorities, but is also overly broad and in effect unconstitutional.
115. The executions of searches with or without warrants impacts on persons listed as foreign prominent public officials, domestic prominent influential person, family members and known associates thereof. It is further submitted that the Bill violates the right to equality under the law, and equal benefit and equal protection of the law as envisaged by section 9(1) of the Constitution, particularly in relation to the extent of the above. These provision, too, should be removed.
116. The inability to give effect to Chapter 2 of FICA in relation to the creation and functions of the Council, both in relation to the powers of the Minister in terms of FICA, in respect of policies and best practises to identify proceeds of unlawful activities and to combat money laundering activities and in respect of advising the FIC concerning its performance and functions, renders the Bill unconstitutional and invalid.
117. The Standing Committee on Finance is requested to consider the aforementioned submissions in its deliberations.

ANNEXURE 32

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[National](#)

Manuel and Manyi clash over bill that Zuma won't sign

19 September 2016 - 07:21 Genevieve Quintal



Trevor Manuel. Picture: TREVOR SAMSON

PRESIDENT Jacob Zuma has been accused of breaking his oath of office by not signing the Financial Intelligence Centre (FIC) Amendment Bill, with former finance minister Trevor Manuel saying that once Parliament has passed legislation, the president is required to assent to it unless there is a constitutional issue.

Parliament passed the FIC Amendment Bill in May, but it is now waiting for Zuma's signature. The bill requires banks to perform enhanced due diligence on the "politically exposed", in line with international obligations.

But it has aroused ire in some ANC quarters and the Presidency said earlier in August that the delay in signing the bill was because the Progressive Professionals Forum (PPF), a lobby group established by former government spokesman Mzwanele (Jimmy) Manyi, had lodged an objection over its constitutionality.

However, Manuel questioned how an individual such as Manyi could "trump the votes" of more than 400 people in Parliament, and said the failure to sign the bill into law spoke to the "unravelling of SA's democracy".

Manyi on Sunday said he had asked Zuma to refer the amendment bill to the Constitutional Court. "I have no problem with what this bill seeks to do; the only problem I have is the how," he said.

Manyi described Manuel's comments as "nonsense", saying that when there was an objection the president was "forced" to take it into account. "This is why it's not for the first time that a thing which has been sent to the president is returned to Parliament."

Asked whether he had received feedback from the president on his formal objection, Manyi said the fact that Zuma had not signed the bill was feedback enough.

Presidency spokesman Bongani Ngqulunga said Zuma was considering the petition by the PPF. The Presidency would not comment on Manuel's statement.



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Zuma told to sign Financial Intelligence Centre bill into law or face court action

20 September 2016 - 15:30 Staff Writer

THE Council for the Advancement of the SA Constitution has asked President Jacob Zuma to sign the Financial Intelligence Centre (FIC) Amendment Bill, or refer it back to the National Assembly within 30 days.

The organisation warned Zuma in a letter sent on Monday that it would approach the courts if he did not carry out his constitutional obligation.

Council executive secretary Lawson Naidoo wrote that the legislation would "strengthen SA's capacity to fight corruption, specifically money laundering, trafficking and finance of terrorism".

"It will bring us into line with international standards on combating financial crime and in particular our obligations as a member of the Financial Action Task Force."

Parliament passed the bill in May, and it is awaiting Zuma's signature.

The legislation requires banks to perform enhanced due diligence on "politically exposed" people in line with international obligations.

This has aroused ire in some ANC quarters.

The Presidency said in August that the signing of the bill was delayed by a constitutional objection lodged by the Progressive Professionals Forum (PPF), a lobby group established by former government spokesman Mzwanele (Jimmy) Manyi.

Former finance minister Trevor Manuel has said that by not assenting to the bill Zuma was breaking his oath of office.

Once Parliament has passed legislation, the president is required to assent to it, unless there is a constitutional issue.

Manuel questioned how an individual such as Manyi could "trump the votes" of more than 400 MPs, and said failure to sign the bill into law indicated an "unravelling of SA's democracy".

In its letter, the council urged Zuma to "exercise your obligation" under the constitution. It reminded him that section 79(1) required him to sign the bill or refer it back to the National Assembly if he had reservations about its constitutionality.

"You have thus far chosen neither option," wrote Naidoo.

"Your attention is also drawn to section 237 of the constitution, which provides that 'all constitutional obligations must be performed diligently and without delay'."

The Presidency told Business Day on Sunday that Zuma was considering the PPF petition.



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Zuma asked not to sign bill that will scrutinise bank deals - report

Sep 05 2016 10:28 Liesl Peyper

Cape Town - President Jacob Zuma is considering objections to a piece of legislation that will allow the Financial Intelligence Centre (FIC) to monitor the transactions of politicians, their family members and other politically connected individuals in the private sector.

BDLive reported on Monday that the Progressive Professionals Forum (PPF), led by former government spokesperson Jimmy Manyi, petitioned Zuma to not sign the FIC Amendment Bill into law.

Zuma's spokesperson Bongani Ngzulunga confirmed to Bloomberg that Zuma is considering the merit of the objections, but pointed out there is "nothing unusual" about the process.

The PPF claimed the amendment bill had "constitutional defects" as it could violate the human rights of people who are employed by the government or family of state employees, because this makes them a prominent or influential person which immediately renders them a "suspect".

The bill, which has gone through the National Assembly and the National Council of Provinces, was fiercely debated earlier this year in the standing committee on finance (SCOF) where DA MP David Maynier insisted on knowing whether the Guptas were under investigation for their financial transactions.

MPs were specifically at odds over the definition of "politically influential individuals".

READ: Guptas in spotlight in debate on money-laundering bill

Finance Minister Pravin Gordhan said earlier this year the director of the FIC and the finance minister are prohibited by the legislation from indicating whether the FIC is investigating a particular individual.

Gordhan said if they named people being investigated, it could give the person time to hide assets.

BDLive also reported that a discussion document was submitted to Cabinet in which it was suggested that financial transactions above a certain threshold be moved out of National Treasury and fall under government's security cluster.

The suggestion reportedly came from Mineral Resources Minister Mosebenzi Zwane, who had earlier issued a media statement announcing that government would institute a judicial commission of inquiry into local banks' decision to withdraw services to the Guptas.

The presidency has since distanced itself from Zwane's statement about the so-called judicial inquiry.

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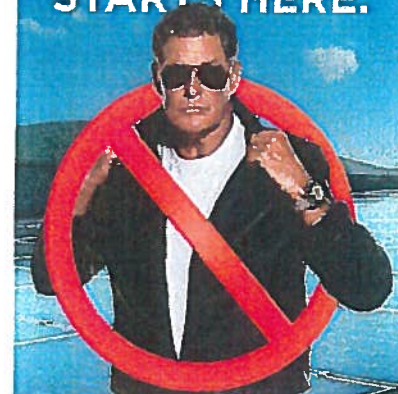
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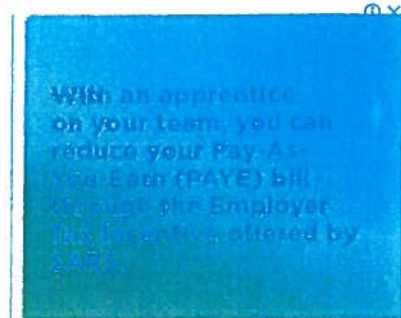
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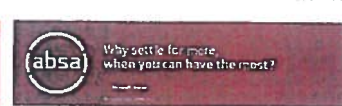
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Analysis: FIC Amendment Bill goes down to the wire as political proxies hit brick wall of Parliament

By Marianne Thamm • 26 January 2017



195 Reactions

There are several battlegrounds in the current life-and-death standoff between the Gupta family and their political proxies on one side, and a growing number of opponents on the other. On Wednesday the fight moved to Parliament where members of the standing committee on finance lashed out at Mzwanele Manyi, president of the Progressive Professional Forum, for

lobbying President Jacob Zuma not to sign the bill passed by Parliament in May last year. By MARIANNE THAMM. 03

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The air was thick with desperation and thinly-veiled anger when the presidents of the Progressive Professional Forum (PPF) and the Black Business Council, Mzwanele Manyi and Danisa Baloyi, made submissions at a public hearing on the Financial Intelligence Centre Amendment Bill to Parliament's portfolio committee on finance on Wednesday.

It was the pro-Gupta Manyi, who at the weekend suggested that South Africa should "scrap" the Constitution in favour of majoritarianism, who lobbied President Jacob Zuma not to sign the bill. The bill is aimed at combatting corruption, money laundering and the financing of terrorism and brings South Africa in line with international standards set by the Financial Action Task Force.

President Zuma was due to sign the amendment by June but delayed after being lobbied by Manyi, prompting legal proceedings by the Council for the Advancement of the South African Constitution (CASAC) in November last year, forcing Zuma to comply with his constitutional obligations. Zuma in turn sent the bill back to Parliament, expressing concern with the constitutionality of a section relating to warrantless searches.

On Wednesday the fight was taken to Parliament where legal opinions by Treasury, CASAC, the Banking Association of South Africa as well as the Speaker of the National Assembly all concurred that the bill, in its current form, met constitutional requirements.

Meanwhile, on another battlefield, compromised head of the Hawks, Lieutenant-General Mthandazo Ntlemenza, wrote to the Gupta family's legal team on January 18 informing them that his office currently had "no evidence that implicates your clients".

Last year Ntlemenza refused to investigate allegations that SARS second-in-command, Jonas Makwakwa, had made "suspicious" cash deposits into his private bank account as well as that of his lover, Kelly-Ann Elskie. Ntlemenza suggested that possible criminality was a SARS "internal matter". The

Makwakwa scandal is currently being investigated, at the request of Commissioner Tom Moyane, by the private legal firm Hogan Lovells – paid for by taxpayers of course.

On Wednesday a Business Day

(<https://www.businesslive.co.za/bd/national/2017-01-25-no-case-hawks-tell-guptas/>) story headed “No case, Hawks Tell Guptas” claimed that Ntlemeza had written to the family’s lawyer, Gert van der Merwe, to inform him that the family were not under investigation.

Asked to clarify matters, Hawks spokesperson, Brigadier Hlangwani Mulaudzi, on Wednesday told *Daily Maverick*, “That is their narrative. Investigations are proceeding, however there is no evidence linking them.”

There we have it.

Mulaudzi was referring to the 72 suspicious transaction reports relating to Gupta-owned bank accounts and picked up by the Financial Intelligence Centre. The transactions were later revealed in an explosive affidavit by Minister of Finance, Pravin Gordhan, in his application in December 2016 seeking to affirm his decision not to intervene after several banks closed Gupta-owned company accounts.

Gordhan has had some room to breathe since he managed to shake Ntlemeza off his back when NPA head, Shaun Abrahams, dropped fraud charges in October last year.

Announcing the dropping of the charges Abrahams revealed that Ntlemeza had been instrumental in pushing for these to be pressed and accused Abrahams of withdrawing them because of public pressure.

“Rather, it seems to us that you make (sic) this decision based on the noise made by politicians, civil society lobby groups, and the media sympathetic to the accused. These groups have falsely accused the Hawks and the NPA in the public domain of pursuing the case against the accused persons for political purposes on instructions from the political masters, which is utter nonsense,” Ntlemeza, clearly overstepping his mandate, wrote to Abrahams.

On Wednesday Manyi dramatically charged that the bill would “plunge” the country into a crisis while Baloyi suggested that the legislation gave authority to the banks to do as they pleased and suggested that the only thing preventing “radical economic transformation” in South Africa was the banks.

It should have come as no surprise then on Wednesday when the security cluster of government agencies, who are part of Zuma’s praetorian guard, also submitted that the Financial Intelligence Act Amendment bill was unconstitutional. The submission went beyond the reservation with regard to the warrantless searches subsection and argued that the Constitution assigned the role of crime fighting to the SAPS and that the bill would allow a “parallel system of investigation”.

Baloyi said the bill was a “dangerous piece of legislation” that would have an adverse effect on the rule of law. She objected in particular to the increased scrutiny politically exposed persons (PEPS) would face due to the legislation.

“Before you know it you will all be PEPS,” she warned MPS.

But Manyi and Baloyi both faced tongue lashings from ruling party and opposition party MPS, who said Manyi had circumvented and disrespected Parliament in approaching President Zuma directly.

The ANC’s Dr Makhosi Khoza, who played a starring role in Parliament’s ad hoc committee investigating the SABC, asked Manyi where he had been when the bill had made its way through Parliament, a lengthy process involving public comment and debate.

“Why did you not speak up earlier? Why did you go directly to the president? You compromised the president by doing so. Let us not be guilty of sharing collective stupidity,” she lashed out, adding, “Corruption is undermining the developmental agenda in South Africa.”

Baloyi’s complaints that the bill gave banks the power to conduct inspections on behalf of the Financial Intelligence Centre were incorrect, said Banking Association of South Africa MD, Cas Coovadia, as was her suggestion that the bill gave banks the power to treat clients in any fashion. South African banks, added Coovadia, were heavily regulated.

Portfolio Committee chair Yunus Carrim said whatever the committee decided

“someone is going to go to the Constitutional Court”.

Wednesday's hearing highlighted where the destructive factional battle in the ruling party is going to play out this year. Little wonder then that Manyi is keen to suspend the Constitution.

MPs in the ruling party seem to have located their backbones, and Parliament is set to become another public arena, along with the courts, where the country's democracy will be defended from the corrosive onslaught of State Capture. **DM**

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By Greg Nicolson

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FULL CHARGE SHEET: Pravin Gordhan accused of fraud

This is the charge sheet issued by the National Prosecuting Authority to Finance Minister Pravin Gordhan, accusing him of fraud.

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CAS: BROOKLYN
421/10/2016



J176 (5/10/13)

REPUBLIC OF SOUTH AFRICA

Summons No 574 1a

COPY: To be handed to accused

Case No

SUMMONS IN CRIMINAL CASE

Magistrate's Court

District: Pretoria	Regional division: Tloane District
Held at: Pretoria	Court: 1a
	Date of trial: 02-November-2016

TO THE ACCUSED

- You are hereby summoned to appear in person before the above-mentioned court at 08:30 on the above-mentioned date and place in connection with the charge(s) of which the particulars are mentioned above and to remain in attendance.
- An admission of guilt of may be made on or before to the Clerk of the above-mentioned Magistrate's Court or at any police station within the area of jurisdiction of the said Court.

Name	Pravin Gordhan		
Address	[REDACTED]		
Gender	Male	Occupation	Member of Parliament
Age	67	Id No	[REDACTED]

Particulars of charge(s):

Accused is/are guilty of the offence of fraud in that upon or about the 16 day of October in the year 2016 and at or near BROOKLYN the accused did wrongfully SEE ATTACHED ANNEXURE A

- Warning (i) Should any change in above-mentioned address take place before the proceedings are finally disposed of you are compelled to inform the official who served this summons upon you thereof.
(ii) Failure to comply with either the above-mentioned warning or this summons renders you liable to a fine or a term of imprisonment not exceeding three months.
- Should you decide to dispute the charge(s) against you and you wish to make use of legal practitioner, you may if you cannot afford a legal practitioner apply for legal aid at the local Legal Aid Office.

Date stamp of sitting office

We'll get an expert opinion.

660

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The appointment of Tito Mboweni will:

- Put the economy on the right track
- Bring upheaval to the business sector
- Not be enough to turn things around

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J175

ADMISSION OF GUILT UNDER SECTION 57 OF ACT 51 OF 1977

I do hereby acknowledge that I am guilty of the offence(s) set out in this summons.

Signature

Identity number

The amount of R deposited this day of in the year of

I enclose Receipt No:

Dated

for the amount of R

produced

IMPORTANT

- 1 Should you intend making use of the post the documents must be posted on a date which will be early enough to ensure that it will reach those formerly mentioned on or before the mentioned payment date
- 2 Only cash, a money order, a postal order or a cheque guaranteed by a bank will be accepted
- 3 The summons, signed by you, must accompany the fine

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

COUNT 1

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 18 October 2010 and at or near PRETORIA in the Regional Division of Gauteng the accused did unlawfully, falsely and with the intent to defraud give out and pretend to Nic Coetzee and/or Susan Visser and/or Khethang Mokoena and/or the South African Revenue Service (SARS) and/or the National Treasury that SARS was liable to pay a sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 to the Government Employees Pension Fund on behalf of Ivan Pillay which amount was a penalty payable by Pillay to the Government Employees Pension Fund for taking early retirement for his own personal reasons by requesting, recommending and approving that SARS should pay the said amount through a remittance dated 18 October 2010.

ANNEXURE A

Case no

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

COUNT 1

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 18 October 2010 and at or near PRETORIA in the Regional Division of Gauteng the accused did unlawfully, falsely and with the intent to defraud give out and pretend to Nic Coetzee and/or Susan Visser and/or Khethang Mokoena and/or the South African Revenue Service (SARS) and/or the National Treasury that SARS was liable to pay a sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 to the Government Employees Pension Fund on behalf of Ivan Pillay which amount was a penalty payable by Pillay to the Government Employees Pension Fund for taking early retirement for his own personal reasons by requesting recommending and approving that SARS should pay the said amount through a memorandum dated 18 October 2010.

AND did there and then and by means of the said false pretences induce Nic Cootzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services or the National Treasury to their/its actual prejudice to pay the sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 to the Government Employees Pension Fund on behalf of Ivan Pillay.

WHEREAS when the accused so gave out and pretended they well knew that in truth the South African Revenue Service (SARS) was not liable to pay the amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 to the Government Employees Pension Fund on behalf of Ivan Pillay thereby committing fraud

ANNEXURE B

Case No.

2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Alternative to count 1

That the accused are guilty of Theft read with sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977, further read with sections 51(2) of Act 105 of 1997

IN THAT upon or about 18th October 2010 and at or near Pretoria in the Regional Division of Gauteng the accused did unlawfully and intentionally steal an amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 the property or in the lawful possession of Nic Coetzee and/or Susanna Visser and/or Khethiiso Mokoena and/or the South African Revenue Service (SARS)

ANNEXURE D

Case no: 100/10

Page 10

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Alternative to count 1

That the accused are guilty of Theft read with sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977, further read with sections 51(2) of Act 105 of 1997

IN THAT upon or about 18th October 2010 and at or near Pretoria in the Regional Division of Gauteng the accused did unlawfully and intentionally steal an amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178 11 the property of the lawful possession of Nic Coetzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services (SARS)

ANNE PUKI C

Case no. 12016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

COUNT 2

THAT the accused are guilty of contravention of Section 86 read with section 1, 38, 39 and 45 of the Public Finance Management Act Act 1 of 1999 and further read with Sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977

IN THAT upon or about the date and place mentioned in count 1, accused 1 whilst being an Accounting officer for The South African Revenue Services (SARS) acting in concurrence with accused 2 and 3 wilfully and in a grossly negligent way caused SARS to incur or failed to prevent irregular, fruitless and wasteful and unauthorised expenditure and thereby contravening the said sections of the Act

ANNE XURI TC

Case no 12016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

COUNT 2

THAT the accused are guilty of contravention of Section 86 read with section 1, 36, 39 and 45 of the Public Finance Management Act, Act 1 of 1999 and further read with Sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977

IN THAT upon or about the date and place mentioned in count 1, accused 1 whilst being an Accounting officer for The South African Revenue Services (SARS) acting in concurrence with accused 2 and 3 wilfully and in a grossly negligent way, caused SARS to incur or failed to prevent irregular, fruitless and wasteful and unauthorised expenditure and thereby contravening the said sections of the Act

ANNEXURE 1

Schedule

TABLE

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

Count 3

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 7th February 2011 and at or near PRETORIA in the Regional Division of Gauteng the accused did unlawfully falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS at that SARS that SARS was authorised to enter into an employment contract with Mr Visvanathan Pillay for a period of five (5) years commencing on 1 January 2011 and terminating on 31 December 2015.

AND did there and then by means of the said false pretence induce Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS to enter into a contract to a recruitment contract for a period of five (5) years commencing on 1 January 2011 and terminating on 31 December 2015.

WHEREAS when the respondent gave out and placed on display the said contract, he knew that in truth the South African Revenue Service (SARS) was only authorised to conclude a three (3) year contract with effect from 1 August 2010 with Mr Visvanathan Pillay and thereby committing fraud

nine six is and fifty two needs for a period of 100 (100) years which there was no appropriate authority or letter authorising same.

WHEREAS when the accused so gave out and pretended, they well knew that in truth the South African Revenue Service (SARS) was under no obligation to enter into a new employment contract or extend the employment contract entered into on 7 February 2011 with Mr Visvanathan Pillay as it still had a period of a year to run to conclusion and thereby committing fraud.

ANNEXURE 1

CASE 1

2016

THE STATE

VERSUS

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Count 4

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 1st April 2014 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS that SARS was authorised to enter into an employment contract with Mr Visvananthan Pillay as Deputy Commissioner for a period of four (4) years commencing on 1 April 2014 and terminating on 31 December 2018.

AND did this and then by means of the said false pretences induce Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS to her to prejudice to an amount of remuneration payable of One million nine Hundred and eighty thousand (R1 980 000) Hundred and eighty

the terms for any two cents for a period of four (4) years when there was no approval internal memo or letter on the subject.

WHEREAS when the accused so gave out and pretended they well knew that in truth the South African Revenue Service (SARS) was under no obligation to enter into a new employment contract or extend the employment contract entered into on 7 February 2011 with Mr Viswanathan Pillay as it still had a period of a year to run to conclusion and the CC, Contending Party

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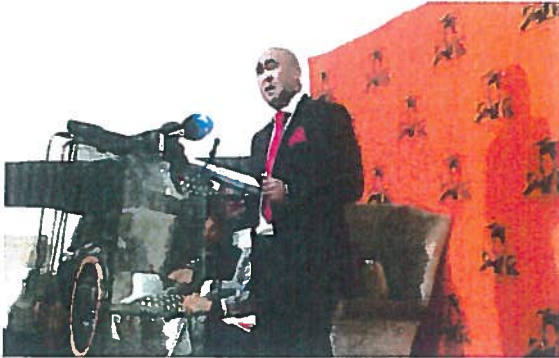
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NPA HEAD SHAUN ABRAHAMS WITHDRAWS CHARGES AGAINST PRAVIN GORDHAN

Pravin Gordhan and two former Sars officials Oupa Magashula and Ivan Pillay were set to appear in court this week on fraud charges.



FILE: NPA boss Shaun Abrahams. Picture: Reinart Toerien/EWN.

SARS (<https://ewn.co.za/Topic/SARS>) Finance Minister Pravin Gordhan (<https://ewn.co.za/Topic/Finance-Minister-Pravin-Gordhan>)
 Eyewitness News ([/ewn.co.za/Contributors/eyewitness-news](https://ewn.co.za/Contributors/eyewitness-news)) | 2 years ago (710 days ago)

PRETORIA - National Prosecuting Authority (NPA) head Shaun Abrahams (<http://ewn.co.za/2016/10/30/Reports-NPA-head-Shaun-Abrahams-considers-dropping-charges-against-Gordhan>) has announced the withdrawal of fraud charges against Finance Minister Pravin Gordhan (<http://ewn.co.za/Topic/Pravin-Gordhan>) and two former South African Revenue Service (Sars) officials Oupa Magashula and Ivan Pillay.

The three men were set to appear in court this week in connection with fraud charges relating to the early retirement and re-employment of Pillay.

Abrahams says after considering representations he found Gordhan, Pillay and Magashula lacked the requisite intention to act unlawfully.

"I am of the view that this matter could easily have been clarified had there been proper engagement and co-operation between the Hawks, Mr Magashula, Mr Pillay and Minister Gordhan."

His announcement of the withdrawal of the charges, as well as the summons, means the three do not have to appear in court on Wednesday.

Abrahams says he considered a 2009 memo from a Sars legal executive which found that there was no technical reasons why Pillay could not retire early and be re-appointed.

The advocate also considered an opinion from the then acting director general of the Department of Public Works and Administration.

Abrahams concluded that it appeared Magashula and Gordhan were unsure about whether Pillay's early retirement could be approved.

He has, however, defended the initial decision to prosecute, saying on the facts there was a case to answer to.

1. Your representations dated 17 and 18 October 2016 refer
2. Your client's aforementioned representations in terms of section 179(5)(d) of the Constitution have been successful. After perusal of the matter, I have decided to overrule the decision to prosecute your client, Mr Visvanathan (Ivan) Pillay.
3. As such, I have directed the summons to be withdrawn with immediate effect. There is therefore no longer any need for your client to appear in court on the charges as listed in the summons.

Yours sincerely



ADV SK ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 31 October 2016



EWN Reporter

NDPP Shaun Abrahams letter to lawyers confirming charges withdrawn against Pillay, Magashula and Gordhan.

17:30:00 31 OCT 2016

17:30:00 31 OCT 2016



EWN Reporter

#NPA #Abrahams gives his reasons why state are withdrawing charges against, amongst others, Pravin Gordhan.
@ray_toerien

17:30:00 31 OCT 2016

17:30:00 31 OCT 2016



EWN Reporter

#NPA Abrahams: reviewing decisions is a daily occurrence in the NPA. Accused persons submit reviews every day. BB

17:30:00 31 OCT 2016

17:30:00 31 OCT 2016



EWN Reporter

#NPA Abrahams: since my appointment I have reviewed many decisions, as well as agreed with many decision. BB

17:30:00 31 OCT 2016

17:30:00 31 OCT 2016

The decision to charge Gordhan was met with uproar from civil society and some government members who pledged their support for the finance minister.

Legal experts who have studied the evidence said there was simply no case and that the decision was politically motivated.



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ZAR/JPY

▲ (0.96%)

ZAR/USD

▲ (0.73%)

ZAR/AUD

▲ (0.42%)

AS IT HAPPENED: Pravin Gordhan to appear in court to face fraud charges

2016-10-11 10:22

Get all the news, views and analysis following the announcement that Finance Minister Pravin Gordhan must appear in court to face charges of fraud.



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11 Oct 20:26

The last word:

President Jacob Zuma has responded to the announcement by the NPA regarding the summons issued to Minister of Finance Pravin Gordhan.

Zuma, who is currently in Kenya, urged the NPA to carry out their work with dignity and respect.

"Our society is anchored on the rule of law as well as fair and just judicial processes. In this regard, Minister Gordhan is innocent until and unless proven otherwise by a court of law. This is a fundamental pillar of our constitutional democracy and the rule of law," said Zuma.

The President reaffirmed his support for Gordhan, adding that the decision by the NPA came at the most sensitive time for the country, when Gordhan was successfully leading initiatives towards economic revival, bringing together business, government and labour in efforts to reignite growth so that jobs can be saved and created.

11 Oct 19:52

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The issue about the latest step against Finance Minister Pravin Gordhan is access to the National Treasury and the ability of factions within the ANC to control it and use its powers to win the elective conference in December 2017.

That ultimately would require the removal of Pravin Gordhan who has defended the institution's conservatism and independence, emerging markets economist Peter Attard Montalto of Nomura said on Tuesday.

READ: Gordhagate all about access to Treasury - economist

11 Oct 19:37

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Finance Minister Pravin Gordhan still had time to joke about a summons for him to answer to fraud charges on Tuesday at the Open Tender Seminar in Midrand:

- Not having found me at home, they (Hawks) proceeded to go to Treasury. I am not sure what happened there. Given fiscal austerity, they may not have been given a cup of tea.

- You and the public need to ask yourselves, what is this matter that is so urgent, that requires us as a country, 15 days before the delivery of the MTBPS? The last time this happened was before the February budget. There is something attractive about budgets, I'm not sure what it is.

11 Oct 19:30

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Despite the shock news that Finance Minister Pravin Gordhan has been summoned to answer to fraud charges, the rand is unusually strong, says an economist.

FULL STORY

11 Oct 19:20

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Gordhan moves to appease investors, ratings agencies

Strong message from Finance Minister Pravin Gordhan after he learnt from the summons to appear on charges of fraud.

"Our message to investors, and all people who want to assess our economic performance and fiscal performance, give us a year or so – South Africa can change, South Africa can adapt, South Africa can produce results, which will require something that will benefit all South Africans and not just a few."

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LISTEN: Treasury reacting to Gordhan summons



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Gordhan's lawyers question Hawks, NPA motives

Adiel Ismail

680

Cape Town - The lawyers for Finance Minister Pravin Gordhan, Gildenhuis Malatji Inc, on Tuesday questioned the motive of the Hawks and the National Prosecuting Authority for serving a summons for Gordhan to answer to fraud charges at his home.

Summonses were also served on former Sars commissioner Oupa Magashula and former deputy commissioner Ivan Pillay.

Gildenhuis Malatji said they would have expected the Hawks to interact with them directly.

"We had repeatedly requested that the NDPP afford Minister Gordhan the opportunity to make written and/or oral representations before making a decision on whether to prosecute or not."

NPA boss Adv Shaun Abrahams, in particular, advised the lawyers in August that he will only consider the request to make representations to him on whether to initiate a prosecution or not once the investigation has been concluded and a docket has been submitted to the NPA, Gildenhuis Malatji said in a statement.

"It is surprising that we have received a letter dated 4 October 2016, but only sent to our office this morning (11 Oct) advising that Minister Gordhan is an accused person."

Sketching a timeline of sorts, Gildenhuis Malatji said they were initially advised in May 2016 that Gordhan is not a suspect, yet in August 2016, Gordhan was advised that he should give a warning statement which by its very nature meant that he is considered to be a suspect.

"At the time it was contemplated by the Hawks that Gordhan contravened the provisions of Sections 1, 34 and 81(2) of the Public Finance Management Act, 1 of 1999, that he was guilty of corruption in terms of Section 3, 4 and/or 10 of the Prevention of Corrupt Activities Act, 12 of 2004 as well as Section 3 of the National Strategic Intelligence Act, 39 of 1994.

"These related to the establishment of the Sars investigative unit and the early retirement of Pillay."

Gildenhuis Malatji said the latest charges against Gordhan are charges of fraud, alternatively theft insofar as it relates to Pillay's early retirement.

"Fraud is defined as 'the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another'. In order to succeed with proving the crime of fraud, the State must establish the elements of the crime which are defined as first, a misrepresentation, second, prejudice or potential prejudice to another, third, unlawfulness and lastly an intention to so prejudice," the lawyers said.

Gordhan is taking counsel on all available legal avenues to bring this matter to an expedited end, said Gildenhuis Malatji.

11 Oct 18:33

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Black Business Council sees no political interference in Gordhan probe

Lameez Omarjee

Johannesburg – The Black Business Council (BBC) believes there was no political interference during the investigation leading up to the summons issued to Finance Minister Pravin Gordhan for fraudulent activities during his time at Sars.

The BBC said it viewed these developments in a "serious light". "We respect the rule of law and furthermore expect the Chapter 9 institutions that regulate and ensure that nobody is above the law," the organisation stated.

"We trust that the Minister will have fair and just hearing, we believe that as a nation we should trust and allow our legal systems to take its due course."

The BBC further indicated that the work by the presidency and finance ministry to avert a downgrade should continue. "We confirm our determination to work together with all social partners to avert further downgrades as they threaten and undermine our ambitions for a better tomorrow."

The BBC added that the National Treasury is an institution to be respected and supported to ensure that stability in the economy and financial markets is maintained. "We will continue to support policies and behaviours that support the stability of the country and its financial markets."

11 Oct 18:15

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National Treasury responds to summons for Gordhan

Minister Pravin Gordhan confirms that his office has received and signed for summons issued from the Hawks this morning. It is most unfortunate that the Hawks have, once again, chosen to initiate legal proceedings at a moment that appears calculated to maximise the damage inflicted on the economic well-being of South Africans and essential processes of

government.

Minister Gordhan wishes to place on record that he will continue to cooperate fully and in an exemplary manner in the execution of all legal requirements that are placed upon him.

To this end, the Minister's legal team have had extensive interactions with the Hawks over the last six months, including providing for clear communication channels in the event that any further legal proceedings are initiated.

Despite this, the Hawks chose to arrive unannounced at the Minister's private residence this morning. On being told that the Minister has left for another engagement they preceded to the National Treasury offices and served the summons. Shortly thereafter, and again without the courtesy of a prior indication, the National Director of Public Prosecutions convened a press conference to unveil a set of charges that are patently without merit.

Full story to follow

11 Oct 17:49

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Market reaction not as pronounced as with Nenegate

Carin Smith

Cape Town - Although the market reaction was very pronounced, it still fell short of the sharp reaction observed in December last year when former Finance Minister Nkomo was suddenly replaced, said Tumisho Grater, economic strategist at Novare.

She said political risk resurfaced as it was reported that Finance Minister Pravin Gordhan together with former SARS commissioner Oupa Magashule and former deputy commissioner Ivan Pillay have been issued with summonses on charges relating to fraud. They are to appear in the Pretoria Regional Court early next month.

The market's reaction was for the rand to immediately weaken by over 3%, the local bond market saw the benchmark 10-year yield jump nearly 19 basis points to 8.88%, while the country's perceived credit risk as reflected in the 5-year credit default swaps (CDS) spread reached a 3-month high to trade above 260 basis points.

"These developments may increase the probability of a possible downgrade later this year as it adds to the political uncertainty that ratings agencies have been flagging.

"There are now also unanswered questions regarding whether Gordhan will be able to deliver the very important mini budget later this month if the issue is not resolved.

"We now wait to see how the situation unfolds and if the uncertainty will cause a loss of confidence in South African assets which may be reflected in the further weakening of the Rand, higher bond yields and widening credit spreads," she said.

11 Oct 17:39

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Sipho Pityana's Casac takes swipe at NPA boss Shaun Abrahams

Lameez Omarjee

Johannesburg – The Council for the Advancement for the South African Constitution (Casac), has said in a statement that the Finance Minister Pravin Gordhan's summons to appear in court would have "serious negative repercussions".

The organisation, chaired by Sipho Pityana, explained that these recent developments raise questions about the integrity of key institutions of democratic governance.

"The NPA's prosecutorial authority must be exercised 'without fear, favour or prejudice', as demanded by the Constitution," stated Casac. The organisation believes that political interests are at the centre of this, especially given the timing of the announcement.

Gordhan is expected to deliver the mini budget in 15 days' time. "The circumstances around the investigation of these matters, the timing of questioning and the leaks to the media, all call into question the good faith and independence of the investigative authority, the Hawks, as well as that of the NPA," said executive secretary, Lawson Naidoo.

The case brings into question the legitimate use of prosecutorial powers by the National Director of Public Prosecutions (NDPP), Shaun Abrahams. "The protestation of prosecutorial independence by Mr Abrahams appears hollow when measured against his attitude towards pursuing charges of fraud, corruption and racketeering against President Zuma," added Naidoo.

11 Oct 17:26

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Bitcoin prices on a local exchange are on the rise as the rand reacts to a National Prosecuting Authority decision to charge Finance Minister Pravin Gordhan.

Business Leadership SA reiterates backing for Gordhan

Business Leadership South Africa (BLSA) is deeply concerned about both the timing and the decision to charge the Finance Minister, Pravin Gordhan and two former senior SARS employees with fraud.

Our country is experiencing a period of profound upheaval. With another rating agency review ongoing, the Medium Term Budget Policy Statement (MTBPS) weeks away, serious social protest and violence occurring at our universities, and a number of contentious disputes between state institutions playing out in public, this decision could not have come at a worse time.

We understand that the charges relate to decisions made six years ago, regarding approving the early retirement, with full pension benefits, of the then deputy SARS Commissioner and his subsequent reappointment several months later. It is important to note that the charges suggest no improper benefit on the part of the Minister. What is in question is the Minister's interpretation of sections of both the Public Service Administration (PSA) and Public Finance Management Act (PFMA) legislations.

No-one is above the law and it is not our intent to second guess the country's Director of Public Prosecutions. Nonetheless, the nature of these charges and how they have been pursued creates a strong perception that our prosecutorial institutions are being used for political ends. In the current context, this cannot but be to our detriment as a country and is sure to hold us back as we seek to build an economy that addresses the triple headed Hydra of poverty, unemployment and inequality.

We call upon the executive arm of our government through the cabinet to swiftly and emphatically affirm their support for the economic strategies and policies set out in Minister Gordhan's budget speech this year, and in the range of supportive actions spearheaded by him, in the interest of South Africa, together with business and labour.

In particular, we call upon the President to address the country and clearly spell out his government's programme to reassure investors and rating agencies, including a clear plan to:

- Restore credibility in the governance and responsible financial management of State Owned Enterprises, especially South African Airways
- Ensure there is policy certainty in mining that restores investor confidence and provides transparency around enforcement of regulations
- Communicate directly with the country on the government's approach to deal with the current university crisis, including a clear indication of the mandate, scope and timing of the recently appointed inter-ministerial task team.

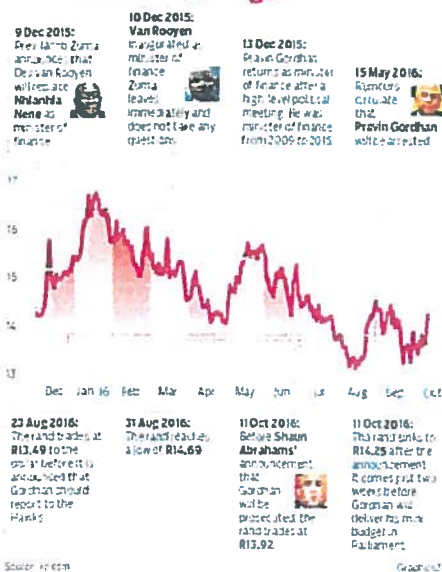
11 Oct 17:04

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Rand's roller-coaster ride since Nenegate.

Infographic: Graphics24

The rand since Nenegate



11 Oct 16:56

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ICYMI: A recap of how the latest Gordhan saga is unfolding.

FULL CHARGE SHEET: Pravin Gordhan accused of fraud

Zuma presses red button. Rand tanks on reports that FinMin Gordhan charged

Rand hedge stocks surge on shock Gordhan move

Makhura to Gordhan: 'We believe in your ethical leadership'

Gordhan: 'Who are the Hawks really serving?'

Only a miracle can save SA from junk - Dawie Roodt

Cape gang linked to Gordhan probe - report

Dawie Roodt on why the rand won't tank to R20/\$

The public must hold officials to account - Gordhan

11 Oct 16:20

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Only a miracle can save SA from junk - Dawie Roodt

South Africa's economy is staring down the barrel of a credit rating downgrade to junk status as the country's finance minister is facing charges, says local economist Dawie Roodt.

Referring to Finance Minister Pravin Gordhan's summons on a charge of fraud, Roodt told Fin24 that "it was pretty much a given even before this most recent development" that South Africa would be downgraded.

"I think we need a minor miracle not to be downgraded. I think it's pretty much a given.

"The ratings agencies will act on a potential change in policy or policy uncertainty. Replacing a minister of finance will certainly lead to policy uncertainty," Roodt told Fin24.

[FULL STORY](#)

11 Oct 16:08

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The infamous Cape gangster gang The American\$ is allegedly tied to the investigation into Finance Minister Pravin Gordhan, according to a media report.

[FULL STORY](#)

11 Oct 16:06

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Listen to economist Dawie Roodt's response to the NPA's decision to charge Finance Minister Pravin Gordhan.



Fin24

Dawie Roodt responds to NPA's decisio...

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Rand steady at R14.28/\$. Today's range in reaction to news of Gordhan's summons on charges of fraud: 13.7878 - 14.3300

Economist Dawie Roodt doesn't see the local unit going back to historic lows reached when former Finance Minister Nhlanhla Nene was fired in December last year.

[FULL STORY](#)

11 Oct 15:44

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The 'war' has again come to the surface - Nomura economist

Today's news that Pravin Gordhan has been issued with a formal summons to answer charges of fraud is only a small cog in a much larger and existential succession battle within the ANC that will continue until the end of 2017 – damping investor confidence and growth.

11 Oct 15:41

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State of public institutions worry Chamber of Mines

The Chamber of Mines notes with concern the announcement by the National Prosecuting Authority of its decision to charge Minister of Finance, Pravin Gordhan, in relation to alleged fraud as part of an ongoing investigation into allegations around the South African Revenue Service.

The Chamber's view is that no individual is above the rule of the law. At the same time, legal means should not be used to opportunistically pursue allegedly nefarious agendas under the guise of justice and due process.

The Chamber is deeply concerned about the state of public institutions in South Africa and will raise the matter with the Presidency.

11 Oct 15:31

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Who really stands to benefit from all this, asks reputation management expert Solly Moeng

While there might be technical substance to the charges, the timing is very worrisome.

There is no doubt in the minds of many observers that Pravin Gordhan's departure from his position as Finance Minister will politically benefit people who have been wanting to take full control of National Treasury and budgetary processes for a while.

In this, Gordhan's enemies and, by extension, the enemies of South Africa's economic well-being, have been given a gift on a silver platter.

It is also strange that, similar to the unfortunate announcement on the banks by Mines Minister Mosebenzi Zwane, a few weeks ago, this also happens while the President is out of the country. Coincidence?

It now seems less certain that Pravin Gordhan will be the one presenting the country's mid-term budget in a few weeks' time. The question is, if someone else gets chosen to present the budget, will it be the same budget prepared by Gordhan and his team or will it be tempered with to benefit 3rd party interests and risk throwing our economy into a tail spin?

Who really stands to benefit from all this? And what has suddenly woken the NDPP (Abrahams) from slumber? If this awakening is legitimate, what else should we expect from him in the short term?

11 Oct 15:23

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Timing of announcement most unfortunate - Business Unity SA

Business Unity South Africa (Busa) finds today's announcement by the National Prosecuting Authority (NPA), that it plans to charge Finance Minister Pravin Gordhan for alleged fraud, most unfortunate.

Commenting on the announcement made by NPA head, Adv. Shaun Abrahams this morning – a few days before Minister Gordhan is to present the Medium-Term Budget Policy Statement (MTBPS) in the National Assembly – Busa President, Jabu Mabuza said that it was "most unfortunate" that this development takes place shortly after the return from New York and Washington DC of a high-level Government, business and labour delegation, led by Minister Gordhan, in an effort to ensure that the country avoided a possible sovereign credit downgrade.

"While nobody is above the law, we remain deeply concerned about what appears to be the emergence of a pattern which sees serious allegations made against Minister Gordhan made very close to important dates and developments. The Hawks presented Minister Gordhan with a list of questions a few days before he was due to present the 2016/17 Budget in the National Assembly. At the end of May, on the eve of a visit to South Africa by foreign ratings agency, the Hawks controversially invited the Minister for a visit to its offices following the issuing of a warning statement, and now, days before the MTBPS – and barely days after our return from the USA – the NPA makes this shocking announcement," said Mabuza.

He said that Busa genuinely believes that the kind of cooperation that has recently seen the Government, through the Treasury, working in a close partnership with organised business and labour would improve the economy, create jobs and stave off any possible sovereign credit downgrades.

As a result, Busa found the timing of the NPA's announcement, which fuelled perceptions that there was an agenda to destabilise the economy, "most unfortunate". Mabuza said such perceptions undermined investor confidence in the country's policy environment.

Busa Chief Executive Officer, Khanyisile Kweyama said while the organisation had taken note of the NPA's decision to summon Minister Gordhan to respond to fraud charges, Busa wished to confirm its confidence in the South African judicial system.

Kweyama emphasised that, in terms of South Africa's laws, Minister Gordhan remained innocent until proven otherwise and the organisation continues to be confident in him. "We reaffirm our confidence in him as Finance Minister and our great appreciation for his sterling work over the past few months, in partnership with the business and labour leadership, to steer the South African economy away from a possible credit downgrade," Kweyama said.

Mabuza added that notwithstanding these developments, Busa hoped that the Government, business and labour would continue to work closely together as partners in the manner that they have done since the beginning of the year.

Developments negative on economy - Sacci

The South African Chamber of Commerce and Industry (Sacci) said on Tuesday afternoon it notes with concern the developments surrounding the Minister of Finance and other former Sars top officials regarding charges of fraud as announced by the head of the NPA at a media briefing earlier today.

"As a business organisation the impact of these developments on the economy can only be negative, especially in an environment where South Africa has been facing a potential credit ratings downgrade and an economy that has been growing at a slow rate," said Sacci.

"We, however, support the constitution of the Republic of South Africa and its organs of state. We also support any individuals' rights as enshrined in the constitution. These rights include the right to a free and fair trial, among other things, and the basic principle of the presumption of innocence until proven guilty by a court of law."

Sacci said it will be refraining from commenting on issues that are sub judice until the issues are resolved by the competent tribunal as prescribed in the Constitution.

11 Oct 14:57

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Is this the tipping point of fiscal prudence?

By Lesiba Mothata, chief economist at Investment Solutions

Emerging market countries are not immune to crises: be they capital flight or currency or banking crises. South Africa is no different to any other emerging market country, which, at some stage of development, found that investor sentiment changed towards it with dire economic consequences.

History teaches us that self-inflicted crises have a lasting effect and could prove much more damaging than episodes of contagion and negative impacts flowing in from elsewhere in the world.

While South Africa has enjoyed a global tailwind due to the growing demand for emerging assets (bonds and equities), improved Chinese growth outcomes, a strong demand for its exports to sub-Saharan African countries and capital inflows received by SABMiller shareholders, the country is not immune to a sudden shift in investor sentiment.

At this stage of the country's economic recovery – and taking into account an ongoing lust for yield by global investors - South Africa should be able to see an improved economic outcome, comfortably achieving gross domestic product (GDP) growth of more than 1% in the next year.

However, the ongoing machinations surrounding the leadership of the National Treasury induces huge uncertainty regarding the path fiscal policy will take from here.

It appears the upcoming Medium-Term Budget Policy Statement - due later in October – may contain surprises that could spook investors and rating agencies.

While no one person is above the law - and they should be tried in court if found wanting - the way in which the grandstanding between the Minister of Finance and the National Prosecuting Authority is playing out is eroding confidence.

It is unfortunate that when South Africa can easily delay a ratings downgrade, it seems poised to deliver its fate to a sub-investment grade (so-called junk status) decision. Emerging market countries get disproportionately punished for fiscal mismanagement.

After many years of prudent fiscal management, it looks like a tipping point has been reached.

11 Oct 14:50

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"This will further erode confidence in the political and economic management of South Africa." Daniel Silke, director of Political Futures Consultancy told Reuters. "It will potentially affect our chances of sustaining the current rating agency levels."

11 Oct 14:35

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Bloomberg analysts in London discuss economic impact of Gordhan summons:

Rand Falls on Reports Pravin Gordhan to Be Charged



11 Oct 14:34

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SACP statement on the Hawks' summons against Finance Minister

No-one - whether the Minister of Finance Comrade Pravin Gordhan or the Hawks should be above the law. The putative charges that the Hawks have, for a while, been making against the Minister who has now apparently been issued with summons in relation to the so-called South African Receiver of Revenue or Sars rogue unit, are a pretext to have him removed from office and weaken the National Treasury's struggle that he is leading against corruption and corporate capture.

The SACP is strongly opposed to political persecutions in any manifestation. The Party has noted the denial of any political involvement in this matter, but also that after assuring Gordhan that he was not a suspect, and then pausing for the local government elections, the matter was suddenly back on the table just after the elections.

The timing has an eerie similarity with the events that unfolded between 2003 and 2007, when the timing of another prosecution against a senior politician appeared to be coordinated around a political calendar.

11 Oct 14:32

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Crude intimidation: delivering a court summons to the home of Pravin Gordhan when he is doing govt work and when his legal team is known.

— Terry Bell (@telbelsa) October 11, 2016

11 Oct 14:32

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AUGUST ANALYSIS: Why the Hawks don't have a case against Gordhan

Safura Abdool Karim on GroundUp warned in August that the Hawks may reformulate their charges, and next time around, the legal arguments may not be as shaky.

FULL ANALYSIS

11 Oct 14:24

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ANC notes decision of NPA to summons Minister Gordhan and others – urges them to cooperate with the process

By ANC national spokesperson Zizi Kodwa:

The African National Congress (ANC) has noted the announcement by the National Prosecuting Authority (NPA) to summons the Minister of Finance, Comrade Pravin Gordhan, Oupa Magashula and Ivan Pillay to appear in court on fraud charges in relation to the investigation at the South African Revenue Service (SARS).

This investigation and related, untested and mischievous "conspiracy theories" has had a detrimental effect on the South African economy and we trust that today's announcement will move us a step closer to uncovering the truth from facts and bring this matter to finality.

We welcome today's remarks by the Head of the NPA, Advocate Shaun Abrahams, rejecting claims of political interference in the prosecutorial process.

The ANC urges all parties as well as external stakeholders to allow the law to take its course. The ANC further urges Cde Pravin Gordhan and others to fully cooperate with the NPA in order to bring this matter to finality as soon as possible.

The presumption of innocence until proven guilty remains a sacrosanct principle of our law

and the ANC has full confidence in our judiciary to act as final arbiters in these matters.

The ANC calls on interested parties to desist against public commentary, which would undermine due process or create further confusion.

11 Oct 14:21

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The public must hold officials to account - Gordhan

Members of National Treasury are expected to conduct themselves in a way that does not compromise the economic reputation of the country and jeopardise the welfare of citizens, while a handful of people in government continue to "extract" from the public purse, said Finance Minister Pravin Gordhan.

"We say that we are here to represent the poor's interest. But when we engage in corrupt practice, we undermine the poor and ensure they do not get what they are entitled to," he said. "Who will defend the poor when we are running to get benefits for ourselves?"

FULL STORY

11 Oct 14:03

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This is the charge sheet issued by the National Prosecuting Authority to Finance Minister Pravin Gordhan accusing him of fraud.

FULL CHARGE SHEET: Pravin Gordhan accused of fraud

11 Oct 14:02

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"The timing is clearly unfortunate ahead of the rating decision and the mid-term budget policy statement in a few weeks time," Mike Davies, an analyst with Kigoda Consulting in Cape Town, said by phone. "It will place South Africa's institutional independence under further scrutiny. The case could be used by President Zuma to reshuffle his cabinet, which is seen as one of the key motives for the campaign against Gordhan." - Bloomberg.

11 Oct 14:02

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[#PravinGordhan](#) Gordhan taking selfies and signing autographs. He says he's "feeling fine". DB. pic.twitter.com/P1KhZEgHHP

— EWN Reporter (@ewnreporter) [October 11, 2016](#)

11 Oct 14:01

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Looks like President saw what FinMin [#Gordhan](#) told [@ThuliMadonsela3](#) when his team given questions.

— Ferial Haffajee (@feriahaffajee) [October 11, 2016](#)

11 Oct 14:01

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They were going to look until they found something onto which they could hook a charge against Pravin Gordhan. The way Zuma works. <https://t.co/yLNBl8Uqv>

— Helen Zille (@helenzille) [October 11, 2016](#)

11 Oct 14:01

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Will Pravin Gordhan resign, or is this the excuse Zuma has been waiting for to fire him? [#NPA](#)

— Barney Mthombothi (@mthombothi) [October 11, 2016](#)

11 Oct 14:00

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Shaun the sheep rushes to charge [#Gordhan](#), stands in stark contrast to his foot dragging avoidance to prosecute the 783 charges against Zuma

— John Steenhuisen (@jsteenhuisen) [October 11, 2016](#)

11 Oct 14:00

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Pravin Gordhan, Thuli Madonsela, Jacob Zuma, NPA, Fees Must Fall, Rand. And it's only Tuesday midday.

— Khaya Dlanga (@khayadianga) [October 11, 2016](#)

11 Oct 14:00

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This whole idea to charge Pravin Gordhan is laughable. It makes the [#NPA](#) & Shawn Abrahams even more of a laughing stock

— Barney Mthombothi (@mthombothi) [October 11, 2016](#)

Gauteng declares war on corruption with open tender system

Worldwide, tender processes are an avenue for state corruption and state capture to take place, said Gauteng Premier David Makhura. For this reason the Gauteng government's open tender system has been established to fight corruption in procurement processes.

By 2018/2019 the Gauteng government hopes to achieve 100% open tender procurement. It was established in the Gauteng government's effort to find ways to restore confidence in public procurement processes.

"Transparency and accountability are important to save public officials and civil servants from themselves, from capture by private and corporate interests," said Makhura. The system aims to promote transparency of government and greater accountability to citizens, said Gauteng MEC of Finance, Barbara Creecy.

FULL STORY

11 Oct 13:33

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David Maynier, Democratic Alliance Shadow Minister of Finance:**Charging Pravin Gordhan is a disaster for the economy in South Africa**

The fact that the Minister of Finance, Pravin Gordhan, will be prosecuted and arraigned on charges of fraud and theft is a disaster for the economy in South Africa.

The news, which comes two weeks before the tabling of the crucial Medium Term Budget Policy Statement on 26 October 2016, has caused the rand to plummet, and will make a sovereign ratings downgrade more likely in South Africa.

The minister maintains that the transaction, relating to the early retirement of the former Deputy Commissioner of the South African Revenue Service, Ivan Pillay, for which he will be charged, was "entirely lawful".

We must now trust the courts to determine whether there is any merit to these charges. And we hope that there will be no delay in bringing this matter to court because "justice delayed is justice denied".

The fact is that, what Deputy President Cyril Ramaphosa, refers to as "a government at war with itself" is destroying any prospect of boosting economic growth and creating jobs in South Africa.

11 Oct 13:32

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From Budget speech to Mini Budget speech - the looming Sars Wars ...

Earlier this year, Finance Minister Pravin Gordhan criticised the timing of the Hawks investigation (they sent him the letter with 27 questions) ahead of his Budget speech on February 24; today he criticised the NPA as his Mini Budget speech is on October 26, in two week's time.

At the time, Network24 revealed that the National Prosecuting Authority (NPA) and the Hawks were "collaborating hard" to prosecute Ivan Pillay, Johann van Loggerenberg and Andries (Skollie) Janse van Rensburg of Sars.

Advocate Shaun Abrahams, head of the NPA, was "directly involved" with the "serious attempt" to prosecute the former Sars officials, a senior source with knowledge of the case told Network24.

Sars wars: Gordhan to reveal all on Hawks letter

11 Oct 13:21

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Pravin Gordhan made the following statement in August after he received a letter of warning from the Hawks regarding the fraud investigation:

Pravin Gordhan on the Hawks



11 Oct 13:20

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WATCH: Rand nose-dives in wake of Gordhan summons

WATCH: Rand nose-dives in wake of Gordhan summons



11 Oct 13:18

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Economist Dawie Roodt:

"I think what is happening here is that the president is using the organs of state, in this instance the prosecuting authority, to try to get rid of Pravin Gordhan.

"If there is a charge of corruption against the minister of finance, you can't allow that guy to remain in cabinet.

"You have to get rid of him. So, I think that's what's going to happen. We're going to see a couple of cabinet heads role."

11 Oct 12:55

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Zuma presses red button. Rand tanks on the news that Pravin Gordhan has been charged.

Reports that the Finance Minister has been served with a formal criminal charge have spooked investors, who fear this signals a renewed attack on Cabinet's most respected member.

FULL STORY

11 Oct 12:49

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Selected from the top 100 Equities by Market cap

Losers	Price	Change	% Change
BGA Bancassurance Group Ltd	R148.24	-R6.76	-4.35%
SBK South African Breweries Ltd	R139.00	-R6.05	-4.30%
SAC Sasol Corporation	R5.34	-R0.33	-6.13%
FSR FirstRand Ltd	R45.50	-R1.72	-3.84%
NED Nedbank Group Ltd	R216.90	-R7.60	-3.44%

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ANNEXURE 34

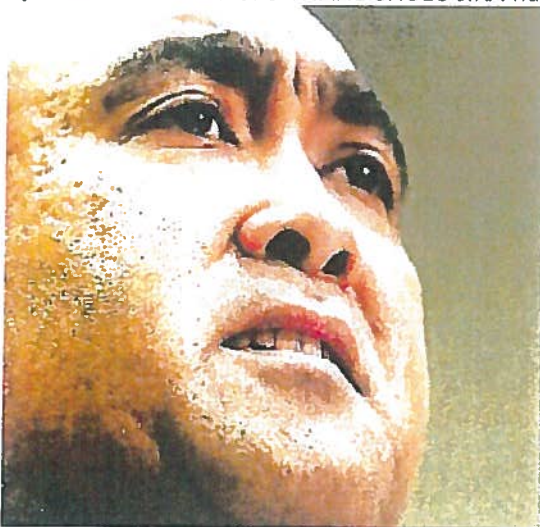
- 691

<https://www.pressreader.com/south-africa/sunday-times/20161023/281535110526682>

Pravin: did ANC know before?

Abrahams met Zuma and three ministers before move to charge Gordhan

- Sunday Times
- 23 Oct 2016
- QAANITAH HUNTER and THANDUXOLO JIKA hunterq@sundaytimes.co.za jikat@sundaytimes.co.za



‘ACTING WITH FEAR AND FAVOUR?’

Shaun Abrahams is raising eyebrows

CHIEF prosecutor Shaun Abrahams met President Jacob Zuma and three cabinet ministers at the ANC’s headquarters the day before he announced he was charging Pravin Gordhan with fraud. The meeting has raised fresh questions about political motives in the move against Gordhan, and will fuel doubts about the independence of the National Prosecuting Authority, although Abrahams and Zuma insisted the charge was not discussed.

CHIEF prosecutor Shaun Abrahams met President Jacob Zuma and three cabinet ministers behind closed doors at the ANC’s headquarters a day before announcing his decision to charge Finance Minister Pravin Gordhan with fraud.

Abrahams and Zuma this week denied that possible charges against Gordhan or any other person were discussed at their Luthuli House meeting.

In response to a question about the meeting, Abrahams, whose job as the head of the National Prosecuting Authority demands he be independent of any political influence, said he went to the ANC’s headquarters at the invitation of Justice Minister Michael Masutha.

“I was, however, at Luthuli House [on] Monday afternoon at the request of the minister of justice and correctional services, where I attended a meeting relating to the state of anarchy as a direct result of the violent student unrest . . . with, inter alia, the minister of justice, minister of state

security, minister of social development and the president,” Abrahams said in an e-mailed response.

Bongani Ngqulunga, Zuma’s spokesman, confirmed the meeting but said the president had not invited Abrahams.

“President Zuma called some ministers to provide him with updates on the security situation at university campuses. The president was keen to be briefed on what was being done to protect security staff, students and property during the protests,” he said.

Ngqulunga did not respond to questions about Abrahams’s presence and whether this did not put the chief prosecutor’s independence into question.

The meeting, also attended by Social Development Minister Bathabile Dlamini, State Security Minister David Mahlobo and Masutha, took place on October 10, hours before Zuma flew to Kenya on a state visit.

Luthuli House insiders say news of Gordhan’s pending charges reached the ANC headquarters on the same day Abrahams visited the building.

The next day, Abrahams announced the NPA would charge Gordhan with fraud relating to his giving early retirement to former South African Revenue Service deputy commissioner Ivan Pillay.

Two days later, the NPA charged EFF leader Julius Malema with incitement to violence for statements he made in 2014, and student leader Mcebo Dlamini on charges related to the ongoing protest at the University of the Witwatersrand.

Ngqulunga said these cases were not discussed.

“The meeting did not discuss the prosecution of the minister of finance, the EFF leader nor did it discuss the prosecution of any student,” Ngqulunga said.

Abrahams, through his spokesman, Luvuyo Mfaku, concurred with Ngqulunga: “The matter relating to the minister of finance, Mr [Oupa] Magashula and Mr Pillay was not the subject of the meeting.”

It is unclear why, if this was a government meeting, it was held at Luthuli House.

The absence of police representatives and Higher Education Minister Blade Nzimande, departments are at the coalface of the university education crisis, made the meeting even more bizarre.

Harold Maloka, Nzimande’s spokesman, referred questions to the ANC.

A senior government official in the security cluster said Abrahams’s presence at Luthuli House was improper.

“It is highly undesirable that he went to a political party’s offices. It then explains the mess around the charges.

“He said at the press conference he had communicated with the justice minister to tell the president that he would be charging Gordhan.

“But it is unlikely he wouldn’t discuss such a big charge if he was in the same room with the president,” said the official.

The meeting may also explain the rush to charge Gordhan even though his lawyers indicated in a letter to Abrahams they were willing to make representations in August.

Further making the Luthuli House meeting controversial is the fact that Zuma remains a potential accused in his corruption case since the High Court in Pretoria ruled that Abrahams and the NPA should reinstate corruption charges against the president.

Zuma has challenged the high court ruling at the Supreme Court of Appeal.

It is unclear why Abrahams was present when acting national police commissioner Khomotso Phahlane, the operational head in charge of stabilising universities, was absent.

Mfaku did not answer questions about whether Abrahams's presence compromised his independence. He also did not explain Abrahams's role or whether he discussed the prosecution of student leaders before their arrests.

Lumka Oliphant, Dlamini's spokeswoman, said the minister attended as acting defence minister. She said Dlamini briefed the president about the situation at tertiary institutions as chairwoman of the justice and crime prevention cluster.

Masutha did not respond to written questions.

The meeting did not discuss the prosecution of the minister of finance, the EFF leader nor of any student

ANNEXURE 35

— 4872

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WORLD NEWS

South African state prosecutor drops fraud charges against Gordhan

2 MIN READ



PRETORIA (Reuters) - South Africa's state prosecutor dropped fraud charges on Monday against Finance Minister Pravin Gordhan, the latest twist in a police investigation that has rattled financial markets in the continent's most industrialised economy.

SPONSO

Head of the National Prosecuting Authority, Shaun Abrahams gestures as he announces the dropping of fraud charges on Monday against Finance Minister Pravin Gordhan, the latest twist in a police investigation that has rattled financial markets in the continent's most industrialised economy, during a media briefing, in Pretoria, South Africa, October 31, 2016. REUTERS/Siphiwe Sibeko

Worries that Gordhan could be prosecuted or even removed from his job have also increased the risk that credit rating agencies would downgrade South Africa to "junk" status, undermining efforts to revive economic growth.

The rand gained as much as 1.6 percent against the dollar, while bonds firmed as the head of the National Prosecuting Authority, Shaun Abrahams, read his decision at a media conference in the capital, Pretoria.

SPONSO

South African Finance Minister Pravin Gordhan attends a media briefing in Johannesburg, South Africa, March 14, 2016. REUTERS/Siphiwe Sibeko/Files

"I am satisfied that... Gordhan did not have the requisite intention to act unlawfully," Abrahams said, adding he owed nobody an apology and would not resign after the flip-flop on the decision to prosecute.

Gordhan was due to face charges in court on Wednesday that he fraudulently approved early retirement for a deputy tax commissioner and re-hired him as a consultant, costing the revenue service 1.1 million rand (\$80,000).

Gordhan, who is widely respected in financial markets, said the accusations were

politically motivated.

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The charges triggered a backlash from opposition political parties, civil society, big business and some senior members of the ruling African National Congress (ANC). Abrahams denied any political interference in the probe.

Analysts and supporters of Gordhan say the charges could be a ploy by President Jacob Zuma and his allies to discredit a finance minister who stood in the way of their securing access to lucrative government contracts.

The president has denied that he is in conflict with Gordhan.

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BREXIT

Tony Blair advises Labour Party to vote down May's possible Brexit deal

1 MIN READ



LONDON (Reuters) - Former British Prime Minister Tony Blair said on Thursday he would advise Labour Party lawmakers to vote down a Brexit divorce deal that Theresa May is trying to clinch with the European Union.

Britain's former Prime Minister Tony Blair arrives for an event at Thomson Reuters in London, Britain, October 11, 2018. REUTERS/Simon Dawson

When asked if he would advise Labour lawmakers to vote down a possible deal, Blair said: "It really is difficult... the alternatives are all worse because if you do get to a blockage in parliament that is what opens up the possibility of going back to the people."

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All quotes delayed a minimum of 15 minutes. See [here](#) for a complete list of exchanges and delays.

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ANNEXURE 36

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UPDATE: FNB closes Gupta business accounts

Wednesday 6 April 2016 - 2:49pm



File: The Democratic Alliance want the Public Protector to probe the alleged abuse of power on the part of President Jacob Zuma following claims that he had allowed the Gupta family to pick ministers.

File: The Democratic Alliance want the Public Protector to probe the alleged abuse of power on the part of President Jacob Zuma following claims that he had allowed the Gupta family to pick ministers.

Estelle Bronkhorst /



File: The Democratic Alliance want the Public Protector to probe the alleged abuse of power on the part of President Jacob Zuma following claims that he had allowed the Gupta family to pick ministers.

File: The Democratic Alliance want the Public Protector to probe the alleged abuse of power on the part of President Jacob Zuma following claims that he had allowed the Gupta family to pick ministers.

Estelle Bronkhorst /

Editor's note: This article has been updated with additional information.

JOHANNESBURG – Oakbay Resources and Energy on Wednesday confirmed that First National Bank (FNB) had become the second bank to cancel its business accounts after Absa had cut ties with the firm earlier this week.

This was the latest in a series of backlashes by corporate South Africa against Oakbay Resources after allegations of “state capture” by the controversial Gupta family, and their alleged influence on the business of government through their close ties to President Jacob Zuma and his family.

Oakbay Resources director Nazeem Howa, in a statement on Wednesday, challenged their detractors, calling them “the purveyors of the numerous false allegations” and said they must provide evidence of wrongdoing against the company.

“We challenge the purveyors of the numerous false allegations made against us in recent months to provide any evidence of wrongdoing. It is time to put up, or shut up,” Howa said in a statement.

Howa said they would approach Jacques Celliers, (<https://www.enca.com/money/fnb-ceo-step-down>) the Head of FNB, to demand answers for the closing of the Oakbay's accounts.

But he said Oakbay was already in the process of moving its accounts to "a more enlightened institution".

"Oakbay has received no reason whatsoever justifying FNB's actions. We find the timing of FNB's decision staggering, given Oakbay's accounts are in excellent financial health and we have been a loyal and profitable customer for many years," Howa said

Howa said Oakbay had invested more than R10 billion in South Africa and employed more than 4,500 people.

He also said the deal to acquire Optimum Coal Mine, which will supply Eskom with five percent of its coal (<https://www.enca.com/money/gupta-owned-coal-mine-deal-gets-green-light>), would double their staff compliment whose jobs would be jeopardised by these latest developments.

Howa further said the Gupta family detractors were talking about state capture (<https://www.enca.com/south-africa/business-groups-welcome-anc-state-capture-probe>) when only one percent of the family's business comes from government.

Oakbay Resources is an investment vehicle in mining and exploration business owned by the Gupta family, (<https://www.enca.com/south-africa/none-eskoms-business-if-guptas-own-mine>) whose vast business interests range from mining, print and broadcast media, and information technology.

KPMG on Friday resigned as Oakbay Resources auditors with immediate effect after 15 years, (<http://www.enca.com/south-africa/kpmg-sasfin-cut-ties-guptas>) citing "risk of association", while banking partner Sasfin Capital gave the firm notice of their intention to terminate services effective from June 1, saying it was in line with an internally driven strategic review.

Last month, Deputy Finance Minister Mcebisi Jonas dropped a bombshell by confirming reports that the Gupta family had approached him to take over as finance minister (<https://www.enca.com/south-africa/deputy-finance-minister-mcebisi-confirms-gupta-job-offer>) a few days before Zuma fired Nhlanhla Nene from the post in December.

But in response, Zuma told Parliament that the Gupta family had never appointed any Cabinet minister. (<http://www.enca.com/south-africa/zuma-no-ministers-appointed-guptas>)

Howa, who earlier in the day spoke at a The New Age business breakfast on "State Capture", also said Oakbay did not believe that Mark Pamensky, sitting on the Oakbay and Eskom boards, constituted a conflict of interest, nor that it was unusual.

"When there is a discussion about Oakbay at Eskom, I can swear from our side that [Pamensky] recuses himself immediately," Howa said.

Howa also defended the Gupta family relationship with President Zuma's son, Dudzane, who is a director in 11 companies owned by them.

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FNB declined eNCA's request for an interview but said in a statement it can confirm that it has no banking account with Oakbay Investments (Pty) Ltd.

"We can further confirm that we have given notice to close various banking accounts of entities that may be associated with Oakbay Investments (Pty) Ltd," the statement said.

FNB said due to the confidential nature of its customer relationships, it is not in a position to provide any further details.

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Helen R. Miller • a year ago

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Mark D. Mobley • a year ago

The closing of Oakbay Accounts by FNB is a clear indication that FNB is no longer out of the control of whites. Even the banking sector which should be fair and unbiased has become the puppet of wmc. No stone left unturned to pull Guptas down.

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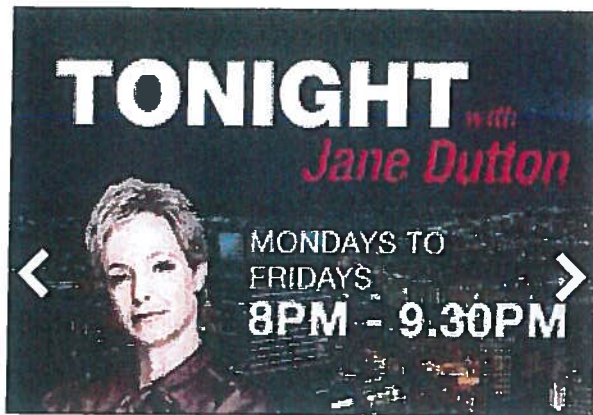
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- 1 Zulu King announces partnership with Afriforum (<https://www.enca.com/news/zulu-king-announces-partnership-afriforum>)
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- 3 Will Nene be fired? (<https://www.enca.com/news/will-nene-be-fired>)
- 4 Ramaphosa blames state capture, apartheid for ailing economy (<https://www.enca.com/news/ramaphosa-blames-state-capture-apartheid-ailing-economy>)

- 5 Emeritus Desmond Tutu dismisses death reports (<https://www.enca.com/south-africa/emeritus-desmond-tutu-dismisses-death-reports>)



(<https://www.youtube.com/playlist?list=PL2BJTpLEt7O7mV8Vr2NrOLxNWF6HiOyJ6>)



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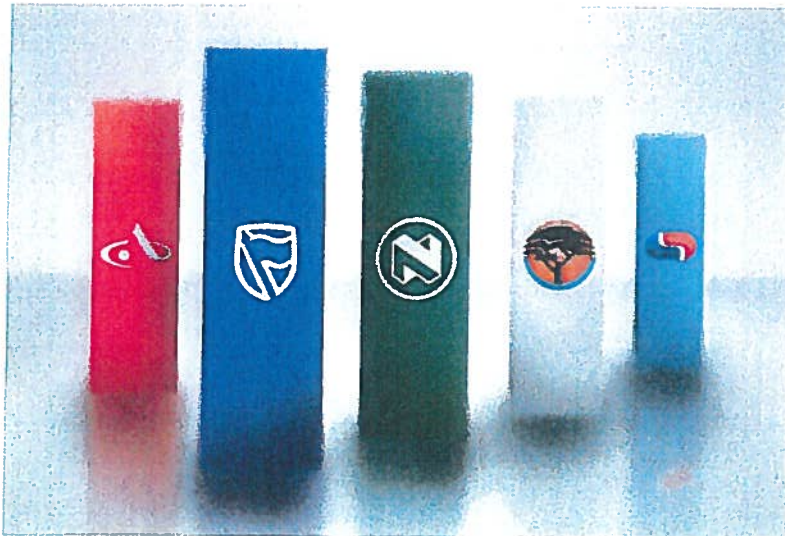
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Guptas dropped by all major South African banks

Staff Writer 8 April 2016



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In an update on the state of its relationships with South African banks, Gupta-owned Oakbay Resources says that all major banks in the country have dropped them – but they continue to get support from foreign banks in the country.

In a [SENS update](#) on the matter, the group clarified that reports of FNB dropping the company only apply to the holding company, Oakbay Investments.

Meanwhile, Absa's decision to drop Oakbay Resources was made in December 2015, but only communicated in April 2016, the group said.

The group added that the last local bank supporting them – which remained unnamed in the update – had given notice on Thursday (7 April) that it, too, would be terminating its relationship with the company.

"As of yesterday, (Oakbay Resource's) remaining local banking service provider has given notice regarding the termination of their banking services on June 6, 2016," it said.

This brings the total list of finance groups turning against the company to five: FNB, Absa, KPMG, Sasfin and the unnamed SA finance group.

According to Oakbay, "despite the cessation of the provision of services by the major local banks, the Group continues to be serviced by a major Asian bank with a presence in South Africa."

The bank, however, made a specific request not to be named.

"The terminations will not impact the operations of the Group and the Company is confident that the remaining banking relationship is sufficient to fully service the operational requirements of the Group."

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On Friday, Oakbay Resources announced that its non-executive chairman, Atul Gupta, and its chief executive officer, Varun Gupta, had resigned with immediate effect, in the wake of what it called a political attack against the family.

Additionally, President Jacob Zuma's son – Duduzane Zuma – resigned as a Non-Executive Director of Shiva Uranium, a major subsidiary of the company, and from all of his positions at Oakbay Investments, the company owned by the Gupta family.

More on the Guptas

[Another major SA bank closes its doors to Gupta company](#)

[Absa cuts ties with Gupta's Oakbay company: report](#)

[KPMG cuts ties with Gupta family](#)

[Fresh Gupta scandal hits Eskom](#)

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ANNEXURE 37

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MINISTRY
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9111, Cape Town, 8000, 7th floor, 120 Plain Street, Cape Town. Tel: (+27 21) 462 2310, Fax: (+27 21) 461 0859

20 April 2016

The Honourable Minister of Finance: Mr Pravin Gordhan, MP
Ministry of Finance
40 Church Square
Old Reserve Building
PRETORIA
0001

Dear Honourable Minister

**IN RE: INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED AGAINST
FINANCIAL INSTITUTIONS**

I refer to the decision taken by Cabinet on Wednesday, 16 April 2016 to appoint an Inter-Ministerial Committee ("IMC") to consider the impact of certain allegedly unilateral actions taken by specific financial institutions against certain of its clients, which actions may have the potential to negatively affect the economy of the Republic of South Africa with particular focus to be given to the impact of these actions on the already distressed mining and financial services sectors.

The IMC is to consist of the Ministers of Labour, Finance, Communications and Minister of Mineral Resources. Consultations with the financial institutions are being arranged for **Monday, 25 April 2016 from 09h00 to 17h00** in Pretoria. The venue for the day, agenda for the various consultations and Terms of Reference for the IMC will be circulated shortly.

Whilst I am aware that the timing of the meeting may not be suitable, I trust that the matter is sufficiently serious and urgent to receive your urgent attention and look forward to receiving a positive response from you of your attendance at the aforesaid consultations.

I look forward to your urgent response.

Sincerely



Mr Mosebenzi Zwane, MP
Minister of Mineral Resources

RE: Inter-Ministerial Committee in Respect of Allegations Levelled Against Financial Institutions

Nwabisa Jennings [Nwabisa.Jennings@dmr.gov.za]

Sent: Friday, April 22, 2016 12:39 PM

To: Busi Sokhulu [Busi.Sokhulu@treasury.gov.za]

Dear Blessing,

As per the email below, this serves to confirm that the Inter-Ministerial Committee will convene as per details below:

Date: Monday, 25 April 2016**Time:** 09h00-17h00**Venue:** Department of Mineral Resources, Minister's Boardroom, 70 Trevenna Campus, Building 2C
4th Floor, Cnr Meintjies & Francis Baard Street, Sunnyside, Pretoria

Please note that the agenda as well as the Terms of Reference will be available on Monday at the meeting.

Please confirm the number of people that will be accompanying the Minister as well as the Minister's dietary requirements. Can you also forward us the car registration, model and colour of the cars.

Kind Regards,
Nwabisa Jennings
012 444 3947

From: Nwabisa Jennings**Sent:** 22 April 2016 11:48 AM**To:** 'blessing.sokhulu@treasury.gov.za'**Subject:** Inter-Ministerial Committee in Respect of Allegations Levelled Against Financial Institutions

Dear Blessing,

I trust that you are well. Attached please find a letter for Minister Gordhan's attention from Minister Zwane. Our driver will hand deliver the original to your offices shortly.

Kind Regards,
Nwabisa
012 44 3947

9/27/2018

Inter-Ministerial Committee in respect of allegations levelled against Financial Institutions

Inter-Ministerial Committee in respect of allegations levelled against Financial Institutions

Joanne Scott

Sent: Friday, April 22, 2016 3:47 PM
To: Nwabisa.Jennings@dmr.gov.za
Cc: pamela.salusalu@labour.gov.za
Attachments: SKMBT_C554e16042215470.pdf (405 KB)

Dear Ms Jennings

Please find attached correspondence for Minister Zwane's attention.

Please could I request that you acknowledge receipt.

Dear Ms Salusalu

Please note that Minister Gordhan has copied Minister Oliphant into this correspondence, please find attached for her attention.

Please could I request that you acknowledge receipt.

Kind regards

Joanne Scott

Ministry of Finance

40 Church Square, Old Reserve Building, PRETORIA

Private Bag X115, PRETORIA, 0001

Tel: +27 12 315 5158

Fax: +27 12 323 3262

E-mail for official correspondence: minreg@treasury.gov.za



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Mr MJ Zwane
Minister of Mineral Resources
Private Bag X59
PRETORIA
0001

Dear Minister Zwane

**INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED
AGAINST FINANCIAL INSTITUTIONS**

I refer to your letter dated 20 April 2016, emailed to my office at 11h48am on 22 April 2016.

As you are aware, I was not present at the Cabinet meeting you refer to but I have consulted the Cabinet Secretariat on the matter.

The following emerges:

1. The Cabinet meeting was on the 13th April 2016 – not 16th April 2016 which was a Saturday.
2. No Inter-Ministerial Committee was established.
3. Three Ministers were nominated: Finance, Labour and Mineral Resources.
4. No one Minister was designated as convenor.
5. The financial services sector is not “already distressed” as your letter indicates, and care must be taken not to compromise financial stability.

Whilst I appreciate the urgency of the matter for some, I must emphasise that the legal and regulatory environment has both global (BASEL III, Financial Action Task Force) and local (SA Reserve Bank; Financial Services Board; Financial Intelligence Centre; National Consumer Commission; etc) regulators and regulations.

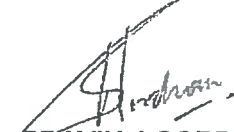
I am currently seeking legal advice on what could be done in the present circumstances, given the intensive legislative framework we have governing the financial sector.

In the circumstances, it will be advisable for the three Ministers to first consult on the framework for any discussion with financial institutions. I prefer that this takes place on the

margins of the Cabinet meeting of the 26th April 2016. You might also be aware that discussions of the nature envisaged have already taken place elsewhere.

Accordingly, I look forward to discussing the way forward next Tuesday.

Kind regards



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE

Date: 22 - 4 - 2016

cc. Ms MN Oliphant, MP
Minister of Labour

ANNEXURE 38

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3 June 2016

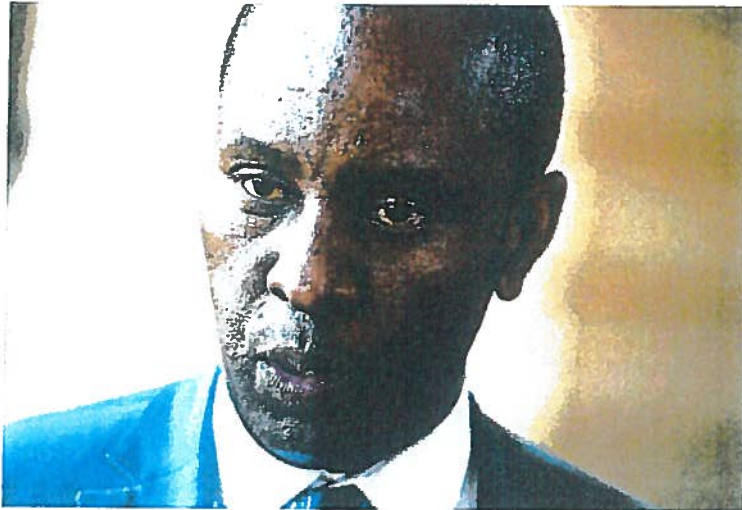
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Politics

Zwane rebukes banks for 'telling the government how to run the country'

03 June 2016 - 19:26 By Karl Genertzky

Mineral Resources Minister Mosebenzi Zwane, who is a member of the three-member Cabinet team tasked with engaging banks over their decision to cut ties with the Gupta-family-linked Oakbay Investments, says engagements will continue until "we find each other".



FROM LEFT FIELD: Mosebenzi Zwane, the new Minister of Mineral Resources, seems to have nothing going for him - except for his friendship with the Guptas

Image: DELWYN VERASAMY/MAIL & GUARDIAN

"We will never allow a situation where the private sector dictates to government how to run this country," he said on Friday, speaking on the sidelines of the National Union of Mineworkers' (NUM's) annual central committee meeting in Pretoria.

- **Transnet deals fall into Gupta man's lap** A close Gupta associate is set to profit from lucrative mystery-shrouded Transnet contracts that are under investigation by the National Treasury.

The broader concern centred on individuals waking up to find their accounts closed, without the government having recourse, said Zwane.

- **Why banks ditched the Guptas** In the current political environment of media leaks and vendettas, it is perhaps surprising that no one in the media has managed to find out exactly why it was that Barclays Africa decided to close the bank accounts of the Gupta-owned Oakbay Investments.

The government would ensure a solution, even if it meant establishing a state bank, he said.

- **Mines minister Zwane says he is in talks with banks over Gupta firm** Mining minister Mosebenzi Zwane said on Wednesday he had spoken to local banks that have cut links with Oakbay Investments, a holding company owned by the Gupta family, to restore the ties in a bid to try and save jobs at the company.

In May, ANC secretary-general Gwede Mantashe urged the government not to meddle in the relationship between the Guptas and their banks, saying the state must allow them to sort out their differences.

Mantashe's remarks pointed to the difference in thinking on the Gupta saga among senior leaders of the governing party. He said the government task team should instead approach the banking regulator — the South Africa Reserve Bank — for clarity on the matter.

Leading banks Absa, FNB, Nedbank and Standard Bank withdrew their services from the family, as did their auditors, KPMG, and JSE sponsor Sasfin.

In May it was also reported that Zwane and Deputy Mineral Resources Minister Godfrey Oliphant secured a meeting with at least one bank CEO — Standard Bank's Sim Tshabalala — but failed to persuade him to disclose any details around the closure of the Gupta family's Oakbay accounts.

Finance Minister Pravin Gordhan, who was also part of the team that the Cabinet tasked with "finding a lasting solution to the matter", was advised of the meeting, which took place at Zwane's office in Pretoria, but reportedly did not attend.

The controversial Gupta family came under pressure after Deputy Finance Minister Mcebisi Jonas disclosed that family members had offered him the finance minister position before the axing of former minister Nhlanhla Nene, in December last year.

Earlier in his address on Friday, Zwane said that as the South African mining industry shifted toward the exploitation of less accessible deposits, it must have a tough conversation with itself over future employment levels in the sector.

He said the "upskilling" of mineworkers needed to be accelerated, especially as the sector continued to face tough economic conditions and future mechanisation.

About 700 NUM delegates were in attendance on the first day of the two-day meeting in Pretoria. The union is expected to work to resolve difficult questions of finances and organisation, after haemorrhaging members in the mining sector since 2012. To date it has lost 36% of its members due to both inter-union rivalry and retrenchment.

"In the past three years we have granted 80 mining rights with a potential to create in excess of 22,000 much needed jobs," said Zwane.

However, although SA has more than R1-trillion worth of mineral reserves, much of these deposits are in areas that are difficult to reach, pointing to future mechanisation of the sector.

"This may not be a popular view, but we must question what this means for future workers prospects," said Zwane.

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Presidency denies government wants probe into banks

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02 September 2016 - 21:04 Genevieve Quintal



Mosebenzi Zwane. Picture: GCIS

THE Presidency on Friday distanced itself from a statement made by Mineral Resources Minister Mosebenzi Zwane that the Cabinet had resolved to request that a judicial inquiry established into the banks and their actions against the Guptas, as well as to review the legislation that governs the banking system.

Zwane headed an interministerial committee established by the Cabinet after the big four banks withdrew banking services to the Gupta family. He drew up a Cabinet memo on the banks, which he said in his statement on Thursday night had been adopted by the Cabinet.

According to the Presidency, Zwane's statement was issued in his personal capacity and did not reflect the position or views of Cabinet.

"He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet, the Presidency or government," spokesman Bongani Ngqulunga said.

"The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof, are deeply regretted."

He said the Presidency wanted to assure the public, the banking sector as well as the domestic and international investors of Government's commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin the economy.

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Presidency denies government wants probe into banks

02 September 2016 - 21:04 Genevieve Quintal



Mosebenzi Zwane. Picture: GCIS

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[National](#)

Did Mosebenzi Zwane lie about bank memo that Cabinet 'adopted'?

4 Sept 2016
@17:25

04 September 2016 - 17:25 Staff writer



Mosebenzi Zwane. Picture: AFP PHOTO/RODGER BOSCH

MINISTER of Mineral Resources, Mosebenzi Zwane's head should be on the "chopping block", the DA says.

DA spokesman on finance David Maynier said the party welcomed the news that President Jacob Zuma has distanced himself from Zwane's statement recommending a Judicial Commission of Inquiry into the termination of banking relationships with the Gupta-controlled Oakbay Investments.

However, he said the statement did not go far enough.

READ THIS: [Presidency denies government wants inquiry into banks' actions against the Guptas](#)

"...it leaves the political door open for some of the bizarre recommendations, supposedly made by the Minister in his personal capacity, to be considered in the future," Maynier said.

Zwane claimed on Thursday that Cabinet had resolved to request that a judicial inquiry be established into the banks and their actions against the Guptas, as well as to review the legislation that governs the banking system.

Zwane headed an interministerial committee established by the Cabinet after the big four banks withdrew banking services to the Gupta family. He drew up a Cabinet memo on the banks which he said had been adopted by the Cabinet.

However, the Presidency said Zwane's statement was issued in his personal capacity and did not reflect the position or views of Cabinet.

Welcoming the Presidency's stance, Maynier said: "The fact is that the task team should never have been established and the Guptas should never have been allowed to effectively 'contract' the Executive to carry out a

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The party said Zwane's comments "directly contradicted a public outcry and call to the President, including by the SACP, to establish a judicial commission of inquiry into corporate state capture not limited to but including allegations levelled against the Guptas".

"Minister Zwane's utterances effectively fed into the use of our Cabinet to advance the private business interests of the Guptas while ignoring public outcry and call for a judicial commission into corporate state capture.

"It also shows how an individual Cabinet Minister can use his position to serve private business interests, break policy coherence and cause the confusions such as the Presidency had to clarify regarding Zwane's utterances," the SACP said.

"Such wrongful things must come to an end. The President needs to consider further action to achieve the objective," the party added.

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07 Sept 2016 @

Mosebenzi Zwane faces parliamentary roasting

By Staff Reporter -

Party



Democratic Alliance finance spokesperson David Maynier confirmed on Tuesday that the minister faces a roasting in parliament on Wednesday.

National Assembly Speaker Baleka Mbete has agreed to a request for an urgent question to Zwane. Maynier noted that, to his knowledge, this is the first time Mbete's agreed to an urgent question in this Parliament.

"I will, therefore, be putting the Minister in the political hot seat tomorrow by asking him an urgent question as follows: 'Whether, in the light of his controversial statement, dated 1 September 2016, concerning his recommendation that a Judicial Commission of Inquiry be established to investigate the termination of contractual relationships by certain financial institutions with Oakbay Investments (Pty) Ltd, the minister will resign; if so, when; if not, why not?'"

Maynier alleges that Zwane allowed the Guptas to "hijack" the Executive to carry out an investigation into financial institutions, the National Treasury and the South African Reserve Bank.

READ MORE: EFF wants Minister Mosebenzi Zwane out

"We can only hope that he saves himself the embarrassment by replying, 'yes, with immediate effect'", he said.

Zwane, who chaired an inter-ministerial committee set up by Cabinet to probe why South Africa's banks blacklisted Gupta-owned businesses, said in a statement last week that a judicial inquiry should be considered to look into:

- The current mandates of the Banking Tribunal and the Banking Ombudsman,
- The current Financial Intelligence Centre Act (Fica) and the Prevention of Combating of Corrupt Activities Act in relation to the banks' conduct,
- South Africa's clearing bank provisions to allow for new banking licences to be issued, and
- the establishment of a State Bank of South Africa with the possible corporatisation of the Post Bank being considered as an option.

Referring to the nation's four biggest lenders refusing to do business with the Gupta family, Zwane said evidence shows the banks' actions "were as a result of innuendo and potentially reckless media statements and, as a South African company, Oakbay had very little recourse to the law".

"Looking into these mandates and strengthening them would go a long way in ensuring that, should any other South African company find itself in a similar situation, it could enjoy equal protection of the law," he said.

READ MORE: ANC condemns Zwane for "reckless" statement

There was fear that Zwane's announcement would cause further market turmoil and currency weakness and lead to a sovereign ratings downgrade.

However, the Presidency said on Friday that Zwane's remarks were issued in his personal capacity and not on behalf of the task team or Cabinet.

"Minister Zwane is a member of the task team. He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet," Presidency spokesperson Bongani Ngqulunga said. "The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof, are deeply regretted."

The Presidency also moved to quell public and investor fears: "The Presidency wishes to assure the public, the banking sector as well as domestic and international investors of Government's unwavering commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin our economy."

-News24Wire

PA to President 725
on MZwane
October 2016.



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

NATIONAL ASSEMBLY

QUESTIONS FOR WRITTEN REPLY

QUESTION NO: 2138.

Date Published: October 2016

Mr D J Maynier (DA) to ask the President of the Republic:

- (1) Whether the statement issued by the Minister of Mineral Resources on 1 September 2016 was issued in the Minister's personal capacity; if not, what are the relevant details; if so, why did the Minister state in a reply to written question 1892 on 22 September 2016 that he was not speaking in his personal capacity;
- (2) whether the specified statement reflects Cabinet's position on the recommendations contained in the inter-ministerial committee's report; if not, why not; if so, why did the Minister claim in a reply to written question 1892 on 22 September 2016 that four of the specified recommendations were approved by Cabinet;
- (3) whether any action has been taken against the specified minister for issuing the specified statement; if not, why not; if so, what are the relevant details?

NW2455E

Reply:

I had indicated in my previous reply that the statement issued by the Minister of Mineral Resources, Mr Mosebenzi Zwane on 1 September 2016, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms to close down the accounts and withdraw audit services from the company named Oakbay Investments, was issued in his personal capacity and not on behalf of the task team or Cabinet. I am not in the position to answer why the Minister Zwane in his reply on 22 September 2016 said that he was not speaking in his personal capacity. The question in this regard must be directed to the Minister.

I reprimanded the Minister for the statement.

ANNEXURE 39

~ 727



national treasury

Department
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

OAKBAY ATTACKS ON TREASURY COURT APPLICATION

The National Treasury notes the numerous attacks launched by the lawyers representing the Oakbay Group of companies on the affidavit filed by the Treasury in the Oakbay litigation as well as the contradictions contained therein. National Treasury has no intentions of conducting the case in the court of public opinion and will provide a comprehensive and appropriate response in court once the Oakbay respondents have filed their answering affidavits. We would also like to urge the Oakbay to respect the court process.

In a statement issued today, National Treasury said, "it is peculiar in the extreme for the aforementioned respondents to address the issues raised in the affidavit by way of media releases as these make no meaningful contribution to the case at hand. The Minister has presented his case under oath in an appropriate forum and it is incumbent upon the Oakbay respondents to do likewise should they wish to oppose his version.

National Treasury wishes to also point out that, the affidavit by the Minister has not made any pronouncement or interpretation on the FIC report and has sought solely to put the material facts before court.

'We welcome the announcement by Oakbay respondents that, they intend to oppose the application after their unsuccessful attempt to coerce the Minister into withdrawing the matter. This will provide an opportunity for all issues to be properly ventilated in an open court', National Treasury concluded.

Issued by: National Treasury

21 October 2016

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

729

CASE NUMBER: 80978/16

In the matter between:

2017-10-10

PRETORIA

OFFICE OF THE DEPUTY JUDGE

MINISTER OF FINANCE

APPLICANT

and

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

TEGETA EXPLORATION AND RESOURCES
(PTY) LTD

4TH RESPONDENT

JIC MINING SERVICES (PTY) LTD

5TH RESPONDENT

BLACKEDGE EXPLORATION (PTY) LTD

6TH RESPONDENT

TNA MEDIA (PTY) LTD

7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

ABSA BANK LTD	15 TH RESPONDENT
FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	19 TH RESPONDENT
REGISTRAR OF BANKS	20 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	21 ST RESPONDENT

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IN THE HIGH COURT OF SOUTH AFRICA

741

(GAUTENG DIVISION, PRETORIA)

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and correct.Is 'n ware kopie van die oorspronklike,
en korrekte oorspronklike.

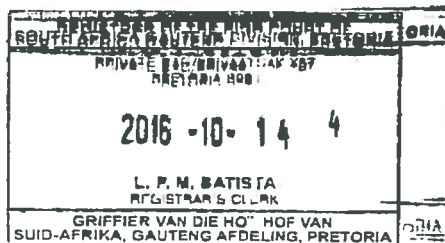
Case no /2016

80978/16

In the matter between:

MINISTER OF FINANCE

and



Applicant

OAKBAY INVESTMENTS (PTY) LTD

First Respondent

OAKBAY RESOURCES AND ENERGY LTD

Second Respondent

SHIVA URANIUM (PTY) LTD

Third Respondent

TEGETA EXPLORATION AND RESOURCES (PTY)
LTD

Fourth Respondent

JIC MINING SERVICES (PTY) LTD

Fifth Respondent

BLACKEDGE EXPLORATION (PTY) LTD

Sixth Respondent

TNA MEDIA (PTY) LTD

Seventh Respondent

THE NEW AGE

Eighth Respondent

AFRICA NEWS NETWORK (PTY) LTD

Ninth Respondent

VR LASER SERVICES (PTY) LTD

Tenth Respondent

ISLANDSITE INVESTMENTS ONE HUNDRED AND
EIGHTY (PTY) LTD

Eleventh Respondent

CONFIDENT CONCEPT (PTY) LTD

Twelfth Respondent

JET AIRWAYS (INDIA) LTD (INCORPORATED IN
INDIA)

Thirteenth Respondent

SAHARA COMPUTERS (PTY) LTD	Fourteenth Respondent
ABSA BANK LTD	Fifteenth Respondent
FIRST NATIONAL BANK LTD	Sixteenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-First Respondent

NOTICE OF MOTION

TAKE NOTICE that on a date to be determined by the Registrar of the above Honourable Court, the applicant intends to apply for an order in the following terms:

1. Declaring that the applicant is not by law empowered or obliged to intervene in the relationship between the first to fourteenth respondents, and the fifteenth to eighteenth respondents, as regards the closing of the banking accounts held by the former with the latter.
2. For further or alternative relief.
3. For costs of suit as against any respondent(s) entering opposition to this application, jointly and severally, the one paying the other to be absolved.

TAKE NOTICE FURTHER that the affidavit of PRAVIN JAMNADAS GORDHAN and its annexures will be used in support of this application.

TAKE FURTHER NOTICE that if you intend opposing this application you are required:

- (a) to notify the applicant's attorneys, in writing, no later than five days after delivery hereof; and
- (b) within fifteen days thereafter to deliver any answering affidavit.

TAKE NOTICE FURTHER that you are required to appoint in the notification referred to in (a) above an address referred to in Rule 6(5)(b) of the Uniform Rules of Court at which you will accept notice and service of all documents in these proceedings (preferably an email address).

TAKE FURTHER NOTICE that if no such notice of intention to oppose is given, the application will be set down for hearing on a date and at a time to be arranged with the Registrar of the above Honourable Court, not being less than ten days after service of this notice of motion.

SIGNED AT PRETORIA ON 13 OCTOBER 2016



STATE ATTORNEY

Attorney for the applicant

SALU Building

255 Francis Baard Street

Pretoria

Tel: 012 309 1575

Fax: 012 309 1649

Email: TNhlanzi@justice.gov.za

Ref: Ms T Nhlanzi

TO: THE REGISTRAR
High Court, Pretoria

744

AND TO: OAKBAY INVESTMENTS (PTY) LTD
First Respondent
Grayston Ridge Office Park, Block A
Lower Ground Floor,
144 Katherine street, Sandown
Sandton
Telephone: +27(0)11 430 7640
FAX: +1 0123-4567-8900
E-mail: info@oakbay.co.za

AND TO: OAKBAY RESOURCES AND ENERGY LTD
Second Respondent
89 Gazelle Avenue
Corporate Park South
Midrand

AND TO: SHIVA URANIUM (PTY) LTD
Third Respondent
1A BERG STREET
Hartebeesfontein
North West. 2600
Tel: 0184679000
Fax: 018 467 9040

AND TO: TEGETA EXPLORATION AND RESOURCES (PTY) LTD
Fourth Respondent
Grayston Ridge Office Park, Block A
Lower Ground Floor,
144 Katherine Street, Sandown
Sandton
Tel: 011 542 1000
Fax: 011 262 3868

AND TO: JIC MINING SERVICES (PTY) LTD
Fifth Respondent
JIC House
16th Road
MIDRAND

AND TO: BLACKEDGE EXPLORATION (PTY) LTD
Sixth Respondent
89 Gazelle Avenue
Corporate Park South
MIDRAND

AND TO: TNA MEDIA (PTY) LTD
Seventh Respondent
52 Lechwe Street
Corporate Park South
Old Pretoria Main Road
MIDRAND
1685
TEL: 011 542 1222
FAX: 086 733 7000

AND TO: THE NEW AGE
Eighth Respondent
52 Lechwe Street
Corporate Park South
Old Pretoria Main Road
MIDRAND
1685
TEL: 011 542 1222
FAX: 086 733 7000

AND TO: AFRICA NEWS NETWORK (PTY) LTD
Ninth Respondent
Fourth Floor, Sandown Mews
88 Stella Street, Sandton,
Johannesburg
TEL: 011 542 1222
FAX: 086 733 7000

AND TO: VR LASER SERVICES (PTY) LTD
Tenth Respondent
Grayston Ridge Office Park, Block A
Lower Ground Floor,
144 Katherine Street, Sandown
Sandton

AND TO: ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD
Eleventh Respondent
89 Gazelle Avenue
Corporate Park South
Old Johannesburg Road
Midrand
1685

AND TO: CONFIDENT CONCEPT (PTY) LTD
Twelfth Respondent
89 Gazelle Avenue
Corporate Park South
Old Johannesburg Road
Midrand
1685

AND TO: JET AIRWAYS (INDIA) LIMITED (INCORPORATED IN INDIA)
Thirteenth Respondent
5th Floor, Bedford Centre Office Tower
Smith Road
Bedford Gardens
2008
Johannesburg

AND TO: SAHARA COMPUTERS (PTY) LTD
89 Gazelle Avenue
Corporate Park South
Old Johannesburg Road
Midrand
1685

AND TO: ABSA BANK LTD
Fifteenth Respondent
7th Floor
Barclays Towers West
15 Troy Street
Johannesburg

AND TO: FIRST NATIONAL BANK LTD
Sixteenth Respondent
6th Floor, 1 First Place
FNB Bank City
Simmonds Street
Johannesburg

AND TO: STANDARD BANK OF SOUTH AFRICA
Seventeenth Respondent
9th Floor
Standard Bank Centre
5 Simmonds Street
Johannesburg

AND TO: NEDBANK LIMITED
Eighteenth Respondent
G Block
3rd Floor Desk
135 Rivonia Rd
Sandown
Sandton

AND TO: THE GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK
Nineteenth Respondent
370 Helen Joseph Street
Pretoria

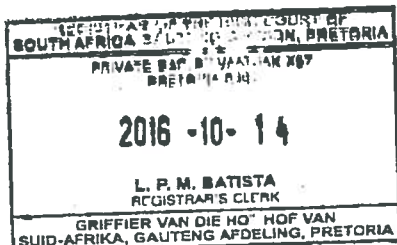
AND TO: THE REGISTRAR OF BANKS
Twentieth Respondent
370 Helen Joseph Street
Pretoria

AND TO: DIRECTOR OF THE FINANCIAL INTELLIGENCE
CENTRE
Twenty First Respondent
Woodhill Centre
St. Bernard Drive
Garsfontein
Pretoria

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case no /2016

In the matter between:



MINISTER OF FINANCE

Applicant

And

OAKBAY INVESTMENTS (PTY) LTD	First Respondent
OAKBAY RESOURCES AND ENERGY LTD	Second Respondent
SHIVA URANIUM (PTY) LTD	Third Respondent
TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Fourth Respondent
JIC MINING SERVICES (PTY) LTD	Fifth Respondent
BLACKEDGE EXPLORATION (PTY) LTD	Sixth Respondent
TNA MEDIA (PTY) LTD	Seventh Respondent
THE NEW AGE	Eighth Respondent
AFRICA NEWS NETWORK (PTY) LTD	Ninth Respondent
VR LASER SERVICES (PTY) LTD	Tenth Respondent
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD	Eleventh Respondent
CONFIDENT CONCEPT (PTY) LTD	Twelfth Respondent

JET AIRWAYS (INDIA) LTD (INCORPORATED IN INDIA)	Thirteenth Respondent
SAHARA COMPUTERS (PTY) LTD	Fourteenth Respondent
ABSA BANK LTD	Fifteenth Respondent
FIRST NATIONAL BANK LTD	Sixteenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-First Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

PRAVIN JAMNADAS GORDHAN

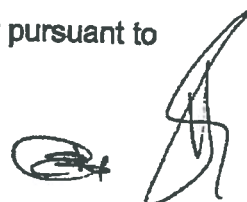
solemnly affirm that:

1. I am the Minister of Finance, and in that capacity also head of the National Treasury of South Africa, and the applicant in this matter. I was appointed to this position in December 2015 (having previously served in the same capacity for over five years from 2009 to 2014).
2. The contents of this affidavit are, save where the context indicates



otherwise, within my personal knowledge or derived from records and information under my control. They are true and correct. Where I make legal submissions this is based on advice by my legal representatives.

3. This is an application for declaratory relief arising from a dispute relating to powers of intervention by Government in relation to the closing of private clients' accounts by registered banks. This dispute has arisen in circumstances which have considerable importance for the operation of the banking sector of the South African economy, and its regulation by Government. The related controversy has received both national and international attention, and it is clearly in the public interest, the interest of the affected clients and relevant banks, and employees of both that it be authoritatively resolved.
4. The first to fourteenth respondents are registered companies in the Oakbay group of companies (collectively, "Oakbay"). Their names, registered offices and principal places of business within the jurisdiction of this Court are reflected in the notice of motion. To avoid prolixity these details are not repeated here.
5. The fifteenth to the eighteenth respondents are registered South African banks (collectively, "the banks"). Their names, registered offices and principal places of business are likewise reflected in the notice of motion.
6. The nineteenth respondent, the Governor of the South African Reserve Bank ("Reserve Bank"), is cited by virtue of any interest he may have in this application. The twentieth respondent, the Registrar of Banks, is cited by virtue of any interest he may have in this application, in particular pursuant to

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the provisions of sections 4 and 7 of the Banks Act 94 of 1990. The twenty first respondent, the Director of the Financial Intelligence Centre, is similarly cited pursuant to any interest he may have in the application pursuant to the Financial Intelligence Centre Act 21 of 2001 (FICA).

7. In April 2016 it was publicly announced on behalf of Oakbay, controlled at the time by the Gupta family, that their banking accounts had been closed by the banks. Oakbay also announced that its auditors, KPMG, and its sponsor on the Johannesburg Stock Exchange, Sasfin, have similarly terminated their relationships with Oakbay.
8. According to a series of public statements by Oakbay, its executives thereafter engaged in urgent approaches to their bankers with a view to clarifying the basis on which they each took the individual decision to close Oakbay's accounts. At the same time Oakbay made public statements contending that the banks had acted irregularly, and indeed improperly, in closing the accounts.
9. Oakbay also proceeded to direct representations and demands to me as the Minister of Finance. In short, Oakbay demanded that on behalf of Government I intervene with the banks to achieve a reversal of their decisions. In a first letter to me dated 8 April 2016, Oakbay contended that "the unexplained decision of a number of banks, and of our auditors, to cease working with us", was

"the result of an anti-competitive and politically-motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have



decided to close our business accounts. ... As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks."

10. I attach a copy, marked "A". Naturally these serious allegations were a source of concern, particularly in view of the number of jobs (7 500) stated by Oakbay to be at risk.
11. A further letter followed on 17 April 2016 (attached, marked "B"). It offered "our deepest apology and regret" if the first letter had come across other than an appeal for assistance to save jobs. It asked to be advised "about any possible assistance you are able to offer us in these trying times". The letter was closely followed by two open letters, one to the CEOs of the banks and one in similar terms to me, on behalf of two "employee representatives".
12. In my capacity as Minister of Finance, I was concerned to explore any respect in which I could properly, in terms of law, address the situation arising from Oakbay's serious allegations concerning the banks, and the job losses it predicted as imminent. To that end a meeting was arranged on 24 May 2016 with Oakbay representatives, senior Treasury officials and myself. Prior to the meeting, I had taken steps to obtain independent legal advice by senior counsel in important respects relevant to the apparent issues. This advice was provided in an opinion by senior and junior counsel dated 25 April 2016. I attach a copy, marked "C".
13. For brevity I do not repeat at length the contents of that legal advice. I ask that annexure C be regarded as incorporated herein. In short, counsel advised that the National Executive (comprising Cabinet and such individual



Ministers as may be appointed by the President) are governed by the Constitution and national legislation. They are accordingly entirely "creatures of statute" with only such powers as the law itself confers on them. Nothing in law, the opinion advised, authorised governmental intervention with the banker-client relationship arising by contract. The opinion also emphasised the obligations imposed by the Basel Committee on Banking Supervision at the Bank of International Settlements on South African banks. The Committee had imposed an international duty regarding know-your-customer (KYC) standards. I was further advised that required KYC policies and practices "not only contribute to a bank's overall safety and soundness", but also "protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money-laundering, terrorist financing and other unlawful activities." (These aspects are addressed more fully in paras 17-19 of the opinion.) These principles, I was further advised, are given effect to in domestic law by the FICA. In addition, the Banks Act imposes reporting duties, requires the Registrar of Banks under certain circumstances to disclose information reported to him to third parties, and contemplates that any concerns regarding the banking sector be communicated by the Registrar to *inter alios* the Minister of Finance (paras 19-21 of the opinion).

14. South African banks not complying with their Basel or domestic duties are furthermore subject to fines by foreign and domestic authorities, and to steps being taken against them outside and inside South Africa.



15. On 24 May 2016, following my meeting with Oakbay's CEO, Mr Nazeem Howa, I wrote to him. I attach a copy of the letter, marked "D". I again ask that it and its attached *aide memoire* be regarded as incorporated herein. My officials and I sought to provide assistance by attaching an information document explaining in outline the regulatory framework governing the banking and financial sectors. I also drew attention to sources of further information, both nationally and internationally. The letter reiterated the legal impediments to any registered bank discussing client-related matters with me or any third party. I stressed that "the Minister of Finance cannot act in any way that undermines the regulatory authorities". I encouraged Oakbay to achieve a determination of its contentions by approaching a court. Finally I requested Oakbay to desist from its attacks on the integrity of National Treasury, in the public interest.
16. Also on 24 May 2016 I received a letter from Oakbay, attached marked "E". Oakbay here significantly places on record that on its own legal advice, any legal approach by it challenging the closure of the accounts or the basis on which this had been effected "may indeed be still-borne". It is further apparent that Oakbay recognised that "as case law suggests, [any legal approach] will fail in a court of law". The letter however both asserts a continued intention by Oakbay to "appeal to you for assistance", and a suggestion that the banks had closed the accounts without "any indication of any wrongdoing on our side ... we have done nothing wrong".



17. In view of Oakbay's persistence in its stance, I sought further advice from senior and junior counsel. I attach a copy of their additional opinion, dated 29 May 2016 as annexure "F".
18. On 28 June 2016, I received a further Oakbay letter, this time from the CEO of Sahara, the fourteenth respondent, again apologising for public statements made in the media but also again pressing me "to serve the national purpose". I attach a copy marked "G".
19. The continued assertions by Oakbay that, as Minister of Finance, I should intervene in, or exert pressure upon, the banks regarding their closure of the Oakbay accounts is harmful to the banking and financial sectors, to the regulatory scheme created by law, and the autonomy of both the governmental regulators and the registered banks themselves. It is well-known that the international financial environment has been extremely difficult since 2008. The proper conduct of the financial regulatory scheme is clearly in the public interest. So too are the jobs of the affected individuals (which Oakbay has variously estimated at 6 000, 7 500 or 15 000), for which I as Minister of Finance would always have a considerable concern, as well as the serious allegations detailed above contending that the banks have acted irregularly and indeed quite improperly in terminating the accounts. As I have indicated, my encouragement to Oakbay that its contentions be established in a court of law have been resisted. Oakbay indeed placed it on record that its own "detailed" legal advice from several sources was that it had no basis to challenge the banks' decisions. (Inconsistently with this, as will become apparent, Oakbay has more recently suggested that it may well



yet seek to turn to the courts, evidently at a time of its choosing). This notwithstanding, as will be apparent from the foregoing, Oakbay has persisted in its allegations, and the dispute regarding my capacity in particular to intervene with the banks has continued.

20. Given Oakbay's failure to approach the courts, or any commitment to do so, on 28 July 2016 I wrote both to the Registrar of Banks (the twentieth respondent) and to the director of FIC (the twenty first respondent). I attach copies of these letters marked "H" and "I". I should note that I had previously received a letter from the nineteenth respondent, dated 26 April 2016, in which the Governor of the Reserve Bank raised his independent concerns regarding the deleterious effect on the banking sector of the contentions made by Oakbay. I attach a copy marked "J".
21. To my letters "H" and "I" I received the response I annex marked "K".
22. It is evident that, notwithstanding the assertion by Oakbay on 24 May 2016 that it holds the "view that we have done nothing wrong" and that "no bank has given us any indication of any wrongdoing on our side", each of the banks has considered itself under a legal duty pursuant to the international and domestic statutory instruments applying to it to report over a significant period matters regarding the conduct of Oakbay accounts such as to fall within the purview of these instruments.
23. That Oakbay itself is aware of this is apparent from the following public statement made by Mr Howa in an interview with *Carte Blanche* (an investigative television production) screened by M-Net on 19 June 2016. Mr



Howa divulged that one of the banks closing accounts had given the following reasons, when requested by Oakbay to do so:

"Without waiving our rights not to furnish reasons for our decision [and] without inviting any debate about the correctness of our decisions, I point out that the law, inclusive of South Africa's Companies Act, Regulation 43 [sic], Prevention of Organised Crime Act, Prevention and Combating of Corrupt Activities Act and the Financial Intelligence Centre Act, as well as the USA's Foreign Corrupt Practices Act and UK's Bribery Act, prevent us from having dealings with any person or entity who a reasonably diligent (and vigilant) person would suspect that such dealings could directly or indirectly make us a party to or accessory to contraventions of that law."

24. Should Oakbay challenge the proposition that any or all of the banks was indeed bound by law to report under FICA in such terms, it is open to Oakbay in terms of section 29(4)(c) or (d) of FICA to require the banks to disclose to this Court the full contents each of the reports in question. If the banks have acted lawfully and within the parameters of their statutory duty these should evidence the bases on which each reporting bank has concluded that the dealings in question could directly or indirectly make that bank a party to or accessory to contraventions of law. Conversely, the full reports, if disclosed pursuant to FICA, would confirm whether there is any substance to the serious contentions advanced by Oakbay that the banks have acted improperly in closing the accounts.
25. Similarly, I am advised, it is open to the banks in answering this application to disclose such reports in terms of the same provisions.



26. On 25 July 2016 my office received a further letter from Mr Howa, a copy of which I attach marked "L". I responded on 10 August 2016 in the terms apparent from annexure "M", stressing the need for a satisfactory answer from Mr Howa in writing by Friday 12 August 2016. To this Mr Howa replied on 17 August 2016 (a copy of which I attach marked "N"), simply to the effect that he was "currently out of the country", and that he would not meet this timeframe. I received no further communication, until an email dated 9 September 2016, a copy of which I attach marked "O". In this Mr Howa expressed the view that it would be "preferable" again to meet, ostensibly to consider a "full file of correspondence" (which, despite my previous request, he still had not produced). He stated that the meeting would add "considerable flavour" to the correspondence. I gave careful consideration (taking into account legal advice) to the appropriateness of another meeting, for the purpose intended by Mr Howa. There has been no such further meeting. Oakbay still has failed to produce the documentation to which Mr Howa has referred, and still has not provided the satisfactory answer (referred to above).
27. Previously, on 4 August 2016, I had received a letter with an attached certificate from the Director of the FIC. I attach a copy, marked "P1" and "P2". This reflects the increasingly serious state of affairs which has arisen. This is illustrated by the number and scale of reported transactions linked to Oakbay. Just one example is the reporting of an amount of R1,3 billion as a suspicious transaction, in terms of the FICA, relating to Optimum Mine Rehabilitation Trust. Indeed, as appears from the further attached letter of 27 June 2016 (annexed, marked "Q") from attorneys acting for the business



rescue practitioners of Optimum, "with the written approval of the Department of Mineral Resources" R1,3 billion was intended to be transferred from the account closed by Standard Bank to the Bank of Baroda. For this the further approval of the Reserve Bank was sought. I am not aware as to whether the transfer to the Bank of Baroda was effected from the closed Optimum account held by Standard Bank. This is a matter that may be clarified by the Reserve Bank and Standard Bank.

28. It is important that payment of funds to a mining rehabilitation trust in principle qualifies for a tax deduction in the hands of a taxpayer. In turn the mining rehabilitation trust is exempt from tax. If those funds from the trust were to spent on anything other than genuine mining rehabilitation, it will expose the fiscus not only to the loss of tax revenue and also put the burden of mining rehabilitation on the fiscus.
29. Given the circumstances I have described, the grant of the declaratory orders sought is called for, in the public interest. The continued public assertions that registered banks within the regulatory environment in South Africa acted for no adequate reason, irregularly and indeed for improper reasons in closing accounts are harmful to the reputation for integrity of South Africa's financial and banking sectors. So too is the continued uncertainty arising from Oakbay's simultaneous disinclination itself to seek a court's ruling. That uncertainty is prejudicial, as stated, to financial stability and the standing of the South African regulatory authorities, the operation of the banking and financial sectors, the South African economy at large and the employees whose interests Oakbay invokes.



30. I accordingly ask for an order in terms of the notice of motion. I respectfully submit that it would be both in the public interest and in the interests of justice for this application to be heard and determined on as expeditious a basis as is possible. In this regard, I understand that a request will be directed to their Lordships the Judge President and the Deputy Judge President.



PRAVIN JAMNADAS GORDHAN

I certify that this affidavit was signed before me at PRETORIA on this the 13th day of October 2016 by the deponent who acknowledged that he knew and understood the contents of this affidavit, and solemnly affirmed the truth of thereof.



COMMISSIONER OF OATHS

Name:

ELEANOR DELAINE GROENENWALD
COMMISSIONER OF OATHS

Address:

EX OFFICIO
SA POLICE SERVICE LEGAL OFFICIAL
PRESIDIA BUILDING 255 PAUL KRUGER STREET
PRETORIA

Capacity:



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case no. 80978/16

In the matter between:

MINISTER OF FINANCE

First applicant

and

OAKBAY INVESTMENTS (PTY) LTD

First respondent

OAKBAY RESOURCES AND ENERGY LTD

Second respondent

SHIVA URANIUM (PTY) LTD

Third respondent

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Fourth respondent

JIC MINING SERVICES (PTY) LTD

Fifth respondent

BLACK EDGE EXPLORATION (PTY) LTD

Sixth respondent

TNA MEDIA (PTY) LTD

Seventh respondent

THE NEW AGE

Eighth respondent

AFRICA NEWS NETWORK (PTY) LTD

Ninth respondent

VR LASER SERVICES (PTY) LTD

Tenth respondent

ISLANDSITE INVESTMENTS 180 (PTY) LTD

Eleventh respondent

CONFIDENT CONCEPTS (PTY) LTD

Twelfth respondent

JET AIRWAYS (INDIA) LTD

Thirteenth respondent

SAHARA COMPUTERS (PTY) LTD

Fourteenth respondent

ABSA BANK LTD

Fifteenth respondent

FIRST NATIONAL BANK LTD
respondent

Sixteenth

STANDARD BANK OF SOUTH AFRICA LIMITED

Seventeenth respondent

NEDBANK LIMITED

Eighteenth respondent

GOVERNOR OF THE SOUTH AFRICAN

RESERVE BANK

Nineteenth respondent

REGISTRAR OF BANKS

Twentieth respondent

DIRECTOR OF THE FINANCIAL INTELLIGENCE
CENTRE

respondent

Twenty-first

AFFIDAVIT

I, the undersigned,

PRAVIN JAMNADAS GORDHAN

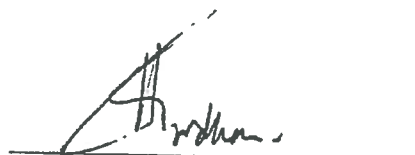
solemnly affirm that:

1. I am the Minister of Finance, and the deponent to the founding affidavit filed in this case.
2. The contents of this affidavit are, save where the context indicates otherwise, within my personal knowledge or derived from records and information under my control. They are true and correct.
3. In paragraph 11 of the founding affidavit I referred to "two open letters, one to the CEOs of the banks and one in similar terms to me, on behalf of two 'employee representatives'". In terms of a notice filed pursuant to Rule 35(12), Oakbay's attorneys have *inter alia* requested a copy of both letters. I confirm paragraph 3 of the response to that notice, recording that "[t]he reference to 'two open letters' was by



error" made in the compilation of the affidavit. The only open letter in my possession is the one to the Banks CEOs which was forwarded to me.

4. I depose to this affidavit to correct that error in the formulation of the affidavit.



PRAVIN JAMNADAS
GORDHAN

I certify that this affidavit was signed before me at PRETORIA on this the 1st day of November 2016 by the deponent who acknowledged that he knew and understood the contents of this affidavit, and solemnly affirmed the truth of thereof.




COMMISSIONER OF OATHS

Name: PATIENCE MNISI

Address: 255 PAUL KLUWER STREET
SAPS HEAD OFFICE

Capacity: EX OFFICIO COMMISSIONER OF OATH
MAJOR GENERAL SAPS LEGAL
SERVICES.

Minister's Office
Ministry of Finance
120 Plain Street
Cape Town

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Dear Minister Pravin Gordhan,

**RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES**

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.



Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

By doing so, they hope to end the political campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Nazeem Howa

CEO, Oakbay Investments



17th April 2016

The Hon. Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

RE: Apology

Let me start with our deepest apology and regret if our recent letter to you came across in any way other than a heartfelt appeal for assistance to save the 7500 jobs within our group following the decision by financial institutions to cut ties with us.

I watched your interview with Richard Quest on CNN last week Thursday and thought I should offer my sincere apologies to you as it was never our intention to come across with any other message other than a plea to you as political head for the financial sector to assist us in avoiding this huge impact on the lives of around 50 000 people, if we include families of our employees.

With your long history as a leader within our democratic struggle, I know you hold the livelihoods of our people very dear to your heart and would hope you would accept our unequivocal apology. I am sure you would agree that our fragile economy cannot in any way afford a single unnecessary job-loss, never mind the 7500 people which would be affected should we not be able to reverse the current hardline stance taken by the institutions.

As you are aware the shareholder has resigned all executive and non-executive roles in our group as a move to address the concerns of the parties about possible association risk, yet we have found the response from the institutions to be intransigent, even in the face of the real threat of significant job losses and the concomitant impact on our economy.

Given your strong relationship with the captains of industry, I would implore you to help us to save the jobs which, in addition to the personal benefit to the affected individuals, we believe is in the best interest of our economy and more broadly our country's overall development.

I look forward to hearing from you about any possible assistance you are able to offer us in these trying times.

Yours sincerely



Nazeem Howa
Chief Executive; Oakbay Investments



STRICTLY CONFIDENTIAL AND LEGALLY PRIVILEGED

Ex parte: MINISTER OF FINANCE

**In re: INTER-MINISTERIAL COMMITTEE IN RESPECT OF
ALLEGATIONS LEVELLED AGAINST FINANCIAL
INSTITUTIONS**

OPINION

**J.J. GAUNTLETT SC
F.B. PELSER**

**Chambers
Cape Town**

25 April 2016

A handwritten signature, possibly of F.B. Pelsner, is written in the bottom right corner of the page. It consists of a stylized, cursive script.

Introduction

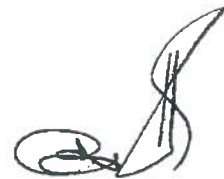
1. Our consultant is the Minister of Finance ("the Minister").
2. We have been asked to provide urgent advice on the power of members of the National Executive, in particular the Minister, to intervene in banker-client relationships. This is the essential question for advice. Eight related and ancillary issues have been identified in our instructions for consideration:
 - (i) the contractual rights of banks to choose their customers, particularly in the light of requirements relating to international anti-money-laundering, combatting the financing of terrorism (AML-CFT), and politically-exposed persons (PEPs);
 - (ii) Government's potential exposure of South African banks to fines by the UK and USA authorities, where they are perceived to be weak on FATF standards and in the context of South African banks having previously been fined by the UK's Financial Conduct Authority and Barclays PLC in its latest results noted that ABSA had lodged suspicious transaction reports without much response from the South African prosecuting authorities; and the potential effect of a large fine against a South African bank by the US or UK authorities to undermine South Africa's financial stability objective, sparking a 2008-type economic crisis in South Africa;
 - (iii) whether banks can disclose information to the Minister regarding individual clients in terms of the Protection of Personal Information Act; and whether banks can provide such information to anyone else, like the SARB or the Bank



Supervision Department, the Financial Services Board, the Financial Intelligence Centre, or SARS;

- (iv) whether any provision in the Banks Act provides for intervention by the Minister in a specific banker-client relationship;
- (v) whether the Oakbay-case fits within the remit of the Banking Ombudsman;
- (vi) what a reasonable period is for banks to give to clients when terminating banker-client relationships;
- (vii) how de-risking by banks may undermine Governments' (unlegislated) financial-inclusion objective (which strives to ensure that all people have access to banking services); and
- (viii) how a meeting with the banks by the Minister (and Government) may undermine Government's legislation (especially the financial sector framework legislation); whether this will set a precedent for anyone else experiencing a problem with any bank; and, more importantly, whether such meeting may undermine the statement made by the Deputy Minister of Finance on the offer made to him by significant owners of Oakbay, and whether this charge should not be investigated first.

3. As appears from the above issues, the request for advice arises in the context of a recent delegation by Cabinet of three members (the Minister of Labour, the Minister of Mineral Resources, and the Minister of Finance) to engage a number of major South African commercial banks. The stated intention, as reported in the media, is to "open constructive talks to find lasting a solution" after the closure of bank accounts held by



Oakbay Investments, an entity owned by the Gupta family.

4. We have been briefed with correspondence between the Minister of Mineral Resources and the Minister of Finance; a circular by the Ombudsman for Banking Services on the closure of bank accounts; and a 2011 National Treasury Policy document titled "A safer financial sector to serve South Africa better". To the extent necessary we refer to some of these documents in the analysis below.
5. For the reasons set out in the analysis which follows we advise that there is no legal basis on which Government may interfere in the banker-client relationship; the banks are required to honour their confidentiality obligations to its current and former customers, and are therefore likely to respond, correctly, that they are precluded by law from answering questions the Ministers may pose; the mooted meeting is likely to cause unintended consequences and adverse perceptions regarding Government's adherence to the relevant principles governing banker-client relationships, international norms and best practice.

Analysis

6. The issues for advice turn on the correct legal framework governing banker-client relationships, and the powers of the Executive. We accordingly deal briefly with each in turn before addressing the specific questions for advice.

Banker-client relationships



7. It is well-established, as our instructions indeed recognise, that the banker-client relationship is governed by the private law of contract.¹ Whether the contractual nature of the relationship is unique (*sui generis*), or one of *mandatum* (mandate) – or some other specific contract – is immaterial for present purposes.² It suffices that the banker-client relationship is governed by the law of contract. This does not, however, mean that public law and statutory enactments do not impact on the contractual relationship. They of course do.³ But it does mean that unless authorised to interfere with the contractual relationship, third parties who intentionally intervene in the banker-client relationship perpetrates a private law wrong (a delict), which is actionable.⁴
8. It is an implied term in the contract between a bank and its customer that the bank is under a duty not to disclose information concerning the customer's affairs.⁵ This duty is not absolute, however. A banker may disclose information about the affairs of a

¹ *Moorcroft Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–1.

² As regards the different constructs, see e.g. Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403; *Moorcroft Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–2ff.

³ See e.g. *Pinto v FNB* 2013 (1) NR 175 (HC) at para 93, in which the Namibian High Court held that the relevant provisions of the Namibian Financial Intelligence Act and Prevention of Organised Crime Act “are to be regarded as terms imposed by law on the traditional banker-client relationship and that contractual bond that exists between them.”

⁴ This applies also after the termination of the contractual relationship, should the interference amount to increasing (or imposing) a contractual obligation which would otherwise have expired (cf Neeshling *et al* *Law of Delict* 6th ed (LexisNexis, Durban 2010) at 306).

⁵ *FirstRand Bank Ltd v Chaucer Publications (Pty) Ltd* 2008 (2) SA 592 (C) at para 20; *GS George Consultants and Investments (Pty) Ltd v Datasys Ltd* 1988 (3) SA 726 (W) at 735D, not affected in this respect by *Densam (Pty) Ltd v Cywillnat (Pty) Ltd* 1991 (1) SA 100 (A).

client under four circumstances.⁶ First, where the bank acts under legal compulsion. Second, where the bank is under a public duty to make the disclosure. Third, where the interests of the bank require disclosure. Fourth, where the disclosure is made by the express or implied consent of the client. When a legal compulsion or public duty arises is addressed below in dealing with the third ancillary issue.

9. The contractual relationship may be terminated either by mutual agreement (between the parties to the contract), or by one party only (acting unilaterally).⁷ Nonetheless, contracts generally provide expressly for a unilateral right to cancel.⁸ Accordingly the reference to "certain allegedly unilateral actions"⁹ is – to the extent that it implies that the *unilateral* nature of the "actions"¹⁰ is a cause for concern or recourse – misconceived. The correct legal position, on the recent authority of the Supreme Court of Appeal (affirmed by the Constitutional Court's dismissal of an attempt to appeal the ruling) is explicitly that a bank may indeed unilaterally close a client's account.¹¹

⁶ Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345. See, too, clause 6.1 the Code of Banking Practice, which adds two more instances (an account being in default; and a cheque having been referred to drawer).

⁷ Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403.

⁸ Moorcraft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–29.

⁹ In the 20 April 2016 letter by the Minister of Mineral Resources, which was delivered only two days later to the Minister of Finance.

¹⁰ This is evidently a reference to the closure of Oakbay's bank accounts.

¹¹ *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 64.

"This leaves for consideration the question whether the Bank had (in terms of the relief presently sought) good cause to close the accounts. The bank had a contract, which is valid, that gave it the right to cancel. It perceived that the listing created reputational and business risks. It assessed those risks at a senior level. It came to a conclusion. It exercised its right of termination in a *bona fide* manner. It gave the appellants a reasonable time to take their business elsewhere. The termination did not offend any identifiable constitutional value and was not otherwise contrary to any other public policy consideration. The bank did not publicise the closure or the reasons for its decision. It was the appellants who made these facts public by launching the proceedings and requiring the Bank to disclose the reasons."

10. A bank must, however, give reasonable notice of its intention to terminate a client's account.¹² But the right to terminate is not lost by failing to provide reasonable prior notice – the termination of the account is merely delayed in the event of premature purported closure.¹³ This is because “a party to an ongoing contractual relationship terminable on notice should never be denied the right to cancel in terms of the contract, especially when it perceives that the future of the relationship will not be in its interests.”¹⁴
11. Terminating the banker-client relationship does not, however, terminate the bank's duty not to reveal information of a previous client.¹⁵

The powers of the Executive

12. It is by now well-established that the powers and duties of the National Executive are governed by the Constitution and national legislation. Ministers, in short, are entirely “creatures of statute”, as the legal principle is expressed. This means they have no inherent powers, only powers given to them by law. The principle of legality, which is a crucial component of the rule of law (which itself, in turn, is a founding value of the Constitution),¹⁶ provides that an organ of State has no power other than that

¹² We revert to this in addressing the sixth ancillary issue.

¹³ *Cf Moorcroft Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–31.

¹⁴ *Ibid.*

¹⁵ Clause 6.1 the Code of Banking Practice; Jonbert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403 fn 19.

¹⁶ Section 1(c) of the Constitution.

conferred by law.¹⁷ It requires that public power be exercised in good faith, and that powers not be misconstrued or used for purposes other than intended.¹⁸

13. Although ancillary powers not expressly provided may be inferred, this may only be done where this is necessary by implication in order to give efficacy to express powers.
14. The purported exercise of powers by a member of the executive arm of government which is not authorised by law is unlawful, and may be resisted by a private entity—even without first setting aside the purported exercise of public power.¹⁹

Overarching question for advice: The power of Cabinet to intervene in banker-client relationships

15. From the above the answer to the fundamental question is clear. It is that save to the extent that this is authorised by law, no Cabinet member (or Cabinet collectively) has any power to intervene in the banker-client relationship. As a matter of public law any such intervention is unlawful and may be ignored by a private entity without seeking legal recourse. As a matter of private law any such intervention constitutes a delict,²⁰ which may result in a claim for damages or other legal remedy (like an interdict).

¹⁷ *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC) at para 56.

¹⁸ *President of the Republic of South Africa v South Africa Rugby Football Union* 2000 (1) SA 1 (CC) at para 148.

¹⁹ See e.g. *City of Tshwane Metropolitan Municipality v Cable City (Pty) Ltd* 2010 (3) SA 589 (SCA) at para 14; *City of Cape Town v Helderberg Park Development (Pty) Ltd* 2008 (6) SA 12 (SCA) at para 50.

²⁰ *Neethling et al Law of Delict* 6th ed (LexisNexis, Durban 2010) at 306.

16. Whether a legal basis for intervention by Cabinet members exists is considered in addressing some of the additional issues identified in our instructions (particularly the fourth), to which we now turn.

First additional issue: Contractual rights of banks to choose their customers

17. Banks do not only have a contractual entitlement, but also a legal obligation to choose their customers carefully. It is a continuing duty, and banks' right to protect their own reputation has been recognised as a valid basis for terminating the banker-client relationship.²¹
18. The Basel Committee on Banking Supervision at the Bank of International Settlements considers that "the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money laundering".²² The Committee recognises as an essential part of banks' risk management practices the adoption of effective know-your-customer (KYC) standards. Proper KYC policies and practices "not only contribute to a bank's overall safety and soundness", but also "protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money-laundering, terrorist financing and

²¹ *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at paras 17-19, holding that "reputation is not necessarily based on fact, but often on perception."

²² Prevention of criminal use of the banking system for the purpose of money-laundering (December 1988) available at <http://www.bis.org/publ/bcbsc137.htm>.

other unlawful activities.”²³

19. In practice banks give effect to their KYC obligation by adopting client-acceptances policies.²⁴ These include *inter alia* minimum standards for establishing and terminating banker-client relationships. These policies generally apply a risk-based approach which focuses on clients with high risk profiles, as indicated by factors like the identity and characteristics of the client; country of origin; the banking product used; and the delivery channel for the business which is being conducted.²⁵ Examples of factors which increases reputational risk to a bank include any business involvement on the part of the client in arms trading; human rights abuses; environmental damage or pollution; undemocratic political regimes.²⁶ An important high risk factor is political exposure. So-called “politically exposed persons” (PEPs)²⁷ are *per se* high-risk customers.²⁸
20. Under South African law these principles are given effect to by the Financial Intelligence Centre Act 38 of 2001 (FICA). It imposes a duty on an accountable institution to identify and verify new and existing customers, to keep records of certain information, and to report certain transactions and situations. This reporting duty

²³ *Ibid.*

²⁴ Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 9-1.

²⁵ *Id* at 9-3.

²⁶ *Ibid.*

²⁷ PEPs are individuals who are or who have been entrusted with prominent public functions, such as heads of state; senior politicians; senior government, judicial or military officials; senior executives of public organisations; and important political party officials (*id* fn 9).

²⁸ Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 9-5.

overrides a bank's duty of confidentiality towards its client. But the duty is to report to the Financial Intelligence Centre – not to Cabinet. Thus, the duty under FICA is for banks to know their clients (which implies an entitlement to terminate a banker-client relationship when reputational risks arise), but banks have no right or duty to keep Cabinet in the know of their clients' (or their own) affairs.

21. To this the Banks Act adds further duties to guard against banks being misused for purposes of market abuse.²⁹ The Banks Act imposes certain reporting duties on banks. Again the duty is not to report to the National Executive, or any Cabinet member. The Banks Act designates the Registrar of Banks as the only authority to whom information must be furnished under the Act.³⁰ The Registrar may under certain circumstances disclose information reported to him to third parties.³¹ The Banks Act contemplates that should there be any concerns regarding the banking sector this be communicated by the Registrar to *inter alios* the Minister.³²

²⁹ Section 60A of the Banks Act.

³⁰ Section 7 of the Banks Act.

³¹ Section 90 of the Banks Act provides

"Notwithstanding the provisions of section 33 (1) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar may furnish information acquired by him or her as contemplated in that section –

- (a) to any person charged with the performance of a function under any law, provided the Registrar is satisfied that possession of such information by that person is essential for the proper performance of such function by that person; or
- (b) to an authority in a country other than the Republic for the purpose of enabling such authority to perform functions, corresponding to those of the Registrar under this Act, in respect of a bank carrying on business in such other country:

Provided that the Registrar is satisfied that the recipient of the information so provided is willing and able to keep the information confidential within the confines of the laws applicable to the recipient."

³² Section 90(2) provides

"The Registrar must inform the Minister and the Governor of the South African Reserve Bank of any matter that in the opinion of the Registrar may pose significant risk to the banking sector, the economy, financial stability or financial markets more generally."

22. It is therefore not consistent with the scheme of the Banks Act or FICA to confer a power on the Minister to extract confidential information from banks.

Second additional issue: Exposure of South African banks to fines by foreign authorities

23. Our instructions identify serious concerns regarding compliance with Financial Action Task Force (FAFT) criteria, and the consequences of non-compliance. Within the South African regulatory regime these are addressed by the Reserve Bank's Directive for Conduct within the National Payment System in respect of the Financial Action Task Force Recommendations for Electronic Fund Transfers, and other measures supported by the Reserve Bank. What these measures essentially require is compliance with KYC principles,³³ to which we have already referred.
24. It is accordingly important that South African commercial banks be permitted to apply national and international best practice in order to choose their clients, know their clients, classify the risk to which their clients expose them, and decide whether their business and reputational risks exposure justifies terminating a specific banker-client relationship. Should Government wrongfully interfere with the exercise of banks' powers and duties, Government may incur delictual liability for any penalty imposed on a banks which is causally connected to Government's conduct.

³³ *Moorecroft Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 8-14.



25. Accordingly Government intervention may expose the financial sector and Government itself to legal risks.

Third additional issue: Whether banks can disclose information under the Protection of Personal Information Act

26. The statutory exceptions to a bank's duty of confidentiality are generally considered³⁴ to comprise those contained in
- (i) section 236(4) of the Criminal Procedure Act 51 of 1977;³⁵
 - (ii) section 31 of the Civil Proceedings Evidence Act 25 of 1965;³⁶
 - (iii) section 78(13) of the Attorneys Act 53 of 1979;³⁷
 - (iv) section 33 of the South African Reserve Bank Act 90 of 1989;³⁸
 - (v) section 74A of the Income Tax Act 58 of 1962;³⁹
 - (vi) section 87(2) of the Banks Act 94 of 1990;⁴⁰

³⁴ See e.g. Jones *et al* *An Introduction to South African Banking and Credit Law* (LexisNexis, Durban 2006) at 6 fn 32, 34; Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345 fn 21.

³⁵ This provision applies to criminal proceedings. It is accordingly of no application in the present circumstances.

³⁶ This section provides that "[n]o bank shall be compelled to produce its ledgers, day-books, cash-books or other account books in any civil proceedings unless the person presiding at such proceedings orders that they shall be so produced." It accordingly does not apply.

³⁷ This provision clearly does not apply, because Oakbay is not an attorney, its account is not a trust account, and there is no request for information regarding the account by any law society.

³⁸ This provision deals with the preservation of secrecy in relation to the business of the Reserve Bank itself. Although an exception exists in relation to information provided to the Minister, the operation of this exception is limited to information the Reserve Bank, a shareholder of the Reserve Bank, or a client of the Reserve Bank.

³⁹ This provision has been repealed by the Tax Administration Act 28 of 2011.

⁴⁰ This provision deals with husbands of wives who are depositors. It is accordingly entirely irrelevant to the current situation. Section 89(2) of the Banks Act is also not relevant, because it authorises the Registrar of Banks to furnish information obtained pursuant to section 33 of the South African Reserve Bank Act to another functionary if the information is essential to the proper performance of that person's function.

- (vii) section 37 of the Financial Intelligence Centre Act 38 of 2002;⁴¹
- (viii) sections 64(1) and 65 of the Access to Information Act 2 of 2000;⁴² and
- (ix) section 69 of the National Credit Act 34 of 2005.⁴³

27. Whether and to what extent these (and similar) provisions authorise an exception to the ordinary principle of banker-client confidentiality depends on the particular facts and circumstances in which the question arises. Save where a statutory exception properly applies, banks' common law contractual duty as amplified by the constitutional duty to observe its client's privacy protected by section 14 of the Constitution prevails.⁴⁴ Cabinet members may not approach banks to disclose information by usurping powers of other functionaries, and may not purport to use (whether directly or indirectly) powers conferred for specific purposes for extraneous purposes – however well-intended.⁴⁵
28. The nature, purpose and scope of the Protection of Personal Information Act 4 of 2013

⁴¹ This provision excludes the duty of secrecy or confidentiality or any other restriction on the disclosure of information (whether imposed by legislation or arising from the common law or agreement) to the extent that such duty or restriction affects compliance by an accountable institution, supervisory body, reporting institution, the South African Revenue Service or any other person with a provision of Part 4 and Chapter 4 of this Act. The Act primarily requires that information be reported to the Centre, and only in some instances that information be reported to a person designated by the Minister.

⁴² This Act does not apply in these circumstances, because there has been no request for a record.

⁴³ This provision imposes a duty to report details regarding a credit agreement directly to the national register, or to a credit bureau.

⁴⁴ Cf *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd v Smit* NO 2001 (1) SA 545 (CC) at paras 15-18.

⁴⁵ *University of Cape Town v Ministers of Education and Culture (House of Assembly and House of Representatives)* 1988 (3) SA 203 (C) at 212; *Van Eck NO and Van Rensburg NO v Etna Stores* 1947 (2) SA 984 (A), applied in *inter alia Gauteng Gambling Board v MEC for Economic Development, Gauteng* 2013 (5) SA 24 (SCA) at para 46.

render it highly questionable whether a power to disseminate to the Minister of Finance information which is not otherwise liable to dissemination to him (under legislation governing the financial sector) can be construed in the current circumstances.⁴⁶ Although certain provisions of the Act are capable of a construction which could in certain circumstances authorise the dissemination of information to the Minister, provisions like section 57 restrict such construction or operation (at least to the extent that, for instance, prior authorisation has not been obtained from the Regulator, to the extent that this may be necessary).

29. However, on the basis of the information contained in our brief it is not possible to provide any conclusive view on the application of the Promotion of Personal Information Act in the circumstances of this case or more generally. The considerations to which we next turn moreover militate considerably against any positive answer.

⁴⁶ As section 2 records, the purpose of the Act is to

- (a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at
 - (i) balancing the right to privacy against other rights, particularly the right of access to information; and
 - (ii) protecting important interests, including the free flow of information within the Republic and across international borders;
- (b) regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe the minimum threshold requirements for the lawful processing of personal information;
- (c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act; and
- (d) establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act."



Fourth additional issue: Whether any provision in the Banks Act provides for intervention by the Minister in a specific banker-client relationship

30. It is precisely because the overall political responsibility for the banking sector rests with the Minister,⁴⁷ and because the Banks Act is a particularly important component of the statutory scheme governing banks, that any ministerial power to obtain information would have been expected to have been provided for in the Banks Act itself. The Act does not, however contain any specific provision which empowers the Minister to obtain information directly from a bank regarding its client.
31. Unsurprisingly the Act also does not contain any provision which contemplates that any oversight responsibility or power the Minister may have under the Act is somehow to be exercised together with the Minister of Labour and the Minister of Mineral Resources. Nor does the Act contemplate that labour matters or the state of the mineral sector may justify the Minister in exercising any power conferred on him by the Act itself. Were the Minister to exercise any such power by taking into account considerations other than those relevant to the banking sector or the dictates of unauthorised third parties (which may include other Cabinet members), his conduct would be *ultra vires* the Banks Act, unlawful, and liable to be ignored by any of the banks with impunity and set aside by a court should the matter become litigious.

⁴⁷ Moorcraft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 2-8.

Fifth additional issue: Whether the Oakbay case fits within the remit of the Banking Ombudsman

32. The Ombudsman for Banking Services has jurisdiction over complaints falling under the Code of Banking Practice.⁴⁸ This Code applies to personal and small business customers. A small business is one with a turnover of less than R10 million per year.⁴⁹ We have not been instructed as regards Oakbay's annual turnover. Should it be more than R10 000 000 per annum (as we suspect), or should any claim which might arise exceed R2 000 000, the jurisdiction of the Ombudsman is excluded on this basis alone. Other factors may also either exclude the Ombudsman's jurisdiction,⁵⁰ or render it premature to exercise any jurisdiction which the Ombudsman may otherwise have had.⁵¹
33. It accordingly appears to us that the remit of the Ombudsman for Banking Services does not include the Oakbay matter.

Sixth additional issue: A reasonable notice period

34. The Code of Banking Practice recognises a bank's right to close a customer's account,

⁴⁸ Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 13–4.

⁴⁹ Cf the website of the Ombudsman for Banking at www.obsa.co.za, cited in Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 13–4 (which refers to a threshold amount of R5 000 000). See, however, *The Ombudsman for Banking Service Handbook* (Juta, Cape Town 2013) at 7, referring to a business turnover which exceeds R10 million per annum as factor which excludes jurisdiction. See too *id* at 8 fn 2, explaining that the R5 000 000 threshold was increased to R10 000 000 w.e.f. 31 May 2011.

⁵⁰ E.g. if the dispute concerns the exercise of the bank's commercial judgment.

⁵¹ E.g. a failure to exhaust internal complaint processes with the particular bank concerned.

and provides that this must generally follow "reasonable prior notice".⁵² The Code does not state what a reasonable period is. It does, however, recognise circumstances in which an account may be closed by a bank without any prior notice.⁵³

35. The legal position is that what constitutes reasonable notice depends on the circumstances of a particular case. In the context of closing bank accounts the character of the account and any additional special facts are relevant considerations to be taken into account.⁵⁴ The Ombudsman for Banking Services has confirmed in a circulated bulletin on closing bank accounts that what constitutes a reasonable notice period will depend on the merits of each particular case. Generally, however, a period of between one and two months would be considered reasonable in respect of an individual account, and two to three months for business accounts. This depends on the nature of the accounts and the number and nature of transactions on the account.
36. The above periods are longer than the one-month period applicable under the equivalent code in the United Kingdom.⁵⁵ They have been increased to afford clients sufficient time to change banks and transfer debit orders.⁵⁶

⁵² Clause 7.3.2 of the Code.

⁵³ Clause 7.3.3, which refers to instances where (i) a bank is compelled to close an account by law or international best practice; (ii) a customer have not used an account for a significant period of time; and (iii) there is reason to believe that the account is being used for any illegal purposes.

⁵⁴ *Prosperity Ltd v Lloyds Bank Ltd* (1923) 39 TLR 372.

⁵⁵ *Haggood Paget's Law of Banking* 13th ed (LexisNexis, London 2007) at 153, referring to clause 7.3 of the UK Banking Code.

⁵⁶ Ombudsman for Banking *Bulletin no. 3* (15 August 2012) at p 4.

37. In the absence of specific factual instructions bearing on the issue, it accordingly appears that the default reasonable notice period is two to three months.

Seventh additional issue: Whether de-risking by banks may undermine Governments' (unlegislated) financial-inclusion objective

38. As we understand it, this question probes whether banks' duties to assess risks and guard against them (in the interest of banks, their other customers, and a sustainable financial sector) conflict with Government's goal of achieving universal inclusion in the banking system.⁵⁷
39. We do not perceive a real tension between these duties and the stated objective. This is because unqualified and universal access to banking services cannot be a legitimate governmental objective to be pursued at the expense of vulnerable bank users. It is for this reason that the national and international legal infrastructure governing banking presupposes that the financial system indeed be protected against (and, if necessary, closed to) certain individuals, entities and their transactions. The result is that a legal obligation is imposed on banks to manage risk profiles, and banks have a legal entitlement to terminate a banker-client relationship when *in their assessment* the relationship exposes the bank to reputational and business risk.

⁵⁷ Our instructions formulate this issue as forming part of the sixth issue, but we address it separately as a seventh issue.

40. It is the unlegislated Government objective of an all-inclusive banking system which has no legal status. However desirable an all-inclusive system might otherwise be, a Government objective with no legal force cannot detract from pre-existing legal rights and duties which are consistent with international norms. This is because common law and statutory rights and duties are of a higher legal status than Government policies.⁵⁸
41. There is, moreover, a binding precedent for the legal principle that a client cannot be imposed upon a bank merely because the client might otherwise be rendered without a bank.⁵⁹ In *Bredenkamp* the Supreme Court of Appeal held that any such imposition would be unfair, and was not supported by any constitutional imperative or public policy consideration.⁶⁰
42. Accordingly the objective of achieving a banking sector which leaves no one without a bank cannot dilute banks' legal duties or divested them of vested rights. Otherwise the banking sector will be rendered unsustainable, which would be counterproductive.

Eighth additional issue: Implications of ministerial meeting

43. For the reasons set out above, the mooted ministerial meeting is not authorised by legislation governing the financial sector. To the extent it seeks to extract information or an explanation which is not permitted, it would be unlawful and unenforceable.

⁵⁸ *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at para 7.

⁵⁹ *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA).

⁶⁰ *Id* at para 60.

Meeting with the banks may undermine Government's or the Minister's authority if either of them is seen to make demands which cannot be enforced.

44. If the banks nonetheless yield to what they may otherwise have regarded as an abuse of public power, then it may indeed set an adverse "precedent" – as our instructions put it. We use the word in inverted commas, because an act of exceeding public power cannot create what in law constitutes a precedent. Even if *de facto* permitted, it still remains *de lege* an illegality without any precedential effect. But it may nonetheless, in the sense contemplated colloquially, set an adverse climate as regards what the financial and other sectors are expected to tolerate. Such conduct may indeed have very adverse national and international consequences. But these are not for us to identify or quantify.
45. Finally, it does appear to us that Government exposes itself to criticism of inconsistent conduct if it were to meet with banks despite the Deputy Minister of Finance's statement remaining unaddressed.⁶¹ If it is correct that significant owners of Oakbay presented themselves as people with power to offer ministerial positions, then they qualify as PEPs. In that event Banks' perception that Oakbay presents business and

⁶¹ The relevant part of the statement to which we understand our instructions refer is para 6 of the media statement of 16 March 2016 issued by the Ministry of Finance. It reads

"Therefore let me state the facts on the matter of whether I was approached by nongovernmental individuals in respect of the position of Minister of Finance. Members of the Gupta family offered me the position of Minister of Finance to replace then-Minister Nene. I rejected this out of hand. The basis of my rejection of their offer is that it makes a mockery of our hard earned democracy, the trust of our people and no one apart from the President of the Republic appoints ministers. Let me also place it on record that there was no discussion between the Deputy Secretary General of the ANC Ms Jessie Duarte and myself on this matter."

reputational risks to themselves and to their other customers cannot be second-guessed,⁶² especially not by Government. But Government might, if it is perceived (even if wrongly so) to meet with banks at the instance of Oakbay's owners, create unintended consequences. In the current context⁶³ and a climate⁶⁴ perception is important.

Conclusion

46. For the reasons set out above we conclude that the contemplated meeting is not authorised by law, and that its potential adverse consequences should be seriously considered and mitigated by appropriate public statements before and after the meeting – were the meeting nevertheless to proceed (despite our advice to the contrary).

We advise accordingly.

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town
25 April 2016

⁶² As the Supreme Court of Appeal held in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 65, it is not even "for a court to assess whether or not a *bona fide* business decision, which is on the face of it reasonable and rational, was objectively 'wrong' where in the circumstances no public policy considerations are involved."

⁶³ *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 19.

⁶⁴ *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly* (CCT 143/15; CCT 171/15) [2016] ZACC 11 (31 March 2016) at para 8.





MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

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Mr Nazeem Howa
Chief Executive Officer
Oakbay Investments
144 Katherine Street
SANDTON
2031

Dear Mr Howa

MEETING ON CLOSING OF OAKBAY BANK ACCOUNTS: 24 MAY 2016

Thank you for meeting with me this morning, together with some of my officials. The meeting was in response to your letters dated 8 and 17 April 2016 to discuss the recent closure of certain Oakbay bank accounts.

We informed you that banks operate in a highly-regulated environment, and a range of factors could give rise to a bank's decision to close an account. I attach an information document outlining the regulatory framework governing the banking sector and financial sector. More information is also available on our website (www.treasury.gov.za) and several international websites, like www.bis.org and www.fatf.com.

We reiterated that there are legal impediments to any registered bank discussing client-related matters with the Minister of Finance, or any third-party. Further, the Minister of Finance cannot act in any way that undermines the regulatory authorities.

It was evident that you have not, as yet, exhausted all legal remedies, including approaching the court for appropriate relief. It was also pointed out that an application to court can also be in the public interest and help to strengthen the current regulatory regime in order to serve customers better.

We agreed to continue engaging and you would provide us with any relevant information.

In conclusion, we pointed out that the recent attacks on the integrity of the National Treasury are not helpful or in the national interest and should be avoided.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 24.-05-2016

Aide Memoire

Background

1. This note arises from a letters B and 17 April 2016 Oakbay addressed to the Minister of Finance, and subsequent communication.
2. The aim of the meeting was to clarify and explain the current global and national regulatory framework; and what can and cannot be done by banks and bank clients, in terms of the regulatory framework.
3. We wish to state emphatically that we will contribute in whatever legally permissible way possible to save the jobs of workers.
4. It is therefore imperative that all parties, including Oakbay, abide by the law and regulatory framework summarised below.

OVERVIEW OF FINANCIAL REGULATORY FRAMEWORK FOR BANKS IN SOUTH AFRICA

1 Overview

Domestic banks are not only regulated by domestically, but also by overseas regulators in countries where such financial institutions have a presence or transact with other financial institutions based in that country. For this reason, financial institutions are regulated in terms of tough international standards like Basel III and Financial Action Task Force (FATF) recommendations on anti-money laundering and combating of financing of terrorism (anti-money laundering and counterfinancing terrorism), the latter endorsed by more than 180 countries. Failure to adhere to these standards would lead to our banks to being excluded from the global financial and payments system, which in turn will significantly reduce economic growth and result in the loss of many jobs. For example, more than a million jobs were lost in 2008 as a result of a bank failure in the USA.

It is essential that South Africa's financial system remains part of the global financial system. Being part of the global financial system facilitates:

- Selling of government bonds to fund the budget deficit and infrastructure
- Funding of the country's current account deficit
- Foreign direct investment, and the generation of jobs
- Trade, both imports and exports, including financing for such trade.
- Access to global payments system, which enables payments for imports and exports, purchasing goods and services on-line, and being able to use your credit cards overseas
- Insurance and remittances.

The implications of being excluded from global markets would be catastrophic, with long term structural effects. Such an adverse impact can be seen in countries, such as the Islamic Republic of Iran, which have been at the receiving end of sanctions imposed by jurisdictions like the USA and EU.

Cabinet has since the 2008 Global Financial Crisis adopted numerous decisions (all available on www.gov.za as part of post-Cabinet media statements) intended to protect the integrity of the South African financial system and introduce measures to make it safer and serve SA better. Cabinet has noted that it is in South Africa's best national interests to ensure that the domestic financial sector is

regulated according to international standards in order to promote economic growth and reduce the risk to the national fiscus.

In addition to prudential and anti-money laundering and counter terrorism standards, banks are also expected to comply with market conduct standards, including treating customers fairly, and alternative dispute resolution through the ombuds system.

In addition, it was noted that there are 35 deposit-taking banks, of which 17 are locally incorporated. Aside from the four or five banks named by Oakbay, it is not clear whether Oakbay has exhausted its all its options and applied to the other registered banks for banking facilities.

2. How is compliance monitored at an international level?

In order to ensure the consistent implementation of agreed international standards by all countries, all countries subject themselves to a number of assessments and peer reviews. These include, for example, reviews by the G20 on its members (through the Financial Stability Board and IMF's FSAP) and the FATF's Mutual Evaluation assessment process. The intensity of these reviews has been increased following the global financial crisis, with G20 countries and other major economies being evaluated more often under a revised more stringent methodology.

International banking standards prevent a country's government from intervening in the operations of a bank, for example obliging a bank to take on a customer who may pose risk to the bank. Such an intervention will expose South Africa to a negative peer review for undermining its own laws, and for interfering with the operational independence of financial institutions. Further, taxpayer funds will be liable for any damage suffered by banks for accepting such high-risk clients.

3. What could be the consequence of South African banks not complying?

Failure to comply with standards like Basel III and FATF standards exposes a country to punitive measures from overseas regulators. South African financial institutions may also lose or be refused correspondent banking relations with other foreign banks if they are of the view that they operate in, or are not subjected to, a regulatory environment which is not recognised as adequate in the fight against money laundering and terrorism finance. One of the key principles in all the different standards that apply to the financial sector is that of the operational independence of regulators and supervisors.

In 2014, the G20 (through the Financial Stability Board) agreed on a common toolkit available to overseas supervisors to deal with countries deemed to be "non cooperative jurisdictions". The Financial Stability Board describes in its report:

"...a list of measures that could be taken after a jurisdiction is listed as non-cooperative, to safeguard the global financial system and to apply additional pressure to improve the jurisdiction's adherence"

These measures, as applied by overseas regulator to their banks, include:

- i) Preventing South African banks from doing business with foreign banks;
- ii) Banks will have increased regulatory requirements imposed on them by overseas regulators;

- iii) International banks will be banned from doing business in South Africa; and
- iv) Increased audit requirements.

In addition to these measures, most jurisdictions commonly impose massive fines for specific contraventions and for lapses in anti-money laundering and counterfinancing terrorism regulatory rules by their financial institutions. Such fines can be high, as can be seen by the \$8.9 billion fine imposed on BNP Paribas by US Authorities, and could by themselves generate a financial crisis in a smaller economy like ours. SA banks have recently been fined lesser fines by UK and other authorities.

Cabinet has approved the strengthening of current anti-money laundering and counterfinancing terrorism legislation, as evidenced by the Financial Intelligence Amendment Bill currently before Parliament. When enacted, this Bill will require greater disclosure by clients of banks with regard to beneficial ownership of entities and politically-influential persons who will be subject to enhanced due diligence by the banking sector.

4. What has happened in other countries?

Given the serious and significant consequences of South Africa being found non-compliant with the international regulatory requirements and the large fines foreign regulators may impose, banks have a duty to monitor bank accounts and to take active steps to ensure that their actions meet the regulatory and international requirements. In this respect South Africa is not an outlier. In February, (2015) a leading US bank (J.P. Morgan Chase & Co.) closed more than 100,000 accounts through anti-money-laundering screening and cut ties with over 5,000 individuals that pose risks to the bank.

In the EU and UK, Deutsche Bank¹, Barclays and UBS, despite the assessed 'low risk' of their operating environment, have taken significant steps including account closures. The three lenders have closed the accounts of between 20,000 and 35,000 customers. The action by these leading European banks illustrate the increased seriousness and aggressiveness with which the world's biggest banks are closing client accounts which they consider too risky – either under anti-money laundering rules or from other regulatory requirements. Their actions also includes them withdrawing from countries they consider as not having sufficiently robust anti-money laundering and counterfinancing terrorism regulatory frameworks.

National Treasury has taken particular note of this as JP Morgan, Barclays and Deutsche Bank collectively account for about a third (31%), when other US and EU banks are included Citibank, that number is as much as 50%. Therefore as much as half of the debt the government issued this year to support a variety of the social programmes of government requires fall outside the direct influence of domestic regulators and is maintained only through the 'mutual trust' of domestic regulatory arrangements.

5. Why would a bank close down the accounts of a client?

It should be noted that banks routinely close some accounts every year, where such a client has either not complied with domestic regulatory standards, or simply not adhered to contractual

requirements. Hence the closure of accounts does not set a precedent, but can be regarded as an enforcement measure of last resort. Government policy on banking includes does financial inclusion, market conduct and financial integrity objectives to ensure no community or individual is financially excluded, but this does not apply to non-complying customers.

Banks have also signed up to a Code of Banking Practice. Clauses 7.1, 7.2 and 7.9 cover the process banks have agreed to when closing accounts. These commitments include reasonable prior notice; The responsibilities of the client, including the need for clients to inform banks of changes to the contact details and to their financial affairs; and the circumstances under which banks may close accounts, including if they are compelled to do so under law or international best practice, if the account has not been used for a significant period of time, or if there are reasons to believe the account is being used for illegal purposes.

6. What can affected customers do?

Customers do have recourse when affected adversely by banks, via the ombuds system and the courts. However, such recourse needs to take into account the following:

- Relationships between banks and their clients are private and confidential.
- Government therefore has limited scope to intervene on behalf of specific clients, but must rather ensure that the regulatory framework governing these relationships is in accordance with the existing legal framework.
- Company clients however may approach the courts to provide relief over elements of the contractual terms of the relationship between themselves, their institution and the banks. Small businesses and individual customers can also approach the banking ombud.

In addition, it should be noted :

- A. Customers that are affected by such a closure can approach the courts, and seek for damages from their bank. There is an established case law that provides for the circumstances under which the closure of accounts is not allowed.
- B. The courts would be best suited to make an impartial judgement on the actions of the bank in relation to its customer.
- C. To the best of our knowledge, Oakbay has not waived its customer rights to confidentiality to enable banks to report to their regulator on their reasons for closing their accounts.
- D. If there is the willingness to make disclosure and provide full access to transactions, the banks and regulators might be able to respond more clearly and openly to the issues at hand.
- E. In the circumstances, an approach to the courts remains an option. Any aggrieved customer or company has nothing to fear from such action, as long as it has adhered to the laws of the country.



24th May 2016

Minister Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

RE: Meeting on closing of Oakbay Bank Accounts: 24 May 2016

Thank you very much for the cordial meeting this morning to discuss the decision by the four major banks operating in our country to close our bank accounts.

Thank you, too, for the documents outlining the regulatory environment in which the banks operate.

Given the time challenges facing us during the meeting and your suggestions around legal remedies, I thought it prudent to place on record that following detailed discussions with several legal advisors, we are of the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born. The banks have each said as much to us in their correspondence to ourselves. As mentioned this morning, we have also being told by the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction.

It certainly is our view that this flies in the face of the banking code of good practice, yet, as case law suggests, will fail in a court of law. Given this position, as well as the decisions of the responsible regulators, we seem to have no options open to us other than our appeal to you for assistance.

We were also particularly engaged with paragraph 5 of your Aide Memoire which provided some detail with the reasons why banks would close accounts. As discussed fully with you, no bank has given us any indication of any wrongdoing on our side. I am sure you will also recall the detail shared with you today of the due diligence exercise we underwent around the proposed purchase of a bank, as well as the detail shared with you around the Reserve Bank requests for information around currency exchange. Most importantly, we have 16 years of audit reports from KPMG, one of South Africa's leading audit firms which backs our view that we have done nothing wrong.

It was good to hear this morning that you share our concern around the livelihoods of our 7500 staff, which once again confirms your strong pedigree as a liberation fighter.

As you are aware the shareholder has resigned all executive and non-executive roles in our group as a move to address the concerns of the parties about possible association risk, yet we have found the response from the institutions to be intransigent, even in the face of the real threat of significant job losses.

While I understand the legal impediments facing you as political head of our economy as well as the challenges presented by the current regulatory framework, I would like to believe that our detailed discussion this morning will open the way for you to consider those difficulties against the obvious requirement for South Africa to create a business environment which will promote job creation and economic growth. I would suggest what has happened to us does no such thing and in fact should be viewed as creating a negative perception around foreign direct investment.

Finally, we note your comment around recent attacks on the National Treasury. Let me state for the record, we are fiercely patriotic, and as such support all institutions of our country, including Treasury.

I look forward to hearing from you about any possible assistance you are able to offer us in these trying times. As you would have heard in our meeting and hopefully from this letter we have exhausted all options, and as a South African company - which is fully compliant to all the banking regulations - we are appealing to you to facilitate our rights in terms of Clause 5 of your Aide Memoire which talks very clearly of Government Policy as it applies to any community or individual.

As democrats, we cannot standby as 7500 livelihoods are placed at risk through decisions which seems to have been taken without any due process around compliance.

Yours sincerely



Nazeem Howa
Chief Executive
Oakbay Investments



STRICTLY CONFIDENTIAL AND LEGALLY PRIVILEGED

Ex parte: MINISTER OF FINANCE

**In re: COMPLAINT BY OAKBAY INVESTMENTS (PTY) LTD
AGAINST CERTAIN FINANCIAL INSTITUTIONS**

OPINION

**J.J. GAUNTLETT SC
F.B. PELSER**

**Chambers
Cape Town**

29 May 2016

A handwritten signature in black ink, appearing to be 'J.J. Gauntlett', is written over a vertical line.

A. Introduction

1. Our consultant is the Minister of Finance ("the Minister").
2. We have previously advised on issues regarding an inter-ministerial committee established to deal with allegations levelled against financial institutions by Oakbay Investments (Pty) Ltd ("Oakbay"). In an opinion dated 25 April 2016 we advised that Government has no power to interfere with the banker-client relationship, and that banks are under a legal duty to observe their confidentiality obligations to current and former customers. We are now asked to advise on three ancillary issues:
 - (1) Whether banks are legally obliged to provide Oakbay with reasons for closing Oakbay's accounts.
 - (2) Whether it would be permissible for the Minister to approach the banks to request reasons and whether the banks would be obliged to comply with the request by the Minister if Oakbay waives its right to confidentiality.
 - (3) Whether the current regulatory system provides a mechanism through which the Minister can intervene at the instance of Oakbay.
3. We have been briefed with correspondence between the Minister and the CEO of Oakbay dated 8 April 2016, 17 April 2016, and 24 May 2016. In the analysis which follows we first set out the contents of these letters in relevant part before addressing each of the three questions.



B. Analysis

4. The three ancillary questions for advice arise in the context of the correspondence between the Minister and Oakbay. As will be seen, Oakbay's specific request in the last letter (and the basis on which it is advanced) bears particularly on the third question. Accordingly the relevant parts of the correspondence are shortly summarised before turning to each question for advice.

(1) The correspondence

5. In the first of the aforesaid letters, written by Oakbay's CEO to the Minister, the latter is informed of potential job losses following "the unexplained decision of a number of banks, and of our [Oakbay's] auditors, to cease working with us [Oakbay], and of continued press coverage of unsubstantiated and false allegations against the Gupta family", as a result of which "it has become virtually impossible to continue to do business in South Africa."¹ The letter attributes the banks' and auditors' decisions to "an anti-competitive and politically-motivated campaign designed to marginalise our business."² It states that Oakbay is "currently unable" to pay "many of the salaries of our more than 4 500 employees".³ Oakbay envisaged that the political campaign against it would be ended by the Gupta family relinquishing control of Oakbay.⁴

¹ Second paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.

² Third paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.

³ Seventh paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.

⁴ Eighth and ninth paragraphs of Oakbay's CEO's letter dated 8 April 2016 to the Minister.



6. The second letter, again by Oakbay's CEO, apologises to the Minister for any adverse impression that the first letter created.⁵ It explains that the first letter was addressed to the Minister in his capacity "as political head for the financial sector",⁶ invokes the Minister's involvement in the democratic struggle, and refers to "our fragile economy".⁷ It confirms that "the shareholder has resigned all executive and non-executive roles in [the Oakbay] group".⁸ Yet Oakbay "found the response from the institutions to be intransigent".⁹ On this basis the second letter implores the Minister to assert his "strong relationship with the captains of industry" to save the jobs of Oakbay's employees in the interest of the country's economy and development.¹⁰
7. In response to these letters a meeting was convened between the Minister and Oakbay on 24 May 2016. The Minister's letter to Oakbay's CEO on the same day recorded what was conveyed at the meeting. It is that the Minister could not intervene in the banker-client relationship or interfere with the regulatory authorities' functions,¹¹ and that Oakbay has not exhausted its legal remedies (which include approaching a court).¹²
8. The letter attaches an *aide memoire* which confirms the Minister's undertaking to

⁵ Para 1 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

⁶ Para 2 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

⁷ Para 3 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

⁸ Para 4 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

⁹ Para 4 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

¹⁰ Para 5 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

¹¹ Para 3 of the Minister's letter dated 24 May 2016 to Oakbay's CEO.

¹² Para 4 of the Minister's letter dated 24 May 2016 to Oakbay's CEO.

"contribute in whatever legally permissible way possible to save the jobs of workers."¹³ But the *aide memoire* also notes that a failure by South African banks to comply with international standards may lead to job losses of more than a million, as the 2008 banking crisis in the USA demonstrated.¹⁴ The *aide memoire* further reflects that 17 locally-incorporated deposit-taking banks exist, and that Oakbay did not indicate whether it applied to any of these institutions for banking facilities.¹⁵ The *aide memoire* also identifies far-reaching adverse macro-economic consequences should Government intervene in banks' business.¹⁶ It further explains that the regulatory regime governing banks has resulted in over 100 000 accounts being closed by a single leading US bank,¹⁷ and between 20 000 and 35 000 even in "low risk" operating environments in the EU and UK by leading banks like Deutsche Bank, Barclays and UBS.¹⁸ This not only demonstrates reputable banks' conduct in compliance with the regulatory regime, but also the risk of their withdrawal from countries whose regulatory frameworks are perceived as insufficiently robust.¹⁹ It could also hold adverse consequences for the South African Government's social programmes.²⁰ The *aide memoire* concludes by identifying recourse open to an aggrieved customer whose bank account is closed.²¹ It states that "an approach to the courts remains an option" and that "[a]n aggrieved customer or company has nothing to fear from such action, as long

¹³ Item 3 s.v. "Background" on the first page of the *aide memoire*.

¹⁴ First para s.v. "Overview" on the first page of the *aide memoire*.

¹⁵ Last para s.v. "Overview" on the second page of the *aide memoire*.

¹⁶ S.v. "How is compliance monitored?" on the second page of the *aide memoire*.

¹⁷ First para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.

¹⁸ Second para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.

¹⁹ Second para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.

²⁰ Third para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.

²¹ S.v. "What can affected customers do?" on the fourth page of the *aide memoire*.

as it has adhered to the laws of the country.”²²

9. In the final letter Oakbay’s CEO thanks the Minister for the *aide memoire*.²³ It reveals that Oakbay sought advice from “several legal advisors” who are “of the strong view” that banks have acted within their contractual rights and that “any legal approach may indeed be still-born.”²⁴ This, the letter states, is borne out by correspondence by the banks (which correspondence does not appear to have been shared with the Minister).²⁵ Hence Oakbay “will fail in a court of law”, its letter states.²⁶ The letter appears to imply that the absence of a legal remedy, and the responsible regulators’ responses that they could not intervene, is a basis for a political intervention by the Minister.²⁷ This despite “the legal impediments facing [him] as political head of [South Africa’s] economy as well as the challenges presented by the current regulatory framework”.²⁸ Yet the letter repeats the prior recordal that “the shareholder [of Oakbay] has resigned ... as a move to address the concerns of the parties about possible association risk”.²⁹ (It will be recalled that the first letter attributed the banks’ decision to close Oakbay’s accounts to “an anti-competitive and politically motivated campaign”³⁰ waged “against the Gupta family”.³¹ The suggestion was that improper political pressure would have

²² Para E s.v. “What can affected customers do?” on the fourth page of the *aide memoire*.

²³ Para 2 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁴ Para 3 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁵ Para 3 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁶ Para 4 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁷ Para 4 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁸ Para 8 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

²⁹ Para 7 of Oakbay’s CEO’s letter dated 24 May 2016 to the Minister.

³⁰ Para 3 of Oakbay’s CEO’s letter dated 17 April 2016 to the Minister.

³¹ Para 2 of Oakbay’s CEO’s letter dated 17 April 2016 to the Minister.

been remedied by the resignation of the Gupta family as shareholder, not that the remedy is to apply political pressure in the opposite direction.) The letter states vaguely that Oakbay has "exhausted all options",³² but does not identify whether it had sought to open an account with any of the other financial institutions to which the *aide memoire* refers.

10. Ultimately, what the correspondence reflects is that Oakbay's request to the Minister is for him to exercise a political power pursuant to Government policy reflected in clause 5 of the *aide memoire* – there being, as Oakbay apparently acknowledges, no legal basis for the Minister to intervene. The pressure sought to be brought to bear upon the Minister is the livelihoods of now 7 500 Oakbay employees (previously the number was 4 500)³³ being "placed at risk through decisions [by the banks] which seems [sic] to have been taken without any due process around compliance".³⁴ Quite what is meant by the latter phrase is not made clear. It does however suggest a legal cause of action: the lack of "due process". This is not consistent with the legal advice Oakbay has disclosed it has received: that Oakbay has no legal recourse against the banks.

(2) The questions for advice

11. In our previous opinion we have dealt with banks' contractual power to terminate the

³² Para 10 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.

³³ Para 7 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

³⁴ Para 11 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.



banker-client relationship; the duty of banks not to disclose information of a previous client; and the Minister's power conferred by statute. We explained that without a statutory power to do so, the Minister has no legal authority to intervene. Conversely he is under a common-law duty *not* to interfere with the banker-client relationship. We refer to the legal framework set out in the previous opinion and do not repeat it here.

(a) *First question: Are banks legally obliged to provide Oakbay with reasons for closing Oakbay's accounts?*

12. The duty to provide reasons for conduct is one imposed by administrative law on a public authority exercising public power.³⁵ A commercial bank's closing of its customer's account is not governed by administrative law.³⁶ Accordingly there is no legal obligation to provide reasons for closing an account.³⁷ Nor is any such entitlement or duty created by the Code of Banking Practice.³⁸ It also does not appear that any such contractual entitlement has been agreed by Oakbay with any of its erstwhile bankers, otherwise Oakbay would not have stated in its letter to the Minister that it has been advised that it has no sustainable legal cause of action.³⁹

³⁵ Section 33(2) of the Constitution; section 5(1) of the Promotion of Administrative Justice Act 3 of 2000.

³⁶ Although the Supreme Court of Appeal recorded in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 55 the appellant's contention that "the banking industry is in the hands of few who enjoy significant market power. It is accordingly a case 'where private power approximates public power or has a wide and public impact'", it did not uphold the argument – rejecting it by implication.

³⁷ Significantly in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 64 the Supreme Court of Appeal appeared to have implied that in order for any duty to exist on a bank to the effect that an account may only be closed on good cause shown, this would require a contractual term or the development of the common law.

³⁸ Clause 7.3.2 of the Code of Banking Practice merely provides that a bank "will not close [a customer's] account without giving [the customer] reasonable prior notice".

³⁹ Paras 3-4 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.

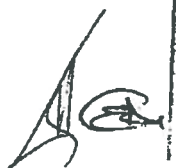
13. Accordingly there is no legal obligation on the banks to provide Oakbay with reasons. But even were it otherwise, the remedy is one only capable of being exercised by Oakbay itself, as the answer to the second question (to which we now turn) confirms.
- (b) *Second question: May the Minister approach the banks to request reasons for closing Oakbay's accounts, and would the banks be obliged to comply with the request by the Minister if Oakbay waives its right to confidentiality?*
14. The client-banker relationship vests a duty in the bank to honour the confidentiality of the client's information, and it imposes a duty on the bank to honour this duty. Accordingly a client may indeed waive its right to confidentiality.⁴⁰
15. The onus of proving a waiver is on the person who raises it. That party must demonstrate that the right-bearer, in this case Oakbay, with full knowledge of its right, decided to abandon it, whether expressly or by conduct plainly inconsistent with an intention to enforce it.⁴¹ Accordingly, should the Minister rely on a waiver, he would bear the onus. A waiver is not lightly presumed. None of the letters to the Minister contains anything which is compatible with an inference of waiver.
16. Thus, at a factual level the first question cannot be resolved on a basis which

⁴⁰ Clause 6.1 the Code of Banking Practice; Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345.

⁴¹ *Borstlap v Spangenberg* 1974 (3) SA 695 (A) at 704H.

circumvents the Minister's general duty not to interfere in the banker-client relationship, which survives any termination of the contract between Oakbay and its banks. Only were Oakbay subsequently to waive its right to confidentiality does the legal question as regards the Minister's legal authority and banks' legal entitlements arise.

17. As regards banks' legal entitlements, should Oakbay waive its right to confidentiality, a bank would not be able to invoke it at its own instance to refuse to disclose otherwise confidential information. This is because the confidentiality is that of a client, not a bank. Once the right is waived a bank has no duty to observe confidentiality, and it in any event never had any *right* to resist disclosure: only a duty to do so (for as long as confidentiality subsists).
18. But the correct question is not whether the banks can invoke a waived right to confidentiality. It is whether the Minister has the power to request information in the first place – whether or not the information is subject to confidentiality or not. This is because the Minister only has such powers as are conferred on him by law. As our previous opinion identified, it is the Banks Act which would have authorised the Minister to obtain information from banks. But this Act does not authorise this. It authorises the Registrar of Banks as the only authority to whom information must be furnished under the Act.
19. Accordingly whether or not Oakbay waives its right to confidential information (which



it has not yet done), the Minister is not empowered to approach the banks to obtain information regarding Oakbay. On that basis alone banks are entitled to refuse any request by the Minister to obtain information, including banks' reasons for closing Oakbay's accounts.

(c) *Third question: Does the current regulatory system provide a mechanism through which the Minister can intervene at the instance of Oakbay?*

20. For the reasons set out in our previous opinion and repeated in answering the second question, the regulatory system does not provide any mechanism through which the Minister may intervene. The Minister's powers, we repeat, are not inherent; they are limited to such powers as are conferred on him by statute. No statutory provision gives him the power to call upon a bank to provide the information which Oakbay wants. Oakbay's reliance on the reference to "government policy on banking" in paragraph of the *aide memoire* is misconceived. Policy—especially a reference such as this to policy in its broadest sense—confers no power such as Oakbay contemplates.⁴² (It may further be noted that in invoking paragraph 5 of the *aide memoire*, Oakbay elides the specific qualification: "but this does not apply to non-complying customers.")

⁴² *Akamí Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at para 7
"The word 'policy' is inherently vague and may bear different meanings. ... I prefer to begin by stating the obvious, namely that laws, regulations and rules are legislative instruments, whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise the separation between Legislature and Executive will disappear. Compare *Executive Council, Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) (1995 (10) BCLR 1289) in para [62] One thing, however, is clear: policy determinations cannot override the terms of the provincial Act for the reasons already given. ..."

21. In these circumstances the question arises whether in the absence of a statutory authorisation the Minister may intervene *ex necessitate*. There appears to be no successful post-constitutional invocation of the exercise of a power not conferred by law but of necessity. This is no doubt because of the importance of the rule of law and the doctrine of legality, which preclude the exercise of a power not conferred by law. While the Constitution itself contemplates National Treasury and confers certain powers on it, it significantly does not confer any power to interfere in contractual relations.

22. There is, moreover, no true factual necessity. This is because if payment to employees cannot be effected through Oakbay's closed bank accounts, it can of course be made through intermediaries – like an attorneys' trust account. More importantly, however, Oakbay did not indicate whether it has approached any of the other banks identified in the *aide memoire* and whether they have refused to open bank accounts for Oakbay. Accordingly the assertion that all available avenues have been exhausted is not borne out. In such circumstances the Minister will expose himself to a successful interdict by a bank were he to assert a power by necessity to intervene at the instance of Oakbay.

C. Conclusion

23. For the above reasons we answer the questions for advice as follows:



- (1) Banks are not legally obliged to provide Oakbay with reasons for closing Oakbay's accounts.
 - (2) It would not be permissible for the Minister to approach the banks to request reasons for the closure of the accounts, and the banks would not be obliged to comply with the request by the Minister – even were Oakbay to waive its right to confidentiality.
 - (3) The regulatory system does not provide a mechanism through which the Minister may intervene at the instance of Oakbay.
24. We shall be glad to make ourselves available to deal with any issues for further advice or clarification, or settle any correspondence, should this be required.

We advise accordingly.

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town

29 May 2016





Minister's Office
Ministry of Finance
120 Plein Street
Cape Town

Sahara Computers(Pty)Ltd
89 Gazelle Avenue
Corporate Park
Midrand

28th June 2016

Dear Minister Pravin Gordhan,

RE: REQUEST FOR MEETING TO DISCUSS CLOSURE OF SAHARA BANK ACCOUNTS

You may recall that earlier this year (20 April) Nazeem Howa CEO of Oakbay Investments sent a letter to you, updating you on the developments at Oakbay Investments, principally the 140 redundancies that Sahara was forced to make as a direct result of the closing of our business bank accounts by FNB, ABSA, Standard Bank and Nedbank.

Writing to you today as CEO of Sahara I can confirm that vital banking services have still not been restored neither to us, nor for that matter other businesses across the Oakbay group, despite the decision by our shareholders to step away from the day to day involvement in our business.

I now find myself in a precarious position where I am forced to make a number of important strategic decisions concerning the future of our business - decisions which will inevitably lead to further redundancies.

The decisions I will be forced to make over the coming weeks will not only affect the livelihoods of the remaining 103 employees at Sahara, but their families and dependents too.

It would seem that the engagement from my colleagues and me with you on PowerFM on Sunday, 26 June) has been misconstrued in some quarters. I would like to assure you the calls related to the extremely difficult position we find ourselves in following the banking blacklisting crisis at Oakbay. Our frustrations are felt by our employees, who fear for their jobs.

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Directors G Naidoo | E Tak

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As an addendum to this - following our engagement with you on Sunday evening I have also been the recipient of a threatening phone call aggressively warning against any further appeals to you regarding the reopening of Oakbay's bank accounts. I hope you would publicly condemn acts of intimidation, which are using your name, such as this?

I return to the more important issue at stake - you say you are here, in your capacity as Treasury Minister, to serve the national purpose so that 55 million South Africans can have decent jobs and a better economic future. I humbly plead that you find some way to help us make a small start with our own employees, and therefore request that you meet with me, at your earliest convenience. I can then brief the rest of my colleagues and our employees on what concrete steps are being made to secure the future of my remaining 103 employees, their families and dependents.

Yours sincerely

Stephan Nel
CEO, Sahara

SAHARA COMPUTERS (PTY) LTD.

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H- 811



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REPUBLIC OF SOUTH AFRICA

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Mr Murray Michell
Director
Financial Intelligence Centre
Private Bag X177
PRETORIA
0001

Dear Mr Michell

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

1. You will be aware from continued media statements by the CEO of Oakbay Investments and its "portfolio companies" (as the CEO has termed them) regarding approaches to me relating to the closure of accounts in the Oakbay group of companies.
2. My understanding is that the entities in the Oakbay group comprise the following:
 - a) Mining Interests in Oakbay Resources and Energy, Shiva Uranium, Tegeta Exploration and Resources, JIC Mining Services and Black Edge Exploration;
 - b) Media Interests in TNA Media (Pty) Ltd, New Age and ANN 7;
 - c) Other Interests in VR Laser Services, Islandsite Investments 180, Confident Concepts and Jet Airways.
3. In these approaches (culminating in a letter of 28 June 2016 following a similar letter on 24 May 2016, both of which I attach) Oakbay has asserted that Absa, FNB, Nedbank, Sasfin and Standard Bank, without justification, and as "the result of an anti-competitive and politically-motivated campaign designed to marginalise our businesses" (see the further letter of 8 April 2016, which I also attach), closed business accounts of Oakbay entities.
4. Oakbay contends that the consequences for it and its employees (asserted in different letters as numbering 4 500 and 7 500) of the closure of accounts are serious, following the decisions of KPMG and Sasfin, too, to terminate their relationships with the Oakbay group as auditors and JSE sponsor respectively.

5. Clearly the allegations made are inherently adverse to good market conduct practices and the integrity of our banking (and with it, financial) system. At the same time it would be my concern that no loss of jobs be caused in the South African economy by any irregularities such as those suggested by Oakbay.
6. I have pointed out to Oakbay that on the independent legal advice I had taken, there are legal impediments to any registered bank discussing client-related matters with me, and furthermore that I cannot act in any way that undermines the regulatory authorities. I have however pointed out that Oakbay has legal remedies, including approaching a court. (I attach in that regard my letter of 24 May 2016, with its attached information document.) I have repeatedly encouraged Oakbay to exercise recourse to a court to establish the legal propositions and factual allegations for which it contends.
7. Oakbay however, following what it terms "detailed discussions with several legal advisors", expresses *"the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born"*. Oakbay also records that it has been told by "the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction. It certainly is our view that this flies in the face of the Banking Code of Good Practice, yet, as case law suggest, will fail in a court of law. Given this position, as well as the decisions of the responsible regulators, we seem to have no option open to us other than our appeal to you for assistance." (Oakbay letter of 24 May 2016, attached)
8. Oakbay asserts in the same letter that *"no bank has given us any indication of any wrongdoing on our side"*.
9. This latter statement is to be viewed in conjunction with an interview of Oakbay's CEO by Carte Blanche (screened on 19 June 2016), in which Mr Howa stated that one of the banks closing Oakbay's accounts gave the following as a reason:
*"Without waiving our rights not to furnish reasons for our decision without inviting any debate about the correctness of our decisions, I point out that the law, inclusive of South Africa's Companies Act, Regulation 43 [sic], Prevention of Organised Crime Act, Prevention and Combating of Corrupt Activities Act and [the] UK's Bribery Act prevent us from having dealings with any person or entity who[m] a reasonably diligent (and vigilant) person would suspect that such dealings could directly or indirectly make us a party to or accessory to contraventions of that law.
 ... We have (conducted) enhanced due diligence of Oakbay entities and as required by the FICA and have concluded that continuing with any bank-customer relationship with them would increase our risk of exposure to contravention of the mentioned law to an unacceptable level."*
10. Oakbay has persisted in its series of approaches directed to me. As appears from the above, acting on legal advice, it declines to seek any declaratory ruling from a court to support either its legal contentions suggesting a duty on the part of the Minister of Finance to intervene with the banks or its factual contentions that the banks' conduct has an irregular and indeed improper basis. This stance has however been accompanied by a series of radio interviews and media statements by spokespersons for Oakbay in which it continues to assert that *"the response from the institutions [is] intransigent"* (as Mr Howa put it in his letter to me of 17 April 2016), and to assert that the closure of accounts took place on an irregular basis.
11. It is my concern that the continued allegations of irregularity by the banks concerned, in circumstances in which Oakbay itself refuses to obtain an appropriate declaratory

order from the courts, is harmful to the reputation of South Africa's financial system within the global financial system. As you are aware, domestic banks are not only regulated domestically, but also by overseas regulators, in terms of demanding international standards like Basel III and Financial Action Task Force recommendations on money-laundering and financing terrorism. Cabinet has also noted that it is in the national interest to ensure that the domestic financial sector is regulated according to international standards in order to promote economic growth and reduce risk to the fiscus.

12. Cabinet, since the 2008 global financial crisis, took numerous decisions to improve market conduct practices by financial institutions. This is to ensure that customers of financial institutions are treated fairly.
13. In the circumstances, I would be glad to be advised whether or not the registered banks have indeed reported to the Financial Intelligence Centre ("FIC") as indicated by the above public statement by Mr Howa, or whether no such reports have been made.
14. In the circumstances, I am considering the merits of obtaining a definitive court ruling on whether:
 - (a) the Minister of Finance (or Governor of the SARB, or Registrar of Banks) has the power in law to intervene with the banks concerned regarding their closure of the Oakbay accounts held with them; and
 - (b) a basis exists in fact for the contention that the relevant banks terminated the accounts in question for a reason unrelated to their statutory duties not to have dealings with any entity if a reasonably diligent and vigilant person would suspect that such dealings could directly or indirectly make that bank a party or accessory to contraventions of the relevant laws (identified above).
15. As noted above, it is apparent from Oakbay's own public statement to Carte Blanche on 19 June 2016 that at least one of its erstwhile banks has given as the basis for the closing of accounts that bank's statutory duty to report under Financial Intelligence Centre Act 38 of 2001 ("FICA").
16. In view of the above, I request you, pursuant to your powers aforementioned, read with section 29(4)(a) and (c) of the FICA, to inform me at your very earliest convenience (if at all possible by 4 August 2016).
 - (a) Whether FIC has indeed received from the aforementioned banks reports in terms of the FICA relating to any entities in the Oakbay Group, as listed above (or otherwise);
 - (b) over what period(s);
 - (c) in respect of which entities; and
 - (d) in what respective amounts relating to each such entity.

It is not for my purposes necessary, at this stage, to request further details regarding the nature of each transaction reported, or the parties thereto, but you may hold a different view.



- 17 I copy this letter to the Governor, given the Reserve Bank's own interest in issues of financial stability to which I have referred, and to the Registrar of Banks, given his own institutional interest (in terms of sections 4 and 7 of the Banks Act) in the matters raised.
18. Your urgent response would be greatly appreciated.

Yours sincerely



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 28 - 07 - 2016

- cc. Mr L Kganyago
Governor: South African Reserve Bank
- Mr K Naidoo
Registrar of Banks: South African Reserve Bank





MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

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Mr Kuben Naidoo
Registrar of Banks
South African Reserve Bank
PO Box 427
PRETORIA
0001

Dear Mr Naidoo

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3. In these approaches (culminating in a letter of 28 June 2016 following a similar letter on 24 May 2016, both of which I attach) Oakbay has asserted that Absa, FNB, Nedbank, Sasfin and Standard Bank, without justification, and as "the result of an anti-competitive and politically-motivated campaign designed to marginalise our businesses" (see the further letter of 8 April 2016, which I also attach), closed business accounts of Oakbay entities.
4. Oakbay contends that the consequences for it and its employees (asserted in different letters as numbering 4 500 and 7 500) of the closure of accounts are serious, following the decisions of KPMG and Sasfin, too, to terminate their relationships with the Oakbay group as auditors and JSE sponsor respectively.
5. Clearly the allegations made are inherently adverse to good market conduct practices and the integrity of our banking (and with it, financial) system. At the same time it would be my concern that no loss of jobs be caused in the South African economy by any irregularities such as those suggested by Oakbay.
6. I have pointed out to Oakbay that on the independent legal advice I had taken, there are legal impediments to any registered bank discussing client-related matters with

me, and furthermore that I cannot act in any way that undermines the regulatory authorities. I have however pointed out that Oakbay has legal remedies, including approaching a court. (I attach in that regard my letter of 24 May 2016, with its attached information document.) I have repeatedly encouraged Oakbay to exercise recourse to a court to establish the legal propositions and factual allegations for which it contends.

7. Oakbay however, following what it terms "detailed discussions with several legal advisors", expresses "the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born". Oakbay also records that it has been told by "the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction. It certainly is our view that this flies in the face of the Banking Code of Good Practice, yet, as case law suggest, will fail in a court of law. Given this position, as well as the decisions of the responsible regulators, we seem to have no option open to us other than our appeal to you for assistance." (Oakbay letter of 24 May 2016, attached)
8. Oakbay asserts in the same letter that "no bank has given us any indication of any wrongdoing on our side".
9. This latter statement is to be viewed in conjunction with an interview of Oakbay's CEO by Carte Blanche (screened on 19 June 2016), in which Mr Howa stated that one of the banks closing Oakbay's accounts gave the following as a reason.

*"Without waiving our rights not to furnish reasons for our decision without inviting any debate about the correctness of our decisions, I point out that the law, inclusive of South Africa's Companies Act, Regulation 43 [sic], Prevention of Organised Crime Act, Prevention and Combating of Corrupt Activities Act and [the] UK's Bribery Act prevent us from having dealings with any person or entity who[m] a reasonably diligent (and vigilant) person would suspect that such dealings could directly or indirectly make us a party to or accessory to contraventions of that law.
... We have (conducted) enhanced due diligence of Oakbay entities and as required by the FICA and have concluded that continuing with any bank-customer relationship with them would increase our risk of exposure to contravention of the mentioned law to an unacceptable level."*
10. Oakbay has persisted in its series of approaches directed to me. As appears from the above, acting on legal advice, it declines to seek any declaratory ruling from a court to support either its legal contentions suggesting a duty on the part of the Minister of Finance to intervene with the banks or its factual contentions that the banks' conduct has an irregular and indeed improper basis. This stance has however been accompanied by a series of radio interviews and media statements by spokespersons for Oakbay in which it continues to assert that "the response from the institutions [is] intransigent" (as Mr Howa put it in his letter to me of 17 April 2016), and to assert that the closure of accounts took place on an irregular basis.
11. It is my concern that the continued allegations of irregularity by the banks concerned, in circumstances in which Oakbay itself refuses to obtain an appropriate declaratory order from the courts, is harmful to the reputation of South Africa's financial system within the global financial system. As you are aware, domestic banks are not only regulated domestically, but also by overseas regulators, in terms of demanding international standards like Basel III and Financial Action Task Force recommendations on money-laundering and financing terrorism. Cabinet has also noted that it is in the national interest to ensure that the domestic financial sector is regulated according to international standards in order to promote economic growth and reduce risk to the fiscus.

12. Cabinet, since the 2008 global financial crisis, took numerous decisions to improve market conduct practices by financial institutions. This is to ensure that customers of financial institutions are treated fairly at all times.
13. In the circumstances, I am considering the merits of obtaining a definitive court ruling on the whether:
- (a) the Minister of Finance (or Governor of the SARB, or Registrar of Banks) has the power in law to intervene with the banks concerned regarding their closure of the Oakbay accounts held with them; and
 - (b) a basis exists in fact for the contention that the relevant banks terminated the accounts in question for a reason unrelated to their statutory duties not to have dealings with any entity if a reasonably diligent and vigilant person would suspect that such dealings could directly or indirectly make that bank a party or accessory to contraventions of the relevant laws (identified above).
14. As noted above, it is apparent from Oakbay's own public statement to Carte Blanche on 19 June 2016 that at least one of its erstwhile banks has given as the basis for the closing of accounts that bank's statutory duty to report under Financial Intelligence Centre Act 38 of 2001 ("FICA").
15. In view of the above, I request you to inform me at your earliest convenience, if at all possible by the 04th August 2016 of the following:
- (a) whether your office has indeed received from the aforementioned banks reports in terms of the applicable banking legislation relating to any entities in the Oakbay Group, as listed above (or otherwise);
 - (b) over what period(s);
 - (c) in respect of which entities; and
 - (d) in what respective amounts relating to each such entity.
- It is not for my purposes necessary, at this stage, to request further details regarding the nature of each transaction reported, or the parties thereto, but you may hold a different view.
16. Your urgent response would be greatly appreciated.

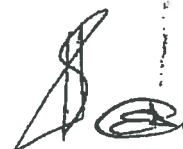
Yours sincerely



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 28 - 07 - 2016

cc. Mr L Kganyago
Governor: South African Reserve Bank

Mr M Michell
Director: Financial Intelligence Centre



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South African Reserve Bank
Office of the Governor

MINISTER OF FINANCE	
- JS	
2016-04-26	
FILE No:	M3/10/1
MINISTER OF FINANCE	

1389/16

Honourable Mr Pravin J Gordhan, MP
Minister of Finance
40 Church Square
Pretoria
0002

Dear Min Gordhan

Cabinet's decision on engaging banks on the closure of individual bank accounts

The recent Cabinet's decision to appoint a subcommittee of three Ministers to engage banks on the closure of an individual entity bank account refers.

As you know, the South African Reserve Bank (the Bank) is responsible for the prudential supervision of commercial banks and the promotion of financial stability. The Bank pursues an approach to regulation and supervision which is forward looking, risk based and outcomes focused. It is this approach, the high level of observance of international standards, and the strong risk management in our domestic financial services firms which has been credited correctly for the emergence of the South African financial sector from the global financial crisis relatively unscathed.

The on-going health and effective functioning of the financial system is an important component of the success of any modern economy. Given its importance, the financial services sector carries the responsibility of supporting and facilitating trade, infrastructure investment, anchoring capital raising activities of both the private and public sectors and providing appropriate and adequately regulated financial services to millions of ordinary people. Importantly, the South African financial services sector is fast becoming a critical bedrock for the Pan African trade and infrastructure development, a key component of the growth and development of the sub-Saharan economies especially. It is in this context that we would like to raise with you our concerns regarding Cabinet's proposed approach and decision on the matter pertaining to the relationship between banks and their individual customers.

In terms of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) as amended, and related regulations thereto, banks are required amongst others to adhere to the highest standards of compliance to laws which govern their relationships with customers. As such, and in order to ensure their adherence to these requirements, they have to continuously assess the risk profiles of their customers. As part of these assessments, and within the normal operations of banks, they may have to close or alter conditions on customer accounts. In any given period, a substantial number of bank accounts are closed or have their conditions altered as provided for in legal

contracts which govern these arrangements. This is not only critical for maintaining the integrity of the financial system, but it is also important for promoting and ensuring the on-going financial soundness of banks as prudential institutions, in accordance with the provisions of the Banks Act (Act 94 of 1990) as amended, and in the public interest.

Moreover, we note that Cabinet's resolution for certain Ministers to engage with banks was informed by concerns that the actions taken by the banks may deter potential foreign investment. We caution against the unintended consequence of this being viewed as undue political interference in banks' operations, and restricting the ability of banks to make independent operational decisions within the parameters of the existing legal and regulatory frameworks. This could introduce heightened levels of uncertainty and pose a risk to South Africa's financial stability.

It is the Bank's view that sufficient remedies and recourse for bank customers exist in the current financial regulatory framework, including statutory and voluntary ombudsmen, as well as the courts. As such, any aggrieved bank customer should seek recourse through the said established institutions and processes. This approach would enhance the credibility of our institutional and regulatory environment and restore public trust and investor confidence.

I am at your disposal to discuss this matter further if required, at your earliest convenience.

Yours sincerely



Lesetja Kganyago

Governor

Date: 26 APR 2016



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820

1 August 2016
Ref: 14/8/1 - Ministry

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tebogo.shakwane@fic.gov.za

Mr P J Gordhan, MP
Minister of Finance
Private Bag X115
Pretoria
0001

Dear Honourable Minister

**REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF
OAKBAY GROUP**

I acknowledge receipt of your letter dated 28 July 2016.

I have carefully studied the matters raised in the letter and the request for information concerning possible reports made under section 29 of the Financial Intelligence Centre Act, 2001 (the FIC Act).

The disclosure of information concerning reports under the FIC Act is strictly governed by, among others, section 40 of the Act. By virtue of these provisions the Centre is allowed to disclose such information only in limited circumstances and only to a limited group of potential recipients. The FIC Act, in section 29(4)(c), provides for an exception to these controls where such information is to be used for the purpose of legal proceedings. The mechanism provided for in the FIC Act where such information is to be tendered in evidence in legal proceedings is by means of a certificate issued under section 39 of the Act.

Given that your letter indicates your intention to approach a court for a definitive ruling on certain questions of law, and by virtue of my powers under the FIC Act, I have decided to issue a certificate under section 39 of the Act, relating to possible reports that may have been made in relation to the entities mentioned in your letter. I must emphasise that such a certificate is only to be used for the purpose of introducing evidence in legal proceedings and will only confirm or refute the receipt of reports pursuant to the FIC Act. Such a certificate will not



financial intelligence centre
REPUBLIC OF SOUTH AFRICA

disclose any information concerning the content of any particular report which the Centre has received.

The certificate will be issued on or before 4 August 2016.

Kind regards



MURRAY MICHELL
DIRECTOR





South African Reserve Bank
Office of the Deputy Governor
Kuben Naidoo

STRICTLY CONFIDENTIAL

2016-08-12

Honourable Mr Pravin J Gordhan, MP
The Minister of Finance
40 Church Square
Pretoria
0001

Dear Minister Gordhan

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

Your letter dated 28 July 2016, regarding the accounts of the Oakbay Group, refers.

The contents of the letter have been noted as well as your intention of approaching the Court for a definitive ruling on the issue. With regard to these issues, the South African Reserve Bank ("SARB" or "Bank") has acquired the services of senior legal counsel to provide the Bank with legal advice and guidance in the matter.

In the interim however, you have requested me to address you with regard to any reports received by the Office of the Registrar of Banks "...in terms of the applicable banking legislation relating to any entities in the Oakbay Group ...". It is hereby confirmed that to the best of my knowledge, acting on available information, this Office has not received any such reports from the banks regarding the issues you raise in your letter. The information that banks provide to the Financial Intelligence Centre regarding specific transactions are, in general, not forwarded to the Office of the Registrar of Banks.

I have however been informed by the Financial Surveillance Department of the Bank ("FSD") that Standard Bank has informed FSD about a particular foreign exchange transaction involving VR Laser Asia, an associated company of Oakbay, which could form the basis of an exchange control related investigation by that department.

Yours sincerely

Kuben Naidoo
Registrar of Banks

Date: 12/08/2016

25 July 2016

Minister Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

Closing of Oakbay Bank Accounts

Thank you for your letter dated July 14 which I received on July 18.

My apologies for not sending you the bank letters. Unfortunately, I did not have the request in the notes I jotted down at our last meeting. I have, however, attached the notice letters from all four banks today.

Hopefully, we can jointly find a way to understand the real reasons for the banks decision to unilaterally close our accounts.

With regards to your question about the letter in the public domain, it is critical that you see the correspondence within the context of the letters that followed (attached for your ease of reference) in which we asked the writer to clarify his reference to the many pieces of legislation and whether Standard Bank had found any evidence of us transgressing any piece of legislation.

For the record, we have made the same request to each of the banks and to date we have not been provided with a single example of where we have transgressed any of the legislation mentioned in their letters. Further, we have not once had a query from any of the banks on any of our transactions. In detailing the contents of the Standard Bank letter in my TV interview with Carte Blanche, I was merely trying to illustrate that these were the allegations that were being made, but without being provided with a shred of evidence.

We have not decided against approaching the courts. Our first priority has been to move decisively to stabilize the business, ensure some level of sustainability which would safeguard the 7500 jobs across our business. Once we have achieved a moderate level of stability and sustainability and when we deem our current initiatives to reverse the current position are exhausted, we will certainly consider the legal option which we understand to be a lengthy and arduous process. As you would understand, without banking facilities we won't have a business to operate well before the conclusion legal proceedings.

Let me also clearly state our support for any and all legislation which advances the clampdown on corruption and money-laundering. As such, please be assured that despite the many unproven media articles, as a company we will not be party in any way to any steps to undermine the financial stability of our country.

Finally, let me assure you of our support for all initiatives to create and sustain jobs within our economy. With reference to your comments about the recent disciplinary action against staffers at ANN7, let me assure you that they are due to transgressions of our disciplinary code and that our processes are fully compliant with the existing legislation. If you so wish, I can provide you with greater detail on this matter when we next meet.

Let me also assure you that no matter the outcome of the hearing, the number of jobs that exist at ANN7 will continue to increase as we offer young South Africans an opportunity that has remained closed for so many years. As an executive team charged with leading the business, we will continue to build our business on sound and good governance, always using our constitution as a guiding principle.

I would also like to give you an update on the ripple-effect the banks' actions have had on Oakbay and its operations when we meet hopefully in the not too distant future. I will also bring along my full file of all the correspondence with the banks so that you can understand our frustration at not getting a proper explanation for their unprecedented action.

Yours sincerely

Nazeem Howa



Chief Executive
Oakbay Investments





MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Mr Nazeem Howa
Chief Executive Officer
Oakbay Investments
144 Katherine Street
SANDTON
2031

Dear Mr Howa

CLOSING OF OAKBAY BANK ACCOUNTS

Your letter of 25 July 2016 refers.

The letter does not indicate why "the full file of all the correspondence with banks" (as you term it) has not been provided. Every opportunity has been provided for Oakbay to do so since your first approach to me in April.

My letter dated 24 May 2016 recorded that you had undertaken to provide "all relevant information", based on my request at the meeting for all relevant correspondence from banks. I requested again this information in my letter of 14 July 2016 when I also pointed out that to date I had not received any copies of these letters from banks related to the closure of your accounts.

It is concerning that Oakbay still does not accept that the Minister of Finance, in law, is unable to interfere with the relations between registered banks and their clients. This assertion by Oakbay also remains inconsistent with the legal advice that Oakbay has received from several of its own legal advisers. This (as explicitly recorded by you in your previous correspondence) is that it has no case against the banks arising from the closing of the accounts.

In regard with the contention in the third paragraph of your letter that "the real reasons" for the banks' closing of accounts have not been disclosed, Oakbay's suggestion that the closure of its accounts was irregular (this in conflict with both the legal advice I have received and that which you have recorded you have received) continues to be a serious concern in terms of the functioning and reputation of the South African financial sector and, in particular, banking. Banks in South Africa are highly regulated, not only by South African laws, but in all countries where they may operate, in order to facilitate trade and transactions for South African companies and residents.

I am also concerned if Oakbay continues, as first stated in correspondence four months ago, with the possible contemplation of implementing job losses among its employees (and to subject certain of its journalist-employees to disciplinary proceedings).

Under these circumstances, further delay is clearly undesirable in my consideration of the matter. Should you wish to honour the undertaking made and recorded on 24 May and again on 14 July, or would like to make any further representations to me, I request that you convey these electronically to me by 9h00 on Friday, 12 August 2016. On receipt of the above documents, I shall then schedule a meeting with you as requested in your letter and in your earlier letter dated 18 July 2016.

Yours sincerely



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 10 - 08 - 2016



N

Rebecca Tee

From: Ministry Registry
Sent: 17 August 2016 06:22 AM
To: Ismail Momoniat; Rebecca Tee
Subject: FW: Closing of Oakbay Bank Accounts

827

For your information.

From: Nazeem Howa [mailto:nazeemh@oakbay.co.za]
Sent: 17 August 2016 06:06 AM
To: Ministry Registry
Subject: Re: Closing of Oakbay Bank Accounts

Dear Ms Scott

I am currently out of the country. I will respond formally upon my return to South Africa.

Nazeem

From: Ministry Registry <Minreg.Registry@treasury.gov.za>
Date: Wednesday, 10 August 2016 at 3:57 PM
To: Nazeem Howa <nazeemh@oakbay.co.za>
Subject: Closing of Oakbay Bank Accounts

Dear Mr Howa

Please find attached correspondence for your attention from Minister of Finance.

Please could I humbly request that you confirm receipt.

Kind regards

Joanne Scott

Ministry of Finance

40 Church Square, Old Reserve Building, PRETORIA

Private Bag X115, PRETORIA, 0001

Tel: +27 12 315 5158

Fax: +27 12 323 3262

Mobile: +27 72 257 7961

E-mail for official correspondence: minreg@treasury.gov.za

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09 September 2016

The Hon Pravin Gordhan
Minister of Finance
Pretoria

Dear Hon Minister

Thank you for your letter of August 10, and my apologies for not responding earlier.

I am very happy to share with you my full file of correspondence with the banks as suggested in my last letter to you. It makes for interesting reading.

I would prefer if possible that we meet to discuss the processes we have engaged in as they have been supplemented by several meetings and telephone calls which will add considerable flavour to the correspondence and provide you with a much fuller picture.

I am happy to meet at your convenience to show you my file and inform you of my various meetings and telephone calls.

I am happy to further engage constructively with the other points you make in your letter which I believe can best be dealt with through a meeting, rather than letters.

Yours sincerely


Nazeem Howa
Chief Executive

DIRECTORS : N HOWA | A CHAWLA | R RAGAVAN

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4 August 2016
Ref: 14/8/4 - Ministry

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Mr P J Gordhan, MP
Minister of Finance
Private Bag X115
Pretoria
0001

Dear Honourable Minister

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

I refer to your letter of request dated 28 July 2016 and my subsequent reply dated 1 August 2016.

I have carefully studied the matters raised in your letter and am satisfied there is legal merit and relevance in the request as it relates to the mandate, powers and functions of the Financial Intelligence Centre ("the Centre").

Herewith please find attached a Certificate, issued under my hand in terms of section 39 of the Financial Intelligence Centre Act ("the Act") in which certain information as reported to the Centre in terms of section 29 of the Act (subject to section 38(3) of the Act in respect of protecting reporters' identities) is set out.

In addition, please note that in terms of section 39 of the Act, a certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of Section 28, 29 or 30(2) or 31 is on its mere production in a matter before court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

Kind regards



MURRAY MICHELL
DIRECTOR



financial intelligence centre
REPUBLIC OF SOUTH AFRICA



**CERTIFICATE IN TERMS OF SECTION 39 OF FINANCIAL INTELLIGENCE
CENTRE ACT, 2001 (ACT NO 38 OF 2001)**

I the undersigned,

MURRAY STEWART RODON MICHELL

An official of the Financial Intelligence Centre ("FIC"), hereby states that:

1. The Financial Intelligence Centre (Centre), was established in terms of section 2 of the Financial Intelligence Centre Act 38 of 2001 ("the Act")
2. Section 3 of the Act states that the principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities, the combating of money laundering activities and the financing of terrorist and related activities.
3. I am appointed under section 6 of the Act as the Director of the Centre.
4. My responsibilities as the Director are defined in section 10 of the Act and includes:
 - 4.1 the performance by the Centre of its functions and
 - 4.2 taking all decision of the Centre in exercise of its powers in performance of its functions, except those decisions taken in consequence of a delegation or instruction in terms of Section 16 of the Act.



5. A function of the Centre is to receive suspicious transaction reports, reported / sent to the Centre as contemplated in Section 29 of the Act.
6. On 28 July 2016 I received a request for information from the Minister of Finance; the request is attached as Annexure A.
7. I studied the request and:
- 7.1 was satisfied that there was legal merit and relevance in the request as it relates to the Centre's mandate, powers and functions and
- 7.2 noted that the request did not contain data discriminators in relation to the persons or entities mentioned in the request.
8. The Centre used the following data discriminators to identify the information specified in this certificate relating to persons or entities associated with the persons or entities mentioned in the request:

Identifying Number	Surname	Initials	Full Name	
6602056061184	GUPTA	AK	AJAY KUMAR	
6806145105080	GUPTA	AK	ATUL KUMAR	
7004042051081	GUPTA	C	CHETALI	
7005101418186	GUPTA	S	SHIVANI	
7208056345087	GUPTA	RK	RAJESH KUMAR	
7710240935087	GUPTA	A	ARTI	
8607146112184	GUPTA	V	VARUN	
9408046139081	SINGHALA	S	SRIKANT	(Minor)
9511156045087	SINGHALA	S	SASHANK	(Minor)

Company Name	Registration Number
Aeon Diamonds	2003/017679/07
Afripalm Managed Services	2007/026575/07
Afripalm Resources	2006/011933/07
Comair	1967/006783/06
Confident Concept	2006/023982/07
Cyret Technologies	2008/014823/07
Green Fig Trading 5	2005/021117/07
Infinity Media Networks	2011/003219/07
Islandsite Investments 254	2007/035464/07
JIC Engineering Services	2007/005004/07
JIC Mining Services Africa	2007/011186/07
JIC Mining Services Asia	2007/008414/07
Moetapele Projects	2006/021771/07
Northam Platinum	1977/003282/06
Sahara Computers	1997/015590/07
Sahara Media Holdings	2006/013459/07
Sahara Press	2006/010256/07
Shiva Uranium	1921/006955/06
Sunzi Equity Investments	2004/014322/07
Surya Crushers	2012/037510/07
Thelo Cement	2006/028825/07
Thelo Investments	2006/031859/07
Tna Media	2010/006589/07
Uni Africa Holdings	2004/015237/07
Vusizwe Media	2008/023317/07
Woodlane Consortium	2007/031952/07

9. By virtue of the powers vested in me as the Director of the Centre under section 39 of the Act, and subject to section 38(3) in respect to protecting the identity of the reporter, I hereby confirm that the



Information set out below was reported or sent to the Centre in terms of
Section 29 of the Act:

Row No.	Date	STR Number	Subjects Reported	Value Reported
1	2012-12-10	STR/00040/20121210/I/E	Ajay Kumar Gupta	
2	2013-05-17	STR/00155/20130517/I/E	Ajay Kumar Gupta	859,933
3	2013-05-17	STR/00167/20130517/I/E	Atul Kumar Gupta	961,932
4	2013-05-17	STR/00179/20130517/I/E	Rajesh Kumar Gupta Shubhangi Gupta	961,932
5	2013-05-20	STR/00061/20130520/I/E	Atul Kumar Gupta	31,009
6	2013-07-11	STR/00161/20130711/I/E	Atul Kumar Gupta	948,150
7	2014-02-06	STR/00224/20140206/I/E	Atul Kumar Gupta	961,932
8	2014-02-07	STR/00043/20140207/I/E	Atul Kumar Gupta	38,000,000
9	2014-04-10	STR/00102/20140410/I/E	TEGETA RESOURCES (PTY) LTD	38,000,000
10	2014-07-24	STR/00391/20140724/I/E	JNT CHAWLA-A/GUPTA-RK Rajesh Kumar Gupta	5,000,000
11	2014-12-12	STR/00093/20141212/I/E	OAKBAY RESOURCES AND ENERGY (PTY) LTD	32,045
12	2014-12-15	STR/00026/20141215/I/E	Atul Kumar Gupta	2,000,000
13	2015-02-06	STR/00441/20150206/I/E	SHIVA URANIUM LTD	1,070,749
14	2015-03-16	STR/00221/20150316/I/E	SAHARA COMPUTERS (PTY) LTD Ajay Kumar Gupta Atul Kumar Gupta Rajesh Kumar Gupta	6,000,000 1,550,000
15	2016-01-26	STR/00131/20160126/I/E	ANNEX DISTRIBUTION (PTY) LTD	
16	2016-02-04	STR/00213/20160204/I/E	Atul Kumar Gupta	1,242,386
17	2016-02-05	STR/00573/20160205/I/E	SAHARA HOLDINGS (PTY) LTD Atul Kumar Gupta	17,133,000 Multiple Transactions
18	2016-02-05	STR/00589/20160205/I/E	SAHARA HOLDINGS (PTY) LTD Atul Kumar Gupta	Multiple Transactions
19	2016-02-07	STR/00007/20160207/I/E	SAHARA HOLDINGS (PTY) LTD	4,250,000

Row No.	Date	STR Number	Subjects Reported	Rand Value Reported
20	2016-02-07	STR/00008/20160207//E	SAHARA HOLDINGS (PTY) LTD	
21	2016-02-09	STR/00009/20160209//E	Rajesh Kumar Gupta Atul Kumar Gupta	11,475,000 18,146,000
22	2016-02-26	STR/00595/20160226//E	SAHARA COMPUTERS (PTY) LTD Rajesh Kumar Gupta Atul Kumar Gupta Chetali Gupta	Multiple Transactions
23	2016-02-29	STR/00626/20160229//E	ANNEX DISTRIBUTION (PTY) LTD	Multiple Transactions
24	2016-03-04	STR/00338/20160304//E	ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD Atul Kumar Gupta	Multiple Transactions
25	2016-03-07	STR/00015/20160307//E	OAKBAY INVESTMENTS (PTY) LTD ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	Multiple Transactions
26	2016-03-17	STR/00474/20160317//E	SAHARA DISTRIBUTION (PTY) LTD	Multiple Transactions
27	2016-03-17	STR/00084/20160317//E	CORRECT MARKETING C C	5,000
28	2016-03-18	STR/00013/20160318//E	SAHARA HOLDINGS (PTY) LTD SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta	Multiple Transactions
29	2016-03-31	STR/00149/20160331//E	MABENGALA INVESTMENTS (PTY) LTD Rajesh Kumar Gupta	Multiple Transactions
30	2016-03-31	STR/00156/20160331//E	Atul Kumar Gupta	Multiple Transactions
31	2016-03-31	STR/00158/20160331//E	MABENGALA INVESTMENTS (PTY) LTD Rajesh Kumar Gupta	Multiple Transactions
32	2016-03-31	STR/00172/20160331//E	Atul Kumar Gupta	Multiple Transactions
33	2016-03-31	STR/00187/20160331//E	OAKBAY INVESTMENTS (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	Multiple Transactions
34	2016-03-31	STR/00357/20160331//E	TNA MEDIA (PTY) LTD Atul Gupta	Multiple Transactions

Row No.	Date	STR Number	Subjects Reported	Rand Value Reported
35	2016-03-31	STR/00367/20160331/I/E	TNA MEDIA (PTY) LTD Atul Gupta	Multiple Transactions
36	2016-03-31	STR/00385/20160331/I/E	SURYA CRUSHERS (PTY) LTD Varun Gupta	Multiple Transactions
37	2016-03-31	STR/00275/20160331/I/E	NEWSHELF 960 (PTY) LTD	Multiple Transactions
38	2016-03-31	STR/00158/20160331/I/E	MABENGALA INVESTMENTS PTY LTD	10,000,000
39	2016-03-31	STR/00187/20160331/I/E	OAKBAY INVESTMENTS (PTY) LTD	374,713,699
40	2016-04-01	STR/00338/20160401/I/E	ISLAND SITE INVESTMENTS ONE HUNDRED (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	158,278,904
41	2016-04-05	STR/00374/20160405/I/E	BLACKEDGE EXPLORATION (PTY) LTD	Multiple Transactions
42	2016-04-06	STR/00360/20160406/I/E	CONFIDENT CONCEPTS (PTY) LTD Rajesh Kumar Gupta Varun Gupta	Multiple Transactions
43	2016-04-07	STR/00011/20160407/I/E	Varun Gupta	282,074
44	2016-04-07	STR/00166/20160407/I/E	SHIVA URANIUM LIMITED Atul Kumar Gupta Varun Gupta	125,848,620
45	2016-04-07	STR/00276/20160407/I/E	INFINITY MEDIA NETWORKS (PTY) LTD Atul Kumar Gupta Varun Gupta	24,115,385
46	2016-04-08	STR/00429/20160408/I/E	INFINITY MEDIA NETWORKS (PTY) LTD Atul Kumar Gupta Varun Gupta	6,938,305
47	2016-04-11	STR/00011/20160411/I/E	Atul K Gupta	531,570
48	2016-04-11	STR/00302/20160411/I/E	SAHARA DISTRIBUTION (PTY) LTD Atul Kumar Gupta	100,000
49	2016-04-11	STR/00314/20160411/I/E	SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta	5,018,417
50	2016-04-11	STR/00348/20160411/I/E	SAHARA SYSTEMS (PTY) LTD Atul Kumar Gupta	2,000,000

Row No.	Date	STR Number	Subjects Reported	Value Reported
51	2016-04-11	STR/00503/20160411/I/E	SAHARA DISTRIBUTION (PTY) LTD Atul Kumar Gupta	4,992,558
52	2016-04-12	STR/00389/20160412/I/E	Arti Gupta	86,579
53	2016-04-12	STR/00396/20160412/I/E	Chetali Gupta Atul Kumar Gupta	119,766
54	2016-04-12	STR/00405/20160412/I/E	SAHARA CONSUMABLES (PTY) LTD Atul Kumar Gupta	4,016,374
55	2016-04-12	STR/00460/20160412/I/E	ANNEX DISTRIBUTION (PTY) LTD Atul Kumar Gupta	3,657,164
56	2016-04-13	STR/00034/20160413/I/E	SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta Chetali Gupta	41,833,304
57	2016-04-13	STR/00374/20160413/I/E	TNA MEDIA (PTY) LTD Atul Gupta	7,999,992
58	2016-04-19	STR/00432/20160419/I/E	UNI AFRIKA HOLDINGS (PTY) LTD Atul Gupta	Multiple Transactions
59	2016-04-21	STR/00090/20160421/I/E	ISLANDSITE INVESTMENTS ONE UNDRED (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	172,464,887
60	2016-04-21	STR/00607/20160421/I/E	CONFIDENT CONCEPTS (PTY) LTD Rajesh Kumar Gupta Varun Gupta	78,859,600
61	2016-04-21	STR/00586/20160421/I/E	ANNEX DISTRIBUTION (PTY) LTD SAHARA COMPUTERS (PTY) LTD SAHARA HOLDINGS (PTY) LTD	876,001
62	2016-04-21	STR/00455/20160421/I/E	OPTIMUM COAL MINE PTY LTD	1,372,756,090
63	2016-04-21	STR/00511/20160421/I/E	KOORNFONTEIN MINES (PTY)	1,207,859,627
64	2016-04-22	STR/00908/20160422/I/E	ANNEX DISTRIBUTION (PTY) LTD SAHARA COMPUTERS (PTY) LTD SAHARA HOLDINGS (PTY) LTD	256,476
65	2016-05-06	SAR-160506-0000129	OAKBAY RESOURCES AND ENERGY (PTY) LTD	327,421,132
66	2016-05-06	SAR-160506-0000130	SHIVA URANIUM LTD	327,421,132

Row No.	Date	STR Number	Subjects Reported	Value Reported
67	2016-05-11	STR-160511-0000323	OPTIMUM MINE REHABILITATION TRUST	1,341,426,552
68	2016-05-11	STR-160511-0000325	OPTIMUM VLAKFONTEIN MINING AND EXPLORATION PTY LTD	410,237
69	2016-05-11	STR-160511-0000351	OPTIMUM OVERVAAL MINING AND EXPLORATION PTY LTD	418,989
70	2016-05-11	STR-160511-0000435	OPTIMUM COAL TERMINAL PTY LTD	173,244,916
71	2016-05-16	SAR-160506-0000130	SHIVA URANIUM LTD	510,064,228
72	2016-06-03	STR-160603-0000380	OAKBAY INVESTMENTS (PTY) LTD	407,332,455
Total Value				R6,339,974,102

10. In terms of section 39 of the Act, a certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of Section 28, 29 or 30(2) or 31 is (subject to Section 38(3)) on its mere production in a matter before court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

Issued under my hand at CAPE TOWN on 04 August 2016.



MURRAY STEWART RODON MICHELL
DIRECTOR: FIC



DELIVERED BY EMAIL

South African Reserve Bank

Attention: Registrar of Banks
Email: rene.vanwyk@resbank.co.za

Johannesburg Office
155 5th Street
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr E Levenstein/OPTI13168.19/#3821963v2
DIRECT PHONE: +27 11 535 8237
DIRECT FAX: +27 11 535 8737
EMAIL ADDRESS: elevenstein@werksmans.com

27 June 2016

Dear Sirs

URGENT

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- 1 As you are aware, Optimum Coal Mine Proprietary Limited ("OCM"), the company that owns the Optimum coal mine, was placed in business rescue on 4 August 2015 and remains in business rescue.
- 2 We act on behalf of Piers Marsden and Peter van den Steen, the joint business rescue practitioners of OCM and on behalf of OCM.
- 3 OCM is the beneficiary of the Optimum Mine Rehabilitation Trust Fund ("Trust"), a Trust established for the purpose of holding funds to secure the environmental rehabilitation obligations of OCM.
- 4 There is currently an amount of approximately R1.5 billion which is held in an account, in the name of the Trust, with The Standard Bank of South Africa Limited ("Standard Bank").
- 5 Standard Bank has advised the trustees of the Trust that it does not intend to establish business relationships with Tegeta Resources and Exploration Proprietary Limited ("Tegeta") (who nominated, and who subsequently have been appointed, the trustees of the Trust) and that it will be terminating its relationship with all companies in the Tegeta group.
- 6 OCM is a subsidiary of Tegeta.
- 7 The effect of this is that Standard Bank will be closing the Trust's bank account and has requested that the Trust's funds be transferred to another banking institution, with the written approval of the Department of Mineral Resources ("DMR").

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors: D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata LM Becker JD Bahr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloets PPJ Coetser C Cole-Morgan JN de Villiers R Driman LJ du Preez RJ Feanstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallemeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Krige PJ Krueche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Mansaka H Masondo SM Moerane C Moraltis PM Mosabo KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roothman W Rosenberg NL Scott TA Sibidia LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Weglarski G Widdins M Wiehahn DC Williams DG Williams E Wood BW Workman-Davies

JOHANNESBURG • CAPE TOWN • STELLENBOSCH • TYGER VALLEY



- 8 The trustees of the Trust have advised the business rescue practitioners that they have identified the Bank of Baroda as the banking institution to whom the Trust's funds will be transferred. At present the trustees intend to transfer an amount of R1.5 billion.
- 9 In light of the fact that the DMR has indicated that it is agreeable to the Trust's funds being transferred to the Bank of Baroda, provided they are a bank registered as such by the South African Reserve Bank ("SARB") and recent press reports which have indicated that SARB is investigating the Bank of Baroda, the business rescue practitioners have requested us to write to you to enquire whether SARB has any reservations or concerns with the trustees transferring the Trust's funds to the Bank of Baroda.
- 10 We understand that the DMR has approved of the transfer of the funds, subject to the condition referred to above, and that the transfer of the funds is imminent.
- 11 Your urgent attention and response to this would be appreciated.
- 12 We look forward to hearing from you.

Yours faithfully

Werksmans Attorneys
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

2



'A1'

840

An open letter from the employees of Oakbay to (SOS):

Maria Ramos, Chief Executive Officer, ABSA
Jacques Celliers, Chief Executive Officer, FNB
Ben Kruger, Chief Executive Officer, Standard Bank
Michael Brown, Chief Executive Officer, Nedbank

Dear Maria, Jacques, Ben and Michael

RE: IMPASSIONED PLEA FROM OAKBAY EMPLOYEES - PLEASE SAVE OUR JOBS

We are not rich people. We are not politically connected. We have not captured the state. We have never offered any politician a job.

We do not know if any of the allegations against the Gupta family or Oakbay's management are true. We do not care.

All we care about is providing for our families. If you do not open Oakbay's bank accounts we cannot be paid and Oakbay cannot pay its bills.

If by the end of May the accounts remain closed, Oakbay's businesses will close. That means that thousands of us will be without a job.

How will we pay our bills? How will we feed our families? You will not just be hurting us, but our children too. Must they go to school on an empty stomach? What happens when we cannot pay our rent or house bonds? Will our children have to live on the street?

We urge you to recognise that your actions have a human cost. Only a few weeks ago the companies we worked for were profitable and our jobs secure. We do not understand why we have become the victims in a political game.

Please reopen the bank accounts so that we do not have to suffer. We, the employees, have not done anything wrong.

We humbly ask you to hear our message.

Yours faithfully

Employee Representatives

1. P Mosomane

2. R Russo

Joanne Scott

From: Pravin Gordhan
Sent: 21 April 2016 02:37 PM
To: Joanne Scott
Subject: Fwd: Letter from the employees of Oakbay (SOS)

A2

Begin forwarded message:

From: Oakbay Staff <staff.Oakbay@vox.co.za>
Date: 20 April 2016 at 9:40:45 AM SAST
To: Undisclosed recipients;
Subject: Letter from the employees of Oakbay (SOS)

An open letter from the employees of Oakbay to (SOS):

Marla Ramos, Chief Executive Officer, ABSA
 Jacques Celliers, Chief Executive Officer, FNB
 Ben Kruger, Chief Executive Officer, Standard Bank
 Michael Brown, Chief Executive Officer, Nedbank

Dear Marla, Jacques, Ben and Michael

RE: IMPASSIONED PLEA FROM OAKBAY EMPLOYEES - PLEASE SAVE OUR JOBS

We are not rich people. We are not politically connected. We have not captured the state. We have never offered any politician a job.

We do not know if any of the allegations against the Gupta family or Oakbay's management are true. We do not care.

All we care about is providing for our families. If you do not open Oakbay's bank accounts we cannot be paid and Oakbay cannot pay its bills.

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We urge you to recognise that your actions have a human cost. Only a few weeks ago the companies we worked for were profitable and our jobs secure. We do not understand why we have become the victims in a political game.

Please reopen the bank accounts so that we do not have to suffer. We, the employees, have not done anything wrong.

We humbly ask you to hear our message.

Yours faithfully

Employee Representatives

842

1. P Mosomane

2. R Russo



MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

'B'

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Mr MJ Zwane
Minister of Mineral Resources
Private Bag X59
PRETORIA
0001

Dear Minister Zwane

**INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED
AGAINST FINANCIAL INSTITUTIONS**

I refer to your letter dated 20 April 2016, emailed to my office at 11h48am on 22 April 2016.

As you are aware, I was not present at the Cabinet meeting you refer to but I have consulted the Cabinet Secretariat on the matter.

The following emerges:

1. The Cabinet meeting was on the 13th April 2016 - not 16th April 2016 which was a Saturday.
2. No Inter-Ministerial Committee was established.
3. Three Ministers were nominated: Finance, Labour and Mineral Resources.
4. No one Minister was designated as convenor.
5. The financial services sector is not "already distressed" as your letter indicates, and care must be taken not to compromise financial stability.

Whilst I appreciate the urgency of the matter for some, I must emphasise that the legal and regulatory environment has both global (BASEL III, Financial Action Task Force) and local (SA Reserve Bank; Financial Services Board; Financial Intelligence Centre; National Consumer Commission; etc) regulators and regulations.

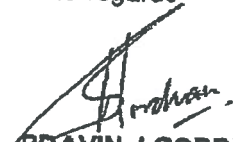
I am currently seeking legal advice on what could be done in the present circumstances, given the intensive legislative framework we have governing the financial sector.

In the circumstances, it will be advisable for the three Ministers to first consult on the framework for any discussion with financial institutions. I prefer that this takes place on the

margins of the Cabinet meeting of the 26th April 2016. You might also be aware that discussions of the nature envisaged have already taken place elsewhere.

Accordingly, I look forward to discussing the way forward next Tuesday.

Kind regards



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 22 - 4 - 2016

cc. Ms MN Oliphant, MP
Minister of Labour



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3252
PO Box 29, Cape Town, 8000, Tel: +27 21 484 6100, Fax: +27 21 481 2834

**Mr MJ Zwane, MP
Minister of Mineral Resources
Private Bag X50
PRETORIA
0001**

Dear Minister Zwane

MEETING ON CLOSING OF OAKBAY BANK ACCOUNTS

I had received two letters from Oakbay Investments regarding the closure of their bank accounts, I would like to inform you that I have met with representatives of the company this morning. The meeting was also intended to seek clarity on certain statements the company has made that potentially impugned the integrity of the National Treasury.

Please find attached a copy of the correspondence that I have sent to Mr Howa regarding the discussions that took place.

Kind regards



**PRAVIN GORDHAN, MP
MINISTER OF FINANCE
Date: 24-05-2016**

cc. **Mr JG Zuma
President of the Republic of South Africa**



MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X116, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 28, Cape Town, 6000, Tel: +27 21 484 8100, Fax: +27 21 461 2834

Mr Nazeem Howa
Chief Executive Officer
Oakbay Investments
144 Katherine Street
SANDTON
2031

Dear Mr Howa

MEETING ON CLOSING OF OAKBAY BANK ACCOUNTS: 24 MAY 2016

Thank you for meeting with me this morning, together with some of my officials. The meeting was in response to your letters dated 8 and 17 April 2016 to discuss the recent closure of certain Oakbay bank accounts.

We informed you that banks operate in a highly-regulated environment, and a range of factors could give rise to a bank's decision to close an account. I attach an information document outlining the regulatory framework governing the banking sector and financial sector. More information is also available on our website (www.treasury.gov.za) and several international websites, like www.bis.org and www.fatf.com.

We reiterated that there are legal impediments to any registered bank discussing client-related matters with the Minister of Finance, or any third-party. Further, the Minister of Finance cannot act in any way that undermines the regulatory authorities.

It was evident that you have not, as yet, exhausted all legal remedies, including approaching the court for appropriate relief. It was also pointed out that an application to court can also be in the public interest and help to strengthen the current regulatory regime in order to serve customers better.

We agreed to continue engaging and you would provide us with any relevant information.

In conclusion, we pointed out that the recent attacks on the integrity of the National Treasury are not helpful or in the national interest and should be avoided.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 24 - 05 - 2016



Bulletin № 3

Closure of bank accounts

Distribution: Members of Banking Association of South Africa
Representative Bodies
Other Financial Service Ombudsmen
Consumer NGOs
Government Consumer Bodies
Press

Last review date: 15 August 2012

1. Introduction

The office has received a number of complaints relating to the unilateral decision of a bank to close or freeze accounts. Typically the complainant complains that his overdraft was frozen and his account was closed without any warning and that he has suffered distress and considerable inconvenience as a result.

The bank's version is usually that the bank's staff had regularly warned the complainant that they would close the account if he continues to issue cheques without sufficient funds in his account or if he does not keep his overdraft within the agreed limit. The bank will also regularly state that the relationship between the complainant and the bank has broken down to such an extent that the bank took a business decision to terminate the relationship/agreement between themselves and the complainant. The bank then summarily closes the complainant's account.

The office is also increasingly receiving complaints regarding the fact that the bank, when freezing the account, still expects the complainant to pay the normal monthly fees associated with the particular account.

The purpose of this bulletin is to inform the banks as to how the Office would typically approach a complaint of this nature.

2. The Legal Position

It is accepted that one of the implied terms of the bank-customer contract is that a banker may not cease to do business with a customer "*except upon reasonable notice*". The bank may also not close an account in credit by payment of the credit balance without giving reasonable notice. (See *Joachimson v Swiss Bank Corporation* [921]3 KB 110.)

It is also accepted that what constitutes "*reasonable notice*" depends on the character of the account and the special facts and circumstances of each case. (See *Prosperity Ltd v Lloyds Bank Ltd* (1923) 39 TLR 372). In this particular case, a month's notice was considered insufficient.

Whilst a bank is indeed entitled to demand repayment of an overdraft forthwith, this action is different from closing the account.

When closing an account, a bank must bear in mind that alternative arrangements have to be made by the customer. A bank has a duty to advise their customer that a facility is withdrawn to prevent prejudice to his/her good name and business reputation if further cheques were issued after the facility had been withdrawn.

In *Penderis & Gutman NNO v The Liquidators of the Short-Term Business, A A Mutual Insurance Association Ltd and Another* 1991 (3) SA 342 (CPO), it was held that if there is a change in security given by a customer to his bankers they may stop or freeze the account. The court further held that there is nothing to prevent a bank, after having stopped an account, from authorizing the payment of one or more cheques presented after the account had been frozen if it is of the view that honouring such cheques would be to its advantage or to the advantage of the customer. It does not follow that meeting such cheques amounts to a total "*defrosting*" of an account.

In *Bredenkamp v Standard Bank* (599/09)[2010] ZASCA 75 the court held that the exercise of a contractual right, which does not involve any public policy considerations or constitutional

values, does not have to be 'fair'. The common law did not need to be developed and it was sufficient that the bank give notice of its intention to close a bank account.

3. The Code of Banking Practice

The *Code of Banking Practice* makes certain references to the bank's obligations to a customer before closing an account.

3.1 Your entitlements

As a customer or potential customer you can expect the following reasonable conduct from your bank as more fully outlined and detailed in the body of the Code. Your bank will:

- *Not close your account without reasonable prior notice given to you at your last contact details.*

In accordance with clause 3.1, the bank will send the notice of account closure to the customer's address that it has on record. In this regard, the *Code of Banking Practice* reasonably expects customers to ensure that they provide the bank with their most up to date contact details to enable the bank to send the required notice to the correct address:

3.2 Your responsibilities

The body of the Code that follows includes a number of responsibilities that your bank expects you to fulfill in your relationship with your bank. For ease of reference these responsibilities include the following:

- *It is your responsibility to inform us of any change in your contact details or in your financial affairs as and when this occurs.*

Clause 7.3 deals with closure of an account in more detail and states:

7.3 Closing an account

7.3.1 We will assist you to close an account that you no longer require.

7.3.2 We will not close your account without giving you reasonable prior notice at the last contact details that you gave us.

7.3.3 We reserve the right, however, to protect our interests in our discretion, which might include closing your account without giving you notice:

- *if we are compelled to do so by law (or by international best practice);*
- *if you have not used your account for a significant period of time or*
- *if we have reasons to believe that your account is being used for any illegal purposes.*

Your bank will inform you about the implications of abandoning an account (not using it) as opposed to closing it. For instance, there may be unclaimed balances with associated fees, balances may have to be written off and you need to know what the reclaim process is, if it applies to your account.

4. The Intended Practice of the Office

a. Sufficient notice

The view of the office remains that it is clear from the law and Code that it is insufficient to warn a client that the account may be closed if he does not comply with certain conditions. Notice of the actual decision to close the account must be given, unless the closure without notice is permitted by law as stated in the Code of Banking Practice.

The notice must be in writing and we suggest that it be sent by registered mail. This will provide the office with sufficient evidence of the notice having been sent within a reasonable period prior to the actual closure. The bank should notify the customer of the date upon which they intend closing the account.

As far as what would constitute a reasonable period, each matter would be looked at on its merits, however, a period of between 1-2 months for individual accounts and of between 2-3 months for business accounts would be considered reasonable, depending on the nature of the accounts and the number and nature of transactions on the account.

The notice periods were increased to afford the complainant sufficient time to change banks and for the new bank to have sufficient time to transfer all debit orders that existed on the old account to the new account.

A bank is at liberty to refuse any instruction to pay a third party if such instruction would result in the customer's account going beyond the agreed limits. A freezing of debits from an account whilst the account continues to exist beyond the limits is thus acceptable. However, once the decision to close the account is made, actual notice of closure must be given.

It must be stressed that the office would not consider it appropriate for a bank to close a habitually unauthorised overdrawn account as soon as it has a nil or credit balance. Such actions would not be considered as justifiable in terms of clause 3.1 of the Code.

b. Abandonment of account

Paragraph 7.3 of the Code of Banking Practice reads as follows:

...Your bank will inform you about the implications of abandoning an account (not using it) as opposed to closing it. For instance, there may be unclaimed balances with associated fees, balances may have to be written off and you need to know what the reclaim process is, if it applies to your account.

The bank needs to inform the complainant of the consequences, should an account not be used.

It might occur that there is a credit balance available on the account at the time that the account becomes dormant, which balance could be depleted if the complainant does not close the account. The bank needs to inform the complainant at account opening time of its procedure for dealing with dormant accounts, and what it will do with unclaimed balances.

The bank needs to notify the complainant before the account is classified as dormant. Even though the bank might be entitled to charge monthly fees on the account, the bank needs to inform the complainant

immediately that these fees are still being charged and if the account is not closed the balance on the account will be depleted by any applicable fees.

The notice should inform the complainant of the date on which the account will become dormant, any balances outstanding that will be written off or credit balances and any related fees which the bank will be entitled to if the account is not closed by the complainant before that date. The notice also needs to explain the process for reclaiming any credit balance on the account.

The notice must be in writing and we suggest that it be sent by registered mail, fax or e-mail which will provide the office with sufficient evidence of the notice having been sent within a reasonable period prior to the account becoming dormant.

As far as what would constitute a reasonable period, each matter would be looked at on its merits, however, a period of between 2-4 weeks would be considered reasonable, depending on the nature of the account

The Ombudsman for Banking Services

Houghton Place
51 West Street
Houghton
Johannesburg

A SAFER FINANCIAL SECTOR
TO SERVE SOUTH AFRICA BETTER



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

A safer financial sector to serve South Africa better

2011

National Treasury Policy Document

Republic of South Africa

23 February 2011

To obtain additional copies of this document, please contact:

Communications Directorate
National Treasury
Private Bag X115
Pretoria
0001
South Africa

Tel: +27 12 315 5698
Fax: +27 12 315 5126

The online version of the document corrects minor typographical errors in the printed version.

Foreword

The financial sector plays a central role to support the real economy. Yet, it also introduces risks, particularly when it recklessly chases short-term "artificial" profits, as was proved during the global financial crisis. As a result, internationally, much has been done to improve the regulation of the financial sector. Much more still needs to be done.

While the recession is over, the crisis and the results of the crisis still linger as financial stability is not yet secured internationally. In South Africa, our financial sector successfully weathered the crisis, but a million people still lost their jobs. Recognising the need for coordinated international efforts to secure global financial and economic stability, we have committed to important obligations to try and prevent a similar crisis in the future. These commitments are also informed by our own domestic situation.

Financial stability however is not the only objective. The financial sector needs to do more to support the real economy. The sector has a vital role to play in the ongoing transformation of our society, and our desire to bring a better life to all of our people. For this reason, this document outlines a number of changes in the area of market conduct, consumer protection and financial inclusion, including a new approach to dealing with high and opaque bank charges as well as for insurance and savings charges.

This is the beginning of an important conversation with society including all other stakeholders. We look forward to engaging with each of you on the issues we raise, and together building a safer financial sector to serve South Africa better.

Pravin J Gordhan
Minister of Finance

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Overview

The financial services sector touches the life of each and every South African. It enables economic growth, job creation, the building of vital infrastructure and sustainable development for South Africa and her people. It is, therefore, crucial that the sector is well-regulated and stable. However, stability is not the only policy objective for the financial sector. The sector is characterised by high and opaque fees, and needs to be more transparent, competitive and cost-effective. Moreover, many South Africans do not have access to financial services. Not only does this inhibit economic growth, it also keeps people trapped in poverty.

With the worst of the financial crisis behind us, government will have a renewed focus on maintaining financial stability, strengthening consumer protection and ensuring that financial services are appropriate, accessible and affordable.

To achieve this, the Reserve Bank will be given lead responsibility for prudential regulation and the Financial Services Board for consumer protection. As part of this, the mandate of the Financial Services Board will be expanded to include the market conduct of retail banking services. Finally, National Treasury will encourage greater access to financial services through a range of initiatives.

■ The role of the financial sector

The financial services sector is at the heart of the South African economy and touches the life of each and every citizen. Financial services allow people to make daily economic transactions, save and preserve wealth to meet future aspirations and retirement needs, and insure against personal disaster.

At the level of the macroeconomy, the financial sector enables economic growth, job creation, the building of vital infrastructure and sustainable development for South Africa and her people. However, the global financial crisis highlighted the immense costs of a poorly

"We are pleased with the performance of our financial sector. It has proven to be remarkably resilient in the face of the recent financial crisis and the global economic meltdown"

- President Jacob Zuma,
State of the Nation Address,
10 February 2011

regulated financial services sector. Although South Africa's financial institutions were resilient in the face of the crisis, the indirect impact through job losses was devastating. In short, we cannot be complacent.

National Treasury launched a formal review of the financial regulatory system in 2007. The scope of this review was expanded in 2008 after the financial crisis. This work has now been completed, culminating in this document, which sets out a number of proposals.

This document provides a comprehensive review of the key challenges facing the financial sector, and proposes a roadmap to deal with the challenges. It presents government's vision of how to reshape the sector in order to address these challenges, and sets out the policy priorities of government over the next few years.

The approach to financial sector reform takes into account not only the direct lessons of the crisis, but also the broader policy objectives of maintaining financial sector stability, protecting consumers and ensuring that efficient, effective and inexpensive financial services are more accessible.

Box 1.1 A safer financial sector to serve South Africa better

To promote sustained economic growth and development, South Africa needs a stable financial services sector that is accessible to all. This policy document sets out government's proposals, emphasising financial stability, consumer protection and financial inclusion. The main proposal is to separate prudential and market conduct regulation. In addition, it addresses:

- **Stability.** The Reserve Bank's mandate for financial stability will be underpinned by a new Financial Stability Oversight Committee, co-chaired by the Reserve Bank Governor and the Minister of Finance.
 - **Consumer protection.** Government will enhance consumer protection. The structure of the Financial Services Board (FSB) will be broadened to include a banking services market conduct regulator.
 - **Access to financial services.** Financial access will be broadened. The Financial Sector Charter will be reviewed and reforms undertaken to encourage "micro insurance".
 - **Coordination.** Regulatory coordination will be enhanced, and regulators strengthened as required. The Council of Financial Regulators will be formalised.
 - **Comprehensiveness.** All businesses in the financial sector should be licensed or registered. Institutions providing similar services should be regulated by the same agency.
- New legislation will be required to implement the proposals. Several bills dealing with banking, financial markets, credit rating agencies and the regulatory powers of financial supervisors will be tabled in Parliament during 2011. The policy document will be available on www.treasury.gov.za.

The global financial crisis and the domestic financial sector

Though the worst of the financial crisis has passed, the world economy continues to face many challenges. The January 2011 update to the *World Economic Outlook*¹ notes that while economic conditions are improving globally, the return to growth is uneven, taking the form of a two-speed recovery. There is subdued economic growth and high unemployment in advanced economies such as the United States, United Kingdom, France and Japan, in contrast to buoyant economic

¹Released by the International Monetary Fund in Johannesburg on 25 January. Available online at <http://www.imf.org>

growth in emerging economies such as China, India and Brazil, with the risk of overheating and rising inflation.

Similarly, the January 2011 update to the *Global Financial Stability Report*² notes that "global financial stability has yet to be secured" and highlights the risks of increasingly unsustainable public debt positions and high, volatile capital flows.

Table 1.1 Snapshot of the financial services sector in South Africa

	June 2000	June 2010	Relative size 2010
Size*			<i>Share of GDP</i>
Assets	R68.6bn	R203.8bn	10.5 %
Of which:	R 1 890bn	R 6040bn	252%
Banks	R 730bn	R 3040bn	127%
Long term insurers**	R 630bn	R 1440bn	60%
Short term insurers	R 50bn	R 90bn	4%
Pension funds (public and private)	R 470bn	R 1480bn	62%
Employment***	286000	356 353	<i>Share of formal employment</i>
			3.9 %
Tax contribution*	n/a	R21 bn	<i>Share of corporate taxes</i>
			15.3%

Source: SARB, Stats SA, SARS; Tax contribution is for the 2009/10 tax year.

* Size is gross value added in nominal rand of the financial intermediation and insurance component of the finance, real estate and business services sector. Estimate based on projected growth.

** The long-term insurer assets figure includes assets of pension funds managed by an insurance company

*** Financial intermediation, insurance, pension funding and auxiliary services.

* Estimate as detailed disaggregated data is not available. The total financial services, business services and real estate and business services sector contributes R39.6bn or 29% of corporate tax. Excludes VAT and other taxes.

The financial sector in South Africa comprises over R6 trillion in assets, contributing 10.5 per cent of the gross domestic product of the economy annually, employing 3.9 per cent of the employed, and contributing at least 15 per cent of corporate income tax. It has survived the crisis relatively unscathed, and continued its strong performance of the last decade. Since 2000, the sector has grown at an annual rate of 9.1 per cent³, compared to broader economic growth of 3.6 per cent. Growth in employment has also been very strong: over the same period, the number of people employed in the sub-sector increased by 24.5 per cent and the financial sector has become one of the fastest-growing employers in South Africa. The total assets of the sector have also grown significantly, registering nominal compound average growth of 12.3 per cent between 2000 and 2010. Financial sector assets now stand at 252 per cent of gross domestic product (GDP)⁴. However, as with most financial sectors, South Africa's has become more globally

²Released by the International Monetary Fund in Johannesburg on 25 January. Available online at <http://www.imf.org>

³As measured by gross value added.

⁴More data on the financial sector is available in the appendix to this document

connected and concentrated, potentially exposing the country to significant risks.

Given the need for higher economic growth and job creation, it is imperative to ensure that the South African financial system remains competitive and that it is made safer through regulation that follows global best practice, but bearing in mind the specific circumstances of our own economy.

While South Africa was spared the direct effects of the global financial crisis, the resultant recession has led to substantial job losses

Although South Africa has sound macroeconomic fundamentals and a robust financial regulatory framework, we suffered more proportionately from the financial crisis compared to other G-20 countries, with job losses of close to 1 million jobs. Growth has finally recovered, though at a significantly lower level than in 2007. The New Growth Path⁵ developed by government aims to increase the rate of growth to above 6 per cent and create 5 million jobs by 2020. In the G-20, President Jacob Zuma committed South Africa to a global financial regulatory reform agenda aimed at strengthening financial stability. These commitments are in four areas:

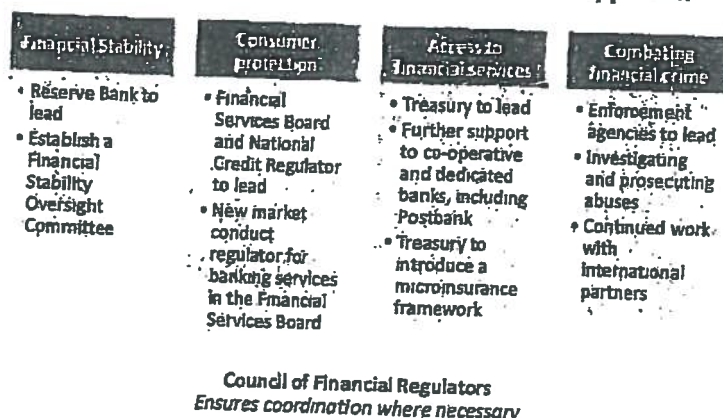
1. A stronger regulatory framework – developing appropriate principles for weak areas of the global system of financial regulation.
2. Effective supervision – strengthening the effectiveness, governance and domestic and international coordination of our regulators.
3. Crisis resolution and addressing systemic institutions – ensuring that the costs of a financial institution's failure are as small as possible, and that such a failure does not affect the broader financial system.
4. International assessment and peer review – undertaking regular assessments of the regulatory system and benchmarking our principles and practices against the international norms.

Against this background, this policy document sets out a new framework for South Africa. It is structured into four policy objectives:

1. Financial stability
2. Consumer protection and market conduct
3. Expanding access through financial inclusion
4. Combating financial crime

⁵ Available online at www.info.gov.za/view/DownloadFileAction?id=135748

Figure 1.1: The new framework will take a holistic approach



In order to achieve these objectives, as detailed in chapter 3, the major policy shift is to move towards a modified “twin-peaks” model, where different agencies are given the lead responsibility for key policy objectives.

Policy priority 1: Financial stability

The South African financial services industry operates in a globalised environment where a crisis in one economy can easily spread to another, with devastating speed and impact. Increased international trade, vital to ensuring that South Africa creates jobs and continues to grow, will require the financial sector to be integrated further with the global economy. This, however, may introduce increased financial stability risks and the need for enhanced supervision of the financial sector.

Increased global interconnectedness requires enhanced supervision

The crisis has also highlighted the need for financial regulation to be better coordinated with monetary, fiscal and other economic policies and to take into account systemic risks. As detailed in Box 2.2, this “macroprudential approach” will form the basis of our financial system regulation and broader financial sector policy reforms in the years ahead.

Against this background, a number of initiatives were announced in 2010, and will be taken forward this year:

South Africa supports G-20 initiatives to strengthen global financial stability

- **Financial Stability Oversight Committee:** A new financial stability oversight committee will be established, comprising the South African Reserve Bank, Financial Services Board and National Treasury. It will be jointly chaired by the Governor and the Minister of Finance.
- **Council of Financial Regulators:** The Council of Financial Regulators will provide interagency coordination between regulators on issues of legislation, enforcement and market conduct. It will also include relevant standard-setters such as the Independent Regulatory Board for Auditors. This Council will not be involved in the day-to-

day operations and activities of the regulators. It will meet at least once or twice a year.

- *Improved banking and financial crisis resolution frameworks:* Substantial progress on strengthening South Africa's resolution and crisis management framework has taken place over the past year, mainly focused on improving interagency coordination. National Treasury and the Reserve Bank have also finalising a comprehensive joint review of the crisis contingency framework.
- *International peer review:* G-20 countries, through the Financial Stability Board, have committed themselves to international peer reviews of their financial sector. During 2010, the International Monetary Fund and the World Bank jointly assessed South Africa's compliance to international regulatory best practice in banking, insurance and securities regulation. The assessment indicated that the quality of South Africa regulation and supervision is generally very good.

■ Policy priority 2: Consumer protection and market conduct

The South African sector is characterised by high and opaque fees

The South African financial sector is characterised by high and opaque fees, and, in some cases, the unfair treatment of customers. For savers, particularly the poor and vulnerable, savings instruments are limited, expensive and inappropriate. For borrowers, particularly small and medium enterprises, access to credit is often difficult.

Regular complaints to the relevant ombuds and numerous independent studies demonstrate that fees and charges are a problem. In banking, an independent inquiry under the auspices of the Competition Commission found that bank charges are unreasonably high. In insurance, a statement of intent signed between the Minister and the industry in 2005 noted the abusive charging practices in the insurance industry.

To address this challenge, Chapter 4 proposes the following:

- *Creating a retail banking services market conduct regulator in the Financial Services Board.* This new regulator will focus on issues of market structure and bank costs and work closely with the National Credit Regulator, which has a complementary role in regulating the extension of credit.
- *Implementation of the comprehensive Treating Customers Fairly initiative,* with clear principles for market conduct backed up by rules. Over time, this initiative will ensure consistent standards of consumer protection across the sector.

Furthermore, Chapter 5 considers key issues in the regulation of pension funds, ensuring that consumers, particularly the vulnerable older population, are protected against poverty after retirement. Additionally, pension fund regulation must facilitate investment while minimising risks to systemic stability.

■ Policy priority 3: Expanding access through financial inclusion

Sustainable and inclusive economic growth and development will be aided by improving access to financial services for the poor, vulnerable and those in rural communities. In spite of the relative success of the “Mzansi” bank account initiative⁶ in 2010, 37 per cent of 33 million South African adults did not have a bank account and only 40 per cent had a formal long-term insurance product⁷. Government will act to ensure the implementation of the transformation objectives of the Financial Sector Charter, focusing on greater access for the poor and the promotion of broad-based black economic empowerment. These objectives can be achieved without undermining financial stability or promoting reckless credit practices.

Economic development requires increased access to financial services for all

Government has created an enabling framework for co-operative banks, is working at facilitating the entry of smaller dedicated banks, is improving the governance arrangements of the Postbank and intends to introduce a micro insurance framework that will improve access to micro insurance products and services. Further details are set out in Chapter 6.

■ Policy priority 4: Combating financial crime

Finally, Chapter 7 discusses the need for initiatives to combat financial crime and abuses, including the stealing of trust and beneficiary funds, money laundering and addressing the financing of terror.

■ Managing policy trade-offs and competing objectives

These priorities, however, interact with one another, often generating difficult decisions for the policymaker. In particular, there are multiple trade-offs and competing objectives which must be balanced.

Policy objectives are competing...

- *Financial stability versus access to credit.* While unrestrained credit growth might appear desirable (for example, to allow broader access to housing), the financial crisis demonstrated that excessive household lending creates financial stability risks, with disastrous economic consequences. A careful balance needs to be struck between these competing objectives.
- *Consumer protection versus financial stability.* Arguably, a highly profitable and concentrated financial services sector is a stable one but, often, profits might be considered excessive and due to unreasonably high fees. Again, a balance is required.
- *Combating financial crime versus financial access.* Combating financial crimes is part of a comprehensive strategy to address

⁶An initiative launched in 2003 to roll out no-frills bank accounts to people who were previously regarded as “unbanked”.

⁷Finscope(2010)

financial integrity. Yet, overly onerous requirements might impede access to financial services for the poor.

...and complementary

Then again, many of the objectives are complementary. For example, in South Africa, appropriate consumer protection standards, such as the National Credit Act, prohibit excessive lending, reinforce the nation's financial stability objectives.

This document addresses some of these trade-offs and recommends steps to simultaneously meet different objectives.

The way forward

Detailed consultation will follow on all aspects of the proposals

A safer financial sector to serve South Africa better outlines the underlying approach to be taken for a series of legislative and regulatory changes to be introduced over the next three years. It notes that South Africa will be shifting towards a twin peak model for financial regulation, and that the financial sector will be made safer through a tougher prudential and market conduct framework. Many of these standards are in line with international commitments agreed via the G-20 and other processes. Various regulators have already proceeded to implement these tougher standards.

Comprehensive consultations with all stakeholders will take place as each measure is implemented, through the usual governmental and parliamentary processes. The various legislative amendments that follow will be released for public comment, after approval by Cabinet. The public comments process will culminate in the normal parliamentary processes and hearings, for enactment of legislation. This year, the following bills will be introduced: Banks Act Amendment Bill, Financial Services Laws General Amendment Bill, Financial Markets Bill and the Credit Ratings Services Bill. Further bills will also be introduced next year, as most financial sector legislation is reviewed.

Lessons from the global financial crisis

The global financial crisis has made many countries re-evaluate their financial sector policy priorities. A system-wide, or "macroprudential", approach to regulation has become a dominant theme in regulatory reforms. Basel III will bolster the regulatory framework for banks; similarly the implementation of the Solvency Assessment and Management regime will ensure the on-going health of insurance companies. Moreover, the scope of regulation will be expanded to cover private pools of capital, over-the-counter derivative markets, credit rating agencies and commodity markets. Finally, internationally, the supervision of global systemically important financial institutions will be stepped up.

■ The crisis in brief⁸

The global economy is emerging from the most serious financial crisis since the Great Depression of the 1930s. At its roots were the twin problems of global macroeconomic imbalances and inadequate financial sector regulation. Global imbalances in saving and consumption between different parts of the world were characterised by large savings in emerging economies such as China flowing into industrialised economies such as the United States, United Kingdom and the Eurozone.

This glut of funding fuelled an unsustainable level of debt-financed consumption in some advanced economies, coupled with rapid rises in asset prices.

The world economy is recovering from a crisis primarily brought about by global savings and consumption imbalances and inadequate financial regulation

⁸A list of publications providing more comprehensive discussions on the crisis can be found in the "further reading" section at the end of this document

Subprime mortgages in the US created the problem...

In many countries, but in the United States particularly, "light touch" regulation of the financial sector supported this explosion in lending and allowed household debt to rise to unsound levels. Abundant credit and scant regulation led to the proliferation of products such as "subprime" mortgages⁹. These were targeted at vulnerable households which could only afford to repay their loans on the assumption that rapid house price and income growth would continue.

The risks in indiscriminate credit extension were amplified by the innovation of sophisticated financial products and inappropriate risk management systems. Through a process of securitisation, financial institutions were able to repackage mortgage-related products into securities which they could then sell to investors around the world. As a result, toxic mortgages became deeply rooted in the global financial system. When the housing bubble finally burst, the total exposure of all financial institutions around the world to subprime products ran into trillions of dollars¹⁰.

which was amplified by the extremely interconnected nature of the global financial system.

The financial crisis peaked with the collapse of Lehman Brothers in September 2008. As a result of the ensuing panic and uncertainty, financial institutions became unwilling to lend to each other and liquidity in the interbank funding market dried up. Governments were forced to provide extraordinary support to financial institutions by buying debt worth hundreds of billions of dollars and bailing out distressed companies. Stock markets around the world collapsed, household wealth was wiped out and lending to corporations came to a grinding halt. The result was the largest global recession since the Great Depression of the 1930s.

The longer term effects include a worldwide recession and a sovereign debt crisis in the peripheral euro area

More than two years after the collapse of Lehman Brothers, the global financial system remains fragile. The main risks to system-wide stability stem from weak bank funding markets, deteriorating sovereign finances, and a slow and uncertain economic recovery.

The upheaval in the financial system has adversely affected the fiscal health of many governments. High-debt and high-deficit Eurozone economies such as Portugal, Ireland and Greece have been in particularly severe financial and fiscal difficulties. More generally, advanced economies face slow growth, high unemployment and mounting public debt.

Of greatest concern is the fact that global macroeconomic imbalances in savings and consumption continue to be remain skewed. The two-speed global recovery has led to large international capital flows to emerging markets, which may pose a threat to financial stability if the flows are suddenly reversed.

⁹ A subprime mortgage, previously common in the United States, is a type of loan that was granted to a person with a poor credit history who did not qualify for a conventional mortgage loan product. Typically the loan was offered at a very low initial interest rate, which reset later to a higher rate.

¹⁰ The International Monetary Fund's Global Financial Stability Report, April 2010, estimates that top US and European banks were forced to write down toxic assets worth US\$ 2.3 trillion between 2007 and 2010.

Box 2.1 Financial Stability Board

The Financial Stability Board (FSB) has been established to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. It brings together national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts.

All G-20 countries have between one and three seats on the FSB. South Africa has one seat, held by National Treasury. Other members of the FSB include the International Monetary Fund, the World Bank, the European Commission, the European Central Bank, the Bank of International Settlements and the Organisation for Economic Cooperation and Development.

The mandate of the FSB is to

- assess vulnerabilities affecting the financial system and identify and oversee action needed to address them;
- promote coordination and information exchange among authorities responsible for financial stability;
- monitor and advise on market developments and their implications for regulatory policy;
- advise on and monitor best practice in meeting regulatory standards;
- undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities, and addressing gaps;
- set guidelines for and support the establishment of supervisory colleges;
- manage contingency planning for cross-border crisis management, particularly with respect to systemically important firms; and
- collaborate with the IMF to conduct Early Warning Exercises.

The FSB was established in April 2009 as the successor to the Financial Stability Forum (FSF). The FSF was founded in 1999 by the G-7 Finance Ministers and Central Bank Governors. In November 2008, the Leaders of the G-20 countries called for a larger and more representative membership of the FSF so as to increase its effectiveness. In April 2009, the expanded FSF was re-established as the Financial Stability Board (FSB) with a broadened mandate to promote financial stability.

The FSB consists of a plenary, a steering committee, a chairperson and a secretariat. South Africa is a member of the plenary which meets at least twice a year and additionally holds several conference calls when needed. Its secretariat is located in Basel, Switzerland, and hosted by the Bank for International Settlements.

The FSB also has, at present, three standing committees – the Standing Committee on the Assessment of Vulnerabilities (SCAV), the Standing Committee on Standards and Implementations (SCSI) and the Standing Committee on Supervision and Regulatory Cooperation (SRC). South Africa is currently the vice-chair of the SCSI and a member of the SCAV.

International lessons from the crisis

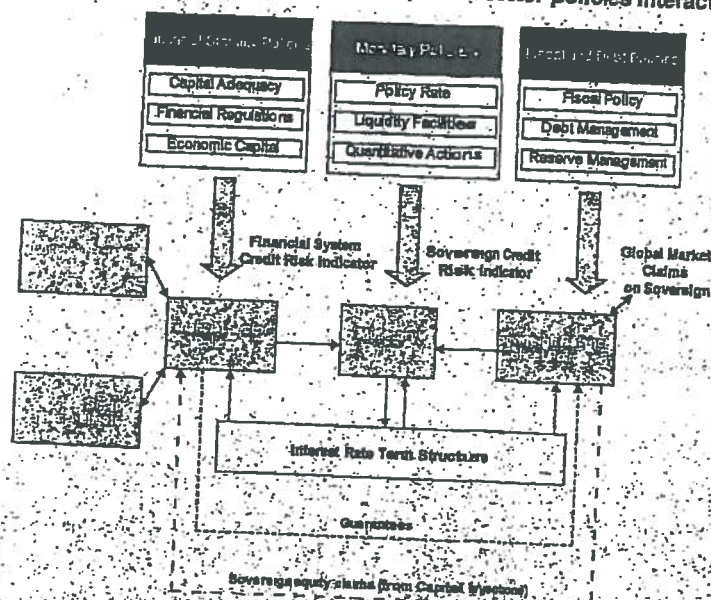
The enormous costs of these watershed events have forced governments to reconsider how they approach financial sector regulation. Most regulators, particularly in advanced economies, were taken by surprise by the events of 2007-2009 and were unable to anticipate the rise in systemic risk that culminated in the crisis.

Box 2.2 Developing a macroprudential approach to regulation

In the aftermath of the financial crisis, there is a renewed focus on managing system-wide risk across the entire financial sector. This has become known as the *macroprudential approach to regulation*, because it entails the analysis of macroeconomic trends and how they interact with the prudential soundness and stability of financial firms and the financial system. In contrast, *microprudential* supervision is mostly concerned with the prudential soundness of individual financial institutions or groups. Before the crisis, some believed that microprudential supervision was sufficient to maintain financial stability: if all institutions were soundly regulated, then the system must be stable. The financial crisis, however, has highlighted that the build-up of macroeconomic risks (such as asset bubbles, high household debt levels or the increasing linkages between large financial institutions) may pass unnoticed by microprudential regulators, who focus only on individual institutions.

The macroprudential approach also attempts to identify and control risks arising from linkages between financial institutions. If one financial institution has large exposures to another, then the health of one will necessarily affect the health of the other. Also, actions to boost the health of one entity might have unanticipated and adverse effects on the other.

Understanding how economic and financial sector policies interact



Source: Dale Gray and Samuel Malone, *Macro-financial Risk Analysis*, Wiley Finance.

There are a number of tools that can be used to reduce systemic risks. These include a leverage ratio to cap credit growth at banks; loan-to-value or debt-to-income limits on certain types of lending; the adjustment of risk weights on specific asset classes or types of loans to discourage asset bubbles in certain sectors; and the adjustment of collateral or margin requirements to reduce the growth of leverage in the sector.

Some key lessons have emerged:

- The need for a holistic view of financial sector regulation. Financial regulatory reform has been focused on ensuring that authorities and regulators adopt a “macroprudential” approach towards supervision as opposed to a purely microprudential one (see

box 2.2). This is particularly true for global systemically important financial institutions.

- **The failure of "light-touch" regulation of the financial sector at the global level.** The idea that the financial sector can successfully regulate itself has lost credibility in the aftermath of the crisis. Even if individual financial institutions are able to improve risk management practices, regulators must proactively monitor changes in systemic risk.
- **The importance of regulating market conduct to support prudential regulation.** The crisis has proven that it is poor policy to force banks to lend to consumers who cannot afford to repay their loans. Inappropriate lending practices in the US and the resultant fall-out of the subprime mortgage crisis demonstrated the need to balance the socio-economic objectives of increased access to credit and homeownership with the imperative of financial stability. The regulation of market conduct must eliminate lending malpractices in order to both protect consumers and reduce systemic risk.
- **Global cooperation in preventing macroeconomic imbalances.** The macroeconomic imbalances in savings and consumption that laid the ground for the crisis have shown no signs of disappearing. The global community must act together to find a sustainable solution to this problem.
- **The importance of swift regulatory action to prevent contagion.** The financial crisis swelled from a prudential crisis at a few institutions to a liquidity crisis across global markets in 2008 and 2009. By 2010, the crisis had turned into a sovereign crisis in fiscally weak European economies and has recently spilled into political crises in countries which have suffered from extended unemployment. The key lesson here is that regulatory action must be swiftly taken to prevent the spread of contagion.

As a result of these lessons, the global community is rebuilding a regulatory framework that is better equipped to supervise a sophisticated financial sector and pays more attention to systemic risk.

■ What protected the South African financial sector?

The South African financial sector did not experience the financial upheaval seen in advanced economies and, as a result, the economy is in a favourable situation to recover from the downturn and emerge stronger than before.

South Africa's economy is placed to emerge stronger than before

The policy components that protected the country from a financial and subsequent sovereign crisis include:

- **A sound framework for financial regulation and well-regulated institutions** ensured that potential risks were anticipated and appropriate action was taken to mitigate them. South African regulators have generally not followed a light-touch approach. Sustainable credit extension has been possible through effective legislation, such as the National Credit Act, strong regulatory action,

and good risk management systems at banks. Nevertheless, we should not be complacent – additional work can and should be done to strengthen the regulatory framework bearing in mind the lessons of the global financial crisis. These are discussed in more detail in chapter 3.

- **Appropriate and conservative risk management practices at domestic banks.** The experience of the small banking crisis in 2002 and the adoption and implementation of the Basel II Capital Accord in 2008 have led to improved risk management practices and stronger crisis management arrangements. In addition, conservative practices at banks have ensured that much less securitisation and derivatives trading has taken place, relative to advanced markets.
- **Limited exposure to foreign assets.** The prudential regulation of foreign exposure as applied in the last decade, including limits on the extent of exposure to foreign assets by institutional investors and banks, has helped to limit our overall foreign risk.
- **Subsidiary structure and listing requirements.** Registered banks have to be subsidiaries of the domestic or foreign parent company, so their assets and liabilities are ring-fenced even when the parent company is in distress. The listing requirement also ensures transparency, rigorous disclosure standards and high standards of corporate governance, forcing banks to satisfy shareholders and stakeholders at all times.

Financial sector policy was complemented by prudent economic and fiscal policies

It is important to realise that the South African financial system was protected by a much broader set of prudent economic, fiscal and financial sector policies that insulated the economy from the worst of the global shocks. These include:

- **A robust monetary policy framework** that is capable of absorbing relatively large external shocks with minimum impact on the domestic economy. The flexible inflation-targeting framework provides a much-needed anchor for monetary policy during times of excessive volatility. Moreover, the flexible exchange rate can lessen the impact of disruptive capital flows. In contrast, Eurozone countries, for example, are locked into a fixed exchange rate with their neighbours. This reduces their ability to manage shocks.
- **Countercyclical monetary policy.** Leading into the crisis, rapid growth in credit extension posed a risk to the inflation target. In response, the Reserve Bank gradually raised the repo rate, from 7 per cent in 2005 to 12 per cent by mid-2008. This acted to stem excess credit growth and mitigate the risks of the global surge in financial activity. Then, as the financial crisis unfolded, the Reserve Bank reduced rates rapidly, which cushioned the domestic economy from adverse global conditions.
- **Countercyclical fiscal policy.** The crisis led to a substantial fall in domestic tax revenue and the need for increased spending to deal with the worst of the crisis. South Africa's strong fiscal position meant the country could respond appropriately. Countries that overspent during the boom years before the crisis have found it

extremely difficult to survive the crisis, and face an austere fiscal consolidation process.

- **A proactive approach to dealing with bank credit risks.** As credit extension boomed, the Registrar of Banks took proactive steps to reduce potential risks – including the raising of capital adequacy requirements and setting conservative leverage ratios. This placed sensible limits on credit extension.
- **A focus on reducing household vulnerability.** The introduction of the National Credit Act protected households and consumers from reckless lending practices.

These elements are part of a comprehensive set of policies that will continue to ensure financial stability, and provide an excellent foundation to build on to increase the resilience of the financial sector.

Box 2.3 Costs of the financial crisis

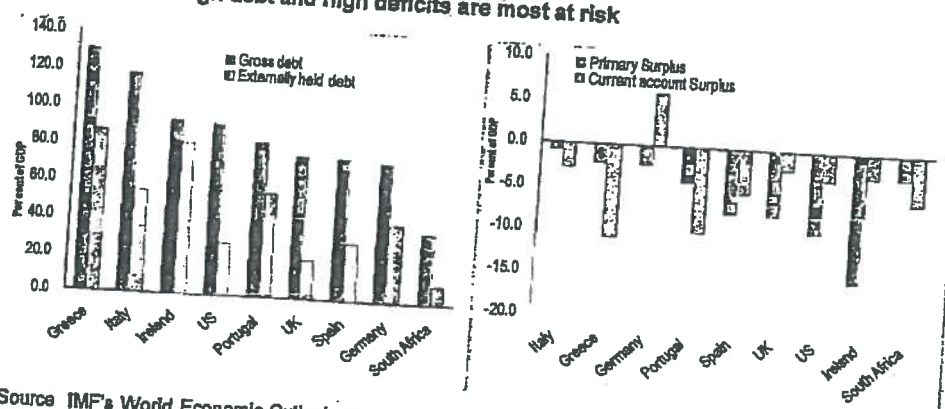
The financial crisis of 2008-09 had a devastating impact on the global financial system and the real economy, but it was by no means particularly unique. Using a dataset spanning 68 countries and 800 years, Carmen Reinhart and Kenneth Rogoff argue¹ that the recent financial crisis is not especially unique. For instance, their research finds that over the last 800 years, the aftermath of a financial crisis has been almost always characterised by, first, a prolonged fall in asset prices such as real estate valuations, second, a deep fall in output and unemployment, and finally, an explosion in the real value of government debt, largely due to the lack of economic growth, a fall in government revenues and possible deflation.

As a result of these three factors, a financial crisis is inevitably followed by a recession and an often painful restructuring of the financial system. The authors find that, on average, while recessions typically last no longer than two years, unemployment continues to rise for five years, and asset prices fall for the next six years. Public debt also rises rapidly as the government spends to fight the recession even as its revenues fall.

The recent crisis has played out in a similar way. If the first stage of the crisis was severe stress on financial institutions, the second stage was the impact on sovereign finances. The crisis has affected government funding in multiple ways. First, crisis-afflicted economies were forced to spend billions of dollars bailing out financial sectors. In the United States, for example, Congress appropriated US\$700 billion to the Troubled Asset Relief Programme – the national bail-out package. However, it was recently noted that only US\$25 billion of this amount was actually spent. Second, governments were, however, forced to spend funds to avoid a severe recession: again, the US government spent US\$957 billion in fiscal stimulus between 2008 and 2010. Facing higher expenditure and lower tax revenues during the recession, the US federal fiscal deficit widened from US\$459 billion in 2008 to an estimated US\$1.6 trillion in 2010. Third, central banks were forced to inject emergency liquidity into their economies in order to support the financial sector – with possible implications for future inflation. The US Federal Reserve poured US\$1.7 trillion into the global financial system between September 2008 and October 2010, announcing a further US\$600 billion of liquidity injections in November 2010.

Apart from these significant drains on the taxpayer, the financial crisis also sparked contagion from financial institutions to sovereign finances, and vice versa, in weaker economies. In peripheral Europe, in countries such as Greece, Ireland and Portugal, strong feedback loops have been created between the public and private sectors. While in Greece, poor fiscal management had an adverse impact on Greek banks, in Portugal and Ireland, failing financial institutions had to be supported by the state, leading to a significant deterioration in sovereign finances. Further affected by falling revenues during the recession, these governments have been forced to undertake rigid austerity programmes, worsening unemployment and slowing the economic recovery. ¹ *This Time is Different: Eight Centuries of Financial Folly*, Princeton University

Countries with high debt and high deficits are most at risk



Source: IMF's World Economic Outlook and the Quarterly External Debt Database, World Bank. All figures are for 2010.

The key lesson from the crisis has therefore been to emphasise the tremendous costs associated with a collapse in financial stability. Further, the crisis underscored the need for prudent macroeconomic policy: the smaller advanced economies with high levels of debt and deficits – both external and internal – have been most affected by the recession. In this light, South Africa's fiscal position is substantially stronger – both the size of debt relative to GDP and the primary budget deficit is lower than any of the major European countries. It is important both to implement sound fiscal policies and to thoroughly regulate the financial sector.

Strengthening the prudential regulation of banks

In December 2009, the Basel Committee on Banking Supervision (BCBS) proposed a set of bank supervision reforms (Basel III)¹¹ requiring banks to hold sufficient amounts of high-quality capital and liquid assets to see them through both a solvency and a funding crisis. The proposals took into account the lessons of the crisis, particularly the rapid spread of contagion from one bank to another.

Quantitative Impact Studies (QIS) were conducted in each of the member countries, including South Africa, to estimate the impact of the new rules on individual banks. The Basel Committee proposed several changes to the original proposals in July 2010, which took into account the QIS results. In September 2010, bank governors and heads of supervision agreed to a final set of proposals and a timetable for implementation.

Basel III will require banks to hold more high-quality capital and liquid assets

Some of the key proposals for reform are:

- **Improving bank capital.** Banks are now required to hold a higher percentage of their assets as loss-absorbing capital. There are also rules prescribing the quality of the assets that banks must hold as protection against losses. The minimum core capital ratio has been set at 4.5 per cent of risk-weighted assets, to be phased in by 2015.

¹¹ Strengthening the resilience of the banking sector and International framework for liquidity risk measurement, standards and monitoring, Basel Committee on Banking Supervision, Consultative Documents, December 2009

- **Reducing pro-cyclicality.** A major criticism of the pre-crisis regulatory framework is that it amplified pro-cyclicality in the financial system. In times of high asset growth and low risks, banks were permitted to hold less capital against potential losses while in high-risk periods, banks were called on to increase capital holdings at a time when they were least able to do so. The new Basel rules seek to mitigate this pro-cyclicality by instituting a countercyclical capital conservation buffer of a maximum of 2.5 per cent of risk-weighted assets over and above the core Tier 1 capital ratio. These buffers will vary according to the business cycle, encouraging banks to increase capital holdings during good times, which can be drawn down during a crisis.
- **Leverage ratio.** A simple, non-risk based and non-cyclical backstop measure has been introduced in the form of a minimum leverage ratio (the ratio of bank capital to total assets). A preliminary leverage ratio of 3 per cent (that is, assets can rise to a maximum of 33 times total capital) will start with supervisory monitoring from 2011. A parallel run from 1 January 2013 to 1 January 2017 will follow and disclosure starts from 1 January 2015. The leverage ratio will become a mandatory requirement by 2018.
- **Liquidity ratio.** In order to ensure that banks account for risks to their funding and liquidity structure, two new global liquidity standards have been proposed. The "Liquidity Coverage Ratio" (LCR) ensures that banks have enough liquid assets to survive the outflow of funds during a highly stressed scenario over a one month horizon. The "Net Stable Funding Ratio" (NSFR) is a longer-term structural ratio designed to address liquidity mismatches over a one-year horizon. The observation period for both starts in 2011. The LCR will be implemented by 2015 and the NSFR by 2018.

Implementation In South Africa

In terms of the new capital regulations, South Africa is strongly placed to implement the reforms to the Basel framework. Domestic banks are already capitalised above the new levels. Even though South African bank supervision does not call for capital conservation buffers, domestic banks are capitalised in excess of the buffer requirements. The current leverage ratio is far more conservative than the proposed change. Consequently, there is no requirement for South African banks to either raise capital or deleverage.

Domestic banks, however, do not presently meet the new global liquidity standards. Moreover, compliance with the standards will require structural changes to the financial system that allow banks to increase the maturity of their funding and investment managers to increase the horizon of their investments.

In consultation with regulators, National Treasury is examining ways to reduce regulatory asymmetries that hinder banks from meeting these requirements. The first step has been to change aspects of Regulation 28 of the Pension Funds Act (see Box 5.1) to allow banks access to more long-term financing: pension funds will now be allowed to buy long-dated bank debt. In addition, there have been changes to the definition

South African banks are capitalised well above the new requirements; however, they do not presently meet the global liquidity standards

of "cash", which will reduce the incentives for pension funds to hold large amounts of short-term operational funds outside the banking system.

Further steps will be taken, such as ensuring that non-bank products are appropriately regulated given their risk profile. Moreover, as outlined in the Budget Review, work to reform the savings environment to reduce tax distortions is ongoing. In addition, banks have already begun to take proactive steps to raise the proportion of their funding from retail deposits, a step that will also benefit savers.

The bulk of the Basel III reform package should be phased in by member countries by January 2012, and the liquidity requirements over a lengthy period ending on 1 January 2019. To facilitate implementation in South Africa, the Reserve Bank has made proposals to amend the existing regulations to the Banks Act. Three drafts of the proposed amendments to the Regulations were released for comment during 2010. After comments from this draft are received early in 2011, a fourth draft will be released. Following consultation, the amended Regulations should be finalised in mid-2011 and approved by the Minister of Finance in time to be released at the 2011 Medium Term Budget Policy Statement.

Box 2.4 Regulating banker bonuses

One of the big problems identified during the global financial crisis is the bonus structure of many overseas banks. Many banking executives believed that they were entitled to big bonuses even when their banks are clearly failed, and were dependent on taxpayer funds to save their banks. How people behave is closely linked to the incentives they receive. If salary and bonus incentives in the banking industry are structured towards short-term, risky profits, then the effect will be to encourage behaviour by the industry that is skewed toward short-term, risky investment. This may introduce undue risk. For this reason, the Financial Stability Board (FSB) undertook a detailed global review of compensation practices and issued Principles for Sound Compensation¹.

South Africa fully supports these principles. However, bonuses in the South African financial services sector appear not to be substantially out of line with those in other sectors in our economy, including state-owned enterprises. Indeed, the approach taken in the FSB principles serve as a model for strengthening compensation and bonus structures for other industries where large bonuses are common.

The two global standard setters in banking and insurance (the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors) have worked to include these standards into the Basel Core Principles and the Insurance Core Principles. In South Africa, the relevant compensation guidelines issued by the two global bodies will be incorporated in to the implementation of Basel III and Solvency Assessment and Management.

■ Solvency assessment and management for insurers

The Financial Services Board is in the process of developing a new risk-based solvency regime for South Africa's short and long-term insurers, known as the Solvency Assessment and Management (SAM) regime. SAM is based on Europe's Solvency II, and seeks to align the regulation of the local insurance industry with international standards. It is a risk-based regulatory framework which sets out strengthened capital requirements for insurers as well as guidelines on governance, risk management and disclosure. Similar to Basel II, it uses a three-pillar structure of capital adequacy (Pillar 1), systems of governance

The Solvency and Assessment Management regime will strengthen supervision of insurers

(Pillar 2) and reporting requirements (Pillar 3). Implementation of SAM for the insurance industry is set for January 2014.

The primary purpose of the regime is the protection of policyholders and beneficiaries, with additional objectives being to align capital requirements with the underlying risks of an insurer, provide incentives to insurers to adopt more sophisticated risk monitoring and risk management tools and to help maintain financial stability.

Implementation in South Africa

National Treasury and the Financial Services Board will conduct an economic impact assessment of the proposed SAM regime. The first phase of the economic impact assessment will consider what particular national objectives need to be taken into account, such as transformation objectives, access to finance, the emergence of smaller black-owned insurance businesses, and how the principle of proportionality should be applied in light of these objectives. The Financial Services Board has released a roadmap document, appropriately named "SAM Roadmap", which outlines key milestones required for each stage of the project¹².

■ Other initiatives

Regulating systemically important financial institutions

During the financial crisis, governments were forced to bail out those banks that were systemically important, and whose collapse would have led to extreme turmoil in financial markets. The existence of financial institutions that are not subject to market discipline, however, creates the problem of moral hazard. Secure in the knowledge that they will be bailed out by the government, these institutions may face the incentive to undertake excessively risky investments.

Concerns have been expressed that the measures taken to support institutions, particularly the global banking sector, during the crisis, has created significant moral hazard issues that will remain a challenge well into the future, and could sow the seeds of a future crisis. The regulation of global systemically important financial institutions (G-SIFIs) has become one of the biggest regulatory challenges in the post-crisis landscape.

The Financial Stability Board has developed initial proposals for the regulation of such institutions – referred to as SIFIs – and presented these to G-20 leaders at the Seoul Summit in November 2010. Broadly speaking, the mechanisms seek to achieve the following objectives:

- **Reducing the probability of failure.** These measures will increase the ability of every SIFI to absorb losses, possibly through systemic capital and liquidity surcharges or the use of contingent¹³ or bail-in¹⁴ capital.

¹² Available online at www.fsb.co.za

¹³ Contingent capital is a debt instrument which converts to equity at a pre-specified trigger which signals that the issuing entity might be approaching distress.

¹⁴ Bail-in capital is the equity capital obtained through the forcible conversion of the bonds of a failing company into equity.

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List of abbreviations

ACCC	Australian Competition and Consumer Commission
AML	Anti-Money Laundering
ASIC	Australian Securities and Investments Commission
ASISA	Association for Savings and Investment South Africa
BCBS	Basel Committee on Bank Supervision
BSD	Bank Supervision Department
CBDA	Co-operative Banks Development Agency
CCI	Consumer credit insurance
CFEB	Consumer Financial Education Body
CFT	Combating of Financing of Terrorism
CPMA	Consumer Protection and Markets Authority
CPA	Customer Protection Act
ELA	Emergency liquidity assistance
DBSA	Development Bank of South Africa
FAIS	Financial Advisory and Intermediary Services
FIC	Financial Intelligence Centre
FOS	Financial Ombudsman Service
FSAP	Financial Sector Assessment Programme
FSB	Financial Services Board
FSC	Financial Sector Charter
FSDC	Financial Stability and Development Council
FSOC	Financial Stability Oversight Council
FPC	Financial Policy Committee
G-20	Group of 20 nations
GEPF	Government Employees Pension Fund
GDP	Gross domestic product
G-SIFI	Global systemically important financial institutions
HHI	Herfindahl-Hirschman Index
IMF	International Monetary Fund
LCR	Liquidity Coverage Ratio
NCR	National Credit Regulator

NSFR	Net Stable Funding Ratio
OECD	Organisation for Economic Cooperation and Development
ROSC	Reports on Standards and Codes
SADC	South African Development Community
SAM	Solvency Assessment and Management
STRATE	South Africa's central securities depository
QIS	Quantitative Impact Study
UNIDROIT	International Institute for the Unification of Private Law

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REPUBLIC OF SOUTH AFRICA

Financial institutions play a vital role at the frontline in the fight against financial crime

theft, and organised crime. Widespread abuse of the financial system can adversely affect the macroeconomic environment within which South Africa operates, endanger financial stability and deter foreigners from investing in the country. It is, therefore, fundamentally important that the sector is protected from criminal activities and South Africa takes a very strong view on the maintenance of financial integrity.

Measures to promote financial integrity aim to detect and address abuses of the products and services offered by financial institutions. These measures bring transparency to the financial sector by requiring financial institutions to conduct proper due diligence with respect to their customers, and maintain customer and transaction information in records that are accessible by supervisory and investigating authorities.

Internationally, the Group of 20 nations (G-20) has, in a number of statements on strengthening the international financial regulatory system, referred to steps such as strengthening transparency, promoting market integrity and reinforcing international cooperation. In this context, the G-20 called on the Financial Action Task Force – a 36-member inter-governmental body established by the 1989 G-7 Summit in Paris – to revive the review process for assessing compliance by jurisdictions with standards on financial crimes.

South Africa is a member of the FATF, which works closely with other key international organisations, including the IMF, the World Bank, the United Nations, and regional bodies such as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), of which South Africa is also a member. The United Nations, through Conventions and Security Council resolutions, also plays a significant role in the campaign against illegal financial activities.

Framework for targeting financial crimes

South Africa has prioritised the fight against crime and continues to develop strong structures that investigate and prosecute financial crimes as well as strengthen compliance and regulatory measures. The Financial Intelligence Centre (FIC) was established in 2002 to lead the fight against illegal financial activities. The legislative framework for maintaining financial integrity rests on three pillars: the Prevention of Organised Crime Act of 1998, criminalising money laundering; the Protection of Constitutional Democracy Against Terrorism and Related Activities Act of 2004, criminalising terror financing; and the Financial Intelligence Centre Act of 2001 (FICA). The FICA prescribes a list of accountable institutions³⁴ and, as part of the "Know Your Client" (KYC) principle, requires them to identify the clients with whom they have business relationships and conduct due diligence with respect to them. These institutions are required by law to keep proper records relating to the identity of their clients and to report any large or suspicious transactions.

Tackling organised crime, money laundering and the financing of terror are all priorities

³⁴ The business sectors required to report to the Financial Intelligence Centre include banks and other financial services providers, authorised foreign exchange dealers with limited authority, insurance companies, collective investment schemes, stock and bond brokers, casinos, bookmakers, estate agents, accountants, auditors, attorneys and motor vehicle dealers.

As part of South Africa's drive to protect the integrity of the financial system, more advanced mechanisms have been put in place through, among other things, the introduction of new legislation and amendments to existing ones. The Financial Services Board (FSB) Act of 1990 has created an Enforcement Committee, which efficiently deals with non-compliance and imposes administrative sanctions to enhance the integrity of the financial sector regulatory regime. Through other legislation administered by the FSB, such as the Inspection of Financial Institutions Act of 1998, a number of undesirable business practices have been successfully prosecuted; some of the cases are still pending in courts.

During 2010, the FSB issued 19 inspection reports that enabled them to take decisions on, among others, institutions conducting unregistered businesses and those implicated in the misappropriation of investor funds³⁵. The outcomes of these inspections have prompted several applications to the High Court to place certain financial institutions under curatorship, as well as referrals to law enforcement agencies. Through the Financial Institutions (Protection of Funds) Act of 2001, a framework has been put in place to deal with "the investment, safe custody and administration of funds and trust property by financial institutions". The theft and misappropriation of trust funds by financial institutions and other bodies such as estate agents and attorneys have resulted in massive losses to the unsuspecting public. The FSB's successful prosecution of one of the leading masterminds behind the so-called 'Ghavalas option', which involved the stripping of the surplus assets of several pension funds, has helped to build faith in the South African financial system. Other efforts such as proper training of pension fund trustees and addressing broader governance challenges within the financial sector will also enhance the integrity of the system. The Bank Supervision Department of the Reserve Bank has also successfully targeted Ponzi and pyramid schemes.

Those that steal from trust funds and fleece the public through elaborate pyramid schemes will face the full might of the law

International principles of effective supervision to prevent criminal activity require supervisors to have adequate resources, sufficient independence, access to information, and the power both to make rules and to impose sanctions, and yet be held accountable³⁶. The 2010 joint World Bank/IMF Financial Sector Assessment Programme (FSAP) report on South Africa hails the country for upholding a strong regulatory and supervisory architecture of the highest international standard.

■ Challenges facing financial integrity in South Africa

Despite existing policy and regulatory measures, the financial system remains at threat. According to the 2009 FATF/ESAAMLG Mutual Evaluation Report on South Africa:

³⁵ FSB Annual Report, 2010.

³⁶ The World Bank, *Preventing Money Laundering and Terrorist Financing: A Practical Guide to Bank Supervisors*, 2009.

"Major profit-generating crimes include fraud, theft, corruption, racketeering, precious metals smuggling, abalone poaching, '419' Nigerian-type economic/investment frauds and pyramid schemes, with increasing numbers of sophisticated and large-scale economic crimes and crimes through criminal syndicates. South Africa remains a transport point for drug trafficking. Corruption also presents a problem. However, the South African authorities are committed to pursuing this issue through a range of initiatives such as the introduction of measures to entrench good governance and transparency. Security agencies indicated that the current threat from international and domestic terrorism is low, and will remain low for the foreseeable future. Nevertheless, the authorities are vigilant about the concern that South Africa could be used as a transit or hideaway destination for people with terror links."

The Financial Intelligence Centre (FIC), together with National Treasury, will be working on a more comprehensive financial integrity policy to enhance our interaction with the relevant local and international bodies. It is also important to be able to effectively respond to international instruments such as sanction resolutions by the United Nations Security Council. Further, the global financial system continues to be threatened by weak financial controls in some high-risk jurisdictions. Currently, South Africa is working together with other countries through FATF to identify such high-risk jurisdictions.

It is also important that the FIC, in its Annual Report and through other means, makes available information relating to patterns and techniques that are utilised by criminal elements to commit financial crimes. Such information will raise awareness of illegal activities among policymakers, supervisory bodies, business entities and individuals. Another possible strategy to raise awareness is the development and regular release of threat indicators with respect to, say, money laundering and terrorism financing.

Combating money laundering and terror financing

The events of 11 September 2001 increased the global focus on Anti-Money Laundering (AML) and Combating of Financing of Terrorism (CFT). Since then, apart from establishing the Financial Intelligence Centre (FIC), South Africa has implemented various policy and regulatory measures to strengthen the AML/CFT framework.

Money laundering consists of three stages, namely; (i) placement, which is a stage at which criminals introduce the illicitly obtained money into the financial system; (ii) layering, which involves the separation of the proceeds from their source by creating layers of transactions designed to disguise the audit trail of the criminal proceeds; and (iii) integration, which takes place when the criminal proceeds are integrated into the financial system as legitimate funds. All these stages commonly occur in the banking, securities, insurance and microfinance sectors of the economy.

Reducing money laundering is part of a comprehensive fight against crime

Abuses within the banking, securities and insurance sectors

Although South Africa has a sophisticated financial sector characterised by well-developed infrastructure and technology, the economy remains primarily cash-based due to the large informal sector. During 2009-10, the Financial Intelligence Centre (FIC) reported to the authorities R66.1 billion in financial transactions in the country that were suspected to be proceeds of crime and money laundering³⁷.

The cash-based nature of the South African economy poses challenges

The FIC has recorded a number of criminal incidences through suspicious transaction reports (STRs). During the 2009-10 period, the FIC received 29 411 STRs, which reflects a 28 per cent increase from the previous reporting period (22 762 in 2008-09). The available data reflects that 91 per cent of the STRs are from the financial sector, with only 9 per cent from the non-financial sector. This demonstrates clearly that the financial sector continues to be at a higher risk of attracting financial crimes.

In June 2003, the Basel Committee on Banking Supervision (BCBS), International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commissions (IOSCO) published a joint note providing a record of the initiatives taken within each sector to combat money laundering and the financing of terrorism. The note provided an overview of the common AML and CFT standards that apply to all three sectors and an assessment as to whether there are serious gaps or inconsistencies in the different approaches. These standard-setting organisations identified the following vulnerabilities that required increased due diligence:

- Transactions involving accounts in multiple jurisdictions
- Securities accounts introduced from one intermediary to another without adequate customer due diligence through Know Your Client investigations or from high risk jurisdictions
- The use of front persons or entities (such as corporations and trusts)
- Entities with complex corporate structures
- Politically exposed persons
- Dealing with financial institutions and intermediaries or customers operating in jurisdictions with ineffective AML/CFT systems
- Unregistered or unregulated investment vehicles, cross-border omnibus and correspondent accounts, and fictitious trading schemes.

According to FATF, there are comparatively low levels of suspicious transactions reported in the securities industry relative to other industries, such as banking³⁸. In South Africa there are no empirical studies which analyse the vulnerabilities in this sector. As a result, there is inadequate information to establish if and to what extent the securities market in South Africa is subject to criminal abuse. According to studies in other countries, the following areas in securities markets are vulnerable to money laundering: wholesale markets, unregulated funds,

³⁷ FIC Annual Report 2009/10

³⁸ FATF, *Money Laundering and Terrorist Financing in the Securities Sector*, October, 2009

wealth management and investment funds, bearer securities, and bills of exchange³⁹.

The insurance industry, as part of the financial sector, is also susceptible to criminal abuse. However, although no extensive studies have been conducted in South Africa, FATF believes that the insurance sector is not as badly affected by illegal activities as the banking sector. This could be attributed to the nature of the insurance business and the safety checks already in place. The IAIS issues AML Guidance Notes for insurance entities and their supervisors. South Africa is currently in the process of developing a new risk-based solvency regime for short and long-term insurers and risks posed by money laundering and terrorism financing are likely to be factored into the new regime.

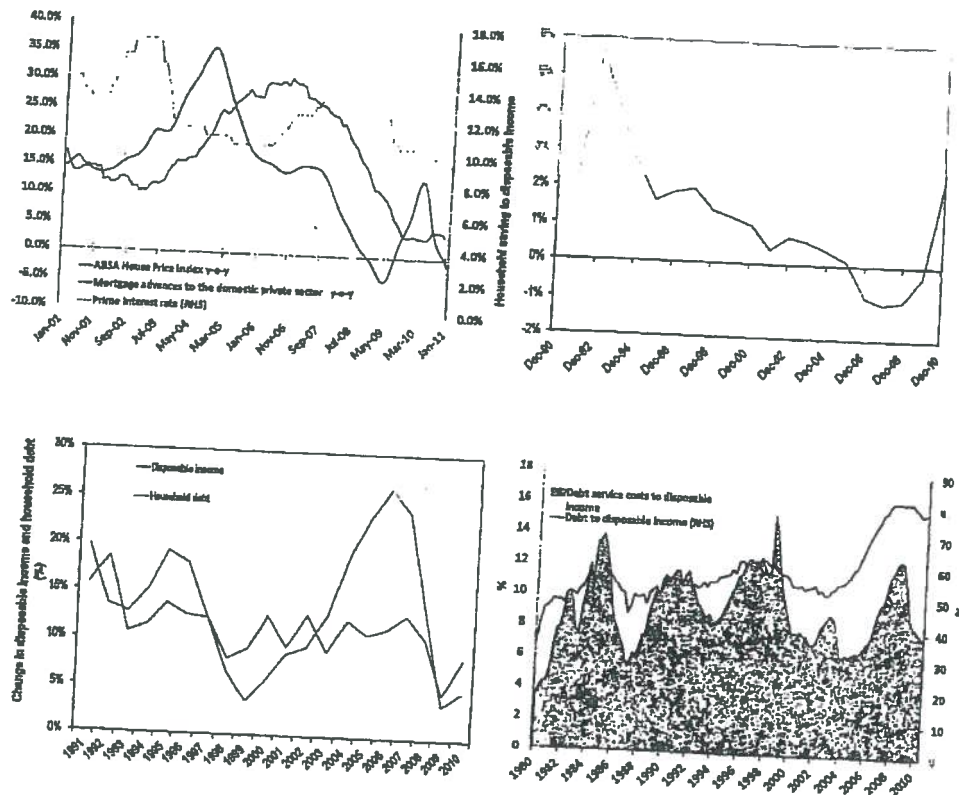
³⁹ MONEYVAL Typologies Report, 2008

Selected data

South Africa: Selected economic indicators (2006-2010)						
	2006	2007	2008	2009	2010	Most recent data
GDP and prices (% change)						
Real GDP growth	5.6	5.6	3.6	-1.7	2.6*	
Real GDP per capita growth	4.2	4.2	2.5	-2.8	1.5*	
CPI	3.2	6.1	9.9	7.1	4.3	
Public Finance (% of GDP)						
Revenue	26.3	26.6	26.3	24	23.8*	
Expenditure	26	25.9	26.7	28.9	29.5*	
Overall balance	-0.3	0.7	0.4	-4.9	-5.7*	
Government debt	32.6	28.6	24	22.2	30.7*	
Labour in non-agricultural sector (% change)						
Remuneration per worker	7.5	6.7	12.8	11.8	15.8	Q2
Labour productivity	2.8	2.9	1.6	1.5	4.3	Q2
Nominal Unit Labour Costs	4.5	3.7	11.0	10.9	11.0	Q2
External Sector (% change)						
Merchandise exports f.o.b.	24.4	20.7	31.8	-23.2	6.3	Q3
Merchandise imports f.o.b.	32.4	20.3	28.9	-25.1	3.2	Q3
Terms of trade	3.6	1.6	-0.1	8.1	2.4	Q3
Nominal effective exchange rate	-5.9	-9.6	-17.1	2.4	1.0	Q3
Real effective exchange rate	-3.2	-3.5	-10.4	7.8	1.9	Q3
External Sector (% of GDP)						
Current account balance	-5.3	-7.0	-7.1	-4.1	-3.0	Q3
Financial account balance	6.0	7.6	4.2	4.4	4.8	Q3
Foreign debt	22.7	26.3	26.3	27.7	24.1	Q2
Gross reserves (US\$bn)	25.6	33	34.1	39.7	44.1	Q3
Monetary Aggregates (% change)						
Broad money (M3)	22.5	23.5	14.7	1.7	5.1	Q3
Income velocity of circulation of money	1.4	1.3	1.2	1.2	1.3	Q3
Repo rate in per cent	9	11	11.5	7	6.5	Q3
Savings and Investment (% of GDP)						
Gross National Saving	14.7	13.4	16.3	16.3	16.7	Q3
Household savings	1.1	1.1	1.2	1.6	1.5	Q3
Corporate savings	10.6	9.5	11.1	14.4	17.4	Q3
Government savings	2.7	3.5	2.6	-0.5	-2.3	Q3
Gross capital formation	19.1	20.4	23.5	21.6	19.5	Q3

* projected value

South Africa: Selected household indicators



Credit Standing of consumers

	Q2 2008	Q3 2008	Q4 2008	Q1 2009	Q2 2009	Q3 2009	Q4 2009	Q1 2010	Q2 2010	Q3 2010
Credit active consumers (million)	17.2	17.5	17.6	17.6	17.8	18.0	18.1	18.2	18.32	18.35
Consumers in good standing (million)	10.4	10.4	10.3	10.2	9.9	9.9	9.9	9.8	9.73	9.86
Consumers with impaired records (million)	6.8	7.1	7.3	7.5	7.9	8.1	8.2	8.4	8.59	8.49
Consumers in good standing (%)	60.5	59.5	58.4	57.6	55.9	55.1	54.7	54.0	53.1	53.7
Consumers with impaired records (%)	39.5	40.5	41.6	42.4	44.1	44.9	45.3	46.0	46.9	46.3
Total Credit granted (Rbn)	85.6	72.3	65.8	51.7	50.7	53.6	63.3	61.6	67.5	75.1
Gross debtors book (Rbn)	1117	1131	1134	1141	1125	1129	1133	1145	1155	1167
Applications received (million)	—	6.3	6.6	5.7	5.6	5.8	6.5	6.0	6.5	6.9
Applications rejected (million)	—	2.8	2.9	2.5	2.5	2.6	2.8	2.4	2,633	2,690
Applications rejected %	—	44.8	44.3	43.9	44.3	44.1	43.5	40.3	40.3	39.1
Credit Enquiries (million)	103	114	102	99	122	146	147	125	135	190

South African banking sector: Analysis of deposits 2006-2010

	2006	2007	2008	2009	2010	% of total deposits in 2010
	<i>In R billions</i>					
Interbank deposits	90	111	134	154	169	7.8
Public sector	176	199	222	213	219	9.8
Government deposits	60	58	52	51	70	3.1
Local government deposits	28	29	37	31	27	1.2
Public enterprises	88	112	123	125	117	5.2
Other monetary institutions	NA	NA	11	6	5	0.2
Insurers and pension funds	90	103	105	112	129	5.7
Other companies and close corporations	651	834	1,036	1,107	1,140	50.7
Households	338	400	469	510	517	23.0
Total domestic deposits	1,345	1,648	1,966	2,098	2,175	96.8
Non-resident deposits	56	62	106	80	73	3.2
Total deposits	1,401	1,710	2,072	2,178	2,248	100.0

South African banking sector: Analysis of liabilities 2006-2010

	2006	2007	2008	2009	2010	% of total liabilities in 2010
	<i>In R billions</i>					
Cash, cheque and transmission deposits	309	362	391	392	422	13.9%
Other demand deposits	294	362	429	412	457	15.1%
Savings deposits	67	81	100	117	119	3.9%
Short-term deposits	218	254	352	346	300	9.9%
Medium-term deposits	280	336	372	438	436	14.4%
Long-term deposits	234	314	428	472	513	16.9%
Total domestic deposits	1,345	1,648	1,966	2,098	2,175	71.8%
Non-resident deposits	56	62	106	80	73	2.4%
Total deposits	1,401	1,710	2,072	2,178	2,248	74.2%
Non-deposit liabilities	153	197	264	266	270	8.9%
Total deposits and liabilities	1,554	1,907	2,336	2,443	2,518	83.1%
Capital	370	423	591	607	514	16.9%
Total equity and liabilities	1,925	2,330	2,927	3,050	3,031	100.0%

South African financial soundness indicators 2008-2010

	2008	2009	2010 (to Nov)
Capital Adequacy			
Regulatory capital to risk-weighted assets	12.5%	13.6%	14.3%
Regulatory tier 1 capital to risk-weighted assets	9.6%	10.6%	11.2%
Asset Quality			
Impaired advances to total gross loans	3.2%	5.4%	5.9%
Specific credit impairments	1.1%	1.6%	1.8%
Share of mortgage advances of gross loans and advances	40.8%	43.3%	44.6%
Credit losses	0.11%	0.13%	0.10%
Profitability			
Profit after tax (% of gross operating income)	21.5%	17.9%	19.1%
Interest income (% Gross operating income)	50.2%	49.7%	49.0%
LIQUIDITY			
Liquid assets to total assets (%)	9.8%	11.3%	12.0%
Share of short-term assets in total deposits	61.4%	58.2%	57.7%

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Enhancing Choice through Disclosure and Transparency

The retirement funds industry is characterised by poor disclosure, which can contribute to high charges and harmful inertia, as consumers are not able to compare products. The non-disclosure of certain fees and premiums can also work against the industry; for example, it is highly possible that people are not aware that a retirement annuity fund which purchases a life annuity upon maturity incorporates a guarantee to pay a pension until the death of the pensioner. Although guaranteed annuities are important, they can also be costly since the business of managing longevity risk – the risk that people will live longer than expected – after retirement is a difficult one for insurers, and therefore needs to be priced accordingly. However, legitimate concerns and perceptions that industry costs are high for retirement annuities, as an example, can be better dealt with if the guarantee and its related premium are fully disclosed to the client prior to the annuity being purchased. In this regard, a statutory requirement to disclose certain information to the client is necessary.

Poor disclosure, high charges and inappropriate fees are a concern

Every pension fund must be obliged to provide statements to its members on a regular basis, possibly twice a year. The Chilean experience indicates that the statements should contain an optimal amount of information, since members tend not to read very detailed information. The proposed Organisation for Economic Cooperation and Development (OECD) disclosure guidelines recommend that statements should provide at least the following basic information:

- The contributions already accumulated from both employer and members
- The pension benefit you are likely to receive if you continue your contributions until retirement, adjusted for inflation and investment risk
- How much you need to contribute to reach a particular replacement ratio
- Benefits due to beneficiaries upon death, disability and so on
- A breakdown of the fees (such as administration, investment) and the net benefits.

Such disclosure enables members to take more informed decisions, including whether to supplement their retirement savings or to increase their contributions, or even switch to another fund under a portability-enabled system. It should be noted that disclosure under DC funds is relatively better than in DB funds, given the inherent transparency of DC funds.

National Treasury, together with the Financial Services Board, will also be formally engaging with the industry on the high and opaque charges, especially on products such as retirement annuities, to better understand their cost structures. This will be done through the *Treating Customers Fairly* programme.

Managing Costs through Umbrella Funds and Alternative Products

The retirement funds industry, especially retirement annuities, is correctly perceived by society as fraught with high costs. High administrative costs reduce retirement income, irrespective of whether the fund is a DB or DC, although this is more pronounced in the latter case.

Economies of scale may offer benefits in terms of cost and effective supervision

A possible solution to structurally manage retirement costs or fees is through economies of scale. A recent study by Economic Research Southern Africa (2010) shows that South Africa has unused scale economies of between 24 per cent and 30 per cent²⁶. Further, the study argues that the optimal fund size to achieve economies of scale is around 220 000 members. Economies of scale can be achieved through the consolidation of small private sector pension funds into a smaller number of large funds. There are currently too many pension funds to allow for cost efficiencies at the member level.

The currently overpopulated pension fund space also makes effective supervision difficult. Although the number of active pension funds has declined significantly to 3200 active funds, further consolidation can still be achieved. A legal threshold can be set at which a fund will be registered by the Financial Services Board (FSB). Further, smaller employers should be encouraged or required to join umbrella funds. Umbrella funds have demonstrated some advantages when it comes to reducing costs, transparency and good governance. According to the FSB (2006), the cost to contribution ratio for funds with 20 members or less stood at 63.5 per cent, while funds with 10 000 or more members had a cost to contribution ratio of 0.69 per cent. Similarly, Alletthausen, Hacking and Latchman (2010) found costs and fees of stand-alone funds to be significantly higher than umbrella funds²⁷.

Public sector pension funds: harmonising rules and regulations

Public sector pension funds (such as those of state-owned entities, the Government Employees Pension Fund or GEPPF and local government pensions) are characterised by fragmented rules and supervision. For example, the largest pension scheme in the country, GEPPF, is self-regulated and has different rules compared to other public sector pension funds. This is the case with many other government pension schemes.

Although the Pension Funds Act ("PFA") is a relatively old piece of legislation, having been enacted in 1956, and in need of modernising, it has managed to keep pace with certain key developments. For example, the PFA:

²⁶Economic Research Southern Africa, *Study on Economies of Scale in SA retirement funds*, Presentation at ASISA 2010 Conference on Retirement Reform

²⁷Anne Cabot-Alletthausen, Hugh Hacking and Bashkar Latchman. *Umbrella Funds - Is this where the market is going?* Presentation at the 2010 Institute of Retirement Funds Conference on Retirement Funds

- allows divorcees to immediately receive a share of their member-spouse pension upon divorce (if the benefit is prescribed by the marriage contract), and not wait for the member-spouse to first retire²⁸
- affords members of pension funds registered under the PFA access to the Pension Funds Adjudicator
- incorporates a minimum benefits rule

A number of public sector pension funds do *not* incorporate these modern rules, and therefore place their members at a disadvantage.

There have been numerous complaints regarding the GEPF rules. In particular, the rule that restricts members who leave after a few years to only their portion of contributions upon resignation has been considered by many as grossly unfair. This rule also has the potential of discouraging persons from becoming government employees since pension benefit is a major consideration in the decision to join an organisation. The inability for a member to receive full benefits (that is, both contributions from employee and employer) upon withdrawal from a fund is one of the reasons why DB funds were converted to DC funds in the last decades. A process is currently underway to review the current rules of the GEPF to better align them with best practice, even though it will remain a DB fund.

Box 5.3 Pension Funds Investing in government bonds

The South African bond market is very active with government issuing local bonds to fund its expenditure. Statistics indicate that both public and private pension funds are major investors in government bonds. In 2008, institutional investors, especially pension funds, were the largest investors in government bonds: around 60% of government bonds were held by the Public Investment Corporation (mainly the Government Employees Pension Fund) and private pension funds, with another 20% were held by long-term insurers. In 2009, private pension funds held around 31% of their total assets in government bonds.

It is also important to note that all entities cannot issue a bond, since a bond requires a guarantor and requires the issuer to be able to raise income to service the interest payments. The bond must also pay an appropriate return in line with the associated risk. National Treasury is able to play such a role within government, given the power to raise taxes.

Two options will be investigated with regard to the possibility of bringing all public sector pension funds within the same regulatory framework as private pension funds:

- Requiring all public sector pension funds (that is, funds of state-owned entities, the GEPF and local government funds) to register under a (revised or new) Pension Funds Act and be subject to the supervision of the FSB
- Designing a uniform dedicated public sector pension funds act, with the aim of consolidating some or all of the funds not supervised under the PFA, and subjecting them to the supervision of the FSB.

²⁸This rule gives effect to the Divorce Act and Constitution.

National Treasury and the FSB will engage with the relevant public sector organs to consider the various options and best approach in facilitating this harmonisation and consolidation.

Tax proposals in the 2011 Budget

The 2011 Budget gives effect to some of the reforms. Three sets of corresponding tax changes are proposed as transitional measures (as outlined in Chapter 5 of the Budget Review):

- *Uniform contribution system:* The system for obtaining deductions will be unified so that individuals will be allowed a single stream of deductions for contributions made to pension, provident and individual retirement annuity funds.
- *Provident funds:* As part of the new uniform tax system, strong consideration is being given toward subjecting provident fund withdrawals to the one-third lump sum limit currently required in relation to pensions. These changes seek to ensure that retirees preserve some of their retirement savings throughout their retirement years. This change will be subject to extensive consultations and will contain transitional relief for those with vested rights.
- *Living annuities:* Upon retirement, taxpayers can convert their retirement fund savings into guaranteed annuities or living annuities (in addition to partial withdrawals as a lump sum). While guaranteed annuities lie at the core of the insurance business because these annuities depend on the life-span of the retiree, living annuities are based solely upon the member investment. It is therefore proposed that the list of eligible living annuity providers be expanded to other intermediaries (e.g. collective investment schemes and government retail bond issues).

Access to financial services

Achieving sustainable and inclusive development in the financial sector goes hand-in-hand with improving access to financial services, particularly for the poor and vulnerable. In 2010, 37 per cent of 33 million South African adults did not have a bank account and only 40 per cent had a formal long-term insurance product. To increase access to affordable, convenient and appropriate financial services, financial inclusion interventions are essential.

National Treasury is undertaking a number of initiatives that will contribute to developing a financial sector that provides access to the poor and thereby contributes to economic growth, job creation and poverty alleviation. These initiatives include developing the role of Co-operative and Dedicated Banks, strengthening the Postbank, and introducing a micro insurance framework.

National Treasury is also working with the financial sector, the trade unions and other stakeholders to finalise the gazetting and converting of the Financial Sector Charter into a Sector Code that will become binding on all reporting institutions.

■ Overview

Financial inclusion is about ensuring that all South Africans have access to financial services that encourage them to manage their money, save for the future, obtain credit and insure against unforeseen events. This is especially important for low-income households who live in or close to poverty. Unforeseen emergencies – such as the loss of a job or an income-earning asset – can push vulnerable families into vicious poverty traps. Access to credit and insurance can not only help the poor raise their standards of living but prevent those standards from falling sharply in an emergency.

Financial inclusion has gained global attention and recognition as a vehicle for sustainable and inclusive growth and development. The government played a key role in facilitating the adoption of the

*Access to financial services
is crucial in the South
African context*

Financial Sector Charter in 2004 to promote financial inclusion. This was done by committing major financial institutions to work more closely with government, labour and the wider community to transform the financial sector to better serve the poor and vulnerable, and ultimately the nation. In addition, South Africa is working towards fulfilling its commitment to implement the G-20 Principles for Innovative Financial Inclusion.

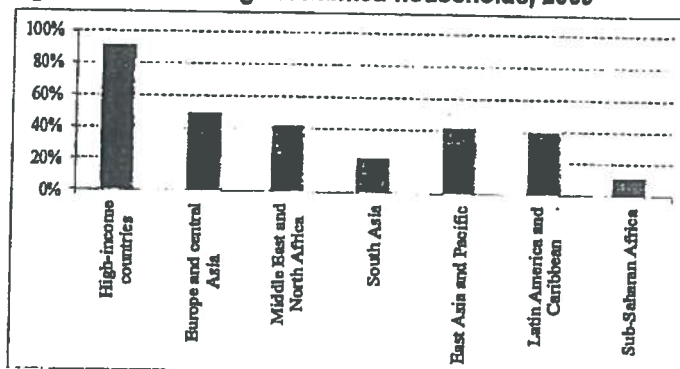
Increasing access to formal financial services for individuals, households and micro, small and medium enterprises (MSMEs) has substantial benefits for the economy, including job creation, boosting economic growth, alleviating poverty, improving income distribution, and empowering women. Improving access to financial services will entail policy interventions, and changes to the institutional environment.

■ Financial inclusion scorecard

*More than 50 per cent of South African households have deposit accounts.
More than 60 per cent of adult South Africans have a bank account*

Access to financial services varies greatly across different parts of the world. The percentage of households that have a deposit account with a formal financial institution varies from 91 per cent²⁹ in high-income countries such as the United States to 12 per cent in Sub-Saharan Africa. In South Africa the number of households with deposit accounts is estimated to be between 50 per cent and 75 per cent (see figure 6.1 for regional comparisons).

Figure 6.1: Percentage of banked households, 2009



Source: C Gap, Financial Access 2009

When considering other financial inclusion indicators, South Africa has varying results in comparison to other economies. The number of bank branches per 100 000 adults is among the lowest in the world. The number of ATMs per 100 000 people is substantially higher than India, but roughly half that of Brazil and one-third of that of Australia. The number of point-of-sale terminals is once again much higher than India and half that of Brazil but one-quarter that of Australia. Table 6.1 compares selected financial inclusion indicators internationally.

²⁹C Gap, Financial Access 2010

Table 6.1 International comparison of selected financial inclusion indicators

	Australia	Brazil	India	Mexico	South Africa	United Kingdom	United States
Deposit value (% of GDP)	75.18	35.55	55.03	15.08		61.32	43.91
Loan value (% of GDP)	115.55	78.61	40.93	13.38	95.96	80.64	44.81
Bank branches per 100 000 adults	32	13	10	15	8	21	
ATMs per 100 000 adults	157	112	7	45	52	123	
POS per 100 000 adults		2 247	67	592	1 068	2 331	
Value of SME loans (% of GDP)		3.77	4.34	-	10.71	-	4.93

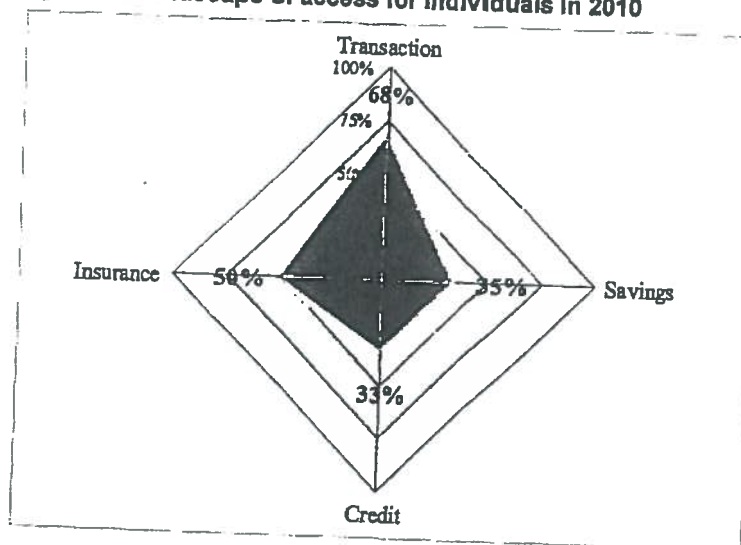
Source: C Gap Financial Access 2010 and SARB National Payment System Division

1. Red shading Indicates the lowest value
2. Green shading Indicates the highest value

Access for Individuals

The South African Finscope survey measures access to credit across four categories of financial products: transaction, savings, credit, and insurance products. This landscape of access (figure 6.2) includes both formal and informal financial sectors of the economy and indicates that 68 per cent of adult South Africans use transaction products, 35 per cent savings products, 50 per cent insurance products and 33 per cent credit products.

Figure 6.2 Landscape of access for Individuals in 2010

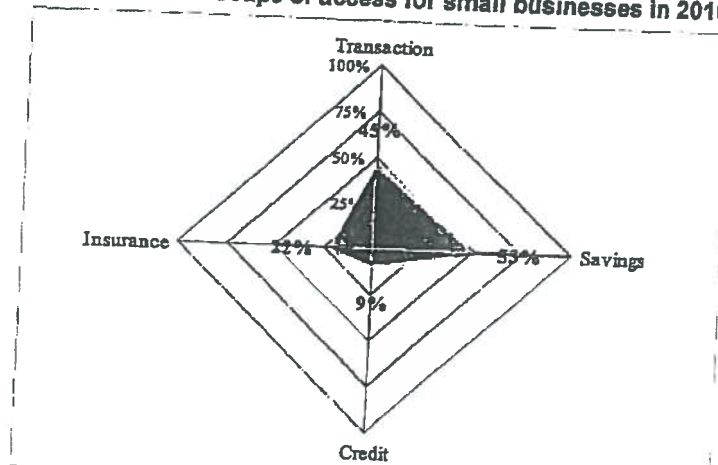


Source: Finscope South Africa 2010

Access for small businesses

According to the Finscope South Africa Small Business Survey 2010, 45 per cent of small businesses use transaction products, 53 per cent savings products, 45 per cent transaction products, 22 per cent insurance products and 9 per cent formal credit products (see figure 6.3).

Figure 6.3: Landscape of access for small businesses in 2010



Source: Finscope South Africa Small Business Survey 2010

Financial inclusion Initiatives

In recent years, government has undertaken a number of initiatives to accelerate financial inclusion. These include promoting entry into the banking sector, creating an enabling framework for co-operative banks, facilitating the entry of smaller dedicated banks, improving the governance arrangements of Postbank, and introducing deposit insurance for co-operative banks, taking forward the Financial Sector Charter and improving access to housing and small business finance.

In addition, the industry has introduced a number of initiatives that harness cutting-edge technology to provide innovative and useful products (see box 6.1). Where appropriate, government will support these initiatives through legislative and regulatory changes.

Co-operative banks

Acknowledging that consumers with a common bond may wish to form an association to provide financial services to members, a legal and supervisory framework was created for the co-operative banking sector in 2007. This was designed to afford depositors in co-operative banks the same level of safety and protection as that enjoyed by depositors in mutual banks and first-tier banks.

The purpose of the Co-operative Banks Act is to create a regulatory framework that provides for the registration of Co-operative Financial Institutions (CFIs) as co-operative banks. CFIs include financial services co-operatives, saving and credit co-operatives, community banks, credit unions and village banks. There are approximately 60 CFIs currently operating under the common bond exemption to the Banks Act. Their total assets are approximately R137 million, total savings R125 million and membership approximately 36 000. The co-operative bank supervisors are in the process of conducting assessments of 18 CFIs that have applied for registration as co-operative banks. These CFIs represent 92.7 per cent of the sector's total assets. The registration of several co-operative banks is expected in 2011.

Registration of several Co-operative banks is expected in early 2011

Box 6.1 Using technology and innovation to expand access to banking

Across the world, there has been an explosion in new technologies and innovative approaches towards banking. South Africa is no different. By reducing costs, and taking banking to all corners of the country, many of the previously unbanked have benefited. Some examples of these innovations in South Africa include:

Domestic money transfer systems: Retailers have developed technologies that enable customers to transfer money on a person-to-person basis between any of the retailer's stores. A registered bank is responsible for all the deposit-taking and regulatory requirements in terms of legislation (including payment-related requirements). In other innovations, customers can also initiate payment instructions from their bank account. A message is sent to the mobile device of the beneficiaries, allowing them to withdraw the money at the account holder's bank's ATM.

Prepaid cards expand the capabilities of banks to provide card-based solutions for both banked and unbanked customers (such as shopping centre gift cards, FIFA World Cup Cards).

The community banking mobile banking account, offered by one of the Big Four banks, is a card and cellphone-based basic transactional account originated and serviced in communities by community banking sales agents, community bankers and at authorised community retailers. The account links the client's bank account to a SIM card so that transactions such as purchases, money transfers, and balance enquiries can be done via a cell phone or through a community retailer's transactional device. Clients can also use their debit cards through existing banking infrastructure. The product provides mass market customers with a cash management solution that is affordable, accessible, easy to use, and enabled through non-traditional channel access such as local community retailers (specifically cash-in and cash-out). Other retail partners include spaza shops, hairdressers, butchers and shebeens.

Virtual payments (mimoney) act as electronic cash that can be used as a payment method on platforms such as an internet website, a mobi website (a website downloaded to a mobile phone) or at a telephone booking centre (call centre) where mimoney is advertised as an acceptable payment mechanism. mimoney can even be redeemed at retailers that are mimoney acceptors.

Pure cash back at point of sale (POS) allows debit cardholders to withdraw cash at any POS device whether at a retail store or spaza shops. Pure cash-back at POS will promote access in rural areas at a lower transaction cost than an ATM withdrawal.

Cash-back at POS enables certain retailers to allow a customer to receive a cash-back with their purchase on debit cards.

Transaction notification services provide customers with immediate electronic notifications – SMS or email – alerting them to financial transactions on their accounts. Such services allow customers to better manage their finances and identify fraudulent transactions on their accounts.

Real-time Clearing (RTC) transactions are real-time EFT credit push inter-bank transactions that allow customers to make immediate payments across relevant channels and products, enabling beneficiaries to have immediate access (within 60 seconds) to the funds received. Only a single transaction is allowed with no batch processing. Only South African rand-based transactions are allowed. Straight-through-processing is utilised and no manual intervention allowed.

Early debit orders (EDOs): There are two types of EDOs – authenticated early debit orders (AEDOs) and non-authenticated early debit orders (NAEDOs). AEDOs enable the accountholders to electronically authorise future-dated deductions from their bank accounts for the payment of insurance premiums, loan repayments, asset purchases, and so on, at the point of sale by swiping their bank cards and entering their PIN. Since these deductions are authenticated by the consumer in person, they cannot be repudiated, giving the service provider and consumer certainty of payment. NAEDOs allow qualifying service providers and consumers transacting with these service providers the equivalent benefit of AEDO without the PIN authentication requirement. A NAEDO instruction is therefore similar to a standard debit order, except that it is processed earlier. Debits in AEDOs and NAEDOs (with a capped item limit of R3000 per transaction) are processed on a randomised, non-preferential basis, providing every user (including the customer's own bank) with an equal and fair opportunity to recover payments due from the account. The solution expands access to the National Payment System, improves the effectiveness of debit order payments and reduces the incidence of returned debit orders as well as the associated fees and costs. A NAEDO payment is enhanced by a tracking service, which enables the instruction to be processed from the mandated date over a selected tracking period (the instruction is kept in the background and triggered whenever a deposit is applied to the account).

The Co-operative Banks Act also provides for establishing the Co-operative Banks Development Agency (CBDA) to support, promote and develop the co-operative banking sector. The agency began operating in August 2008 and is currently designing capacity-building programmes for CFIs. The Act further makes provision for the agency to establish and manage the Co-operatives Banks Deposit Insurance Fund. National Treasury, in consultation with CBDA and the supervisors of co-operative banks, is in the process of developing a framework to establish the fund.

Financial Sector Charter (FSC)

Expectations are that the long-awaited draft Financial Sector Code will be gazetted for comment in mid-2011

The Financial Sector Charter came into effect in January 2004 as a result of the NEDLAC Financial Sector Summit. The FSC sets broader and deeper transformation targets, taking into account the specifics of the financial sector. At its launch, it was recognised by stakeholders that, given the risk of re-capitalisation expected of significant shareholders of, say, a bank, the focus of the Charter should be on access and ownership targets. Hence, the Charter includes access targets in other sectors like the financing of low-income housing, small and medium enterprise finance, transformation infrastructure, and access to financial services such as affordable banking, insurance and savings products.

One of the key initiatives flowing from the FSC process is the Mzansi account. Mzansi was launched in 2004 by the four big banks and the Postbank. It is designed as an entry-level transactional account with common features to address the obstacles that deter consumers from being part of the formal banking sector. By August 2010, there were 3 million active Mzansi accounts.

The FSC allows for a comprehensive mid-term review of its target to take into account achievements by the financial sector against the targets and to adjust the targets in line with existing challenges. The Financial Sector Charter Council, constituted to oversee implementation of the Charter between 2004 and 2014, is redrafting the Charter as the Financial Sector Code in terms of the Broad-based Black Economic Empowerment (B-BBEE) Act 53 of 2003. The draft Financial Sector Code is the product of interaction between industry associations, labour, community and government. The draft code aims at aligning the FSC with the B-BBEE Act Codes of Good Practice, which were gazetted in 2007, well after the launch of the FSC.

After making significant progress from inception until 2007, the Charter process broke down over negotiations to amend it to meet the new B-BBEE requirements. This delay slowed the process of transformation, but now, after three years, the dispute over equity ownership appears to have been resolved.

Phase one of the draft code, which represents an agreement mainly on the ownership element, was gazetted for comment end 2010. It is envisaged that phase two of the code, which will include access targets will be gazetted for comment mid-2011.

Box 6.2 A primer on *stokvels*

A *stokvel* is an association of individuals who make regular contributions to a common pool of savings, which is generally given in total or in part to each contributor on a rotational basis. The business of a *stokvel* is directed by a common bond that exists between its members.

There are different types of *stokvels*:

- General savings clubs are established for a variety of purposes, such as women's *stokvels*, where members pool their savings to buy groceries in bulk at reduced prices or party *stokvels*, where members takes turns to organise parties at which food and liquor are sold and the host takes the profits.
- Burial societies are *stokvels* established to assist members with funeral costs. They are formed between people with a social connection, such as members of the same church, to provide a way for members to save for and insure themselves against the death of a family member.
- Investment *stokvels* save for capital projects or to invest in a business venture, property or shares.

There are divergent estimates of the size of the industry. In 2003, the University of Cape Town estimated that adults in South Africa invested about R12 billion a year in *stokvels*. In 2007, Old Mutual estimated that informal savings in South Africa amounted to R33 billion. The National *Stokvels* Association of South Africa estimates that approximately 8.3 million adults are members of 800 000 *stokvels*. Finscope 2010 found that 38% of adults – 12 million people – use *stokvels*.

Stokvels accept deposits in a manner that is identical to conducting the business of a bank. Subject to certain exceptions, no person may conduct the business of a bank in South Africa unless such a person is registered as a bank in terms of the Banks Act, or as a mutual bank in terms of the Mutual Banks Act. However, in recognition of, among other things, their social and economic role, the Reserve Bank made an effort to legalise them and in January 1994, the Registrar of Banks, with the approval of the Minister of Finance, issued Government Notice No. 2173 based on the common-bond principle, whereby *stokvels* can lawfully conduct their operations within South Africa, provided they operate within the scope and conditions of the common-bond exemption notice. In December 2006, the common-bond exemption notice was revised to, among other things, prohibit *stokvels* from undertaking activities of pension fund organisations as defined in the Pension Funds Act.

Restructuring the governance of the Postbank

The Postbank is among the financial institutions best suited to take the lead in satisfying the financial services needs of rural and poor communities in South Africa. Given this important role, government embarked on a process to bring the banking activities of the Postbank under the legislative and regulatory ambit of the financial services sector.

Legislative framework in place to improve and expand the role of the Postbank

The first leg of this process saw the drafting and approval of the South African Postbank Limited Act, which seeks to create a legislative framework to establish the Postbank and improve and expand its role as a dedicated bank (see below).

Overall, the idea is to expand the Postbank's products and services, particularly for the rural and lower income markets as well as communities that have little or no access to commercial banking services. National Treasury is working with the Postbank and the Department of Communications to make this vision a reality.

Dedicated banks

Government is committed to promote legislation to encourage greater competition in the retail banking sector, by facilitating entry for banks that are limited in complexity, scope and size. "Dedicated banks" are envisaged to be narrow or core banks that specialize in certain retail

Dedicated banks will receive renewed attention

activities such as deposit taking or lending or both. The idea of narrowing the activities of such banks to the funding of risk-free or lower-risk retail assets is attractive as it reduces the bank-default risk of depositors.

A number of proposals suitable for a post-crisis industry are being considered. A discussion paper in this regard is being prepared and will be published for comment in mid-2011.

Deposit insurance

A number of challenges complicate the introduction of deposit insurance. Discussions are on-going.

Deposit insurance seeks to protect bank depositors, in part or in full, in the event of a bank failure. It is one way to balance the often conflicting policy objectives of financial inclusion and financial sector stability. Although National Treasury circulated a draft Deposit Insurance Bill in 2008 for comments, a range of challenges complicate the conclusion of this initiative. These include the need to take into account the specifics of the South African financial system – the domination of the sector by four big banks, and the leading role of corporate depositors in previous bank-run episodes. The introduction of deposit insurance is particularly important for encouraging new entrants to the sector. In the absence of deposit insurance there is a strong possibility that customers will prefer saving with the big four as these banks are considered to be “too-big-to-fail” and, as such, safer. This attitude might prevail even if smaller banks have a better and cheaper product offering.

Discussions between the relevant parties are on-going. A timeline for public consultation on the proposals is being finalised.

The IMF/World Bank Reports on the Observance of Standards and Codes (ROSC) assessment in March 2010 highlighted the limited progress made in launching a deposit insurance scheme in South Africa and emphasised – in light of the recent draft liquidity proposals issued by the Basel Committee on Banking Supervision in December 2009 – that the absence of explicit deposit insurance regulation may have an adverse effect on South African banks.

Micro insurance

The regulatory framework for the insurance sector should better support access for the poor

Informal insurance or risk pooling is probably the single largest financial service in South Africa. For example, 23 per cent of black South Africans and 15 per cent of coloured South Africans surveyed by Finscope in 2009 obtained protection against funeral expenses through membership of informal burial societies.

The formal sector has struggled to keep pace, partly because of regulatory barriers. As a result, a large proportion of the South African population continues to be excluded from obtaining access to an appropriate range of formal insurance products and services. Finscope 2010 reports that only 50 per cent of adults hold or are covered by insurance, and that this is dominated by funeral and what are considered hugely under-reported credit policies (policies issued against a credit purchase). Moreover, many of these policies are sold by unscrupulous, and in many instances illegally operating, intermediaries.

The challenge South Africa faces is threefold: we need to enable better take-up of insurance policies by poorer and more vulnerable households, change the composition of the insurance market to better reflect the needs of these families (so that they are protected in life and not just against funerals), and ensure protection against unscrupulous operators.

Government believes that the current regulatory framework for the insurance sector should better support the provision of appropriate insurance products to low-income South African households.

National Treasury has finalised its micro insurance policy framework, which will be released in March 2011. The framework aims to achieve the following objectives: (i) extending access to a variety of good-value formal insurance products appropriate to the needs of low-income households; (ii) enabling current informal insurers to provide formal insurance, in the process establishing new, well-capitalised insurers and promoting small business development; (iii) lowering the barriers to entry to encourage broader participation in the market and promote competition among providers; (iv) ensuring protection of the consumers of microinsurance; and (v) facilitating effective supervision and enforcement.

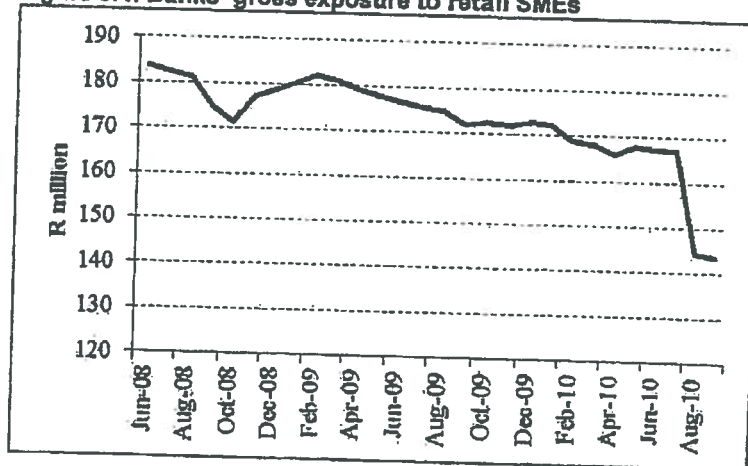
Access to small business finance

Ensuring the success of small business is high on government's agenda as small business is seen as a major force for economic growth and employment creation.

Banks' gross credit exposure to retail SMEs³⁰ decreased from R183.8 million in June 2008 to R143.7 million in September 2010³¹ (see figure 6.4). This downward trend indicates the credit constraint under which SMEs are operating in the current economic environment.

Treasury is taking forward FSC proposals to improve SME access to finance and supporting dti's strategic initiatives to increase financial services to small business

Figure 6.4: Banks' gross exposure to retail SMEs



Source: Bank Supervision Department BA200 data

³⁰Retail SMEs have an aggregate exposure of less than or equal to R7.5million

³¹There is no consistent national definition of the term SME. Improving this is a core priority for Treasury.

A number of Development Financial Institutions (DFIs) provide finance to SMEs and micro-enterprises. These include the Industrial Development Corporation (IDC), Khula Enterprise Finance, South African Microfinance Apex Fund (samaf), National Empowerment Fund (NEF) and National Youth Development Agency. The New Growth Path recently endorsed by Cabinet contemplates a remake of the mandates and roles of DFIs. In particular it proposes a "one-stop shop and single funding agency for small and micro businesses through the consolidation of Khula, samaf and IDC, among others". As announced, in the 2011 State of the Nation address, many of these will be rationalised to make them more effective.

According to the Finscope South Africa Small Business Survey 2010 there are roughly six million small businesses with fewer than 200 employees. One in six South Africans aged 16 years and older generates an income through a small business and 58 per cent of small business owners are women.

Almost a quarter of small business owners – 22 per cent – cited sourcing money as their main obstacle when starting up, while 14 per cent named access to or cost of finance as the biggest hurdle to growing their business.

What is significant is that 76 per cent of small business owners were unaware of any organisation that helps or advises small businesses. Only nine per cent of small business owners are aware of the use of banks as a potential basis of support and only two per cent sought help there.

In international rankings for the ease of doing business³², South Africa is ranked second out of 183 economies in terms of the ease of obtaining credit. This is based on the depth and coverage of credit information as well as the strength of legal rights, which is the degree to which collateral and bankruptcy laws protect the rights of borrowers and lenders and facilitate lending; South Africa's rankings in other index constituents are not as favourable (see table 6.3).

In terms of its regulatory environment for easy access to credit for businesses, South Africa is rated joint second with the UK out of 183 economies

³²World Bank Group, Doing Business, 2010

Table 6.3: South Africa rankings on ease of doing business

Topic	Ranking out of 183
Starting a business	67
Dealing with construction permits	52
Employing workers	102
Registering property	90
Getting credit	2
Protecting investors	10
Paying taxes	23
Trading across borders	148
Enforcing contracts	85
Closing a business	76

Source: World Bank Group, Doing Business 2010

Apart from its work with G-20 efforts aimed to improve access to finance by micro, small and medium enterprises, Treasury is presently examining FSC proposals to improve access for black small and medium enterprises and supporting the trade and industry department's strategy initiatives³³ to increase supply of financial services to small business.

Access to Housing Finance

Addressing housing challenges is a major priority of government. The twin problems of supply and affordability continue to hamper the growth of the affordable housing finance market in South Africa. An analysis of the South African housing finance market is shown in table 6.4.

Table 6.4: South African housing market

Market segment	Monthly Income	Households		Average mortgage granted Q2 2010 R'000
		Number (million)	% of total	
Housing subsidy market ¹	< R3500	8.3	60%	R0 ¹
Gap market ²	R3500 to R10000	3.2	23%	R184.3
Affordable market	R10001 to R15000	0.7	5%	R245.3
Traditional market	> R15 000	1.6	12%	R687.5

¹Households qualify for a fully subsidised house of R140 000

²Households earning between R3501 and R7000 qualify for a state subsidy in terms of the Finance Linked Individual Subsidy Programme (FLISP)

Source: National Credit Regulator, June 2010, Consumer Credit Market Report, FinMark Trust, 2010, Enhancing access to housing finance, unpublished report

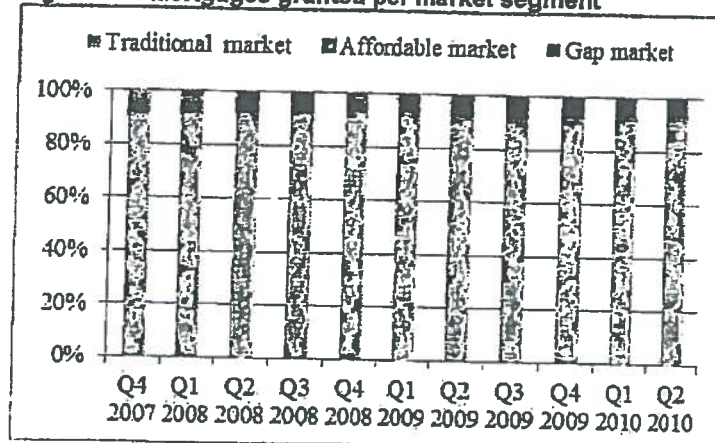
Despite the progress made in the last 16 years, an estimated 2 million households live in informal and inadequate housing. The subsidy

³³dti, *Integrated strategy on the promotion of entrepreneurship and small enterprises*.

instrument has created distortions in affordable housing, which has resulted in a housing stock gap. Over 1.3 million households in the "gap market segment" who do not qualify for a housing subsidy live in inadequate, overcrowded or informal housing. Other than resale stock, there is no housing available in this market segment. Consequently, any housing finance goes towards home improvements and not new supply. There is housing delivery in the "affordable market segment" although not yet at the required scale. Only in the "traditional market segment" – households earning more than R 15 000 per month – does housing supply and finance operate efficiently and without distortion.

The trend in mortgages granted since the last quarter of 2007 is shown in figure 6.5. The mortgages granted to the gap market as a proportion of total mortgages has decreased from 3.1 per cent at the end of 2007 to 1.8 per cent in the second quarter of 2010. The same trend is observable in the affordable market, with mortgages declining from 6.3 per cent to 5.0 per cent over the same period. The proportion of mortgages granted to the traditional market increased from 90.6 per cent to 93.2 per cent over the same period.

Figure 6.5: Mortgages granted per market segment



Source: National Credit Regulator Consumer Credit Market Reports

The World Bank contracted FinMark Trust to undertake research and explore policy options on enhancing access to housing finance in the affordable and gap markets. The study is underway and results are expected by early 2011. National Treasury will carefully consider the recommendations for implementation.

Financial Inclusion data and measurement

Data deficiencies and inconsistencies hinder the effective measurement of progress and the formulation of appropriate and informed policy intervention. Efforts aimed at improving the availability of authentic, credible and reliable data that will facilitate progress-tracking and monitoring have commenced. The critical first step is to design financial inclusion performance indicators across the dimensions of financial inclusion – products, services, target groups and institutions – to focus and guide the development and implementation of the data and measurement framework.

South Africa is currently taking part in the data collection initiatives of G-20 Financial Inclusion data and measurement subgroup, the Alliance for Financial Inclusion Group, and Finscope. The Finscope survey is a Finmark Trust initiative supported by syndicate members including National Treasury. It is the only survey that focuses on access to and usage of financial products and services.

Trade-off between inclusion and maintaining the integrity of the financial system

A key trade-off for the policymaker lies between the objective of financial inclusion and the desire to protect the sector from financial crimes and other abuses, such as money-laundering and terrorism financing. Protecting against financial crime requires the mandatory disclosure of client and transaction information through the "Know Your Client" (KYC) principle – disclosures that are sometimes onerous for low-income households. Through a special dispensation under Exemption 17, under the Financial Intelligence Centre Act, we saw the emergence of Mzansi account products which effectively lowered the KYC requirements of disclosure in order to accommodate the informal sector. Mzansi account and similar low value products carry a low money laundering and terror financing risk and as a result they pose no significant threat to the financial system. Exemption 17 complements South Africa's drive to enhance financial inclusion.

South Africa is currently part of an international project on financial inclusion run by the Financial Action Task Force (FATF) – a 36-member inter-governmental body established by the 1989 G-7 Summit in Paris, of which South Africa is a part. The project will be finalised in June 2011. The Alliance for Financial Inclusion (AFI), which is also an international standard setting body in matters relating to Financial Inclusion, is working together with FATF in order to enhance access to financial services, particularly in developing countries.

Remittances

Remittances, in particular, can pose a challenge to financial integrity while at the same time performing a very important function for the poor. Poverty is the motivating factor for people immigrating to South Africa and remitting money to their home countries. The FinMark Trust and the Consultative Group to Assist the Poor (CGAP) commissioned research on remittances in Southern Africa in 2005 to estimate market potential and assess regulatory obstacles for migration remittances within South Africa and the Southern Africa region.

The results of the FinMark and CGAP survey suggest that less than half of the remittances in both the domestic and international markets have been processed via informal channels (for example, taxi drivers, friends and relatives), which poses a major risk to the remitter since the money might not even reach its destination. Further, these informal channels can easily be abused by money launderers and terrorism financiers. Various alternative formal money transfer channels were identified by the report in terms of serving the banked and unbanked remitters in the domestic and regional remittance market. These technological and

market innovations include mobile airtime transfer, mobile banking, internet transfers to money transfer agents, the Mzansi Transfer product, the Western Union model and a prepaid card model.

A number of regulatory challenges remain to the formalisation of remittances in the Southern African region. In terms of South African exchange control regulations, cross-border remittances can only be facilitated by authorised banks and Authorised Dealers in foreign exchange with Limited Authority (ADLAs) – usually referred to as bureaux. These entities are strictly supervised by the Reserve Bank and the Financial Intelligence Centre in order to safeguard the integrity of the remittance system. In line with FATF recommendations, South Africa is on the path of adopting the risk-based regulatory approach towards AML/CFT compliance. The risk-based approach will seek to balance the important role remittances play in alleviating poverty, with the need to ensure that they are not misused and abused. The cash-threshold reporting system has also been introduced to ensure that accountable and reporting institutions must, within a prescribed period, report to the FIC those transactions that involve an amount of cash in excess of a prescribed amount.

Regulatory reforms in this area are important to deal with high volumes of remittances in the informal and low-income sectors of the economy. In addition, remittances have a direct bearing on immigration laws and regulations on exchange control and anti-money laundering. Proper accreditation and supervision of ADLAs is important to not only maintain the integrity of the system but also to enhance access and efficiency of the system. National Treasury will continue to work together with the FIC and the Reserve Bank to ensure that the remittance system works effectively and efficiently.

Box 6.3 Ownership and financial stability

Due to the structure of their balance sheets and their role as intermediators of capital banks pose a systemic risk. A failing bank can trigger a systemic crisis that not only risks causing other banks to fail ("contagion"), causing disastrous disruption to the functioning of the entire financial system and the economy to shrink severely, with the tragic loss of millions of jobs. The global financial crisis demonstrated this in practice.

Precisely to prevent such a banking crisis, South Africa's Banking Act requires regulatory approval from the banking registrar in the Banking Supervision Department to approve any significant change in ownership. These requirements include a test of whether the directors and owners of financial institutions are fit and proper, whether there are proper governance structures in place to be able to exercise sufficient oversight over the funds with which they are entrusted, and minimum capital requirements to provide members and depositors with an additional layer of protection against financial losses.

Shareholders who have significant shareholding (of more than 15 per cent) are required to be shareholders of reference, and must be in a position to inject more unleveraged and unencumbered cash in the event of a run or liquidity crisis in the financial institution. Section 27(1) and (2) of the Banks Act, Act No. 94 of 1990 requires that any person wishing to acquire more than 15 per cent of the total nominal value or voting rights of a bank's shares may only do so with the approval of the Registrar of Banks. The purpose of these provisions is to ensure that the shareholders are "fit and proper" persons and understand the implication of owning a bank. Importantly, the Banks Act also requires any shareholding exceeding 15 per cent to be liable for funding the recapitalisation of banks that experience capital shortages. This means that such shareholders will need to have deep pockets to fund such capital shortages; at short notice, should a bank have liquidity or solvency problems.

Shareholders of reference cannot borrow to fund the purchase of bank shares, as borrowed funds are treated as encumbered. This reason for this can be seen in the global financial crisis, where shareholders have been forced to provide more funds, or lose their market share as outside funders (e.g. governments) have come in as new shareholders. The global financial crisis demonstrated that banks are best owned by institutions with broad and deep balance sheets and access to international and domestic lines of credit. Allowing banks to be owned by a handful of individuals, no matter how wealthy, would pose substantial systemic threats to the system. These threats would be even larger if these individuals or groups of individuals purchased their bank shares with borrowed money.

Combating financial crime

Finance is central to almost every economic activity. It also attracts criminal elements bent on securing ill-gotten gains. As the financial system has developed and technology has advanced, financial crimes have also become more sophisticated.

South Africa has prioritised the fight against crime and continues to develop strong structures that identify, investigate and prosecute money laundering cases as well as strengthen compliance, oversight and regulatory measures.

Measures to promote financial integrity bring transparency to the financial sector by requiring financial institutions to conduct proper due diligence on their customers and capture and maintain customer and transaction information in records that are accessible by supervisory and investigating authorities.

■ Integrity is a critical aspect of financial stability

Finance is central to almost every economic activity. It also attracts criminal elements bent on securing ill-gotten gains. As the financial system has developed and technology has advanced, financial crimes have also become more sophisticated. Criminals tend to have more resources to cheat the system, thereby requiring the state to build more capacity to fight such crimes. The criminal justice system must be able to channel more resources into the speedy and efficient investigation and prosecution of financial crimes.

Financial crime poses an enormous risk to the safety and strength of the financial system

Types of financial crimes include corruption, blackmail, money-laundering, advance fee fraud ("419 scam"), banking fraud, identity

companies seeking to recover full commission, mostly paid up front. The statement of intent also addresses ways to retrospectively rectify poor benefits paid under investment policies where contractual changes took place, going back to 1 January 2001. The statement notwithstanding, a number of rulings issued by the Pension Funds Adjudicator in 2009 highlighted the unfair and unreasonable practice by certain insurers in cases where multiple causal events occur, to deduct the maximum regulatory allowed causal event charge for each causal event.

To ensure better compliance with the statement of intent, the Financial Services Board issued draft directive 153 in mid-2010 to all long-term insurers for comment. This directive provides guidance on the maximum causal event charges that may be deducted under regulations and addresses the issue of multiple causal events. Comments received on the draft directive are currently being considered with a view to shortly issuing a final directive. Accompanying the directive will be a questionnaire for long-term insurers to report on the implementation of the statement of intent principles as of 31 December 2009 (the date by which the retrospective aspects of the statement of intent were to be fully implemented) and to confirm that the statement of intent has been consistently applied.

Short-term insurance

In the short-term insurance industry, there are also problems of high costs, the lack of appropriate disclosure and conflicts of interest.

Of particular concern is consumer credit insurance, or CCI, which is taken out increasingly by consumers to cover their indebtedness to credit providers such as banks, microfinance institutions, retailers and car dealerships. Its objective is to protect borrowers and their dependents against repossession of the underlying purchase in times of financial difficulty due to death or loss of income of the borrower, and to protect credit providers against default. Generally, the risks that are covered include death, disability, critical illness and retrenchment of the insured, or the loss, destruction or damage of the asset in respect of which the debt is incurred. Often it is taken out at the insistence of the credit provider as a form of collateral security. CCI supports the extension of credit for both consumption and asset accumulation.

Short-term insurance also has a number of market conduct challenges, particularly consumer credit insurance

National Treasury and the Financial Services Board will be reviewing the CCI market in South Africa to determine if it is delivering on its objectives, and if there is a need to revisit the prevailing policy and regulatory framework. This review will be considered in the context of consumer protection being one of the policy priorities for National Treasury, and the findings released in a 2007 report on abuses in this market²¹. National Treasury will release a public discussion document on regulatory proposals following this review.

²¹In 2007, the then Life Officers Association and the South African Insurance Association co-sponsored a Panel of Enquiry (Panel) to investigate abuses in the CCI market. The Panel's final report was released on 21 April 2008.

The ombuds system is a powerful additional mechanism in the hands of consumers

Recommendations of the comprehensive review into ombuds system will be implemented during 2011

The ombuds system

International best practice in consumer protection requires the financial sector to provide consumers with speedy and affordable redress to address complaints and resolve disputes. These mechanisms are a powerful and additional weapon in the hands of consumers—but they require careful consideration and preparation. South Africa has embodied such redress in its ombud schemes (see Box 4.2). Such schemes, whether statutory, recognised or voluntary, should align with best practice standards such as independence, impartiality, confidentiality, transparency, clarity of purpose and effectiveness.

A comprehensive review of the ombuds system was commissioned by National Treasury and the Financial Services Board (FSB), and during 2011 the two institutions will work together to ensure that the recommendations are implemented appropriately. One of the issues the review addresses is the future mandate and role of the Financial Services Ombudsman Scheme (FSOS) Council, presently fulfilling a coordinating role for all the ombuds.

A further component of the work is increasing awareness among consumers about ombuds and their role. For instance, there is now one hotline for complaints to all the ombud schemes. Access of customers to ombud services remains a concern, as is the affordability of the service. Ultimately, Treasury and the FSB intend to ensure that any new ombud scheme architecture efficiently delivers quality outcomes for consumers, and represents good value for money for the country.

■ Components of a comprehensive solution

In addition to strengthening and expanding the market conduct regulatory framework and implementing the Treating Customers Fairly initiative outlined above, there is a need to improve regulator coordination.

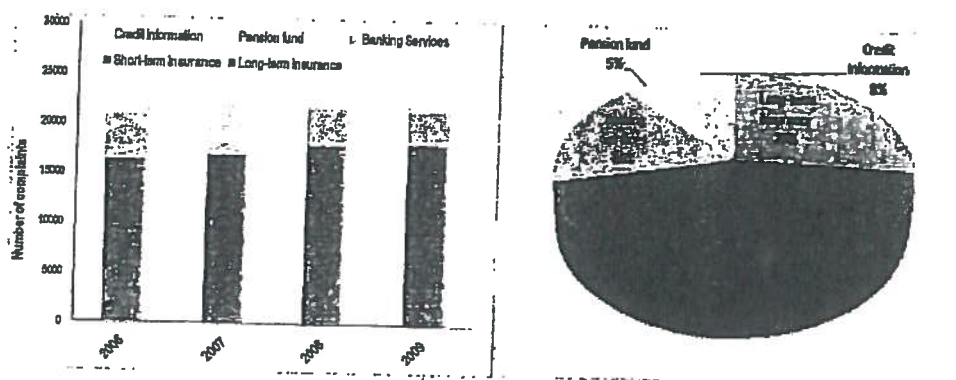
The shift to a twin-peaks system of financial regulation

As detailed in chapter 3, the regulatory system will move to a type of "twin-peaks" system. This will mean substantially stronger market conduct regulation at the Financial Services Board (FSB). To ensure this is comprehensive, FSB responsibilities will be expanded to include overseeing the market conduct of banks, including developing principles on how banks should set their fees, how these fees should be reported and what constitutes fair and unfair behaviour.

Box 4.2 Work of the financial services ombuds

Except for 2008 when complaints received by the Pensions ombud peaked, most complaints relating to financial services are received by the long-term and short-term insurance ombuds. Complaints received by the Financial Advisory and Intermediary Services (FAIS) ombud have increased each year since 2007. The banking services ombud has seen a decrease in complaints since 2007.

Distribution of complaints received by the financial sector ombuds since 2006



Long-term insurance: Most of the complaints received by the long-term insurance ombud in 2009 related to claims declined due to policy terms or conditions not met (49 per cent). The second highest complaints were about poor service or communication as well as non-provision of documents (22 per cent).

Short-term insurance: Most of the complaints received by the short-term insurance ombud in 2009 related to motor vehicles insurance (56.4 per cent). The second highest number of complaints was with respect to homeowners insurance (16.8 per cent).

Pensions: Two-thirds of complaints received by the pensions ombud were on withdrawal benefits, followed by death benefits, divorces (visible for the first time in 2009) and disabilities.

Banking service: Complaints varied from mortgage finance (20.9 per cent), credit cards (14.3 per cent), ATMs (10.7 per cent) to debit orders (2.6 per cent).

FAIS ombud: Most complaints were about long-term (24.6 per cent) and short-term (18.7 per cent) insurance products followed by investment products (13.3 per cent), retirement products (5.4 per cent) and medical schemes (1.1 per cent).

Improving regulatory coordination

The regulatory framework for consumer protection will require effective coordination between the many agencies and ministries responsible for legislation. Currently, at least three government ministries are involved: finance, trade and industry and justice, as well as many more agencies.

Regulatory coordination is vital

Also discussed in chapter 3, the new Council of Financial Regulators will play a strong role in coordination of regulators, particularly in the area of market conduct.

Consumer financial education

The importance of consumer financial education lies in its ability to improve people's financial well-being. The current financial sector environment has abundant and increasingly complex product offerings. This, combined with a growing range of financial challenges facing households at the macro and micro levels, implies that enhanced financial understanding and awareness by consumers is essential. Improved consumer financial education reduces information

Consumer financial education is also important, particularly as financial products become more complex

asymmetries and promotes market transparency, competition and efficiency. It also has the potential to increase access to and demand for financial products.

The current draft consumer financial education policy rests on three pillars:

- Consumer financial education is not a substitute for effective consumer protection and market conduct regulation. Rather, it is part of a wider policy approach, which includes properly regulating and supervising the financial services industry and protecting individual consumers.
- Consumer financial education requires a multi-stakeholder approach that is centrally coordinated to ensure the active involvement and cooperation of all: government, schools, financial institutions, industry associations, employers, trade unions, community organisations, and non-governmental organisations.
- A national consumer financial education strategy with risk-based priorities is central to providing consumers with choices, informing them of their rights, instilling in them the values and confidence that empower them to make sound financial decisions, build assets and invest in the future.

The emerging consensus from the 2010 engagement process with stakeholders in consumer financial education, undertaken by the Financial Services Board in conjunction with Treasury, is that a national strategy should be developed, taking into account South African realities and international best practice. Major outputs would be a national financial literacy strategy, an action plan for its implementation and a clear assignment of roles and responsibilities of key stakeholders including the market conduct regulator.

In addition, activist consumer bodies need to be supported. Online price comparison tools and forums to complain about the quality of service provide an invaluable function for the broader community.

■ Next steps

While the above initiatives contribute towards a sound consumer protection and market conduct regime in South Africa, additional work needs to be done and comprehensive consultation is required between National Treasury, the regulators, consumer advocacy groups and industry.

Detailed proposals on regulatory reforms to strengthen the regime will be released for discussion in 2011, particularly the setting up of the banking services market conduct regulator and the *Treating Customers Fairly* Roadmap.

Safeguarding pensioners

Pension funds play an important role in the national economy. Given South Africa's low savings rate and the present twin fiscal and current account deficits, pensions are even more important for economic development. Pension funds, smartly invested, provide a mechanism for unlocking savings, stimulating economic growth and ensuring that pensioners are provided for in retirement. By regulating them appropriately, governments can protect the elderly against poverty, facilitate investment and reduce systemic risk. While awaiting potentially far-reaching social security reforms, certain urgent steps have been taken to protect current savings.

■ Reforming pensions to increase savings

In relation to the size of the economy, South Africa has one of the largest pension fund industries in the world, with nine million members and assets in excess of R 2 trillion. Globally and locally, pension funds are also important institutional investors. They pool funds from both employers and employees, with the aim of providing retirees and their beneficiaries with income upon the retirement, death or disability of a member. This guards against poverty in old age and reduces the potential dependency on the government.

Pension funds play a vital role in the economy

Although pension funds are slightly different from other prudential entities like banks, which guarantee deposits upon demand, they do raise prudential concerns due to the long-term nature of contributions and the risks involved to meet such promises. This prudential concern is present in both Defined Contribution²² (DC) schemes (guarding against

²² With a defined contribution pension plan the employer's annual contribution is specified and guaranteed: future benefits fluctuate on the basis of investment earnings

fraud and excessive risk taking) and Defined Benefit²³ (DB) schemes (which additionally require a continuous matching of liabilities and assets). Further, although the collapse of a pension fund does not necessarily pose a threat to the entire financial system or economy, collapse due to mismanagement and fraud can profoundly damage the future of pension fund members, and also undermine the certainty and incentives of the savings regime. For these reasons, pension funds require good prudential and member protection oversight.

Pension reforms continue to be a topical policy issue in most countries, including South Africa. These reforms are necessitated by various factors associated with market imperfections, population dynamics, incomplete consumer information and literacy, low savings, investment risks, and the shortage of knowledgeable professional trustees.

South Africa has embarked on major social security reform first announced by the Minister of Finance in 2006, which will also include retirement reform; Chapter 7 of the 2011 Budget Review indicates the progress up to date. This reform has, however, taken longer than initially anticipated. In the meanwhile, National Treasury has taken urgent steps related to governance, disclosures and investment framework, in order to protect current members of pension or retirement annuity funds. This section will not cover the broader social security and retirement reform, but focus on the interim steps taken to protect current savings.

■ Challenges and policy issues

Maximising Savings through Preservation

The Old Mutual Savings Monitor (2010) ranks pension funds as the second most widely used savings vehicle after funeral policies in South Africa. The national savings rate – including savings by government, corporates and households – stands at around 16.7 per cent of Gross Domestic Product (GDP), with households contributing only 1.5 per cent of this total. The poor household saving rate coupled with lack of preservation presents a considerable challenge for the retirement funds industry.

Preservation is the requirement that money saved for retirement through a pension, provident or retirement annuity fund should remain in such a fund or be rolled over into another similar savings vehicle without incurring taxes or penalties until the person retires in the normal course of his or her career, reaches the age of 55 or retires on grounds of permanent disability.

²³With a defined benefit pension plan, the employer promises a specified monthly benefit on retirement that is predetermined by a formula based on the employee's earnings history, tenure of service and age, rather than depending on investment returns.

Pension funds have broad coverage

Box 5.1 Regulation 28 to the Pension Funds Act

The aim of pension fund investment regulation is to ensure that the saving South Africans contribute towards their retirement is invested in a prudent manner that not only protects the pension fund member, but is channelled in ways that support economic development and growth. To this end, Regulation 28 of the Pension Funds Act empowers the Minister to define asset spreading requirements for pension funds.

A second draft regulation was released for public comment on 30 November 2010, following an announcement in the *Medium Term Budget Policy Statement*. Over thirty stakeholders commented on this draft. These comments were broadly representative of the retirement fund industry and ancillary services, including asset managers, insurers, asset and risk consultants, and industry associations.

The feedback received was overwhelmingly positive and mostly proposed technical refinements, although some substantive issues were put forward, namely:

- The proposed treatment of cash and debt instruments held by retirement funds was could artificially restructure the market in a way which could undermine liquidity management by a fund.
- Debt limits proposed could remain overly strict and could be relaxed in certain controlled instances
- Limits on alternative investments, and unlisted equity in particular, were likewise considered overly strict in a manner that could impede investment into this pro-development funding channel
- Investment into Africa, while much better enabled, could be even further so, to support economic growth in the region and the positioning of South Africa.

National Treasury has, in response, brought about several improvements to the November draft. The Regulation now better recognises and promotes the responsibility of funds and boards of trustees towards sound retirement fund investment. It expands the allowance for debt issued by listed or regulated entities, thereby supporting a stronger corporate debt market and addressing the bank structural funding mismatch between short-term borrowing and long-term lending, while crucially still protecting retirement funds and their member's savings. The regulation better enables investment into unlisted and alternative assets to support economic development that may be funded through such capital-raising channels. Investment into Africa is likewise supported through providing for alternative ways of accessing this market in a responsible way. Importantly, the Regulation continues to better align retirement fund regulation with other government policy objectives like socially responsible investing and transformation.

The Regulation will be effective from 1 July 2011. Notices and Guidance Notes on the treatment of securities, lending, derivatives, and part-guaranteed insurance policies will be drafted by the Financial Services Board in consultation with National Treasury, and will also be subject to stakeholder engagement ahead of finalisation in March. Provision is made in the Regulation for transitional arrangements, and funds can apply for temporary exemption from provisions that they may not immediately be able to comply with.

To support the implementation process, National Treasury, together with the FSB, will hold stakeholder workshops to further explain the Regulation.

According to the same Monitor, 52 per cent of 91 survey respondents who changed employers and exited their funds withdrew benefits in cash, 25 per cent transferred their benefits to the fund of the prospective employer, 18 per cent left the benefits in their previous fund, 3 per cent invested in a retirement annuity fund, and 4 per cent in a preservation fund. Further, Anderson (2010) states that following the retrenchments that took place between January 2009 and August 2010, only 10.2 per cent preserved while 89.8 per cent took cash payouts²⁴. During the same period, a dismal 2.4 per cent preserved retirement benefits from divorce settlements against the 97.6 per cent that went for divorce payouts.

When changing employers, about half of respondents take benefits out in cash

²⁴John Anderson, *Are we saving enough?* Presentation at the Institute of Retirement Funds 2010 Conference on Retirement Funds

Withdrawals pose a policy challenge

The large withdrawals from the pension fund system could be triggered by various factors including financial hardship, retrenchments and indebtedness. Moreover, the current default system makes it easier for persons who might not even be going through financial hardship to withdraw their savings, simply because the current system does *not* compel preservation of retirement savings upon job changes, retrenchment or divorce. The Income Tax Act does encourage preservation to some extent, by allowing retirement capital to be transferred tax free to a similar approved fund, while taxing any pre-retirement withdrawals. The challenge with the current tax system is that the tax clearly does not serve as a strong disincentive since people are willing to pay it and withdraw their savings.

The introduction of mandatory preservation is therefore critical and National Treasury plans to extensively consult all relevant stakeholders.

Further, to effectively enable this change, there should also be an enhanced system of portability. Portability refers to a worker's ability to maintain or transfer accumulated pension benefits either to a preservation fund or a prospective employer's plan when changing jobs, for example. This would introduce additional competition in the industry and possibly lead to a fall in costs.

Managing Early Withdrawals within Compulsory Preservation and Retirement Annuities

Early withdrawal of funds from pension funds is usually restricted because retirement savings must be safeguarded for their intended purpose, which is to provide *sufficient* income upon retirement. Globally, sufficient income is considered to be between at least 40 and 70 per cent of income at retirement. Premature withdrawals of retirement benefits prevent people from retiring comfortably, adversely affect the growth of pension funds and result in poor savings.

In South Africa, there is an uneven treatment of the various retirement saving products. Due to lack of compulsory preservation for occupational pension funds, there are reported cases of individuals resigning from their jobs just to gain access to their pensions. At the other end of the spectrum, individuals who make use of Retirement Annuity Funds (RAs) are barred from withdrawing any of their savings in the fund before the age of 55 years. In this regard, there seems to be a need to ensure consistent treatment of the various products if the goal is to preserve retirement savings and close loopholes in the system.

A system of compulsory preservation and life annuities may need to be balanced with some highly restricted forms of withdrawals, to balance protection of savings with a limited degree of flexibility.

Products like Provident Funds will have to be treated equally with other products in terms of benefits. For example, we will need to do away with the ability to have a provident fund paying out a lump sum of the entire benefit at retirement.

Member education

As noted in chapter 4, consumer and member education is critical to improve financial well-being. Countries like the US invest significant resources in trying to reach out to consumers of financial services. In South Africa, a recent study by the Bureau for Market Research reveals that a meager 35 per cent of the surveyed "affluent" market (income cluster of above R 750 000 per annum) and the "realised" market (income cluster of between R 300 000 – 750 000 per annum) are financially knowledgeable²⁵. This illustrates the challenge of consumer literacy, since these are persons who would be expected to have a better understanding of the financial products and services they use.

Consumer education is a further challenge

Making permanent changes in attitudes towards pensions, and savings in general, requires ongoing education. Providing effective and regular education for actual and possible pension fund participants and retirement annuity fund holders regarding the need to save, planning for retirement and investing and financial literacy in general, can counteract poor financial decisions by members. This education, however, must start with children at home and in schools. The Financial Services Board is currently rolling out a consumer education strategy, which also targets schools.

Trustee Education

A key aspect of the governance of pension funds is the role of trustees. Trustees must have the relevant education, experience and skills to make investment decisions consistent with the best interest of the pension fund and its beneficiaries. They should at all times exercise their fiduciary responsibilities towards the fund, and not necessarily to the persons appointing them, be it employees or employers.

The impetus for demanding high levels of expertise and integrity from trustees requires the following: application of fit and proper standards to the appointment of trustees and to their conduct, mechanisms to achieve proper training of trustees, and the use of independent professional trustees. Government is also considering making it a statutory requirement that trustees be fit and proper with certain minimum qualifications, which should be achieved within a fixed period from the date of appointment.

A Code of Ethics has been proposed as one of the possible strategies to ensure that the industry operates in an ethical manner and upholds the highest standards. Such a Code would be binding on all persons operating in the retirement industry. National Treasury will facilitate meetings with the industry's representative bodies in 2011 to facilitate the drafting of such a Code of Ethics.

²⁵Prof DH Tustin, *Attitudes, beliefs and behaviour of Gauteng consumers towards saving*. Paper presented at the 2010 South African Savings Institute/Old Mutual South Africa Savings Workshop

Box 5.2 A review of the provision of annuity products

Retirement annuity products serve a critical role in encouraging long-term savings. However, they are also characterised by a reputation for high costs and consumer abuses. National Treasury will embark on a review of the annuity market with the objective of facilitating competition, reducing costs, promoting flexibility, and enhancing disclosure and consumer protection.

Increasing competition

The two main types of retirement benefits available after retirement are living annuities and guaranteed annuities. The current challenge in the sector is that collective investment scheme (CIS) companies can only offer living annuity products if they obtain a long-term insurance licence. An applicant for a licence must be able to put up capital of R10 million. This requirement seems onerous particularly since the CIS company is only offering living annuities, which by definition do not offer any guarantee. Enabling collective investment scheme companies to offer living annuities without the need for a long-term insurance licence could open the market and foster competition.

Reducing costs

The regulatory treatment of fees across the financial sector creates inconsistencies in the annuity market. There are differences in the layers of fees charged by insurers and CIS companies. For example, an annuity policy sold by an insurer includes a commission charge, an administration charge, a monthly policy fee and an annual service fee. An annuity policy sold by a CIS company includes an annual management fee, a broker commission and a trail fee. Insurers are also required to comply with commission regulations in terms of the Long-term Insurance Act; however CIS companies are not subject to commission regulations and are permitted to charge an additional unregulated trail fee for on-going advice to clients. Such discrepancies in the fee structure result in the practice of financial advisors switching products in the pursuit of high fees to the detriment of the consumer. Consequently, there is a need to align and standardise fees payable on annuity products.

This specific issue has been discussed in the 2011 Budget Review.

Improving transparency

There is a need to enhance disclosure, particularly to highlight the difference between a guaranteed annuity and a living annuity product. Guaranteed annuities provide much needed protection especially in the context of rising life expectancy, leading to people outliving their savings in retirement. Protection against this risk has become more important. However, guaranteed annuities are often more costly due to the nature of the guarantee. More effort can be made to ensure that investors are aware of the different costs upfront, and sensitised to the importance of a guaranteed annuity.

Mandatory lock in periods

Individuals who make use of annuity products are restricted from withdrawing any of their savings until the age of 55. There has been much debate about the balance between the mandatory restrictions on withdrawals and the need for flexibility of access to retirement annuity funds. Consideration is being given to enable some restricted access to retirement savings, while also promoting the need for pension fund savers to retain their savings or preserving.

- **Improving the framework for resolution.** These measures seek to reduce the spread of contagion that results from the collapse of a large, cross-border financial institution, and to limit the use of taxpayer money in bail-outs. An effective resolution framework includes creating colleges of supervisors and "living wills", which explain how the institution is to be wound up if in distress, while still maintaining its core functions.
- **Strengthening core market infrastructure.** To prevent contagion spreading from one financial institution or market to another, authorities must improve market infrastructure to ensure, for example, that over-the-counter derivatives and complex financial transactions take place on a centralised clearing exchange, and that funding and repo markets are well regulated and monitored.

Expanding the scope of financial regulation

Regulatory reforms seek to bring all sources of systemic risk into the supervisory net. This includes the regulation of all private pools of capital, such as hedge funds, which can be an important source of systemic risk. International rules on the regulation of over-the-counter derivatives markets are being developed. Standard-setters around the world are in the process of refining high-quality accounting standards to deal with the more complex financial transactions.

The perimeter of regulation must be extended to cover previously unregulated pools of capital and activities

The Financial Stability Board has outlined reforms to compensation practice whereby short-term compensation practices of banks should not encourage excessive risk-taking by bankers. Steps have also been taken to regulate credit rating agencies, which contributed towards excessive risk-taking in the lead-up to the financial crisis.

In South Africa, steps are being taken to extend regulation to private pools of capital, including hedge funds, unregulated financial activities such as the functioning of credit rating agencies as well as over-the-counter derivatives markets.

Improving the financial crisis resolution framework

Substantial progress on strengthening South Africa's resolution and crisis management framework has taken place over the past year. The first phase of this process focused on improving interagency coordination. Following phases include a comprehensive joint review of the crisis contingency framework, including making legal changes where necessary to ensure that the authorities have all the appropriate tools available in the unlikely event of a crisis.

Strengthening the regulatory framework

National Treasury initiated a review of the financial regulatory system before the financial crisis and, in light of lessons from the crisis, expanded the review. The Minister of Finance requested that this survey identify gaps and weaknesses in order to improve the financial regulatory system in South Africa and enhance the soundness of the financial system.

Reforms proposed to the South African regulatory system include shifting to a twin-peaks approach to regulation, characterised by separate prudential and market conduct regulators. In addition, South Africa will adopt a system-wide approach to financial stability and regulation, bolster the supervision of individual institutions, and ensure better coordination and information-sharing. The scope of regulation will also be extended to cover presently unregulated financial activities that have the potential to create systemic risks to financial stability.

■ The role of regulation in the financial sector

The nation's financial system – comprising institutions such as banks, pension funds and insurers, markets such as securities markets, and regulators, including the central bank – provides the framework for carrying out economic transactions and monetary policy. The global financial crisis has demonstrated that an unstable financial system can have far-reaching negative consequences for the wider economy. Therefore, a sound, well-regulated financial system is essential not only for financial stability, but also for supporting economic growth, development and the creation of jobs. The focus of regulation must also be on the system as a whole, and not just the individual institution.

Even before the financial crisis, regulating the financial sector was considered to be necessary because of the existence of a number of

Effective regulation is vital for economic growth and financial stability

"market failures" in the provision of financial services¹⁵. These failures create the need for regulation to build investor confidence in the liquidity and solvency of financial institutions and to establish systemic stability in the sector as a whole.

The aims of regulating the financial sector include:

- Maintaining confidence in the financial system and sustaining systemic stability
- Ensuring providers of financial services are appropriately licensed
- Promoting appropriate market conduct and prosecuting cases of market misconduct, thereby protecting the consumer
- Maintaining the safety and soundness of financial institutions
- Enforcing applicable laws.

A number of factors need to be borne in mind when designing an effective regulatory framework

The regulatory regime chosen will depend on the type of services provided or sold, and, in general, no provider is allowed to operate outside the regulatory framework. After the financial crisis, regulators around the world have taken a tougher and more intrusive approach towards supervision. While current regulations apply to the banking, insurance, securities, collective investment schemes and pensions sectors, many countries are beginning to extend their regulatory scope to cover institutions and markets such as hedge funds, credit rating agencies, money markets and commodity futures. In particular, the regulation of the "shadow banking" system, or the provision of banking services by non-banks, is becoming very important¹⁶.

As discussed in the previous chapter, the key reforms measures to emerge from the crisis relate to more onerous capital and liquidity requirements on banks (Basel III) and the insurance sector (Solvency II in Europe). There are even more stringent requirements on systemically important financial institutions. Additionally, the mandates of regulators and the quality of supervision have been strengthened. More importantly, many countries are also reviewing their regulatory system to reduce the scope for regulatory arbitrage, and ensure better coordination and information-sharing between regulators.

South Africa's resilient and globally connected financial system weathered the crisis well, largely on account of strong and effective regulation. The strength of the system was further confirmed by the Reports on Standards and Codes (ROSC) – an assessment of financial sector regulation conducted jointly by the International Monetary Fund (IMF) and the World Bank in 2010. There is still room for improvement, however, as indicated by the ROSC process, and it is imperative that South Africa continues to ensure that the financial system remains robust. Noting the lessons of the financial crisis, and following consultations with key regulators, National Treasury proposes a detailed set of improvements to the South African financial regulatory system. This chapter summarises the key proposals.

¹⁵ These market failures largely stem from the presence of asymmetric information (between providers and customers) and the concentrated nature of the industry.

■ Principles behind reforming the financial regulatory system

The proposed reforms of the financial regulatory system in South Africa are guided by the following “principles” or guidelines:

Clear principles guide our regulatory reform initiatives

Principle 1: Financial service providers must be appropriately licensed or regulated. Entry into the market must be subject to an appropriate licensing or registration process, depending on the type of financial services provided. No provider of a financial service should be allowed to operate outside the regulatory perimeter. Once licensed, appropriate conditions will apply, including being appropriately capitalised, taking into account financial stability and safety and soundness concerns. Further conditions relate to regulated financial institutions maintaining sound corporate governance standards, encapsulating appropriate checks and balances, and including the application of sound capital management, risk management and compliance with relevant legislation and regulation.

Principle 2: There should be a transparent approach to regulation and supervision. Regulation and supervision should be risk-based, where appropriate, and proportional to the nature, scale and complexity of risks present in a regulated entity and the system as a whole. Risk-based supervision requires significant investment in human capital, as supervisors typically need to develop skills to monitor risk in highly complex financial transactions.

Principle 3: The quality of supervision must be sufficiently intense, intrusive and effective. The “ability” to supervise requires appropriate resources, authority, organisation and constructive working relationships with other agencies and must be complemented by the “will to act”. The “will to act” requires supervisors to have a clear and unambiguous mandate, operational independence coupled with accountability, skilled staff, and a relationship with industry that avoids “regulatory capture.” As noted in a recent paper by the IMF¹⁷, there is a need to strengthen the quality of supervision, and supervisors need to have the capacity to effectively challenge supervised entities. Given the experience in advanced economies, there must be steep penalties for financial abuse and misleading reporting within the risk-based framework.

Principle 4: Policy and legislation are set by government and the legislature, providing the operational framework for regulators. The policy framework will be set transparently via the executive, and legislative proposals will be approved by Parliament. While regulators do not set policy, it is critical to clearly demarcate what constitutes policy, and empower regulators to set the supervisory framework and necessary directives.

Principle 5a: Regulators must operate objectively with integrity and be operationally independent, but must also be accountable for

¹⁷International Monetary Fund, 2010 “The Making of Good Supervision: Learning to say ‘No’”

their actions and performance. Regulators must be empowered to work without fear or favour and be operationally independent within an approved legislative and policy framework. They must operate transparently and fairly within the law, and be accountable for their actions – meeting agreed performance objectives and targets for each year. Special mechanisms may need to be considered to protect the integrity of regulators, and avoid abuse and unwarranted interference from those breaking the rules.

Principle 5b: Governance arrangements for regulators and standard-setters must be reviewed, so that boards perform only governance functions. The governance arrangements for all regulators must be reviewed. Where boards exist, they should be involved in governance issues only, and not policy or operational issues. Governance arrangements must ensure that regulators have operational independence, and that they can act without seeking approvals from the board when conducting their operational, monitoring, licensing or sanctioning activities. Employees of regulated entities should not be serving on the boards of regulatory bodies.

Principle 6: Regulations should be of universal applicability and comprehensive in scope in order to reduce regulatory arbitrage. Individual institutions, or classes of institutions, should not arbitrarily be exempted from regulation and supervision.

Principle 7: The legislative framework should allow for a lead regulator for every financial institution that is regulated by a multiple set of financial regulators. All regulators involved must strive to coordinate their supervisory activities. Financial institutions are generally regulated or supervised by more than one regulator, often falling under different Ministries. Regulators should be obliged to coordinate their activities, formalised through legislation or Memoranda of Understanding. The lead regulator must ensure that effective consultation takes place between regulators, and should not inadvertently undermine other regulators.

Principle 8: Relevant ministers must ensure that the legislation they administer promotes coordination and reduces the scope for arbitrage. More than one ministry is responsible for some form of legislation or regulation applying to financial institutions. Ministers must ensure that the legislation they administer allows for coordination.

Principle 9: The regulatory framework must include responsibility for macroprudential supervision. One of the key lessons from the financial crisis is the need to assess risks to the system as a whole (see Box 2.2). The overall prudential framework must be countercyclical and the regulation of entities must take place on a group-wide basis. Given the interlinkages between financial institutions, a strengthened approach to consolidated supervision is important.

Principle 10: Special mechanisms are needed to deal with systemically important financial institutions (SIFIs). The regulatory system must put in place special mechanisms to mitigate systemic risks posed by SIFIs. In particular, regulators must reduce the moral hazard risk inherent in financial institutions deemed “too big to fail” (see

chapter 2), as well as reduce the possibility of requiring government-sponsored bail-outs of financial institutions. This may require special resolution legislation to deal with liquidity and solvency problems affecting SIFIs, as many generic laws cannot apply to SIFIs in a crisis.

Principle 11: Market conduct oversight must be sufficiently strong to complement prudential regulation, particularly in the banking sector. Market conduct oversight is critical for the financial sector, and complements prudential oversight. The system of ombuds must be appropriately supportive.

Principle 12: Financial integrity oversight should be effective to promote confidence in the system. The optimal balance must be found between the promotion of financial inclusion and the restriction of criminal and fraudulent activities. There must be credible and punitive sanctions against those not complying with the law or misappropriating clients' funds.

Principle 13: Regulators should be appropriately funded to enable them to function effectively. A regulated sector should ideally fund the operational budgets of regulators in a way that eliminates risk of capture and conflicts of interest. South Africa uses a variety of ways to fund regulators, including levies, fees, allocations from the fiscus and own-revenue collected. The most appropriate method of funding will depend on the type of regulatory activity (prudential, market conduct or ombud regulator), and whether the regulator is a separate entity or located within another entity.

Principle 14: Financial regulators require emergency-type powers to deal with a systemic financial crisis, requiring strong and overriding legislative powers. The resolution of the financial crisis required regulators to have special powers in emergencies to quickly and effectively resolve insolvencies.

Principle 15: All the above principles are reflected in international standards like Basel III and standards set by the International Association of Industry Supervisors (IAIS) and International Organisation of Securities Commission (IOSCO). To the extent that there are any contradictions or inconsistencies in the above principles, the international standards will apply. South Africa has committed itself to international best-practice by adopting standards for banking, insurance and securities markets. Similar Organisation for Economic Cooperation and Development (OECD) and other standards also apply for pensions and other industries. These standards should not be contradicted by the principles outlined above.

4 Proposals to strengthen the financial regulatory system

First proposal: Given the need to prioritise and strengthen both prudential and market conduct supervision and regulatory powers, South Africa will move towards a "twin-peak model" of financial regulation.

South Africa's system of financial regulation was broadly modelled on countries it is historically linked to, particularly the UK and other former British colonies such as Australia and Canada. In the three decades before the global crisis, regulatory systems diverged significantly (see Box 3.1), with Australia¹⁸ adopting a "twin peaks" system, and the UK¹⁹ opting for a single regulator. Following the 1993 Melamet Commission, South Africa opted for a single-regulator approach. After the financial crisis broke out in 2007, however, there was a global shift away from the single-regulator model towards a twin-peak model (such as in the UK). South Africa, too, has decided against any shift to a single-regulator system. In line with international trends, South Africa will now be adopting the "twin-peak" model for financial regulation.

The twin-peak approach recognises the different skill sets required for prudential and market conduct regulation. Prudential regulation is designed to maintain safety, soundness and solvency of financial institutions or funds, while market conduct regulation requires the perspective of a customer, which is a different regulatory perspective and philosophy. It is inevitable that market conduct regulation and prudential regulation will frequently overlap and conflict. It is also recognised that while it may be relatively easier to separate prudential and market conduct regulation in banking and insurance, it may be more difficult in financial markets, securities and pension funds.

Under the direction of the Minister of Finance, National Treasury, the Financial Services Board and the South African Reserve Bank will establish a joint task team to examine and propose how best to move towards twin-peak regulation and supervision. This process will be phased in, taking into account the need to minimise the risk of weakening the capacity of any regulator during the transition period.

¹⁸ In Australia, the Australian Prudential Regulation Authority (APRA) supervises banks and insurers, while the Australian Securities and Investments Commission (ASIC) is responsible for enforcing financial services and corporations laws.

¹⁹ In the UK, the Financial Services Authority was responsible for regulating all financial services before the crisis

Box 3.1 Types of regulatory structures and why twin peaks is appropriate for South Africa

Regulatory structures differ substantially across the world. There is no generally accepted best practice on the ideal structure and each system is considered to have both strengths and weaknesses. Essentially, there are four possibilities

In the **institutional approach** (examples are China, Mexico and Hong Kong) a firm's legal status (as a bank, broker dealer, or insurance company) determines (a) which regulator is tasked with overseeing its activities from both a safety and soundness and a business conduct perspective, and (b) the scope of the entity's permissible business activities. However, there is a tendency for regulators to reinterpret and expand the scope of permissible activities under their jurisdiction, so that over time entities with different legal statuses have been permitted to engage in similar activities but subject to different requirements by different regulators

Under the **functional approach** (France, Italy and Spain) supervisory oversight is determined by the type of business that is being transacted by the entity, without regard to its legal status. Each type of business may have its own functional regulator. The benefit of this approach is that the regulator will apply consistent rules to the same activity regardless of the entity in which the activity is conducted. However, in practice it may be extremely difficult to distinguish which type of activity comes within the jurisdiction of a particular regulator, giving rise to disparities in regulatory positions on similar activities.

The **single-regulator/integrated approach** (Germany and, until recent reforms, the UK) utilises a single universal regulator tasked with conducting both prudential oversight and business conduct regulation for all financial services. This approach has the benefit of a streamlined focus on regulation without the conflict over jurisdictional lines that are possible under both the institutional approach and the functional approach. It also has the benefit of the regulator having a holistic view of the entity's business activities and enhances the ability of the regulator to assess the risks associated with changing market conditions and regulatory arbitrage, as information about these matters will be collected and monitored by one agency. Hence, oversight is broad as well as deep. There is, however, likely to be conflict between prudential regulation (which requires "thinking like a banker") and market conduct regulation (which requires "thinking like a customer"). Effective market conduct regulation may occasionally result in lower profits; a prudential regulator may be disinclined to take regulatory action which can adversely affect profitability and solvency.

The **twin peaks approach** (Australia, Canada and the Netherlands) separates regulatory functions between at least two regulators: one that performs the prudential supervision function and the other that focuses on business conduct regulation. This approach is designed to garner the benefits of the integrated approach (regulatory consistency, jurisdictional clarity and informational efficiency), yet also addressing the inherent conflicts between prudential regulation and consumer protection. The twin peaks approach is regarded as the optimal means of ensuring that transparency, market integrity, and consumer protection receive sufficient priority and given South Africa's historical neglect of market conduct regulation, a dedicated regulator responsible for consumer protection, and not automatically presumed to be subservient to prudential concerns, is probably the most appropriate way to address this issue.

In addition the existence of separate prudential and market conduct regulators may be a way of creating a system of checks and balances, thereby avoiding the vesting of too much power in the hands of a single agency. It should be noted however that the flip side of creating checks and balances is the need to carefully define roles and responsibilities to avoid duplication of work and jurisdictional overlap. Moreover, separation of prudential and market conduct regulation does not eliminate the possibility of conflict between them. Hopefully, consultation between the two bodies would lead to an acceptable compromise. But if not, some external means would need to be found to reconcile objectives. In South Africa, the formal way of resolving conflict will be through the Council of Financial Regulators.

Finally, given the South Africa's current regulatory structure, it is likely that moving to a twin peaks system would cause the least amount of disruption to both market participants and to the regulators themselves.

Second proposal: Strengthen the operational independence, integrity and accountability of all regulators.

Operational independence is an essential prerequisite for an effective regulatory regime and for maintaining a fair and equitable financial system. Institutional, regulatory and supervisory independence is necessary to create the right incentive structure for regulators and supervisors. Regulators must therefore operate independently, without fear, favour or prejudice. Operational independence includes the freedom to approve, disapprove and revoke licenses, decide to conduct an on-site examination, as well as take enforcement action (or to recommend that another government agency take action) against a person or entity based upon evidence of violation of a law or regulation.

The heads of supervisory or regulatory agencies should be appointed for a fixed term of at least five years. Once appointed, regulators should appoint their own staff, within the framework determined by their governance board or the minister of finance, eventually approved by Parliament. Regulators should not be dismissed without good causes shown, and which are transparent and reported to Parliament.

Heads of supervisory or regulatory agencies must be fair and seen to be fair, and be protected from undue pressure and interference. Regulators should have mechanisms to protect them from political and other interference when acting within their mandate. The procedures to hire and fire regulators must be transparent and subject to clear rules.

The operational budgets of regulators should be funded appropriately. Government will review the method of funding regulators and ombuds schemes to enable regulators to perform their functions without compromising their operational independence and to minimise the risk of regulatory capture. Fees should also be imposed to cover certain costs for complex licence or merger applications. The financial sector should also be obliged to contribute towards the funding of activities of consumer groups who monitor bank charges and market conduct practices, in a way that does not undermine the integrity or independence of such consumer groups.

Current legislation will have to be amended. The recent ROSC assessment of the South African financial system has identified inconsistencies with international benchmarks in three areas relevant to operational independence – dismissal of senior staff without good cause, revocation of the registration of banks, and exercising the authority to appoint a curator of a failing or failed bank. For example, some regulators cannot grant or withdraw certain licences without the approval of their board or minister. In other cases, a government ministry controls the governing body of the regulator. Despite the recent financial sector assessment programme noting that there do not appear to be any indications that the possibility of staff termination has affected operational independence, the assessors recommended amending the laws to remove this potential power of intervention by the executive. The first issue could be resolved by adding a simple requirement that the Minister of Finance or Reserve Bank Governor may dismiss board members, registrars or other senior officials only for good cause, with

the reasons to be made public and tabled in Parliament. The process of licensing, registration, inspections and monitoring, and investigations will also be improved. As a result, there are already initiatives towards improving prudential oversight (including harmonising the licensing regime, monitoring, supervision and inspection), money market and consumer protection oversight, enforcement and aligning legislation.

A clear framework for the ethical behaviour of regulators should be determined by the Minister of Finance. This should include, among others, procedures to be followed regarding behaviour for dealing with regulated institutions, forbidding gifts or sponsorships from regulated institutions, confidentiality arrangements, as well as so-called 'gardening leave' arrangements (to prevent employees taking current and sensitive information when they leave the employment of a regulator).

Regulators must be appropriately accountable for their performance. Regulatory agencies must be made accountable for their actions to Parliament and strategic plans, budgets and annual reports must be submitted to Parliament, through the relevant Minister. All regulators should annually report on their activities to Parliament.

Third proposal: Expand the financial regulatory system to include macroprudential supervision, and establish an interagency financial stability oversight committee.

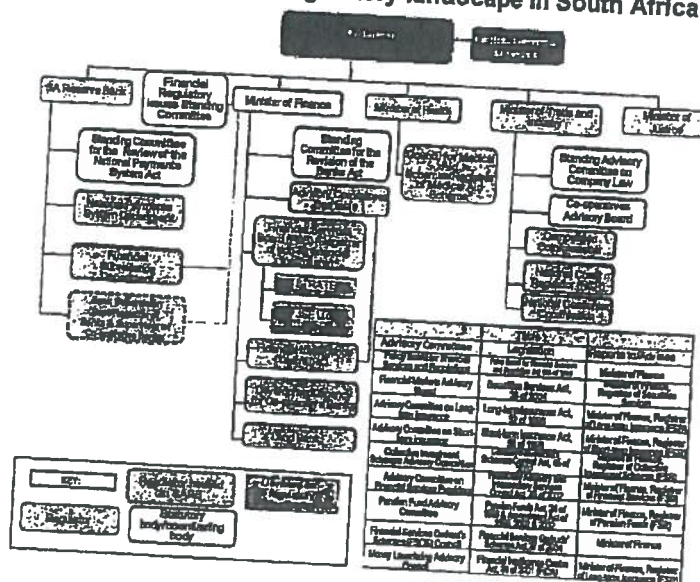
The primary lesson from the financial crisis is the need for a macroprudential approach to supervision (see Box 2.2), which focuses on risks within the system as a whole. All South African financial sector regulators are essentially micro-regulators, and do not focus on macroprudential risks. They are responsible for a specific sector, such as banking, insurance or securities markets, and, as such, do not monitor either the macroeconomic risks posed to financial institutions that do not fall in their jurisdictions, or the risks to other sectors of the economy.

The Reserve Bank is best placed to play the role of a macroprudential supervisor. Most (but not all) countries have given this responsibility to the central bank (see Box 3.2) and given the traditional role of the Reserve Bank, there is little doubt that only the Reserve Bank has the appropriate capacity to perform this function effectively. The role of the Reserve Bank in implementing monetary policy, and as the lender of last resort as well as the provider of emergency liquidity assistance (ELA), provides it with unique insight into the workings of the entire financial sector, as well as the macroeconomy. The implicit responsibility of the Reserve Bank in monitoring macroeconomic risks was explicitly confirmed in a letter from the Minister of Finance to the Governor of the Reserve Bank on 16 February 2010.

In common with many jurisdictions, the Reserve Bank has taken a number of steps to strengthen the macroprudential and financial stability functions within the Bank. An internal Financial Stability Committee has been bolstered and includes all members of the Monetary Policy Committee to ensure effective coordination

between monetary and macroprudential policies. This committee has an important role in macroprudential oversight and crisis prevention. In addition, the exchange control department has been renamed the Financial Surveillance Department and its role in collecting and analysing cross-border data has been strengthened.

Figure 3.1: The present regulatory landscape in South Africa



While the mandate of financial stability lies with the Reserve Bank, other regulators (market conduct regulators, as well as the National Credit Regulator) must also take into account the financial stability implications of their activities, and assess all systemic risks potentially arising from any institutions that they may be supervising.

It is proposed to establish a Financial Stability Oversight Committee, jointly chaired by the Governor and the Minister of Finance. This body will enable government to oversee financial stability from a systemic perspective and to have a central role in crisis management and resolution. It will be convened at least quarterly.

Fourth proposal: Strengthen market conduct supervision and the ombuds system, and expand the scope of the Financial Services Board to cover market conduct in retail banking.

Market conduct standards must be strengthened particularly in the retail banking sector. Despite strong oversight by the National Credit Regulator (NCR) and the Financial Services Board (FSB), such powers need to be extended to cover the full range of retail banking, including the regulation of banking charges and other practices such as those identified by the report of the Banking Enquiry Panel established by the Competition Commission in 2008.

It is proposed that a separate retail banking market conduct regulator be established in the FSB, taking account of the work of the NCR. Given the asymmetry in power between consumers and financial institutions, it is also important to strengthen the current ombuds system so that it is more effective in resolving disputes that cannot be settled by customers

and their financial institution. The *Treating Customers Fairly* initiative launched by the FSB is expected to significantly improve the quality of consumer protection for customers of financial services.

In setting up a dedicated retail banking market conduct regulator within the FSB, account must be taken of the work of the NCR, which covers both banking and non-banking credit. In its short time of existence, the NCR has demonstrated excellent and path-breaking work on monitoring reckless credit practices. This experience is proving to be a leading example that many countries are now following – indeed, it was reckless credit extension on the part of US banks via products like “teaser” loans to those who could not afford to pay that triggered the crisis in 2007. Consultations within government are necessary to assess the impact of having two separate regulators covering different aspects of market conduct in the retail banking sector (transactional banking in the FSB and credit extension in the NCR), and how best to coordinate the work of the two regulators.

Fifth proposal: Clarify roles and responsibilities.

In addition to the regulators, there are a number of other key players in the regulatory environment, including the Reserve Bank, National Treasury, and departments such as Trade and Industry, Justice, and the prosecuting authorities.

Current legislation does not spell out who is responsible for policy, legislation, regulation and supervision, and is often not consistent across different pieces of legislation governing the different financial regulators. Legislation should be revised to reflect specific roles and functions.

Policy and legislation is the responsibility of the relevant department (National Treasury or Trade and Industry, under the direction of their ministers) and ultimately of Cabinet. Given that regulators are in a unique position to provide the necessary technical expertise and insight into weaknesses that need to be addressed, National Treasury must work closely with them to prepare policy and legislative proposals. As emphasised above, regulators are not, however, mandated to determine policy, but rather to implement the policy determined by the government, via the Minister of Finance. The drafting of legislation affecting the financial sector also needs to be better coordinated between government departments.

Box 3.2 Examples of international strategies to strengthen regulatory coordination

The United Kingdom

The Tripartite Council for Financial Stability (consisting of Treasury, the Bank of England and the Financial Services Authority) has been merged with the Bank of England's Financial Stability Committee and rebadged as the Financial Policy Committee (FPC). The new committee will reside within the Bank, but will include representatives from prudential regulators, Treasury as well as some outside representation. Although the powers of the committee are yet to be finalised, the tools that are being considered for the FPC include:

- Setting system-wide cyclical capital requirements to reduce capital buffers required in a crisis and to be correspondingly tougher in good times;
- Setting leverage limits to function as a backstop against excessive lending where there are generalised concerns that could not easily be addressed through changing risk weights;
- Insisting on forward-looking loss provisioning to prepare for future losses when lending is growing quickly;
- Setting limits on borrowing with, for example, maximum loan-to-value ratios for mortgages;
- Setting limits on lending through various regulatory mechanisms.

India

Despite announcing as early as March 2010 that the Financial Stability and Development Council (FSDC) would be established to strengthen and institutionalise the mechanism for maintaining financial stability, the exact structure and responsibilities were only clarified in a Ministry of Finance circular at the end of December 2010 (available at

http://finmin.nic.in/the_ministry/dept_eco_affairs/capital_market_div/Financial_stability.pdf). The FSDC will be composed of the Governor of the Reserve Bank of India, the Finance Secretary and/or Secretary of the Department of Economic Affairs, Secretary of the Department of Financial Services, the Chief Economic Advisor of Ministry of Finance, the Chairman of the Insurance Regulatory and Development Authority, and the Chairman of the Pension Fund Regulatory and Development Authority. Its responsibilities will include financial stability, financial sector development, inter-regulatory coordination, financial literacy, financial inclusion, macroprudential supervision of the economy, including the functioning of large financial conglomerates, and coordinating India's international participation with relevant bodies. However, it is not clear whether the FSDC will have any statutory powers.

The United States of America

The Dodd-Frank Wall Street Reform and Consumer Protection Act, at more than 2300 pages, takes numerous measures to improve the system of regulation in the US. Among the most significant changes for macroprudential regulations are the following:

- The act creates the Financial Stability Oversight Council (FSOC) to serve as an early-warning system to identify risks in firms and market activities, to enhance oversight of the financial system as a whole and to harmonise prudential standards across agencies. The voting members of the FSOC include the Treasury Secretary, who serves as chairperson, and the heads of the Federal Reserve, the Securities Exchange Commission, Federal Deposit Insurance Corporation, Commodity Futures Trading Commission, numerous other financial regulators and an independent member with insurance expertise.
- The FSOC will engage in data gathering, information-sharing, monitoring, and identification of gaps in regulation.
- Non-bank financial companies that are identified by the FSOC as 'systemically important' will be brought under regulation by the Federal Reserve.
- The Federal Reserve is required to establish enhanced risk-based capital, leverage and liquidity requirements, overall risk management requirements, resolution plans, credit exposure reporting, concentration limits and prompt corrective action to apply to all systemically important companies. Standards will increase in stringency based on enumerated factors including the degree of leverage, amount and nature of financial assets.
- Many regulators have been given discretion to modify statutory standards and issue exemptions. In addition the FSOC is yet to become fully operational. As a result significant unknowns remain on the scope and content of systemic risk regulation.

Sixth proposal: Promote greater coordination and information-sharing between all financial regulators, and establish a Council of Financial Regulators.

In addition to clarifying the responsibilities of the different regulators, the regulatory framework must ensure appropriate coordination and information-sharing between them.

Most financial institutions are subject to a number of regulators (for instance, many banks in South Africa also have an insurance arm, so they are regulated by both the Bank Supervision Department (BSD) within the Reserve Bank, the insurance registrar within the Financial Services Board (FSB), the Financial Advisory and Intermediary Services registrar, as well as the National Credit Regulator (NCR)). Although most regulators effectively fall under the Minister of Finance, some key regulators are accountable to other Ministers (for instance, the NCR is accountable to the Minister of Trade and Industry). In such a case, the lack of coordination between, for example, the NCR and the BSD could pose significant systemic risk to the entire banking system.

Ensuring coordination between regulators, even when they all report to one Minister only, is a challenge at the best of times. The regulatory framework must require all regulators operating in the financial sector to coordinate their activities (unless they are exempted for good reason), and that this be formalised through legislation or Memoranda of Understanding. Ministers must ensure that the legislation they administer allows for such coordination.

Coordination and information-sharing can be achieved through formalising the Council of Financial Regulators. While each regulator will remain operationally independent, the Council will seek to ensure effective coordination between them.

The Council will comprise the heads of key financial regulators such as the BSD, the FSB and NCR; agencies such as South African Revenue Service (SARS) enforcement and the Financial Intelligence Centre (FIC); relevant standard-setters such as the Independent Regulatory Board for Auditors and the Accounting Standards Board; and non-financial regulators such as the Competition Commission and officials from the Department of Trade and Industry. The Council of Financial Regulators will be supported by technical committees comprising officials from the regulatory agencies, National Treasury and other key stakeholders.

To summarise, there will be two committees that deal with regulatory coordination:

- *the Financial Stability Oversight Committee*, which will have a mandate to coordinate on financial stability issues and would be responsible for both mitigating the risk of any crisis and for a resolution in the unlikely event of such a crisis; and
- *the Council of Financial Regulators*, which will ensure a flow of information and coordination of regulation in the other areas, such as enforcement, market conduct and legislation.

Seventh proposal: Increase the scope of regulation.

The financial crisis has revealed that many financially related activities are not regulated, self-regulated or too lightly regulated and may pose systemic risks. They include, among others, money markets, private pools of capital, credit ratings agencies, stock exchanges, payment systems and disclosure and accounting standards. Although the Reserve Bank and Financial Services Board (FSB) may play a role in guiding some of these largely unregulated sectors, regulatory powers need to be strengthened to deal with possible monopolistic practices and abuses.

It is important that all financial service providers and activities be subject to some form of regulation and if they are to be exempted, a strong rationale must be developed for doing so. A comprehensive assessment needs to be made of all unregulated activities and conflicts of interest, a process initiated with stakeholders to identify what kind of regulation is required and effective prudential and market conduct oversight executed if necessary. The governance and regulatory arrangements covering self-regulated or very lightly regulated entities which pose a systemic risk also need to be reviewed from a prudential and systemic risk perspective.

Eighth proposal: Public entities and funds operating in the financial system should not be exempted from general legislation and regulatory standards that apply to the private sector institutions and funds. Where there are exemptions, they should be transparent, and subject to review on a regular basis.

Many public pension funds (such as the Government Employees Pension Fund, Transnet Pension Fund, and municipal pension funds) are exempted from the Pensions Fund Act, and often have their own legislation. Similarly, many public-owned banks competing with private sector banks are also exempted from the Banks Act. The failures of Fannie May and Freddie Mac in the US demonstrate the systemic risks such banks pose when regulated lightly. Public financial institutions or funds should not be exempted from general laws and the ambit of regulations as these exemptions risk undermining the integrity of the regulatory system, and also create the false impression that the standards applied to public entities are less rigid than those applied to the private sector. This is not to suggest that many of the activities of development banks like the Development Bank of South Africa (DBSA) and Land Bank do not have good reason to be exempted through their own legislation. However, it is strongly recommended that such exemptions be reviewed and, where they continue to exist, be subject to annual review and made more transparent, with stricter oversight from National Treasury.

Ninth proposal: Improve enforcement capacity.

Several financial regulators are responsible for enforcement, including the Bank Supervision Department, the Financial Services Board, the Financial Intelligence Centre and Financial Surveillance Department of the Reserve Bank (formerly known as the Exchange-Control Department). In addition, the South African Revenue Service also has enforcement capacity with regard to tax evasion and fraud. In addition,

both the police and the judicial system are involved in the case of criminal charges.

Transgressors in respect of one set of activities and institutions often transgress in other financial activities as well (for example, someone involved in money-laundering is often also guilty of tax evasion). It is therefore critical for the different enforcement agencies to work together and share information on a regular basis. This can be done through the Council of Financial Regulators. Any legislative barriers to such cooperation and sharing must be removed, without compromising the principle of confidentiality for tax affairs or market sensitive information.

Like with all other regulators, the system of accountability to the Minister and Parliament must be strengthened and should enable enforcement agencies to act without fear or favour.

Tenth proposal: Rationalise advisory and technical committees and enhance consultation processes with the industry and key stakeholders.

While consultation with key stakeholders is a critical part of good financial sector policy, there are currently more than ten separate advisory bodies, standing committees and boards operating at the expense of the taxpayer. The overly bureaucratic approach taken towards advisory bodies tends to make such bodies ineffective. It is proposed that the advisory bodies advising the Minister be rationalised into one body and that each regulator set up their own advisory bodies; legislation is not required to establish any advisory body.

■ The way forward

This chapter has provided more detail on proposed reforms. In shifting towards a twin peak model for financial regulation, the financial sector will be made safer through a tougher prudential and market conduct framework.

As noted in chapter 1, comprehensive consultations will take place as each measure is implemented, and all stakeholders consulted, through the normal governmental and parliamentary processes. A number of new pieces of legislation will be required and these will be introduced in the forthcoming years.

Table 3.1 Selected financial sector regulators

	Entity	Current function	Currently reports to
1	Bank Supervision Department	Banking sector (prudential) regulation	Reserve Bank
2	Financial Services Board (FSB)	Regulator of non-bank financial institutions	Minister of Finance
3	National Payments System Department	Payment system oversight	Reserve Bank
4	Exchange Control Department	Exchange control regulation	Reserve Bank / Minister of Finance
5	National Credit Regulator (NCR)	Regulator of credit provision	Minister of Trade and Industry
6	Co-operative Banks Supervision	Regulation of co-operative banks (over R20million)	Reserve Bank
7	Co-operative Banks Development Agency	Regulation of co-operative banks (under R20million)	Minister of Finance
8	Financial Advisory and Intermediary Services ombud	Resolve disputes between financial service providers and customers	FSB
9	Pensions Funds Adjudicator	Resolve disputes with respect to pension fund management	FSB
10	Industry ombuds	Resolve disputes in long-term insurance, short-term insurance and banking services industries	FSB
11	Johannesburg Stock Exchange (incl. Besa) (JSE)	Licensed self regulating securities exchange	FSB
12	Strate	Licensed self-regulating central securities depository	FSB
13	Financial Intelligence Centre (FIC)	Preventing financial crimes: Anti-money laundering and combating the financing of terrorism	Minister of Finance
14	Council for Medical Aid Schemes	Regulation of medical aid schemes	Minister of Health

Protecting consumers of financial services

The South African financial services industry is characterised by high and opaque fees, and the provision of inappropriate services driven only by commissions. Over the long-term, it is expected that greater competition will bring down prices and improve behaviour. While important, this will take time, and not necessarily lead to the fair treatment of consumers.

A stronger approach needs to be taken towards market conduct regulation. To do so, the Financial Services Board has launched the *Treating Customers Fairly* initiative, which will be implemented across the financial services sector. Consumer education will be ramped up. A retail banking services market conduct regulator will be created in the Financial Services Board.

■ Why regulate market conduct?

For as long as they have existed, financial sector regulators have grappled with how best to ensure that firms behave appropriately towards their customers. This chapter considers the current market conduct regulatory framework, identifies gaps, and makes proposals for a new framework that will ensure improved standards of consumer protection.

Financial services firms should treat their customers fairly

Market conduct regulation is essential because financial service providers often have far more expertise than consumers in assessing the quality of financial products and possess far more knowledge on the array of services available. Unfortunately this can create the incentive for financial service providers to exploit their superior information. Abuses range from milder complaints of providing deficient financial advice to egregious and blatant cases of fraud and misrepresentation.

Firms may charge high fees and offer inappropriate products

Moreover, big financial service providers with substantial market power may charge higher fees, sell products that are not appropriate for their clients and exploit their market power in other ways that may be deemed unfair to consumers.

Market conduct regulation restricts such abuses and also complements prudential objectives. As was demonstrated in the subprime crisis, inappropriate selling of financial products can have systemic effects and, a lack of confidence in the financial system due to poor market conduct practices causes losses to consumers and inhibits economic growth. In South Africa, now that the worst of the financial crisis is over, the focus on market conduct regulation and consumer protection will again be intensified.

Box 4.1 What have other countries done about market conduct?

In Australia, consumer protection laws are enforced by two regulators: the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). The ACCC enforces Australian Consumer Law, which was introduced on 1 January 2011 and generally applies protection to any person or business as consumers of goods and services. ASIC has primary responsibility for enforcing the consumer protection provisions in law related to financial products and services including credit and aspects of the payments system. This law, which is amended to maintain consistency with the Australian Consumer Law, includes the Australian Securities and Investments Commission Act 2001, the Corporations Act 2001 and the National Consumer Credit Protection Code.

In Canada the Financial Consumer Agency of Canada, established in 2000, is the regulatory agency responsible for protecting consumers of financial services by (i) ensuring financial institutions comply with consumer protection law and regulations; (ii) monitoring the compliance of financial institutions with voluntary codes of conduct; (iii) informing consumers about their rights and responsibilities when dealing with financial institutions and (iv) providing information and tools to help consumers understand and shop around for financial products and services.

In the United Kingdom, the government has announced that it will transfer prudential regulation to a new unit of the Bank of England, and create a new consumer authority, the Consumer Protection and Markets Authority (CPMA). The new consumer agency will be independent and funded by the financial services industry. The Consumer Protection and Markets Authority once established will take on the FSA's responsibility for consumer protection and conduct regulation. The CPMA will be mandated to regulate the conduct of all firms, both retail and wholesale – including those regulated prudentially – and will take a proactive role as a strong consumer champion in the UK. The CPMA will maintain the FSA's existing responsibility for the Financial Ombudsman Service (FOS) and oversee the newly created Consumer Financial Education Body (CFEB), which will play a key role in improving financial capability. The CPMA will also have responsibility for the Financial Services Compensation Scheme. In March 2010, the FSA stated that while the Treating Customers Fairly initiative had yielded some improvements to market conduct, it had not delivered substantial on-the-ground benefits to consumers. It would need to be bolstered by a new conduct model that will take a dramatically different approach, with more pro-active intervention.

The US, in acknowledging lapses that precipitated the global crisis, moved swiftly to pass the Dodd-Frank Act which has been described as the most sweeping financial regulatory reform since the Great Depression. The Dodd-Frank Act creates a Consumer Financial Bureau. This bureau will be independent, with a budget paid for by the Federal Reserve Bank. It will also have wide powers, aiming to protect consumers from deceptive and abusive loans and other financial products and services. It will be able to conduct examinations of banks and seek information from other firms about consumer-related business. In doing its work, the Consumer Financial Bureau will consolidate existing consumer protection programmes now scattered across several agencies criticised for doing a poor job in the past. The bureau will have offices that are in charge of fair lending, financial education, armed services affairs, and financial protection for older Americans, among others.

Gaps in the current market conduct regulatory framework

South Africa: framework for market conduct regulation

Over the past few years, South Africa's regulatory framework for market conduct and consumer protection in financial services has been bolstered by the introduction of a number of laws to protect consumers, including the Financial Advisory and Intermediaries Services Act (2002), the Financial Services Ombuds Schemes Act (2004), the National Credit Act (2005), and most recently the Consumer Protection Act, which will be implemented on 1 April 2011.

The new Consumer Protection Act (CPA) sets a high standard for the protection of consumers. It establishes a single and comprehensive framework for consumer protection. It is far-reaching, applying not only to contracting parties but users, recipients and beneficiaries of goods and services. Consumers are not limited to South African citizens: the CPA defines consumers as all juristic persons. There is a focus on "vulnerable consumers" that includes many poor and uneducated persons. Goods and services have a much broader scope in terms of the Act than traditional definitions and will include, among others: retailers of goods, casinos, print media industry, airlines, estate agencies, and banking and financial services.

New Consumer Protection Act is a milestone for consumers

Why are financial services different?

Arguably, the financial services industry should be held to a higher standard of consumer protection than other industries for a number of reasons:

- Loss of deposits or savings imposes immediate costs on consumers
- The underperformance or even failure of financial products such as retirement annuities may impose considerable hardship on consumers
- Quality or appropriateness of financial products such as life, property and income-protection insurance is only established some time after purchase or when a disaster occurs
- Many long-term financial contracts impose heavy penalties for cancellation and switching.

The financial services industry should be held to a higher standard of consumer protection than other industries

However, the financial services sector also has a number of peculiarities which require slightly different treatment. For example, although the purchaser of a retirement annuity should be allowed a "cooling-off" period to reconsider her decision, someone who trades shares should not because this might introduce systemic risk. Moreover, the cost of this systemic risk will be borne by the economy as a whole, and many might lose their savings, even though the original share trader remains protected.

For this reason, consumer protection legislation for the financial services sector needs to be designed appropriately. The challenge facing the Financial Services Board, National Treasury and the Department of Trade and Industry is to develop a framework that complements

prudential oversight, setting standards of conduct that are more stringent than those generally applied to other non-financial goods and services. Finally, jurisdiction of the financial sector must be clarified between financial and more generic consumer protection legislation, in order to avoid financial services firms profiting from gaps between the different legislative frameworks.

Treating Customers Fairly initiative

The Treating Customers Fairly initiative proposes a consistent market conduct framework across the financial services sector

The Financial Services Board published *Treating Customers Fairly*²⁰ in 2010, a proposal to adopt a framework for tougher market conduct oversight. It focuses on an outcomes-based approach, requiring firms to incorporate the fair treatment of customers at all the stages of the product life-cycle, including the design, marketing, advice, point-of-sale and after-sale stages. The initiative encourages firms to re-evaluate their company culture and to foster the attitude of treating customers fairly. It is hoped that the initiative will lead to more optimal outcomes from the perspective of the regulators, consumers and ultimately, firms.

The desired outcomes of the *Treating Customers Fairly*, or TCF, initiative are:

- Consumers should be confident that they are dealing with firms where fair treatment of customers is central to corporate culture.
- Products and services marketed and sold in the retail market should be designed to meet the needs of identified consumers.
- Advice should be suitable and take account of the consumer's circumstances.
- Consumers must be provided with clear information and kept informed before, during and after the point of sale.
- Consumers should be sold products that perform as firms have led them to expect, within reasonable limitations.
- Consumers should not face unreasonable post-sale barriers imposed by firms to change products, switch provider, submit claims or complain.

TCF is an important step in strengthening market conduct objectives in the financial sector, and will complement government's broader objectives in this area. The Financial Services Board will shortly publish a TCF Roadmap, which outlines the path towards implementing the initiative in South Africa. The TCF approach proposed for South Africa explicitly incorporates lessons learnt from the UK experience. As noted in Box 4.1, the FSA has recognised that a relatively hands-off approach to applying TCF, which relies on financial firms "doing the right thing" is insufficient, and that it also has to be more pro-active with specific interventions.

In particular, while broad outcomes guide the implementation of the initiative, international experience is that clear, enforceable rules and regulations also need to be in place to ensure that these outcomes are achieved. These will be developed as the programme is implemented.

²⁰ <http://ftp.fsb.co.za/public/insurance/TCFDiscussionPaper052010.pdf>

Specific regulatory proposals will be subject to an assessment to ensure that they are in proportion to the nature, scale and complexity of the market conduct risks that are present in different industries and business models.

Retail banking challenges

The 2008 report of the Banking Enquiry Panel established by the Competition Commission found evidence of abuses in the setting of certain transactional fees and charges in the banking industry, and found inadequacies in the disclosure practices that made interbank comparisons by customers difficult, if not impossible.

Banking enquiry focused on fees and charges, and found evidence of abuses and inadequacies in disclosure

The enquiry focused on the level and structure of charges made by banks and other providers of payment services and the feasibility of improving access by non-banks to the national payment system in order to encourage competition. The focus on transaction-based or payment services brought related fees and charges under close scrutiny. Moreover, the banking industry does not provide savers and investors with standardised interest rates, such as a nominal annual compounded monthly (NACM) rate that allows risk-return comparisons and an improved choice of savings and term deposit products.

The Banking Enquiry identified a major gap in the market conduct regulatory regime: there is no regulator that oversees the market conduct practices of the retail transactional banking sector. While the National Credit Regulator oversees the credit business of banks, it is clear that regulatory oversight needs to be extended to cover the entire banking sector, including retail banking.

National Treasury strongly supported the sterling efforts of the Competition Commission in highlighting the weakness and opacity in market conduct practices, and is therefore proposing that as part of the shift to a twin-peak model of regulation, the market conduct role of the Financial Services Board (FSB) will be expanded by creating a dedicated banking services market conduct regulator within the FSB, which will work closely with the National Credit Regulator.

The mandate of the FSB will be expanded to include market conduct in retail banking.

In particular, banks agreed to the lowering of penalty fees on dishonoured debit orders, improving the management of the current debit order system, greater transparency of ATM fees and charges, the implementation of a standardised switching code to promote ease of switching bank accounts between banks, and improving customer education. Banks also agreed on measures to ensure that all role-players in the debit order and payment system do not abuse the system. Recommendations on interchange and entry into the payment systems required policy guidance from the Reserve Bank and National Treasury, and could not be implemented by the banks unilaterally. However, the Reserve Bank and National Treasury have agreed that while non-banks should enter the clearing space, subject to strict criteria, they should not be allowed into the settlement space given the inherent systemic risks.

Insurance challenges

The market conduct record of the insurance industry is weak, measured by the volume of complaints to the statutory ombuds

There are primarily two types of insurance available to consumers – long-term insurance and short-term insurance. *Long-term insurance* includes life, health and disability insurance: these policies pay out a benefit when the insured individual dies, becomes ill or disabled. *Short-term insurance* is insurance for the possessions that an individual owns, and can be taken out on a home or car, on home contents, and on any other possessions. As noted in Box 4.2, 70 per cent of all complaints to the major financial services ombuds are for long-term and short-term insurance. Against this background, on-going efforts to strengthen the oversight of market conduct abuses in both sectors are a priority.

Long-term insurance

In the long-term insurance industry, high penalties are common on early termination of retirement and other savings policies. Also, long-term insurance companies often seek to recover full commission on termination. In 2006, National Treasury took steps to improve practices in the contractual savings market. Regulations were passed to reduce early termination penalties and limit the commission that can be paid upfront on investment products. There is on-going monitoring of potential abuses in this area.

Conflict of interest is a concern

Another area of concern relates to the role of intermediaries, and potential conflicts of interest. “Triangular association” refers to situations where an intermediary, such as a financial advisor, provides advice to the policyholder but is paid a commission by the insurer. This affects the ability of the intermediary to act independently and in the best interests of the client. Further, the inconsistent regulatory treatment of fees across the financial sector creates gaps in the treatment of investment and risk product offerings. Such treatment results in the practice of “churning” by intermediaries in the pursuit of higher fees to the detriment of the consumer. A possible solution would be to do away with commission for sales of policies and rely more on structured fees.

One of the primary focus areas of policy will be to lower costs and enhance the fairness and transparency of investment and risk policies, and to protect consumers and encourage an improved long-term savings environment. In this context, National Treasury will embark on a broad review of intermediary structures and fees across the long- and short-term insurance sectors with a view to aligning regulated and non-regulated fees and streamlining intermediary structures across the sector.

Statement of Intent

Some companies have not complied with the 2005 Statement of Intent

In December 2005, the Minister of Finance and the life insurance industry represented by the Life Offices’ Association (now incorporated into the Association for Savings and Investment South Africa – (ASISA)) signed a statement of intent. The statement of intent, among other commitments, limits the reduction of retirement annuities and endowment policies when policyholders make contractual changes such as reducing or not paying premiums or contributions (so-called “causal events”). Such reductions were as a result of long-term insurance

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STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	19 TH RESPONDENT
REGISTRAR OF BANKS	20 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	21 ST RESPONDENT

FILING NOTICE

DOCUMENTS FILED : THE 1ST, 2ND, 3RD, 4TH, 6TH,
7TH, 11TH, 12TH, AND 14TH
RESPONDENTS' ANSWERING AFFIDAVIT

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[BY EMAIL]

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

and

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

JIC MINING SERVICES (1979) (PTY) LTD

5TH RESPONDENT

BLACKEDGE EXPLORATION (PTY) LTD

6TH RESPONDENT

TNA MEDIA (PTY) LTD

7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

ABSA BANK LTD

15TH RESPONDENT

MD MH

FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
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DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

1ST, 2ND, 3RD, 4TH, 6TH, 7TH, 10TH, 11TH, 12TH, AND 14TH RESPONDENTS' AFFIDAVIT

I, the undersigned,

RONICA RAGAVAN

hereby declare under oath and say:

1.

I am the acting Chief Executive Officer of Oakbay Investments (Pty) Ltd, the First Respondent herein. Prior to taking this position, I served as the Chief Financial Officer and have been with the company for over 15 years I am duly authorised to depose to this affidavit on behalf of the First, Second, Third, Fourth, Sixth, Seventh, Tenth, Eleventh, Twelfth and Fourteenth Respondents in this application. I am also the acting Group CEO. A resolution authorising me to do so is attached hereto and marked Annexure "OB1".

Q MH₂

The facts in this affidavit fall within my personal knowledge, except where otherwise expressly stated or indicated by the context. Where I refer to allegations or factual circumstances not within my personal knowledge I will ensure that confirmatory affidavits of those who have personal knowledge of the allegations so levelled are filed.

3.

In this regard, I refer to the confirmatory affidavits annexed hereto and marked as Annexures "OB2.1" to "OB2.5" of:

- 3.1. Mr Nazeem Howa, the former CEO of the Oakbay Group up until his resignation on 15 October 2016 on account of ill-health;
- 3.2. Mr Ajay Gupta, a member of the Gupta family;
- 3.3. Mr Noel Lindsay, a forensic auditor and founder and Managing Director of Nardello & Co LLP;
- 3.4. Mr Andre Oldknow, the Group Human Resources Director for Oakbay;
- 3.5. Mr Pieter Johannes van der Merwe, Chief Executive Officer of VR Laser Services (Pty) Ltd;
- 3.6. Mr Stephan Jacobus Daniel Nel, Chief Executive Officer of Sahara Computers (Pty) Ltd.

Q MH

Where legal submissions are made, I do so on the advice of counsel and the attorneys acting on behalf of the Oakbay Group.

5.

For the convenience of the Court, I will use the following abbreviations in this affidavit:

- 5.1. I will refer to the Minister of Finance of the Republic of South Africa, Mr Pravin Gordhan, as "*the Minister*";
- 5.2. I will refer to the First, Second, Third, Fourth, Sixth, Seventh, Tenth, Eleventh, Twelfth and Fourteenth Respondents collectively as "*Oakbay Group*";
- 5.3. I will refer to Absa Bank Ltd, Standard Bank Ltd, First National Bank Ltd and Nedbank Ltd collectively as "*the Banks*";
- 5.4. I will refer to the South African Reserve Bank as "*Reserve Bank*";
- 5.5. I will refer to the Financial Intelligence Centre as "*FIC*";
- 5.6. I will refer to Ajay Gupta, Atul Gupta and Rajesh Gupta as the "*Gupta Brothers*" or "*Gupta Family*";
- 5.7. I will refer to the Financial Intelligence Centre Act, 38 of 2001 as "*FIC Act*";
- 5.8. I will refer to the Promotion of Administrative Justice Act 3 of 2000 as "*PAJA*";
and
- 5.9. I will refer to the application by the Oakbay Group for further information from the Financial Intelligence Centre as the "*FIC application*".

 4

In what follows, I set out the relevant parties to the dispute, and the relevant roleplayers within the Oakbay Group which I represent. Thereafter, I deal with the impermissibility of the declaratory relief sought by the Minister which is both abstract and academic. As will become apparent, the Minister has been aware that there is no dispute between the parties regarding his powers since 24 May 2016. This was confirmed on 25 July 2016. The Minister's application is not an application to address a contested legal point regarding a justiciable issue. Certainly, the Minister has not offered any legally cogent explanation for what is so unique about the current situation so as to compel him to do so, months after it became clear that there was no legal issue between the Minister and the Respondents. I cannot imagine that the Oakbay Group is the first company or person in South Africa to write to the Minister to seek his help in respect of whatever malady they were facing. On the Minister's own version, there is nothing in the Oakbay Group's situation that justifies this application and on this ground alone, the Court should decline to entertain the application.

7.

Moreover, the application is riddled with factual and legal errors. For example, there are other relevant roleplayers who may have an interest in the relief sought who have not been joined, including not least the Gupta Brothers themselves, the President of the Republic of South Africa, the Bank of China, Optimum Coal Mine (Pty) Ltd, the Trustees of the Optimum Mine Rehabilitation Trust, Koornfontein Mines (Pty) Ltd as well as the Koornfontein Mines Rehabilitation Trust. Factually, the Minister's reliance on the list of 72 purported "*suspicious transaction reports*" is misplaced and the Minister's flawed application is supported by a flawed analysis and a faulty factual record.

AM 5

As such, I am advised that the only appropriate decision by this Court is to confirm that there is no dispute between the parties and to dismiss this application. I am advised that if this Court were to rule otherwise, it would be addressing both matters and potentially affecting parties not before this Court and who have been given no opportunity to address the issues at hand. This would create unnecessary collateral issues. The Court should therefore decline to grant the relief sought.

9.

As a final procedural point, I deal with the application to strike out material in the Minister's affidavit that is irrelevant and / or vexatious – in particular annexure "P" to the Minister's affidavit which is a certificate issued by the Financial Intelligence Centre purportedly in terms of section 39 of the FIC Act. Annexure "P" allegedly details 72 transactions involving certain of the Respondents (and certain persons who are not respondents in this application, including the Gupta Brothers, Optimum Coal Mine (Pty) Ltd as well as the Trustees of the Optimum Mine Rehabilitation Trust) which have allegedly been reported to the Financial Intelligence Centre as "*suspicious transaction reports*". As I demonstrate below, the certificate is entirely irrelevant to the issues in the declaratory application and ought to be struck out. As just one example of the lack of relevance of the certificate, three-quarters of the 72 allegedly suspicious transactions occurred after the time when the banks described below had already decided to terminate their relationship with the Respondents and could never have justified the Banks' decision to do so.

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To the extent that the Court deems the information contained in the certificate relevant and declines to strike out the certificate on the ground of irrelevance, I am informed that I have both a right and duty to respond thereto. In this regard, I demonstrate that the acquisition of the certificate was improper and unlawful and that the certificate holds no evidential value. I also deal with the FIC Application which was launched by the Oakbay Group to compel the FIC to disclose missing information pertaining to the 72 transactions so that the Oakbay Group can address the allegations made against them.

11.

However, in good faith, and in order to provide the most complete answer possible to the allegations therein, the Oakbay Group has engaged a firm of forensic accountants to exhaust all efforts to identify and explain (where it is possible to do so) each of the 72 "*suspicious transaction reports*". The report filed by the forensic firm demonstrates that the information on the 72 transactions is inadequate even to connect them with the Oakbay Group and is, in many instances, financially inexplicable on its face, e.g., describing single transactions greater than the relevant Respondent's annual revenues. To the extent that the transactions can be identified, these transactions were entirely appropriate and lawful.

12.

Finally, I deal with certain red herrings i.e. extraneous matters which have been raised in the affidavits of the Minister and the Banks and the appropriate relief to be granted in this application.

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7

13.

The application has as its target three businessmen namely Mr Ajay Gupta, Mr Atul Gupta and Mr Rajesh Gupta, referred to in the popular press as the Gupta Brothers. Originally from India, Gupta Brothers are an entrepreneurial family who have lived in South Africa since 1993. Shortly after their arrival they founded their first business – a shoe business that operated out of a small garage in Johannesburg. The Gupta Brothers then founded Sahara Computers (Pty) Ltd, the 14th Respondent herein, an IT hardware distribution business. Sahara eventually launched their own brand of notebook computers and the business grew to become one of the most well-known consumer brands in South Africa.

14.

Since the formation of their initial business, the Gupta Brothers have created many additional businesses and employ many thousands of employees throughout South Africa. In the process, the Gupta Brothers have cooperated with other business partners to develop new lines of business and create broad commercial conglomerates composed of private companies and public companies. Contrary to some media claims, the substantial portion of these companies' revenues are derived from private commercial transactions and not government contracts.

15.

The Gupta Brothers are the founders of **Oakbay Investments (Pty) Ltd**, the First Respondent herein, an investment holding company with business interests in a number of industries including IT, media, property & leisure, mining and engineering.

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Between February 2016 and April 2016, the Gupta Brothers resigned from all the positions that they had previously held in the Oakbay Group, both as Board Members and in a management capacity. In addition, the Gupta Brothers considered selling their shares or disposing of them to third parties.

17.

Some of the current Oakbay Group companies have been operating successfully in South Africa for 20 years, contrary to some misperceptions that it only consists of new entities. The Oakbay Group has a track record of strong business performance in a number of sectors. From Oakbay's beginnings in the IT sector, it has diversified into mining, media and engineering. This diversification began with the acquisition of Westdawn Investments from JIC Mining Services (1979) (Pty) Ltd, a mining services company, in 2006, and the establishment in 2006 of Tegeta, a mining exploration company. In 2010, the Oakbay Group acquired another mining asset in Klerksdorp which is now known as Shiva Uranium.

18.

In 2010, the Oakbay Group launched The New Age national newspaper and followed this with the launch of ANN7 news network in 2013. Most recently, in 2014 the Oakbay Group acquired an indirect minority stake in an engineering company VR Laser, a company which specialises in the design and manufacturing of various steel products used in the defence, mining, rail and transport industry.

The diversification of Oakbay has enabled consistent growth and job creation throughout times of both economic boom and bust. In 1997, Sahara was launched, with just a few employees. Today, the entities which make up the Oakbay Group employ some 8 300 persons.

20.

The First, Second, Third, Fourth, Sixth, Seventh, Tenth, Eleventh, Twelfth and Fourteenth Respondents form part of the Oakbay Group. The Fifth, Eighth, Ninth and Thirteenth Respondents do not form part of the Group and the Gupta Brothers have no interest in these entities. I am not aware of the basis on which these entities are joined in this application and I am advised that their joinder in this application constitutes a material misjoinder as a matter of law. The consequences of this misjoinder is that the Court cannot properly render a decision until the correct parties are before it.

21.

As I have set out above, the First Respondent, **Oakbay Investments (Pty) Ltd** is the holding company for most of the entities in the Oakbay Group. All the companies within the Oakbay Group report weekly or periodically to the Executive Committee of Oakbay Investments (Pty) Ltd, which I chair. I now turn to describe the business of these entities in more detail.

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10

22.

Oakbay Resources and Energy Limited, the Second Respondent, is a Johannesburg Stock Exchange-listed energy and natural resource focused mining company that owns a controlling stake in Shiva Uranium (Pty) Limited.

23.

Shiva Uranium (Pty) Ltd, the Third Respondent, currently has significant gold, uranium and coal mining operations in the Republic of South Africa. Its uranium processing plant is situated in the Hartbeesfontein District of North West province of South Africa. Shiva Uranium (Pty) Ltd also acquired a coal mine from Tegeta Exploration and Resources (Pty) Ltd in February 2016.

24.

Tegeta Exploration and Resources (Pty) Ltd, the Fourth Respondent, is the owner and operator of the Optimum and Koorfontein coal mines. Tegeta Exploration and Resources (Pty) Ltd mines and explores coal in South Africa. The company was founded in 2006 and is based in Johannesburg, South Africa. Oakbay Investments has a 29% stake in Tegeta.

25.

The Fifth Respondent is JIC Mining Services 1979 (Pty) Ltd. JIC Mining Services 1979 (Pty) Ltd is not in any way related to the Oakbay Group or the Gupta family. I speculate that the Minister meant to join Westdawn Investments (Pty) Ltd instead of JIC Mining Services 1979 (Pty) Ltd.

Westdawn Investments (Pty) Ltd t/a JIC Mining ("JIC") has been a provider of mining services to a number of major mining companies in South Africa for over 25 years. The nature of demand for JIC's services changes with the commodities cycle and historically has been heavily focused on gold mining. Currently, demand is particularly strong from platinum producers. JIC, which is the largest business unit within the mining division, has no revenue at all from any government source. Oakbay Investments acquired JIC in 2006 when the company was unprofitable, losing approximately 100 million Rand per year. JIC is now profitable.

27.

I am advised that the joinder of JIC Mining Services 1979 (Pty) Ltd is a misjoinder and the failure to join Westdawn Investments (Pty) Ltd t/a JIC Mining is a material non-joinder. Again, this non-joinder and misjoinder means that the court cannot properly determine the issues at stake in this application as it does not have the correct parties before it.

28.

In the financial year 1 March 2015 to 29 February 2016, the Group's mining businesses reported total revenues of 1.88 billion Rand. This contributed approximately 58% of Oakbay Investments' revenues in the period.

Media

29.

The Oakbay Group includes a successful and growing media business which includes

(M) MT 12

The New Age national newspaper and the ANN7 news network. Its Editor-in-Chief is Moegsien Williams.

30.

The New Age national newspaper ("*TNA*") is owned and operated by **TNA Media (Pty) Ltd**, the Seventh Respondent herein. Since its launch in 2010, TNA Media (Pty) Ltd's business model has been to seek to generate advertising revenue from a broad range of private sector and public sector contingencies. TNA is sold and distributed in all nine of South Africa's provinces with six daily regional editions and a bureau in every province. As such, TNA is South Africa's only truly national, broadsheet daily while at the same time also maintaining an element of regional focus.

31.

The ANN7 news network is owned and operated by Infinity Media Networks (Pty) Ltd. Infinity Media Networks (Pty) Ltd is not a respondent to this application. I assume that the entity cited as "*Africa News Network (Pty) Ltd*", the 9th Respondent, was intended to refer to Infinity Media (Pty) Ltd, but this is mere speculation as I have no personal knowledge of this fact. I am advised that the non-joinder of Infinity Media (Pty) Ltd is a material non-joinder in this application.

32.

As with other Oakbay Group companies, ANN7 is intently focused on skills development and job creation. ANN7 and TNA currently have offices in six provinces in South Africa. ANN7 (in conjunction with TNA) has an existing Cadet Academy which has launched the careers of many South African journalists since its inception, both at ANN7/TNA and other media outlets. The Academy offers an apprenticeship to groups of talented youngsters, some of whom are offered permanent roles with the

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businesses once the formal schooling period ends. Since 2012, the Cadet Academy has produced, on average, 40 young journalists per year.

33.

Since their inception, TNA and ANN7 have together created 783 jobs for South Africans. In the financial year 1 March 2015 to 29 February 2016, the combined media businesses reported revenues of 419 million Rand, representing 12.9% of Oakbay's revenues.

Strategic Investments

34.

The Tenth Respondent, **VR Laser Services (Pty) Ltd**, forms part of the Oakbay Group's strategic investments portfolio. Oakbay Investments (Pty) Ltd has an indirect minority shareholding (17%) in VR Laser Services (Pty) Ltd, a leading manufacturer of steel products for global, blue-chip customers in a range of industries including: defence, mining, rail and transport. Its services include: laser cutting, plasma cutting, bending, fabricating and various machining services. I record that the neither the Oakbay Group nor the Gupta Family has shareholding in VR Laser Asia.

Property and Equipment Leasing

35.

The Group also has additional, associated but un-consolidated strategic investments in Islandsite Investments **One Hundred and Eighty (Pty) Ltd** and **Confident Concepts (Pty) Ltd**, the Eleventh and Twelfth Respondents herein. These entities are involved in the property and equipment leasing sectors. They generate total

DMH 14

revenues of 189 million Rand, of which zero is generated from Government sources.

Sahara Computers

36.

The Fourteenth Respondent is Sahara Computers (Pty) Ltd. As explained above, Sahara was established in 1997 and was the Oakbay Group's first business in South Africa. Since inception, Sahara's focus has always been IT hardware. In 2005, the Sahara notebook was the number one South African-branded notebook. Sahara also revolutionised the traditional dealer channel in South Africa by changing the standard dynamics of how distribution was handled, via: the best prices, a Tier One product, easy access and unique distribution country-wide.

37.

Sahara has always moved with the times and anticipated future customer demand. In 2010, the division made a strategic shift and embraced increasing levels of connectivity by becoming more retail and technology focused by embracing tablets and smart phones. In the financial year 1 March 2015 to 29 February 2016, Sahara reported revenues of 1.1 billion Rand. This contributed approximately 31% of Oakbay Investments' revenues in the period. However, as I set out below, Sahara's businesses are now facing challenges in terms of suppliers and bank accounts which threaten these gains.

38.

Having dealt with the parties to the application, I now turn to examine the Minister's application in more detail and the factual and legal difficulties precluding the granting of the relief sought.

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15

39.

In this application the Minister seeks declaratory relief that *"he is not by law empowered or obliged to intervene in the relationship between the 1st to 14th Respondents and the 15th to 18th Respondents, as regards to the closing of the bank accounts held by the former with the latter."*¹

40.

I agree with this statement and therefore this Court need not proceed any further. The Minister states a general legal proposition from which no consequential relief flows. There is also, as I set out further below, no *lis* between the parties which justifies the need for a declaratory order of this nature. The order which the Minister seeks is therefore entirely unnecessary and of academic interest only.

41.

Moreover, as noted above, as a number of necessary parties affected by this application have not been joined as respondents by the Minister in his application, any action by this Court may affect parties who have had no opportunity to present their views or have their day in court.

42.

To the extent that there was any lack of clarity or confusion between the parties (including the Minister) as to the Minister's powers, this was settled in the two opinions which the Minister received from his legal counsel. The conclusions of these legal

¹ Notice of Motion, page 2 of the paginated papers.

opinions were accepted by the Oakbay Group on 24 May 2016 and 25 July 2016. Accordingly, the declaratory relief sought by the Minister is moot. Going forward with this application for declaratory relief is a waste of the Court's time and amounts to an abuse of this Court's process and the application should be dismissed on this basis.

43.

Moreover, I am advised that the Minister is essentially asking the Court to insert itself into the functioning of the executive branch in a manner that raises a significant question of the separation of powers (under the Constitution). In this regard, even if the Minister correctly concluded that the Oakbay Group asked him to intervene in support of its dispute with its banks (which I strongly deny), I see no reason why the Minister felt compelled to act at all. Surely it is wholly within the normal exercise of his powers and his discretion to ignore or reject a citizen's request. Governments function in this manner across the world every day, deciding to reject or ignore citizen requests. Ordinarily a citizen's redress is the courts if the executive branch exercises - or fails to exercise - its powers in a reasonable manner consistent with applicable law and the rights of its citizens. If this court were to countenance the Minister's application for guidance here, it would open the floodgate for other weak-kneed political officials who are too scared to take positions on sensitive political and policy matters, as they could (and would) simply retreat to the judiciary for advisory rulings on any issue they did not want to have to decide.

44.

Responding (or deciding not to respond) to the pleas of citizens for government action is primarily the job of the executive and legislative branches, not the judiciary, as the former were democratically elected and must answer to the people. The minister's application - at its very heart - seeks to overturn this fundamental

11.17

constitutional norm by thrusting the court into the functioning and political judgments of a cabinet level branch of government and by asking the court to render an opinion on a matter that properly belongs with the decision-making of that other branch of government. If this Court were to "take the bait", the court would be setting itself and the country down a dangerous path, where the judiciary will become a maker of political judgments, rather than the arbiter of the judgments made by the political branches of government. On this ground alone the application should be dismissed.

The Court should decline the relief sought

45.

I am advised that the application for declaratory relief brought by the Minister is an application in terms of section 21 of the Superior Courts Act in terms of which a court may, in its discretion, and at the instance of any interested person, "*enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination*".

46.

The Court, in determining whether to make the declaratory order, has a discretion which it must exercise taking into account the particular circumstances of the case. I am furthermore advised that an applicant for declaratory relief is required to establish that he or she is a person interested in an "*existing, future or contingent right or obligation*" and, if the court is so satisfied, the Court will then determine whether the case is a proper one for the exercise of the discretion and to make the declaratory order sought.

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18

In this application, the Minister fails at both hurdles. In the first instance, there is no "existing, future or contingent right or obligation" of the Minister which is challenged by any of the parties in this application. There is no case or controversy that requires this court to take any action. To justify this application, the Minister contends that Mr Nazeem Howa ("Mr Howa"), the previous CEO of Oakbay Investments (Pty) Ltd and CEO of the Group of Companies, made "demands" that the Minister exercise his governmental authority to intervene and reverse the action taken by the banks. A reading of the correspondence in question reveals that this was not the case. Mr Howa never disputed the Minister's legal advice that he had no legal right to interfere with the decision made by the banks.

48.

The facts of the matter are briefly as follows: In a period of five months, between December 2015 and April 2016, each of the four major South African banks (ABSA, First National Bank, Nedbank and Standard Bank) terminated their accounts with various members of the Oakbay Group. ABSA closed the majority of the Group's accounts in December 2015 whilst the remaining three banks all closed the majority of the Group's account during the first week of April 2016. It is almost impossible to do business in South Africa without a bank account (especially on a large scale) and the effect of the Banks' decisions to close Oakbay's accounts immediately placed at risk the 8 300 employees who are employed by the Oakbay Group and approximately 50 000 persons who rely on Oakbay Group for their livelihoods.

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The Oakbay Group was and remains fearful of the dire consequences of being "unbanked" by the four major South African banks. Following the Banks' decisions, Mr Howa directed correspondence to every single person he could think of who might be in a position to assist the Oakbay Group. Mr Howa believed (and continues to believe) that it is a matter of national priority that one of the largest and most successful business groups in South Africa seek the assistance of any and all stakeholders to advise and assist the Group in its difficulties. The Minister was but one on a very long list who received correspondence from the Group. In this regard, I annex marked "OB3.1" to "OB3.10" similar letters and correspondence, all of which are generic in nature and not specifically directed to any one person in which Mr Howa asked for assistance from *inter alia*:

49.1. The President of the Republic of South Africa;

49.2. The Democratic Alliance;

49.3. The African National Congress;

49.4. The Governor of the Reserve Bank;

49.5. The Bank Ombudsman;

49.6. Trade Unions;

49.7. Consumer Ombudsman;

49.8. The Minister of Mining;

49.9. The Department of Labour; and

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50.

Other members of the Oakbay Group also took action. The Group Human Resource Director, Mr Andre Oldknow, on behalf of employees who submitted a petition, also lodged a bill of rights violation complaint with the SA Human Rights Commission. I attach hereto a copy of the complaint, the ruling, appeal and outcome of appeal as **Annexures "OB4.1" to "OB4.4"**. It is also worth mentioning that employees, across the entire Group, staged a peaceful march, handing over a memorandum to ABSA bank, FNB and Standard bank. A copy of the relevant correspondence and memorandum is attached hereto as **Annexure "OB5"**.

51.

There was nothing untoward about Mr Howa's attempts to seek assistance to protect the business and, importantly, the 8 300 jobs which would be lost if the Oakbay Group were forced to shut down its South African operations.

52.

Companies and constituents in South Africa and indeed the world over routinely approach their governments, including the executive, legislative and regulatory authorities for assistance in a wide range of situations. Clearly, Mr Howa was not of the view that these entities and persons would have a legal right to reverse the decision of the Banks or to "*intervene*" in those decisions.

(W) MH
21

It would be a bizarre result if every empowered government official receiving a letter from a constituent seeking assistance or counsel could race to a court to seek a declaration of the variety that the Minister seeks in this application. Taken to its logical conclusion, every regulator or member of the government could, if this Court countenances it, inundate the Courts seeking to get declarations such as the Minister seeks. It is strange, therefore, that the Minister decided to approach the Court for an abstract declaration of rights regarding whether or not he was "*empowered or obliged*" to assist their petitioner. He needed to have done nothing at all, as members of the executive branch do routinely when their assistance is sought in matters beyond their powers or mandate.

The Oakbay Group's correspondence to the Minister

54.

In point of fact, Mr Howa did not "*demand*" (as the Minister mis-states in his Founding Affidavit) or even ask the Minister to "*intervene*". In the first letter to the Minister (of 8 April 2016),² Mr Howa informs the Minister that 3500 jobs created by Oakbay's mining interests were "*now at risk*" as a result of the closure of the bank accounts and that, with their bank accounts closed, the Oakbay Group is "*currently unable to pay many of the salaries of our more than 4500 employees*" which would result in "*tens of thousands of their dependents*" suffering as a result of the campaign against the Oakbay Group and the Gupta family. Mr Howa indicates that:

"we believe that this is the result of an anticompetitive and politically motivated campaign designed to marginalise our business. We have received no justification

² Annexure "A" to the Founding Affidavit, 21 of the paginated papers.

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whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts."

He concludes: *"I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs".*

55.

It is in this context that the plea for help is made to the Minister. Nowhere in the letter of 8 April 2016 does Mr Howa demand or ask the Minister to exercise a legal right or power to intervene in the banks' commercial decisions. Rather, the first line of the letter makes it clear that Mr Howa's intention was *"to provide [the Minister] with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses"*. Clearly the Minister would have an interest in job losses, and the Minister admits as much at paragraph 19 of his Founding Affidavit when he states: *"So too are the jobs of the affected individuals (which Oakbay has variously estimated at 6000, 7500 or 15000) for which I as Minister of Finance would always have a considerable concern"*.

56.

The following day, in an interview on 9 April 2016, Mr Howa explained to the interviewer Richard Quest of CNN that following the Banks' decisions to close the accounts, he had appealed to multiple persons *"on behalf of his staff"* in order to help stave off imminent job losses. Mr Howa explained that Oakbay's worries were whether they would be able to pay their staff and their suppliers.³

³ A copy of this video interview is available at <https://businesstech.co.za/news/banking/119659/watch-gupta-company-ceo-on-cnn/>.

QMH₂₃

In a follow-up letter dated 17 April 2016,⁴ Mr Howa apologised to the Minister if it might have seemed as if his previous letter portrayed anything other than a *"heartfelt appeal for assistance"*. He states: *"it was never our intention to come across with any other message than a plea to you as political head for the financial sector to assist us in avoiding this huge impact on the lives of around 50 000 people"*. He asks the Minister for *"help to save the jobs"* and revert regarding *"any possible assistance you are able to offer"* in the best interest of the economy and overall development.

58.

On or about 25 April 2016, Mr JJ Gauntlett SC advised Minister Gordhan that no cabinet member has any power to intervene in the banker-client relationship (*"the First Opinion"*)⁵. As a matter of public law, he further advised that any such intervention may be ignored by a private entity without seeking legal recourse and, as a matter of private law any such intervention constitutes a delict, Mr Gauntlett advised.

59.

The Minister addressed correspondence to Mr Howa on 24 May 2016, a month after he received the First Opinion and following a meeting between the parties on the same day.⁶ (The meeting was held despite a conclusion in the First Opinion that *"the contemplated meeting is not authorised by law"*). By this stage, the Minister could be in no doubt as to the ambit of his power and authority. The Minister, in his letter, clearly states that he cannot act in any way that undermines the regulator or the

⁴ Annexure B to the founding affidavit, page 23 of the paginated papers.

⁵ Annexure C to the Founding Affidavit, page 23 of the paginated papers

⁶ Annexure D to the Founding Affidavit, page 51 of the paginated papers.

QMH
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60.

Nevertheless, the Minister indicated in this letter that "*We agreed to continue engaging and you would provide us with any relevant information*". In other words, the Minister agreed that, notwithstanding that the Minister had no power to interfere or intervene in the relationship between the Oakbay Group and the Banks (a proposition which has at all times been accepted by the Oakbay Group and which had been confirmed in the First Opinion), he nevertheless undertook to continue to engage with the Oakbay Group and he (the Minister) asks for further relevant information from the Group.

61.

In a letter written by Mr Howa to the Minister on the same day (24 May 2016), Mr Howa clearly refers to the fact that he is "*aware of the legal impediments*" preventing intervention by the Minister.⁷ He accepts (as he must) that the Minister has no power to intervene in the banker-client relationship. However, in the light of the Minister's stated commitment to continue to engage with the Oakbay Group, Mr Howa seeks from the Minister "*any possible assistance [he is] able to offer [the Oakbay Group] in these trying times*".

62.

Shortly thereafter and on 29 May 2016 Minister Gordhan received a further opinion from Mr Gauntlett SC (the "*Second Opinion*"). The Second Opinion is, in essence, a repetition of the circumstances prevailing under the First Opinion and it did not disclose any new information which the Minister did not have on receipt on the first

⁷ Annexure E to the Founding Affidavit, page 46 of the paginated papers.

63.

Yet, the Minister continued to offer "assistance" to the Oakbay Group. In response to a telephonic question raised by Mr Stephan Nel, the CEO of Sahara Computers (Pty) Ltd in June 2016, the Minister stated:

"Where Treasury can assist it will go out of his way to do so. We will not stand still. There are options that are not being undertaken that can be looked at."

I refer in this regard to a newspaper article annexed hereto and marked as **Annexure "OB6"** headed: *"Gupta's Sahara CEO claims he was intimidated after Gordhan ambush"* and in which the Minister's undertaking to assist the Oakbay Group is recorded.

64.

On 28 June 2016, Mr Stephan Nel, the CEO of Sahara Computers, addressed correspondence to the Minister in which he sought a meeting with the Minister so that he could *"then brief the rest of my colleagues and our employees on what concrete steps are being made to secure the future of my remaining 103 employees, their families and dependents"*.⁹ Mr Nel does not request or demand that the Minister exercise any government "powers of intervention".

65.

Finally, there is also no request for "intervention" in the last letter from Mr Howa to the

⁸ Annexure F to the Founding Affidavit, page 53 of the paginated papers.

⁹ Annexure "G" to the Founding Affidavit, page 66 of the paginated papers.

Minister dated 25 July 2016,¹⁰ In this correspondence, Mr Howa again emphasises the effect of the loss of jobs at the Oakbay Group on the economy and states: "*hopefully, we can jointly find a way to understand the real reasons for the banks decision to unilaterally close our accounts*". Nowhere does Mr Howa demand or ask the Minister to intervene or attempt to persuade the banks to reverse their decision.

66.

In fact, following this letter, and despite clear advice in the First Opinion and Second Opinion that he had no authority to do so, the Minister did write to the FIC on 28 July 2016 in an effort to obtain the reasons for the banks' decisions to close the accounts and in order to "*approach the Court*". As I set out further below, the explanations sought by the Minister were not provided by the FIC.

Conclusion on the requirement for an "existing, future or contingent right or obligation"

67.

Accordingly, on the first leg of the test for declaratory relief, the Minister fails to pass the hurdle of establishing his interest in an existing, future or contingent right or obligation which is at stake in this application. The Minister's attempts to create the impression that he was "*forced*" to approach the Court are without merit. There was no such need and all parties have understood the legal position at all relevant times.

¹⁰ Annexure "L" to the Founding Affidavit, page 80 of the paginated papers.

68.

Moreover, on the second leg of the test, this Court should exercise its discretion to refuse the Minister's invitation to enter the political fray which is currently being played out in the South African media. In this section, I deal with the political motivations for this entirely unnecessary application which has placed considerable demands on the courts and the public purse. I am advised that a court should be slow to step into the political arena where there is no need for it to do so, merely because the Minister seemingly has another agenda not appropriate for the Court to entertain. I further submit that the Court should clearly establish the precedent that the courts have no place in addressing such unnecessary applications that are an abuse of the resources and the role of an independent judiciary that should not be involved in political games.

69.

I reiterate that it is mischievous at best (and misleading at worst) for the Minister to have attempted to suggest to this court that the Oakbay Group or the Gupta Family ever demanded or implied that the Minister had a legal obligation or entitlement to intervene in the relationship between the Oakbay Group and its bankers. It is also either mischievous or misleading for the Minister to suggest that the Oakbay Group or the Gupta Family ever acted or purported to act in such a way that the Minister could have reasonably deduced therefrom that this application presents a matter that needs to be decided in our Courts. Simply put, everyone was and continues to be in accord that the Minister has no legal right or obligation to intervene and such a request was never made to the Minister. As such, the Minister's application should be dismissed and no further time and resources of the Court wasted.

DMH₂₈

70.

Indeed, the dispute between the Gupta Family and the Minister has a long and unfortunate political history, which I now set out.

The Minister's call to "*clip the wings*" of the Gupta family

71.

Mr Pravin Gordhan was appointed Finance Minister in South Africa on 14 December 2015.

72.

In January 2016, shortly after his assumption of office, the Minister called a meeting with approximately 60 "*captains of industry*" and CEO's of large companies in South Africa. The meeting was held on 29 January 2016 at Nedbank's office in Sandton. I did not attend the meeting (nor was I invited).

73.

A media report of the meeting (which apparently lasted two and a half hours) is attached hereto and marked as **Annexure "OB7"**. At the meeting, the Minister discussed various threats facing the South African economy. I have been informed by various credible sources (who do not want to be named for obvious reasons) that, in addition to issues such as Eskom and the weakening Rand, the Minister also referred explicitly to the threat of "*a Family in South Africa*" who is involved in politics and business. The Minister apparently elaborated on this Family and eventually said that steps must be taken "*to clip the wings of this Family*".

The sources who, independently from each other, informed me of this meeting and the allegations made, said that it was clear that the Minister referred to the Gupta Family and that on no permutation could a different Family be suggested by him. I was told that the Minister made sure that everybody present knew exactly what he meant and to whom he referred. I specifically challenge the Minister to confirm or deny whether this meeting occurred and to produce the agenda of the meeting, the minutes of the meeting and a recording of what was said at the meeting.

75.

The Oakbay Group was not invited to the meeting nor were any of the members of the Gupta Family invited or present at the meeting. The result of the aforesaid is that any and all discussions at the meeting took place in the absence of any representative of the Oakbay Group or the Gupta Family. It is fairly incredible that a meeting of 60 major companies in South Africa could have been held and the Gupta Family deliberately excluded from the meeting.

76.

There is also a supreme irony in the Minister's conduct in calling and addressing the meeting in this manner. The Minister is at pains in this application to point out that he has limited constitutional and statutory powers and that he may not interfere in the private relationships of businesses. Yet, this is precisely what the Minister did in January 2016 in addressing the meeting in this fashion and in placing pressure on big business in South Africa to "*clip the wings*" of the Gupta family and their businesses.

DMH
30

The sources who have reported to me on the Minister's comments are, for obvious reasons and fears of repercussions, not willing to provide confirmatory affidavits at this stage. Subsequent events, however, in my respectful submission, prove that the information which I received must have been correct because this statement set the ball rolling for an orchestrated effort by business in South Africa (including the banks) to close out the Oakbay Group and the Gupta Family.

Event's following the Minister's call to "*clip the wings*" of the Gupta family

78.

The Minister's statement resulted in a sudden refusal of many South African companies to conduct business with any entity who is linked to the Gupta family. I annex hereto marked as **Annexure "OB8"** a list of businesses who suddenly started to disassociate with the Oakbay Group of Companies following this meeting to which I referred. Many of these entities announced their sudden decision publicly and in concert in an effort to drum up all the support they could to execute the "*instruction*" received from the Minister and to be seen in doing so.

79.

The only entity that had disassociated with the Oakbay Group prior to this meeting was ABSA. ABSA notified the Oakbay Group of its decision to close all the accounts held with them in December 2015, shortly after the Minister's assumption of office, purportedly on the ground of "*reputational risk*".

The onslaught after the Minister's address was severe and has had a significant and negative impact on the Oakbay Group which will be apparent in the 2017 year-end statements. First, the Oakbay Group's auditors, KPMG, caused their relationship with the Group to be terminated in March 2016. This notwithstanding that KPMG had given clean audits to the Oakbay Group's accounts for sixteen years with no concerns or exceptions. When they terminated their mandate, KPMG indicated that the termination was not because of any "*audit risk*" which they perceived in respect of the Oakbay Group, but arose instead from "*reputational risk*". This is, of course nonsense, because given the nature of KPMG's business, "*reputational risk*" only flows from "*audit risk*". I must surmise that KPMG had been persuaded to disassociate themselves from the Oakbay Group for fear of falling out of favour with other clients.

81.

A number of other companies and institutions also followed the Minister's direction.

82.

First National, Nedbank and Standard Bank gave notice of their decision to close all accounts held with them from approximately April 2016 and went so far as to suggest that their closing of the accounts followed their practice to disassociate with entities which might be involved in money laundering, terrorist activities and other similar unlawful conduct.

83.

The timing of Standard Bank's decision merits further discussion. After the notice was received from ABSA in December 2015, the Oakbay Group applied for accounts with

(A.) MH
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Standard Bank in January 2016. These applications were processed and the accounts were activated on 10 February 2017. I am advised that Standard Bank would have performed due diligence on the Oakbay Group before activating the accounts. It is therefore apparent that the due diligence did not raise any red flags and that Standard Bank was satisfied to the extent that it activated the accounts.

84.

Tegeta Exploration and Resources (Pty) Ltd (the Fourth Respondent) acquired the target companies of Optimum Coal Holdings (then under business rescue), one of which was Optimum Coal Mine ("OCM") (also under business rescue) from Glencore, the closing date of the transaction being 15 April 2016. The business rescue practitioners sent a notice to the creditors (including Nedbank, RMB (part of First Rand Group) and Investec), on 31 March 2016, confirming the distribution of the proceeds of the sale to creditors. The total outstanding purchase price of R2 084 210 206-10 (Two Billion, Eighty Four Million, Two Hundred and Ten Thousand, Two Hundred and Six Rand and Ten Cents) was paid on 14 April 2016. This amount was distributed to the consortium of banks, who were the primary creditors of Optimum Coal Holdings. Termination notices from the banks were received on the following dates:

84.1. First National Bank on 1 April 2016;

84.2. Standard Bank on 6 April 2016;

84.3. Nedbank on 7 April 2016 (although decision was taken also on the 6th).

85.

To put it plainly, the Banks waited to receive confirmation of the proposed payment before they gave notice of their decisions to terminate the Oakbay Groups' Accounts.

DMH 33

It is inconceivable that three different commercial banks could, independently from each other, within such a short space of time, come to the same conclusion to terminate their respective banking relationships with the Oakbay Group within a period of 5 days.

86.

I need to place on record that the reasons from the banks, given to various entities in the Group, differed. Nedbank and Standard Bank handed their notices of cancellation in regard to the 10th Respondent (VR Laser Services (Pty) Ltd) to the management of VR Laser in person. These discussions were recorded. The Standard Bank representative, Mr David Pike, confirmed that "*whilst that is the shareholding [i.e. whilst the Gupta Brothers own shares in the entity]... we are not comfortable*" with the situation (relationship). Mr Pike confirmed that there was nothing wrong with VR Laser's account, except for the shareholding of the Guptas. Mr Pike indicated that he was not in a position to divulge more information.

87.

The Nedbank representative, Ms Strydom, in contrast to what Nedbank allege in their affidavit and correspondence, confirmed to the management of VR Laser that they closed the account "*because of everything going on in the media as well as the things going on with the Gupta family...*" From these contradictory statements I humbly submit that the banks clearly focused on the demise of the Gupta family and their businesses. I submit this is *mala fide*. The CEO of VR Laser attended these discussions and made the recordings. His confirmatory affidavit in this regard is annexed.

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34

The sudden about-turn became so severe that even the companies supporting the main business of the Oakbay Group and its suppliers withdrew any and all involvement and support. This caused many commercial relationships strengthened over decades to be terminated and lost forever.

89.

The Minister's interference in the private business affairs of the Oakbay Group has been supported by other government entities. The Bank of Baroda, with whom the Oakbay Group presently bank, has complained of continued interference in their business by SARS and the Reserve Bank.

90.

The Bank of China opened accounts for VR Laser Services (Pty) Ltd on 8 September 2016, but closed them a few weeks later on 29 September 2016. It is noteworthy that VR Laser Services (Pty) Ltd provided the Bank of China with all due diligence documents and even stated the fact that the Guptas are indirect shareholders prior to the opening of the account. The Bank of China accepted this information and opened the account. I annex in this regard a "Welcome Letter" marked as **Annexure "OB9.1"**. A few days later however, after only a few transactions, the relationship was suddenly ended. A termination email confirming these events is attached hereto and marked as **Annexure "OB9.2"**.

91.

For some reason, the Bank of China ("BOC"), has not been cited as a Respondent and I submit that this is a further material non-joinder.

QMH
35

Due to the fact that VR Laser played open cards from the beginning, the CEO of VR Laser contacted the Business Development department. The call was recorded. The representative was very apologetic about the closure of VR Laser's accounts but confirmed the following:

- 92.1. The account was closed because of the "*potential political risk*" associated with the Guptas by "*higher management*";
- 92.2. The South African Reserve Bank did not "*list*" the Guptas;
- 92.3. VR Laser would have to restructure from shareholder's side "*in order to survive banking*".

93.

This however is in contrast with other conduct of the Banks and there is no consistency in their application of their "*political risk*" policy. For example, notwithstanding that the Gupta Family has a shareholding in Richards Bay Coal Terminal (Pty) Ltd, the Banks have not (so far as I am aware) taken any steps to close the Richard Bay Coal Terminal's account. The policy is clearly selectively applied and targets the Gupta family and its businesses.

94.

I submit that these interferences should become the subject of further investigation and decisive action. These practises by the four major banks aided by the Reserve Bank continue today.

Q MH
36

The same interference was experienced, so I was informed, in respect of the Oakbay Group's present bank, the Bank of Baroda which endures severe pressure by officials of the South African Reserve Bank.

96.

As a result of the aforesaid, I submit that First National Bank, Nedbank and Standard Bank (aided by the South African Reserve Bank and at the behest of the Minister) executed their instruction "*to clip the wings of the Family*" and that is, I submit, why this application was eventually brought in the way it was and at the time it was issued.

97.

Evenly concerning and relevant to this point is the ongoing interference and bullying tactics by the banks. I have been informed that the banks have now embarked on a further onslaught by contacting business associates like Mr Salim Essa of the Group and even employees receiving their remuneration from the group and advising them that their accounts are to be revised. These obvious scare tactics are aimed at thrusting further pressure on the Oakbay Group and anybody associated with it.

The timing of the application confirms the real reason for the application

98.

The timing of this application supports the Oakbay Group's suspicions that the application is politically motivated. The certificate from the FIC on which this application is purportedly based (and which I deal with below) was received by the Minister on 4 August 2016. However, the Minister did not launch the application

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immediately. In fact, he waited some two months to issue this application, although the founding affidavit consists of a paltry 13 pages.

982

99.

It is, I believe, notorious that on or about 22 August 2016, the Minister was directed to report to the Hawks to issue a warning statement by 25 August 2016. The event was much-publicised and I attach marked "OB10" a newspaper article dealing with the Hawks' directive and the Minister's response thereto.

100.

On 25 August 2016, the Minister failed to report to the Hawks and the following day, on about 26 August 2016, he held a meeting with staff of the National Treasury. At this meeting, the Minister indicated that *"the out-of-favour Indian-South African family – the Guptas – are the brain behind the nightmare. He said he is being attacked by the influential family because of the work the National Treasury is doing"*. The newspaper article which appeared in the Business Day is annexed hereto and marked as **Annexure "OB11"**.

101.

The timing of this application, launched a few weeks after these statements on 14 October 2016, coincided with the criminal proceedings instituted against the Minister and the obvious inference is that this application was his retaliation against the Gupta Family (whom he falsely and without any basis believed to be behind his criminal investigation by the Hawks). On this ground too, the application is abusive and ought to be dismissed with costs.

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38

The timing further coincided with the anticipated release of the State of Capture Report. It will be recalled that the last day in office for the previous Public Protector was 14 October 2016. Several applications to prevent the State of Capture report from being released followed and those would be heard on 2 November 2016. This application was strategically issued a few days before the hearing of that matter in order to cloud the issues and further taint the Oakbay Group.

Conclusion on the request for declaratory relief

103.

On account of the circumstances I have set out above, it is clear that there was no need for the Minister to bring this application and that the declarator in the notice of motion is not seriously sought. There was no disagreement as to the Minister's obligations and no legal dispute that required the Minister to go to the Court. Rather, the Minister has used this fictitious "*dispute*" between himself and the Gupta family to charge to court in a highly-publicised fashion, and to place before this Court a range of extraneous and defamatory statements and documents (dealt with further below).

104.

This Court should not stand for this abuse and, on account of the fact that the Minister has failed to establish that he has an "*existing, contingent or future right or obligation*" at stake in this matter and has also failed to demonstrate why this is an appropriate case for the Court to exercise its discretion in favour of the declaratory relief, the application should be dismissed with costs.

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105.

As set out above, the application papers were served on the Oakbay Group on 14 October 2016. On 18 October 2016, the Group's attorney directed a letter to the State Attorney acting on behalf of the Minister of Finance of which a copy is appended hereto marked "OB12".

106.

In this letter, Oakbay Group's attorney states:

"The application seeks declaratory relief that the applicant is not by law empowered or obliged to intervene in the relationship between my clients and commercial banks.

In support of this application your client's representative deposed of a founding affidavit in which the deponent seeks to rely on certain facts contributing to the initiative to launch the application.

Without proper consideration (so I submit) the deponent to the founding affidavit, curiously so, implicates my clients in inappropriate and unlawful conduct which "creates an, increasingly serious state of affairs".

The insinuation that my clients would, as per the example in the papers, act with impropriety which "will expose the fiscus not only to the loss of tax revenue but also put the burden of mining rehabilitation on the fiscus" is uncalled for, malicious and vexatious."

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The letter continues:

"By issuing the application (at a first glance merely asking for a declarator) supported by a defamatory founding affidavit causes this application to be vexatious and an abuse of court.

It therefore, in my view, justifies this letter informing you of the fact that I intend advising the Oakbay Group of companies to oppose the application, obtain all the necessary information from the relevant role players and ask for a punitive costs order against the applicant when the application is dismissed.

*We are all aware of the fact that the application is launched with the financial resources of the tax payer. There is **no dispute about the fact that your client is not by law obliged to intervene in the relationship between my clients and commercial banks.** To spend tax payers' money in a reckless and inappropriate manner will, in my view, constitute a contravention of the provisions of the Public Finance Management Act, No. 1 of 1999 warranting further action against those officials responsible for same.*

In order to ensure that we do not expose the fiscus unnecessarily to costs we propose that the application be withdrawn and your client to tender our clients' costs, same on or before close of business on 19 October 2016." (My emphasis)

108.

In conclusion the attorney wrote:

"We need to reiterate that the purpose of this letter is to afford your client the

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opportunity to save the tax payer's hard earned money. We record that our clients would like to put their formal version before court since you have chosen that forum. If the application is, therefore, not withdrawn the matter must proceed and we will gladly do the necessary in order to restore the misrepresentation created by the papers." (My emphasis)

109.

It is clear from the letter that the relief sought in the Applicant's application is not disputed and has never been disputed and could never be the basis of a substantive application to this Court. The role of this Court is not to satisfy the Minister's academic interest in obtaining a judicial *imprimatur* over the legal advice which he has already received from his counsel. Its role is to resolve disputes between genuine litigants.

110.

Instead of permitting taxpayer's money to be spent on senior counsel and teams of legal representatives for all the parties, the Minister was invited to withdraw the application.

111.

The Minister refused to do so. In a letter dated 19 October 2016, appended hereto as Annexure "OB13", the offices of the State Attorney declined to withdraw the application and insisted that the application should proceed. This reaffirmed the Oakbay Group's concerns that the true reason for the launching of this application is not to obtain the declarator regarding this Minister's powers (or lack thereof), but part of the Minister's ongoing plan to discredit the Gupta family and to eliminate them from South African business.

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42

On 7 November 2016, the attorney for the Oakbay Group forwarded a further letter to the office of the State of Attorney, and copied to all parties. In this letter, he indicated his disappointment at the approach taken by the Minister in this application and appended his previous letter of 18 October 2016 and the Bank's response. A copy of this letter is annexed marked "OB14". To prevent duplication the annexures to this letter is omitted.

113.

As a result of the failure of the Minister to withdraw the application, the Oakbay Group was constrained to file a notice of intention to oppose and to answer in this affidavit the untrue, scandalous, vexatious and irrelevant allegations and insinuations in the Minister's affidavit regarding the Oakbay Group's affairs. I will later in this affidavit and under a separate heading deal with the devastating impact the Minister's application has had on the *fama* and *dignitas* of the Oakbay Group. I submit that it warrants further action to be taken by the Gupta Family and the Oakbay Group which will be done in a separate action following these proceedings. I submit that, given that there is no live issue between the parties, the implication is clear that the Minister issued this application with the intention to harm the Oakbay Group and to eliminate the Group and the Gupta Family from South African business.

114.

The Minister's application has encouraged the media to badmouth the Group and the Gupta Family by suggesting or implying that they are dishonest, corrupt and conducting their bank accounts contrary to banking regulations and legislation. Not only are these allegations false; they are utterly irrelevant to the academic issue in this

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application regarding the Minister's powers. I accordingly now turn to consider the Oakbay Group's application to strike out certain portions of the Minister's affidavit and Annexure "P" thereto as irrelevant.

THE APPLICATION TO STRIKE OUT

115.

I will cause to be filed with this affidavit an application to strike out certain material which is irrelevant, scandalous and / or vexatious in terms of Rule 6(15). The application to strike is attached hereto and marked **Annexure "OB15"**. The passages and annexures in question include:

115.1. Paragraph 19 of the Founding Affidavit which states: *"the continued assertions by Oakbay that, as Minister of Finance, I should intervene in, or exert pressure upon, the banks regarding their closure of the Oakbay accounts is harmful to the banking and financial sectors, to the regulatory scheme created by law, and the autonomy of both the government regulators and the registered banks themselves"*. As I have set out above, this allegation is patently false and its inclusion in the founding affidavit is scandalous and vexatious. The Oakbay Group has never contended that the Minister of Finance has the power to intervene or exert pressure on the banks regarding their closure of the Oakbay accounts.

115.2. Paragraph 27 of the Founding Affidavit which states: *"Previously, on 4 August 2016, I had received a letter with an attached certificate from the Director of the FIC. I attach a copy, marked 'P1' and 'P2". This reflects the increasingly serious state of affairs which has arisen. This is illustrated by the number and scale of reported transactions linked to Oakbay. Just one example is the*

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reporting of an amount of R1,3 billion as a suspicious transaction, in terms of the FICA, relating to Optimum Mine Rehabilitation Trust. Indeed, as appears from the further attached letter of 27 June 2016 (annexed marked 'Q') from attorneys acting for the business rescue practitioners of Optimum, 'with the written approval of the Department of Mineral Resources' R1,3 billion was intended to be transferred from the account closed by Standard Bank to the Bank of Baroda. For this the further approval of the Reserve Bank was sought. I am not aware as to whether the transfer to the Bank of Baroda was effected".

115.3. Annexure P to the Founding Affidavit – the certificate purportedly issued in terms of section 39 of the FIC Act and which purports to record 72 "suspicious transaction reports" which were reported to the Financial Intelligence Centre under the FIC Act - has no bearing on the relief which is sought in this application and is irrelevant. (This certificate is annexed to an affidavit of the Director of the FIC. I shall hereafter refer to Annexure "P" as "the certificate" simpliciter.)

116.

If this Court does not dismiss this application for a declarator because it does not get out of the starting blocks of section 21 of the Superior Courts Act, and if the Court is inclined to deal with the application, Oakbay Group's counsel intend making application to strike out the aforementioned passages of the Minister's founding affidavit and the certificate for being scandalous, vexatious or irrelevant.

117.

If this Court refuses to strike out these passages and annexure P, then I am advised that I have both a right and a duty to respond to these allegations, which the court (by

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refusing to grant the strike out application) will axiomatically have determined to be relevant to the application. It is to this subject, and in particular the purported "suspicious transaction reports" set out in annexure P to the Minister's founding affidavit and the FATF Recommendations referred to in the banks' affidavit, to which I now turn.

THE FATF RECOMMENDATIONS

118.

The Oakbay Group is of the view that the exposition provided by the Minister and the Banks on local and international Banking Law is irrelevant for purposes of the application. I am advised to reply to these comments to a certain degree in the event that they become relevant in this matter.

119.

"The Financial Action Task Force ("FATF") is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions (including South Africa). The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system."

FATF, About Us, <http://www.fatf-gafi.org/about/> . There is no dispute that the FATF standards are the applicable anti-money laundering standards for government AML regulation.

120.

However, those standards do not set forth in any detail how banks design and implement their anti-money-laundering programs. While it is unclear exactly what

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principles the banks followed in designing their anti-money-laundering programs,¹¹ the international banking community generally follows the guidance provided by the Wolfsberg Group in implementing anti-money-laundering programs. The Wolfsberg Group began as a group of thirteen international banks in 2000, "*which aims to develop frameworks and guidance for the management of financial crime risks, particularly with respect to Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.*"¹¹. Over the years since then, the Wolfsberg Group has issued Guidance and responses to frequently asked questions ("FAQs") that essentially are international banking standards for anti-money-laundering programs.

121.

The Wolfsberg Guidance on a Risk Based Approach for Managing Money Laundering Risk ("*RBA Guidance*"), attached as **Annexure "OB16"**, states at RBA Guidance at 1-2, that there is "*no universally agreed or accepted methodology by either governments or institutions, which prescribes the nature and extent of a risk based approach.*". Accordingly, the Guidance is to be used for each institution to determine its risk based process and "*not designed to prohibit potential customers from engaging in transactions with institutions, but rather assist institutions in effectively managing potential money laundering risks.*" The Guidance recommends that risks be measured by three types of risk: Country Risk, Customer risk, and Services risk. The RBA Guidance at 3-5 sets forth specific risk variables that banks should consider in determining the level of risk posed by particular customers.

122.

In light of the RBA Guidance, I now turn to address the Customer and Services risks

¹¹ See in this regard <http://www.wolfsberg-principles.com>.

Q MH
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Customer Risk

123.

Oakbay acknowledges that the affiliation of Duduzane Zuma, a son of President Zuma, with certain of the Group businesses, results in those businesses being considered as *"close associates of a politically exposed person"* ("PEP"), and therefore subject to Enhanced Due Diligence under the Wolfsberg Guidance, Wolfsberg Frequently Asked Questions on Politically Exposed Persons ("PEP FAQs") (2008), at 3-5 attached hereto as **Annexure "OB17"**.

124.

However, both the FATF Recommendations and Wolfsberg recognise that bank customers associated with a PEP, a family member of a PEP, or a close associate of PEP, standing alone, does not mean a bank should not be willing do business with such customers. The PEP FAQs at 2 state: *"It is however important to understand that the majority of PEPS do not abuse their position and will not represent any undue additional risk to a Financial Institution solely by virtue of that categorisation"*.¹²

125.

Further, Oakbay points out how Duduzane Zuma's relationship with the Group developed from a young age. Duduzane Zuma started working for Sahara at age 24 in 2005. The Oakbay Group has had a long and strong tradition of recruiting young aspiring individuals and training them as part of the Group's commitment to the black

¹² See also the FATF Recommendations 10 and 12 (setting forth requirements for risk based customer diligence).

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empowerment initiatives in the country. (For example, currently the Group's media companies train and prepare for employment over 40 graduates annually, all of who brought in with no prior training or experience.) Mr Zuma was one of many young South Africans hired by the Group. It is to be noted that Mr Zuma's father had at the time been relieved of his duties as Vice President. Under the circumstances, Mr Zuma would be hard pressed to be considered a PEP.

126.

Mr Zuma demonstrated good business sense and the fact that he is one of over twenty children of President Zuma (who subsequently became the President) was unrelated to his success at the Group businesses. As he continued his relationship with Sahara, Mr Zuma continued to develop his relations with the Gupta family and demonstrated individual capabilities in the business arena.

127.

Mr Zuma demonstrated excellent aptitude at Sahara being very interested in technology. Over time, Mr Zuma acquired shares in some of the Group companies, including accumulating shares that were disposed of by other persons who had been brought into shareholding participation through the black empowerment program.

128.

Accordingly, while the Oakbay Group accepts that Mr Zuma is now a PEP, and that his continued shareholding in the Oakbay Group could result in those companies being a close affiliate of a family member of a PEP, as stated above, the facts demonstrate that Mr Zuma's shareholding in the Oakbay affiliated companies is quite proper and the result of many years of hard work, business skills and the benefit of the black empowerment programs promoting share ownership and other involvement.

Q

Moreover, the organisational structure and share ownership of the affiliated companies is not unusual for a large conglomerate and provides no basis for any suggestion that the entities were created to conceal improper transactions. There are sound business reasons for the structure of the Oakbay Group companies. While the Gupta-affiliated businesses are owned ultimately by the Gupta brothers and other family members, certain companies in the group are owned and managed by Oakbay for logical reasons of management oversight, governance and integration. Yet other companies were acquired over time by the Group so those may have a different set of ownership, including partners with equity in the companies, because of the need for additional capabilities, experience and resources. Overall, the corporate structure of the Group is logical, consistent with its business needs and similarly situated companies in South Africa.

130.

Many of the allegations raised by the Minister hint at public corruption. In evaluating the corruption risk associated with the Oakbay affiliated businesses, the first consideration should be to evaluate which businesses do any government business and second, what businesses do any government business and the extent of that business. As mentioned earlier, Sahara and JIC represent 85-90% of the Group's revenue and do no business with the government. The remaining 10-15% of revenue is attributable to media businesses, which do obtain limited business with both private and governmental organizations. As the only company which has newspapers in six provinces in the Republic, there is a reasonable amount of government media spend on the Group media companies. It is well known that governmental entities are purchasers of media advertising space, and that affiliated media businesses are in

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some cases the sole outlet for government media purchases. Our affiliated media businesses receive less than one percent of the government's overall media purchases. Thus, there is minimal anti-money-laundering or corruption related risk associated with the bank accounts for these businesses.

131.

Further allegations and insinuations have also been made regarding Tegeta and coal contracts related to Eskom. In this regard, I state the following. First, the Group entered the coal business in 2006 with the formation of Tegeta. Oakbay affiliates sell less than four percent of the total coal purchased by Eskom, and that coal is provided at one of the lowest prices out of all Eskom's major suppliers.

132.

The foregoing demonstrates that the Oakbay related companies, while affiliated with a family member of a PEP, in fact present low risk for anti-money-laundering and use of the financial system to further corruption.

Services Risk

133.

The overwhelming majority of the banking services used by the Oakbay affiliated companies also are low risk. For example, the companies use banks for payroll and other business transactions that are ordinary and customary. Oakbay has no complex treasury functions such as currency trading, hedging or complex loans.

134.

As a result, Oakbay believes that a properly informed risk analysis of the accounts

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related to Oakbay and its affiliates demonstrates that the accounts present low services risk for banks in South Africa.

996

135.

Furthermore, Oakbay and its affiliates do not engage, in the normal course of business, in US dollar or UK sterling transactions. None of the companies are organized under the laws of the United States or the United Kingdom, and the controlling individuals, primarily the Guptas and others, including myself, are not citizens, "*resident aliens*", or residents of either the US or the UK. The relevant legal entities are organized under the laws of South Africa, and the relevant individuals are citizens of South African and India and residents of South Africa.

136.

As such, I am advised that Oakbay does not fall within the jurisdiction of the U.S. or U.K. anti-corruption laws. Further, I am informed that, after appropriate diligence, it is confirmed that neither Oakbay, its affiliates nor any related individuals are the subject of any economic sanctions programs under the laws of the US, the European Union, any other recognized country, or the United Nations. There are no red flags or other concerns about the Group or its shareholders.

137.

Accordingly, the Court should disregard all references to such matters in the various opposing affidavits.

138.

The FIC has submitted the 72 transactions as potentially "*suspicious transactions*"

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reports" for money laundering or corruption related payments. As set forth above, I do not believe that any of the Wolfsberg risk factors apply in general or specifically to the 72 transactions, which are addressed in detail below.

OAKBAY GROUP'S RESPONSE TO THE 72 "SUSPICIOUS TRANSACTIONS"

139.

I commence this section of the affidavit with a discussion of the various attempts which the Oakbay Group has made to obtain information from the Banks pertaining to their reasons for closing the accounts and, more recently, in regard to the 72 "*suspicious transaction reports*" set out in the certificate. Thereafter, I deal with each of the transactions which the team of forensic auditors employed by the Oakbay Group has been able to identify and explain the underlying *causa* for each transaction. I demonstrate that there is nothing "*suspicious*" or untoward about these transactions – they were simply flagged in the ordinary course under the FIC Act, together with millions of other innocent transactions, and any attempt to draw conclusions of impropriety from the certificate is misplaced.

The attempts to obtain information concerning the 72 transactions

140.

In this section of the affidavit, I detail the lengths to which the Minister and the Oakbay Group of Companies and the Gupta Family have gone to obtain the information on which the Minister purportedly relies in order to sustain the relief sought and to support the scandalous, vexatious and irrelevant allegations which had devastating effects on the reputation of the Group and the Family. Indeed, even the Minister's attempt to obtain such information from the banks was unsuccessful.

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141.

Following the Minister's engagement with the Oakbay Group (and prior to the launching of this application) on 28 July 2016 the Minister directed correspondence to *inter alia* the Financial Intelligence Centre and the South African Reserve Bank. The letter (annexure "H" to the Minister's application)¹³ advised Mr Murray Michell of the Financial Intelligence Centre that he (the Minister) was considering obtaining a court ruling on:

141.1. Whether he has the power in law to intervene with the banks concerned regarding their closure of the Oakbay accounts; and

141.2. Whether a basis exists in fact for the contention that the relevant banks terminated the accounts in question for a reason unrelated to their statutory duties not to have dealings with any entity if a reasonably diligent and vigilant person would suspect that such dealings could directly or indirectly make that bank a party or accessory to contraventions of the relevant laws.

142.

In his letter the Minister, therefore, clearly states that he will approach the Court for two declarators, the one pertaining to his own authority and the second pertaining to the conduct of the banks.

143.

It is clear that, at least as at 28 July 2016, a question existed in the Minister's mind as

¹³ Annexure H to the Founding Affidavit, page 70 of the paginated papers paragraph 14.

- 999

to whether the termination of the Oakbay Group's bank accounts was lawful. And, as I set out below, no information was provided by the Financial Intelligence Centre which could persuade the Minister one way or the other, and there is no basis on which the Minister would be entitled to draw the adverse inferences which he has made in his founding affidavit.

144.

In his letter, the Minister requested that FIC sends him feedback on the four issues raised in his letter *i.e.*:

144.1. Whether FIC has indeed received reports relating to the accounts in question;

144.2. Over what periods;

144.3. In respect of which entities; and

144.4. In what respective amounts relating to each such entity. (My emphasis).

145.

Copies of this letter were sent to the Governor of the South African Reserve Bank and the Registrar of Banks.

146.

In response to the request for information, Mr Michell from the Financial Intelligence Centre did not deal with the specific information requested by the Minister. Instead, Mr Michell took it upon himself to issue a certificate purportedly in terms of section 39 of the FIC Act, and sent it to the Minister on 4 August 2016. The certificate, as dealt with further below in the auditor's report, is sparse in its information and indeed is the

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very antithesis of the obvious purpose of such a certificate, namely to provide 1000
"evidence" upon which a court may arrive at a conclusion.

147.

The issuing of the certificate was unlawful for at least the following reasons:

- 147.1. Mr Michell was asked by the Minister to look at 7 entities, but in fact the certificate refers to some 13 entities – many of whom are not joined in this application, including the Gupta Brothers themselves. There is no indication as to how Mr Michell identified the further entities to include in the certificate;
- 147.2. Mr Michell does not explain how he identified the "data discriminators" referred to in paragraph 8 of the certificate;
- 147.3. The certificate is vague and unintelligible and does not permit a reasonable person in receipt of the certificate to identify the transactions which were purportedly flagged as "suspicious";
- 147.4. In this case, the certificate is not being used as "evidence" on any issue relevant to the Minister's application (as required by section 39 of the FIC Act) but rather to support the Minister's spurious allegations of the "increasingly serious state of affairs" at paragraph 19 of his affidavit. As the FIC itself has stated: *"the contents of a report on a suspicious or unusual transaction is hearsay, by nature, and is based on a reporter's suspicions and therefore will not meet evidentiary standards set by our judiciary for use in certain legal proceedings."* See in this regard the FIC November 2016 press release annexed marked "OB18". By definition, such a report cannot prove anything about "the state of affairs" at Oakbay or any of its affiliates and the Minister's attempts to interpret the certificate in this manner are misguided.

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147.5. The certificate contains no detail as to the purported "*suspicious transaction reports*" and the majority of transactions therein (particularly the "*multiple transaction*" amounts) are untraceable. This denies the Oakbay Group of an opportunity to explain and refute the allegations levelled against them through the certificate.

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148.

The FIC recognised (at paragraph 44 of its affidavit in the FIC Application) that there are "*extremely limited*" circumstances in which the FIC may share the information it holds. The subsections permitting the dissemination of the FIC's information all relate to ongoing investigations or the performance of the functions of institutions and agencies similar to the law enforcement agencies of the Republic. Yet, the FIC released information to the Minister for a stated purpose that had nothing to do with law enforcement or investigations and this release of information was itself unlawful.

149.

On these grounds alone, the certificate should be disregarded in its entirety.

150.

Moreover, a number of persons whose names appear on the certificate (the Trustees of the Optimum Mine Rehabilitation Trust and entities described as "*Annex Distribution (Pty) Ltd*", "*Mabengela Investments (Pty) Ltd*", "*Surya Crushers (Pty) Ltd*", "*Newshelf 960 (Pty) Ltd*", "*Confident Concepts (Pty) Ltd*", "*Sahara Distribution (Pty) Ltd*", "*Koornfontein Mines (Pty) Ltd*") have for reasons unknown to me been included in the certificate but have not been joined in this application. There are also references to a number of persons with the surname "*Gupta*" including "*Varun*", "*Rajesh Kumar*", "*Chetali*", "*Atul Kumar*", "*Arti*" and "*Atul K*". None of these persons have been joined

A 157

151.

I am advised that the failure to join those persons who are named in the "*suspicious transaction reports*" is a material non-joinder as, given the reliance placed by the Minister on the certificate, those persons whose names appear on the certificate are entitled to an opportunity to refute those allegations. Indeed, the publication of the information relating to them is unlawful, and by definition could not have been included (as asserted by Mr Michell) for purposes of litigation involving them.

152.

Should this court not strike out the certificate either as irrelevant or unlawful, or at the very least postpone the application to enable all persons whose names appear on the certificate an opportunity to be joined in this application and to respond thereto, I am advised that I should deal with the information in the certificate as best I can, although I reserve the rights of the Oakbay Group to deal more fully with the transactions therein once the FIC application (dealt with below) has been finalised.

153.

Suffice to say that in response to the Minister's request for "*detail*" from the Financial Intelligence Centre as to the reasons for the closure of the Oakbay Group's accounts, the best the Financial Intelligence Centre could come up with was to issue a certificate of "*suspicious transaction reports*". Nor has the Minister produced any other evidence of wrongdoing on the part of Oakbay or its affiliates. Apart from this certificate (which says nothing at all) and an assertion by Mr Kuben Naidoo of the Reserve Bank that there is a transaction regarding VR Laser Asia which "*might*" give rise to exchange control concerns – a question which Mr Kuben Naidoo had not even been asked to

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address¹⁴ - no justification or "*dirt*" could be found by the Minister in support of the conduct of the banks who blatantly refused to give any reasons for their conduct.

154.

I am advised that the Minister is required to make out his case in his founding affidavit and, if he wished to rely on any purported wrongdoing by the Oakbay Group as a justification for launching this application (and an attempt to justify the relevance and non-mootness of the application), he was required to set that out in his founding affidavit. I accordingly have a right to respond to those allegations as the *numerus clausus*, or the best (or worst) that the Minister was able to come up with regarding the allegations against the Oakbay Group and the Gupta family.

155.

Reinforcing the fact that the FIC certificate provided no evidence of "*an increasingly serious state of affairs*," as alleged at paragraph 19 of his affidavit, the Minister waited more than two months until October 2016 to issue his application.

156.

For that reason, (and others I will deal with hereunder) I submit that the Minister was *misguided* in issuing his application in the way he did. I deal now with Oakbay's attempts to obtain information regarding the Banks' closure of its accounts.

¹⁴ Annexure K, to the Founding Affidavit, page 79 of the paginated papers.]

157.

Since this application was issued the Oakbay Group instructed its attorneys to call on each one of the four banks to furnish reasons for their sudden and unexplained conduct by closing the bank accounts of the Group and the entire Gupta Family one by one. Copies of this correspondence is annexed hereto and marked as **Annexures "OB19.1" to "OB19.4"**. From what I have explained hereinabove the banks refused to give any co-operation whilst FIC vehemently opposed the FIC application to access the information purportedly used as a basis to discredit the Oakbay Group and the Gupta Family and to justify the closure of the accounts in question.

158.

On 25 November 2016, the Oakbay Group issued the FIC Application to the Financial Intelligence Centre in an effort to obtain the information concerning the factual basis of the 72 "*suspicious transaction reports*".

159.

The opposing papers to the FIC application were served on/or about 22 December 2016. Essentially, the FIC refused to provide the information which is sought.

160.

The Deputy Judge President directed on 15 December 2016 that the main application and the FIC application be heard simultaneously and this direction, unfortunately, rendered it impossible for the Oakbay Group to be in a position to gain access to the records and the information held by FIC in order to complete this affidavit with the

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161.

The Oakbay Group submits that the relief sought in the FIC application is warranted – it would amount to a serious violation of Oakbay Group's constitutional rights to deny the Oakbay Group the information which it needs to identify the impugned transactions and to clear its name. The information which the Oakbay Group needs in respect of each transaction which is regarded as suspicious includes:

161.1. The date of the transaction;

161.2. Any reference numbers attaching to the transaction;

161.3. The value of the transaction;

161.4. The details of the sending party;

161.5. The originating bank;

161.6. The receiving bank; and

161.7. Any other transaction-related details which would assist in the identification and / or explanation of the transaction in question.

162.

The situation where the Oakbay Group had to beg their own bankers for access to the information and had to apply to Court to obtain access to the information (only to be refused by FIC) shows a *prima facie* resistance to efforts by the Oakbay Group to allow it to clear its name where the said information (so withheld) is used by the

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163.

Notwithstanding that the FIC Certificate is baseless and the fact that the Oakbay Group has still not been given reasons for the closure of their bank accounts, I am informed that I cannot leave unanswered the allegation concerning the 72 transactions which are contained in annexure "P" to the Minister's affidavit and must "*plead over*" in respect of those remaining allegations. Accordingly, it was decided in the first week of January 2017 to leave no stone unturned in order to deal fully with these allegations (despite the resistance of the banks and the Financial Intelligence Centre to provide details of the 72 transactions). Accordingly, the Oakbay Group appointed a team of independent forensic auditors to show that there is nothing untoward about the 72 transactions.

The forensic review

164.

Since this application was launched, and in order once and for all to put to bed any insinuations of wrongdoing made by the Minister, the banks and the media, the Oakbay Group employed a firm of forensic auditors, namely Nardello & Co.

165.

An expert affidavit deposed to by Noel Lindsay of the said forensic audit firm wherein this Honourable Court will find his report clearly indicating that, with the limited information available, no transgression of any international banking standard (obviously applicable to local banks and their practice) could be found. A copy of his unsigned expert affidavit and the audit report is annexed hereto and marked as

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Annexures "OB20" and "OB21". Due to logistical and time constraints it was impossible to obtain the signed expert affidavit before this answering affidavit had to be filed in terms of the directive of the Deputy Judge President. A signed copy of the expert affidavit will be provided to this Court at the hearing of this matter.

166.

Nardello & Co. LLP was instructed to review the 72 transactions that appear on the certificate purportedly issued in terms of section 39 of the FIC Act, dated 4 August 2016, which was prepared by Mr Murray Mitchell, the Director of the FIC. Those transactions that have a reported value attributed to them amount to Rand 6,839,974,102, in total. Nardello was instructed to identify the 72 transactions in the banking records of the Oakbay Group, including the personal bank statements of the members of the Gupta Family.

167.

I do not repeat all the findings herein and ask that the report be read into this affidavit.

168.

In short, of the 72 transactions on the certificate, 20 transactions were entirely unidentifiable as they were labelled "*multiple transactions*". A further 37 transactions could not be located in the bank accounts of the corporate entities and individuals concerned due to missing information and / or errors. The audit team was able to identify 15 transactions, with a combined value of R127, 230, 298, on the Corporate spreadsheets, the Corporate PDFs, the Corporate bank statements or the Personal bank statements. Those 15 transactions comprise numbers 7, 8, 11, 14, 20, 38, 43, 46, 48, 49, 50, 52, 53, 55 and 57 in the certificate.

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In respect of the transactions which were identifiable on the sparse information in the certificate, the auditors have identified a legitimate *causa* for each transaction and demonstrate that there is nothing unlawful or "*suspicious*" about the transaction in question.

170.

I also note that only 15 of the transactions on the certificate are dated prior to the announcement by ABSA that accounts will be terminated in December 2015. Those 15 transactions list 8 different persons' accounts and span a four-year period. This is not activity that would likely, or did in fact, cause any bank to terminate an account.

171.

In any event, once the Banks determined to close the Oakbay Group's accounts, it is not surprising that they began to flag every material transaction in those accounts -- that would be consistent with their decision but would not be evidence that any particular transaction warranted suspicion. The huge jump in "*suspicious transaction reports*" beginning in 2016 - and in particular, in late March, as the termination decisions were on the brink of announcement - confirms that assessment.

172.

Some number of the post-March 2016 transactions (and possibly the first-quarter 2016 transactions for the ABSA accounts) may in fact have been transfers related to closing accounts. There was no "*increasing*" level of concern - just regulatory filings reflecting a decision already made to close accounts.

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Given that some two-thirds of the transactions in the FIC certificate occurred in connection with or after the banks' decisions to close the Oakbay Group's accounts, these transactions could not have been the justification for the closing of the accounts. That is additional evidence that the Minister's submission of the certificate - and the filing of an application as an excuse to get it into the public record - was for entirely other reasons.

174.

Finally, as the auditors' report confirms, some of the transactions listed in the certificate are incredible on their face as they exceed the total turnover in the accounts during relevant months. That raises questions about how the chart was compiled and, more importantly, the undue weight the Minister put on this list.

175.

In short, in respect of each of the 72 transactions which the Oakbay Group and its team of forensic auditors have been able to identify, it is clearly shown that the allegations of wrongdoing or "*suspicion*" in respect of those transactions are misplaced.

176.

I do not repeat all of the auditors' findings, but have been advised to deal with one of the transactions referred to by the Minister in support of his application to justify the innuendo that some of the transactions referred to in the flawed certificate may cause unnecessary risks for the fiscus.

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In his papers the Minister says that the transfer of an amount of R1.461 billion secured for mining rehabilitation is of significant concern. He creates the impression that Oakbay (actually Optimum) ignored the conditions of the mining license and disposed of the amount for its benefit. After this application was launched these allegations were repeated in an article published on IOL news. A copy of the article is attached hereto and marked as **Annexure "OB22"**.

178.

As I will indicate below, the Minister had no cause for concern. Let me present the facts to refute this frivolous allegation and innuendo:

178.1. it is a condition to the mining license of Optimum Coal Mine (Pty) Ltd (OCM) that an amount of R1.461 billion be secured by an entity called Optimum Coal Rehabilitation Trust;

178.2. It is not disputed that the required amount was held at Standard Bank in accordance with the conditions whilst Optimum Coal Mine (Pty) Ltd was under business rescue;

178.3. When Standard Bank closed the accounts of the Group in April 2016 those accounts included the Optimum Coal Mine accounts subsequent to termination of the business rescue proceedings. It obviously followed that the amount of R1,461 billion had to be re-invested with an alternative bank;

178.4. The Optimum Coal Mining Rehabilitation Fund opened its investment account with Bank of Baroda in Johannesburg and with the consent of all relevant parties caused the investment to be transferred to the new account.

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This then is the reason that the R1,461 billion was transferred out of the Standard Bank account and there was nothing improper about the transaction.

180.

I was informed that during the interview Mr Ajay Gupta had with Adv. Madonsela on 4 October 2016 in respect of the "*State of Capture*" report, Adv. Madonsela was under a similar misguided view of the investment and requested proof of the fact that the amount is still secured for the benefit of mining rehabilitation. The Bank of Baroda was requested to issue a certificate confirming that the amount remained invested in accordance with the conditions to the mining license.

181.

A few days later and in accordance with the undertaking to Adv. Madonsela a certificate issued by the Bank of Baroda was delivered at her office and I take the liberty of appending hereto as **Annexure "OB23"** the certificate disposing of any speculation regarding the Minister's concerns.

182.

I, lastly under this heading, deal with the facts regarding the figures relating to the limited scope of all business conducted with government, directly and indirectly by the group.

183.

I append hereto as **Annexures "OB24.1" to "OB24.12"** recent audit reports received from the current auditors of the group, SNG, clearly indicating the finite extent of

Other possible "risks"

184.

For the sake of completeness, several other entities were contacted by the Oakbay Group in order to establish whether any other investigations were pending or had been completed in relation to the 72 transactions. These entities include the South African Revenue Service ("SARS"), the Hawks and international forums.

185.

The following written confirmations and/or certificates attached hereto and marked **Annexures "OB25.1" to "OB25.3"** were received from the aforementioned entities:

185.1. Current Tax Clearance certificates received from SARS;

185.2. Hawks letter of confirmation, confirming that there are no complaints or reports from either the banks, the FIC or the SAPS reported or pending; and

185.3. An independent certificate from Nardello & Co, who conducted a sanction list check on the Gupta Brothers.

186.

It is clear from the aforementioned documents that the 72 transactions have not attracted further investigation from the relevant authorities despite the fact that they were made public knowledge by the minister. The only reasonable conclusion that can be drawn from this state of affairs is that the 72 transactions do not warrant further investigation by the relevant authorities because they view them as lawful.

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68

187.

The result of the termination of these commercial relationships, purportedly on the back of the statement by the Minister urging businesses to "*clip the wings*" of the Gupta family has had devastating effects of the businesses in the Oakbay Group. I do not intend to deal fully with these consequences in this affidavit, as these effects will form part of an action to be instituted by the Oakbay Group against the Minister and such businesses for damages suffered as a result of this unlawful conduct. However, for illustrative purposes, I am advised to deal with the dire situation of at least one of the companies in the Group, Sahara Computers (Pty) Ltd.

188.

Suppliers of Sahara, entities like Sandisk, Western Digital, LG and many other international computer manufacturers conducted business with Sahara on a daily basis involving literally billions of rands over the years. These relationships took years to build and cherish.

189.

By latching on to the perception created by the banks and closure of accounts these suppliers all terminated their relationship with Sahara.

190.

As a result of the aforesaid it became impossible for Sahara to conduct its business in a lucrative way since it had no bank accounts and no suppliers.

69

The onslaught on Sahara by exemplification only was severe and devastating. This all followed the meeting called by the Minister supported by his calculated application on relief not disputed but in which he left slanderous innuendos. Sahara's ability to trade has been severely hampered by this, and Sahara has had to engage in time-consuming and expensive efforts to find new suppliers, in which it has been only partially successful.

192.

And through all of this, the Minister's insinuation that there was something irregular in the conduct of the Gupta family through the Oakbay Group is without foundation. The allegations in the Minister's papers that there is anything untoward about the 72 transactions in annexure P has similarly been revealed to be false. These so-called "*suspicious transaction reports*" listed by the Minister in his application could, at best, be seen as a smokescreen to persuade the general public (and in all likelihood the International Banking Community) that the Group and the Family are involved in dubious and inappropriate transactions.

193.

I repeat that if any party wishes to draw any inferences from the certificate annexed as "P" to the founding affidavit of the Minister, then this Court must order the Financial Intelligence Centre to produce the information sought by the Oakbay Group in the FIC application within 14 days, and postpone the hearing of the Minister's application until the Oakbay Group has had a fair opportunity to respond thereto.

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70

THE ALLEGATIONS CONTAINED IN THE BANKS' AFFIDAVITS

1015

194.

I do not intend to deal specifically with the many irrelevant issues raised in the Banks' affidavits which purport (unsuccessfully) to justify the Banks' conduct. Insofar as there are allegations of wrongdoing in the affidavits of the Banks, and in particular Standard bank which is the only bank which attempts to provide any reasons for its decision to close the Oakbay Group's accounts, the allegations are largely hearsay or so devoid of detail that the Oakbay Group cannot deal with those allegations. However, I must say something about the notice of motion which is annexed to the Standard Bank.

195.

The Oakbay Group has been taken by surprise with the Notice of Motion and affidavit filed on behalf of Standard Bank on 14 December 2016 just one day before the meeting with the Deputy Judge President. I am advised that the manner in which Standard Bank has sought relief by way of a notice, as a respondent in this application, is completely irregular. The Standard Bank affidavit is entirely hearsay and those hearsay allegations are completely irrelevant for purposes of this application.

196.

The Oakbay Group does not wish to delay this Application but will reply to the allegations in due course and in the appropriate forum seeing as the Public Protector has recommended that there be a judicial inquiry into those allegations. Those recommendations are also now subject to a review application launched by the President. This is accordingly not the correct forum to address those allegations and I do not intend to deal with them here.

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71

Furthermore, such answers would have to be provided in a forum where all interested parties, including the Gupta Family (who were not joined in this application) were joined. I record once again that the Oakbay Group denies any wrongdoing.

198.

In any event, the relief which is sought in Standard Bank's notice of motion (namely that all members of the Executive have no power or obligation to interfere in the affairs of the Oakbay Group and its bankers) is devoid of merit. Standard Bank has failed to join a number of relevant parties including the other members of the Executive and the Gupta family, all of whom would have an interest in the relief sought in that application.

199.

Moreover, the relief sought by Standard Bank is beyond the scope of this affidavit and is likely wrong in law. The word "*intervene*" is broadly defined and there may be examples where certain Ministers are given specific powers in relation to the control of banking affairs of individuals or companies. The example which springs to mind is the Minister of Mineral Affairs who is empowered and obliged to monitor the rehabilitation fund of a mine. It is exactly for this reason that in this matter the business rescue practitioners of Optimum Mine asked the Minister of Mines for his permission to transfer the R1,461 billion from the Standard Bank account to the Bank of Baroda and why the Reserve Bank also alluded to the fact that the Minister of Mines has a role to play.

In this limited way at least, there must be supervision, and the blanket declarator sought by Standard Bank is procedurally improper and incorrect in law.

COSTS

201.

As I have set out above, there is no *lis* underlying the application for the declarator which, in effect, amounts to an abuse of this Court by the Minister. The Oakbay Group has been constrained to answer the scandalous and irrelevant allegations in the Minister's affidavit and to deal with the related application by Standard Bank. The Oakbay Group should be awarded its costs on a punitive scale.

CONCLUSION

202.

In the premises, the Oakbay Group prays for an order in the following terms:

202.1. Dismissing the Minister's application;

202.2. Dismissing the relief sought in the notice of motion filed by Standard bank;

202.3. Granting the relief sought in the Notice of Motion in the FIC application;

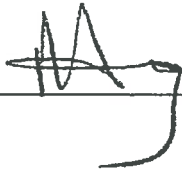
202.4. Granting the respondents which form part of the Oakbay Group their costs on a punitive scale, such costs to include the costs of three counsel.

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DEPONENT

Signed and sworn before me at PRETORIA on this 20TH day of JANUARY 2017 after the Deponent declared that she is familiar with the contents of this statement and regards the prescribed oath as binding on her conscience and has no objection against taking the said prescribed oath.



COMMISSIONER OF OATHS:

MOHLAPAMEETSE HAPPY MAGOMA
ATTORNEY / COMMISSIONER OF OATHS
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WATERKLOOF RIDGE, PTA - EAST
PRETORIA
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Ronica Ragavan

From: Martin Banner
 Sent: Monday, 27 June 2016 12:25 PM
 To: ronica@oakbay.co.za; ashu@oakbay.co.za
 Cc: ajay@oakbay.co.za
 Subject: Aircraft Hangarage



1975 Beachcraft King Air C90XP
 Request a Quote:
 aircraftsales@nac.co.za
 +27 11 267 5000



Dear Ronica and Ashu,

Thank you for your time on Friday – always nice to see you.

Much as I personally would love to help you based on our excellent relationship over the years, I have consulted our board and shareholders (which include Investec and others as I discussed) and I am afraid that we are just not going to be able to assist as things stand at present. You were very clear about the reputational risk issues and I am afraid that our shareholders see it the same way.

It is certainly my wish that things get cleared up sooner rather than later so that we can continue a normal business relationship and I wish you all of the best through these trying times.

Kind Regards,

Martin Banner

Chief Executive Officer

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AM

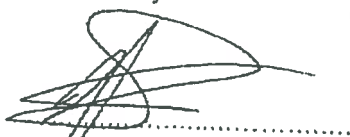
Kindly ensure that all amounts owing to Fireblade Aviation in terms of both the above mentioned Agreements, are paid in full by 30 June 2016.

Equally we request that all movables and assets belonging to Islandsite Investments are removed from our premises by the same date.

One of the factors in our decision to terminate both these agreements, is the concern we have relating to our reputational risks going forward.

We thank you for your business to date.

Yours sincerely



R.J. Kaing

Operations Director



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Aston Park
Johannesburg
Gauteng

Business Postal Address:

P O Box 7151
Gauteng Park
1622

Tel: +27 10 595 3920 (office hours)
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Registered Address:

655 Audley Road
Parktown
2193

Registered Postal Address:

P O Box 61621
Atteridgeville
2107

Ms Ronica Ragaran
Islandsite Investments (Pty) Ltd
89 Gazelle Avenue, Corporate Park
Midrand 1682

12 May 2016

By email

Dear Ms Ronica

**NOTICE OF TERMINATION - HANGARAGE & SERVICES AGREEMENT and
CORPORATE OFFICE LEASE AGREEMENT**

We refer to the following agreements between Fireblade Aviation (Pty) Ltd and Islandsite Investments (Pty) Ltd both signed on 26 August 2014:

1. Hangarage & Services Agreement

In terms of Clause 7.6 of this Agreement, we hereby advise you of our notice of termination of this Agreement, which will be effective on 30 June 2016.

2. Corporate Office Lease Agreement

In terms of Clause 22.7 of this Agreement, we hereby advise you of our notice of termination of this Agreement, which will be effective on 30 June 2016.

FIREBLADE AVIATION PROPRIETARY LIMITED
Incorporated in the Republic of South Africa - Company Registration No. 2012/015701/PT - VAT# 405684600
Physical: P.O. Box 24, Corner Blydenburg, East Rylands, R.O. Road, R.J. Jansz, 1 E.M. Oppenheimer, H.F. Oppenheimer, 40 Telford

Q MTH

- 7 Accordingly, as a matter of considerable urgency, Oakbay respectfully requires the following assistance from the JSE.
- 8 In the first instance, Oakbay respectfully requests that the JSE forthwith issue a notice to all its accredited sponsors to bring their duties under the Code of Ethics contained in Schedule 16 to the Listing Requirements and, in particular, that, in assessing prospective clients, sponsors and their executives are to remain transparent and honest in all their professional and business relationships and that they should not allow bias, a conflict of interest or undue influence of others to override their professional judgment.
- 9 Second, in the immediate wake of the dispatch of that communication, Oakbay seeks to be granted a further opportunity to approach all the accredited sponsors of the JSE in order to secure the services of one of them in circumstances where they will be freshly apprised of the requirement that they comply with inter alia the abovementioned precepts of the Code of Ethics.
- 10 It is in light of these circumstances that Oakbay urgently and respectfully requests the JSE to use the discretion available to it in terms of paragraph 2.6 of the Listings Requirements, as it has done so before for other issuers (such as in the case of Hwange Colliery Limited), to extend the 30-day period prescribed in the Listings Requirements for Oakbay to appoint a new sponsor.
- 11 You will appreciate the considerable importance to Oakbay, its officers and all its shareholders that they not be prejudiced in the manner set out above in consequence of matters unrelated to Oakbay and its operations. It will be especially unfair on the minority shareholders of Oakbay, who would suffer extreme hardship as a result of any adverse consequences resulting from the circumstances set out above. It should be noted that Oakbay's minority shareholders include public interest organisations, such as the Industrial Development Corporation of South Africa, as well as members of the National Mineworkers Union.
- 12 Purely due to the time frame set out in the JSE's letter of 12 July 2016, we request that you provide us with a response to the requests framed in this letter by 16:00, Friday, 15 July 2016.
- 13 What is more, we request an urgent meeting with the JSE in order that we might discuss the matters set out above, in order that Oakbay might be in a position properly to protect the interests both of it and of all its shareholders.
- 14 Should the JSE require further information with regard to the above, please contact Trevor Scott on +27 83 380 8040 or via email at trevors@oakbay.co.za.
- 15 I do look forward to hearing from you.
- 16 Yours sincerely



T SCOTT

FINANCIAL DIRECTOR



MA

- 2.11 Questco Proprietary Limited;
- 2.12 One Capital Proprietary Limited;
- 2.13 Avior Capital Markets Proprietary Limited;
- 2.14 Bravura Capital Proprietary Limited;
- 2.15 River Sponsors Proprietary Limited; and
- 2.16 Vunani Corporate Finance Proprietary Limited.
- 3 All of the aforementioned sponsors declined to accept an engagement with Oakbay.
- 4 Oakbay refrained from approaching the following sponsors since either they or the groups of which they form a part previously indicated their unwillingness to provide professional or other services to Oakbay:
 - 4.1 ABSA Capital;
 - 4.2 Citigroup Global Markets Proprietary Limited;
 - 4.3 Deloitte & Touche Sponsor Services Proprietary Limited;
 - 4.4 Deutsche Securities SA Proprietary Limited;
 - 4.5 Java Capital Trustees & Sponsors Proprietary Limited;
 - 4.6 KPMG Services Proprietary Limited;
 - 4.7 Nedbank Corporate & Investments Banking (a division of Nedbank Limited);
 - 4.8 Rand Merchant Bank Corporate Finance Division;
 - 4.9 Rothschild (South Africa) Proprietary Limited;
 - 4.10 Sasfin Bank Limited;
 - 4.11 The Standard Bank of SA Proprietary Limited; and
 - 4.12 UBS South Africa Proprietary Limited.
- 5 In the circumstances, while Oakbay has made every conceivable effort to comply with the provisions of paragraph 2.2 of the aforementioned Listings Requirements, the reluctance of the sponsor community to accept an appointment from Oakbay – without providing any sustainable reasons, or any reasons whatsoever (especially relating to governance) , for doing so – places Oakbay in the invidious position, and indeed one entirely not of its making, where the period granted for it to appoint a new sponsor is on the verge of elapsing without it having secured a new sponsor.
- 6 It is Oakbay's view that, given that it is not in breach of any of its obligations under the Listings Requirements, it seems that the only bases upon which the abovementioned sponsors may have refused to assist Oakbay are bias, a perceived or real conflict of interest or the undue influence borne of the baseless and improper conflation of Oakbay with some of its shareholders, in all likelihood based upon media speculation about the latter. Plainly, where there is no basis upon which to impugn any of the conduct of Oakbay or its officers, it cannot be for accredited sponsoring brokers to act in this manner. It can never be for speculation and rumour about a shareholder to be used in this way effectively to render it impossible for that company to comply with the Listing Requirements.



Issuer Regulation
The Johannesburg Stock Exchange
1 Exchange Square
Gwen Lane
SANDOWN

Via email: andrev@jse.co.za

14 July 2016

ATTENTION: MR. A. VISSER

Dear Sir,

OAKBAY RESOURCES AND ENERGY LIMITED ("OAKBAY RESOURCES" OR "THE COMPANY")

- 1 We refer to correspondence recently exchanged with you concerning the appointment of a new sponsoring broker for Oakbay and, in particular, to your letter of 12 July 2016, a copy of which we enclose for your convenience.
- 2 At the outset, we must emphasise that, since the resignation of Sasfin Capital as its sponsoring broker, on 15 March 2016, Oakbay has made every possible effort to secure a new sponsoring broker so that it might comply with the Listings Requirements of the Johannesburg Stock Exchange Limited ("JSE"). To this end, Oakbay has approached the following accredited sponsors (some of which on more than one occasion):
 - 2.1 Arbour Capital Sponsors Proprietary Limited;
 - 2.2 Bridge Capital Advisory Services Proprietary Limited;
 - 2.3 Exchange Sponsors Proprietary Limited;
 - 2.4 Investec Bank Limited;
 - 2.5 JP Morgan Equities Limited;
 - 2.6 Merchantec Capital;
 - 2.7 Merrill Lynch SA Proprietary Limited;
 - 2.8 Pallidus Capital Proprietary Limited;
 - 2.9 PricewaterhouseCoopers Corporate Finance Proprietary Limited;
 - 2.10 PSG Capital Limited;

Oakbay Resources & Energy Limited

Reg. No. 2009/021537/06

Directors:

T Scott • D J Nyemane • M V Prunensky • T W Rensen
I Roux • N Hlewa

10/12/2016

KPMG cuts ties with Gupta business empire | Fin24

"We welcome the process, which should ultimately allow the truth to be recognised and end this current trial by innuendo and slander. We will fully co-operate with the office of the secretary general during the information gathering process," Oakbay Investments said in a statement last week.

KPMG's role in Sars 'rogue' unit report

One of the four biggest professional services companies in the world, KPMG was criticised recently for its report on the alleged SA Revenue Service (Sars) 'rogue' unit, creating a standoff between Treasury and the tax collector.

When Finance Minister Pravin Gordhan was reappointed in December, he criticised KPMG over the leaked report. "It's allegations that have no foundation. They are based on a leaked document that even I haven't seen," he said.

"How would you like to be accused of something on the basis of a document that has not been put to you or questions that have not been put to you, on the basis of no opportunity having been put to you to say what the facts of the matter are? One thing I would like to request from you is to stop reporting on rumours."

On Wednesday Gordhan said the Sikhakhane Panel finding that the establishment of the unit contravened the National Strategic Intelligence Act was wrong and based on a superficial and clearly mistaken reading of the aforementioned Act.

"As far as I was aware, the unit lawfully performed its functions," he said. "My legal advice is that the establishment unit was lawful."

In the KPMG report, which says the creation of the unit was unlawful, it failed to interview the people that were allegedly guilty.

"Their report contains large chunks of text delivered to them in correspondence by a firm of lawyers acting for Sars," Business Day editor-in-chief Peter Bruce wrote in his column recently. "And then they instructed their own clients that their report must not be used against those people."

"The reputational damage this could do to a brand as big as KPMG is enormous, particularly if, as is possible, this investigation is one day tested in court and found to have no merit," he said.

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24



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Successful people are humble in
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iNET BFA

ZAR/AUD

10,51 + (1.07%)

ZAR/EUR

15,44 + (1.22%)

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17,79 + (1.52%)

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0,14 + (1.45%)

ZAR/USD

13,74 + (1.35%)

All data is delayed

See More

KPMG cuts ties with Gupta business empire

Apr 01 2016 07:00 Mathew le Cordeur

Cape Town - KPMG has terminated its business relationship with the Gupta business empire due to the political storm surrounding the family's friendship with President Jacob Zuma.

KPMG was the auditor for all Gupta-owned and -controlled businesses and performed a variety of other services for the Guptas, who are allegedly at the heart of what is termed "state capture".

RELATED: How parastatals like Eskom and Transnet fit into Gupta web

RELATED: Zuma's plight no bar for rand

This follows Deputy Finance Minister Mcebisi Jonas and former ANC MP Vytjie Mentor's claims in March that the Guptas offered them top cabinet positions.

In an internal email circulated to staff and partners, KPMG Southern Africa CEO Trevor Hoole said they had no audit reason in support of the decision.

"The recent media and political interest in the Gupta family, together with comments and questions from various stakeholders has required us to evaluate the continued provision of our services to this group," Hoole said.

"We have decided that we should terminate our relationship with the group immediately," he said. "I can assure you that this decision was not taken lightly, but in our view the association risk is too great for us to continue.

"It is with heavy hearts that we have reached our conclusion, and there will clearly be financial and potentially other consequences to this, but we view them as justifiable."

Before making the decision, KPMG consulted extensively



Alul Gupta (File, Felix Dlangamandla, Network24)

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Guptas: It was a very reluctant decision

Carel Smil, KPMG executive for clients and sectors, told Fin24 on Thursday that while he was not able to comment, he was aware of the decision

"This is a confidential matter between us and our clients," he said telephonically from Johannesburg. Hoole had hoped the decision would not be publicised, his email explains

Oakbay Investments confirmed the news on Thursday "KPMG is no longer the auditor for Oakbay Investments," a spokesperson, who declined to be named, told Fin24 "Our understanding is that this was a very reluctant decision on their behalf

"KPMG confirmed to Oakbay that no audit reason whatsoever contributed to this development"

The Guptas own Oakbay Investments, which is a shareholder in a number of private equity investments and joint ventures, such as Sahara Computers, JIC Mining Services, Shiva Uranium, The New Age newspaper, ANN7 TV and Cliftop Lodge

Co-founders and chairpersons Ayay and Alul Gupta are at the centre of an African National Congress investigation to determine whether they influence who Zuma appoints to key government positions to ensure business deals are structured around their businesses
<http://www.fin24.com/Companies/Financial Services/kpmg-cuts-ties-with-gupta-business-empire-20160331>

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1. KPMG;
2. Ernst Young;
3. Price Waterhouse Coopers;
4. Deloitte & Touche Inc
5. Grant Thornton;
6. Baker Tilly SVG
7. Baker Tilly Greenwoods
8. Horwath Leveton Boner
9. Nmahdi Meyer
10. Mazars
11. Moore Stephens
12. Fireblade
13. NAC
14. Execujet Aviation SA
15. Absolute Aviation
16. Textron Financial Services
17. M & F
18. Marsh
19. Zurich
20. Scandisk
21. Western Digital
22. LG Electronis
23. Eqstra
24. Barloworld Equipment

Q/M

Gordhan and CEOs set sights on ratings

Concerns on possible downgrade unite SA's top business leaders

PHAKAMISA NDZAMELA
Finance Writer

FINANCE Minister Pravin Gordhan met about 60 CEOs at a packed Nedbank boardroom on Friday to discuss how SA should avert a downgrade to its sovereign credit rating.

There are deep concerns about the effect of a possible downgrade on SA's cost of borrowing, the financial markets and on business and ordinary South Africans.

Last week, African National Congress secretary-general Gwede Mantashe said negative growth and another downgrade must be avoided at all costs and that SA had to do "everything" it could to avoid a recession.

In December, Fitch Ratings

There was also a call to transfer some talent from the private sector to the boards of state-owned entities so as to assist with governance.

The South African government has had to make billions of rand in guarantees for some state-owned entities, and in so doing, locking up much-needed capital.

The meeting, held at Nedbank's head office, was led and co-ordinated by businessman Jabu Mabuza together with leadership in the Old Mutual group of companies. It was attended by CEOs of SA's big four banks, captains of major insurers and mining houses.

After the meeting Mr Mabuza said he believed government and business were prepared to work together to avert the challenges SA faced.

Mr Gordhan attended the meeting with Deputy Finance Minister Mcebisi Jonas and Treasury director-general Lungisa Fuzile.

He told Business Day yesterday that the meeting was a continuation of the government's consultative meetings that started before and during the World Economic Forum in Davos.

"We thought it was important to work with Mr Mabuza and his colleagues on the question of the credit ratings in SA which is a concern for government, business and the public more generally," Mr Gordhan said.

"It was a very constructive meeting ... we had the opportunity to convey our analysis on the economic environment and they shared some useful thoughts on what we could do together."

Old Mutual emerging markets CEO Ralph Mupita said: "From an Old Mutual perspective, we certainly believe that in SA we do have a crisis and we can avert it if social partners can focus on actions that can lead to long-term economic growth."

"The 2015-16 budget is critical to averting the ratings downgrade."

ndzamelap@businessday.co.za

11 We had the opportunity to convey our analysis on the economic environment

downgraded SA's credit rating from BBB to BBB-, just one level above sub-investment grade.

Last month, the International Monetary Fund slashed SA's economic growth forecast to less than 1% for this year.

Mr Gordhan said yesterday that it was important to point out that during the global financial crisis and the 2009-14 period, it was emerging markets that "used their fiscal space to support global growth". This meant emerging-market countries had to accumulate some debt.

Among the ideas discussed at the two-hour meeting were bringing in private sector capital to support infrastructure investment and to partially privatise energy assets such as Kusile and Medupi, a source who attended the meeting said.

The idea is to allow private partners to inject some capital similar to the public and private partnership model at Telkom.

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The Guptas and President Jacob Zuma's son Duduzane all resigned from their executive positions in April.

Nel told Gordhan that he will be forced to make further strategic decisions that will result in more job losses.

"The decisions I will be forced to make over the coming weeks will not only affect the livelihoods of the remaining 103 employees at Sahara, but their families and dependents too," he said.

Regarding the Power FM "ambush", Nel told Gordhan that the "engagement" was "misconstrued in some quarters".

"I would like to assure you the calls related to the extremely difficult position we find ourselves in following the banking blacklisting crisis at Oakbay," he wrote.

He also asked the minister to "publicly condemn acts of intimidation" following the alleged phone call intimidating Nel.

Responding to Gordhan's statement that he serves 55 million South Africans in their efforts to have decent work in a stable economic environment, Nel said he can start with saving the jobs at Oakbay.

"I humbly plead that you find some way to help us make a small start with our own employees, and I, therefore, request that you meet with me, at your earliest convenience," he wrote.

Fin24 had not received comment from Treasury regarding the letter before publication.

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der Wall, a palaeontologist until recently. She is now a statistician with a difference.

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2017-01-19 10:53

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Roxanne Smit <roxannes@tnamedia.co.za>

Peaceful Protest

1 message

Roxanne Smit <roxannes@tnamedia.co.za>
To: CGriesel@fnb.co.za

Wed, Apr 20, 2016 at 9:53 AM

To whom it may concern.

On behalf of all 7500 employees at Oakbay Investments, we are writing to request that 1000 employees be allowed to initiate a peaceful march against the decision taken by South African banks Standard Bank, ABSA, Nedbank and FNB - to close Oakbay Group Accounts. We understand that there are rules and regulations when it comes to engaging in a march; we therefore need a person's name that will come down to us and receive the petition letter.

Oakbay Investments in total employs people in Media, ICT, Mining, Manufacturing and Property/Leisure; meaning that if 7500 jobs are lost, five different sectors are affected.

The current suggested route where the march will take place is from 1 Biccard, Braamfontein to FNB Bank City, Simmonds Street, Johannesburg, to Standard Bank, 5 Simmonds Street, Johannesburg ending at ABSA Bank Head Office.

Our date requested is next week Tuesday the 26th of April.

Thank you for taking the time to read this letter and kindly send me the name of the person that will receive the petition as soon as possible.

Much appreciated.

Regards,

Aphiwe Bukani

On Behalf Of All Oakbay Group staff Members

Kind Regards,
Roxanne Smit

A plea from the employees of Oakbay to:

Jacques Celliers, Chief Executive Officer, FNB

Tuesday 26 April, 2016

Dear Jacques,

RE: OAKBAY EMPLOYEES MARCH ON THE BANKS - PLEASE SAVE OUR JOBS

Today we are marching to save our jobs. We want you to see the faces of the people who will suffer as a result of your decision to close Oakbay's accounts.

There will be 7,500 South Africans out of work at the end of May. We do not understand why we must be the victims of a political game at the top.

We have families we need to support. Together we have tens of thousands of dependents. If we do not have jobs how will we feed our children? How will we pay our rent or house bonds? Will our children end up living on the street?

We plead with you again to make the right decision. Please recognise the pain you will cause to thousands of innocent families if you do not reopen Oakbay's accounts.

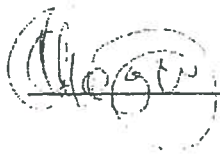
We, the employees, have not done anything wrong.

We humbly ask you to hear our message.

Yours faithfully

Oakbay Group Employees

Handed over by:



I have received a copy of the memorandum

Received by:





Corporate and
Investment Banking

CONFIDENTIAL

15 Alice Lane
Sandton
Johannesburg
2196
South Africa

Private Bag X10056
Sandton
2146
South Africa

Tel +27 (0)11 895 6000
Fax +27 (0)11 895 7802

www.absacapital.com

29 April 2016

Ms Roxanne Smit
TNA Media

Dear Ms Smit

OAKBAY EMPLOYEES MARCH ON THE BANKS – PLEASE SAVE OUR JOBS

We are in receipt of your memorandum delivered on 26 April 2016 at our Johannesburg offices. We have carefully considered it and we sympathize with the position of Oakbay employees.

We are required by law to keep client matters confidential and can only discuss related matters with them. This includes taking any decisions relating to past, current or prospective clients. Consequently we are not able to carry out the request contained in your memorandum or any other action relating to client accounts.

With kind regards,

Phakamani Hadebe
CEO – CIB, SA

Member of
 BARCLAYS

Abisa Bank Limited Reg No 1986/004781-0/5 Authorized Financial Services Provider Registered Credit Provider Reg No NCRCP1

A plea from the employees of Oakbay to:

Maria Ramos, Chief Executive Officer, ABSA

Tuesday 26 April, 2016

Dear Maria,

RE: OAKBAY EMPLOYEES MARCH ON THE BANKS - PLEASE SAVE OUR JOBS

Today we are marching to save our jobs. We want you to see the faces of the people who will suffer as a result of your decision to close Oakbay's accounts.

There will be 7,500 South Africans out of work at the end of May. We do not understand why we must be the victims of a political game at the top.

We have families we need to support. Together we have tens of thousands of dependents. If we do not have jobs how will we feed our children? How will we pay our rent or house bonds? Will our children end up living on the street?

We plead with you again to make the right decision. Please recognise the pain you will cause to thousands of innocent families if you do not reopen Oakbay's accounts.

We, the employees, have not done anything wrong.

We humbly ask you to hear our message.

Yours faithfully

Oakbay Group Employees

Handed over by:

I have received a copy of the memorandum

Received by:

1/12/2017

TNA Media Mail - Recipient of Memorandum



Roxanne Smit <roxannes@tnamedia.co.za>

Recipient of Memorandum

1 message

Zibi, Songezo: Absa <Songezo.Zibi@absa.co.za>
To: "roxannes@tnamedia.co.za" <roxannes@tnamedia.co.za>

Mon, Apr 25, 2016 at 8:54 AM

Dear Roxanne,

We confirm that we shall have an appropriate executive to receive the memorandum when you get here. Please send me via return email the necessary details especially in respect of the time you may get here. We are also in touch with JMPD with regards to logistics.

Best regards,

Songezo Zibi

+27 63 695 4522

Important Notice:

Absa is an Authorised Financial Services Provider and Registered Credit Provider, registration number: NCRCP7. This e-mail and any files transmitted with it may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unless specifically indicated, this e-mail is not an offer to buy or sell or a solicitation to buy or sell any securities, investment products or other financial product or service, an official confirmation of any transaction, or an official statement of Absa. Any views or opinions presented are solely those of the author and do not necessarily represent those of Absa. This e-mail is subject to terms available at the following link: <http://www.absa.co.za/disclaimer>. The Disclaimer forms part of the content of this email. If you are unable to access the Disclaimer, send a blank e-mail to disclaimer@absa.co.za and we will send you a copy of the Disclaimer. By messaging with Absa you consent to the foregoing. By emailing Absa you consent to the terms herein. This email may relate to or be sent from other members of the Absa Group.

A plea from the employees of Oakbay to:

Ben Kruger, Chief Executive Officer, Standard Bank

Tuesday 26 April, 2016

Dear Ben

RE: OAKBAY EMPLOYEES MARCH ON THE BANKS - PLEASE SAVE OUR JOBS

Today we are marching to save our jobs. We want you to see the faces of the people who will suffer as a result of your decision to close Oakbay's accounts.

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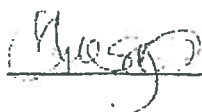
We plead with you again to make the right decision. Please recognise the pain you will cause to thousands of innocent families if you do not reopen Oakbay's accounts.

We, the employees, have not done anything wrong.

We humbly ask you to hear our message.

Yours faithfully
Oakbay Group Employees

Handed over by:



I have received a copy of the memorandum

Received by:



1/12/2017

TNA Media Mail - RE: PEACEFUL PROTEST - OAKBAY EMPLOYEES - NB!

1037

Standard Bank email disclaimer and confidentiality note

Please go to <http://www.standardbank.co.za/site/homepage/emaildisclaimer.html> to read our email disclaimer and confidentiality note. Kindly email disclaimer@standardbank.co.za (no content or subject line necessary) if you cannot view that page and we will email our email disclaimer and confidentiality note to you.

Handwritten signature

THE NEW AGE
www.thenewage.co.za

Roxanne Smit <roxannes@tnamedia.co.za>

PEACEFUL PROTEST - OAKBAY EMPLOYEES - NBI

1 message

Roxanne Smit <roxannes@tnamedia.co.za>

Wed, Apr 20, 2016 at 11:48 AM

To: ross.linstron [REDACTED]

Cc: helene.strimling@standardbank.co.za

To whom it may concern.

On behalf of all 7500 employees at Oakbay Investments, we are writing to request that 1000 employees be allowed to initiate a peaceful march against the decision taken by South African banks Standard Bank, ABSA, Nedbank and FNB - to close Oakbay Group Accounts. We understand that there are rules and regulations when it comes to engaging in a march; we therefore need a person's name that will come down to us and receive the petition letter.

Oakbay Investments in total employs people in Media, ICT, Mining, Manufacturing and Property/Leisure; meaning that if 7500 jobs are lost, five different sectors are affected.

The current suggested route where the march will take place is from 1 Biccard, Braamfontein to FNB Bank City, Simmonds Street, Johannesburg, to Standard Bank, 5 Simmonds Street, Johannesburg ending at ABSA Bank Head Office.

Our date requested is next week Tuesday the 26th of April.

Thank you for taking the time to read this letter and kindly send me the name of the person that will receive the petition as soon as possible.

• Much appreciated.

Regards,

Aphiwe Bukani

On Behalf Of All Oakbay Group staff Members

Kind Regards,
Roxanne Smit

AMH

1/12/2017

TNA Media Mail - RE: PEACEFUL PROTEST - OAKBAY EMPLOYEES - NB!

1039

Kind Regards,

Roxanne Smit

Personal Assistant to Mr. Gary Naidoo

011 542 1040

On Wed, Apr 20, 2016 at 11:48 AM, Roxanne Smit <roxannes@tnamedia.co.za> wrote:

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Regards,

Aphiwe Bukani

On Behalf Of All Oakbay Group staff Members

Kind Regards,

Roxanne Smit



1/12/2017

TNA Media Mail - RE: PEACEFUL PROTEST - OAKBAY EMPLOYEES - NBI

"OBS!"

NEW AGE

Roxanne Smit <roxannes@tnamedia.co.za> 1040

RE: PEACEFUL PROTEST - OAKBAY EMPLOYEES - NBI

1 message

Linstrom, Ross R <Ross.Linstrom@standardbank.co.za>
To: Roxanne Smit <roxannes@tnamedia.co.za>

Wed, Apr 20, 2016 at 5:15 PM

Good day Roxanne Smit

My sincere apologies for the delay in responding. We will be more than happy to receive yourself or your delegation at our 5 Simmonds Street office on 26 April 2016. Once you have obtained the necessary approvals for the march would you be so kind to supply me with the following details:

- › The name and designation of the delegate who will handing over the petition letter
- The expected time that your delegation will arrive at 5 Simmonds Street

I am not in a position to supply you with the name of the Standard Bank representative that will be receiving your petition due to time constraints and the short notice that you have requested. However, I will gladly mail you confirmation once I have identified the appropriate banking representative.

I hope that the above is in order. If you have any queries or need our further assistance please do not hesitate to contact me.

Kind regards

Ross Linstrom

Standard Bank Media Relations

From: Roxanne Smit [mailto:roxannes@tnamedia.co.za]
Sent: 20 April 2016 02:58 PM
To: Linstrom, Ross R <Ross.Linstrom@standardbank.co.za>
Cc: Strimling, Helene HM <Helene.Strimling@standardbank.co.za>
Subject: Re: PEACEFUL PROTEST - OAKBAY EMPLOYEES - NBI

Good day,

Can you kindly respond ASAP as time is against us.

Much appreciated.

A NM

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street
Braampark, Forum III
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel: 011 877 3600
Fax: 011 403 0567



Tel: 011 484 3612

Fax: 011 484 3619

Email: khanyim@ombudsman.org.za / joanrr@ombudsman.org.za / millicent@ombudsman.org.za
/ pressombudsman@ombudsman.org.za / rlobara@ombudsman.org.za

Website:

<http://www.presscouncil.org.za/Complaints?prev=http%3A%2F%2Fwww.presscouncil.org.za%2FContentPage%3Fcode%3DCONTACT>

Accordingly, your appeal is dismissed and this decision is final.

Should you not be satisfied with this finding then kindly be advised that you may challenge same in court through the process of judicial review.

An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application must be made within 180 days of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision). A person who asks for judicial review after this period will not be successful, unless they can convince the court to that it is "in the interests of justice" to allow it.

Yours faithfully,

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION
CHANTAL KISOONA
CHIEF OPERATIONS OFFICER

CC PROVINCIAL MANAGER, GAUTENG PROVINCE
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

5. That the Commission is consequentially the appropriate body to investigate the matter.

Please note that in terms of Article 12 (9) of the Commission's Complaints Handling Procedures:

"If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complaint must ... be provided with the contact details of the said organisation, institution or body in order to pursue the alternative option himself or herself (indirect referral)..."

The Commission notes that you have emphasised the fact that the decisions taken by the four major banks have "set in motion a chain of events" which have essentially threatened the stability of a number of businesses in which members of the Gupta family own and/or have an interest. Consequentially, you have cautioned against the significant impact this may have on the financial as well as reputational security of the employees, who may be faced with retrenchment and unemployment. The request for the Commission's intervention, therefore, places emphasis on the socio-economic impact on the greater public, as well as on the individual rights in relation to fair labour practices and dignity, amongst others.

Please be advised that banks and other financial institutions in South Africa are strictly regulated by a number of laws, including but not limited to the Financial Intelligence Centre Act (FICA), which was introduced to regulate the movement of monies with the aim of preventing financial crime, such as money laundering, tax evasion, and terrorist financing activities. Financial Institutions are therefore legally obligated to conduct detailed due diligence on clients and/or potential clients in line with international best practice. In considering ongoing relationships with clients, each bank conducts a detailed risk assessment.

The Commission recognises that the decision taken by the respective banks to close the relevant accounts may have external implications, particularly in relation to investor confidence. However, the Commission does not have a mandate to investigate and/or to regulate the manner in which banks conduct business operations and risk assessments in line with legal obligations.

It is further noted that the affected companies have approached the relevant forums to challenge the decision taken by the banks in question. In this regard, reference is made to Article 4(2) of the Commission's Complaints Handling Procedures which states the following:

"The Commission may reject any complaint which -

...

(c) is the subject of a dispute before a court of law, tribunal, any statutory body, any body with internal dispute resolution mechanisms, or settled between the parties, or in which there is a judgment on the issue in the complaint or finding of such court of law, tribunal, any statutory body or other body..."

In addition, the Commission notes the allegations made in relation to the manner in which the matters relating to the members of the Gupta family has been reported in the media. The Commission is not the most appropriate body to deal with these complaints, and should you wish to do so, you may lodge a formal complaint with the Press Ombudsman of South Africa at the following details:

Press Ombudsman of South Africa (Press Council):

Address: Building B, 1st floor,
Burnside Island Office Park
410 Jan Smuts Avenue
Craighall Park
2196

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofdstad Street
Braampark, Forum III
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3600
Fax: 011 403 0567



Mr Andre Oldknow

Per email:

Our Ref.: AP20/07/2016
Provincial Ref.: GP/1617/0118

Date: 10 October 2016

Dear Sir,

RE: APPEAL TO THE CHIEF OPERATIONS OFFICER

The above matter and your letter of appeal received by our offices on or about the 26 July 2016 refers. I confirm receipt of the aforesaid letter and the contents thereof has been noted.

The South African Human Rights Commission (hereinafter referred to as the "Commission") was established to investigate *prima facie* violations of human rights as contained within the Bill of Rights, which is Chapter Two of the Constitution of the Republic of South Africa of 1996 (hereinafter referred to as the "Constitution").

On perusing your file in this matter I note that in your initial complaint you alleged that the decision taken by the four major banks in South Africa (the Respondents) to close all bank accounts of the members of the Gupta family and its businesses has and/or may potentially have a negative impact on a number of rights of the business employees.

On or about the 4 July 2016 I note that the Gauteng Provincial Office advised you that following from its assessment of the complaint, the Ombudsman for Banking Services (OBS) is the most appropriate body to deal with the complaint. Moreover, the concerns relating to the rights and protections afforded to employees in relation to the impact of third party liability is a matter that falls within the jurisdiction of the Labour Court. On this basis, the Provincial Office was of the view that there was nothing further it could do in the matter and proceeded to close the file.

In your letter of appeal you indicated your dissatisfaction with the manner in which the complaint was dealt with, and alleged the following, *inter alia*:

1. That the matter falls outside of the Jurisdiction of the OBS due to the fact that the banking accounts of the legal entities concerned exceed the prescribed limit of R10 million;
2. That the Labour Court cannot be approached due to the fact that there is no dispute in existence between the parties in the employment relationship;
3. That a long-term investor - Impala Platinum - has terminated its relationship with the company, giving rise to the possibility of retrenchment in the JIC Mining Services;
4. That the violation of rights extends far beyond the normal bank-client relationship; and

Transforming Society. Securing rights. Restoring dignity
Chairperson: M.L. Musi-wauu, Commissioner: M.S. Amosela
Acting Chief Executive Officer: P. Makanele

Handwritten signature and initials

OB 4:4.

1044

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Decision on Appeal before the SAHRC - Oldknow, Andre - GP/1617/0118

10 October 2016, 11:14

Pandelis Gregoriou
[Redacted]
andynusana easterhuizen

Letter - Oldknow 4 October 2016.pdf (1.2 MB) Downloaded | [Details](#)

Dear Mr Andre Oldknow,

Kindly find attached hereto the decision by the Office of the Chief Operations Officer of the South African Human Rights Commission on appeal for your attention and perusal.

I trust that you find the above in order.

Yours faithfully
Pandelis Gregoriou

<p>Pandelis Gregoriou (Mr) Head of Legal Services T: +27 11 977 3855 E: pgregoriou@sahrc.org.za</p> <p>Forum III - Braamfontein Office, 13 Macleod Street, Braamfontein, 2017</p> <p>Switchboard T: +27 11 977 1608</p>	<p>Upcoming events</p> <p>Click here to view our next MC</p> <p> Thank before printing</p> <p>Follow us on:</p> <ul style="list-style-type: none">FacebookTwitterLinkedInYouTube
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Q MKE

prepared to have a commercial service agreement with the said company. If this situation is not remedied some 340 employees of JIC Mining Services stand to lose their jobs with the resultant impact on their dependents.

6. The fact is that the actions of the SA Banks have set in motion a chain of events and public perception where even the current banking services provided to Oakbay Group companies by a reputable International Bank operating with a local banking license, is now somehow not an acceptable business arrangement to a major client that would allow a business units in the Oakbay Investments Group to continue operating.
7. The effect of what has been done is that all directors of the companies, managers and employees have essentially been found guilty by association with "politically exposed persons", who it should be added have not been found guilty of any offences in a court of law, and yet the innocent employees have to face job losses with the impact of their dependents. This abuse of such power is tantamount to economic extermination by depriving people of their livelihoods and leaving them destitute.
8. Whilst the SAHRC in ordinary circumstances may be correct in its observation that fair labour practices and employees' rights and protections are best adjudicated by the Labour Court, its recommendation that the Labour Court be approached for appropriate relief, regrettably under the circumstances appears misplaced and creates the impression that the officials of the SAHRC who have considered the complaint have not grasped or taken cognizance of the realities already explained in the detailed written motivation accompanying the original complaint on 23 May 2016. For the Labour Court to adjudicate a matter within the context of employment and labour legislation there has to be a dispute in existence between the parties in the employment relationship. This is not the case as has been clearly pointed out. The Employer, Employees and the Trade Unions that represent them are not in dispute about anything. Quite to the contrary in fact, by all accounts there appears to be unanimity that the actions of the SA Banks is excessive and unjustified if the human rights violations that it results in are considered.
9. An impassioned plea is made to the South African Human Rights Commission to thoroughly investigate and consider in detail each and every human rights violation that has been reported and motivated in terms of the decision of the 4 major banks impacting on the livelihoods and lives of employees employed by operating entities associated with the Oakbay Investment Group and their violations.
10. Representatives of employees in the Oakbay Group will avail themselves to assist the SAHRC in order to investigate the matter and respectfully request that each and every one of the human rights violations that may further unfold as a result of the situation be addressed as per original complaint and accompanying motivation. Detailed consideration and feedback is requested to ensure rights may be appropriately protected.

Reference no of determination, decision or finding	GP/1617/0118/KC/FT
Date of determination, decision or finding*	04 JULY 2016

*If your appeal is lodged AFTER a period of 45 days from the date of being notified of such determination, decision or finding by post, delivery, facsimile or email, please attach a separate page providing the reasons for the late lodging of the appeal.



Signature of André Oldknow

24 July 2016

Date



Please indicate (X) how you would like to be contacted.

SMS	x	Fax		E-mail	x	Phone	x	Post	
-----	---	-----	--	--------	---	-------	---	------	--

Tel No: Office hours	011 542 2000
Tel No: After hours	[REDACTED]
Cell No	[REDACTED]
Fax No	-
E-mail address	[REDACTED]
Postal address	[REDACTED]

B. DETAILS OF DETERMINATION, DECISION OR FINDING AGAINST WHICH APPEAL IS LODGED

1. The letter as received from Me Kisha Candasamy, Acting Provincial Manager, Gauteng Province, SA Human Rights Commission dated 04 July 2016 with reference GP/1617/0118/KC/TT related to the complaint lodged on 23 May 2016 has bearing.
2. The assessment and analysis of the South African Human Rights Commission finding that the complaint with regard to the closure of the Bank accounts belonging to Oakbay Investments (Pty) Ltd (and other entities associated with the Gupta Family by the 4 Major South African Banks, i.e. ABSA Bank, First National Bank, Nedbank and Standard Bank should be referred to the Ombudsman for Banking Services (Banking Ombud) is fatally flawed and based on the incorrect supposition of which institution(s) should consider the matter.
3. Oakbay Investments, as holding company, has already referred the matter to the Banking Ombud that has reportedly determined that the matter does not fall within the jurisdiction of the Ombudsman of Banking Services as the banking accounts of the legal entities concerned are greater than R10m in value.
4. In light of the aforementioned, and the fact that the violations of human rights in contravention of the Bill of Rights as contained in Chapter 3 of the Constitution extends far beyond just the relevant client and bank relationship, and has every potential of adversely impacting the lives of innocent employees and their dependents, including defenseless children for generations to come in the current economic climate, it is respectfully submitted that the South African Human Rights Commission (SAHRC) is indeed the correct and only institution mandated in terms of section 184 of the Constitution to promote the protection, development and the attainment of human rights, and to monitor and assess the observance of such rights within the Republic of South Africa.
5. It must be brought to your attention as a matter of urgency that the problem with banking services has broadened and deepened since the complaint dated 23 May 2016 was first lodged with the SAHRC. Since then at least one long-standing client - Impala Platinum Limited - of Westdawn Investments (Pty) Ltd trading as JIC Mining Services, an operating entity within the Oakbay Investments Group has advised that after 31 October 2016 it will no longer be

X
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Age Group	Yes (%)
18-24	~15
25-34	~45
35-44	~55
45-54	~65
55-64	~75
65+	~85

Identity Number of Appellant: NOTE THIS APPEAL IS BASED ON A GROUP COMPLAINT

Name	André
Surname	Oldknow
Physical Address	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
Postal Address	[REDACTED]
	[REDACTED]
	[REDACTED]

Q. No.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

2nd Floor
33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3750
Fax: 011 403 0668



10. Should you not be satisfied with this decision, you may lodge an appeal, in writing within 45 days of receipt of this letter. A copy of the appeal form is available at any office of the Commission. The appeal should be lodged with the Head Office of the Commission – contact details are as follows:

Physical Address	Appeals Section	Postal Address: Appeals Section
	33 Hoofd Street	Private Bag X2700
	4th Floor, Forum 3	Houghton
	Braampark	2041
	Braamfontein	
	2017	

Fax number: 011 403 0567 (Attention – Appeals Section). Telephone number: 011 877 3654 / 3653

11. We thank you for bringing your complaint to the attention of the Commission and trust your matter will be resolved.

Yours faithfully,


Kisha Candasamy
Acting Provincial Manager
Gauteng Province



- 5 The Banking Ombud is best placed, in this instance, to engage with the relevant bank structures and to obtain further information as to the legality and fairness of the practise by banks as alleged.
6. To assist you further please note the following contact information for the Banking Ombud so that you may contact them with regards to your complaint.

Physical Address:

34 & 36 Fricker Road, Ground Floor, 34 Fricker Road, Illovo, Johannesburg

Telephone: 011-712-1800

7. The Commission notes furthermore that the complaint raises issues concerning the conduct of the banks and its impact on employees. The issue of fair labour practices and employees' rights and protections are best adjudicated before the Labour Court. The Labour Court is the most appropriate forum to pronounce on the extent of protection of employees and the legal protection that can be invoked to defend employees' rights vis-a-vis their employer and possible liability of third parties that impact the employer-employee relationship. The Commission recommends that you approach the Labour Court for appropriate relief. Please note the contact details of the Labour Court in Johannesburg for your reference:

Tel: 011 431 1237

Arbour Square Building, 6th Floor

Corner Juba & Melle Streets

Braamfontein

8. In view of the above, the Commission has closed your file. This is in line with Article 12 (9) of the Commission's Complaints Handling Procedures which provides that:
'If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complainant must be notified thereof in writing; be provided with the contact details of the said organisation, institution or body in order to pursue the alternative option himself or herself...'
- 9 In view of the above referral the Commission has closed your file

Q M H

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

2nd Floor
33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel : 011 877 3750
Fax: 011 403 0668



Ref: GP/1617/0118/KC/TT

04 July 2016

Mr. Andre Oldknow

Per email: [REDACTED]

Dear Sir

RE: COMPLAINT LODGED REGARDING CONDUCT OF BANKS CONCERNING OAKBAY INVESTMENTS

- 1 Your complaint received on 23 May 2016 refers.
- 2 The South African Human Rights Commission (the Commission) is a state institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution) to support constitutional democracy. It is mandated in terms of section 184 of the Constitution to promote the protection, development and attainment of human rights, and to monitor and assess the observance of such rights within the Republic of South Africa.
3. After careful assessment and analysis, the Commission has found that your complaint concerning the closing of bank accounts belonging to Oakbay Investments (Pty) Ltd (and other entities associated with the Gupta Family) by the following banks: ABSA Bank, FNB Bank, Nedbank and Standard Bank should be referred to the office of the Ombudsman for Banking Services (Banking Ombud).
- 4 Please be advised that the Banking Ombud is the most appropriate organisation to assist you based on its mandate to investigate all complaints involving banking services and practices. The Commission is of the view that the issue around the legal validity of the closing of the account(s) falls within the mandate of the Banking Ombud.

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Chairperson: M. L. Mshwara, Commissioners (Full-Time): B. Matlala, I. Morake, M. S. Amathumbe, Commissioner (Part-Time): D. Titus
Chief Executive Officer: L. Khumalo

QNH

Fair Labour Practices

Termination of services on operational grounds may be for financial, economic, organisational restructuring or technological reasons. No contemplation of such actions were tabled by the affected companies at the time of the decision of the banks became known. If job losses should now result, it is a challenge to conclude that any dispute that may arise should as a first course of action be pursued in accordance with the provisions of the Labour Relations Act (as amended). The respective companies (legal entities), the management and the employees who work for such Employers are finding themselves in exactly the same situation becoming victims of the circumstances.

Limitation of rights

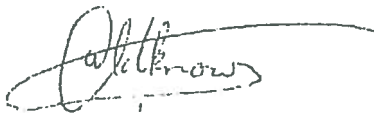
The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

- a. the nature of the right;
- b. the importance of the purpose of the limitation;
- c. the nature and extent of the limitation;
- d. the relation between the limitation and its purpose; and
- e. less restrictive means to achieve the purpose.

With the exception as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

It is contended that the commercial contract rights of banks do not trump the human rights of people, including the employees of Oakbay Investments (Pty) Ltd, its subsidiaries and associated companies.

To put it bluntly, nor two parties may enter into contract that is detrimental to the rights of any other individual (natural person).


ANDRE OLDKNOW
SIGNATURE

23 May 2016
DATE

consideration is unacceptable for any one bank and/or banks acting in concert/collaboration/collusion to have. Absolute power corrupts absolutely, and in this instance as it has the potential of playing out may deprive many people of the right to have access to adequate housing. The state must take reasonable legislative and other measures, available to it to prevent violation of this right to housing.

Health care, food, water and social security

Everyone has the right to have access to health care services, sufficient food and water; and social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

Employees use their income to provide for things like health care, buying food and providing for their retirement. By losing their jobs employees may soon be reduced to not having their current medical needs satisfied and / or to provide proper nutrition for themselves and their dependants and /or may become a social burden for the state and other South African tax payers.

Children

Children of employees who are the most vulnerable and in need of family care or parental care and have the right to basic nutrition, shelter, basic health care services and social services, may as a result of the situation for the first time become exposed to maltreatment, neglect, abuse or degradation. This has the potential of putting at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

Access to information

Everyone has the right of access to any information that is held by another person and that is required for the exercise or protection of any rights. Under the current circumstances and restriction on the availability of information it becomes problematic for any individual to determine how to properly protect those rights. The investors/shareholders are seemingly still prepared to keep investing in South Africa, and would like to have businesses in the country. This is evidenced by a payment of R2.15 billion to finalise the acquisition of the Optimum Coal Mine target companies as approved by the Competition Tribunal. This transaction closed with payment being made even after the decision of the major banks became known. What becomes particularly pertinent is exactly who were the most immediate main beneficiaries on the transaction with Optimum Coal Holding coming out of business rescue. Not least of which is how the banks that were settled actually benefitted, and which entities lost financially as a result of the transaction being concluded. This may all have relevance in decision making and how rights are best to be protected

Just administrative action

Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. And everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. Unsubstantiated reasons, not backed up by a decision of a competent court of law as a foundation, leads to potential abuses of power by legal entities in the financial services sector that raise serious concerns.



the state and all Chapter 9 institutions must respect, protect, promote and fulfil the rights in the Bill of Rights. Lodging of this complaint with the South African Human Rights Commission is done on the basis that the Human Rights of individuals/employees in affected companies have already and/or stand to be violated. These include, but are not limited to the following:

Equality

Everyone is equal before the law and has the right to equal protection and benefit of the law. This includes the full and equal enjoyment of all rights and freedoms.

Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected. The dignity and rights of employees are being totally disregarded in the action of the banks.

Freedom of association

Everyone has the right to freedom of association. This includes every single employee who was associated in an employment relationship with companies (employers as legal entities) even from long before the Gupta-family acquired shareholding in such legal entities.

Freedom of movement and residence

Everyone has the right to freedom of movement and the right to leave the Republic. This includes Investors, and for the media to bring "state capture" and the decision of the banks into connection with the so-called flight of the Gupta-family to Dubai when they were essentially only attending a wedding in Turkey is at the very least irresponsible and sensation seeking, and fans the flames of disassociation of the business community to deal with companies that employ the employees. Such reporting by media companies creates distrust and suspicion that ultimately impact the rights of individuals working in such organisations.

Freedom to work and freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law. The management and employees of the companies affected are having these rights threatened by the actions of the banks which potentially may deprive them not only of doing work; but also may have the effect of labelling them negatively in as far as their personal brand is concerned, as well as ignoring the stature of individuals as professionals, many of who are registered by regulatory bodies and bound by a code of ethics which transcends corporate boundaries.

Housing

The decision of the banks, should it lead to job losses will deprive innocent people of the financial means to pay rent or to pay off bonds for homes bought through the very banks that made the decision to close the bank accounts of the companies that these people are paid by. Failure to pay off bonds may lead to the repossession of properties which ultimately may lend itself to the financial benefit of the very institutions that made the decision to close the bank accounts in the first instance. Power with such far reaching implications on the scale possible in the instance under

BACKGROUND TO AND NATURE OF COMPLAINT TO THE HUMAN RIGHTS COMMISSION

The four (4) major South African banks – ABSA, FNB, NEDBANK & STANDARD BANK – have given notice to close the bank accounts of all entities associated with the Gupta-family. Although the banks are citing client confidentiality as reason for not disclosing more information, at the core thereof is so-called “reputational risk” associated with “politically exposed persons”. In political circles and in the media allegations of “state capture” by the Gupta-family are being advanced.

The banks are relying on what they seem to contend to be an absolute right to terminate the provision of banking services to a client based on the terms and conditions of the contract entered into by the bank. The implication of closure of bank accounts of legal entities (juristic persons) rather than natural persons does not only achieve a disassociation with the individuals it is aimed at, but as is now the case, if it manifests in actions by a number of banks around the same time, it creates a “choke point” whereby the business finds it virtually impossible position to continue trading (buy, sell or pay).

In the instance of Oakbay Investments, and its subsidiary companies affected by the closure of bank accounts, key stakeholders to be considered in various pieces of legislation – being the employees of companies – who all have individual human rights, are either being grossly violated or potentially violated in various respects.

The violation of these rights are taking place in a country which is a constitutional democracy where the rule of law is supposed to reign supreme and where the principles of natural justice is supposed to apply. This includes the right of the individual to a fair trial by a competent court of law that has jurisdiction, and the right of any individual to be presumed to be innocent until proven and found guilty. At the heart of the rule of law is that justice must be seen and experienced to be done.

The reality is that if businesses have to close because of veiled decision making processes in corporate boardrooms or whatever level or forum such decisions are made in a non-transparent manner based on untested allegations – which are then repeated and amplified many times over by parties which in themselves cannot necessarily at face value be assumed to be pursuing a fully informed or just course of action – there will be a gross miscarriage of justice including innocent employees and their dependants.

At the time of writing this complaint to the Human Rights Commission it is common cause that if the businesses affected have to cease operations because of not being able to trade, many thousands of innocent employees and their dependants will be deprived of an income and their livelihoods that may have far reaching long-term implications from which many will never be able to recover in their lifetime. The heartache and psychological torture that will be inflicted on innocent human beings in an unfair and unjust manner will be unimaginable and unprecedented, and in South African business history, if the situation remains unchecked and unchallenged by Chapter 9 institutions. In civilised society large scale job losses, violations of human rights and destroying of human lives cannot ever be regarded as acceptable “collateral damage” to achieve a specific purpose of disassociating with individuals on grounds of reputational risk.

The Bill of Rights is a cornerstone of democracy in South Africa that enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. As such

Western Cape - P O Box 3563, Cape Town 8001

Tel: 021 - 426 2277 Fax: 021 - 426 2875

North West P O Box 9586 Rustenburg 0300

Tel (014) 592 0694 Fax (014) 594 1089

Mpumalanga P O Box 6574 Nelspruit 1200

Tel (013) 752-8292 Fax (013) 752-6890

Northern Cape P O Box 1816, Upington 8800

Tel No (054) 332-3993/4 Fax No (054) 332-7750

Q. M. H.

Plattmann 23/1/2016
 (on behalf of yourself, another person,
 association, organisation or organ of state)

Representative sample of
 Oakbay Investments Group,
 Subsidiary & associated companies
 employees as per accompanying
 signed Schedules

If on behalf of another person (including a child or a person with a mental disability),
 association, organisation or organ of state:

AE
 27/1/2016

Signature of representative, parent,
 appropriate adult or guardian

Remember:

- To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.
- To attach any copies of documents which can assist in this matter.

What to do once you have filled in the form. Once you have filled in this form, please post or fax it to us at:

Johannesburg - Private Bag X 2700, Houghton 2041
 Tel: 011 - 877-3600/3601 Fax: 011 403 0682/0668

Free State - P O Box 4245, Bloemfontein 9300
 Tel: 051 - 447 1130 Fax: 051 447 1128

Eastern Cape - P O Box 972, East London 5200
 Tel: 043 - 722-7821/25/28 Fax: 043 -722-7830

KwaZulu Natal - P O Box 1456, Durban 4000
 Tel/Fax: 031- 304 7323/4/5

Northern Province - P O Box 55796, Pietersburg 0700
 Tel: 015 - 291 3500/3504 Fax: 015 - 291 3505

AE
 QNH

22. Were any steps taken by the person/association/organisation/organ of state to resolve the matter

Yes _____ No _____

If yes, please tell us what _____

23. What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought)

HUMAN RIGHTS COMMISSION TO INVESTIGATE AND TAKE APPROPRIATE ACTIONS THAT WOULD PROTECT EMPLOYEES WHO ARE NOT IN A POSITION TO DEFEND THEMSELVES FROM LOSING THEIR JOBS AND MEANS OF GENERATING AN INCOME IN A LAWFUL AND HONEST MANNER TO PROVIDE A LIVELIHOOD FOR THEMSELVES AND THEIR DEPENDANTS, WITHOUT BECOMING VICTIMS OF ACTIONS TAKEN AGAINST NATURAL PERSONS, SEEMINGLY THE GUPTA-FAMILY OR INDIVIDUAL MEMBERS THEREOF

24. Do you need an interpreter when attending any proceedings, investigations or hearing at our offices

Yes _____ No ☒ X

If yes, the language you speak _____

NOTE: Article 40 of the Human Rights Commission Complaints Handling Procedures provides that all proceedings, investigations and hearings will be conducted in English, unless you request that the proceedings be conducted in another official language.

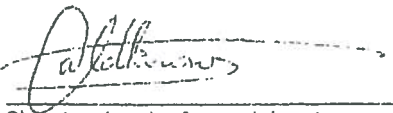
25. Can we use your name in news reports or letters we write regarding this matter/complaint

Yes ☒ X No _____

NOTE: Article 8 of the Human Rights Commission Complaints Handling Procedures provides that you may request that your personal particulars be kept confidential and not be disclosed to any person outside the South African Human Rights Commission's office in order to protect your identity.

26. Please tell us how you heard about the South African Human Rights Commission (e.g. radio advert, newspaper, poster, from a friend, etc)

KNOWN FROM PROVISIONS IN RELEVANT LEGISLATION AND THE NATURE OF THE WORK PERFORMED BY THE COMMISSION.



Signature/mark of complainant

23 May 2016
Date



THE 4 MAJOR BANKS IN SOUTH AFRICA AND THE KEY DECISION MAKERS INVOLVED THE DECISION OF THE 4 MAJOR BANKS IN SOUTH AFRICA. THE SOUTH AFRICAN MEDIA WHICH ARE PUBLISHING UNSUBSTANTIATED, UNVERIFIED REPORTS AS FACTS WHICH ARE CLOUDING THE PERCEPTIONS ABOUT THE SOUTH AFRICAN PUBLIC AS TO THE ROLE THAT THE GUPTA-FAMILY AS SHAREHOLDERS - AND NOT DIRECTORS ON THE BOARD OF COMPANIES - CAN PLAY IN THE MANAGEMENT OF THE AFFECTED COMPANIES AND EMPLOYEES.

17. Where can we contact them:

THE HEAD OFFICES OF THE 4 MAJOR BANKS IN SOUTH AFRICA - ABSA, FNB, NEDBANK & STANDARD BANK

18. If you do not know his/her/its/their names, please tell us anything you do know about him/her/it/them

THE 4 MAJOR BANKS IN SOUTH AFRICA - THE DECISIONS OF WHICH ULTIMATELY HAVE TO BE REPRESENTED BY THE RESPECTIVE CHIEF EXECUTIVES:

- ABSA - MARIA GRACIELA RAMOS BUCAD
- FNB - JACQUES CELLIERS
- NEDBANK - MICHAEL WILLIAM THOMAS BROWN
- STANDARD BANK - BEN KRUGER

19. Did anybody see or hear what happened (only people who actually saw or heard what happened, not people who heard about it from someone else)

THE KEY DECISION MAKERS OF THE 4 MAJOR BANKS IN SOUTH AFRICA - THE DECISIONS OF WHICH ULTIMATELY HAVE TO BE REPRESENTED BY THE CHIEF EXECUTIVES.

Full name(s) and surname(s) _____

How and where can we get in touch with them _____

20. In your own words, tell us exactly what happened (include all information but be as brief as possible)

SEE ATTACHED MOTIVATION OF THE NATURE OF COMPLAINT WITH REGARD TO THE VIOLATION OF RIGHTS.

21. Have you reported the matter to anyone else

Yes _____ No _____

If yes, who (e.g. Police, lawyer, Public Protector) _____

AIMING TO REPORT TO THE COMPETITION COMMISSION TO REQUEST AN INVESTIGATION AS THE DECISIONS OF THE 4 MAJOR BANKS APPEAR NOT TO BE COINCIDENTAL - CONCERN THAT THERE MAY BE COLLUSION OF SORTS - RATHER THAN SOUND DECISIONS THAT WILL STAND THE TEST OF SCRUTINY BY A COMPETENT COURT OF LAW

[Handwritten signature]
[Handwritten initials]

Fax number _____
E-mail address _____

11. Details of association, organisation or organ of state on whose behalf you are completing this form

Full name of the association, organisation or organ of state
GROUP OF EMPLOYEES WORKING FOR OAKBAY INVESTMENTS (PTY) LTD; ITS
SUBSIDIARIES AND ASSOCIATED COMPANIES THAT ARE IMPACTED BY THE DECISION
OF THE 4 MAJOR BANKS - ABSA, FNB, NEDBANK & STANDARD BANK - TO CLOSE THE
BANK ACCOUNTS OF ALL ENTITIES ASSOCIATED WITH THE GUPTA-FAMILY

Registration number _____
What does it do (e g civil, business, retailer, factory, NGO, etc) _____
Who should we talk to there _____
What is contact person's position (e g colleague, chairperson, director, secretary) _____

The address where we can send letters to _____
Postal Code _____
Telephone number _____
Cell phone number _____
Any other telephone number where we can contact him or her _____
Whose telephone number is it _____
Fax number _____
E-mail address _____

PART C: THE COMPLAINT

12. Date
EXACT DATE & TIME OF DECISION ONLY KNOWN TO THE KEY DECISION MAKERS OF
THE 4 MAJOR BANKS IN SOUTH AFRICA

On what date did it happen _____

13. Is it still happening

Yes ☒ No _____

14. Where did it happen
IN PLACE ONLY KNOWN TO THE KEY DECISION MAKERS OF THE 4 MAJOR BANKS IN
SOUTH AFRICA

Place _____ Town _____ Province _____

15. If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated

SEE ATTACHED MOTIVATION OF THE NATURE OF COMPLAINT WITH REGARD TO THE
VIOLATION OF RIGHTS.

16. If you know, the full name(s) and surname(s) of person(s), association,
organisation or organ of state who violated these rights, please tell us

Telephone number at work: 011-542-2000

Telephone number at home: [REDACTED]

Cell phone number: [REDACTED]

Any other telephone number where we can contact you: [REDACTED]

Whose telephone number is it: [REDACTED]

Fax number: [REDACTED]

E-mail address: [REDACTED]

Important:

Part B must only be filled in if you are writing on behalf of somebody else, for an association or organisation - do not fill this in if your own rights have been violated.

PART B: DETAILS OF PERSON ON WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)

6. Name and surname of person on whose behalf you are completing this form

His or her full name(s) and surname: I PERFORM THE ROLE OF GROUP HUMAN RESOURCES DIRECTOR FOR THE OAKBAY INVESTMENTS GROUP AND AM THEREFORE REFLECTING TO YOU CONCERNS OF EMPLOYEES/INDIVIDUALS, A REPRESENTATIVE SAMPLE OF WHICH CAN BE SEEN ON ACCOMPANYING SCHEDULE SIGNED BY AFFECTED PEOPLE

His/her nickname(s), if any: _____

7. ID number

His or her ID number: SEE ACCOMPANYING SCHEDULE SIGNED BY REPRESENTATIVE SAMPLE OF AFFECTED PEOPLE

If he or she does not have an ID number, his or her date of birth: _____

If he or she does not know his or her date of birth, his or her age: _____

8. Race (information required for statistical purposes only)

Please state his or her race: SEE ACCOMPANYING SCHEDULE SIGNED BY REPRESENTATIVE SAMPLE OF AFFECTED PEOPLE

9. Gender (information required for statistical purposes only)

Please state whether he or she is male or female: SEE ACCOMPANYING SCHEDULE SIGNED BY REPRESENTATIVE SAMPLE OF AFFECTED PEOPLE

10. Address and contact numbers

The address where he or she lives SEE ACCOMPANYING SCHEDULE SIGNED BY REPRESENTATIVE SAMPLE OF AFFECTED PEOPLE

Postal Code: _____

The address where we can send letters to: _____

Postal Code: _____

Telephone number at work: _____

Telephone number at home: _____

Cell phone number: _____

Any other telephone number where we can contact him or her: _____

Whose telephone number is it: _____

Q MAY

"UB 4.1"

- 1061

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The new address is
33 Hoofd Street
Braampark Forum 3
Braamfontain
2198

Postal address remains as:
Private Bag X 2700
Houghton
2041

New Telephone number
011 877-3800
Fax numbers: 011 403-0632



**SOUTH AFRICAN HUMAN RIGHTS COMMISSION
COMPLAINT FORM**

For office use only

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- Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.
- If there is more than one person who would like to send a complaint to us, each person must complete a separate form

PART A: YOUR DETAILS

1. Name and surname

Your full name(s) and surname: ANDRÉ OLDKNOW

Your nickname(s), if any _____

2. ID number

Your ID number: [REDACTED]

If you do not have an ID number, your date of birth _____

If you do not know your date of birth, your age _____

3. Race (information required for statistical purposes only)

Please state your race WHITE

4. Gender (information required for statistical purposes only)

Please state whether you are male or female; MALE

5. Address and contact numbers

The address where you live [REDACTED]

Postal Code [REDACTED]

The address where we can send letters to [REDACTED]

Postal Code: [REDACTED]

[Handwritten signature]
[Handwritten initials: AMH]

OAKBAY

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

By doing so, they hope to end the campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Financial Services Board to assist and guide us in our process to appeal to these institutions to reverse their decision to save the jobs of our staff.

We would like to appeal to your processes to ensure fairness from the non-banking sector of the area you regulate to ensure proper compliance in their dealings with ourselves. You will have noticed.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

Nazeem Howa
Chief Executive
Oakbay Investments
(Sent electronically without signature)



"OB 3.10"

OAKBAY

1063

24 April 2016

Adv D Tshidi
FSB Executive Officer

Dear Sir,

**RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES**

I am writing to you today to request some time in your diary to brief you about the possible significant job losses which may occur within our group of companies and to seek assistance around relief which may be possible through your oversight of the financial services sector.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa. In addition, we are now finding a reluctance from insurance companies to take on our business, for what we believe to be no good reason.

We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us. Nor for a decision by Mutual & Federal to insure a mine we acquired last week after receiving a detailed quotation. AIG is showing a similar reluctance. The M&F decision followed an extensive process of finalising and agreeing a quotation, with the policy to take effect on transfer of the shares.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer.

QMH

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.


By doing so, they hope to end the campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Minister of Finance with the political responsibility to govern the financial sector to end the deadly stranglehold the banks have placed on our businesses. If you have any questions, please do not hesitate to contact me.

Yours sincerely


Nazeem Howa
CEO, Oakbay Investments



"OB.3.9"

1065

OAKBAY

Minister's Office
Department of Labour
Room 1207, 12th Floor.
120 Plein Street.
Cape Town

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Dear Ms. Nelisiwe Mildred Oliphant.

**RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES**

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakhay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

QNT

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

By doing so, they hope to end the campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Minister of Finance with the political responsibility to govern the financial sector to end the deadly stranglehold the banks have placed on our businesses. If you have any questions, please do not hesitate to contact me.

Yours sincerely



Nazeem Howa

CEO, Oakbay Investments



"OB 3-8"

1067

OAKBAY

Minister's Office
Department of Mineral Resources
Trevenna Campus
Building 2 C
C/o Meinjes and Francis Baard Street
(Formerly Schoeman Street)
Sunnyside

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Dear Mr. Mosebenzi Joseph Zwane,

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR PORTFOLIO COMPANIES

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

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All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

AMT

"OB.3.7"

1068



N A T I O N A L C O N S U M E R C O M M I S S I O N

Office of the Commissioner
08 Bauhinia Road, Block 10, Berkley Office Park, Techno Park, Centurion, Tel: 012 761 3400, Email:
e.mohamed@thencc.org.za

16 May 2016

Attention: Nazeem Howa

Chief Executive

Oakbay Investments

Per Email: nazeemh@oakbay.co.za

Dear Sir

RE: THE DISPUTE BETWEEN YOURSELVES AND VARIOUS BANKS REGARDING BANKING SERVICES

I confirm receipt of your letter dated 24 April 2016 that was received by the Commission at a later date.

As you may be aware, the Financial Services Laws General Amendment Act 45 of 2013 which became effective on the 28th of February 2014 exempts the banking industry, the long and short term insurance industry, the pension funds industry etc., from the Consumer Protection Act 68, of 2008. The Commission as a creature of statute is mandated to only deal with matters that are not excluded from the consumer protection. As a result of this exclusion, the Commission is not empowered to deal with your complaint

We trust that the above is in order.

Kind Regards,

Ebrahim Mohamed

Commissioner,

National Consumer Commissioner

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay investments and have stepped down from all executive and non-executive positions and any involvement in the day to day running of the business.


By doing so, they hope to end the political campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs. We would like some times with the leadership of the dominant union in this sector to seek advice and assistance to avoid this eventuality.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Nazeem Howa
CEO, Oakbay Investments



"OB3.6"

1070

OAKBAY

14th April 2016

Mr David Sipunzi
General Secretary
National Union of Mineworkers
Johannesburg

Dear GS

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR PORTFOLIO COMPANIES

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

QMA

"OB 3.5"
- 1071

OAKBAY

18th July 2016

Sdumo Dhlamini
President
Cosatu
Republic of South Africa

Dear Comrade Sdumo

RE: Probable job losses at Impala Platinum Mine due to banking situation

It is with regret that we have to advise that Impala Platinum Limited have notified that after the current main commercial agreement with JIC Mining Services comes to an end on the 31st of July 2016, it will only permit the provision of services in terms of a contractual period covered for a further three (3) months until the 31st of October 2016. Impala Platinum Limited management's decision has been based on the fact that the 4 major South African Banks, ABSA, FNB, NEDBANK & STANDARD BANK have decided to close all bank accounts of Oakbay Investments Group companies.

Impala Platinum ("Impala") is not prepared to do business with Westdown Investments (Pty) Ltd trading as JIC Mining Services ("JIC") if the Company does not have a transactional bank account held at a South African Bank which operates as a local banking institution accountable under the Financial Intelligence Centre Act (FICA). If the situation therefore cannot be remedied or turned around before the 31st of October 2016, the commercial agreement between Impala will thus come to an end by the said date.

Our fear is that should this eventuality become a reality, it will open the way to many more such notices from companies with whom we may have contracts, impacting an industry that is already suffering the ravages of widespread job losses.

This situation forces the company to contemplate the termination of services of all its employees working at the mining operations of Impala Platinum Limited. Despite the circumstances JIC views its employees as its most valuable asset and we obviously intend to fully comply with extant legislation in our consultations with Organised Labour and affected parties.

We will endeavor to keep you updated about the process as it unfolds and appeal to you to assist us to save these jobs.

Yours sincerely


Nazeem Howa
Chief Executive
Oakbay Investments



Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

By doing so, they hope to end the campaign against Oakbay

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Minister of Finance with the political responsibility to govern the financial sector to end the deadly stranglehold the banks have placed on our businesses. If you have any questions, please do not hesitate to contact me.

Yours sincerely

Nazeem

Nazeem Howa

CEO, Oakbay Investments

QMH

"OB.3.4"

- 1073

OAKBAY

Goverment's
Office

South African Reserve Bank
370 Helen Joseph Street
Pretoria
0002

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Dear Mr. Mr E. L. Kganyago.

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

Q MH

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

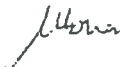
By doing so, they hope to end the political campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs. We would like some times with the leadership of the ruling party to seek advice and assistance to avoid this eventuality.

If you have any questions, please do not hesitate to contact me.

Yours sincerely


Nazeem Howa
CEO, Oakbay Investments

Q MH

0183.3.4

1075

OAKBAY

8th April 2016

Mr Gwede Mantashe
Secretary General
African National Congress
Luthuli House
Johannesburg

Dear SG,

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES

I wanted to request some time from you for Mr Moegsien Williams and myself to address the national officials on Monday to share with you our huge concerns that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

QMH

By doing so they hope to end the campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Leader of the Official Opposition to appeal to the banks to review their decision to save the jobs of our staff.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Nazeem Howa
Chief Executive
Oakbay Investments



'08.3.2''

1077

OAKBAY

21 April 2016

Mr Musi Maimane
Leader of the Official Opposition
Democratic Alliance

Dear Sir,

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR
PORTFOLIO COMPANIES

I am writing to you today to request some time in your diary to brief you about the possible significant job losses which may occur within our group of companies.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 1,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer.

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

QMH

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.


By doing so, they hope to end the political campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

If you have any questions, please do not hesitate to contact me.

Yours sincerely


Nazeem Howa
CEO, Oakbay Investments



OB 3.1 4

1079

OAKBAY

Office of the President
The Presidency of the Republic of South Africa
Union Buildings
Private Bag X1000,
Pretoria.
0001

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Your Excellency Mr. President.

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR PORTFOLIO COMPANIES

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

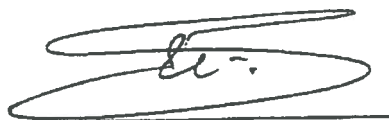
QMM

3.

I confirm that I have read the answering affidavit deposed to by **RONICA RAGAVAN**.

4.

I confirm the correctness of the contents of the answering affidavit in so far as same relates to me.

**DEPONENT**

Signed and sworn before me at PRETORIA on this the 30th day of January 2017 the deponent having acknowledged that the deponent knows and understands the contents of this declaration and that the deponent has no objection to the taking of the prescribed oath and that the deponent considers it binding on their conscience. I certify that the provisions of Regulation R. 1258 of 21 July 1972 have been complied with.

**COMMISSIONER OF OATHS****FULL NAMES:****OFFICIAL CAPACITY:****AREA APPOINTED:**

MOHLAPAMEETSE HAPPY MAGOMA
ATTORNEY / COMMISSIONER OF OATHS
65 RIGEL AVENUE
WATERKLOOF RIDGE, FTA - EAST
PRETORIA
TEL: (012) 327 4480 / FAX: 086 619 9440



ABSA BANK LTD	15 TH RESPONDENT
FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
REGISTRAR OF BANKS	19 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

STEPHANUS JACOBUS DANIEL NEL

hereby declare under oath as follows:

1.

I am a major male businessman and the Chief Executive Officer of Sahara Computers
(Pty) Ltd.

2.

The facts contained herein fall within my own personal knowledge unless otherwise
stated and are to the best of my belief both true and correct.

Q

J-MH

VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5456
✉ 62 RIGEL AVE
WATERKLOOF
GT VD MERWE/yvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

1082

10082.54

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

JIC MINING SERVICES (1979) (PTY) LTD

5TH RESPONDENT

BLACKEDGE EXPLORATION (PTY) LTD

6TH RESPONDENT

TNA MEDIA (PTY) LTD

7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

Q

DMH

3.

I confirm that I have read the answering affidavit deposed to by **RONICA RAGAVAN**.

4.

I confirm the correctness of the contents of the answering affidavit in so far as same relates to me.


 DEPONENT

Signed and sworn before me at PRETORIA on this the 20TH day of January 2016 ^{Full} the deponent having acknowledged that the deponent knows and understands the contents of this declaration and that the deponent has no objection to the taking of the prescribed oath and that the deponent considers it binding on their conscience. I certify that the provisions of Regulation R. 1258 of 21 July 1972 have been complied with.


 COMMISSIONER OF OATHS

FULL NAMES:

OFFICIAL CAPACITY:

AREA APPOINTED:

MOHLAPAMEETSE HAPPY MAGOMA
 ATTORNEY / COMMISSIONER OF OATHS
 65 RIGEL AVENUE
 WATERKLOOF RIDGE, PTA - EAST
 PRETORIA
 TEL: (012) 327 4480 / FAX: 086 619 9440



ABSA BANK LTD	15 TH RESPONDENT
FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
REGISTRAR OF BANKS	19 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

PIETER JOHANNES VAN DER MERWE

hereby declare under oath as follows:

1.

I am a major male businessman and the Chief Executive Officer of VR Laser Services (Pty) Ltd.

2.

The facts contained herein fall within my own personal knowledge unless otherwise stated and are to the best of my belief both true and correct.

Q



VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5456
✉ 62 RIGEL AVE
WATERKLOOF
GT VD MERWE/lyvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

"082.4"

1085

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

JIC MINING SERVICES (1979) (PTY) LTD

5TH RESPONDENT

BLACKEDGE EXPLORATION (PTY) LTD

6TH RESPONDENT

TNA MEDIA (PTY) LTD

7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT






3.

I confirm that I have read the answering affidavit deposed to by **RONICA RAGAVAN**.

4.

I confirm the correctness of the contents of the answering affidavit in so far as same relates to me.

**DEPONENT**

Signed and solemnly declared before me at PRETORIA on this the 20TH day of January 2017 the deponent having acknowledged that the deponent knows and understands the contents of this declaration and that the deponent has no objection to the taking of the prescribed oath and that the deponent considers it binding on their conscience. I certify that the provisions of Regulation R. 1258 of 21 July 1972 have been complied with.


COMMISSIONER OF OATHS**FULL NAMES:****OFFICIAL CAPACITY:****AREA APPOINTED:**

MOHLAPAMEETSE HAPPY MAGOMA
ATTORNEY / COMMISSIONER OF OATHS
65 RIGEL AVENUE
WATERKLOOF RIDGE, PTA - EAST
PRETORIA
TEL: (012) 327 4480 / FAX: 086 619 9440



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DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

ANDRE OLDKNOW

hereby declare solemnly as follows:

1.

I am a major male businessman and the Group Human Resources Director of the Oakbay Group.

2.

The facts contained herein fall within my own personal knowledge unless otherwise stated and are to the best of my belief both true and correct.





VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5456
✉ 62 RIGEL AVE
WATERKLOOF
GT VD MERWE/yvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

"OB2.3"

1088

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

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5TH RESPONDENT

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7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

Q


10/11/17

3.

I confirm that I have read the answering affidavit deposed to by **RONICA RAGAVAN**.

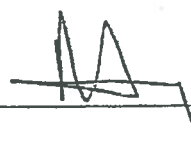
4.

I confirm the correctness of the contents of the answering affidavit in so far as same relates to me.



DEPONENT

Signed and sworn before me at PRETORIA on this the 20th day of January 2017 the deponent having acknowledged that the deponent knows and understands the contents of this declaration and that the deponent has no objection to the taking of the prescribed oath and that the deponent considers it binding on their conscience. I certify that the provisions of Regulation R. 1258 of 21 July 1972 have been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

OFFICIAL CAPACITY:

AREA APPOINTED:

MOHLAPAMEETSE HAPPY MAGOMA
ATTORNEY / COMMISSIONER OF OATHS
65 RIGEL AVENUE
WATERKLOOF RIDGE, PTA - EAST
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TEL: (012) 327 4480 / FAX: 086 619 9440



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REGISTRAR OF BANKS	19 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

AJAY KUMAR GUPTA

hereby declare under oath as follows:

1.

I am a major male businessman.

2.

The facts contained herein fall within my own personal knowledge unless otherwise stated and are to the best of my belief both true and correct.

Q

 MH

VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5456
✉ 62 RIGEL AVE
WATERKLOOF
GT VD MERWE/yvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

1091

"082.2"

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

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7TH RESPONDENT

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10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

Q MTT


A MTH

3.

I confirm that I have read the answering affidavit deposed to by **RONICA RAGAVAN**.

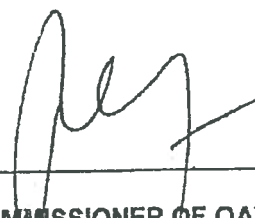
4.

I confirm the correctness of the contents of the answering affidavit in so far as same relates to me.



 DEPONENT

Signed and sworn before me at Tokai on this the 19 day of January 2017 the deponent having acknowledged that the deponent knows and understands the contents of this declaration and that the deponent has no objection to the taking of the prescribed oath and that the deponent considers it binding on their conscience. I certify that the provisions of Regulation R. 1258 of 21 July 1972 have been complied with.



 COMMISSIONER OF OATHS

TIMOTHY LISTER MAUGHAN
 UNIT 17, 10 PEPPER STREET
 CAPE TOWN
 COMMISSIONER OF OATHS
 PRACTISING ATTORNEY R.S.A

FULL NAMES:

OFFICIAL CAPACITY:

AREA APPOINTED:

MT

Q

ABSA BANK LTD	15 TH RESPONDENT
FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
REGISTRAR OF BANKS	19 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

NAZEEM HOWA

hereby declare under oath as follows:

1.

I am an adult male businessman previously employed as CEO of the Oakbay Group.

2.

The facts contained herein fall within my own personal knowledge unless otherwise stated and are to the best of my belief both true and correct.



 M7

VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
& 012 343 5456
☐ 82 RIGEL AVE
WATERKLOOF
GT VD MERWE/yvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

1094

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

4TH RESPONDENT

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7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

**JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)**

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

Q

14/11/16
11


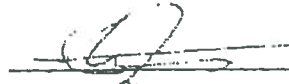

INTERIM MEDIA NETWORKS PROPRIETARY LIMITED
 (INCORPORATED IN SOUTH AFRICA)
 ("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS
 ON 16 JANUARY 2017

RRR01/2017 - AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

- 1 The company authorises Ms. Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa.
- 2 Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above
- 3 The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion

Director	Agree	Disagree	Signature
G NAIDOO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
M WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	
PS MOSOMANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

RRR01/2017
 Authority to sign affidavit
 16 January 2017

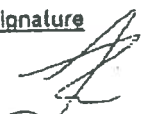



SAHARA COMPUTERS PROPRIETARY LIMITED
(Registration number 1997/015590/07)
("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS ON 16 JANUARY 2017

RRR01/2017 - AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

- 1 The company authorises Ms Ronica Ragavan, in her capacity as authorised representative to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa.
- 2 Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
- 3 The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
E TAK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
G NAIDOO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
SJD NEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
PU GOVENDER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

RRR01/2017
Authority to sign affidavit
16 January 2017

QNH

CONFIDENT CONCEPT PROPRIETARY LIMITED
(Reg.No. 2006/023982/07)
("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTOR ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as authorised person, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
A CHAWLA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>A Chawla</u>

QMH

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PROPRIETARY LIMITED
(Registration number 2002/004934/07)
("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS OF THE COMPANY IN
TERMS OF SECTION 73 OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
A CHAWLA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>A Chawla</u>
R RAGAVAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>R Ragavan</u>

Qmth




INA MEDIA PROPRIETARY LIMITED
 (Incorporated in South Africa)
 ("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS ON 16 JANUARY 2017

RRR01/2017 - AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

- 1 The company authorises Ms Ronica Ragavan, in her capacity as authorised representative to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa
- 2 Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above
- 3 The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
G NAIDOO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
M WILLIAMS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
W TALIEP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

QMH

RRR01/2017
 Authority to sign affidavit
 16 January 2017

BLACKEDGE EXPLORATION PROPRIETARY LIMITED
(Registration number 2008/006957/07)
("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTOR ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

Director

Agree Disagree

Signature

A CHAWLA



A Chawla

Q MH

WESTDAWN INVESTMENTS PROPRIETARY LIMITED
(Reg. No. 2006/020386/07)
("the Company")

ROUND ROBIN RESOLUTION ADOPTED BY THE DIRECTORS OF THE COMPANY IN
TERMS OF SECTION 73 OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

Director

Agree

Disagree

Signature

R. RAGAVAN



Ronica Ragavan

LB LOURENS



LB Lourens

AMH

RRR01/2017

Authority to sign affidavit

16 January 2017

TEGETA EXPLORATION AND RESOURCES (PTY) LTD
Registration Number 2006/014492/07
(the "Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
A CHAWLA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>A Chawla</u>
R NATH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>R Nath</u>
R RAGAVAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>R Ragavan</u>

Q MH

"OB 1"

- 1103

OAKBAY INVESTMENTS PROPRIETARY LIMITED
(Registration number 2006/017975/07)
("Company")

ROUND ROBIN RESOLUTION OF DIRECTORS PASSED IN TERMS OF SECTION 74
OF THE COMPANIES ACT OF 2008 PASSED ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms. Ronica Ragavan, in her capacity as acting CEO, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms. Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms. Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
A CHAWLA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>A Chawla</u>
R RAGAVAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Ragavan</u>

QMH


SHIVA URANIUM PROPRIETARY LIMITED
 (Registration Number 1921/006955/07)
 ("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS OF THE COMPANY
ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____
MJ MTSHALI	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____ 

MH

Q

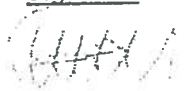
SHIVA URANIUM PROPRIETARY LIMITED
 (Registration Number 1921/006955/07)
 ("the Company")

ROUND ROBIN RESOLUTION PASSED BY THE DIRECTORS OF THE COMPANY
ON 16 JANUARY 2017

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter and prosecute it to its conclusion.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	 _____
MJ MTSHALI	<input type="checkbox"/>	<input type="checkbox"/>	_____

Handwritten initials and a circled 'A' in the bottom right corner.

1106

OAKBAY RESOURCES AND ENERGY LIMITED
(Registration number 2009/021537/06)
("Company")

**ROUND ROBIN RESOLUTIONS ADOPTED BY THE DIRECTORS OF THE COMPANY IN
TERMS OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017**

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit, pertaining to matters relevant to the Company, in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
TW RENSEN	<input type="checkbox"/>	<input type="checkbox"/>	_____
MV PAMENSKY	<input type="checkbox"/>	<input type="checkbox"/>	_____
DJ NYAMANE	<input type="checkbox"/>	<input type="checkbox"/>	_____
T SCOTT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____

RRR01/2017
Authority to sign affidavit
16 January 2017



OAKBAY RESOURCES AND ENERGY LIMITED
 (Registration number 2009/021537/06)
 ("Company")

**ROUND ROBIN RESOLUTIONS ADOPTED BY THE DIRECTORS OF THE COMPANY IN
 TERMS OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017**

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

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2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
TW RENSEN	<input type="checkbox"/>	<input type="checkbox"/>	_____
MV PAMENSKY	<input type="checkbox"/>	<input type="checkbox"/>	_____
DJ NYAMANE	<input type="checkbox"/>	<input type="checkbox"/>	_____
T SCOTT	<input type="checkbox"/>	<input type="checkbox"/>	_____
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____

RRR01/2017
 Authority to sign affidavit
 16 January 2017

9

OAKBAY RESOURCES AND ENERGY LIMITED
 (Registration number 2009/021537/06)
 ("Company")

**ROUND ROBIN RESOLUTIONS ADOPTED BY THE DIRECTORS OF THE COMPANY IN
 TERMS OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017**

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit, pertaining to matters relevant to the Company, in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
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<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
TW RENSEN	<input type="checkbox"/>	<input type="checkbox"/>	_____
MV PAMENSKY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
DJ NYAMANE	<input type="checkbox"/>	<input type="checkbox"/>	_____
T SCOTT	<input type="checkbox"/>	<input type="checkbox"/>	_____
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____

9


OAKBAY RESOURCES AND ENERGY LIMITED
 (Registration number 2009/021537/06)
 ("Company")

**ROUND ROBIN RESOLUTIONS ADOPTED BY THE DIRECTORS OF THE COMPANY IN
 TERMS OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017**

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

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2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
TW RENSEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MV PAMENSKY	<input type="checkbox"/>	<input type="checkbox"/>	_____
DJ NYAMANE	<input type="checkbox"/>	<input type="checkbox"/>	_____
T SCOTT	<input type="checkbox"/>	<input type="checkbox"/>	_____
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____

RRR01/2017
 Authority to sign affidavit
 16 January 2017

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- 1110


OAKBAY RESOURCES AND ENERGY LIMITED
(Registration number 2009/021537/06)
("Company")

**ROUND ROBIN RESOLUTIONS ADOPTED BY THE DIRECTORS OF THE COMPANY IN
TERMS OF THE COMPANIES ACT, 2008 ON 16 JANUARY 2017**

RRR01/2017 – AUTHORITY TO SIGN AFFIDAVIT

IT IS RESOLVED THAT

1. The company authorises Ms Ronica Ragavan, in her capacity as authorised representative, to act on its behalf, to file an affidavit, pertaining to matters relevant to the Company, in the matter between the Minister of Finance and the Company in the High Court of South Africa;
2. Ms Ronica Ragavan is authorised to sign whatever documents and attest to affidavits as are required for the purposes of 1 above.
3. The actions of Ms Ronica Ragavan in the application launched by the Minister of Finance, case number 80978/16 in the High Court of South Africa (Gauteng Local Division, Pretoria) including the appointment of Van der Merwe & Associates Attorneys are hereby ratified and she is authorised to act on the company's behalf in this matter.

<u>Director</u>	<u>Agree</u>	<u>Disagree</u>	<u>Signature</u>
TW RENSEN	<input type="checkbox"/>	<input type="checkbox"/>	_____
MV PAMENSKY	<input type="checkbox"/>	<input type="checkbox"/>	_____
DJ NYAMANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____ 
T SCOTT	<input type="checkbox"/>	<input type="checkbox"/>	_____
J ROUX	<input type="checkbox"/>	<input type="checkbox"/>	_____



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

"OB 194"

-- 1111

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiant
Ilanie Loots (LLB)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Consultant
*Nico Hager (B.Luris LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

Pretoria
Street Address / Straatadres:
62 Rigel Avenue, Waterkloof
Ridge, Pretoria

Postal Address / Posadres:
Posbus / P.O. Box 27756
Sunnyside
0132

Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

*Sandton
Tel: 011 542 2000
Fax/Faks: 086 603 4356

Our Ref: MR GT VD MERWE/st078

Your Ref: MKIVA CLEMENT
ALAN KEEP

26-10-2016

URGENT

Bowman Gilfillan Incorporated
Clement.mkiva@bowmanslaw.com
Alan.keep@bowmanslaw.com

Dear Sirs,

**OAKBAY INVESTMENTS (PTY) LTD AND OTHERS / MINISTER
OF FINANCE
CASE NUMBER: 80978/16**

We refer to the abovementioned matter.

We noted from a notice of appointment as attorneys of record filed on behalf of the Eighteenth Respondent that your firm will represent the Seventeenth Respondent, Standard Bank of South Africa Limited.

We have not been furnished with a copy of your notice served in this regard and we kindly request you to serve same on us. You are most welcome to send the notice via email to simone@vdmass.co.za. A copy of our notice of intention to oppose is appended hereto for your kind attention and knowledge.

It is common cause that Standard Bank closed bank accounts conducted by our clients over a number of years and you might be aware of the fact that our clients have always maintained the view that your client acted in bad faith in not only closing our clients' accounts but also refusing to furnish reasons for doing so.

Q M7

Simone

From: Simone <simone@vdmass.co.za>
Sent: Wednesday, 26 October 2016 11:48 AM
To: 'Gerhard.Rudolph@bakermckenzie.com'; 'Widaad:Ebrahim@bakermckenzie.com'; 'Callum.OConnor@bakermckenzie.com'
Subject: O78 / MINISTER OF FINANCE
Attachments: 201610261149.pdf
Importance: High

Vriendelike groete/Kind regards

Simone Taljaard

Legal secretary for

Gert van der Merwe
Van der Merwe & Ass Inc
0876540209
62 Rigel Ave North
Waterkloof Ridge
Pretoria



van der Merwe
&
Associates Incorporated

Handwritten initials: A M



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiaat
Ilanie Loots (LLB)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Consultant
*Nico Hager (B.Juris LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

Pretoria
Street Address / Straatadres:
62 Rigel Avenue, Waterkloof
Ridge, Pretoria

Postal Address / Posadres:
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Sunnyside
0132

Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

*Sandton
Tel: 011 542 2000
Fax/Faks: 086 603 4356

Our Ref: MR GT VD MERWE/st/078

Your Ref: G RUDOLPH/CO

26-10-2016

URGENT

Baker & McKenzie

Gerhard.Rudolph@bakermckenzie.com

Widaad.Ebrahim@bakermckenzie.com

Callum.OConnor@bakermckenzie.com

Dear Sirs,

**OAKBAY INVESTMENTS (PTY) LTD AND OTHERS / MINISTER
OF FINANCE**

CASE NUMBER: 80978/16

We refer to the abovementioned matter and in particular the notice of appointment as attorneys of record served by your offices on or about 25 October 2016 confirming that:

1. You act on behalf of the Eighteenth Respondent;
2. The Eighteenth Respondent supports the relief sought by the Applicant;
3. That the Eighteenth Respondent will accept electronic service of all documents by email at the email addresses provided for on your notice;
4. That the Eighteenth Respondent may file an affidavit within the timeframes prescribed for the filing of answering affidavits.

Handwritten signature/initials

process of drafting our clients' opposing papers and, if possible, would like to include any information held by our clients' erstwhile bankers.

We obviously tender the reasonable costs for furnishing us with the aforesaid copies and/or access to information held by your client in this regard. If we do not receive any formal response or feedback we will assume that your client does not have any such information or documentation at its disposal.

All our clients' rights remain strictly reserved.

Kind regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES



- 1115

of the provisions of the Financial Intelligence Centre Act, No. 38 of 2001.

We are in the process of collating the bundle of documents which we intend to use in drafting our clients' opposing affidavit. Your client, our clients' erstwhile banker, has information pertaining to the transactions referred to in Annexure "P2" of the founding papers to the application (we must assume this since it has not been disclosed to us) and your client must have considered certain facts when your client decided to terminate its relationship with our clients.

It was widely reported in the media that our clients were frustrated with the refusal of the banks to furnish reasons for the closure of bank accounts and from the annexures to the application it is evident that our clients maintained the view that the banks closed their accounts as a result of political agendas and ulterior motives.

In correspondence the Applicant (the Minister of Finance) indicated that he was concerned that these allegations of impropriety would harm a stable banking sector in South Africa. In this regard we take the liberty of quoting the following from paragraph 24 of the affidavit deposed to by Minister Gordhan:

"If the banks have acted lawfully and within the parameters of their statutory duty these should evidence the bases on which each reporting bank has concluded that the dealing in question could directly or indirectly make that bank a party to or accessory to contraventions of law. Conversely, the full reports, if disclosed pursuant to FICA, would confirm whether there is any substance to the serious contentions advanced by Oakbay that the banks have acted improperly in closing the accounts". (sic)

We direct this formal letter to you requesting you to furnish us with copies of any and all information including any possible suspicious or unusual transactions, correspondence and/or reasons causing your client (ABSA Bank) to close our clients' accounts and to refuse to conduct any further business with our clients, its associated entities or its shareholders.

May we kindly request you to furnish us with copies of any and all such documents and/or access to any such information within the next 5(Five) days since we are in the

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It is common cause that Nedbank closed bank accounts conducted by our clients over a number of years and you might be aware of the fact that our clients have always maintained the view that your client acted in bad faith in not only closing our clients' accounts but also refusing to furnish reasons for doing so.

We have recently been furnished with the application in question from which it seems as if certain transactions were reported in terms of the provisions of the Financial Intelligence Centre Act, No. 38 of 2001.

We are in the process of collating the bundle of documents which we intend to use in drafting our clients' opposing papers. Your client, our clients' erstwhile banker, has information pertaining to the transactions referred to in Annexure "P2" of the founding papers to the Minister's application (we must assume this since it has not been disclosed to us) and your client must have considered certain facts when your client decided to terminate its relationship with our clients.

It was widely reported in the media that our clients were frustrated with the refusal of the banks to furnish reasons for closure of the bank accounts and from the annexures to the application it is evident that our clients maintain the view that the banks closed their accounts as a result of political agendas and ulterior motives.

In correspondence the Applicant (the Minister of Finance) indicated that he was concerned that these allegations of impropriety would harm a stable banking sector in South Africa. In this regard we take the liberty of quoting the following from paragraph 24 of the affidavit deposed to by Minister Gordhan:

"If the banks have acted lawfully and within the parameters of their statutory duty these should evidence the bases on which each reporting bank has concluded that the dealing in question could directly or indirectly make that bank a party to or accessory to contraventions of law. Conversely, the full reports, if disclosed pursuant to FICA, would confirm whether there is any substance to the serious contentions advanced by Oakbay that the banks have acted improperly in closing the accounts". (sic)

We direct this formal letter to you requesting you to furnish us with copies of any and all information including any possible suspicious or unusual transactions, correspondence and/or reasons causing your client (Nedbank) to close our

MT

clients' accounts and to refuse to conduct any further business with our clients, its associated entities or its shareholders.

May we kindly request you to furnish us with copies of any and all such documents and/or access to any such information within the next 5(Five) days since we are in the process of drafting our clients' opposing papers and, if possible, would like to include any information held by our clients' erstwhile bankers.

We obviously tender the reasonable costs for furnishing us with the aforesaid copies and/or access to information held by your client in this regard. If we do not receive any formal response or feedback we will assume that your client does not have any such information or documentation at its disposal.

All our clients' rights remain strictly reserved.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES





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Our Ref: **MR GT VD MERWE/st/078**

Your Ref: **M KATZ/D LAMBERT/0416998**

24-10-2016

Edward Nathan Sonnenbergs
dlambert@ensafrica.com

Dear Sir/Madam,

OAKBAY INVESTMENTS (PTY) LTD AND TWENTY OTHERS /
MINISTER OF FINANCE
CASE NUMBER: 80978/2016

We refer to the abovementioned matter and in particular your notice served on behalf of the Fifteenth Respondent, ABSA Bank, indicating that the Fifteenth Respondent supports the relief sought by the Applicant.

In your notice you indicate that ABSA Bank will file an explanatory affidavit within the timeframes prescribed for the filing of answering affidavits.

You are obviously aware of the fact that our clients have always maintained the view that your client acted in bad faith in not only by closing our clients' accounts but also refusing to furnish proper reasons for doing so.

We have, recently, been furnished with the application in question from which it seems as if certain transactions were reported in terms

formal response or feedback we will assume that your client does not have any such information or documentation at its disposal.

All our clients' rights remain strictly reserved.

Kind regards,


Gert van der Merwe
VAN DER MERWE & ASSOCIATES



the application (we must assume this since it has not been disclosed to us) and your client must have considered certain facts when your client decided to terminate its relationship with our clients.

It was widely reported in the media that our clients were frustrated with the refusal of the banks to furnish reasons for the closure of bank accounts and from the annexures to the application it is evident that our clients maintained the view that the banks closed their accounts as a result of political agendas and ulterior motives.

In correspondence the Applicant (the Minister of Finance) indicated that he was concerned that these allegations of impropriety would harm a stable banking sector in South Africa. In this regard we take the liberty of quoting the following from paragraph 24 of the affidavit deposed to by Minister Gordhan:

"If the banks have acted lawfully and within the parameters of their statutory duty these should evidence the bases on which each reporting bank has concluded that the dealing in question could directly or indirectly make that bank a party to or accessory to contraventions of law. Conversely, the full reports, if disclosed pursuant to FICA, would confirm whether there is any substance to the serious contentions advanced by Oakbay that the banks have acted improperly in closing the accounts". (sic)

We direct this formal letter to you requesting you to furnish us **with copies of any and all information including any possible suspicious or unusual transactions, correspondence and/or reasons causing your client (First National Bank) to close our clients' accounts and to refuse to conduct any further business with our clients, its associated entities or its shareholders.**

May we kindly request you to furnish us with copies of any and all such documents and/or access to any such information within the next 5(Five) days since we are in the process of drafting our clients' opposing papers and, if possible, would like to include any information held by our clients' erstwhile bankers.

We obviously tender the reasonable costs for furnishing us with the aforesaid copies and/or access to information held by your client in this regard. If we do not receive any

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Our Ref: **MR GT VD MERWE/st/O78**

Your Ref: **MR ASLAM MOOSAJEE**

24-10-2016

Norton Rose Fulbright South Africa Incorporated
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Dear Sir/Madam,

**OAKBAY INVESTMENTS (PTY) LTD AND TWENTY OTHERS /
MINISTER OF FINANCE
CASE NUMBER: 80978/2016**

We refer to the abovementioned matter and in particular your notice served on behalf of the Sixteenth Respondent, First National Bank.

You are obviously aware of the fact that our clients have always maintained the view that your client acted in bad faith in not only by closing our clients' accounts but also refusing to furnish proper reasons for doing so.

We have, recently, been furnished with the application in question from which it seems as if certain transactions were reported in terms of the provisions of the Financial Intelligence Centre Act, No. 38 of 2001.

We are in the process of collating the bundle of documents which we intend to use in drafting our clients' opposing affidavit. Your client, our clients' erstwhile banker, has information pertaining to the transactions referred to in Annexure "P2" of the founding papers to

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KEY STATISTICS FOR 2015/16

180 363	Number of suspicious transaction reports received
9 314 339	Number of cash threshold reports received
34 255	Number of institutions registered with the FIC
R184 6 million	Blocked as suspected proceeds of crime

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of the transactions or activities relating to the financial conduct of reported person(s) and how those transactions or activities are linked with the person(s) mentioned in the FIC's referral. The FIC extracts this information from the reports which persons make to the FIC. In addition to these factual descriptions, a referral from the FIC also contains the FIC's analysis of the events mentioned in the referral and their potential links to unlawful activity, as well as the FIC's advice on the potential unlawful activity which the recipient of the referral may wish to pursue in an investigation. However, any suggestion that the FIC refers mere reports for investigation is technically and factually incorrect.

The FIC wants to assure South Africans that we will continue protecting citizens' rights despite an onslaught of negative and disparaging remarks regarding co-operation. Our records reflect numerous citations from law enforcement agencies for outstanding co-operation. Lastly, we want to assure all law enforcement agencies and victims of crime that the FIC will lawfully co-operate as we have done over the past 14 years to make our information available in order to combat unlawful activity in the Republic of South Africa.

--- ends ---

ISSUED BY THE FINANCIAL INTELLIGENCE CENTRE FOR MORE INFORMATION

PLEASE E-MAIL: communications@fic.gov.za

Note to editors: The Financial Intelligence Centre (FIC) is South Africa's national centre for the gathering, analysis and dissemination of financial intelligence. The FIC was established in 2003 through the promulgation of the Financial Intelligence Centre Act 2001 (38 of 2001) (FIC Act) to identify proceeds of crime, combat money laundering and the financing of terrorism. The FIC reports to the Minister of Finance and to Parliament.

In protecting the financial system, the FIC's primary activities as set out in its founding legislation, are to: process, analyse, interpret and retain information disclosed to and obtained by the FIC; inform, advise, co-operate with and make its financial intelligence products available to investigating authorities supervisory bodies, intelligence services and SARS to facilitate the country's administration and enforcement of law; supervise and enforce compliance with the FIC Act in affected institutions and by individuals not regulated or supervised by a supervisory body, or where the supervisory body is unable to act; exchange information with similar bodies in other countries; monitor and give guidance to accountable and reporting institutions, supervisory bodies and individuals regarding their compliance with the FIC Act; implement a registration system for all affected institutions and individuals; annually review the implementation of the FIC Act and report on this to the Minister of Finance.

The FIC Act establishes a regulatory framework of compliance control measures, which requires certain categories of business (defined as schedule 1 in the FIC Act) to take steps regarding: registration with the FIC; client identification, verification and record-keeping; appointment of compliance officers; training employees on compliance; reflecting their organisation's compliance structures and filing statutory reports with the FIC. The Act also requires all businesses to report suspicious and unusual financial transactions.

Statutory reports submitted to the FIC are the basis upon which the FIC's financial intelligence is developed. This is important for law enforcement, revenue agencies, police and others to support their investigations and forfeiture processes.

the very safety net built by Parliament to balance the interests in having access to private information for lawful purposes in the application of the criminal justice system with protection of our citizens.

One of the requirements to access this information includes the need for the requestor of the information to have a national mandate to investigate an unlawful activity. Another requirement is the need for the investigating authority, at the very least, to indicate what unlawful activity is being investigated. These are very low standards for access to such privileged information, far lower than the test used by our courts to grant warrants to access similar information for evidentiary purposes. These are the factors that would confirm that information reported to the FIC is required for a legitimate reason and once these criteria have been met the FIC has no discretion to refuse a request for the sharing of information.

If the FIC refuses access to this information which it is obliged to protect it is because the requestor did not meet the legal threshold set by the legislator to access such information. We also want to point out that private persons are not entitled to access information reported to the FIC and, in particular, not the content of reports on suspicious or unusual transactions. These checks and balances are inherent in the provisions of the FIC Act.

It is very unfortunate that, in this instance, failure by the requestor of this information to meet the legislative standard, has been interpreted as the FIC being unco-operative. However, the FIC cannot become party to arbitrary violation of citizens' rights and the legislative standard designed to protect our citizens. Instead, where requests from competent authorities, such as law enforcement agencies, are defective, the FIC assists by indicating what is required from the requestor to lay a proper legal basis for the sharing of requested information.

We also want to point out that the contents of a report on a suspicious or unusual transaction is hearsay, by nature, and is based on a reporter's suspicions and therefore will not meet evidentiary standards set by our judiciary for use in certain legal proceedings. The FIC Act provides that any person making such a report may not be compelled to testify in criminal proceedings that may follow the report and that their identity may not be revealed without their consent. Thus it is domestic and international practice that the actual content of a report on a suspicious or unusual transaction cannot be used, in and of itself, to support a conviction in a criminal prosecution.

The reports we refer for investigation do not contain the actual suspicious or unusual transaction reports made to us. Instead it contains a substantial amount of information relating to descriptions

We suspect that this is because there is a general misunderstanding of a report on a transaction, which a reporter deems suspicious or unusual and our role in protecting the reported information. We also want to explain the FIC's role and responsibility as the custodians of this information and the role and responsibility of those who are entitled to access such information.

A report on a suspicious or unusual transaction contains information about a person's identity as well as the person's most private information such as bank account details, signatories on accounts, balances in accounts, and so on.

It also contains information about financial transactions the parties involved, amounts involved, etc. This is non-public, private and confidential information about a person that is protected under the Protection of Private Information Act and the Constitution of the Republic of South Africa.

We can categorically state that the FIC has never, since its inception, given copies of reports on suspicious or unusual transactions to investigators, politicians (including the Minister of Finance who is the Executive Authority responsible for the FIC) or any other person, or allowed any such person to access to such reports. Any suggestion of such allegations is incorrect. The Minister's application contained a certificate from the FIC and not the actual, confidential suspicious and unusual transaction reports.

Unlawful access to such sensitive information has serious ramifications, including possible criminal liability. In addition to private information of individuals, a report on a suspicious or unusual transaction also contains other highly sensitive information such as details about who reported the transaction and the reasons why the reporter considered the relevant transactions to be suspicious or unusual and therefore submitting it to the FIC.

The FIC is entrusted to protect the confidentiality of this information and to ensure no person's rights are unlawfully and unfairly prejudiced through illegitimate access, be it the reporter of the suspicious or unusual transaction, the reported person or third parties mentioned in the report.

The FIC is therefore the gatekeeper of this information and the FIC's job is to protect and preserve citizen's rights. If we fail in our duty citizens' rights as enshrined in the Constitution will be unfairly prejudiced. Access to the information reported to the FIC is regulated in the FIC Act and the requirements to access this information are also defined in the Act. These safeguards were put in place by Parliament and not the FIC. These laws were put in place to protect citizens' rights and prevent abuse of their information. If we deviate from the standards set in law we undermine



Financial
Intelligence Centre

MEDIA ARTICLE

CO-OPERATING FULLY WITH LAW ENFORCEMENT AND OTHER COMPETENT AUTHORITY PARTNERS

11 November 2016 - The Financial Intelligence Centre (FIC) strongly rejects the suggestion created in the media that it is not co-operating fully with its law enforcement and other competent authority partners.

Ordinarily, the FIC prefers to deal with operational matters such as the distribution of information directly with its partners. However, this matter has recently been brought into the public domain and along with it, the allegation that the FIC is not sharing information as per its mandate. It is in the media also, that because of the lack of co-operation from the FIC, an investigation by the Hawks has had 'to grind to a halt'. This claim is clearly nefarious, mischievous and totally without basis.

As per its mandate, the FIC responds to requests for information from law enforcement authorities and other competent authorities, including the Hawks. In doing so, the FIC follows legislative processes compelling it to co-operate with law enforcement and other competent authorities, and has processed thousands of requests for information since its establishment in 2003. In the past year alone, the FIC has responded to close to 2 000 requests for information in support of investigations.

The supposed lack of co-operation by the FIC is in relation to reports on transactions mentioned in a certificate attached to a founding affidavit filed by the Minister of Finance in a High Court Application on 14 October 2016.

Since the Minister's application there have been several questions directed at the FIC about the Financial Intelligence Centre Act, 2001 (No 38 of 2001) and there has been a growing narrative about the organisation being unco-operative in allowing people access to the reports in question.

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- Identification – Existing Clients: where an Institution becomes aware that an individual has become a PEP it should apply appropriate enhanced procedures and controls
- Enhanced Due Diligence: once identified and depending on the product or service sought, additional research and analysis may be appropriate including validation of information provided for a number of factors including an understanding of the source of funds and wealth
- Enhanced Monitoring: accounts with a PEP relationship may, using a risk-based approach, be subject to enhanced monitoring to detect unusual and potentially suspicious activity
- Reviews – Existing PEP Clients: such relationships should be subject to periodic review to ensure that due diligence information remains current and the risk assessment and associated controls remain appropriate. Reviews should generally be approved by relevant senior management
- Training & Education: staff members are the first line of defence in preventing and detecting money laundering and also have a crucial role to play in identifying clients or potential clients who are PEPs. It is therefore vital that the risk, policies, procedures and processes associated with such individuals are communicated to relevant employees and form part of the regular AML training program

12 Should Financial Institutions apply global standards?

Wherever possible, standards of identification and control should be applied globally. Nevertheless, in certain jurisdictions, local regulatory requirements may require, for example, the application of a broader PEP definition, specific control requirements, or guidance with respect to de-categorisation as a PEP. In such cases local regulatory requirements will need to augment or replace global standards in respect of that jurisdiction.

Q M 47

held and the influence associated with that post. Although that influence may well substantially reduce as soon as they have left office, a PEP may have been in a position to acquire his or her wealth illicitly, so that a high level of scrutiny with regard to such individuals may be warranted even after they have left office.

In the case of a former PEP, continued treatment as a PEP may not be warranted if there has been no sufficiently adverse or derogatory information widely published for a period of time that is long enough to conclude that:

- Taking into account the susceptibility of the former position to corruption, their source of wealth is legitimate and
- The individual has not abused such remaining influence as he or she may have.

Any de-categorisation should be subject to an appropriate level of senior management review and approval. This review should be documented.

10 How should the Wolfsberg Guidance on the Risk Based Approach be applied to the management of PEP relationships?

In jurisdictions where the adoption of an RBA is permissible, an institution may consider a number of factors related to the nature of PEP relationships when determining the appropriate controls. This may include the products or services being sought, the individual circumstances of the customer and, where appropriate, the source and amounts of the customers' funds and wealth.

This paper should therefore be read in conjunction with the Wolfsberg statement "Guidance on a Risk Based Approach for managing Money Laundering Risks."³

11 What control framework is appropriate for the management of PEP relationships?

A wide range of controls may be considered for the identification and management of PEP relationships but not all will be appropriate for application across an institution's entire range of business. For example, in retail banking relationships a different balance of controls may be relevant from those considered to be appropriate within a private banking/wealth management environment:

- New Client Approval: institutions should have reasonable procedures designed to try to identify PEPs either before the relationship is established or shortly thereafter, where permitted under applicable law. Whilst normal client relationships are subject to an institution's minimum approval standards, PEP relationships should be escalated for approval to a senior level

³ See www.wolfsberg-principles.com and also the FATF Guidance on the Risk-Based Approach to combating money laundering and terrorist financing, 12 July 2007 at <http://www.fatf-gafi.org/dataoecd/43/46/38960576.pdf>

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If a PEP (or Close Family or Close Associate) is in a position to exercise control over an operating company, then a Financial Institution should, accordingly, consider subjecting that company to relevant elements of the control framework established for PEPs. Even in situations, however, where a PEP has such control, there may be circumstances that militate against concluding that such treatment is warranted. Such situations include the following:

- Where it is a publicly traded company listed on a recognised exchange subject to appropriate listing rules, good governance requirements, transparent reporting etc
- Where it is well regulated, subject to independent supervision, including banks and other Financial Institutions

Normal due diligence undertaken in respect of an operating company may include basic due diligence on the management, board members, persons with significant ownership interests and other individuals capable of exercising control over corporate decisions. Using a risk-based approach to corporate due diligence, as outlined more extensively in the Wolfsberg RBA paper and the Wolfsberg FAQs on Investment and Commercial Banking, the nature and extent of corporate due diligence applied in determining PEP involvement could vary depending on the circumstances.

7 Should State-owned enterprises be considered PEPs?

State-owned enterprises, including central banks, should not be considered PEPs. The individuals who manage and run the state-owned enterprise at senior levels, however, could qualify as PEPs if they sought to establish a relationship with a Financial Institution *on their own behalf or via a Close Family member or Close Associate*. All state-owned enterprises are not necessarily low risk; such entities should be assessed using appropriate risk factors.

8 Should a "non-foreign" PEP be treated differently to a "foreign" PEP?

The greatest risks appear to be present where a PEP seeks to establish a relationship with a Financial Institution beyond the jurisdiction in which they hold the public position that gave rise to the categorisation. Nevertheless, domestic persons, i.e. non-foreign otherwise coming within the definition of PEP as set forth above, may be categorised as PEPs in instances where an institution understands there to be heightened reputational risk.

Such assessments should give due regard to any appropriate legislation or regulatory guidance and be subject to senior management approval.

9 When is it no longer necessary to regard an individual as a PEP?

There is no agreed method for determining the time period that an individual should be regarded as a PEP after they have left the public function that gave rise to the initial categorisation. The risk associated with a PEP is closely related to the office or function they

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- Close Associate: will include a PEP's widely- and publicly-known close business colleagues and/or personal advisors, in particular financial advisors or persons acting in a financial fiduciary capacity

5 How can a PEP or their "Close Family or Associates" be identified?²

The following measures may be appropriate and effective when trying to identify a PEP, but it may be a difficult undertaking particularly if an applicant fails to provide relevant information.

- Making enquiries regarding PEP status of prospective customers during the account establishment process
- Screening prospective customers against a database of such persons. These may, for example, be developed internally, provided by an external service provider or obtained from a reputable source
- The inclusion of PEP related training to appropriate staff which may be part of the regular AML training

Despite the reasonable efforts of a Financial Institution it may be difficult to identify a PEP, particularly if the customer fails to provide important information, furnishes false details or their circumstances change during the course of the relationship. Financial Institutions do not have access to critical information to identify all such persons. They must rely on their customer identification procedures and associated due diligence processes to try to detect such connections and relationships. The level of details available to an Institution will also vary by product or service; in a retail relationship there will be less opportunity to establish such connections than in a private banking/wealth management situation. The difficulties of identifying Close Family and Close Associates are typically even greater than for identifying PEPs.

6 PEP control of an operating company: when might it matter, how should it be dealt with and to what extent should such involvement be ascertained?

If a PEP (or Close Family or Close Associate) has the requisite control of an operating company, such person may be in a position to use the company in furtherance of corrupt purposes, so that transactions of the company should be considered from that perspective. Aside from the potential of abuse of the company, the mere fact of significant PEP involvement in a company may raise reputational issues.

² As noted above, there is no single universally agreed definition of a PEP. In formulating these FAQs consideration was given to the standards issued by internationally-recognised bodies such as the Financial Action Task Force on Money Laundering (FATF). Local or regional regulations may differ in respect of particular elements of the PEP definition, and should be considered by a Financial Institution when determining PEP categorisation. To date, countries have not taken the opportunity to identify PEP's with respect to their own countries. The Wolfsberg Group recommends that the FATF encourage its membership and those of its associate and regional bodies to publish lists of senior, prominent or important holders of public functions, their Close Family and Close Associates in order to mitigate the challenge faced by Financial Institutions in this regard (considering that FATF members (unlike Financial Institutions), are in the position of having the requisite knowledge, or are in a position to obtain it).

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the individual's function, the nature of the title (honorary or salaried political function), the level of authority the individual has over governmental activities and over other officials, and whether the function affords the individual access to significant government assets and funds or the ability to direct the awards of government tenders or contracts.

PEPs are also often the subject of intense public and media scrutiny, with the increased possibility of commensurate reputation risks for Financial Institutions that maintain relationships with them.

Characterisations of specific senior public functions, such as those noted below, can be useful as indicators of seniority, prominence or importance and used to determine whether an individual should be considered a PEP:

- Heads of State, Heads of Government and Ministers
- Senior Judicial Officials
- Heads and other high-ranking Officers holding senior positions in the armed forces
- Members of ruling Royal Families with governance responsibilities
- Senior Executives of state-owned enterprises
- Senior Officials of major political parties

In addition, the following may also be considered to fall within the definition but may be excluded in areas where the risk of corruption or abuse is considered to be relatively low as they do not have the same ability to control or divert funds.

- Heads of Supranational Bodies, *e.g.* UN, IMF, WB
- Members of Parliament or National Legislatures, senior members of the Diplomatic Corps *e.g.* Ambassadors, Chargés d'affaires or Members of Boards of Central Banks

Holders of public functions not meeting the above-referenced standards of seniority, prominence or importance (and therefore not categorised as PEPs) could still represent a heightened reputational or money laundering risk for Financial Institutions. Such individuals should be assessed using appropriate risk factors.

4 How should "Close Associates" and "Close Family" of a PEP be defined?

PEPs may abuse their power and position for the personal gain and advantage of immediate family members or close associates or use them to conceal funds or assets that have been misappropriated as a result of abuse of their official position or resulting from bribery and corruption. It is therefore important to define "Close Family" and "Close Associates" and include them within the control framework established for PEPs.

- Close Family: will include a PEP's direct family members including spouses, children, parents and siblings of the PEP. In any of these cases there may be circumstances which mitigate against such a categorisation including separation and estrangement although these facts should be investigated and recorded

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those considerations and influences. It is therefore reasonable that different control and oversight frameworks would apply, e.g. within a private banking/wealth management relationship from other environments such as certain high volume retail businesses for example retail banking and/or insurance.

2. Why relationships with PEPs may represent an increased risk for Financial Institutions?

Relationships with PEPs may represent increased risks due to the possibility that individuals holding such positions may misuse their power and influence for personal gain and advantage or for the personal gain or advantage of family and close associates. Such individuals may also use their families or close associates to conceal funds or assets that have been misappropriated as a result of abuse of their official position or resulting from bribery and corruption. In addition, they may also seek to use their power and influence to gain representation and/or access to, or control of legal entities for similar purposes.

It is however important to understand that the majority of PEPs do not abuse their position and will not represent any undue additional risk to a Financial Institution solely by virtue of that categorisation.

3 What is the definition of a PEP?

There is no single, universally agreed definition of a PEP. In formulating these FAQs, consideration was given to the standards issued by Internationally-recognised bodies such as the Financial Action Task Force on Money Laundering (FATF). Local or regional regulations may differ in respect of particular elements of the PEP definition, and should be considered by a Financial Institution when determining PEP categorisation standards and relationship management procedures.

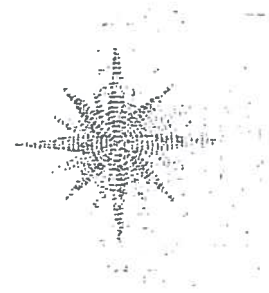
A basic element of the PEP definition is that a PEP is a natural person. The involvement of a PEP in the management of an operating entity, as treated below in Section 6, could result in an increased risk of a relationship with such an entity, but would not necessitate the categorisation of the entity as a PEP. To the extent that it is appropriate to establish beneficial ownership of a trust, personal investment company or foundation, accounts for such entities should, if beneficially owned by a PEP, Close Family or Close Associate (For definitions see question 4), be subjected to the control framework appropriate for PEPs.

While all holders of public functions are exposed to the possibility of corruption or the abuse of their position to a certain degree, those holding senior, prominent or important positions with substantial authority over policy, operations or the use or allocation of government-owned resources have much more influence and therefore normally pose greater risks for an Institution and should accordingly be categorised as PEPs for purposes of control and oversight frameworks.

Financial Institutions should consider a range of factors when determining whether a particular holder of a public function has the requisite seniority, prominence or importance to be categorised as a PEP. Relevant factors could include examining the official responsibilities of

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the Wolfsberg Group



Banco Santander
Bank of Tokyo Mitsubishi-UFJ
Barclays
Citigroup
Credit Suisse
Deutsche Bank
Goldman Sachs
HSBC
JP Morgan Chase
Societe Generale
UBS

Wolfsberg Frequently Asked Questions ("FAQs") on Politically Exposed Persons ("PEPs")

1. Preamble

The continuing threat of money laundering through Financial Institutions is most effectively managed by understanding and addressing the potential money laundering risks associated with customers and their transactions.

This set of revised Questions and Answers updates the original Wolfsberg Group guidance on PEPs (Politically Exposed Persons) issued in 2003. PEP Identification and risk management continue to be major issues for Financial Institutions and this update reflects the concept of the "Risk Based Approach" (RBA) which has emerged as a major regulatory theme since the original document was written. In addition, whilst the Wolfsberg Group's first area of focus was private banking/wealth management its focus since then has extended to other financial service segments.¹

Consequently the Wolfsberg Group has updated the original FAQs to address these developments with this revised set dealing with the initial identification of PEPs and providing assistance in the design of an appropriate control framework that can be tailored to fit an individual Institution's particular customer and product range as well as different regulatory regimes.

It should however be understood that, where a risk based approach is recognised, the risk factors associated with PEPs are simply additional factors that need to be considered as part of an Institution's RBA rather than being an assessment that can or should exist in isolation from

¹ In considering guidance on PEPs in contexts other than private banking, it should be noted that, the Group's statements and principles are now viewed in a much wider context.

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9. Risk Based Approach and the Financing of Terrorism

This Guidance does not specifically address a risk based approach for identifying potential risks related to the funding of terrorism because the Wolfsberg Group believes that such a methodology is not effective when attempting to identify terrorist funds in a financial institution. As the Wolfsberg Group has previously stated⁷, it is difficult to distinguish terrorist funds from other funds. Funds that are used to finance terrorist activities do not necessarily derive from criminal activity. Therefore, a risk based assessment of customers and transactions will not generally provide any utility in specifically identifying potential terrorist funds. However, to the extent that some or part of terrorist financing originates from money laundering, the risk based approach may benefit the fight against terrorist financing by providing the means for financial institutions to identify and report money laundering to government authorities. The Wolfsberg Group continues to believe that the most effective means by which to identify terrorist funds within a financial institution is for governments to identify those connected to terrorist activities and provide that information to financial institutions in a timely manner.

10. Conclusion

This Guidance is not intended to preclude financial institutions from doing business with a customer merely because of its potentially higher risk status. Rather, it is designed to assist institutions to identify situations where additional measures and controls may be appropriate. Even with the use of a reasonably designed risk based approach, a financial institution may unwittingly be involved in money laundering. Such findings do not invalidate the risk based approach and should not result in unwarranted criticism of an institution that has implemented such an approach.

A risk based approach is important to the effectiveness and efficiency of the fight against money laundering. It promotes the prioritisation of effort and activity by reference to the likelihood of money laundering and reflects experiences and proportionality through the tailoring of effort to risk.

⁷ See the Wolfsberg Statement on the Suppression of the Financing of Terrorism at <http://www.wolfsberg-principles.com>

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Accounts for clients introduced by such gatekeepers may also be higher risk where the financial institution places unreasonable reliance for KYC and AML matters on the gatekeeper.

- The use or involvement of intermediaries within the relationship. However, the involvement of an intermediary that is subjected to adequate AML regulation and is supervised for compliance with such regulation or otherwise employs adequate AML procedures generally poses reduced money laundering risks.⁵
- Customers that are Politically Exposed Persons or "PEPs"⁶.

7. Services Risk

Determining the potential money laundering risks presented by services offered by a financial institution may also assist in the overall risk assessment. Services that pose a higher risk of money laundering should be included in a determination of the overall money laundering risks posed. Institutions should be mindful of new or innovative services not specifically being offered by institutions, but that make use of the institution's services to deliver the product. Determining the money laundering risks of services should include a consideration of such factors as:

- Services identified by regulators, governmental authorities or other credible sources as being potentially high risk for money laundering including, for example:
 - International Correspondent Banking services, and
 - International Private Banking services.
 - Services involving banknote and precious metal trading and delivery.

For the avoidance of doubt, services intended to render the customer deliberately anonymous to the financial institution, to avoid identification and detection shall not be offered.

8. Training and Education

Training and education of all relevant employees within a financial institution plays a critical role in the successful implementation of any risk based approach to managing potential money laundering risks. All relevant employees must be aware of and understand the legal and regulatory environment in which they operate, including relevant money laundering prevention provisions, as well as the financial institution's own measures to give effect to their risk based approach.

⁵ For a discussion of intermediaries, including situations posing higher and reduced money laundering risks, see the general FAQs Issued by the Wolfsberg Group with respect to intermediaries, as well as in specific instances in the Guidance for Mutual Funds and Other Pooled Investment Vehicles and FAQs on Investment and Commercial Banking (all of which are available at <http://www.wolfsberg-principles.com>)

⁶ See Wolfsberg FAQs on Politically Exposed Persons at <http://www.wolfsberg-principles.com>

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- Countries identified by the Financial Action Task Force ("FATF") as non-cooperative in the fight against money laundering or identified by credible sources as lacking appropriate money laundering laws and regulations.
- Countries identified by credible sources³ as providing funding or support for terrorist activities. (While, as stated below, a risk based approach to identifying terrorist funding in financial institutions is impracticable, considering those countries that support terrorist activities as an evaluating factor for determining country or geography risk may be appropriate.)
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.⁴

6. Customer Risk

Determining the potential money laundering risks posed by a customer will provide significant input into the overall money laundering risk assessment. Each institution needs to assess, based on its own criteria, whether a particular customer poses a higher risk of money laundering and whether mitigating factors may lead to a determination that customers engaged in such activities do not pose a higher risk of money laundering. Application of the risk variables described above plays an important part in this determination. There is no universal consensus as to which customers pose a higher risk, but the below listed characteristics of customers have been identified with potentially higher money laundering risks:

- Armament manufacturers, dealers and intermediaries.
- Cash (and cash equivalent) intensive businesses including:
 - money services businesses (remittance houses, exchange houses, casas de cambio, bureaux de change, money transfer agents and bank note traders)
 - casinos, betting and other gambling related activities, or
 - businesses that while not normally cash intensive, generate substantial amounts of cash for certain transactions.
- Unregulated charities and other unregulated "not for profit" organisations (especially those operating on a "cross-border" basis).
- Dealers in high value or precious goods (e.g. jewel, gem and precious metals dealers, art and antique dealers and auction houses, estate agents and real estate brokers).
- Accounts for "gatekeepers" such as accountants, lawyers, or other professionals for their clients where the identity of the underlying client is not disclosed to the financial institution.

³ "Credible sources" refers to information that is produced by well known bodies that generally are regarded as reputable and that make such information publicly and widely available. Such sources may include, but are not limited to, supra-national or international bodies such as the World Bank, the International Monetary Fund, the Organisation for Economic Co-operation and Development ("OECD"), and the Egmont Group of Financial Intelligence Units, as well as relevant national government bodies and non-governmental organisations.

⁴ Such as Transparency International.

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increase the risk unless the rationale is understood and the structure is sufficiently transparent to the institution.

4. Measures and Controls for Higher Risk Situations

Financial institutions should design and implement appropriate measures and controls to mitigate the potential money laundering risks of those customers that are determined to be higher risk as the result of the institution's risk assessment process. Such measures and controls may require investment both in terms of resource and time in order to identify and capture appropriate customer risk data. These measures and controls may include one or more of the following:

- Increased awareness by the institution of higher risk situations within business lines across the institution;
- Increased levels of know your customer ("KYC") or enhanced due diligence;
- Escalation for approval of the establishment of an account or relationship;
- Increased monitoring of transactions; and
- Increased levels of ongoing controls and reviews of relationships.

The same measures and controls may often address more than one of the risk criteria identified, and it is not necessarily expected that an institution establish specific controls targeting each and every risk criterion set forth in this Guidance.

Wolfsberg Group guidelines and principles provide more detailed guidance on appropriate enhanced measures and controls that could be initiated for higher risk customers.²

5. Country Risk

Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering risks. There is no universally agreed definition by either governments or institutions that prescribes whether a particular country represents a higher risk. Factors that may result in a determination that a country poses a higher risk include:

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations ("UN"). In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognized, may be given credence by an institution because of the standing of the issuer and the nature of the measures.

² See existing Wolfsberg papers at www.wolfsberg-principles.com/standards

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3. Risk Variables

Some degree of judgement is involved in determining the level of risk a particular client represents to an institution. An institution's risk based approach methodology may therefore also take into account additional risk variables, specific to any particular customer or transaction. These variables may increase or decrease the perceived risk posed by a particular customer or transaction and may include:

- The level of assets to be deposited by the particular customer or size of transactions undertaken. For example, unusually high levels of assets or unusually large transactions compared to what might reasonably be expected of customers with a similar profile may mean that customers not otherwise seen as higher risk should be treated as such. Conversely, low levels of assets or low value transactions involving customers that would otherwise appear to be higher risk mean that a financial institution may decide to treat such customers as lower risk within an overall risk based approach.
- The level of regulation or other oversight or governance regime to which a customer is subject. A customer that is a financial institution, for example, regulated in a jurisdiction recognised as having adequate Anti-Money Laundering ('AML') standards (or is part of a group that implements a group standard where the parent is subject to adequate AML regulation and supervision and the parent of the customer exercises appropriate oversight over the customer) poses less risk from a money laundering perspective than a customer that is unregulated or subject only to minimal AML regulation. Additionally companies and their wholly owned subsidiaries that are publicly owned and traded on a recognized exchange pose minimal money laundering risks. Even though it may become substantially more difficult to distinguish between legitimate and illegitimate transactions, these companies are usually from jurisdictions with an adequate, recognised regulatory scheme, and therefore, generally pose less risk due to the type of business they conduct and the wider governance regime to which they are subject. In addition, the necessity to have a specific understanding of each of the transactions conducted by these companies is mitigated by the nature of the company (publicly owned and traded from jurisdictions with adequate controls). Moreover, these entities may not need to be subjected to as stringent account opening due diligence or transaction monitoring during the course of the relationship.
- The regularity or duration of the relationship. Long standing relationships involving frequent client contact throughout the relationship may present less risk from a money laundering perspective.
- The familiarity with a jurisdiction, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as the result of an institution's own operations within the jurisdiction. Greater familiarity will enhance the ability of the institution to assess the client.
- The use by clients of intermediate corporate vehicles or other structures that have no clear commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency for the financial institution. Such vehicles or structures will

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agreed and accepted methodology by either governments or institutions, which prescribes the nature and extent of a risk based approach. Accordingly, this Guidance seeks to articulate relevant considerations which institutions may find useful in developing and implementing a reasonably designed risk based approach. The specifics of an institution's particular risk based process should be determined by each institution based on the operations of that institution. This Guidance is not designed to prohibit potential customers from engaging in transactions with institutions, but rather assist institutions in effectively managing potential money laundering risks.

1. Basis of a Reasonably Designed Risk Based Approach

A reasonably designed risk based approach is one by which institutions identify the criteria to measure potential money laundering risks. Identification of the money laundering risks of customers and transactions will allow institutions to determine and implement proportionate measures and controls to mitigate these risks. Risks for some customers may only become evident once the customer has begun transacting through the account, making monitoring of customer transactions a fundamental component of a risk based approach.

Money laundering risks may be measured using various categories, which may be modified by risk variables. The most commonly used risk criteria are:

- Country risk;
- Customer risk; and
- Services risk

in each case as modified by the risk variables as described below.

The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential money laundering is discretionary with each institution. There clearly is not one single methodology to apply to these risk categories, and the application of these risk categories is intended to provide a strategy for managing potential money laundering risks associated with potentially high risk customers.

Each financial institution should document and periodically review its risk assessment approach.

2. Applicability to Existing Customers

A financial institution may consider whether a risk assessment should be carried out in respect of existing customers. Circumstances may exist where a financial institution is satisfied with its existing risk control measures for particular customers as a result of which additional risk assessment may be unnecessary. Any decision in this regard should be taken in the context of the overall risks of the institution's business or events with respect to particular customers, transactions or business lines that become apparent through monitoring of transactions or that otherwise become known that may suggest a new risk assessment of the particular customer is appropriate.

AP MTH

the Wolfsberg Group



Banco Santander
Bank of Tokyo-Mitsubishi-U.F.J.
Barclays
Citigroup
Credit Suisse
Deutsche Bank
Goldman Sachs
HSBC
JP Morgan Chase
Société Générale
UBS

Wolfsberg Statement Guidance on a Risk Based Approach for Managing Money Laundering Risks

Preamble

The continuing threat of money laundering through financial institutions is most effectively managed by understanding and addressing the potential money laundering risks associated with customers and transactions. Therefore, the Wolfsberg Group¹ has developed this Guidance to assist institutions in managing money laundering risks and further the goal of Wolfsberg Group members to endeavour to prevent the use of their institutions for criminal purposes.

It is well understood that money launderers go to great lengths to make their transactions indistinguishable from legitimate transactions. Accordingly, it is difficult (at times impossible) for an institution to distinguish between legal and illegal transactions, notwithstanding the development and implementation of a reasonably designed risk based approach in an institution's anti-money laundering program.

An assessment of money laundering risks will result in the application of appropriate due diligence when entering into a relationship, and ongoing due diligence and monitoring of transactions throughout the course of the relationship. A reasonably designed risk based approach will provide a framework for identifying the degree of potential money laundering risks associated with customers and transactions and allow for an institution to focus on those customers and transactions that potentially pose the greatest risk of money laundering.

The Wolfsberg Group believes that this Guidance will support risk management and assist institutions in exercising business judgement with respect to their clients. There is no universally

¹ The Wolfsberg Group consists of the following leading international financial institutions: ABN AMRO, Banco Santander, Bank of Tokyo-Mitsubishi-U.F.J., Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Société Générale, and UBS.

In addition, Allied Irish Banks, DBS, Lloyds, TSB, SEB and Standard Chartered Bank participated in the development of this Guidance.

PMH

C/O ADAMS & ADAMS
ADAMS & ADAMS PLACE
LYNWOOD BRIDGE
4 DAVENTRY STREET
LYNWOOD MANOR
REF: ADELE JORDAAN

AND TO:

MACROBERT INCORPORATED
ATTORNEYS FOR THE 21ST RESPONDENT
MACROBERT BUILDING
CNR JUSTICE MAHOMED AND JAN SHOBA STREETS
BROOKLYN
PRETORIA
EMAIL: ghay@macrobert.co.za
REF: GK HAY

AND TO:

WERKSMANS ATTORNEYS
ATTORNEYS FOR THE 19TH AND 20TH RESPONDENTS
REF: MR C MANAKA/MR C MORAITIS
EMAIL: cmanaka@werksmans.com
cmoraitis@werksmans.com
REF: SOUT 3267.63
C/O MABUELA INCORPORATED
CHARTER HOUSE, 179 BOSMAN STREET
PRETORIA CENTRAL
EMAIL: mabuela@tiscali.co.za

AND TO:

VR LASER SERVICES (PTY) LTD
THE 10TH RESPONDENT
pieterm@vrlaser.co.za

[BY EMAIL]

Q 1/7

AND TO:

EDWARD NATHAN SONNENBERGS
ATTORNEYS FOR THE 15TH RESPONDENT
REF: M KATZ/D LAMBERT/0416998
EMAIL: dlambert@ensafrika.com
C/O GERHARD BOTHA & PARTNERS INC
1ST FLOOR, ERASMUS FORUM BUILDING B
CNR RIGEL AVENUE & STOKKIESDRAAI
ERASMUSRANS
REF: MR B SWART/MR H BOTHA

AND TO:

NORTON ROSE FULBRIGHT SOUTH AFRICA INCORPORATED
ATTORNEYS FOR THE 16TH RESPONDENT
EMAIL: aslam.moosajee@nortonrosefulbright.com
REF: MR MOOSAJEE/FNB13954
C/O MOTLE JOOMA SABIA INCORPORATED
GROUND FLOOR, DUNCAN MANOR
CNR JAN SHOBA AND BROOKS STREETS
BROOKLYN
PRETORIA

AND TO:

BOWMAN GILFILLAN INCORPORATED
ATTORNEYS FOR THE 17TH RESPONDENT
EMAIL: clement.mkive@bowmanslaw.co.za
Alan.keep@bowmanslaw.co.za
REF: C MKIVA/6164672
C/O BOSHOF ATTORNEYS
GROUND FLOOR, HAZELWOOD GATE OFFICE PARK
14 OAKTREE AVENUE
CNR OAKTREE AVENUE AND DELY ROAD
HAZELWOOD
PRETORIA
REF: NATASHA NORTJE/NN1564


AND TO:

BAKER & MACKENZIE
ATTORNEYS FOR THE 18TH RESPONDENT
EMAIL: Gerhard.rudolph@bakermackenzie.co.za
Widaad.ebrahim@bakermackenzie.co.za
Callum.oconnor@bakermackenzie.co.za
REF: G RUDOLPH/CO

9 MAY

TAKE FURTHER NOTICE THAT the Answering Affidavit deposed to by RONICA RAGAVAN, setting out the grounds for the objection, will be used in support of this application.

Dated at Pretoria on this the 20th day of January 2017.


VAN DER MERWE & ASSOCIATES
ATTORNEYS FOR THE 1ST, 2ND, 3RD, 4TH, 6TH, 7TH,
11TH, 12TH AND 14TH RESPONDENTS
62 RIGEL AVENUE NORTH
WATERKLOOF
PRETORIA

REF: MR GT VAN DER MERWE/st/078

TEL: 012 343 5432

FAX: 012 343 5435

EMAIL: simone@vdmass.co.za

TO:

THE OFFICE OF THE DEPUTY JUDGE PRESIDENT
7TH FLOOR, ROOM 7.15, HIGH COURT BUILDING

AND TO:

STATE ATTORNEY
ATTORNEY FOR THE APPLICANT
SALU BUILDING
255 FRANCIS BAARD STREET
PRETORIA
TEL: 012 309 1575
FAX: 012 309 1649
EMAIL: TNhlanzi@justice.gov.za
REF: MS T NHLANZI



ABSA BANK LTD	15 TH RESPONDENT
FIRST NATIONAL BANK LTD	16 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	17 TH RESPONDENT
NEDBANK LIMITED	18 TH RESPONDENT
REGISTRAR OF BANKS	19 TH RESPONDENT
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	20 TH RESPONDENT
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	21 ST RESPONDENT

**1ST, 2ND, 3RD, 4TH, 6TH, 7TH, 11TH, 12TH AND 14TH RESPONDENTS'
APPLICATION TO STRIKE**

BE PLEASED TO TAKE NOTICE that the First, Second, Third, Fourth, Sixth, Seventh, Eleventh, Twelfth and Fourteenth Respondents ("Oakbay Group") objects to the following paragraphs in and annexures to the Founding Affidavit of the Applicant on the grounds that they are scandalous, vexatious, irrelevant and / or amount to inadmissible hearsay evidence:

1. Paragraph 19 and 27;
2. Annexure P1 and P2;

TAKE FURTHER NOTICE THAT the Oakbay Group will make application at the hearing of this matter that the aforementioned paragraphs and annexures be struck out from the Founding Affidavit of the Applicant.

QMH

VAN DER MERWE &
ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5456
✉ 62 RIGEL AVE
WATERKLOOF
GT VD MERWE/yvd

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

"0815" 0

1145

CASE NUMBER: 80978/16

In the matter between:

MINISTER OF FINANCE

APPLICANT

And

OAKBAY INVESTMENTS (PTY) LTD

1ST RESPONDENT

OAKBAY RESOURCES AND ENERGY LTD

2ND RESPONDENT

SHIVA URANIUM (PTY) LTD

3RD RESPONDENT

TEGETA EXPLORATION AND RESOURCES
(PTY) LTD

4TH RESPONDENT

JIC MINING SERVICES (1979) (PTY) LTD

5TH RESPONDENT

BLACKEDGE EXPLORATION (PTY) LTD

6TH RESPONDENT

TNA MEDIA (PTY) LTD

7TH RESPONDENT

THE NEW AGE

8TH RESPONDENT

AFRICA NEWS NETWORK (PTY) LTD

9TH RESPONDENT

VR LASER SERVICES (PTY) LTD

10TH RESPONDENT

ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD

11TH RESPONDENT

CONFIDENT CONCEPT (PTY) LTD

12TH RESPONDENT

JET AIRWAYS (INDIA) LTD (INCORPORATED
IN INDIA)

13TH RESPONDENT

SAHARA COMPUTERS (PTY) LTD

14TH RESPONDENT

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* * * Communication Result Report (7. Nov. 2016 9:03) * * *

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Date/Time: 7. Nov. 2016 9:00

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Reason for error

mimim: 1}	Hang up or line fail	E. 2} Busy
u}	No answer	E. 4} No facsimile connection
u}	Exceeded max. E-mail size	E. 6} Destination does not support IP-Fax



van der Meewe
Accountants & Tax Advisors

Advocaats • Rekeners • Belastingadviseurs • Fiscalisten • Notarissen • Aktevervaardigers

Director / Directeur:
Dirk van der Meewe (BLC, LL.B.)

Accountant/Accountant:
Keesje Leun (LL.B.)

Assistant / Assistent:
Dirk van der Meewe (LL.B.)
Dirk van der Meewe (LL.B.)
Dirk van der Meewe (LL.B.)

Executive Director /
Directie Medewerker (B. B. B. B.)

Phone No: 020 674 1000/21
FAX: 020 674 1000/21

Details:
Street Address / Straatadres:
13 High Avenue, Woudland
1118 JZ, Rotterdam

Postal Address / Postadres:
Postbus 17256
3000 AA Rotterdam

Tel: 067 674 1000
Fax: 067 674 1000
E-mail: info@vdmeewe.nl

* Branch:
Tel: 011 543 2000
Fax: 011 543 4135

Our Ref: MR GT VD MERWE6078

Your Ref: MR THEMBELTHE NIBLANZI

07-11-2016

URGENT

The Office of the State Attorney

BY FAX: 012 309 1649

BY EMAIL: THEMBELTHE@justice.gov.za

Dear Mr Niblanzi,

MINISTER OF FINANCE / OAKBAY GROUP OF COMPANIES AND OTHERS

We refer to the abovementioned matter as well as your letter dated 4 November 2016.

We have copied all the parties you have joined to the previous correspondence in order to ensure that there is a complete record of the correspondence exchanged between our offices.

You have neglected to append a copy of our letter directed to your offices on 18 October 2016 and we append a copy of the letter hereto as Annexure "X". Annexure "X" was a letter directed to your offices in an effort to prevent unnecessary litigation and we take the liberty of quoting the following from the letter:

"We are all aware of the fact that the application is launched with the financial resources of the tax payer. There is no dispute about the fact that your client is not by law obliged to intervene in the relationship between my client's and commercial banks."

Q M/T

Simone

From: Simone <simone@vdmass.co.za>
Sent: Monday, 07 November 2016 10:10 AM
To: 'TNhlanzi@justice.gov.za'
Cc: 'dlambert@ensafrica.com'; 'Gerhard.Rudolph@bakermckenzie.com';
'Widaad.Ebrahim@bakermckenzie.com'; 'Callum.OConnor@bakermckenzie.com';
'ghay@macrobert.co.za'; 'Aslam.moosajee@nortonrosefulbright.com';
'Jocelyn.evans@nortonrosefulbright.com'; 'cmanaka@werksmans.com';
'cmoraitis@werksmans.co.za'
Subject: O78 / MINISTER OF FINANCE
Attachments: 201611070900.pdf
Importance: High

Vriendelike groete/Kind regards

Simone Taljaard

Legal secretary for

Gert van der Merwe
Van der Merwe & Ass Inc
0876540209
62 Rigel Ave North
Waterkloof Ridge
Pretoria



van der Merwe
&
Associates Incorporated

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relevant authority/centre/party to furnish us with the information is for the court to decide and not for you. This does, fortunately, not dilute our clients' rights towards your client who chose to obtain information (in our view unlawfully so) and disclose it with an effort to prejudice our clients.

Correspondence will not take the matter further since we have realised that you do not hold an instruction to condone the late filing of our clients' papers. It is, again fortunately, not up to you to decide whether the late filing of our clients' papers is reasonable or not and we will then have to file an application for condonation if our clients' papers are not filed in time. We will deal with these issues in the application and we will disclose your attitude to court as and when it becomes necessary to do so.

Kind regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

CC: dlambert@ensafrica.com
Gerhard.Rudolph@bakermckenzie.com
Widaad.Ebrahim@bakermckenzie.com
Callum.OConnor@bakermckenzie.com
ghay@macrobert.co.za
Aslam.moosajee@nortonrosefulbright.com
Jocelyn.evans@nortonrosefulbright.com
cmanaka@werksmans.com
cmoraitis@werksmans.com

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We also quote the following:

"We need to reiterate that the purpose of this letter is to afford your client the opportunity to save the tax payer's hard earned money. We record that our clients would like to put their formal version before court since you have chosen that forum. If the application is, therefore, not withdrawn the matter must proceed and we will gladly do the necessary in order to restore the misrepresentation created by the papers."

In response to the aforesaid letter you replied on 19 October 2016 (a copy of your reply appended hereto as Annexure "Y") in which you indicated that *"the invitation to withdraw the application is declined."* You also wrote *"it is accordingly not appropriate to address the contentions in your letter, as regards which our client's rights are reserved."*

Your letter dated 4 November 2016 is, unfortunately, an attempt to display some surprise on your side and it seems as if you did not read our letter dated 18 October 2016.

The contrary of what you suggest is true. What should happen is that your client's application should have been withdrawn when we invited you the first time around but you declined the invitation.

What we have attempted to convey in our letter dated 3 November 2016 is that your refusal to withdraw the superfluous application causes our clients to be in the process of preparing opposing papers and whilst we do so we have encountered (an expected) hostility from some of the other respondents who were keen to furnish the applicant with information (without an entitlement to do so) but with a firm refusal to furnish us with information.

We did not expect you to appreciate our concern and we have, in fact, expected you to employ all efforts to refuse our client the opportunity to put the true and actual facts before court.

We have indicated, and we do so again, that we want to deal with each of the transactions your client chose to disclose in the application and we need the detail of those transactions in order to deal with them. The merit of our application to compel the

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van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

OB 14⁴

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Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiaat
Ilanie Loots (LLB)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Consultant
*Nico Hager (B.Iuris LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

Pretoria
Street Address / Straatadres:
62 Rigel Avenue, Waterkloof
Ridge, Pretoria

Postal Address / Posadres:
Posbus / P.O. Box 27756
Sunnyside
0132

Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

*Sandton
Tel: 011 542 2000
Fax/Faks: 086 603 4356

Our Ref: **MR GT VD MERWE/st/O78**

Your Ref: **MS THEMBELITHE NHLANZI**

07-11-2016

URGENT

The Office of the State Attorney

BY FAX: 012 309 1649
BY EMAIL: TNhlanzi@justice.gov.za

Dear Ms Nhlanzi,

**MINISTER OF FINANCE / OAKBAY GROUP OF COMPANIES AND
OTHERS**

We refer to the abovementioned matter as well as your letter dated 4
November 2016.

We have copied all the parties you have joined to the previous
correspondence in order to ensure that there is a complete record of
the correspondence exchanged between our offices.

You have neglected to append a copy of our letter directed to your
offices on 18 October 2016 and we append a copy of the letter hereto
as **Annexure "X"**. Annexure "X" was a letter directed to your
offices in an effort to prevent unnecessary litigation and we take the
liberty of quoting the following from the letter:

*"We are all aware of the fact that the application is launched with the
financial resources of the tax payer. There is no dispute about the
fact that your client is not by law obliged to intervene in the
relationship between my client's and commercial banks."*

QNH

Any opposing affidavit deposed to by your clients' controlling interest will be answered in the ordinary way.

It is accordingly not appropriate to address the contentions in your letter, as regards which our client's rights are reserved.

Yours Sincerely


Ms Thandolile Nhlanzi

**FOR: STATE ATTORNEY PRETORIA
DEPARTMENT OF JUSTICE &
CONSTITUTIONAL DEVELOPMENT**





Office of the State Attorney Pretoria

PRIVATE BAG X 91
PRETORIA
0001

SALU BUILDING
255 FRANCIS BAARD (SCHOEMAN) STREET
CNR THABO SEHUME (ANDRIES) STREET
(ENTRANCE IN THABO SEHUME (ANDRIES)
STREET)
TEL: (SWITCHBOARD): (012) 309 1500
(DIRECT LINE): (012) 309 1575
(SECRETARY): (012) 309 1504
FAX: (012) 309 1549/50
DOCEX 298

18 OCTOBER 2016

ENQ: T. NHLANZI
EMAIL: TNhlanzi@justice.gov.za

MY REF: 2427/18/232
YOUR REF: MR GT V D MERWE/ST/078

VAN DER MERWE & ASSOCIATES INCORPORATED
P O Box 27756
Sunnyside
0132

Per e mail: simone@vdmass.co.za

Dear Sirs,

**RE: MINISTER OF FINANCE // OAKBAY INVESTMENTS (PTY) LTD AND
OTHERS**

Your letter dated 18 October 2016 in the above matter refers.

That you 'intend advising the Oakbay [G]roup.....to oppose the application' is noted. We however await its own decision in the matter, in particular given the reported resignation on Monday of its CEO on health grounds.

The invitation to withdraw the application is declined. Your clients will decide whether their position remains that recorded by Mr Howa, as the legal advice it has received, in his letter attached to the founding affidavit, or to oppose the application as you suggest, evidently because Oakbay is now advised that the Minister has the legal power and duty to intervene in Oakbay's relations with its erstwhile banks.

As regards the statement that '[our] client's representative' - we take this to intend reference to the Minister, who represents himself - has 'deposed of [sic] an affidavit' with which your letter seeks to engage, no purpose will be served by a trial by correspondence.

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WJH



बैंक ऑफ़ बड़ोदा Bank of Baroda

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JHB/OPE/2016-17/

Date: 05th October 2016

To Whom IT May Concern

This is to certify that OPTIMUM MINE REHABILITATION TRUST, Registration No. IT/13693/07, is maintaining following accounts with us.

Type of Account	Account Number	Outstanding Balances on 05.10.2016 (am in ZAR Min)	Remarks
Current Account	92020200000524	9,338,316.18	-
Fixed Deposit Account	92020300000653	500,000,000.00	-
Fixed Deposit Account	92020300000654	500,000,000.00	-
Fixed Deposit Account	92020300000655	461,000,000.00	-

Account is operative and active.

This certificate has been issued at the request of OPTIMUM MINE REHABILITATION TRUST without any risk or responsibility of the bank or any of its officers.

(SHAIKH RAUF)

SENIOR BRANCH MANAGER



Johannesburg Branch, Sandton City Twin Towers, East Wing, 2nd Floor, Sandton, Johannesburg, Republic of South Africa
Phone +27 11 7840716/23, Fax +27 11 78407659, Email: joburg@bankofbaroda.com, www.bankofbaroda.com

9
MAY

view, constitute a contravention of the provisions of the Public Finance Management Act, No. 1 of 1999 warranting further action against those officials responsible for same.

In order to ensure that we do not expose the fiscus unnecessarily to costs we propose that the application be withdrawn and your client to tender our clients' costs, same on or before close of business on 19 October 2016. Your notice of withdrawal (obviously containing an appropriate tender towards costs) can be served at our offices.

We need to reiterate that the purpose of this letter is to afford your client the opportunity to save the tax payer's hard earned money. **We record that our clients would like to put their formal version before court since you have chosen that forum. If the application is, therefore, not withdrawn the matter must proceed and we will gladly do the necessary in order to restore the misrepresentation created by the papers.**

We conclude this letter to state that your client has made defamatory and untrue remarks towards members of the Gupta family by insinuating that they have been involved in inappropriate conduct.

My clients' rights remain strictly reserved.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

① MH

Without proper consideration (so I submit) the deponent to the founding affidavit, curiously so, implicates my clients in inappropriate and unlawful conduct which *"creates an increasingly serious state of affairs"*.

The insinuation that my clients would, as per the example in the papers, act with impropriety which *"will expose the fiscus not only to the loss of tax revenue but also put the burden of mining rehabilitation on the fiscus"* is uncalled for, malicious and vexatious.

To confirm this (and your client could have ascertained this with a telephone call) we append hereto as **Annexure "A"** a copy of the certificate issued by Bank of Baroda on 5 October 2016 confirming that the full amount has been invested on behalf of Optimum Mine Rehabilitation Trust. The origin of this certificate follows a request by Advocate Thuli Madonsela on 4 October 2016.

The application needs to be read in context. It can never be argued that the deponent to the founding affidavit and the applicant in the application was unaware of surrounding circumstances with regards to political uncertainty and public interest in, inter alia, political affairs of the day and, seemingly, the financial affairs of some of the respondents.

By issuing the application (at a first glance merely asking for a declarator) supported by a defamatory founding affidavit causes this application to be vexatious and an abuse of court.

It therefore, in my view, justifies this letter informing you of the fact that I intend advising the Oakbay group of companies to oppose the application, obtain all the necessary information from the relevant role players and ask for a punitive costs order against the applicant when the application is dismissed.

We are all aware of the fact that the application is launched with the financial resources of the tax payer. There is **no dispute about the fact that your client is not by law obliged to intervene in the relationship between my clients and commercial banks**. To spend tax payers' money in a reckless and inappropriate manner will, in my

Q Mtt



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiaat
Ilanie Loots (LLB)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Consultant
*Nico Hager (B.Luris LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

Pretoria
Street Address / Straatadres:
62 Rigel Avenue, Waterkloof
Ridge, Pretoria

Postal Address / Posadres:
Posbus / P.O. Box 27756
Summerville
0132

Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

*Sandton
Tel: 011 542 2000
Fax/Faks: 086 603 4356

Our Ref: **MR GT VD MERWE/st/078**

Your Ref: **MS T NHLANZI**

18-10-2016

URGENT

**The Office of the State Attorney
SALU Building
255 Francis Baard Street
Pretoria**

**BY FAX: 012 309 1649
BY EMAIL: TNhlanzi@justice.gov.za**

Dear Madam,

**APPLICATION: OAKBAY INVESTMENTS (PTY) LTD AND
OTHERS / MINISTER OF FINANCE**

We refer to the abovementioned application issued under case number 80978/16 served on my clients, at least some of the respondents, on Friday, 14 October 2016.

I represent the respondents which can be referred to as the Oakbay group of companies, many of them cited as respondents in the application where you act on behalf of the applicant.

The application seeks declaratory relief that the applicant is not by law empowered or obliged to intervene in the relationship between my clients and commercial banks.

In support of this application your client's representative deposed of a founding affidavit in which the deponent seeks to rely on certain facts contributing to the initiative to launch the application.

QMH

On the contrary, President Zuma's eldest son – Edward Zuma, on Friday, urged Gordhan to stop playing the victim's card. He called the minister to humbly report to the Hawks because he is not above the law.

See also: I Don't Have Powers To Stop Gordhan's Probing – Zuma

Unfazed by the cold war and the dark cloud hanging above him, the beleaguered minister made it clear to all that he will not report to the Hawks because he was advised not to do so, as he is under no legal obligation to do so.

Gordhan's meeting with the National Treasury staff was held just days after the Hawks had asked Gordhan, his former deputy at SARS, Ivan Pillay, and four other senior former SARS officials to provide warning statements.



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depicts a battle for "Mandela values" versus the values of those who steal.

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Finance Minister Pravin Gordhan, a former commissioner at the SA Revenue Service (SARS), is being investigated for setting up a "rogue unit" at the SARS. He is also being probed for allegedly granting early retirement to the former SARS deputy head, Ivan Pillay.

①

His former colleagues Pillay, Johann van Loggerenberg [former group executive in SARS] and Andries van Rensburg [head of the investigative unit] are also victims of the 'perceived' witch-hunt.

President Zuma Confident In Minister Gordhan Pravin

However, irrespective of Zuma's support and confidence in the minister; the president categorically announced on Thursday that he is not in the position nor has the power to impede Gordhan's investigation.

Q M+7

The sponsors of the shady scuffle between South African Finance Minister Pravin Gordhan and the police elite unit; the Hawks have being unveiled. The revelation was made by Gordhan during a meeting held with the national treasury staff on Friday.

According to the embattled minister, the out-of-favor Indian-South African family- the Guptas are the brain behind his nightmare. He said he is being attacked by the influential family because of the work the National Treasury is doing.

Read also: These Four People Could Replace Gordhan – Check Them Out

The minister also alleged that the Hawks wants to deliberately cut the ground from under his feet because of his personality; adding that the elite unit's legal reading of charges against him are faulty and baseless.

Coming clean with the National Treasury staff, Gordhan claimed that what is currently happening in the country

④ MK

OK

1160

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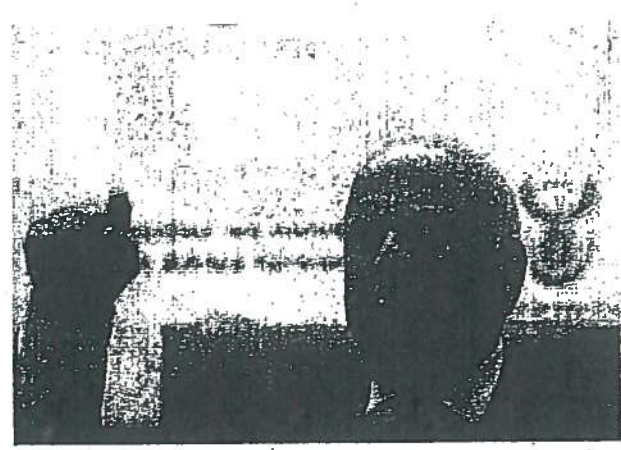
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Post by  Osondu Queen

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ZAR/AUD
10,19 ₪ (-0.38%)

ZAR/EUR
14,47 ₪ (-0.56%)

ZAR/GBP
16,44 ₪ (-0.86%)

ZAR/JPY
0,12 ₪ (-0.68%)

ZAR/USD
13,61 ₪ (-0.56%)

All data is delayed

See More

FULL STATEMENT: Why Gordhan won't meet the Hawks

Aug 24 2016 17:33

I confirm that on 22 August 2016, my attorneys received a letter from the Directorate for Priority Crime Investigations ("the HAWKS") requesting that I present myself at their offices on 25 August 2016, at 14h00 in order that a warning statement may be obtained from me. The letter from the HAWKS is attached.

I have since taken legal counsel and my response through my attorneys to the letter by the HAWKS together with my statement are attached. I am advised that I am under no legal obligation to present myself to the HAWKS as directed in their letter. I have decided not to do so for the following considerations:

1. I was advised in no uncertain terms by the Head of the HAWKS, General Ntsemeza, in his letter of 20 May 2016, in response to my attorney's enquiry, that I am not a suspect in the HAWKS' investigation.
2. I have provided a comprehensive account of matters which the HAWKS had raised in their 27 questions on 18 May 2016.
3. I am advised by my legal team that the assertions of law made by the HAWKS in their letter of 21 August 2016 are wholly unfounded on any version of the facts. There are two matters raised by the HAWKS and these are contravention of the National Strategic Intelligence Act, 39 of 1994 ("the Intelligence Act") as well as Sections 34 and 81 (2) of the Public Finance Management Act, 1 of 1999 ("PFMA").

These alleged contraventions are dealt with in detail in my attorneys' attached letter. Suffice it to say they advise that the alleged charges are wholly unfounded.

I therefore, do not intend to present myself for a warning statement for many considerations, both legal and given my other commitments. I remain committed to assist the HAWKS in any bonafide investigation as stated in my statement.

I have a job to do in a difficult economic environment and serve South Africa as best I can. Let me do my job.

Listen to the clip by Gordhan below:



Finance Minister Pravin Gordhan. (File: AFP)

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Sars wars: I won't be meeting the Hawks, declares Gordhan

2016-08-24 17:17

Cape Town - Finance Minister Pravin Gordhan says he will not meet the Hawks who summoned him to appear at their office to obtain a warning statement.

Gordhan confirmed on Wednesday that his attorneys received a letter from the Hawks requesting himself to appear at their offices at 2pm on Thursday.

"I have since taken legal counsel.... I am advised that I am under no legal obligation to present myself to the Hawks as directed in their letter. I have decided not to do".

Gordhan said that he was advised, in no uncertain terms, by Hawks head General Ntsemeza that he not a suspect in the their investigation

FULL STATEMENT: Why Gordhan won't meet the Hawks

He said that he also provided a comprehensive account of matters which the Hawks had raised in their 27 questions in May 2016.

READ MORE:- 12 ways Gordhan reacted to the relentless Hawks onslaught

"I am advised by my legal team that the assertions of law made by the Hawks in their letter of 21 August 2016 are wholly unfounded on any version of the facts.

"There are two matters raised by the Hawks and these are contravention of the National Strategic Intelligence Act, 39 of 1994 ("the Intelligence Act") as well as Sections 34 and 81 (2) of the Public Finance Management Act, 1 of 1999 ("PFMA)," he said.

These alleged contraventions, said Gordhan, are wholly unfounded.



Finance Minister Pravin Gordhan. (Photo: GCIS)

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BANK OF CHINA JOHANNESBURG BRANCH

VR LASER SERVICES (PTY) LTD
PO BOX 5362
BOKSBURG NORTH
1461

29 September 2016

Dear Sir/Madam



TERMINATION OF CUSTOMER RELATIONSHIP

We regret to advise that in terms of the bank's internal rules and risk appetite, we are no longer able to maintain the relationship with your good company. As such we have closed your account number 100200300098459 and will be in contact with yourselves for the payment of all amounts that we hold on your behalf less standard banking fees that may apply.

We apologise for any inconvenience caused.

Yours sincerely

General Manager

Business Development Department (Africa)

Bank of China Johannesburg Branch

Bank of China Limited Johannesburg Branch
Registration No. 2000/008434/10
Incorporated in the People's Republic of China
A Licensed Financial Services Provider
FSP Reg. No. 5444

14-16th Floors, Alice Lane Towers
15 Alice Lane, Sandton
Johannesburg, South Africa
P.O.Box 782616 Sandton 2146, South Africa
Tel: 27-11-520 9600 Fax: 27-11-520 9685

QMA



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Ref: BKWEL16133

VR LASER SERVICES (PTY) LTD
10 HAGGIE ROAD
DUNSWART EXT.5
BOKSBURG

08 September 2018

Dear Sir / Madam,

We would like to take this opportunity to welcome you as our valued client and thank you for choosing us as one of your business partners.

Your business ZAR account number is: 100200300098459

Bank account details for ZAR fund deposits are as follows:

Bank: The Standard Bank of South Africa
Branch: Sandton Branch
Branch code: 019205
Account name: Bank of China
Account number: 022678958
Reference: 098459 - VR LASER SERVICES (PTY) LTD

Please note that no debit order is allowed on the above account unless it is authorized by Bank of China Limited Johannesburg Branch. Any costs for unauthorized debit orders will be payable by the instructing party.

Bank account details for USD fund deposits are as follows:

Beneficiary Account: 100200300098459
Beneficiary Name: VR LASER SERVICES (PTY) LTD
Beneficiary Bank: Bank of China Limited, Johannesburg Branch
Swift Code: BKCHZAJJ
Receiver's correspondent: Bank of China, New York Branch
Swift Code: BKCHUS33

Please make sure that the correct reference is annotated to ensure that the funds are properly credited into your ZAR account.

Should you require any further details, please feel free to contact us at +27-11-5209636. Or alternatively, you can email us at banking@boc.co.za.

Yours sincerely

Wenxia Yao
General Manager
Banking Department
Bank of China Limited Johannesburg Branch

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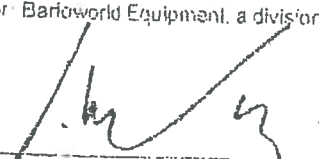
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P.O.Box 782616 Sandton 2146, South Africa
Tel: 27-11-520 9600 Fax: 27-11-520 9696

QMH

the possession, directly or indirectly, of the power to direct or cause the direction of the management, business and policies of such person, whether through ownership of voting securities, by contract or otherwise.

Sincerely

For Barloworld Equipment, a division of Barloworld South Africa Proprietary Limited



Signatory: Emmy Leeka
Capacity: Chief Executive Officer, BWE RSA





Barloworld Equipment

Barloworld Equipment
a division of Barloworld South Africa (Pty) Ltd
137 Padarnow Street, Sandton, South Africa
PO Box 781281, Sandton 2146
Tel: +27 (11) 301 4200 Fax: +27 (11) 301 4130
www.barloworld-equipment.com

Reg No: 194902106/07
Type: Producer Reg No: TPPE20081044

16 May 2016

Shiva Uranium (Pty) Ltd
1A Berg Street
Hartbeesfontein, 2600
North West
South Africa

Attention: Varun Gupta

Dear Sir

Standard Terms and Conditions

1. We refer to the Standard Terms and Conditions for Doing Business with Barloworld Equipment, a division of Barloworld South Africa Proprietary Limited ("BWE"), dated 28 September 2015 ("the Standard Terms & Conditions").
2. In light of recent media reports regarding the withdrawal of the JSE sponsors, auditors, insurers and bankers of Oakbay Resources and Energy Limited, the ultimate holding company of Shiva Uranium (Pty) Ltd ("Shiva Uranium"), BWE is of the view that continuing to do business with Shiva Uranium poses a significant financial and credit risk.
3. Accordingly, pursuant to clause 6.3 of Part A of the Standard Terms & Conditions, we hereby give notice to cancel the Standard Terms & Conditions with immediate effect. This means that all outstanding accounts with BWE will become immediately due and payable. Please attend to settling all such accounts. All goods and services to be acquired from BWE can be done on a cash basis and we will continue to honour all warranty obligations on existing equipment.
4. Please further note that all trading accounts with any affiliated company of Shiva Uranium and/or any of the directors of Shiva Uranium and its affiliated group companies are hereby also cancelled.
5. Affiliated group companies includes any person that, directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, Shiva Uranium. "Control" means, in relation to any entity:
 - a. the beneficial ownership of the majority in number of the shares (or other equity interest) in that entity's entire issued share capital and/or of the whole or major portion of that entity's assets
 - b. the right or ability to direct or otherwise control the votes attaching to the majority of that entity's issued shares (or other equity interest),
 - c. the right or ability to appoint or remove directors or trustees holding a majority of voting rights at meetings of the board or other executive body of that entity, and/or

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Ronica Ragavan

From: Ronica Ragavan
 Sent: Tuesday, 05 April 2016 9:36 AM
 To: nitins@jic.co.za
 Subject: FW: Feedback from Management meeting

Contact Avis for the vehicle leases asap

I would like to meet them to close if I can

From: Mashadi Mmusi [mailto:mmmusi@eqstrafleet.co.za]
 Sent: Tuesday, 05 April 2016 9:32 AM
 To: Ronica Ragavan <ronica@oakbay.co.za>
 Cc: nitins@jic.co.za
 Subject: Feedback from Management meeting

Good Morning Ronica

I hope you are well this morning

Based on the facility review concluded by the Eqstra executive team and the credit committee analysis, Eqstra is not in a position to increase the facility and therefore have declined the increase for the R11 million.

Additionally the quotations provided recently is the best pricing offer from Eqstra. Whilst we appreciate that we have had a long standing relationship, our objective to ensure we conclude good business with the intention of making the right returns for the objectives of the Eqstra shareholders, we are unable to further reduce the quotations.

Eqstra appreciate the opportunity to review the quotations and the continuous support from Westdown.

If you need further assistance, please don't hesitate to contact me

MASHADI MMUSI
 CUSTOMER RELATIONS CONSULTANT

Email: mmmusi@elm.co.za
 Direct Line: +27 (0)11 458 7596
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From: Zandre Rudolph <zandre.rudolph@lge.com>
Date: Tue, May 24, 2016 at 12:11 PM
Subject: FW: Sahara Computers - Credit limit
To: Stephan SJD Nel <sjd@sahara.co.za>, Evan Tak <evan@sahara.co.za>
Cc: "kim chiyoony(cy)" <cy.kim@lge.com>

Dear Stephan,

RHQ did a review on all credit for the risky territories globally. As a company, we have considered and have unfortunately been forced to withdraw cover on your account. We would like to take this opportunity to thank you for your support over the last year.

Regards,
Zandre

From: Cheryl Bezuidenhout/LGESA Finance Accounts Receivables Team(cheryl.bezuidenhout@lge.com)
Sent: Tuesday, May 24, 2016 8:00 AM
To: Zandre Rudolph/LGESA Export Sales Part(zandre.rudolph@lge.com)
Subject: Sahara Computers - Credit limit

Hi Zandre

Please note that insurance cover has been withdrawn from the Sahara account.

Regards

Cheryl Bezuidenhout
AR Manager
Accounts Receivable Department
Office: +27 -11- 323 8122
Fax: 086 502 1543

LG.ELECTRONICS SA (Pty) Ltd
LG Building, Monte Carlo Drive, Raceway, Industrial Park, Gosforth Park, Germiston, 1401
www.lg.com

Q 11/11

CONFIDENTIAL

Western Digital Technologies, Inc.
1155 Nicholson Drive, Suite 100
Irvine, California 92618

August 2, 2016

(VIA FEDEX AND E-MAIL)

Sahara Computers (PTY) Ltd
No. 89 Gazelle Avenue
Corporate Park South
Old Pretoria Main Road
Midrand
Gauteng 1685
South Africa

RE: Notice of Termination

Dear Sir,

Reference is made to the Distributor Agreement by and between Western Digital Technologies, Inc. ("WD") and Sahara Computers (PTY) Ltd ("Sahara"), effective as of March 13, 2013 ("Distributor Agreement").

Pursuant to Section 16(A) of the Distributor Agreement, WD hereby provides notice of termination of the Distributor Agreement. The Distribution Agreement shall terminate on September 9, 2016.

Termination of the Distribution Agreement for any reason shall not affect any provisions which are intended to continue in force after termination or expiry including, but not limited to, Section 3 (Payment of Unpaid Invoices Due) and Section 13 (Confidential Information) which shall remain in full force and effect. Pursuant to Section 13, please return or destroy all WD confidential information in your possession (including, but not limited to, WD price lists and road maps) and any copies of the same.

Yours faithfully,

Western Digital Technologies, Inc.

By: 

Name: James Rumley

Title: Senior Director, WW Business Marketing

AH MH

SanDiskSanDisk is a WD company
SanDisk International

September 16, 2016

By Email + Courier

Sahara Computers (PTY) Ltd
59 Gazelle Avenue
Corporate Park South Midrand
Gauteng 1687
South Africa

Subject: Termination of Distribution Relationship

Dear Customer,

This letter serves as notification of our intention not to renew the CBC Addendum to the International Distributor Agreement for CBC Products dated September 1, 2013 (the "Agreement") which shall therefore expire on December 31, 2016.

In light of the above, effective January 1st, 2017 any existing distributorship or reseller relationship between the parties and/or their affiliates, including, without limitation, the Agreement and any and all effective contractual or other rights and obligations existing between the parties and/or their affiliates, shall terminate.

Please note the obligations set forth in the Agreement with respect to return of Proprietary Information.

This letter and contents hereunder shall be considered confidential and not disclosed to any third parties. It is further clarified that neither party shall have any liability or claim of whatsoever nature to the other in respect of the termination of the Agreement and/or the relationship except that this letter shall not affect any outstanding financial obligations which may have been due and payable prior to the expiration date.

We appreciate the value you have provided to SanDisk and wish you all the best in the future.

Sincerely,

SanDisk International Limited



Hugh Connolly, General Manager

Ronica Ragavan

From: Reliant Insurance Brokers
Sent: Monday, 03 October 2016 8:50 AM
To: 'Ronica Ragavan'
Cc: 'Kevin Thyse'
Subject: FW: Policy Lapse SA ENG 4781331 and SA SRI 4779117
Attachments: pic08532.jpg; pic06629.jpg; pic32657.jpg; ZZAJHBPRTSVR01_ZAJHB1ST04_3023_001.pdf

Hello Ronica,

Please see below.

Kind Regards
Rita

Reliant Insurance Brokers (Pty) Ltd
FSP # 893
PO Box 391740
Bramley
2018

Tel: 011 8870130/1/2
Fax: 011 8870270 / 0866569360
email: reliant@telkomsa.net

-----Original Message-----

From: Linda Griffiths [<mailto:linda.griffiths@zurich.co.za>]
Sent: 17 August 2016 10:29
To: Reliant Insurance Brokers
Cc: Chrissie Erasmus
Subject: Policy Lapse SA ENG 4781331 and SA SRI 4779117

Good Morning Rita,

Unfortunately another policy coming up for renewal that we will not be inviting renewal on. Please note that we will lapse the policy with effect 31 October 2016 and the Sasria as well.

Please ensure your client has cover in place by the 31st October 2016. Our endorsement to follow.

Thanking you and Kind Regards

Handwritten signature/initials

Ronica Ragavan

From: Kevin Thyse
Sent: Monday, 03 October 2016 10:02 AM
To: Ronica Ragavan
Subject: FW: Optimum

Hi Ronica
Hrerwith Hollard withdrawal

*Kind Regards,
Kevin*

*Reliant Insurance Brokers (Pty) Ltd
FSP # 893
PO Box 391740
Bramley
2018*

*Tel: 27 11 8870130/1
Fax: 27 11 8870270
Cell: 0833950766
email - kevin.reliant@telkomsa.net*

From: Gregory Scott [mailto:GregoryS@hollard.co.za]
Sent: 06 July 2016 09:37 AM
To: Kevin Thyse
Cc: Nash Omar; Jacques Wiese
Subject: Optimum

Dear Kevin,

Apologies for missing your call.

In lieu of a call I thought it prudent to get something down in writing as to our final position.

Unfortunately we are unable to offer support on Optimum.

I apologise for the inconvenience and delay in reaching this decision.

I wish you luck for the balance of the placement.

Kind regards,

Gregory Scott.

Business Development Manager | HBM - Property & Energy | South Africa

T +27 11 351 2519 | F +27 83 291 5491 | E gregorys@hollard.co.za | W www.hollard.co.za



17

1174

Ronica Ragavan

From: Kevin Thyse
Sent: Monday, 03 October 2016 9:59 AM
To: Ronica Ragavan
Subject: FW: Optimum Colliery

Hi Ronica herewith M&F letter

*Kind Regards,
Kevin*

*Reliant Insurance Brokers (Pty) Ltd
FSP # 893
PO Box 391740
Bramley
2018*

*Tel: 27 11 8870130/1
Fax: 27 11 8870270
Cell: 0833950766
email - kevin.reliant@telkomsa.net*

From: Phil Lowrie [mailto:Phil.Lowrie@MF.co.za]
Sent: 13 May 2016 08:20 AM
To: Kevin Thyse <kevin.reliant@telkomsa.net> (kevin.reliant@telkomsa.net)
Subject: Optimum Colliery

Dear Kevin,

On 5th February 2016 we provided you with a quote on property insurance, following our numerous discussions and as detailed in your broking notes information, for Optimum Colliery. On the 14th April 2016 we informed you of our decision to withdraw that quote as we were no longer prepared to write this business. We recognize that this action left you and your client in a difficult position as it was close to planned inception date of the cover. We therefore agreed to a hold covered arrangement for 30 days, to give you time to place this insurance elsewhere. You confirmed on 15th April 2016 that you were making alternative arrangements and that this hold covered was not required.

We have accordingly filed our papers.

Kind regards

**Phil Lowrie | Manager - Business Development | Corporate Business
Mutual & Federal Insurance Company Limited**
Authorised Financial Services Provider | A Member of the Old Mutual Group
Tel: +27 (0)11 374 4640 | Fax: +27 (0)11 374 4766 | Mobile: +27 (0)82 909 0699
Email: phil.lowrie@mf.co.za

MUTUAL & FEDERAL

PROTECTING WHAT'S IMPORTANT TO YOU SINCE 1831

DM

TEXTRON FINANCIAL

Two Cessna Blvd., Suite 100
Wichita, KS 67215-1423
1.316.660.1217
1.866.232.5626
www.textronfinancial.com

VIA FEDERAL EXPRESS OVERNIGHT & E-MAIL (ronica@oakbay.co.za)

August 11, 2016

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD.
89 Gazelle Ave., Corporate Park (S)
Midrand
Gauteng, South Africa 1685

RAJESH GUPTA
34 Kings Road
Bedfordview, South Africa 2007

ARTI GUPTA
34 Kings Road
Bedfordview, South Africa 2007

ATUL GUPTA
34 Kings Road
Bedfordview, South Africa 2007

CHETALI GUPTA
34 Kings Road
Bedfordview, South Africa 2007


Re: **REQUEST FOR LEASE EXTENSION**
Borrower: ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD.
Account No.: 3110026886-2293321
Lender: CESSNA FINANCE CORPORATION (CFC)
Collateral: Cessna Model 680, Manufacturer's Serial No. 680-0254, South African Marks ZS-AKG

Dear Ms. Ragavan:

As you are aware, the lease for the above aircraft matures on December 21, 2016 and you sought our approval to extend the lease. We have reviewed your request and respectfully decline it and ask that you pay off the aircraft prior to the maturity date. At this time we are not comfortable extending our financial relationship past the original maturity date.

I sincerely hope that you understand our position. Please let us know what information you may need in order to complete the pay off by December 21, 2016.

TEXTRON FINANCIAL CORPORATION


Robert L. Hotelling, Jr.
Senior Vice President
Chief Credit Officer
rhotelling@textronfinancial.com
ph: 316-660-1235



ABSOLUTE SERVICE CENTRE



ABSOLUTE CHARTER GROUP

13 September 2016

Islandsite Investments 180 (Pty) Ltd
Private Bag X180
Halfway House
1685
Attn: Ashu Chawla/Stephen Morris

Dear Ashu/Stephen,

Absolute Service Centre (Pty) Ltd regrets to inform you that we are no longer in a position to support the maintenance on your Cessna Citation Sovereign, registration ZS-AGG.

This letter serves as formal 30 Days' notice of the termination of our services.

Yours truly,

Dewald Basson
Commercial Director: Product Support

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Ronica Ragavan

From: Ettore Poggi
Sent: Thursday, 07 July 2016 11:16 AM
To: Ronica Ragavan
Cc: Ashu Chawla; Shane Hayward
Subject: RE: ZA- OAK

Thank You Ronica.

Best regards

ETTORE POGGI
Vice President
Africa

ExecuJet Aviation Group
 Tel: +27 11 516 2300
 Fax: +27 86 637 8810
 Mobile: +27 83 327 7000
www.execujet.com

From: Ronica Ragavan [mailto:ronica@oakbay.co.za]
Sent: 07 July 2016 07:23 AM
To: Ettore Poggi <ettore.poggi@execujet.co.za>
Cc: Ashu Chawla <ashu@sahara.co.za>
Subject: ZA- OAK

Dear Mr Poggi

Thanks for a pleasant meeting yesterday.

As discussed , Execujet will allow us till 31 August 2016 to make alternate arrangements for hangering/parking ZS-OAK. However should we find alternate arrangements earlier we shall move the aircraft, if not we will take up the offer of positioning it at Execujet Capetown.
 Also Execujet will continue to manage the aircraft and provide all other services o maintenance flights etc.

Although we understand the reason for the sudden change in decision we humbly request that should your shareholders or Board wish to meet
 With us to clarify or discuss any matters in particular we are more than willing to make ourselves available for the same.

We thank you once again for assisting and bearing with us on this matter.

Regards
 Ronica



TOTAL AVIATION SERVICES a promise not made lightly



AS
M/ff

NOTICE - This message and any attachments thereto contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient of this message, you are hereby notified that you must not disseminate copy or take any action in reliance on it or on any of its attachments. If you have received this message in error, please notify us by email legal@execujet.eu or telephone +41 44 804 1616 and destroy

Nardello
Co.

1179

Nardello & Co. LLP
22-24 Ely Place
London EC1N 6TE
T: +44 0 20 7079 5900
F: +44 0 20 7079 5919
www.nardelloandco.com

PRIVILEGED AND CONFIDENTIAL

17 January 2017

Ajay Gupta
Atul Gupta
Rajesh Gupta

Nardello & Co. conducted searches of national and international lists (Commission de Surveillance du Secteur Financier, Luxembourg; Commonwealth of Australia Law; De Nederlandsche Bank, Netherlands; Department of Foreign Affairs and Trade, Australia; European Union; Financial Services Agency, Japan; Guernsey Financial Services Commission; Hong Kong Monetary Authority; Home Office; HM Treasury (formally Bank of England); Isle of Man Financial Supervision Commission; Jersey Financial Services Commission; Ministry of Finance, Japan; Monetary Authority of Singapore; Office of Foreign Assets Control (OFAC), United States; Office of the Superintendent of Financial Institutions, Canada; Reserve Bank of Australia; United Nations Security Council Committee; and US Department of State) that name entities and individuals subject to sanctions.

None of the above-named individuals appears on any of these lists.



0825.2

1180

Privaatsak/Private Bag X 1500, SILVERTON

Reference	26/1/1
Enquiries	Maj. Gen ZL Mnonopi
Tel / Fax	012 846 4002 012 846 4400
E mail	Mnonopizintle@saps.gov.za

OFFICE OF THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
HEAD OFFICE
PRETORIA

16 January 2017

The Attorneys
Van Der Merwe Associates Incorporated
PO Box 27756
Sunnyside
0132

**AMENDMENT ON RESPONSE ENQUIRY: POSSIBLE INVESTIGATION RELATING TO GUPTA FAMILY AND
OAKBAY GROUP OF COMPANIES**

This office acknowledges the receipt of the letter dated 11/01/2017 with reference reading MR GT VD MERWE/yvd/078.

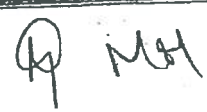
The contents of your letter has been noted though Annexure "A" referred to was not attached.

This office wishes to confirm that there are no reports nor complaints relating to this matter that were received from the banks or FIC as cited in your correspondence.

This office also wishes to confirm that Rosebank Cas 104/10/2016 relating to the suspicious transaction reports (STR) involving your clients is dealt with by this office, but presently there is no evidence that implicates your clients. Please withdraw the first correspondence dated 2017/01/12 with reference Rosebank Cas 106/10/2016.


LIEUTENANT GENERAL,
NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
B. M. NTLEMEZA

DATE: 2017-01-16



Tax Clearance Certificate Number:

0700/2/2017/A000640373

Tax Clearance Certificate - Good Standing**Enquiries**

0800 00 SARS (7277)

Approved Date

2017-01-11

Expiry Date

2017-09-14

Company registration number 1997/015590/07

Income Tax 9203014833
SAHARA COMPUTERS PTY LTDVAT 4700182076
SAHARA COMPUTERS PTY LTDPAYE 7370736607
SAHARA COMPUTERS PTY LTD

Trading Name CORRECTION COMPUTERS

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- via eFiling
- by calling the SARS Contact Centre
- at your nearest SARS branch

This certificate is issued in respect of the taxpayer's tax compliance status only, and does not address any other aspect of the taxpayer's affairs.

This certificate is issued free of charge by SARS



Tax Clearance Certificate Number:
0700/2/2017/A000665076

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2017-01-19
Expiry Date
2018-01-19

Company registration number 2006/023982/07
Income Tax 9331507641
CONFIDENT CONCEPTS (PTY) LTD
VAT 4080246251
CONFIDENT CONCEPTS (PTY) LTD
PAYE 7390788455
CONFIDENT CONCEPTS (PTY) LTD
Trading Name CONFIDENT CONCEPTS (PTY) LTD

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- by calling the SARS Contact Centre
- at your nearest SARS branch

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This certificate is issued free of charge by SARS

④ MH



- 1183

Tax Clearance Certificate Number:
0790/2/2017/A000640361

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2017-01-11
Expiry Date
2018-01-11

Company registration number 2002/004934/07

Income Tax 9355261141
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PTY LTD

VAT 4740199619
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PTY LTD

PAYE 7780767325
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PTY LTD

Trading Name ISLANDSITE INVESTMENTS 180 PTY LTD

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- by calling the SARS Contact Centre
- at your nearest SARS branch

This certificate is issued in respect of the taxpayer's tax compliance status only, and does not address any other aspect of the taxpayer's affairs.

This certificate is issued free of charge by SARS

Q M

Tax Clearance Certificate Number:
0700/2/2017/A000664897

Tax Clearance Certificate - Good Standing

Enquiries
0800 06 SARS (7277)
Approved Date
2017-01-20
Expiry Date
2018-01-20

Company registration number 2011/003219/07
Income Tax 9987105153
INFINITY MEDIA NETWORKS PTY LTD
VAT 4310262904
INFINITY MEDIA NETWORKS PTY LTD
PAYE 7910782293
INFINITY MEDIA NETWORKS PTY LTD
Trading Name INFINITY MEDIA NETWORKS PTY LTD

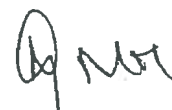
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- at your nearest SARS branch

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This certificate is issued free of charge by SARS





1185

Tax Clearance Certificate Number:
0700/2/2016/A000387241

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-09-14
Expiry Date
2017-09-14

Company registration number 2010/006569/07

Income Tax 9951093153
TNA MEDIA PTY LTD

VAT 4890256276
TNA MEDIA PTY LTD

PAYE 7080775812
TNA MEDIA PTY LTD

Trading Name THE NEW AGE NEWSPAPER

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- by calling the SARS Contact Centre
- at your nearest SARS branch

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This certificate is issued free of charge by SARS

Q M+1

Tax Clearance Certificate Number:

0700/2/2017/A000664869

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2017-01-19
Expiry Date
2018-01-19

Company registration number 2008/006957/07**Income Tax** 9196314174
BLACKEDGE EXPLORATION (PTY) LTD**VAT** 4530246570
BLACKEDGE EXPLORATION (PTY) LTD**PAYE** 7920768712
BLACKEDGE EXPLORATION (PTY) LTD**Trading Name** BLACKEDGE EXPLORATION

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- at your nearest SARS branch

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This certificate is issued free of charge by SARS





Tax Clearance Certificate Number:
0700/2/2016/A000387274

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-09-14
Expiry Date
2017-09-14

Company registration number 2006/020386/07

Income Tax 9282159160
WESTDAWN INVESTMENTS PTY LTD

VAT 4490232198
WESTDAWN INVESTMENTS PTY LTD

PAYE 7800762025
WESTDAWN INVESTMENTS PTY LTD

Trading Name WESTDAWN INVESTMENTS

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- by calling the SARS Contact Centre
- at your nearest SARS branch

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This certificate is issued free of charge by SARS

④ MH



Tax Clearance Certificate Number:
0700/2/2016/A000387325

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-09-14
Expiry Date
2017-09-14

Company registration number 2006/014492/07

Income Tax 9112268165
TEGETA EXPLORATION AND RESOURCES (PTY) LTD

VAT 4680233949
TEGETA EXPLORATION AND RESOURCES (PTY) LTD

PAYE 7270766894
TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Trading Name TEGETA EXPLORATION AND RESOURCES (PTY)

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- by calling the SARS Contact Centre
- at your nearest SARS branch

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This certificate is issued free of charge by SARS

Q MH



Tax Clearance Certificate Number:
0700/2/2016/A000584830

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-12-02
Expiry Date
2018-01-02

Company registration number 1921/006955/07

Income Tax 9001022608
SHIVA URANIUM (PTY) LTD

VAT 4090119985
SHIVA URANIUM (PTY) LTD

PAYE 7760750531
SHIVA URANIUM (PTY) LTD

Trading Name SHIVA URANIUM LIMITED

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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This certificate is issued free of charge by SARS

④ MH



Tax Clearance Certificate Number:
0700/2/2016/A000340667

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-08-29
Expiry Date
2017-08-29

Company registration number 2009/021537/06

Income Tax 9364892167
OAKBAY RESOURCES AND ENERGY LTD

Trading Name OAKBAY RESOURCES AND ENERGY LTD

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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This certificate is issued free of charge by SARS

AMH



OB 25.1
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Tax Clearance Certificate Number:
07002/2016/A000387367

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2016-09-14
Expiry Date
2017-09-14

Company registration number 2006/017975/07

Income Tax 9093288166
OAKBAY INVESTMENTS (PTY) LTD

VAT 4620241218
OAKBAY INVESTMENTS (PTY) LTD

PAYE 7650776901
OAKBAY INVESTMENTS (PTY) LTD

Trading Name OAKBAY INVESTMENTS

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

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- at your nearest SARS branch

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MAH

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

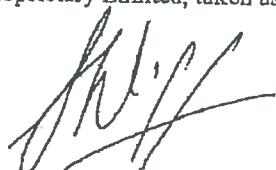
The Total Revenue for each period has been matched to the corresponding Audited Financial Statements, with insignificant variances (if any) in relation to the total revenue of the organisation, for the exception of the period ended 29 February 2016 as at the time of drafting this report these financial statements were not available.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Westdawn Investments Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R0	R0	R0	R0
Private Sector Revenue	R953,159,853	R983,174,656	R1,116,837,023	R1,115,491,204
Other	R0	R0	R0	R0
Total Revenue	R953,159,853	R983,174,656	R1,116,837,023	R1,115,491,204

19 January 2017

Directors
Westdawn Investments Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Westdawn Investments Proprietary Limited (herein after referred to as Company/The company/JIC) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions).
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 2936 Saxonwold, 2132
Tel: 027 (0) 11 231 0608
Fax: 027 (0) 11 231 0701

Victor Stuurman (Chief Executive)

A comprehensive list of all Directors is available at the company offices or registered office.
SizweNtsalubaGobodo Incorporated. Registration Number 2005/034699/21

QNH

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

Conclusion

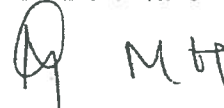
Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Sahara Computers Proprietary Limited, taken as a whole.



A. Philippou CA (SA)
Director
SizweNtsalubaGobodo Incorporated
Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "**Public Sector Revenue**" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "**Private Sector Revenue**" as reported on in this report is revenue derived directly from sources that are **NOT** organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "**Other**" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R0	R0	R0	R0
Private Sector Revenue	R463,845,925	R635,253,738	R782,410,282	R718,164,708
Other	R0	R0	R0	R0
Total Revenue	R463,845,925	R635,253,738	R782,410,282	R718,164,708

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AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Sahara Computers Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Sahara Computers Proprietary Limited (herein after referred to as Company/The company/Sahara) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 above to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Sizwe Ntsaluba Gobodo Inc.
Head Office
20 Morris Street East Woodmead, 2191
P.O. Box 2589, Saxonwold, 2132
Tel: +27 (0) 11 231 0800
Fax: +27 (0) 11 234 0701

Victor S. Nkomo (Chief Executive)

A comprehensive list of all Directors is available at the company office or registered office.
Sizwe Ntsaluba Gobodo Incorporated, Registration Number: 2015/034639/21

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All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Confident Concepts Proprietary Limited, taken as a whole.

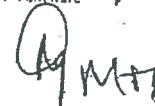


A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 0	R 0	R 0
Private Sector Revenue	R43,478,138	R64,106,522	R53,612,955	R132,089,065
Other	R0	R0	R0	R 0
Total Revenue	R43,478,138	R64,106,522	R53,612,955	R132,089,065

19 January 2017

Directors
Confident Concepts Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Confident Concepts Proprietary Limited (herein after referred to as Company/The company/Confident Concepts) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 239, Saxonwold, 2132
Tel: +27 (0) 11 231 0800
Fax: +27 (0) 11 234 0701

Victor Sibese (Chief Executive)

A comprehensive list of all Directors is available at the company's registered office.
Sizwe Ntsaluba Gobodo Incorporated. Registration Number: 2015/034639/0

Handwritten signature: DMH

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements, with insignificant variances (if any) in relation to the total revenue of the organisation, for the exception of the period ended 29 February 2016 as at the time of drafting this report these financial statements were not available.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Islandsite Investments 180 Proprietary Limited, taken as a whole.



A. Philippou CA (SA)
Director
SizweNtsalubaGobodo Incorporated
Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R0	R0	R0
Private Sector Revenue	R120,101,714	R43,368,921	R46,470,298	R47,494,080
Other	R0	R0	R0	R0
Total Revenue	R120,101,714	R43,368,921	R46,470,298	R47,494,080

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19 January 2017

Directors
Islandsite Investments 180 Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Islandsite Investments 180 Proprietary Limited (herein after referred to as Company/The company/Islandsite) has appointed us to assist in the quantification of revenue derived from the public sector. We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 2935, Saxenwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0701

Vicente S. (Chief Executive)

A comprehensive list of all Directors is available at the company offices & registered office.
Sizwe Ntsaluba Gobodo Incorporated Registration Number: 2015/134639/21

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All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements. The variances between the table above and the corresponding financial statements relate directly to the trade discount which has been netted off from the revenue for purposes of the Annual Financial Statements.

It is important to note that the company changed its year end from June to February with effect from February 2016 and therefore the reporting period to 29 February 2016 is for 8 months.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of VR Laser Services Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 30 June 2014	12 months ended 30 June 2015	8 months ended 29 February 2016
Public Sector Revenue	R31,644,476	R52,490,499	R66,546,311
Private Sector Revenue	R128,141,331	R123,600,977	R80,553,483
Other	R0	R0	R0
Total Revenue	R159,785,807	R176,091,476	R147,099,794



AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
VR Laser Services Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS PRIVATE SECTOR

Dear Sir/Mam

Introduction

VR Laser Services Proprietary Limited (herein after referred to as Company/The company/VR Laser) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 July 2013 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods July 2013 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 29398, Sandton, 2132
Tel: 07 (0) 11 231 0600
Fax: 07 (0) 11 234 0701

Victor Sizwe (Chief Executive)

A comprehensive list of all Directors is available at the company's office or registered office.
Sizwe Ntsaluba Gobodo Incorporated, Registration Number 2005/034639/21

[Handwritten signature]

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Infinity Media Networks Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 263,000	R 8,023,882	R 6,181,651
Private Sector Revenue	R0	R32,488,907	R98,554,395	R209,770,737
Other	R 0	(R2,475)	R0	R0
Total Revenue	R0	R32,749,432	R106,578,277	R215,952,388

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19 January 2017

Directors
Infinity Media Networks Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Infinity Media Networks Proprietary Limited (herein after referred to as Company/The company/Infinity) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Sizwe Ntsaluba Gobodo
Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 2925, Saxonwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 231 0701

Victor Sefiso (Chief Executive)
A comprehensive list of all Directors is available at the company office or registrar's office.
Sizwe Ntsaluba Gobodo Incorporated Registration Number: 2015/034639/21

[Handwritten signature and stamp]

All figures in the table above are quoted in South African Rand's and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of TNA Media Networks Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors



Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R86,810,139	R83,036,944	R85,530,575	R114,089,695
Private Sector Revenue	R76,501,438	R77,602,510	R71,725,735	R84,167,045
Other	R3,828,977	R6,085,242	R5,591,294	R5,406,819
Total Revenue	R167,140,554	R166,724,706	R162,847,604	R203,663,110

19 January 2017

Directors
TNA Media Networks Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

TNA Media Networks Proprietary Limited (herein after referred to as Company/The company/TNA) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 2938, Sandton, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0701

Victor Schreiner (Chief Executive)
A comprehensive list of all Directors is available at the company offices or registered office.
Sizwe Ntsaluba Gobodo Incorporated, Registration Number: 2015/0134635/21

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Blackedge Exploration Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated
Registered Auditors



KAF

"OB24.5"



1215

AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Blackedge Exploration Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Blackedge Exploration Proprietary Limited (herein after referred to as Company/The company/Blackedge) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Street East, Woodmead, 2101
P.O. Box 2939, Secorivold, 2132
Tel: (027) 011 231 0600
Fax: (027) 011 234 0701

Victor Maseko (Chief Executive)

A comprehensive list of all Directors is available at the company office or registered office.
Sizwe Ntsaluba Gobodo Incorporated. Registration Number: 2005/034639/21

AP MH

All figures in the table above are quoted in South African Rands and are exclusive of VAT.


The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation for the periods ended February 2013, 2014 and 2015. In respect of the period ending 29 February 2016, there is a variance of R9.925 Million entirely due to the fact that other income from discontinued operations had been grouped with Revenue for disclosure purposes in the corresponding Annual Financial Statements. This Other income is predominantly made up of Diesel rebates.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Tegeta Exploration and Resources Proprietary Limited, taken as a whole.


A. Philippou CA (SA)
Director
SizweNtsalubaGobodo Incorporated
Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 0	R 0	R493,474,166
Private Sector Revenue	R420,000	R5,948,999	R2,208,947	R2,788,975
Other	R 0	R0	R0	R 0
Total Revenue	R420,000	R5,948,999	R2,208,947	R496,263,141

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1218



AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Tegeta Exploration and Resources Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS PRIVATE SECTOR

Dear Sir/Mam

Introduction

Tegeta Exploration and Resources Proprietary Limited (herein after referred to as Company/The company/Tegeta) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

20 Morris Street East, Wynnburg 2151
P.O. Box 2939, Saxonwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0701

Victor S. Dase (Chief Executive)

A comprehensive list of all Directors is available at the company office or registered office.
Sizwe Ntsaluba Gobodo Incorporated. Registration Number: 2005/034619/21

[Handwritten signature and stamp]
Sizwe Ntsaluba Gobodo

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation.

It is also important to know that the company changed its ownership structure and name during the 2015 financial year from Shiva Uranium Limited to Shiva Uranium Proprietary Limited.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Shiva Uranium Proprietary Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors




Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 0	R 0	R 0
Private Sector Revenue	R 236,455,378	R 151,210,853	R 165,048,700	R 273,714,078
Other	R 0	R 0	R 0	R 0
Total Revenue	R236,455,378	R151,210,853	R165,048,700	R273,714,078

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AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Shiva Uranium Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

**REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF
QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS
PRIVATE SECTOR**

Dear Sir/Mam

Introduction

Shiva Uranium Proprietary Limited (herein after referred to as Company/The company/Shiva) has appointed us to assist in the quantification of revenue derived from the public sector. We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Sizwe Ntsaluba Gobodo Inc.
Head Office
20 Morris Street East, Woodmead, 2191
P O. Box 2939, Saxonwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0701

Vicor Seane (Chief Executive)
A comprehensive list of all Directors is available at the company office or registered office.
Sizwe Ntsaluba Gobodo Incorporated. Registration Number: 2005/034639/21

[Handwritten signature and stamp]

All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements with insignificant variances (if any) in relation to the total revenue of the organisation. The company did not generate any revenue for the periods under review.

It is also important to know that the company changed its ownership structure and name during the 2015 financial year from Oakbay Resources and Energy Proprietary Limited to Oakbay Resources and Energy Limited.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Oakbay Resources and Energy Limited, taken as a whole.



A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 0	R 0	R 0
Private Sector Revenue	R 0	R 0	R 0	R 0
Other	R 0	R 0	R 0	R 0
Total Revenue	R0	R0	R0	R0

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1224



AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Oakbay Resources and Energy Limited
144 Katherine Street
Sandton
Gauteng
South Africa

REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS PRIVATE SECTOR

Dear Sir/Mam

Introduction

Oakbay Resources and Energy Limited (herein after referred to as Company/The company/ORE) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Sizwe Ntsaluba Gobodo Inc.
Head Office
20 Morris Street East, Woodmead, 2191
P.O. Box 2939, Saxonwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0701

Victor Sekake (Chief Executive)

A comprehensive list of all Directors is available at the company's registered office.
Sizwe Ntsaluba Gobodo Incorporated Registration Number: 2005/034639/21

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All figures in the table above are quoted in South African Rands and are exclusive of VAT.

The Total Revenue for each period has been matched to the corresponding Audited Financial Statements, with insignificant variances (if any) in relation to the total revenue of the organisation, for the exception of the period ended 29 February 2016 as at the time of drafting this report these financial statements were not available.

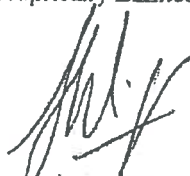
Important to note is that the revenue disclosed above is derived from management fees charged to companies within the group and that this revenue is disclosed as *'other income'* in the corresponding Annual Financial Statements.

Conclusion

Because the above procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance opinion on the underlying source and results of this engagement. Furthermore as this information has been derived directly from the accounting records of the company, we cannot confirm the accuracy and/or validity of the descriptions on the accounting records directly related to the source of the revenue which forms the core of this engagement. Management take full responsibility for the accuracy and validity of the information provided for purposes of this engagement.

Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that could have had an impact on our findings.

Our report is solely for the purpose set out in the first paragraph of this report and for your information as well as to assist you in formulating your responding affidavit for legal proceedings in which the company has been named as a respondent, and is not to be used for any other purpose, nor to be distributed to any other parties without our prior consent. This report relates only to the accounts and items specified above and do not extend to any financial statements of Oakbay Investments Proprietary Limited, taken as a whole.

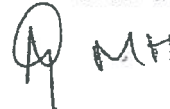


A. Philippou CA (SA)

Director

SizweNtsalubaGobodo Incorporated

Registered Auditors

Procedures Performed and documentation obtained

- We have performed all the procedures as detailed in points 1-5 above and we have reported accordingly in our findings paragraph below.
- The following documentation was requested and received from management:
 1. Detailed General Ledger relating to Revenue.
 2. Copy of signed Annual Financial Statements.
- The Audited Financial Statements as well as General Ledger relating to Revenue were received from management. No procedures other than that detailed in procedure 2 above were performed in order to verify these account balances, therefore we do not express an opinion on the Financial and/or Management statements presented.

Definitions and explanatory notes

- The definition of "*Public Sector Revenue*" as reported on in this report is revenue derived directly from sources which are organs of the South African Government which would include inter-alia National, Provincial and local government as well as State Owned Companies.
- The definition of "*Private Sector Revenue*" as reported on in this report is revenue derived directly from sources that are *NOT* organs of state. This revenue would include inter – alia Private companies, Public Companies not owned by the state such as JSE Listed entities, Non Profit companies, agencies as well as revenue derived from any and all natural persons.
- The definition of "*Other*" as reported on in this report is revenue derived or reported on in the company's accounting records where the source is not clearly identifiable and would include, amongst others, items such as fair value adjustments, General Journal entries and audit adjustments that are not directly linked to a specific transaction.

Findings

The Following table illustrates the revenues derived by the company and from the relevant sources that these revenues are derived from:

	12 months ended 28 February 2013	12 months ended 28 February 2014	12 months ended 28 February 2015	12 months ended 29 February 2016
Public Sector Revenue	R 0	R 0	R 0	R 0
Private Sector Revenue	R2,400,000	R2,400,000	R2,400,000	R23,820,000
Other	R 0	R 0	R 0	R 0
Total Revenue	R2,400,000	R2,400,000	R2,400,000	R23,820,000



AUDIT • ADVISORY • FORENSICS

19 January 2017

Directors
Oakbay Investments Proprietary Limited
144 Katherine Street
Sandton
Gauteng
South Africa

REPORT ON THE AGREED UPON PROCEDURES PERFORMED IN TERMS OF QUANTIFYING THE EXTENT OF REVENUE GENERATED FROM PUBLIC SECTOR VS PRIVATE SECTOR

Dear Sir/Mam

Introduction

Oakbay Investments Proprietary Limited (herein after referred to as Company/The company/Oakbay) has appointed us to assist in the quantification of revenue derived from the public sector.

We have performed procedures agreed with you and described below on the revenue derived by the company for the period 1 March 2012 to 29 February 2016. Our engagement was undertaken in accordance with International Standard and Related Services applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the management of the company. This report is prepared for management of the company to assist them in quantifying the extent of Public sector revenue generated by the company.

Scope of Engagement (as per engagement letter)

1. Obtain from management the detailed general ledger for the revenue account of the company for the periods March 2012 to February 2016. (These reports to include Invoices, Credit Notes, Journals and any other potential transactions)
2. Confirm total revenue per financial period as received in procedure 1 to audited financial statements for the corresponding periods.
3. Group detailed revenue ledger on a per customer basis.
4. Allocate each customer between Public and Private Sector based on the descriptions within the information obtained in procedure 1 above.
5. Issue a detailed report detailing the split between Public and Private Sector business.

Head Office
20 Morris Siraal East, Woodmead, 2191
P.O. Box 2939, Saxonwold, 2132
Tel: (0) 11 231 0600
Fax: (0) 11 231 0701

Victor Selene (Chief Executive)

A comprehensive list of all Directors is available at the company offices or registered office.
SizweNtsalubaGobodo Incorporated. Registration Number: 2015/034639/21

Q M H




बैंक ऑफ बड़ोदा Bank of Baroda

1228

DEPOSIT RECEIPT

DEPOSIT RECEIPT NUMBER	92020300000654
NAME OF THE DEPOSITOR	OPTIMUM MINE REHABILITATION TRUST
AMOUNT OF DEPOSIT	500,000,000.00
PERIOD OF DEPOSIT	12 MONTHS
RATE OF INTEREST	7.70% P.A.
VALUE DATE	24-06-2016
MATURITY DATE	24-06-2017
INTEREST AMOUNT ON MATURITY	38,444,954.71
INTEREST ACCRUED AS ON 31-12-2016	21,357,283.47
TOTAL AMOUNT ON MATURITY	538,444,954.71


Manoj Kumar Jha
(Chief Manager)



Date: 13th Jan 2017






बैंक ऑफ बड़ोदा Bank of Baroda

1229

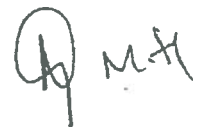
DEPOSIT RECEIPT

DEPOSIT RECEIPT NUMBER	92020300000655
NAME OF THE DEPOSITOR	OPTIMUM MINE REHABILITATION TRUST
AMOUNT OF DEPOSIT	461,000,000.00
PERIOD OF DEPOSIT	12 MONTHS
RATE OF INTEREST	7.70% P.A.
VALUE DATE	24-06-2016
MATURITY DATE	24-06-2017
INTEREST AMOUNT ON MATURITY	35,446,248.24
INTEREST ACCURRED AS ON 31-12-2016	19,691,415.36
TOTAL AMOUNT ON MATURITY	496,446,248.24


Manoj Kumar Jha
(Chief Manager)



Date: 13th Jan 2017



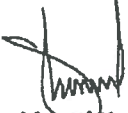


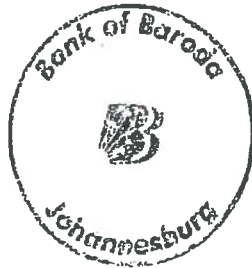
बैंक ऑफ बड़ौदा Bank of Baroda

1230

DEPOSIT RECEIPT

DEPOSIT RECEIPT NUMBER	92020300000653
NAME OF THE DEPOSITOR	OPTIMUM MINE REHABILITATION TRUST
AMOUNT OF DEPOSIT	500,000,000.00
PERIOD OF DEPOSIT	12 MONTHS
RATE OF INTEREST	7.70% P.A.
VALUE DATE	24-06-2016
MATURITY DATE	24-06-2017
INTEREST AMOUNT ON MATURITY	38,444,954.71
INTEREST ACCURRED AS ON 31-12-2016	21,357,283.47
TOTAL AMOUNT ON MATURIY	538,444,954.71


Manoj Kumar Jha
(Chief Manager)



Date: 13th Jan 2017

Q M n

Date: 18-01-2017

BANK OF BARODA, JOHANNESBURG

TYPE: BARODA CURRENT ACCOUNT
A/C NO: 92020200000524 ZAR

PAGE:

TO:

.. OPTIMUM MINE REHABILITATION TRUST

CUSTOMER ADDRESS:

cust_Acomu_addr1

JOHANNESBURG

JOHANNESBURG

GAUTENG

SOUTH AFRICA

ugeshnin@sahara.co.za

ACCOUNT ADDRESS:

144 KATHERINE STREET

JOHANNESBURG

JOHANNESBURG

GAUTENG

SOUTH AFRICA

ugeshnin@sahara.co.za

STATEMENT OF ACCOUNT FOR THE PERIOD OF 31-05-2016 to 18-01-2017

TRAN DATE	TRANSACTION PARTICULARS	WITHDRAWALS	DEPOSITS	BALANCE
31-05-16	B/F			0
22-06-16	CREDIT IN NEDBANK		1469916933.63	1469916933.63C
24-06-16	Dr. Tran for funding A/	500000000.00		969916933.63C
24-06-16	Dr. Tran for funding A/	500000000.00		469916933.63C
24-06-16	Dr. Tran for funding A/	461000000.00		8916933.63C
30-06-16	92020200000524: Int. Pd: 0		328115.02	9245048.65C
29-07-16	92020200000524: Int. Pd: 0		31322.02	9276370.67C
31-08-16	92020200000524: Int. Pd: 0		31428.14	9307798.81C
30-09-16	92020200000524: Int. Pd: 0		30517.37	9338316.18C
31-10-16	92020200000524: Int. Pd: 0		31638.01	9369954.19C
30-11-16	92020200000524: Int. Pd: 0		30721.17	9400675.36C
30-12-16	92020200000524: Int. Pd: 0		31849.28	9432524.64C
Page Total:		1461000000.00	1470432524.64	9432524.64C
GRAND TOTAL:		1461000000.00	1470432524.64	9432524.64C

Unless the constituent notifies the bank immediately of any discrepancy found by him/her in this statement of Account, it will be taken that he/she has found the statement correct.

Date Stamp

Manager

*** END OF STATEMENT ***



"OB23"

1232

Date: 18th January 2017

To Whom IT May Concern

Account Balance in the current of Optimum Mine Rehabilitation Trust Account # 92020200000524 maintained with our branch on 17th January 2017 is ZAR 9 432 524 .64 (ZAR Nine million four hundred thirty-two thousand five hundred twenty-four Rand and sixty-four cents)

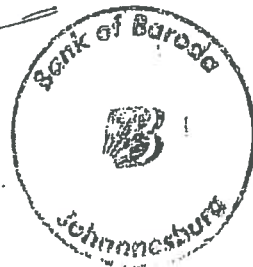
This certificate has been Issued at the request of the customer for the purpose of confirming the account balance of Optimum Mine Rehabilitation Trust in the current account maintained with Bank of Baroda.

We confirm that there has been no withdrawal from the funds deposited with our bank for Optimum Rehabilitation Trust.

This letter has been issued without any risk or responsibility of the bank or any of the bank official.


(Manoj K Jha)

CHIEF MANAGER





In his affidavit, Gordhan notes that monies from the trust are not taxed, and if they are used for any purpose other than mine rehabilitation it amounts to both a loss in taxes to the fiscus and the placing of the burden for the mine's rehabilitation on the taxpayer.

"It appears from a letter from attorneys acting for the business rescue practitioners of Optimum, with the written approval of the Department of Mineral Resources R1.3bn was intended to be transferred from the account closed by Standard Bank to the Bank of Baroda," Gordhan notes.

Oakbay acquired the Optimum mine with the direct help of Zwane, who accompanied its executives to Switzerland on a visit to previous owners Glencore.

Overall, the FIC report reflected "the increasingly serious state of affairs which has arisen", Gordhan says.

In another letter to Gordhan, Registrar of Banks Kuben Naidoo says he has been informed by the Financial Surveillance Department that Standard Bank had informed it about a transaction involving VR Laser Asia "which could form the basis of an exchange control-related investigation".

VR Laser Asia is the firm at the centre of a dispute between Gordhan and state arms-maker Denel, which he says entered into a joint venture agreement with the firm without obtaining his permission as required by the Public Finance Management Act.

Oakbay has 15 days to respond to the application.

Political Bureau

Related stories (/news/politics)



Gordhan was real target of Zwane's inquiry - DA

[\(/news/politics/gordhan-was-real-target-of-zwanes-inquiry---da-2071659\)](/news/politics/gordhan-was-real-target-of-zwanes-inquiry---da-2071659)



Zwane insists he has backing for Gupta bank saga probe

QMH

Gordhan's explosive affidavit and supporting documentation, filed in the Pretoria High Court on Friday, adds a new twist to the controversy surrounding the release of outgoing Public Protector Thuli Madonsela's "state capture" report on allegations of undue influence by the Gupta family, which President Jacob Zuma and Co-operative Governance Minister Des van Rooyen have sought to interdict.

Gordhan says in it the continued assertions by Oakbay that "I should intervene in, or exert pressure upon, the banks regarding their closure of the Oakbay accounts is harmful to the banking and financial sectors, to the regulatory scheme created by law, and the autonomy of both the governmental regulators and the registered banks themselves".

For this reason he asks the court to declare once and for all that he is not legally empowered or obliged to do so.

But he notes that while he may not approach the banks for information regarding the accounts of their clients, his lawyers have advised that Gupta firm Oakbay may require them to do so in response to the application, and the banks themselves may disclose reports they have made to the Financial Intelligence Centre in answer to the application.

This raises the possibility that details of all such transactions relating to the Guptas and their companies may be revealed in court.

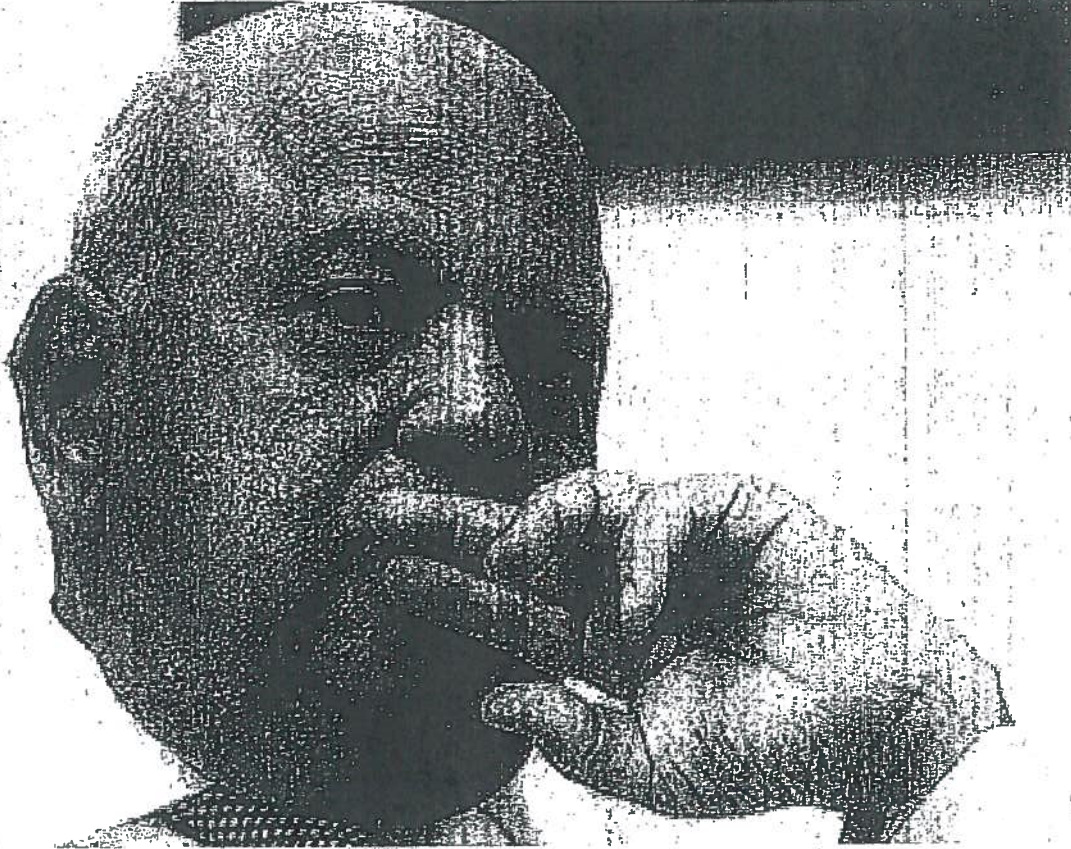
Already, Gordhan was forced in response to the repeated requests for his intervention from Oakbay chief executive Nazeem Howa, despite his having informed Howa that he could not legally interfere in the relationship between banks and their clients, to write to Financial Intelligence Centre director Murray Michell, asking him to confirm whether the banks had reported any transactions and to list the sums involved, without disclosing further details.

It is the report Michell sent to Gordhan in response that exposes the full extent of reported transactions involving the Guptas, dating back to 2012, when an amount of R859 993 is reflected against the name of Ajay Gupta. But this is small change compared to subsequent transactions - R38m for Atul Gupta on February 6, 2014 and the same sum the next day; an amount of R11.475m by Sahara Computers in February this year; R374m from Oakbay Investments in March; R1.37bn from the Optimum Coal Mine in April and on the same day R1.207bn for Koornfontein Mines, followed by R1.34bn for the Optimum Mine Rehabilitation Trust on May

Gordhan exposes Guptas in explosive affidavit

POLITICS / 16 October 2016, 06:59am

Craig Dodds



Finance Minister Pravin Gordhan Picture: Leon Lestrade

Cape Town - The Gupta family's efforts to force Finance Minister Pravin Gordhan to intervene after their banks closed their business accounts has spectacularly blown up in their faces, leading the minister to seek a court order declaring that he may not do so and in the process exposing the extent of transactions reported to the Financial Intelligence Centre, totalling R6.8 billion.

Among the transactions is an apparent attempt to transfer R1.3bn from the Optimum Coal Mine Rehabilitation Trust to the Bank of Baroda - the only bank still serving the Guptas - with the approval of the Mineral Resources Department, whose minister is Mosebenzi Zwane.

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Entity	Account Number	Bank
Sahara Holdings (Pty) Ltd	1286037670	NED
Sahara Holdings (Pty) Ltd	4072444965	ABSA
Sahara Systems (Pty) Ltd	32620094420101	SBI
Sahara Systems (Pty) Ltd	4054265985	ABSA
Sahara Systems (Pty) Ltd	420933530	STD
Sahara Systems (Pty) Ltd	62017330127	FNB
Shiva Uranium (Pty) Ltd	030654785	STD
Shiva Uranium (Pty) Ltd	206032	STD
Shiva Uranium (Pty) Ltd	273319310	STD
Shiva Uranium (Pty) Ltd	4076226343	ABSA
Shiva Uranium (Pty) Ltd	920202000000364	BOB
Tegeta Resources (Pty) Ltd	4072444486	ABSA
Tegeta Resources (Pty) Ltd	62586745196	FNB
Tegeta Resources (Pty) Ltd	62586745203	FNB
Tegeta Resources (Pty) Ltd	920202000000046	BOB
Tegeta Resources (Pty) Ltd	920203000000065	BOB
Tegeta Resources (Pty) Ltd	920203000000102	BOB
Tegeta Resources (Pty) Ltd	920203000000408	BOB
Tegeta Resources (Pty) Ltd	920203000000423	BOB
Tegeta Resources (Pty) Ltd	920203000000526	BOB
TNA Media (Pty) Ltd	?	NED / BOI
TNA Media (Pty) Ltd	4076462329	ABSA
TNA Media (Pty) Ltd	62282303321	FNB
TNA Media (Pty) Ltd	62561420482	FNB
TNA Media (Pty) Ltd	32620057830102	SBI
TNA Media (Pty) Ltd	32620057820101	SBI
TNA Media (Pty) Ltd	251844218	STD
Ajay Gupta	1686158858	NED
Ajay Gupta	40-7245-1198	ABSA
Arti Gupta	62587778641	FNB
Arti Gupta	920202000000304	BOB
Arti Gupta	40-7265-5667	ABSA
Atul Gupta	62587027741	FNB
Atul Gupta	40-7241-1950	ABSA
Atul Gupta	920206000000288	BOB
Atul Gupta	920206000000287	BOB
Atul Gupta	1513017330	NED
Atul Gupta	920202000000041	BOB
Chetali Gupta	62587040321	FNB
Chetali Gupta	920202000000043	BOB
Chetali Gupta	40-7240-8454	ABSA
Rajesh Gupta	62587014657	FNB
Rajesh Gupta	40-7240-9109	ABSA
Rajesh Gupta	1513029479	NED
Shubhangi Gupta	74295890724	FNB
Varun Gupta	6258702335	FNB
Varun Gupta	920202000000500	BOB
Varun Gupta	40-7276-4022	ABSA

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Entity	Account Number	Bank
Mabengela Investments (Pty) Ltd	92020300000113	BOB
Mabengela Investments (Pty) Ltd	92020300000320	BOB
Mabengela Investments (Pty) Ltd	92020300000466	BOB
Mabengela Investments (Pty) Ltd	92020300000468	BOB
Mabengela Investments (Pty) Ltd	2020300000596	BOB
Oakbay Investments (Pty) Ltd	4072149587	ABSA
Oakbay Investments (Pty) Ltd	1469163381	NED
Oakbay Investments (Pty) Ltd	32620053320101	SBI
Oakbay Investments (Pty) Ltd	32620053320102	SBI
Oakbay Investments (Pty) Ltd	32620053340101	SBI
Oakbay Investments (Pty) Ltd	420934529	STD
Oakbay Investments (Pty) Ltd	92020200000034	BOB
Oakbay Investments (Pty) Ltd	92020600000281	BOB
Oakbay Resources and Energy Ltd	4075141875	ABSA
Oakbay Resources and Energy Ltd	92020300000425-29	BOB
Oakbay Resources and Energy Ltd	92020200000353	BOB
Optimum Coal Mine (Pty) Ltd	020160423	STD
Optimum Coal Mine (Pty) Ltd	62161304383	FNB
Optimum Coal Mine (Pty) Ltd	113860	BOB
Optimum Coal Terminal (Pty) Ltd	0000000364193	STD
Optimum Mine Rehabilitation Trust	494262	STD
Optimum Overvaal Mining & Exploration (Pty) Ltd	62205985982	FNB
Optimum Vlakfontein Mining & Exploration (Pty) Ltd	62205988332	FNB
Sahara Computers (Pty) Ltd	1469050129	NED
Sahara Computers (Pty) Ltd	32620005440102	SBI
Sahara Computers (Pty) Ltd	4052327765	ABSA
Sahara Computers (Pty) Ltd	421030348 -BR- 019205	STD
Sahara Computers (Pty) Ltd	62009883663	FNB
Sahara Computers (Pty) Ltd	62009883738	FNB
Sahara Computers (Pty) Ltd	7900013350	NED
Sahara Computers (Pty) Ltd	92020200000003S	BOB
Sahara Computers (Pty) Ltd	92020300000025	BOB
Sahara Computers (Pty) Ltd	92020400000003	BOB
Sahara Computers (Pty) Ltd	32620005420004	SBI
Sahara Computers (Pty) Ltd	32620005430142	SBI
Sahara Computers (Pty) Ltd	92020300000289	BOB
Sahara Computers (Pty) Ltd	32620005430138	SBI
Sahara Consumables (Pty) Ltd	?	BOB
Sahara Consumables (Pty) Ltd	062791303	STD
Sahara Consumables (Pty) Ltd	1469137518	NED
Sahara Consumables (Pty) Ltd	32620021040101	SBI
Sahara Consumables (Pty) Ltd	4054496374	ABSA
Sahara Consumables (Pty) Ltd	92020200000278	BOB
Sahara Distribution (Pty) Ltd	022 650 679 (PE)	STD
Sahara Distribution (Pty) Ltd	022650679 (CPT)	STD
Sahara Distribution (Pty) Ltd	1286 038 065	NED
Sahara Distribution (Pty) Ltd	1286 038 073	NED
Sahara Distribution (Pty) Ltd	1286 038 081	NED
Sahara Distribution (Pty) Ltd	405 5102 865	ABSA
Sahara Distribution (Pty) Ltd	62046153425	FNB
Sahara Distribution (Pty) Ltd	62046165446	FNB

QMH

Exhibit NL/1: Details of corporate and personal bank accounts

Entity	Account Number	Bank
Annex Distribution (Pty) Ltd	4058228618	ABSA
Annex Distribution (Pty) Ltd	021630003	STD
Annex Distribution (Pty) Ltd	1686161204	NED
Annex Distribution (Pty) Ltd	32620027920001	SBI
Annex Distribution (Pty) Ltd	62056291786	FNB
Annex Distribution (Pty) Ltd	92020400000015	BOB
Confident Concepts (Pty) Ltd	01039005-4	FNB
Confident Concepts (Pty) Ltd	4072149278	ABSA
Confident Concepts (Pty) Ltd	01038360-4	FNB
Confident Concepts (Pty) Ltd	01-038993-2	FNB
Confident Concepts (Pty) Ltd	1686158920	NED
Confident Concepts (Pty) Ltd	270120200000064	BOI
Confident Concepts (Pty) Ltd	27060100000005	BOI
Confident Concepts (Pty) Ltd	32620036120101	SBI
Confident Concepts (Pty) Ltd	420934359	STD
Confident Concepts (Pty) Ltd	92020200000055	BOB
Confident Concepts (Pty) Ltd	92020600000334	BOB
Confident Concepts (Pty) Ltd	92020600000335	BOB
Confident Concepts (Pty) Ltd	92020600000444	BOB
Confident Concepts (Pty) Ltd	92020600000412	BOB
Correct Marketing CC	61512579222	FNB
Infinity Media Networks (Pty) Ltd	0000420967710	STD
Infinity Media Networks (Pty) Ltd	270120200000012	BOI
Infinity Media Networks (Pty) Ltd	4080811352	ABSA
Infinity Media Networks (Pty) Ltd	62467086768	FNB
Infinity Media Networks (Pty) Ltd	62561579198	FNB
Infinity Media Networks (Pty) Ltd	62562624463	FNB
Infinity Media Networks (Pty) Ltd	92020200000274	BOB
Infinity Media Networks (Pty) Ltd	270120200000003	BOI
Islandsite Investment One Hundred & Eighty (Pty) Ltd	270120200000020	BOI
Islandsite Investment One Hundred & Eighty (Pty) Ltd	92020600000370	BOB
Islandsite Investment One Hundred & Eighty (Pty) Ltd	1970799978	NED
Islandsite Investment One Hundred & Eighty (Pty) Ltd	407-217-1431	ABSA
Islandsite Investment One Hundred & Eighty (Pty) Ltd	8071526809-1	ABSA
Islandsite Investment One Hundred & Eighty (Pty) Ltd	270125100000004	BOI
Islandsite Investment One Hundred & Eighty (Pty) Ltd	32620036020103	SBI
Islandsite Investment One Hundred & Eighty (Pty) Ltd	32620036040101	SBI
Islandsite Investment One Hundred & Eighty (Pty) Ltd	420931171	STD
Islandsite Investment One Hundred & Eighty (Pty) Ltd	8887874600101	NED
Islandsite Investment One Hundred & Eighty (Pty) Ltd	92020200000097	BOB
Koornfontein Mines (Pty) Ltd	033038406	STD
Koornfontein Mines (Pty) Ltd	62333459958	FNB
Mabengela Investments (Pty) Ltd	200000077	SBI
Mabengela Investments (Pty) Ltd	23248041	STD
Mabengela Investments (Pty) Ltd	4072646335	ABSA
Mabengela Investments (Pty) Ltd	92020200000126	BOB

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Information extracted from the CoreBank					Transactions identified:								
Row No	Date	CTR Number	Subject Reported	Round value reported	Day	Amount / ZAR	Payer's details:		Recipient's details:			Comments	
							Account Number	Bank	Account Number	Account Holder	Bank	Account Number	
71	18/05/2018	SAR-180505-0000130	SHRVA (VRANKU)	510 064 228									
72	03/06/2018	STR-180603-0000380	DARSA INVESTMENTS	407 332 485									
				6 838 974 101									

MT Multiple Transactions

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Information extracted from the Certificate:					Transactions identified:									
Row No	Date	STR Number	Subsidiary Reported	Rapid policy reference	Date	Amount / ZAR	Payee's details:	Account Holder	Bank	Account Number	Account Holder	Bank	Account Number	Comments
48	11/04/2016	STR00314201804118E	SAHARA DISTRIBUTION (And Gupta)	100,000	14/04/2016	100,000.00	Sahara Distribution	FNB	8081	Sahara Distribution	FNB	8073		We have identified 85 transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate. One is a payment from the 8081 account, while the other is a receipt into the 8073 account. As such they appear to represent a transfer between these two accounts.
49	11/04/2016	STR00314201804111E	SAHARA COMPUTERS (And Gupta)	5,818,417	01/04/2016	5,818,417.12	Sahara Computers	FNB	3683	Techus Distribution (to third party)				
50	11/04/2016	STR00348201804111E	SAHARA SYSTEMS (AM Gupta)	2,000,000	25/04/2016	2,000,000.00	Sahara Computers	STN	0348	Sahara Systems	STN	3530		
51	11/04/2016	STR00305201804118E	SAHARA DISTRIBUTION (And Gupta)	4,962,898										
52	12/04/2016	STR00388201804123E	ARTI GUPTA	81,578	14/03/2016	81,578.28	Arti Gupta	ABSA	6487	Arti Gupta	FNB	8641		
53	12/04/2016	STR00388201804123E	CHETAL GUPTA/ARTI GUPTA	118,788	15/02/2016	118,788.09	Chetal Gupta	ABSA	6484	Chetal Gupta	FNB	8671		
54	12/04/2016	STR00406201804123E	SAHARA CONSUMABLES (And Gupta)	2,918,374										
55	12/04/2016	STR00480201804123E	ANNEX DISTRIBUTION (And Gupta)	3,657,184	31/03/2016	3,657,183.81	JOCE, trading as Inverdisa Connections (Pty) Ltd (a 50% joint)			Annex Distribution	FNB	1788		
56	13/04/2016	STR00394201804134E	SAHARA COMPUTERS (And Gupta)	41,833,304										
57	13/04/2016	STR00374201804134E	TINA MEDIA (ATUL Gupta)	7,868,862	04/04/2016	7,868,862.50	TINA Media	FNB	0482	TINA Media	FNB	3321		We have identified two transactions of the same amount, and think that they may both relate to this transaction on the Certificate. One is a payment from the 0482 account, while the other is a receipt into the 3321 account. As such they appear to represent a transfer between these two accounts.
58	18/04/2016	STR00033201804184E	LINE AFRICA HOLDINGS (And Gupta)	MT										
59	21/04/2016	STR00090201804218E	ELANERITE INV (And Gupta)	172,464,887										
60	21/04/2016	STR00087201804218E	COMPONENT CONCEPTS (Rajesh & Varun)	78,839,806										
61	21/04/2016	STR00056201804218E	ANNEX DISTRIBUTION (SAHARA COMPUTERS/SAHARA HOLDINGS)	878,001										
62	21/04/2016	STR00055201804218E	OPTIMUM COAL MINE	1,372,788,080										
63	21/04/2016	STR00051201804218E	KODOROPONTEN MINES	1,207,858,807										
64	22/04/2016	STR00004201804228E	ANNEX DISTRIBUTION / SAHARA COMPUTERS / SAHARA HOLDINGS	298,476										
65	06/05/2016	SAR-180506-0000128	ENERGY RESOURCES AND ENERGY	327,421,332										
66	06/05/2016	SAR-180506-0000130	SHIVA UPANISHAD	327,421,332										
67	11/05/2016	STR-180511-0000023	OPTIMUM MINE	1,341,438,862										
68	11/05/2016	STR-180511-0000025	REHABILITATION TRUST	418,257										
69	11/05/2016	STR-180511-0000051	OPTIMUM OVERHAUL MINING AND EXPLORATION	418,888										
70	11/05/2016	STR-180511-0000436	OPTIMUM COAL TERMINAL	172,244,816										

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Information extracted from the Certificate:					Transactions Identified:								
Page No	Date	STR Number	Subject Reported	Range value reported	Date	Amount / SAR	Payer's details:- Account Holder	Bank	Account Number	Recipient's details:- Account Holder	Bank	Account Number	Comments
					12/03/2016	11,475,000.00	Sahara Holdings	ABSA	4885	Shivani Gupta	ABSA	2317	We have identified two transactions of the same amount, and think that they may both relate to this transaction on the Certificate
21	06/02/2016	STR00007201602084E	PAJESH K GUPTA/ATUL GUPTA	18,140,000									
22	26/02/2016	STR00009201602284E	SAHARA COMPUTERS (Pvt) Ltd (Delhi)	MT									
23	28/02/2016	STR00006201602284E	AMNEX DISTRIBUTION	MT									
24	04/03/2016	STR000036201603044E	ISLANDITE INVESTMENT 180 (Andhra Pradesh)	MT									
25	07/03/2016	STR00016201603074E	OMNIBAY INVESTMENTS/ISLANDITE INVESTMENT (Delhi)	MT									
26	17/03/2016	STR000474201603174E	SAHARA DISTRIBUTION	MT									
27	17/03/2016	STR00004201603174E	CONCRETE MARKETING CO	5,000									
28	18/03/2016	STR00013201603184E	SAHARA HOLDING/SAHARA COMPUTERS (Pvt) Ltd	MT									
29	31/03/2016	STR000149201603314E	BARBENDOLA INVESTMENTS (Delhi)	MT									
30	31/03/2016	STR000166201603314E	ATUL KUMAR GUPTA	MT									
31	31/03/2016	STR00017201603314E	BARBENDOLA INVESTMENTS (Delhi)	MT									
32	31/03/2016	STR00017201603314E	ATUL KUMAR GUPTA	MT									
33	31/03/2016	STR000167201603314E	OMNIBAY INVESTMENT (Andhra Pradesh)	MT									
34	31/03/2016	STR000037201603314E	THA MEDIA (Andhra Pradesh)	MT									
35	31/03/2016	STR000037201603314E	THA MEDIA (Andhra Pradesh)	MT									
36	31/03/2016	STR000037201603314E	GURYA CRUSHERS (Varanasi)	MT									
37	31/03/2016	STR000275201603314E	MEVASHLEP 680	MT									
38	31/03/2016	STR000166201603314E	BARBENDOLA INVESTMENTS	10,630,000	29/03/2016	10,000,000.00	Oldway Investments	STN	4529	Malabarale Investments	STO	8041	
39	31/03/2016	STR000167201603314E	OMNIBAY INVESTMENTS	374,713,989									
40	31/04/2016	STR000036201604044E	ISLANDITE INVESTMENT 180 (Andhra Pradesh)	184,278,804									
41	05/04/2016	STR000374201604054E	BLACKEDGE EXPLORATION	MT									
42	06/04/2016	STR000036201604064E	CONFIDENT CONCEPTS (Delhi & Varanasi)	MT									
43	07/04/2016	STR00011201604074E	VARUN GUPTA	282,074	16/03/2016	782,074.33	Varun Gupta	ABSA	4022				We understand that this is a payment to Varun Gupta's FNS account (335), when his account at ABSA Bank was closed, but have not seen the applicable bank statements to confirm this
44	07/04/2016	STR000166201604074E	SHIVA URANUM (Andhra Pradesh)	125,848,820									
45	07/04/2016	STR000275201604074E	INFINITY MEDIA (Andhra Pradesh)	24,116,365									
46	08/04/2016	STR000428201604084E	INFINITY MEDIA (Andhra Pradesh)	8,838,305	04/04/2016	8,838,305.28	Infiniti Media	FNS	4483	Infiniti Media	FNB	6788	We have identified three transactions between the company's FNS accounts on this date, two of which appear to cancel each other out
47	11/04/2016	STR00011201604114E	ATUL GUPTA	531,570									

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Oakbay Investments (Pty) Limited - Privileged, Private and Confidential

Exhibit N/2 - Details of the transactions on the Certificate that may have been identified by Nardella & Co. LLP

Information extracted from the Certificate:					Transactions Identified:								
Page No	Date	STN Number	Subject's Reported	Report Value	Date	Amount (ZAR)	Payer's details:	Account Number	Bank	Amount	Comments		
1	10/12/2013	STR0004020121218ME	AJAY KUMAR GUPTA	808,833									
2	17/05/2013	STR00015020130517ME	AJAY KUMAR GUPTA	861,832									
3	17/05/2013	STR000187120130517ME	ATUL KUMAR GUPTA	861,832									
4	17/05/2013	STR0007620130517ME	RAJESH GUPTA/SHUBANGHI GUPTA	31,000									
5	30/05/2013	STR00005120130520ME	ATUL KUMAR GUPTA	948,189									
6	11/07/2013	STR00018100130711ME	ATUL KUMAR GUPTA	861,832									
7	08/02/2014	STR00024100140208ME	ATUL KUMAR GUPTA	36,000,000	27/02/2013	36,000,000.00	Atul Gupta	908 0287	Atul Gupta	ABSA	1950	We have identified five transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.	
							Atul Gupta	ABSA	1950	Sahara Computers	ABSA	7785	We have identified five transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.
8	07/03/2014	STR0004320140307ME	ATUL KUMAR GUPTA	36,000,000	27/02/2013	36,000,000.00	Atul Gupta	908 0288	Atul Gupta	ABSA	1950	We have identified five transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.	
							Atul Gupta	ABSA	1950	Sahara Computers	ABSA	7785	We have identified five transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.
9	10/04/2014	STR00010320140410ME	TEGETA RESOURCES	8,000,000									
10	3/07/2014	STR00038120140724ME	JIT CHANLA-A/GUPTA RR	32,849									
11	13/12/2014	STR00008320141212ME	OAKBAY RESOURCES AND ENERGY	2,000,000	12/11/2014	2,000,000.00	Shree Uruman	ABSA	1043	Oakbay Resources and Energy	ABSA	1875	We have identified 14 transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.
					12/11/2014	2,000,000.00	Oakbay Resources and Energy	ABSA	1875	Oakbay Investments	ABSA	1867	We have identified 14 transactions of the same amount, but on the basis of the date on the Certificate we think two may relate to this transaction on the Certificate.
12	16/12/2014	STR0002620141216ME	ATUL GUPTA	1,076,749									
13	06/02/2015	STR00044100150206ME	SHIVA URUMAN	8,000,000									
14	16/03/2015	STR00022100150316ME	SAHARA COMPUTERS (AJAY SHUBANGHI)	1,560,000	26/01/2015	1,354,000.00	Sahara Computers	FNB	683	Sahara Computers	FNB	738	We have identified two transactions of the same amount, and think that they may both relate to this transaction on the Certificate. One is a payment from the 063 account, while the other is a receipt into the 738 account. As both they appear to represent a transfer between these two accounts.
15	28/01/2018	STR00013120180128ME	ANNELO DISTRIBUTION	1,202,886									
16	24/02/2018	STR00021320180224ME	ATUL GUPTA	17,129,000									
17	08/02/2018	STR0005720180208ME	SAHARA HOLDINGS (AJAY SHUBANGHI)	MY									
18	05/02/2018	STR0005920180205ME	SAHARA HOLDINGS (AJAY SHUBANGHI)	MY									
19	07/02/2018	STR0005820180207ME	SAHARA HOLDINGS	4,250,000									
20	07/02/2018	STR000620180207ME	SAHARA HOLDINGS (PTY) LTD	11,475,000	12/03/2015	11,475,000.00	Sahara Holdings	ABSA	4846	Atul Gupta	ABSA	5687	We have identified two transactions of the same amount, and think that they may both relate to this transaction on the Certificate.

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- 60) The results of Phase 3 of our review suggests that Transactions 62, 63, 67 and 71 could not have been made by the reported subjects for each of those transactions on the Certificate during the periods covered by our review. In contrast, however, for Transaction 72 the level of activity on the accounts of Oakbay Investments in both the 60 day and 90 day periods that we reviewed is consistent with the reported value for that transaction.

56) In the absence of further information being provided by the FIC about the individual transactions that comprise each of the 72 transactions on the Certificate it is impossible for us:

- a) to confirm whether the 15 transactions that we have identified during Phase 1 are the correct transactions;
- b) to confirm whether the five transactions that were identified by officers of Oakbay Investments are the correct transactions;
- c) to identify the remaining 52 transactions on the Certificate that we have been unable to locate within the banking records of Oakbay Investments, its subsidiaries and various other companies controlled by the Gupta family, or within the personal bank accounts of members of that family; or
- d) to locate and review comprehensive supporting documentation for each of the 72 transactions on the Certificate to determine the nature of those transactions.

57) If we are to be able to progress our investigation, the FIC will have to provide us with further information about each of the 72 transactions listed on the Certificate, and any constituents thereof, to the extent that this information relates to Oakbay Investments, its subsidiaries and associates, various other companies controlled by the Gupta family or members of that family (i.e. to entities or individuals other than third parties). For each transaction or constituent thereof that further information comprises the following:

- a) the date;
- b) the amount;
- c) details about the payer's bank account, namely:
 - i) the account number; and
 - ii) the bank.
- d) details about the recipient's bank account, namely:
 - i) the account number; and
 - ii) the bank.

58) As we have already explained (see Paragraphs 13-16 inclusive above) we assume that all of this further information is available to the FIC. For the avoidance of any doubt the information that we are seeking from the FIC can only be provided by the FIC. Without that information we do not know with any certainty the amounts of the transactions that we are seeking to locate, the precise dates upon which those transactions took place or the details of the bank accounts involved.

59) Although we note that officers of Oakbay Investments may have identified two transactions that comprise Transaction 21 (see Paragraph 38 (e) above) we do not consider that the initial results of Phase 2 of our review warrant extending that review.

Company	Activity	April 2016 / ZAR	May 2016 / ZAR
Optimum Mine	Receipts	20,884,647	13,002,258
Rehabilitation Trust	Payments	(15,801,815)	(7,882,389)

50) Please note that the figures for the Optimum Mine Rehabilitation Trust in this analysis for April 2016 are cumulative, and include the figures both for that month and May 2016.

51) It is apparent from this analysis that the level of activity on the bank accounts of both Optimum Coal Mine and Koorfontein Mines in April 2016 is wholly inconsistent with the value reported for Transactions 62 and 63 on the Certificate, of ZAR 1,372,756,090 and ZAR 1,207,859,627 respectively. Indeed, this is also the case for the Optimum Mine Rehabilitation Trust, where the level of activity on its bank accounts in April and May 2016 is a fraction of the value reported for Transaction 67 on the Certificate, of ZAR 1,341,426,552.

52) Shiva Uranium is the subject reported for Transaction 71, which is dated 16 May 2016 on the Certificate. As previously explained, this company's banking records were available in the form of monthly PDFs. Consequently, for simplicity, we considered the activity on the accounts for Shiva Uranium for May 2016, April 2016 and March 2016, and for the purposes of this analysis considered the activity in each of those months to be representative of the activity in the periods ended 30 days, 60 days and 90 days prior to the transaction. As with the analysis for the Optimum Mine Rehabilitation Trust, the figures for April 2016 include those for May 2016, while the figures for March 2016 include both April 2016 and May 2016. The results of this analysis are set out below:

Activity	March 2016 / ZAR	April 2016 / ZAR	May 2016 / ZAR
Receipts	129,848,039	100,663,385	45,359,283
Payments	(150,492,673)	(103,628,203)	(45,479,560)

53) Consequently, it is once again apparent from this analysis that the level of activity on the bank accounts of Shiva Uranium in March, April and May 2016 is inconsistent with the value reported for Transaction 71 on the Certificate, of ZAR 510,064,228.

54) Oakbay Investments is the subject reported for Transaction 72, which is dated 3 June 2016 on the Certificate. This company's banking records were extracted from its accounting records. Consequently, we have been able to determine the activity in the periods ended 30 days, 60 days and 90 days prior to this transaction. The results of this analysis are set out below:

Activity	90 days / ZAR	60 days / ZAR	30 days / ZAR
Receipts	547,624,665	445,747,878	74,288,976
Payments	(548,987,538)	(446,839,892)	(75,310,254)

55) In contrast to the other four transactions that we reviewed as part of Phase 3, this analysis reveals that the level of activity on the bank accounts of Oakbay Investments in the 60 days and 90 days prior to Transaction 72 is consistent with the value reported for that transaction on the Certificate, of ZAR 407,332,455.

CONCLUSIONS

identified further combinations if we had extended our review to the banking records of both Sahara Computers and Sahara Holdings, which were also listed as subjects reported for Transaction 64. Consequently, we suspect that it may be coincidental that the combined value of those six postings equates to the reported value for Transaction 64.

- 45) In view of the results of Phase 2 for Transactions 4, 47, 68 and 69, and because the result for Transaction 64 may be coincidental, we did not increase the size of the initial sample to include any further transactions, because we did not consider it worthwhile to do so.

PHASE 3

- 46) Our initial sample for Phase 3 of our review comprised the following five transactions:

No	Date	Subjects reported	Reported value (ZAR)
62	21/04/2016	Optimum Coal Mine	1,372,756,090
63	21/04/2016	Koornfontein Mines	1,207,859,627
67	11/05/2016	Optimum Mine Rehabilitation Trust	1,341,426,552
71	16/05/2016	Shiva Uranium	510,064,228
72	03/06/2016	Oakbay Investments	407,332,455

- 47) These transactions were deliberately selected, being the five largest transactions on the Certificate.

- 48) In general terms, we have analysed both the amounts of debits and credits that were posted to the bank accounts of each of the companies in our sample to determine whether the level of activity on those accounts was comparable with the value reported for the transactions in question on the Certificate. Initially we conducted this review for the period commencing 30 days before the date of the transaction, as recorded on the Certificate, and depending on the results of that review, we extended this to review the activity on those accounts for periods of 60 days and 90 days. As with Phase 2 we did not attempt to identify and strip out any transfers between accounts held by the same party before embarking upon our analysis.

- 49) We understand that the subjects reported for Transactions 62, 63 and 67 were only acquired by Tegela Exploration & Resources (Pty) Limited in mid-April 2016. Consequently, for Transactions 62 and 63, both of which are dated 21 April 2016 on the Certificate, we compared the reported values of those two transactions with the combined values of both the debits and the credits that were posted to bank accounts maintained by each of Optimum Coal Mine and Koornfontein Mines in April 2016 (we understand that no earlier banking information is available for those two companies). Similarly, for Transaction 67, which is dated 11 May 2016 on the Certificate, we undertook this comparison for the Optimum Mine Rehabilitation Trust for both April and May 2016. The results of this exercise are set out below:

Company	Activity	April 2016 / ZAR	May 2016 / ZAR
Optimum Coal Mine	Receipts	194,278,844	N/A
	Payments	(191,222,515)	N/A
Koornfontein Mines	Receipts	215,122,545	N/A
	Payments	(201,185,157)	N/A

PHASE 2

40) Our initial sample for Phase 2 of our review comprised the following five transactions:

No	Date	Subjects reported	Reported value (ZAR)
4	17/05/2013	Rajesh Gupta Shubanghi Gupta	31,009
47	11/04/2016	Atul Gupta	531,570
64	22/04/2016	Annex Distribution (Pty) Limited Sahara Computers (Pty) Limited Sahara Holdings (Pty) Limited	256,476
68	11/05/2016	Optimum Vlaktefontein Mining and Exploration	410,237
69	11/05/2016	Optimum Overvaal Mining and Exploration	418,989

- 41) Each of these transactions was selected on the basis that the reported value was relatively small, and that as a result it may be easier to identify a combination of amounts posted to the bank accounts of the companies and/or individuals in question, which in total equated exactly to the amount of the value reported for that transaction.
- 42) As previously explained, we restricted our review to the period commencing 30 days before the date of each transaction as recorded on the Certificate. We understand that both Optimum Vlaktefontein Mining and Exploration and Optimum Overvaal Mining and Exploration were acquired in mid-April 2016 (see Paragraph 27 above). For the first of those companies we have been able to establish that the balance on its account at FNB as at the date of acquisition was ZAR 105,072.13. For the second of those companies, however, we have been unable to establish the extent to which there may have been transactions posted to its account at FNB between the date of acquisition and 30 April 2016, when the balance on the account was ZAR (33,959.53). Consequently, any such transactions have not been considered as part of our review of Transaction 69 for the purposes of this phase of our work. We did not attempt to identify and strip out any transfers between accounts held by the same party.
- 43) For Transactions 4, 47, 68 and 69 we were not able to identify a combination of amounts posted to the bank accounts of the companies and/or individuals in question, which in total equated exactly to the amount of the value reported for each of these four transactions. Indeed, for three of the four transactions the amounts posted were insufficient, when considered together, to give rise to transactions with the values reported on the Certificate. For example, for Transaction 4 the sum of the receipts and payments posted to Rajesh Gupta's bank accounts in the period from 18 April 2013 to 17 May 2013 amounted to ZAR 12,031.43 and ZAR 21,189.58 respectively. Both of these figures are significantly less than the reported value for Transaction 4 on the Certificate of ZAR 31,009.
- 44) For Transaction 64 we successfully identified a combination of five receipts and one payment that were posted to the bank accounts of Annex Distribution, that in total amount to ZAR 256,477 or 256,476, depending on whether the result of the addition is rounded up or truncated respectively. We note, however, that there is no apparent consistency between the narratives for these six constituent postings. In addition, we note that these six postings were identified in the banking records of Annex Distribution, and that we may have

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We did not locate this transaction during Phase 1 of our work because we reviewed the banking information of Sahara Holdings (Pty) Limited, and not that of Sahara Computers (Pty) Limited.

e) Transaction 21

The transaction date is 9 February 2016, the reported value is ZAR 18,146,000 and the subjects reported are "Rajesh Kumar Gupta / Atul Kumar Gupta".

Two possible transactions were identified by officers of Oakbay Investments, which when considered together equate to the reported value, although it is unclear whether they are constituents of the transaction that appears on the Certificate because there is a discrepancy of more than two months between the respective dates. In addition, the Certificate suggests that this transaction was a single payment, in that it has not been described as being comprised of "multiple transactions". Both of these payments appear to have been made on 4 December 2015 to account number 40 – 7240 – 9109 at ABSA in the name of Mr RK Gupta. It appears that they originated from "A Gupta".

We did not locate this transaction because it was not included in the sample of transactions that we reviewed as part of Phase 2.

f) Transaction 58

The transaction date is 19 April 2016, the reported value is "multiple transactions" and the subjects reported are "Uni Afrika Holdings (Pty) Limited Atul Gupta".

We have been provided with an Experian credit search report for Uni-Africa Holdings (Pty) Limited, which we assume is the same company, despite the minor differences in the names. This reveals that Atul Gupta was appointed as a director of the company on 15 June 2004. It also records that the company's status is "AR Deregistration Final".

We have also been provided with an electronic copy of a letter from Reza Motani, the CEO of Uni-Africa Investment Holdings, dated 18 January 2017, regarding Uni-Africa Holdings (Pty) Limited. The letter states that:

- Mr Atul Gupta has had no involvement with Uni-Africa Holdings (Pty) Limited other than in its initial set up; and
- Uni-Africa Holdings (Pty) Limited has been dormant since 2006 and has no investments other than a bank account with Standard Bank which is in the process of being closed.

We note that the information in this letter conflicts with the information about this transaction contained in the Certificate.

- 39) Some supporting documentation has been provided to us for some of these six transactions, but at this stage we have not undertaken a detailed review of that documentation to determine firstly whether it is comprehensive, and secondly whether it sheds light on the nature and full extent of those transactions.

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b) Transaction 10

The transaction date is 24 July 2014, the reported value is ZAR 32,045 and the subjects reported are "Jnt Chawla – A/Gupta – RK Rajesh Kumar Gupta".

This transaction was identified by officers of Oakbay Investments. It appears to be a payment of ZAR 32,044.98 in July 2014 from Ashu Chawla's account at ABSA in respect of a home loan with the reference 0003000012763947. We have been told that this loan relates to a property at No 1A Northwold Drive, which is owned jointly by Mr Chawla and Rajesh Gupta. We understand that it was one of a series of identical payments made in respect of this loan, and if so note that none of those other payments appear on the Certificate.

We did not locate this transaction during Phase 1 of our work because the Personal bank statements do not include statements for accounts maintained by Mr Chawla.

c) Transaction 13

The transaction date is 6 February 2015, the reported value is ZAR 6 million and the subject reported is "Shiva Uranium Limited".

This transaction was identified by officers of Oakbay Investments, although it is unclear whether this transaction is the same one that appears on the Certificate because there is a discrepancy of almost three weeks between the respective dates. We understand that it may be a receipt from Oakbay Resources & Energy on 26 February 2015, but at this stage have not confirmed that this was the case.

We did not locate this transaction during Phase 1 of our work because the banking information provided to us for Shiva Uranium forms part of the Corporate PDFs. As such, we reviewed transactions in the period 30 days prior to the transaction date on the Certificate, but the payment identified by officers of Oakbay Investments took place after that date.

d) Transaction 19

The transaction date is 7 February 2016, the reported value is ZAR 4,250,000 and the subject reported is "Sahara Holdings (Pty) Limited".

Two possible transactions were identified by officers of Oakbay Investments, although it is unclear whether either of these is the same as the one that appears on the Certificate because there is a discrepancy of more than two months between the respective dates. In addition, the transactions relate to an entity other than the subject reported as per the Certificate. We understand that both were dividend payments made by Sahara Computers (Pty) Limited, following a board resolution on 2 December 2015. They were for ZAR 4,250,000 each, and were made on 3 December 2015 from account number 4052327765 at ABSA Bank. One of the payments was made to Atul Gupta and the other was made to Chetali Gupta.

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THE RESULTS OF OUR WORK

PHASE 1

- 34) Of the 72 transactions on the Certificate, we may have been able to identify 15 transactions, with a combined value of ZAR 127,230,298, on the Corporate spreadsheets, the Corporate PDFs, the Corporate bank statements, or the Personal bank statements. These 15 transactions comprise numbers 7, 8, 11, 14, 20, 38, 43, 46, 48, 49, 50, 52, 53, 55 and 57.
- 35) For some of these transactions we may have identified more than one possible transaction. Where this is the case, we have attributed specific transactions on the basis of the proximity to the dates of the relevant transactions on the Certificate.
- 36) For ease of reference, we have included details of each of these 15 transactions on the spreadsheet provided to us summarising the details at Paragraph 9 of the Certificate (*see* Paragraph 19 (c) above). The updated version of the spreadsheet is attached at Exhibit NL/2.
- 37) The reason for our uncertainty surrounding the specific identification of these 15 transactions is that although the amounts that we have identified equate exactly to the reported values on the Certificate there are discrepancies between the dates of those transactions and the corresponding dates on the Certificate. For example, for Transaction 11 for ZAR 2 million, dated 12 December 2014, the subject reported is Oakbay Resources & Energy (Pty) Limited. We have identified a payment of that amount to that company from Shiva Uranium Limited ("Shiva Uranium"), on 12 November 2014, and a payment from that company to Oakbay Investments of the same amount on the same day. Bearing in mind that there is a discrepancy of a month in the respective dates, however, we cannot be certain that we have identified the correct transaction. Similarly, it is unclear whether the transaction that appears on the Certificate is the payment from Shiva Uranium or the payment to Oakbay Investments.
- 38) As a result of enquiries made with officers of Oakbay Investments, we also have the following observations about transactions on the Certificate that we have been unable to identify on the Corporate spreadsheets, the Corporate PDFs, the Corporate bank statements or the Personal bank statements. Details of those observations are set out below:

a) Transaction 9

The transaction date is 10 April 2014, the reported value is ZAR 5 million and the subject reported is "Tegeta Resources (Pty) Limited".

A possible transaction was identified by officers of Oakbay Investments, although it is unclear whether this transaction is the same one that appears on the Certificate because there is a discrepancy of in excess of five weeks between the respective dates. We understand that it may be a loan repayment made by Tegeta Exploration & Resources (Pty) Limited to Tegeta Resources (Pty) Limited on 27 February 2014, but at this stage have not confirmed that this is the case.

We did not locate this transaction during Phase 1 of our work because our review commenced on 1 March 2014.

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and 90 days. As with Phase 2, initially we undertook this review for a sample of five transactions, with a view to extending the sample size thereafter.

- 32) For Phases 1, 2 and 3 of our work we have reviewed the banking records provided to us for the relevant periods for each of the corporate and personal bank accounts set out at Exhibit NL/1. We have assumed that all relevant bank accounts have been disclosed to us for those periods.
- 33) We have been unable to conduct Phases 1, 2 or 3 of our review for any of the 20 transactions on the Certificate where the values reported were each described as being "multiple transactions", because as we have already explained we do not have any information about the constituent transactions that are the subject of those STRs. Consequently, we do not have any amounts to search for or with which to compare. As a result, we have not been able to identify any of those transactions in the banking records of the companies or individuals whose names appear as the subjects reported on the Certificate.

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Between 10 April and 31 December 2014	2015 financial year
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26) In the context of this review:

- a) each financial year commenced on 1 March and ended on 28 or 29 February; and
- b) for the 2017 financial year, the spreadsheets provided to us for the various bank accounts commenced on 1 March 2016 and ended on a variety of different dates, although the relevant data was generally available up until the end of June 2016.

27) There were only two exceptions to the time periods of the review referred to above, which were as follows:

- a) For Optimum Coal Mine (Pty) Limited and its subsidiaries some banking information was available in Excel spreadsheets, while the remainder was recorded on hard copy bank statements. Regardless of the medium this data was reviewed for April and May 2016. We understand that the acquisition of this company and its subsidiaries by Tegeta Exploration & Resources (Pty) Limited completed in mid April 2016; and
- b) For Sahara Computers (Pty) Limited we have reviewed the Corporate spreadsheets for the period from 1 January 2015. The first transaction where this company's name is listed as a subject reported is Transaction 14, dated 16 March 2015.

28) In contrast, for the Corporate PDFs, Corporate bank statements and Personal bank statements, our review was restricted to the period commencing 30 days before the date of the transaction as recorded on the Certificate, being double the amount of time for a reporter to file a report (see Paragraph 10 above). In practice, however, if the start date of that 30 day period fell part way through a bank statement then we will have reviewed all of the transactions on that statement, regardless of the fact that some of them took place more than 30 days before the date of the relevant transaction on the Certificate.

29) For some of those transactions on the Certificate where we were unable to locate the exact amount of the value reported in the banking records of the companies or individuals whose names appear as subjects reported on the Certificate, we embarked upon Phase 2 or Phase 3 of our review.

30) Phase 2 involved analysing the amounts posted to the bank accounts of the companies and/or individuals in question to see whether we could identify a combination of amounts posted, which in total equated exactly to the amount of the value reported for that transaction (subject to rounding – see Paragraph 3 above). For this purpose, we restricted our review to the period commencing 30 days before the date of the transaction as recorded on the Certificate. Initially we undertook this review for a sample of five transactions, with a view to extending the size of the sample, depending upon the results of that review.

31) In Phase 3, we separately analysed both the amounts of debits and credits that were posted to the bank accounts of the companies in question to determine whether the level of activity on those accounts was comparable with the value reported for the transaction in question. Initially we conducted this review for the period commencing 30 days before the date of the transaction, as recorded on the Certificate, but depending on the results of that review, we may also have reviewed the activity on those accounts for extended periods of 60 days

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- iii) paper copies of bank statements or online extracts of those bank statements ("Corporate bank statements").
 - b) paper copies of bank statements for all of the bank accounts maintained by all of the individuals whose names appear in the subjects reported column of the Certificate for the period covered by the Certificate, or extracts from the ledger accounts for those bank accounts, which we understand were maintained by Oakbay Investments for the individuals concerned ("Personal bank statements"); and
 - c) a spreadsheet with details of the information contained at Paragraph 9 of the Certificate, which we understand was prepared by staff at Oakbay Investments. We are conscious that this spreadsheet is not a verbatim reflection of that information. Although we have not attempted to verify the accuracy of the spreadsheet we have updated it where we have identified that specific pieces of that information were missing.
- 20) We have not checked the accuracy of the Corporate spreadsheets or the Corporate PDFs with reference to the underlying original bank statements. Similarly, we have relied on the accuracy of any copy documentation that we have received, including both the Corporate bank statements and Personal bank statements, and have not compared any of those copies to the originals.

METHODOLOGY

- 21) For each transaction on the Certificate our methodology has involved the following:
- a) reviewing the relevant Corporate spreadsheets, Corporate PDFs or Corporate bank statements, where the subject reported is a company; or
 - b) reviewing the relevant Personal bank statements, where the subject reported is an individual.
- 22) In essence, there were three distinct phases to our review, as set out below in Paragraphs 23 to 29 (Phase 1); Paragraph 30 (Phase 2); and Paragraph 31 (Phase 3).
- 23) The purpose of Phase 1 was to try to locate the exact amount of the value reported (subject to roundings – see Paragraph 3 above) for the transaction in question within the banking records of the companies or individuals whose names appear as the subjects reported for that transaction on the Certificate. Consequently, if the names of several companies and/or individuals are recorded as being the subjects reported for that transaction then we would have reviewed the banking records for all of them.
- 24) The nature of the review depended on the material available.
- 25) For the Corporate spreadsheets, the time periods of the review varied as follows:

<i>Transaction date</i>	<i>Spreadsheets reviewed</i>
Between 1 January and 3 June 2016	2016 financial year 2017 financial year
Between 1 March and 31 December 2015	2016 financial year
Between 1 January and 28 February 2015	2015 financial year

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- 14) On the basis of this information we assume that for reports that involved "multiple transactions" the constituents of those transactions would not have been detailed in those reports. Nonetheless, we assume that specific details about each of those constituents would have been required before the FIC conducted further analytical work and concluded that further investigation was warranted. We also assume that the FIC would have requested those details (*i.e.* dates and amounts) from the reporter as part of its analytical work, or as a precursor thereto.
- 15) Where a transaction was the subject of a report, the Guidance Note suggests that for a payment made by the reporter, the bank or financial institution to which the payment was made should be specified at field B13, and that the account number at that bank or financial institution should be disclosed in field B14. Similar information should also have been disclosed where the reporter received monies.
- 16) It is unclear whether these fields would have been completed in circumstances where "multiple transactions" were involved, potentially between a number of different accounts and financial institutions. Once again, however, we assume that these details would have been required by the FIC for each of the constituent transactions before it conducted further analytical work and concluded that further investigation was warranted. As before, we also assume that the FIC would have requested those details (*i.e.* banks and account numbers) from the reporter as part of its analytical work, or as a precursor thereto.
- 17) Particulars of the person or entity concerning whom the report is made are to be set out at Part D of the electronic template. Within these fields there is scope to include details about an individual and/or an entity, and for that entity the details of three individuals with signing authority can be included. Similarly, the particulars of a person conducting the transaction on behalf of the person or entity referred to in Part D are to be set out at Part E. We suspect that the information to be set out by the reporter for these two parts, and also potentially for Part B, probably explains why some of the transactions on the Certificate have multiple names for the subjects reported.
- 18) It is unclear to us whether there is scope within the electronic template to report transactions that just involved bookkeeping entries, which may have been designed to conceal money laundering or terrorist financing, rather than monetary transactions of one form or another. Consequently, we have been unable to establish whether any of the transactions on the Certificate may be bookkeeping entries.

MATERIAL PROVIDED

- 19) We were provided with the following broad categories of material to enable us to carry out our work:
- a) information about transactions that were posted to the bank accounts of each of the companies whose names appear in the subjects reported column of the Certificate for the period covered by the Certificate, in one of the following formats:
 - i) Excel spreadsheets of the ledger accounts for the bank accounts from the relevant company's accounting records ("Corporate spreadsheets");
 - ii) PDFs of the ledger accounts for the bank accounts from the relevant company's accounting records ("Corporate PDFs"); or

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these two circumstances prevails, and in the case of the latter whether any such suspicion is well-founded.

- 8) Indeed, the Guidance Note explains that once the FIC receives a report, further analytical work will be conducted on the information provided therein. If that information, together with the additional analysis, indicates a reasonable belief that the information may be required to investigate suspected unlawful activity, the information will be referred to the appropriate authority to carry out further investigation. It is unclear whether, in the opinion of the FIC, any of the transactions on the Certificate warranted further investigation.
- 9) The Act provides that a reporter may continue with and carry out a transaction in respect of which a report is required to be made unless the FIC directs the reporter not to proceed with it. This would tend to suggest that a transaction for which a report is made could actually take place both before or after the date of the report in question.
- 10) The Money Laundering and Terror Financing Control Regulations specify that a person must make a report to the FIC not longer than 15 business days after that person became aware of the facts which gave rise to the suspicion. Indeed, the start of the 15 day period may be, and in the majority of cases will be, before the suspicion is actually formed. It is only in exceptional cases that the FIC may consider condoning a report being sent after the expiry of the 15 day period. Bearing this in mind, it does not seem unreasonable to assume that most or all of the reports for the transactions on the Certificate were submitted within the permitted 15 day period.
- 11) The Guidance Note addresses reactive reporting, where a report is submitted to the FIC following an external prompt, without a prior suspicion having been formed on the basis of the circumstances in which a particular transaction or series of transactions have been conducted. Consequently, the circumstances envisaged in both this paragraph and the previous one suggest that the period between the date of the underlying transaction to which a report relates and the date of the report itself could be more than 15 days, and indeed in certain circumstances could be significantly more than 15 days.
- 12) It appears that electronic reporting is the preferred method by which the FIC receives reports. Consequently, we assume that the reports for most, if not all, of the transactions on the Certificate were submitted electronically. The Guidance Note also states that it is important that as much information as possible be included in the report as this will enable the FIC to take action in respect of a report immediately and assess whether to instruct the reporter not to proceed with the transaction.
- 13) Part B of the electronic template deals with the particulars of the transaction reported. For a single transaction fields B 1 (a) and B 1 (b), namely the date and time of the transaction should be completed. In contrast, field B 1 (c), being the period of transaction (i.e. from a start date to an end date), was to be completed where there was a series of transactions. We assume, therefore, that for the transactions on the Certificate that are described as being "multiple transactions" field B 1 (c) would have been completed by the reporter. Similarly, field B3 should have been completed by the reporter for the "amount of transaction(s)". The Guidance Note does not make detailed reference to this field, but the wording of it suggests that for a single transaction the value should be inserted in this field, and that for "multiple transactions" the combined value should be inserted.

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- c) the dates of some of the transactions listed at (b) above are the same, or similar, which suggests that the corresponding STRs may relate to the same underlying transaction, while for others the dates are sufficiently far apart to suggest that the transactions are probably not connected;
- d) for 20 transactions, the values reported were each described as being "multiple transactions", so both the number and value of the constituent transactions that are the subject of those STRs have not been provided on the Certificate;
- e) the dates of the 72 transactions span the period from 10 December 2012 to 3 June 2016 inclusive, but there is a marked increase in the number of STRs in 2016, as illustrated below:
 - i) 2012 – 1 transaction;
 - ii) 2013 – 5 transactions;
 - iii) 2014 – 6 transactions;
 - iv) 2015 – 2 transactions; and
 - v) 2016 – 58 transactions.
- f) For a lot of the dates on the Certificate there are several transactions recorded (*i.e.* there are 11 transactions on 31 March 2016);
- g) There are seven instances on the Certificate where the STR number appears to have been duplicated. Frequently the dates of those duplications are the same, or similar, but we note that for STR/00338 one of the transactions with this number is dated 4 March 2016 while the other is dated 1 April 2016, almost a month apart. The reason for this is unclear; and
- h) We assume that the STR numbers were issued sequentially, but note that if this is the case then there appear to be some inconsistencies. For example, the numbers of Transactions 20 and 21 are STR/0008 and STR/00009 respectively, but those of Transactions 19 and 22 appear to form part of a sequence, and are STR/00589 and STR/00595 respectively. Again, the reason for this apparent inconsistency is unclear.

BACKGROUND

- 5) In accordance with its statutory function as set out in the Act the FIC issued Guidance Note 4 on Suspicious Transaction Reporting, dated 14 March 2008 (the "Guidance Note"). It contains a lot of useful background information and detail about the reporting regime, some of which we have distilled in the paragraphs that follow.
- 6) The Act imposes an obligation to report suspicious and unusual transactions on a wide range of individuals and institutions, and in particular on any person who carries on a business, is in charge of a business, manages a business or is employed by a business. Consequently, it is possible that at least some of the transactions that are detailed on the Certificate were made by people other than bank employees.
- 7) The reporting obligation imposed by the Act not only applies to circumstances where a person has actual knowledge, but also in circumstances where a mere suspicion may exist. It would appear, therefore, that on receipt of a report the FIC should determine which of

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**OAKBAY INVESTMENTS (PTY) LIMITED – EXHIBIT: NARDELLO & CO.
LLP MEMORANDUM**

INSTRUCTIONS

- 1) Nardello & Co. LLP was instructed to review the 72 transactions that appear on a Certificate in terms of Section 39 of Financial Intelligence Centre Act 2001 (Act No 38 of 2001) (the "Certificate" and the "Act" respectively), dated 4 August 2016, which was prepared by Mr Murray Mitchell, the Director of the Financial Intelligence Centre ("FIC"). Those transactions that have a reported value attributed to them amount to ZAR 6,839,974,102, in total.
- 2) The purpose of the review was to identify the 72 transactions in the banking records of Oakbay Investments (Pty) Limited ("Oakbay Investments"), its subsidiaries and associates and various other companies controlled by the Gupta family. In addition, to the extent that any of those transactions involved members of the Gupta family in their personal capacities, we were to attempt to identify those transactions on their personal bank statements.

THE CERTIFICATE

- 3) Details of the 72 transactions are set out at Paragraph 9 of the Certificate. Those details include the following:
 - a) the row number;
 - b) the date;
 - c) the suspicious transaction report ("STR") number;
 - d) the subjects reported; and
 - e) the value reported, which appears to have been rounded to the nearest Rand.
- 4) We have reviewed the Certificate and note that:
 - a) on numerous occasions the subjects reported list more than one company or individual;
 - b) there are several instances where the value reported is the same for more than one transaction, namely:
 - i) ZAR 961,932 (Transactions 2, 3 and 6 on 17 May 2013, 17 May 2013 and 11 July 2013 respectively);
 - ii) ZAR 2 million (Transactions 11 and 50 on 12 December 2014 and 11 April 2016 respectively);
 - iii) ZAR 38 million (Transactions 7 and 8 on 6 and 7 February 2014 respectively); and
 - iv) ZAR 327,421,132 (Transactions 65 and 66 both on 6 May 2016).

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10. I annex herewith as Annexure A, a report prepared by Nardello & Co. following an investigation conducted and lead by myself at Oakbay Investments (Pty) Ltd the contents of which are self-explanatory.

DEPONENT

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5. The assignments on which I work typically involve wide-ranging allegations of fraud, other financial wrongdoing or misconduct. Indeed, for nearly 30 years I have specialised in undertaking investigations of such matters in a variety of industry sectors, both in the United Kingdom and overseas. I respectfully submit that I am an expert in this field.
6. I have regularly been instructed by London law firms, prosecuting authorities and regulatory bodies, including the Serious Fraud Office ("SFO"), the Financial Conduct Authority ("FCA"), the Department for Business, Innovation & Skills and the Crown Prosecution Service, and by criminal defence firms.
7. I have been involved in several high-profile cases leading the forensic investigation on behalf of the SFO into alleged bribery and corruption.
8. In the civil domain my work often involves multi-jurisdictional asset tracing exercises, to demonstrate how purchases of assets were funded and to substantiate claims to them; internal investigations of employees' wrongdoing or misconduct, such as bribery and theft; reconstructing and interrogating accounting records; analysing trading activity; establishing the financial positions of companies at critical points in their histories; and the quantification of benefit received, losses suffered and a variety of other claims.
9. In the criminal domain, I have been instructed on numerous cases where he has investigated and advised on allegations of bribery and corruption, money laundering, false accounting, fraudulent trading, theft, conspiracy and/or forgery.

Q MTH

STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
REGISTRAR OF BANKS	Nineteenth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twentieth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Twenty-First Respondent

AFFIDAVIT

I, the undersigned,

NOEL LINDSAY

do hereby make oath and say:

1. I am an adult male accountant.
2. The contents of this affidavit are, save where the contrary is expressly stated or the context indicates to the contrary, within my own personal knowledge and are, to the best of my belief both true and correct.
3. I am presently employed as a forensic accountant by Nardello & Co. a global investigations firm based in the London office.
4. I was previously a partner at the accountancy firm Bellamy Woodhouse and prior to that underwent my training as an accountant at PricewaterhouseCoopers.

Q M

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

1261

Case No: 80978/2016

In the matter between:

MINISTER OF FINANCE

Applicant

and

OAKBAY INVESTMENTS (PTY) LTD

First Respondent

OAKBAY RESOURCES AND ENERGY LTD

Second Respondent

SHIVA URANIUM (PTY) LTD

Third Respondent

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

Fourth Respondent

JIC MINING SERVICES (1979) (PTY) LTD

Fifth Respondent

BLACKEDGE EXPLORATION (PTY) LTD

Sixth Respondent

TNA MEDIA (PTY) LTD

Seventh Respondent

THE NEW AGE

Eighth Respondent

AFRICA NEWS NETWORK (PTY) LTD

Ninth Respondent

VR LASER SERVICES (PTY) LTD

Tenth Respondent

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD**

Eleventh Respondent

CONFIDENT CONCEPT (PTY) LTD

Twelfth Respondent

JET AIRWAYS (INDIA) LTD (INCORPORATED

Thirteenth Respondent

SAHARA COMPUTERS (PTY) LTD

Fourteenth Respondent

ABSA BANK LTD

Fifteenth Respondent

FIRST NATIONAL BANK LTD

Sixteenth Respondent

Q M H

Simone

1262

From: Simone <simone@vdmass.co.za>
Sent: Wednesday, 26 October 2016 11:51 AM
To: 'Clement.mkiva@bowmanslaw.com'; 'Alan.keep@bowmanslaw.com'
Subject: O78 / MINISTER OF FINANCE
Attachment: 201610261153.pdf

Importance: High

Vriendelike groete/Kind regards

Simone Taljaard

Legal secretary for

Gert van der Merwe
Van der Merwe & Ass Inc
0876540209
62 Rigel Ave North
Waterkloof Ridge
Pretoria



van der Merwe
&
Associates Incorporated

Q MTH

May we kindly request you to furnish us with copies of any and all such documents and/or access to any such information within the next 5(Five) days since we are in the process of drafting our clients' opposing papers and, if possible, would like to include any information held by our clients' erstwhile bankers.

We obviously tender the reasonable costs for furnishing us with the aforesaid copies and/or access to information held by your client in this regard. If we do not receive any formal response or feedback we will assume that your client does not have any such information or documentation at its disposal.

All our clients' rights remain strictly reserved.

Regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES



We have recently been furnished with the application in question from which it seems as if certain transactions were reported in terms of the provisions of the Financial Intelligence Centre Act, No. 38 of 2001.

We are in the process of collating the bundle of documents which we intend to use in drafting our clients' opposing papers. Your client, our clients' erstwhile banker, has information pertaining to the transactions referred to in Annexure "P2" of the founding papers to the Minister's application (we must assume this since it has not been disclosed to us) and your client must have considered certain facts when your client decided to terminate its relationship with our clients.

It was widely reported in the media that our clients were frustrated with the refusal of the banks to furnish reasons for closure of the bank accounts and from the annexures to the application it is evident that our clients maintain the view that the banks closed their accounts as a result of political agendas and ulterior motives.

In correspondence the Applicant (the Minister of Finance) indicated that he was concerned that these allegations of impropriety would harm a stable banking sector in South Africa. In this regard we take the liberty of quoting the following from paragraph 24 of the affidavit deposed to by Minister Gordhan:

"If the banks have acted lawfully and within the parameters of their statutory duty these should evidence the bases on which each reporting bank has concluded that the dealing in question could directly or indirectly make that bank a party to or accessory to contraventions of law. Conversely, the full reports, if disclosed pursuant to FICA, would confirm whether there is any substance to the serious contentions advanced by Oakbay that the banks have acted improperly in closing the accounts". (sic)

We direct this formal letter to you requesting you to furnish us with copies of any and all information including any possible suspicious or unusual transactions, correspondence and/or reasons causing your client (Standard Bank) to close our clients' accounts and to refuse to conduct any further business with our clients, its associated entities or its shareholders.

QW



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

10th
1265

Case No: 80972/2016

In the matter between:

MINISTER OF FINANCE

Applicant

And

OAKBAY INVESTMENTS (PTY) LTD

First Respondent

OAKBAY RESOURCES AND ENERGY LTD

Second Respondent

SIVA URANIUM (PTY) LTD

Third Respondent

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

Fourth Respondent

JIC MINING SERVICES (PTY) LTD

Fifth Respondent

BLACKEDGE EXPLORATION (PTY) LTD

Sixth Respondent

TNA MEDIA (PTY) LTD

Seventh Respondent

THE NEW AGE

Eighth Respondent

AFRICA NEWS NETWORK (PTY) LTD

Ninth Respondent

VR LASER SERVICES (PTY) LTD

Tenth Respondent

**ISLANDSITE INVESTMENTS ONE HUNDRED
AND
EIGHTY (PTY) LTD**

Eleventh Respondent

CONFIDENT CONCEPTS (PTY) LTD

Twelfth Respondent

**JET AIRWAYS (INDIA) LIMITED
(INCORPORATED IN INDIA)**

Thirteenth Respondent

SAHARA COMPUTERS (PTY) LTD

Fourteenth Respondent

ABSA BANK LTD

Fifteenth Respondent

FIRST NATIONAL BANK LTD

Sixteenth Respondent

Seventeenth Respondent

THE STANDARD BANK OF SOUTH AFRICA

Eighteenth Respondent

NEDBANK LIMITED

Nineteenth Respondent

GOVERNOR OF THE RESERVE BANK

Twentieth Respondent

REGISTRAR OF BANKS

DIRECTOR OF FINANCIAL INTELLIGENCE
CENTRE

Twenty First Respondent

FILING NOTICE

TAKE NOTICE THAT the Tenth Respondent presents for filing herewith its affidavit in response to the Seventeenth Respondent's explanatory supporting affidavit.

Signed at *Pretoria* on this the *20th* day of *January* 2017



Stein Scop Attorneys Inc.

Attorneys for the Tenth Respondents

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Melrose Arch, Johannesburg

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Reference: Bridget Moatshe

- 1267

To:
The Registrar
Gauteng Division, Pretoria

And to:
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Attorney for the Applicant
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255 Francis Baard Street
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Fax: (012) 309 1649
Fax to Email: 086 629 3073
Email: TNhlanzi@justice.gov.za
Ref: 2427/16/232.Ms T Nhlanzi



Received on: _____ 2017

For: _____

And to:
Van Der Merwe & Associates
Attorneys for the first, second, third, fourth,
sixth, seventh, eleventh, twelfth and
fourteenth Respondents
62 Rigel Avenue North
Watekloof, Pretoria
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Received on: _____ 2017

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And to:

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Erasmundrand

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Cnr Jan Schoba and Brooks Streets

Brooklyn

Tel: (012) 362 3137

Received on: _____ 2017

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And to:

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c/o Adams & Adams

Adams & Adams Place

Lynwood Bridge

4 Daventry Street

Lynwood Manor

Tel: (012) 432 6000

Ref: Adelle Jordaan

Received on: _____ 2017

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And to:

MacRobert Attorneys

Attorneys for the Twenty-First Respondent

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Email: ghay@macrobert.co.za

Ref: G K Hay

Received on: _____ 2017

For:

And to:

Werksmans Attorneys

Attorneys for the Nineteenth and Twentieth

Respondents

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Fax: (011) 535 8600

Ref: Mr C Manaka / Mr C Moaitis

Email: cmanaka@werksmans.com and

cmoraitis@werksmans.com

Ref: SOUT 3267.63

c/o Mabuela Incorporated

Charter House

179 Bosman Street

Pretoria Central

Tel: (012) 324 3966

Email: mabuela@tiscall.co.za

Received on: _____ 2017

For: _____

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 80972/2016

In the matter between -

MINISTER OF FINANCE

Applicant

And

OAKBAY INVESTMENTS (PTY) LTD

First Respondent

OAKBAY RESOURCES AND ENERGY LTD

Second Respondent

SHIVA URANIUM (PTY) LTD

Third Respondent

TEGETA EXPLORATION AND RESOURCES (PTY)
LTD

Fourth Respondent

JIC MINING SERVICES (PTY) LTD

Fifth Respondent

BLACKEDGE EXPLORATION (PTY) LTD

Sixth Respondent

TNA MEDIA (PTY) LTD

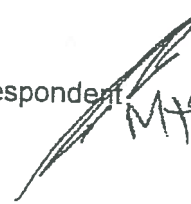
Seventh Respondent

THE NEW AGE

Eighth Respondent

AFRICA NEWS NETWORK (PTY) LTD

Ninth Respondent

A handwritten signature in black ink, appearing to be 'M79', is written over the text 'Ninth Respondent'.

VR LASER SERVICES (PTY) LTD	Tenth Respondent
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD	Eleventh Respondent
CONFIDENT CONCEPTS (PTY) LTD	Twelfth Respondent
JET AIRWAYS (INDIA) LIMITED (INCORPORATED IN INDIA)	Thirteenth Respondent
SAHARA COMPUTERS (PTY) LTD	Fourteenth Respondent
ABSA BANK LTD	Fifteenth Respondent
FIRST NATIONAL BANK LTD	Sixteenth Respondent
THE STANDARD BANK OF SOUTH AFRICA	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty First Respondent

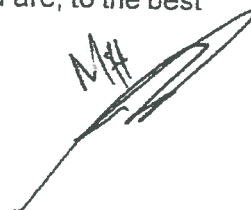
TENTH RESPONDENT'S RESPONSE TO THE SEVENTEENTH RESPONDENT'S
"EXPLANATORY SUPPORTING AFFIDAVIT"

I, the undersigned,

PIETER JOHANNES VAN DER MERWE

do hereby make oath and state that -

1. I am the Chief Executive Officer of VR Laser Services (Pty) Limited, the tenth respondent. In this affidavit I use the terms "tenth respondent" and "VR Laser" interchangeably.
2. I am duly authorised to represent the tenth respondent in these proceedings and to depose to this affidavit on behalf of the tenth respondent.
3. Save where the contrary is stated in this affidavit or appears from the context thereof, the facts contained herein fall within my own personal knowledge and are, to the best



of my knowledge and belief, both true and correct. Where I make submissions of a legal nature, I do so on advice of the legal representatives.

4. I depose to this affidavit in response to the "Explanatory Supporting Affidavit" of the seventeenth respondent, Standard Bank of South Africa Limited ("Standard Bank") deposed to by Ian Hamish Scott Sinton ("Mr Sinton") on 13 December 2016.
5. Insofar as the application of the Minister is concerned, the tenth respondent agrees with the position adopted by the first, second, third, fourth, sixth, seventh, eleventh, twelfth and fourteenth respondents that there is no legal basis for the Minister's application and similarly adopts the position that there is no basis for such relief in fact and in law.
6. Standard Bank is the seventeenth respondent in an application launched by the Minister of Finance ("the Minister") under the above case number on 14 October 2016 ("the Minister's Application"). Unlike the other banks who are cited as respondents in the Minister's Application, namely the fifteenth respondent, ABSA Bank Limited ("ABSA"), the sixteenth respondent, First National Bank Limited ("FNB") and the eighteenth respondent, Nedbank Limited ("Nedbank"), who have all delivered affidavits "supporting" the relief sought by the Minister but have indicated their intention to abide by the decision of this Court, Standard Bank has elected, in addition to supporting the Minister's relief, to seek additional relief which is contained in a



"Notice of Motion" which is attached to the affidavit of Mr Sinton as annexure "SB1" ("the Additional Relief").

7. The Additional Relief sought by Standard Bank is an order that:

"It is declared that no member of the National Executive of Government, including the President and all Members of the Cabinet, acting on their own accord or for and/on behalf of Cabinet, is empowered to intervene, in any manner whatsoever, in any decision taken by the seventeenth respondent [Standard Bank] to terminate its banking relationship with Oakbay Investments Proprietary Limited and its associated entities."

8. Standard Bank also seeks costs against those parties who oppose the Additional Relief.

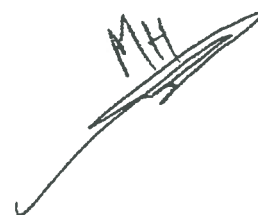
9. Standard Bank "served" its papers by email addressed to the attorneys of record for the first to fourteenth respondents on 13 December 2016 ("the affected respondents"). The affidavit, without annexures, runs to approximately 80 pages, and the annexures run to approximately 200 pages.

10. A meeting convened by the DJP on 15 December 2016 resulted in the Procedural Directive, annexure marked "A", dated 22 December 2016. The procedural directive



inter alia provided for the first respondent (but which I understand to mean all of the affected respondents) to deliver their answering affidavits "to the main application", i.e. the Minister's application, by no later than 20 January 2017.

11. The then attorneys of record and counsel that had been briefed to attend the 15 December 2016 meeting on behalf of the affected respondents had no opportunity to and did not consider the contents of the Standard Bank affidavit prior to the meeting. In the circumstances, and entirely understandably, they did not appreciate that Standard Bank was purporting to seek substantive relief as if it were an applicant.
12. It is apparent from the terms of the directive that the DJP similarly, might not, with respect, have appreciated that he was dealing with a separate and further application by Standard Bank, as the Directive makes no provision for any of the affected respondents to answer Standard Bank's "application". The sole subject matter of the Directive is the Minister's application and the application brought by the Oakbay respondents under a separate case number against the Director of the Financial Intelligence Centre ("FIC").
13. Further, in terms of the DJP's directive no provision is made for the delivery of affidavits by any of the affected respondents in response to the affidavits of co-respondents and in particular the affidavits of the respondent banks notwithstanding

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that the bank respondents had been afforded an opportunity to deliver heads of argument in support of the relief contended for by the Minister.

14. The Tenth Respondent has however been advised that it is necessary to deal with the Standard Bank's "Notice of Motion" so as to ensure that the Court does not accede to that relief which is as will be indicated incompetently brought and misconceived.

15. In order to deal with the Standard Bank's application having regard to the intervening vacation period and in order not to disrupt the timeframes envisaged by the procedural directive, the Tenth Respondent has attempted within the timeframes set out in that directive to deal with the Standard Bank's papers on the basis set out in this affidavit. There may however be aspects of the Standard Bank affidavit to which the Tenth Respondent will seek to respond further and its rights to do so are reserved.

No application by Standard Bank before the Court

16. Standard Bank's purported application is still-born:

- 16.1. To the extent that Standard Bank wished to institute motion proceedings for substantive relief which, it should be noted, is directed at persons who are

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not parties to either of the two applications referred to above, it was obliged to do so through a separate process, duly issued and served on all affected parties in accordance with the Rules. This did not occur.

16.2. Such a proceeding, in compliance with the Rules, would have formally given notice to all affected parties of the relief sought and afforded them the ordinary time periods to file an intention to oppose and answering affidavits. This did not occur.

16.3. Instead, by way of an annexure to its "Explanatory Supporting Affidavit" ("SB1"), Standard Bank set out the terms of the relief that it seeks with no provision for service on anyone and no time periods afforded for the taking of procedural steps for affected parties to oppose the relief sought.

16.4. I am advised that for these reasons Standard Bank's purported application is fatally irregular and defective, incompetent and a nullity.

16.5. Although Standard Bank has indicated that "to avoid possible contentions of non-joinder, Standard Bank's attorneys have been asked to ensure that a copy of this affidavit is made available to the President in his capacity as the head of the National Executive and Cabinet so that he or any other member of the National Executive authorised by him may participate in these proceedings should he elect or be advised to do so", this does not suffice to

overcome the problem. This is irrespective of whether Standard Bank in fact made its papers "available" to the President.

Relief sought by Standard Bank in respect of unidentified persons

17. In addition, the Additional Relief which Standard Bank seeks is to declare that no member of the National Executive of Government (including the President and any Member of Cabinet) may intervene in any manner in the decision taken by Standard Bank to terminate its banking relationships with Oakbay Investments (which is the first respondent in the Minister's Application and a party thereto) and "its associated entities".
18. The "associated entities" of Oakbay Investments are not identified by Standard Bank in Mr Sinton's affidavit or in annexure "SB1". It is not clear whether the phrase "associated entities" comprises all of the affected respondents and, if so, whether it is limited to them or whether "associated entities" includes other entities not cited by the Minister. Nor is the phrase "associated entities" sufficiently clear in and of itself such as to obviate the necessity of identifying the entities concerned.
19. That the term "associated entities" may include other entities who are not cited as respondents in the Minister's Application appears likely given that Mr Sinton states in his affidavit that in the letter sent by Standard Bank to various companies in the Oakbay Group on 6 April 2016, a copy of which is attached to Mr Sinton's affidavit as

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annexure "SB14", the names of certain entities have been redacted because they are not parties to the Minister's Application.

The relief sought by Standard Bank is incompetent

20. The terms of the relief sought by Standard Bank are fundamentally vague. Depending upon the interpretation to be given to the order sought different problems of different kinds arise.
21. Much of the difficulty originates from the use, in common with the Minister's application, of the verb "intervene". It is not at all clear what "intervention" is sought to be declared unlawful and effectively interdicted.
22. Furthermore, it is not clear whether the term "empowered" is intended, as is the case in the Minister's Application, to be confined to the question whether such powers exist at all or whether it is intended to go further and also relate to circumstances where the power exists but its exercise would be unlawful on the particular facts.
23. Standard Bank's "supporting affidavit" provides some indication of its objectives in seeking this form of relief.



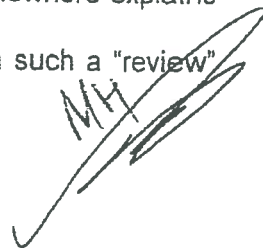
24. One express objective is to forestall the appointment of a judicial commission of inquiry by the President into the termination of the relevant banking relationships. In this regard:

24.1. The facts relied upon by Standard Bank do not support the inference that the President is considering the appointment of a judicial commission inquiry with such limited terms of reference.

24.2. Even if the President was considering an appointment on such terms, Standard Bank has no legal right capable of protection unless and until the President promulgates a decision to appoint a judicial commission of inquiry.

24.3. To the extent that there is even a possibility of the President appointing a judicial commission of inquiry related to the banking sector and even if that appointment arises from the circumstances surrounding the termination of the relevant accounts or any of the concerns expressed by certain Cabinet members, it does not follow that such a commission appointed with terms of reference that are as yet unknown, would be unlawful.

25. Standard Bank appears to fear also the possibility of a "review" of the "prevailing banking regulatory and supervisory legal framework". Its affidavit nowhere explains what such a "review" would entail, under what national legislation such a "review"



could conceivably take place and at the behest of whom. Nor is Standard Bank able to indicate what the ambit of such a "review" would be. Its contention appears to be that no "review" of any nature by any arm of government into any matter concerning banking regulations and supervisory laws applicable to banks should ever take place if such an action is based only on the termination by the banks of the relationships with the Oakbay and its "associated entities".

26. This is an absurd objective. Even if it were to be accepted that Standard Bank's termination of the relevant accounts was lawful in terms of the prevailing banking regulatory and supervisory legal framework in which it operates it does not follow that such framework is above reproach and should not be subjected to closer scrutiny and possible intervention by Government.
27. On the assumption that the framework is beyond reproach, a substantial part of Standard Bank's "supporting" affidavit focuses upon demonstrating why, in its view, it was entitled to terminate the banker-customer relationship with "Oakbay and its associated entities" and its assertion that it did so in good faith.
28. Irrespective of whether Standard Bank, and the other respondent banks, acted lawfully in terminating their relationships with the Oakbay respondents, their conduct highlights the devastating consequences of the power that they collectively wield. If their contentions that they were acting within the confines of the legal regime applicable to banking when acting as they did are to be accepted, their collective

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ability to irreparably prejudice the conduct of business by customers with the concomitant devastation upon the employees and families dependent upon such business, on the basis only of perceived risk arising from relationships with political persons (even if completely innocent and unavoidable, such as familial relationships) and untested media reports, legitimately raises concerns that permit of further scrutiny.

29. Some indication of the havoc created by Standard Bank's decision to terminate the relationship with the affected persons appears from the sequence of events relating to its decision insofar as the tenth respondent is concerned, which appears from the chronology of events which I have prepared and confirm to be correct, and which is attached as Annexure "B"
30. Without engaging with Standard Bank's excursus on the South African and international regime applicable to the regulation, and termination, of banker-customer relationships (and without conceding the correctness of Standard Bank's narrative in this regard), it is clear that there are many factors, albeit sometimes conflicting, that impact on the banker customer relationship.
31. The approach that Standard Bank espouses in order to justify its conduct in relation to the Oakbay respondents is that of conservative de-risking. This, and the regime which it says permits this, says Standard Bank, strengthens investor confidence in South Africa and enhances South Africa's reputation as an investment destination. *Non constat*, however, that there are not permissible and competing views that vice

a legitimate concern about the impact of such a regime upon the efficacy of banking systems, and particularly in respect of developing countries. Such issues would include the need for broader and more inclusive access to banking, as well as addressing the substantial prejudice capable of being sustained by individuals and corporations (or even, it would seem, countries) who, through association or reputation and absent any credible proof of wrong-doing, find themselves "unbanked". This competing, and equally legitimate view, would regard such a regime – resulting in decisions to terminate customer relationships influenced in many instances by the appetite of the media and their untested reports - as precarious and inimical to a sound and stable commerce.

32. It emerges from Standard Bank's own affidavit that the rules pertaining to the closing of bank accounts premised upon mere suspicion of concerning conduct may warrant further consideration through appropriate state conduct. The deleterious global impact of "de-risking" emerges from paragraphs 62 to 73 of its affidavit and the documents that it relies upon. It is readily apparent from these paragraphs of Standard Bank's affidavit, amongst others, that there is a tension between banks' interest in de-risking as the easiest and most cost-effective means of avoiding risk and the potentially devastating consequences of de-risking upon those deemed to constitute a potential reputational or business risk.
33. That the issue of "de-risking", and its possible abuse, is a vexed one requiring further debate, interrogation and research – and potentially justifying review or inquiry is not novel. This has formed the subject of many articles. For example, I attach as

Annexure "C" an Oxfam Report of November 2015 entitled Understanding Bank De-risking and its Effects on Financial Inclusion (https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/rr-bank-de-risking-181115-en_0.pdf)

34. The Brief, De-Risking in the Financial Sector, published by the World Bank in October 2016 (Annexure "D" also highlights the complexities of and challenges to de-risking. (<http://www.worldbank.org/en/topic/financialmarketintegrity/brief/de-risking-in-the-financial-sector>). Thus, the World Bank reports:

The Risks of De-Risking

De-risking may threaten progress that has been achieved on financial inclusion. It also has the potential to reverse some of the progress made in reducing remittance prices and fees, if banks close or restrict access for money transfer operators.

Some humanitarian organizations have also reported that they have lost access to financial services as a result of de-risking. The inability to get humanitarian assistance to refugees from political conflicts or natural disasters could result in death from starvation, exposure, and disease.

De-risking can frustrate AML/CFT objectives and may not be an effective way to fight financial crime and terrorism financing. By pushing higher risk

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transactions out of the regulated system into more opaque, informal channels, they become harder to monitor.

Financial integrity and financial inclusion are complementary. Financial inclusion is a necessary precondition to effectively mitigate risks and combat financial crimes. The Financial Action Task Force recognizes financial exclusion as a risk to financial integrity.

What's the World Bank doing?

The World Bank is launching country pilot studies to analyse the effects of de-risking on consumers and on the wider economy in order to complement to the work Financial Stability Board is doing at the global level.

35. Standard Bank has failed to make out a case for asking this Court to make an order that in substance comprises an interdict against governmental conduct in terms so vague and over-reaching as to encompass the exercise by members of the National Executive of Government, including the President and members of Cabinet, of statutory powers flowing from legislation whose constitutional validity is not challenged. Absent any factual foundation that would identify what conduct and in terms of what source the said persons intend to (or do) exercise their powers, this Court is asked to flagrantly ignore the restraints imposed by the doctrine of separation of powers and to sanction an interdict. This is impermissible.

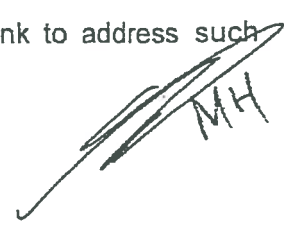
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36. To the extent that Standard Bank would disclaim such far-reaching objectives and would contend that its relief is strictly limited to precluding interference with its decision to have closed the relevant accounts, this raises other but equally insuperable problems:

36.1. There is nothing in Standard Bank's affidavit that justifies a conclusion that the President or any member of Cabinet intends to take some form of action with the aim of compelling Standard Bank to resume its relationships with the affected respondents.

36.2. Those actions which have been identified by Standard Bank as possible "threats", namely the appointment of a judicial commission of inquiry or some "review" of the regulatory regime cannot conceivably result in any form of legal compulsion that Standard should resume its relationships with the affected respondents.

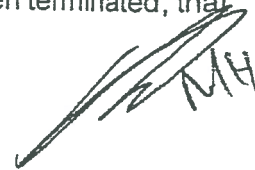
36.3. In the event, on the other hand, that "intervene" is a reference to engaging informally with Standard Bank by, for instance, requesting that it attend meetings then, again, there is no basis for seeking interdictory relief. Not only is there no indication that the President or any other Minister intends at some future time to engage with Standard Bank in this manner but, more to the point, no remedy would be required by Standard Bank to address such

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conduct if it arose. Put simply, it would be open to Standard Bank to refuse to engage. The same malady infects the contrived basis of the relief sought by the Minister in his application.

36.4. I refer in this regard to the "pressure" that Standard Bank alleges was brought to bear upon it to reconsider its decision to terminate its relationship with the Oakbay respondents and, in particular, a request to it to attend a meeting by some members of the National Executive Committee of the ANC and a request to it to attend a meeting with a committee of Cabinet. It is clear from Standard Bank's description of these requests, as well as its description of the meetings themselves, that while it felt pressurised to revisit its decision there was no suggestion that the persons with whom it was meeting had any power to compel it to do so. Neither is there any suggestion that they at any point purported to have such power. Indeed, it is apparent that there was no suggestion even that Standard Bank was required, or could be compelled, to attend the meetings and had it elected so, it could simply have refused the invitation.

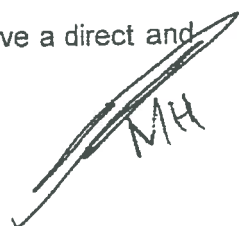
36.5. Not only, therefore, does it appear that the engagement with Standard Bank on this basis was not unlawful but it is readily apparent that there is no suggestion that any Minister (or the President) seeks or intends to engage with Standard Bank on the issue of its decision to terminate the Oakbay relationships in the future. On the contrary, it is patent, that everyone accepts that the Oakbay relationships with Standard Bank have been terminated, that

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it is unwilling to reconsider its decision, and that absent legal action, there is no possibility of such relationships being reinstated in the event that any of the Oakbay respondents even sought such relief (which at present they do not want).

37. On the topic of possible future legal action, as appears from the Oakbay companies' statements to the media, they do not accept Standard Bank's claims that it acted unilaterally and in good faith in terminating its relationships with Oakbay. While the Oakbay companies accept that the contract concluded with Standard Bank permitted it to terminate its relationships with them, the Oakbay companies (the *Bredenkamp* decision of the Supreme Court of Appeal notwithstanding) have not relinquished their view that there may exist public policy grounds to challenge the contract and also to demonstrate that Standard Bank did not act in good faith but that, in addition, in the particular circumstances Standard Bank's conduct –considered together with that of the other respondent banks - was unlawful and in contravention of other legislation, such as the Competition Act. The Oakbay respondents, as they are entitled, are still considering what legal course to pursue in this regard, if any. Such proceedings would constitute the proper forum for the ventilation of the false allegations against the affected respondents and the Gupta family and all of the facts relevant to the termination of the banking accounts of the affected respondents.

38. It is, however, not necessary, or appropriate, for this court to determine this question which is factually and legally complex and incapable of resolution on motion. Nor has it been asked to do so. In addition, all of the persons who would have a direct and

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substantial interest in such a determination, are not joined, such as the entities whose names have been redacted from annexure "SB14" to Standard Bank's answering affidavit, and any other entities falling within the elusive term of "associated entities" as it appears in Standard Bank's notice of motion "SB1".

39. From the foregoing it is apparent that the allegations of "fact" marshalled by Standard Bank as justifying its decision to terminate the relevant accounts have no bearing on the relief sought by it or the Minister:

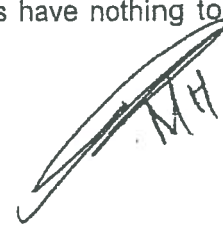
39.1. As indicated, even if Standard Bank acted in compliance with the relevant regulatory regime, these allegations, do not justify its far-reaching relief;

39.2. On the other hand, if the relief is to be confined to reversing its decision to close the relevant accounts, no such possibility has been shown to exist on the papers, either factually or legally and irrespective of the lawfulness of its decision.

40. There is a further fundamental reason why the affected respondents are not obliged to deal with the contents of Standard Bank's "supporting affidavit". This applies equally to the contents of the affidavits of ABSA, Nedbank and FNB.

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41. Once it is appreciated that Standard Bank is not properly in a position of an applicant before this Court for the reasons set out above then its affidavit should be dealt with on the same footing as the affidavits as the other banks.
42. The position is that a respondent which is not opposing the relief sought in an application may either do nothing or may signify its intention to abide the decision, especially in circumstances where no relief is sought against it. A respondent which has elected not to join issue with the applicant is not entitled to file an answering affidavit the sole purpose of which is to build or augment the case for the relief sought for the applicant in those proceedings. It follows that no other respondent is required to deal with those allegations and neither is the court entitled to have regard to them. These affidavits should be dealt with as if they had been struck out in their entirety.
43. Moreover, all of the allegations in the affidavit of the respondent banks are irrelevant to the relief sought by the Minister which is premised on the narrow proposition that he is not as a matter of law empowered or obliged to intervene in the banking relationship between the affected respondents and their bankers.
44. Nor should the court draw any adverse inference from the failure to deal with the myriad hearsay and untested allegations in the affidavits of the respondent banks concerning so-called State Capture. Those allegations, which are disputed, may themselves be the subject of a judicial commission of inquiry depending upon the outcome of other legal proceedings and the affected respondents have nothing to



fear from such an investigation. They are confident that once all of the issues have been properly ventilated, their reputations will be restored.

45. The manifest irrelevance of the allegations in the affidavits of the respondent banks and the irregular manner in which those allegations are sought to be made is indicative of malice on the part of the banks who seek to use these proceedings impermissibly to obtain a judicial stamp of approval on their conduct while at the same time attempting to stultify further scrutiny of that conduct. This should not be countenanced.

WHEREFORE I respectfully pray that the application brought by the Minister of Finance be dismissed with costs, including the costs occasioned by the employment of three counsel; that the "Application" of the Standard Bank be dismissed with costs, including the costs occasioned by the employment of three counsel, and that Standard Bank, Absa, FNB and Nedbank be ordered to make payment of the tenth respondent's costs occasioned by their affidavits, also inclusive of the costs of three counsel.



 DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at ~~JOHANNESBURG~~ ^{Ho} this 20th day of Jan 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended and Government Notice No. 1648 of 19 August 1977, having been complied with.



 COMMISSIONER OF OATHS

Full names:

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Designation:

Area/Office:

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OFFICE OF THE DEPUTY JUDGE PRESIDENT A P LEDWABA
HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA
Gauteng High Court Building, Cnr. Madiba (Vermeulen) & Paul Kruger Str, Room 7.16, Seventh Floor
Tel. (012) 315 7672 - Fax. (012) 315 7600 - Direct Fax. 0864086021 - E-mail: MTroskie@judiciary.org.za

22 December 2016

TO: THE OFFICE OF THE STATE ATTORNEY
Fax No: (012) 309 1649
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Your Ref: 2427/16/z32
Our Ref: 80878/16/DJP LEDWABA/RS

CC: VAN DER MERWE & ASSOCIATES
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Dear Sirs

RE: SPECIAL MOTION: THE MINISTER OF FINANCE / OAKBAY
INVESTMENTS (PTY) LTD & 20 OTHERS, CASE NUMBER: 80978/16

1. I refer to the above matter and our meeting on 15 December 2016.
2. The matter will be heard together with the application under case no 92027/16, as discussed and arranged in the meeting.
3. The matters are hereby set down for hearing as special motions on 28, 29 & 30 MARCH 2017. You are directed to serve and file the notices of set down, together with a copy of this letter attached to them within 7 (seven) days after receipt hereof, failing which the allocated date(s) of hearing may lapse and the dates may be allocated to other litigants who apply for a special motion date. The notices of set down must be filed at the office of the Deputy Judge President, 7th Floor, Room 7.15, High Court Building.
4. I direct that:
 - 4.1 The Respondent(s), (except the 1st Respondent), in the main application who have not yet filed their answering affidavits should file same by no later than 22 December 2016.
 - 4.2 The 1st Respondent in the main application should file its answering affidavit to the main application by no later than 20 January 2017.
 - 4.3 The Applicant in the main application should file his replying affidavits to the main application by no later than 27 January 2017.
 - 4.4 The Applicant and the Respondent(s) supporting the applicant in the main application should file their heads of arguments and practice notes by no later than 10 February 2017.



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- 4.5 The Applicant in case no 92027/16 and the remaining respondents in the main application should file the heads of arguments together with the practice notes on 24 February 2017.
5. For proper administration and allocation of special motions, the applicant should deliver the court- files in triplicate duly indexed and paginated to my office on 10 February 2017 and the parties should also send via email (MTroskie@judiciary.org.za) to my office a Joint Practice Note by no later than 4 March 2017 containing the following:
- Names of the parties and the case number
 - Names and telephone numbers of all counsel in the Motion
 - Nature of the motion
 - Issues to be determined in the application
 - Relief sought at the hearing by the party on whose behalf counsel is appearing
 - An estimate of the probable duration of the application
 - Number of pages in the application and whether or not all papers need to be read and if not, which portion need not be read
5. The aforesaid directives must be strictly adhered to, failing which the matter may be allocated to a Judge for hearing, however depending on why there was non- compliance.
6. All queries and/or communications concerning the hearing of this matter must be directed to my office in writing. All documents and the court file must be filed at the office of the Deputy Judge President on the 7th floor, High Court.
7. It remains the duty of the all legal representatives to ensure that the court file has been properly indexed and paginated in time and that all documents have been filed accordingly as directed at the office of the Deputy Judge President, High Court Pretoria, 7th Floor, Room 7.15.

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8. Should it, for any reasons, transpire that this matter will not proceed on the given date, you are directed to inform the Office of the Deputy Judge President, Immediately.
9. None availability of counsel representing any of the parties shall simply not be allowed as a reason for the matter not to proceed on the date of hearing arranged with my office.
10. Should the above directive not be complied with, the matter may not be allocated to a Judge and the allocated dates may be utilized for other deserving cases.

Regards

P.O.A.

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DEPUTY JUDGE PRESIDENT
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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ANNEXURE B: CHRONOLOGY OF EVENTS

1. On 29 July 2016, Standard Bank gave notice of its intention to terminate its banking relationship with the tenth respondent, affording it two months' notice of such termination.
2. Standard Bank's refrain was that the banking relationships of the affected respondents had been terminated because of an association with the Gupta family. This refrain permeated the discussions that took place between representatives of Standard Bank and me
3. VR Laser specialises in the design and manufacture of steel products from dragline buckets to armoured vehicles. It operates a manufacturing plant in Boksburg and a satellite branch at the Optimum Coal Mine situated at Pullens Hope. VR Laser employs approximately 266 employees.
4. Until April 2016, VR Laser's primary bankers were Nedbank. On 8 April 2016, Nedbank wrote to VR Laser's accountant, Claire Thomsett ("Ms Thomsett") indicating that in terms of the Financial Intelligence Centre Act 38 of 2001 ("FICA"), it was required to keep its customer information current, accurate and up to date by obtaining and re-verifying all relevant customer details. The email, a copy of which is attached hereto as annexure "B1" indicated that to ensure that Nedbank complied with money laundering control and counter terrorist financing obligations in terms of FICA, VR Laser was required to provide it with certain documentation within 5 days including *inter alia* all its company registration documents, proof of its shareholding, proof of its address and proof of authority of a natural person to act on its behalf. The documentation was

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also sought in relation to related companies of VR Laser, VRLS Investments (Pty) Ltd, Advanced Laser Cutting (Pty) Ltd and VRLS Properties (Pty) Ltd.

5. Ms Thomsett duly provided Nedbank with all the documents that had been requested by it. On 9 May 2016, a representative of Nedbank, Ms Marie Strydom ("Ms Strydom") visited the premises of VR Laser and handed me two letters, one addressed to VR Laser and the other to VRLS Properties (Pty) Ltd. The letters which were dated 4 May 2016 and are attached hereto as annexures "B2" and "B3" indicated that any continued relationship between Nedbank and VR Laser or VRLS Properties (Pty) Ltd "may create material business risks" that could pose significant reputational risk to Nedbank and, as such, Nedbank was not prepared to continue to deal with VR Laser or VRLS Properties (Pty) Ltd who were provided with 30 days' notice to find alternative bankers.
6. The letters recorded that as Nedbank was not the primary banker of VR Laser or VRLS Properties, 30 days' notice was reasonable to allow these entities to find new bankers.
7. I was entirely taken aback by the letters. I had been under the impression that the visit by Nedbank representatives was so that they could inspect the Boksburg manufacturing facility operated by VR Laser. When asked about the reasons for the termination, Ms Strydom stated vaguely that the termination had to do with "everything going on in the media as well as things going on with the Gupta family" which Nedbank perceived as a reputational risk to it. Ms Strydom



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seemed unsure of the facts and suggested that this "Gupta shareholding" was held through "Oakbay" and "another company" that she could not recall.

8. The message was clear, the termination of the banking relationship between Nedbank and VR Laser (and its associated entities) was a direct result of the involvement of the Gupta family in these entities (albeit indirectly and only as shareholders and not in any executive capacity).
9. When challenged about the reasonableness of Nedbank's decision, Ms Strydom indicated that "she was not going to get into it" and that if VR Laser wished to extend the 30 day notice period, it would have to show extraordinary circumstances. Ms Thomsett and the Chief Executive Officer of VR Laser, Pieter van der Merwe ("Mr van der Merwe") indicated to Ms Strydom that there were absolutely no new risks associated with VR Laser and that its accounts were in good standing. Mr Van der Merwe expressed his frustration to Ms Strydom about what he perceived to be a "politically fuelled strategic decision" which Nedbank had taken without any concern for the repercussions it would have for hundreds of employees of VR Laser.
10. Following the meeting, Ms Thomsett sent an email to Ms Strydom in which she recorded the events that had taken place and outlined the risks to VR Laser of the termination of its banking relationship with Nedbank. In particular, she listed the following risks namely that VR Laser:
 - 10.1. had (then) 250 employees who, in turn, provided for at least 1000 people;
 - 10.2. had lists of suppliers that it needed to pay to ensure that its operation ran smoothly. If it did not pay its suppliers, production would come to

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a standstill which would mean that penalties would be levied against it for late deliveries;

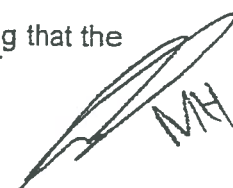
10.3. it was engaged in a contract for Denel and the supply of vehicles for Armscor and it would be impossible for it to perform in terms of these contracts in the absence of banking facilities which, in turn, would become a matter of national importance;

10.4. neither the grounds nor the notice period of 30 days provided by Nedbank was reasonable;

10.5. it could not be good banking practice for Nedbank to take decisions to jeopardise the business of VR Laser at the expense of its employees and clients.

11. Ms Thomsett also indicated that, to the best of her knowledge, VRLS Properties had no link whatsoever to any Gupta family member and therefore that the decision of Nedbank relating to VRLS Properties was irrational and that Nedbank had acted in a manner that was *mala fide*, vexatious and malicious. Ms Thomsett requested Nedbank to urgently reconsider its decision and if it was not willing to do so to extend the 30-day notice period until a legal dispute which VR Laser intended to launch had been settled. A copy of Ms Thomsett's email is attached hereto as annexure "B4".

12. Ms Strydom responded to Ms Thomsett on 11 May 2016 confirming Nedbank's view that Oakbay Investments was the ultimate shareholder of VR Laser and reiterating the decision of Nedbank to terminate its banking relationship with VR Laser in 30 days which period would expire on 8 June 2016 meaning that the

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various bank accounts would be closed on 9 June 2016. A copy of Ms Strydom's email is attached hereto as annexure "B5".

13. As I have set out above, Oakbay Investments is not the ultimate shareholder of VR Laser and, as indicated by Ms Thomsett, the Gupta family has no ties to VRLS Properties (Pty) Ltd. Be that as it may, it was clear that any perceived association between the Gupta family and its members and VR Laser was deemed sufficient for Nedbank to terminate its relationship with VR Laser and its related entities without any proper investigation into the actual shareholding of these entities.
14. True to its word, Nedbank terminated VR Laser's banking facilities on 9 June 2016. As a result, VR Laser was then required to rely more heavily on its second line bankers namely Standard Bank however, on 29 July 2016, a representative of Standard Bank, David Pike ("Mr Pike") visited the premises of VR Laser and handed Mr van der Merwe a copy of a letter giving VR Laser notice of Standard Bank's intention to terminate its banking relationship with VR Laser and indicating that it would not extend any future facilities to VR Laser. The letter indicated that Standard Bank intended to terminate its relationship with VR Laser on 2 months' notice and that it would close VR Laser's facilities on 28 September 2016. A copy of this letter is attached hereto as annexure "B6".
15. During the discussion that took place between Mr Pike and me, I was first asked to clarify the shareholding of VR Laser. I was not sure of the exact shareholding but I explained that the shareholders of VR Laser, were Elgasolve and Craysure. Having explored the shareholding of both Elgasolve and Craysure,

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Mr Pike indicated that it was the "minority shareholding" of Oakbay that was the "problem" for Standard Bank and, from a "consistency point of view" because Standard Bank had exited various relationships with Oakbay Entities, it had no choice but to terminate its relationship with VR Laser.

16. When asked whether Standard Bank perceived any risks from VR Laser, Mr Pike could only refer to a "related party" risk because of its shareholders. Mr Pike indicated that the only solution for VR Laser would be for it to change its shareholding. Mr van der Merwe explained that the Gupta family had disinvested themselves from the Oakbay entities and resigned from their executive positions but Mr Pike made it clear that Standard Bank would not be satisfied for as long as the Gupta family held a beneficial interest in the shares of VR Laser (no matter how small the proportion).
17. In July 2016 I met with representatives of the Bank of China to see whether Bank of China would extend banking facilities to VR Laser. During the meeting I played complete "open cards" with the Bank of China indicating that VR Laser required banking facilities urgently given that Nedbank had terminated its banking relationship with VR Laser.
18. On 23 July 2016, VR Laser applied for an account with the Bank of China. After completing all the FICA documents required by the Bank of China and all its KYC requirements, the Bank of China finally notified VR Laser on 30 August



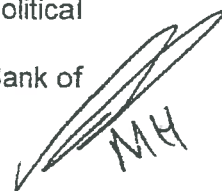
2016 that all the documents had been received and were being processed by the Bank of China "banking department".

19. VR Laser's position was exacerbated and became even more urgent when it received Standard Bank's termination notice of 29 July 2016.
20. On 8 September 2016, VR Laser was informed that its account with Bank of China had been opened. On approximately 16 September 2016, VR Laser processed an internal transaction to familiarise itself with the Bank of China internet banking system. When this was successful, VR Laser sent letters to its suppliers notifying them of the change in its banking details. Because it had not fully transferred its banking facilities to the Bank of China, VR Laser requested an extension from Standard Bank of 1 month for the termination of the relationship between it and Standard Bank so that it could complete the transition. Standard Bank granted VR Laser this extension.
21. On 27 September 2016, VR Laser processed a further internal transfer of R500 000.00. Immediately upon the transfer, the "source" of the transaction was questioned by the Bank of China and documents were requested by the Bank of China including the audited financial statement of VR Laser and its shareholding structure (documents that had already been provided in terms of the FICA process). Ms Thomsett informed the Bank of China that the transfer was merely an internal transfer between VR Laser's accounts and provided the requisite proof as well as an organogram indicating the VR Laser structure.

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Copies of this correspondence are attached hereto as annexures "B7" and "B8".

22. Further questions were then posed by the Bank of China including questions regarding the ultimate beneficial shareholder of Westdawn Investments (which owns shares in Craysure). All of this information had already been provided to the Bank of China as part of the account opening process but was provided again by VR Laser. Despite this, Mr van der Merwe explained to representatives of the Bank of China that VR Laser was a manufacturing business with a monthly revenue of between R15 and R20 million and that he could provide the Bank of China with invoices in respect of all these amounts. The Bank of China representatives indicated that they were reviewing the "due diligence documents and again asked Mr van der Merwe to identify the ultimate beneficial owners of Westdawn Investments. Copies of this correspondence is attached hereto as annexures "B8.1", "B8.2" and "B8.3".
23. Despite providing all the necessary information and providing the Bank of China with every reassurance, on 29 September 2016, VR Laser was informed that the Bank of China had closed its account. A copy of the letter of termination from the Bank of China is attached hereto as annexure "B9". When the reason for the closure of the account was queried by Mr van der Merwe with the representative of business development of the Bank of China, they indicated that they were very sorry and that this was an "instruction" from someone higher up in the bank.
24. The account had been closed because VR Laser was perceived to be a political risk because of its shareholding (which had been fully disclosed to the Bank of



China) before it had opened an account for VR Laser. The bank representative indicated that it was the "whole Gupta thing" and that the Gupta family were not sanctioned on the South African Reserve Bank list and therefore the Bank of China could not afford the risk of doing business with VR Laser. Finally, the representative indicated that the Bank of China would do business with VR Laser if it restructured its shareholding to exclude the Gupta family.

25. Given that the new VR Laser facility with the Bank of China had not materialised (despite VR Laser's best efforts), VR Laser approached Standard Bank for a further extension of the deadline for the termination of VR Laser's facilities with Standard Bank (which had been extended until the end of October 2016) to afford VR Laser the opportunity to find (yet another) bank. VR Laser indicated that without transactional banking facilities, VR Laser would be unable to pay its staff their salaries and bonuses in December. It also indicated that many international banks with a presence in South Africa did not have online banking facilities which meant that VR Laser could not reconcile its payments on a daily basis. Standard Bank refused the request for an extension of its banking facilities to VR Laser which ultimately terminated on 26 November 2016.
26. Copies of correspondence between Mr van der Merwe, Ms Thomsett and Standard Bank in relation to this extension are attached hereto as annexures "B10" to "B11". Letters confirming that Standard Bank would terminate the

A handwritten signature in black ink, appearing to be 'MH' or similar, with a long, sweeping underline.

banking facilities of VR Laser on 26 November 2016 are attached hereto as annexures "B12" to "B13".

27. Confirmatory affidavits deposed to by Mr van der Merwe and Ms Thomsett will be delivered in due course and before the hearing of this application.

A handwritten signature in black ink, consisting of a stylized, sweeping line that curves upwards and to the right, followed by the letters "MH" written in a simple, blocky font.

Claire Tomsett

From: Simelane, T. (Thabo) <ThaboSi@Nedbank.co.za>
 Sent: Friday, April 8, 2016 15:31
 To: Claire Tomsett
 Subject: Client Regulatory Compliance



Hi Claire

FICA

The Financial Intelligence Centre Act 38 of 2001 ('FICA') requires Nedbank Limited ('Nedbank') to keep their customer information current, accurate and up to date by obtaining and re-verifying all relevant customer details. To ensure that Nedbank complies with its money laundering control and counter terrorist financing obligations in terms of FICA and to ensure our continued business relationship, you are requested to provide us with the following documents for FICA purposes within five business working days :

Business entity:

- **Proof of identity:** (For verification of company) we require all company registration documents, ie CM/COR/other documents
- **Proof of shareholding** (for verification of shareholders -any one of the following):
 - an original letter, confirming the shareholding signed by the company secretary on an official company letterhead;
 - an original letter from the company auditors confirming the shareholding; or
 - the audited company financial statements.
 - above parties holding 25% or more shareholding we will need : id documents /company documents to identify these associated shareholder/s
 - If 100% - sole shareholder's declaration (bank to provide this declaration)
- **Proof of address:** lease/utility bill (to be in the name of company)-if not in name of company and if sharing - we will provide you with a shared address declaration to be signed off
- **Proof of authority :**(The proof of authority for a natural person purporting to act on behalf of the company must be verified by comparing these particulars with a resolution /extract of minutes (our standard extract attached or you can provide us with your own resolution)

NB: all documents are to be certified, (we will require the original certified documents)

The above information is required for the entities below:

- VR Laser Services (Pty) Ltd
- VRLS Investments (Pty) Ltd
- Advanced Laser Cutting (Pty) Ltd

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VRLS Properties (Pty) Ltd

Please do not hesitate to contact me should you need further assistance herein.



Thabo Simelane

Business Manager | Business Banking: Northern Gauteng | Nedbank Limited

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t +27 (0)11 294 5698 c +27 (0)82 901 0395 @ thabosi@nedbank.co.za

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Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary.

[<http://www.nedbank.co.za/terms/DirectorsNedbank.htm>]

This email is confidential and is intended for the addressee only.

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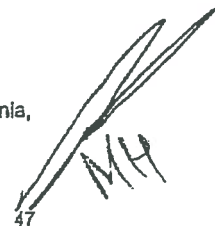
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ACKNOWLEDGEMENTS

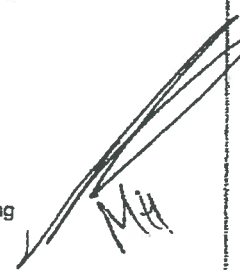
Tracey Durner is the Lead Researcher for the project and a Programs Associate for the Global Center. She specializes in financial inclusion, including anti-money laundering and countering the financing of terrorism and bank de-risking practices, with a particular focus on the Greater Horn of Africa. She has written and contributed analysis to reports on these issues and is responsible for the development, coordination, and implementation of capacity-building programs in the region. She has significant volunteer experience in Uganda and Cameroon. She holds a BA in International affairs and political science from Northeastern University.

Liat Shetret is the Principal Investigator and Team Lead for the project and the Director of the New York office and Senior Analyst for the Global Center at the time of writing. At the Global Center she managed policy, research, and programming activities in Africa and focused on financial inclusion, remittances, anti-money laundering and countering the financing of terrorism, de-risking, and the use of the Internet for counterterrorism purposes. She has award-winning security policy expertise and holds a Master of International Affairs from Columbia University's School of International and Public Affairs and is a Certified Anti-Money Laundering Specialist (CAMS).

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Research reports

This research report was written to share research results, to contribute to public debate and to invite feedback on development and humanitarian policy and practice. It does not necessarily reflect the policy positions of the publishing organizations. The views expressed are those of the author and not necessarily those of the publishers.

For more information, or to comment on this report, email Tracey Durner at tdurner@globalcenter.org

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OXFAM

Handwritten signature/initials

B2

Only received
9 May 2016
04 May 2016

Dear Client,

1. We refer to the abovementioned accounts held with Nedbank Limited ('Nedbank').
2. Nedbank is of the view that any continued relationship with VR Laser Services (Pty) Ltd may create material business risks that could pose significant reputational risk to Nedbank and as such we are unfortunately not prepared to continue our banking relationship.
3. We hereby terminate the banking relationship, as we are entitled to do, and provide you with 30 (thirty) days' notice to find alternative bankers. As Nedbank is not your primary banker we believe that the notice period is reasonable and provides you with adequate time to find alternative banking facilities.

Marie Strydom
Divisional Head: Credit Risk
Nedbank Ltd
Tel: +27(0)11 294 7411
Email: MarieSt@nedbank.co.za

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1. 2014. 11. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 8

Page 1 of 1



B3

The Director(s)
VRLS Properties (Pty) Ltd
1 Tessa Crescent
Sunninghill
Johannesburg
2191

BY HAND

only received
04 May 2016

Dear Client,

ACCOUNT NUMBERS: 1011505789/037284063971000001

1. We refer to the abovementioned accounts held with Nedbank Limited ('Nedbank').
2. Nedbank is of the view that any continued relationship with VRLS Properties (Pty) Ltd may create material business risks that could pose significant reputational risk to Nedbank and as such we are unfortunately not prepared to continue our banking relationship.
3. We hereby terminate the banking relationship, as we are entitled to do, and provide you with 30 (thirty) days' notice to find alternative bankers. As Nedbank is not your primary banker we believe that the notice period is reasonable and provides you with adequate time to find alternative banking facilities.

Yours faithfully,


Marie Strydom
Divisional Head: Credit Risk
Nedbank Ltd
Tel: +27(0)11 294 7411
Email: MarieSt@nedbank.co.za

Business Banking
Northern Gauteng
Sandton

Upper Ground Block 1 135 Rivonia Road Sandown Sandton Gauteng 2196
PO Box 784088 Sandton 2146 South Africa
Tel 011 294 4444 Fax 011 295 4444
www.nedbank.co.za

B5

Claire Tomsett

From: Strydom, M. (Marie) <MarieSt@Nedbank.co.za>
Sent: Wednesday, May 11, 2016 11:31
To: Claire Tomsett
Subject: RE:

Dear Mr Tomsett

With reference to the under mentioned email we note the content thereof and confirm that Nedbank will not respond to each and every allegation contained in mentioned letter. Any omission should not be construed as an admission thereof. Nedbank reserves the right to respond to same at the appropriate time and in the appropriate forum.

We confirm that we are of the view that Oakbay-Investments (Pty) Ltd is an ultimate shareholder in VR Laser Services and reiterate our decision to terminate the banking relationship with VR Laser Services (Pty) Ltd and related parties. We further confirm that the 30 (thirty) days' notice as provided in the termination notices will expire on 8 June 2016 and that the various bank accounts will be closed on 9 June 2016.

Regards
M Strydom

From: Claire Tomsett [mailto:clairet@vrlaser.co.za]
Sent: 09 May 2016 01:14 PM
To: Strydom, M. (Marie)
Cc: Simelane, T. (Thabo); Phillips, M. (Tony); Pieter van der Merwe
Subject: FW:

B4

Dear Mrs Strydom,

IN RE: CLOSING OF BANK ACCOUNTS

Our meeting just now refers.

We believe it is important to place the discussion on record whilst all the facts are still fresh in everybody's minds:

1. *You handed VR Laser Services as well as VRLS Properties letters of termination of their banking facilities. The letters provide for 30 days notice, which will immediately become effective;*
2. *The reasons for the termination were "everything going on in the media as well as things going on with the Gupta family", which is seen as reputational risk. You indicated that the shareholding by the family through Oakbay, and "another one you can't remember", is a reputational association risk;*
3. *We indicated that there were absolutely no new risks in VR Laser. No business risks assessment was done (like a factory visit), and we mentioned that our accounts were in good standing;*
4. *Our immediate concerns were:*
 - a. *We indicated that we have about 250 employees and provide for at least 1000 people;*
 - b. *We have lists of suppliers that we need to pay to ensure that our operations runs smoothly. If we do not pay our suppliers, our production will come to a standstill, which will in return means that penalties will be levied against us for late deliveries;*
 - c. *It is common knowledge that we are busy with a Denel contract, for the supply of vehicles to Armscor, and that it will be impossible to perform on this agreement, which is of national importance, if we don't have banking facilities;*
 - d. *Neither the grounds nor the 30 days notice period is reasonable;*

Handwritten signature and initials, possibly 'MH', with a large diagonal stroke across the bottom right of the page.

- e. Nedbank subscribes to good banking practice. Our view is that it cannot be banking practise to intentionally take decisions to jeopardise a business or group of businesses, to the expense of its employees and clients;
5. When asked about the reasonableness of Nedbank's decision, you indicated that "you are not going to get into it",
 6. You indicated that we need to show "extraordinary circumstances" if we want to extend the 30 days.
 7. We reiterated our complete displeasure in the politically fuelled strategic decision as you completely ignore the repercussions it will have on hundreds of employees. We also mentioned that we will proceed with legal action.

According to me, VRLS Properties has no link whatsoever to any Gupta family member. Your argument therefore does not make sense. It is in fact indicative of the fact that you, as a bank, are doing everything in your power to sabotage our business, even if it means that innocent employees and their families will be the real victims. We acknowledge that you have the right to cancel an agreement, but that discretion must be exercised in a bona fide manner. Your actions are nothing but vexatious and malicious. There is, with respect, nothing legal about that.

We urgently request you to reconsider your decision. If you persist with your decision, kindly revise the time limit of 30 days until such time as the legal dispute, which we will institute within a reasonable time, is settled. This request should not be seen as an acknowledgement of the legality of your request. Our rights remain strictly reserved.

Kind Regards
 Claire Tomsett
 Financial/Admin Manager
 VR Laser Services (Pty) Ltd
 Tel: +27(11)306-8000
 Fax: +27(11)306-8018
 Mobile: +27(0)832821877
clairet@vrlaser.co.za
www.vrlaser.co.za

Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary.
 [<http://www.nedbank.co.za/terms/DirectorsNedbank.htm>]
 This email is confidential and is intended for the addressee only.
 The following link will take you to Nedbank's legal notice.
 [<http://www.nedbank.co.za/terms/EmailDisclaimer.htm>]



B6

29 July 2016

Boksburg Branch

Mr P Van der Merwe
VR Laser Services (PTY) LTD
10 Haggie Road
Dunbart Ext 5
Boksburg North
Boksburg
1462

BY HAND

Dear Mr van der Merwe

VR Laser Services (PTY) LTD REGISTRATION NUMBER 2007/031329/07

We herewith advise that after careful consideration, the Bank is terminating its banking relationship with you on reasonable notice. We will also no longer be extending any future facilities to you. As a result we hereby inform you of the following actions to be taken in respect of the various accounts:

Business Current Account 023 095 199
Business Current Account 023 082 666

Credit Balance R5 922.30
Credit Balance R2 028 546.72

These current accounts will be closed on 28 September 2016. Kindly provide us with the bank account details where the available funds held in these accounts may be transferred to once the set off as indicated below has been applied. Alternatively a bank cheque(s) will be issued in your favour, which will be ready for collection on the first business day after the closure date.

Money Market Call Account 628468654 001
Money Market Call Account 628462654 002

Credit Balance R16 381.96
Credit Balance R258 752.76

We will close these accounts on 28 September 2016. Kindly provide us with the bank account details where the available funds, if any, in the accounts may be transferred to. Alternatively, a bank cheque(s) will be issued in your favour which will be ready for collection on the first business day after the closure date.

Fleet Account 154029910000

Debit Balance R70 000.00

You will not be allowed to use this facility. The Bank will be setting off the outstanding balance on this account against the available funds in the Business Current Account (023 082 666) whereafter the facility will be closed.

Corporate Credit Card 5221189730394197

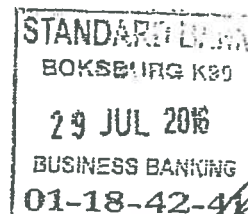
Debit Balance R3911.30

We will close the facilities on 28 September 2016. The Bank will be setting off the outstanding balance on this account against the available funds in the Business Current Account (023 082 666) whereafter the facility will be closed. You are required to destroy and return the MasterCard/s to us on the closure date.

In the event that you may have any queries, please contact our Customer Relationship Centre on 0860 101 101.

Yours faithfully

Mr Brian Busse
Head of Commercial Banking Channel
Personal and Business Banking
The Standard Bank of South Africa Limited



K90 Shopping Centre Cnr North Rand and Rondebuilt roads Boksburg 1459
PO Box 76 Boksburg 1460 SWIFT Address: SBZA ZA JJ www.standardbank.co.za
Tel: 0860 101 341 Fax: 011 823 1661

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services and registered credit provider (NCRCP15)

Directors: TS Gcabashe (Chairman) SK Tshabalala* (Chief Executive) RMH Dunne* BJ Kruger* Adv KD Moroka Dr ML Oduor-Otieno**
AC Parker ANA Petersen con*** SP Ridley* MJD Ruck FD Sullivan*** BS Tshabalala EM Woods
Company Secretary: Z Stephen *Executive Director *British **Kenyan ***Nigerian ****Australian

B8

Claire Tomsett

From: Claire Tomsett <clairet@vrlaser.co.za>
Sent: Tuesday, September 27, 2016 12:42
To: 'lance'
Cc: 'sophie'; Pieter van der Merwe
Subject: FW: VR Laser banking facility
Attachments: VR Laser Services 2015.pdf; organogram.pptx; doc10975220160927120258.pdf

Good day Lance

Trust you are well.

As per the telephonic conversation between Mr. Pieter van der Merwe and Sophie Chen, attached are our financial statements for 2015 already submitted when we opened our account. We are awaiting our 2016 financials which I will forward to you when signed off.

I have also attached our organogram as requested.

With regards to the incoming funds, attached is a proof of payment made yesterday from our other VR Laser account. Would it perhaps be easier if I forwarded a debtors list on a monthly basis so that you will be aware of the funds we are expecting in? We are expecting a few million in the next few days.

Kindly also respond to my request regarding the batch payments. I am not managing to load a batch at this stage.

Mr. van der Merwe would like to make an appointment to see Sophie Chen if possible. Kindly advise.

Kind Regards
 Claire Tomsett
 Financial/Admin Manager
 VR Laser Services (Pty) Ltd
 Tel: +27(11)306-8000
 Fax: +27(11)306-8018
 Mobile: +27(0)832821877
clairet@vrlaser.co.za
www.vrlaser.co.za

From: lance [<mailto:lance@voc.co.za>]
Sent: Tuesday, September 27, 2016 11:32 AM
To: 'clairet@vrlaser.co.za' (clairet@vrlaser.co.za) <clairet@vrlaser.co.za>
Cc: 'Pieter van der Merwe' (pieterm@vrlaser.co.za) <pieterm@vrlaser.co.za>; sophie <sophie@voc.co.za>
Subject: rw:VR Laser banking facility

Hi Claire,

Good day! Apologies on missing your call yesterday.

According to our bank's procedures, supporting documents may be requested for incoming funds. Please kindly coordinate and provide documentary evidence of your source of funds with regards to the R500,000.00 deposited yesterday.

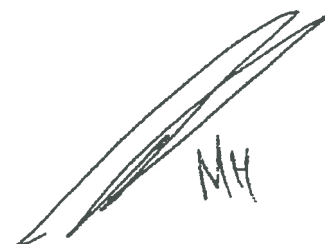
B7

As we are also reviewing your due diligence documents, please kindly provide the following:-

1. Latest audited financial statements
2. Latest complete shareholding structure/ diagram of VR Laser, showing your ultimate beneficial owners (i.e. the natural persons)

Thank you very much for your kind assistance.

Regards
Lance Liu

A handwritten signature in black ink, consisting of a stylized, sweeping line followed by the initials "MH".

Claire Tomsett

From: lance <lance@boc.co.za>
Sent: Wednesday, September 28, 2016 13:47
To: 'Pieter van der Merwe' (pieterm@vrlaser.co.za); 'clairet@vrlaser.co.za' (clairet@vrlaser.co.za)
Cc: sophie
Subject: FW: VR Laser account

B8.3

Hi, Pieter and Claire

Good day!

Sincere apologies for missing your calls as I am in a meeting.

Highly appreciated for the information provided in Pieter's email.

As we are reviewing due diligence documents, for the shareholder structure, kindly advise who is/are the ultimate beneficiary owner(s) of Westdawn Investments.

Thank you so much!

Regards

Lance Liu

From: Pieter Van Der Merwe [mailto:pieterm@vrlaser.co.za]

Sent: 28 September 2016 10:52 AM

To: lance; Claire Tomsett

Cc: sophie

Subject: RE: VR Laser account

B8.2

Good day Lance,

The mails below refer.

Claire tried to contact your office on numerous occasions. She cannot get hold of you. I really don't want to move around in circles – hence my call to Sophie yesterday.

We are a steel manufacturing company. I provided Sophie with a company profile and also a group company profile. If you would like to visit our facility in Boksburg, to understand our business, we will really appreciate it. Our monthly revenue varies between R14 million and R25 million, depending on our sales. You are more than welcome to visit our website to acquaint yourself with the products we sell.

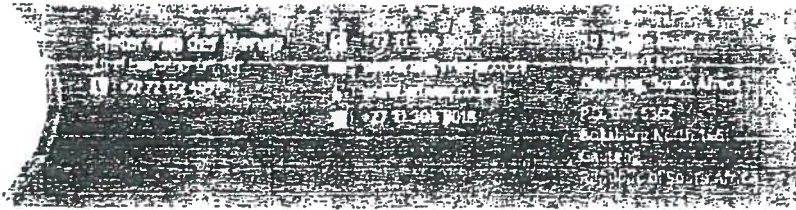
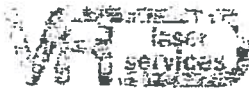
All the funds we receive is from clients to whom we have rendered services and sold products to. Do I understand you correctly that I need to provide you with a breakdown of each and every client that pays money into my account – to whom I have rendered services (such as quotes, orders, invoices, detailed description of services rendered etc)?

I would urgently like to have a meeting with you and Mrs Sophie so that we can discuss your concerns in an open manner.

I am immediately available upon your confirmation of a time.

Regards,





From: lance [mailto:lance@boc.co.za]
Sent: Wednesday, September 28, 2016 10:32 AM
To: 'clairet@vrlaser.co.za' (clairet@vrlaser.co.za)
Cc: 'Pieter van der Merwe' (pieterm@vrlaser.co.za); sophie
Subject: FW: VR Laser account

b8.1

Dear Claire,

We have forwarded the proof of payment to business department.

And the R500,000 transferred from VR Laser's account in Standard bank to VR Laser in Bank of China's account, is it a company internal transfer? what is the source of fund (such as what kind of products or services provided to generate the income?)

For the shareholder structure, kindly advise who is/are the ultimate beneficiary owner(s) of Westdawn Investments as well.

Apologies for the late reply.

Regards
 Lance Liu

B9



中國銀行 約翰內斯堡分行
BANK OF CHINA JOHANNESBURG BRANCH

VR LASER SERVICES (PTY) LTD
PO BOX 5362
BOKSBURG NORTH
1461

29 September 2016

Dear Sir/Madam

TERMINATION OF CUSTOMER RELATIONSHIP

We regret to advise that in terms of the bank's internal rules and risk appetite, we are no longer able to maintain the relationship with your good company. As such we have closed your account number 100200300098459 and will be in contact with yourselves for the payment of all amounts that we hold on your behalf less standard banking fees that may apply.

We apologise for any inconvenience caused.

Yours sincerely

General Manager

Business Development Department (Africa)

Bank of China Johannesburg Branch

Bank of China Limited Johannesburg Branch
Registration No. 2000/008434/10
Incorporated in the People's Republic of China
A Licenced Financial Services Provider
FSP Reg. No. 5444

14-16th Floors, Alice Lane Towers
15 Alice Lane, Sandton
Johannesburg, South Africa
P.O.Box 782616 Sandton 2146, South Africa
Tel: 27-11-520 9600 Fax: 27-11-520 9685

B10

Claire Tomsett

From: Pieter Van Der Merwe <pieterm@vrlaser.co.za>
Sent: Thursday, October 13, 2016 16:41
To: 'Pike, David'; Claire Tomsett; 'Makwala, Quide Q'
Cc: 'Strydom, Jani J'
Subject: STANDARD BANK ACCOUNT VR LASER

Dear Mr Pike,

IN RE: REQUEST ON FURTHER EXTENSION OF ACCOUNT FACILITIES

Our previous request to extend the notice period on our account – as well as your appreciated approval, refers.

I am standing with my hat in my hand again. Apologies for the long mail, but I would like to divulge position.

Due to circumstances beyond our control, we humbly request you to please extend the period again. The reasons for our request are simply this:

1. After receiving your first notice letter – we approached all possible banks (remaining). We could manage to secure a meeting with Bank of China. We made the first appointment with Bank of China in July 2016.
2. On 23 July 2016 we applied for an account. From the outset we played open cards in regards to our banking situation.
3. After going through the entire process, and sending bundles and bundles of documents to them for FICA purposes, they informed us on 30 August 2016 that (finally) all documents have been received and that it will be send to the "Banking Department" to process. The employees have been very helpful.
4. On 8 September 2016 we were informed that the account has been opened.
5. On or about the 16th of September 2016 we made an internal deposit to get acquainted with their banking applications.
6. After a trial run of about a week, we sent letters to suppliers to change our banking details to Bank of China. It was at this stage that we requested your indulgence for an extension as we were afraid that certain customers would still pay into our Standard Bank account. We obviously anticipated that our Bank of China account would be fully operational as from October 2016.
7. On or about 28 September 2016 we did an internal transfer of R500 000 into the account. After being asked about the "source", we advised them that it was a mere internal transfer and provided them with proof. They again asked for further information, already provided under the Fica process.
8. On 29 September 2016 we were informed that our account will be closed.

You will note from our account that we have endeavoured to move as many services out of our standard bank account as we possibly can. We were hoping to replace the existing services you provide us with our Bank of China account. Unfortunately this did not materialize.

Having regard to the above, our humble request is to extend the notice period to the end of the financial year – February 2017. It might seem like an opportunistic request but please consider the following:

MH

1. As a manufacturing company, December and January are very short months.
2. We have really done everything in our power to find alternative solutions in this time.
3. In terms of the labour industry main agreement, we pay all our employees' bonuses in December. Not being in a position to do internet transfers during this time will have disastrous consequences for our company, and mainly the employees and their families over the festive season.
4. Other international banks – with local branches – don't provide for internet banking. In the modern day and age it is impossible to effectively do business without internet banking. Our biggest problem will be to not being able to verify and reconcile client payments (on the internet), on a daily basis.

Should our request be granted – we will be willing to comply with ANY condition that you might determine, such as providing you with reconciliations, invoices for payments received etc. Should you even wish to limit the nature of our transactions, alternatively the amount of transactions, we will be more than willing to abide.

We beg you to consider our request favourably as we only want to sustain our business. We currently have 280 people working for us. Your favourable consideration will at least enable us to think of alternative solutions.

If I need to attend a personal meeting and provide you with proof of our actions, alternatively to discuss possible ways going forward, please let me know.

Thank you in advance.

Regards,



MH

B11

Claire Tomsett

From: Pieter Van Der Merwe <pieterm@vrlaser.co.za>
Sent: Thursday, October 20, 2016 12:23
To: 'Pike, David'; Claire Tomsett; 'Makwala, Quide Q'
Cc: 'Strydom, Jani J'
Subject: RE: STANDARD BANK ACCOUNT VR LASER

Dear Mr Pike,

This is a big blow for me. Thank you for trying however.

Regards,



From: Pike, David [mailto:David.Pike@standardbank.co.za]
Sent: Thursday, October 20, 2016 12:07 PM
To: Pieter Van Der Merwe; Claire Tomsett; Makwala, Quide Q
Cc: Strydom, Jani J
Subject: RE: STANDARD BANK ACCOUNT VR LASER

Pieter, I confirm that your request has been submitted to our risk committee, but unfortunately your request has been declined and we will be closing your accounts on 29th October, per our previous communication confirming the one month extension.

Please see letter attached for further details.

Regards

David Pike



David Pike

Commercial Banking / Gauteng 3 / Centre Manager
 Tel +27 011 280 4936 / Fax +0862 022 907 / Mobile +083 255 7643 / www.standardbank.com

Standard Bank Moving Forward™

From: Pieter Van Der Merwe [mailto:pieterm@vrlaser.co.za]
Sent: 13 October 2016 04:41 PM
To: Pike, David; Claire Tomsett; Makwala, Quide Q
Cc: Strydom, Jani J
Subject: STANDARD BANK ACCOUNT VR LASER

Dear Mr Pike,



B12



26 October 2016

Commercial Banking

The Directors

Inyathi Plate Processing Pty Ltd – name changed to VRLS Properties (Pty) Ltd

13A Clarke Street

Alrode

1451

Dear Claire Tomsett

Inyathi Plate Processing Pty Ltd (name changed to VRLS Properties (Pty) Ltd)
Registration number: 1999/006874/07

We herewith advise that after careful consideration, the Bank is terminating its banking relationship with you on 30 days notice. We will also no longer be extending any future facilities to you.

Account: 023099879

Balance: R67 318.98

We will close these accounts on 26 November 2016. Kindly provide us with the bank account details where the available funds, if any, in the accounts may be transferred to. Alternatively, a bank cheque(s) will be issued in your favour which will be ready for collection on the first business day after the closure date.

In the event that you may have any queries, please contact our Customer Relationship Centre on 0860 101 101

Yours faithfully

Mr Brian Busse
 Head of Commercial Banking Channel
 Personal and Business Banking
 The Standard Bank of South Africa Limited

184 Hyde Lane Cnr Jan Smuts and William Nicol avenues Hyde Park
 PO Box 413106 Craighall Park SWIFT address: SDBZ ZA JJ www.standardbank.co.za
 Tel: 011 280 4800 Fax: 0865 079 295

The Standard Bank of South Africa Limited (Reg. No. 1962/000130/06) Authorized financial services and regulated credit provider (FSCMP15)

Directors: TS Gekizhe (Chairman) SA Isakadisa (Chief Executive) RMM Dunne BJ Kruger Ade XT Moroka Dr Mt. Odum Breno
 AC Parker AHA Peters-de cove SP Bailey MJO Ruck PT Sullivan*** SS Tshabalala Ed Woods
 Company Secretary Z. Skerhen Executive Director *British **Kenyan ***Nigerian ****Australian *****