

2.3 The exercise of the termination upon demand clause is contrary to public policy. The argument is that even if the termination upon demand clause is valid, the exercise of such clause was under the circumstances contrary to public policy. It was submitted that our Courts have accepted the proposition that a contractual right that is valid on its face might in some circumstances be unenforceable. Reference was made to the *Bredenkamp* decision *supra* amongst others. The *Bredenkamp* decision needs to be read carefully and in my view it does stand in the way of the relief sought by the Applicants. The enforcement of the present contract does not implicate an identified constitutional value that was unjustifiably affected. No specific infringement of a human right is relied upon in these proceedings, in the context of the relief sought and even in the Founding Affidavit. The Respondent bank is subject to a number of stringent statutory and regulatory obligations. It was and is not within its power to establish the truth or otherwise of the allegations made against Applicants or as it is often put "the Guptas". In fact, it did specifically not rely on the truth of the countless allegations made against all the entities,

but has specifically relied on the subsequent damage to its reputation, and the fact that it is running major risks by relevant law enforcement agencies should it shut its eyes to all the allegations that have for a considerable period of time polluted our society. An important *dictum* in the *Bredenkamp* judgment is that it is not for a Court to assess whether or not a *bona fide* business decision, which on the face of it was reasonable and rational, was objectively wrong where in the circumstances no public policy considerations were involved. In the *Bredenkamp* decision the protagonists had been "listed" by governmental bodies. Each such listing had an objective quality, so it was submitted, in that it appears to have been made against objectively-discernible criteria. In this context it was stated in the Heads of Argument that by comparison "none of the Applicants have been publicly stigmatized in a similarly objective process". The adverse media coverage was, so it was put, at best subjective. This impacted on whether the bank could validly rely upon alleged reputational harm. I do not agree. An objective investigation or fact-finding exercise by the bank is not required by law, and

the bank does not rely on the truth of all mentioned allegations. It need not. It relies on damage to its reputation and it does so convincingly. The *Bredenkamp* decision *supra* supports this approach. The relationship between client and banker must be considered. A bank is entitled to make business decisions. In this case the bank did so and no properly identifiable and pleaded constitutional value was affected. A bank, and not a Court, must decide to which extent it will allow its reputation to be tarnished by allegations of criminal activities made in the media which refer to its client and the fact that it is such client's banker.

13.

It was submitted with reference to a number of authorities in the context of an abuse of rights within a contractual relationship that there was no evidence that the bank stood to be prejudiced by the continuation of its relationship with the Applicants. Reasons given by the bank were not its true reasons, it was said, thus evidencing a lack of good faith. It was also submitted that it was improbable that each letter of

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termination was the outcome of a proper assessment of the merits and demerits of each Applicant in its position as borrower. Each appears to be the product of a decision of a general application. This reflected a decision-making process that was arbitrary and unreasonable. I have dealt with this argument, and it has no merit having regard to the bank's duty.

14.

Applicants were entitled to reasonable notice:

What this constitutes is of course reliant on all relevant facts. It was said that the notice period which ultimately was in effect a period of some 10 weeks, was unreasonable for the following reasons:

1. Each of the four Applicants is a substantial commercial entity and each has recently lost banking facilities with other major South African banks. The premature termination of the loan facilities would therefore inflict significant harm. I interpose to say that the Applicants have not deemed it fit to have

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instituted proceedings against the major South African banks. This of course is not without significance in the present context;

2. First and Third Applicants' loan facilities had been reviewed fairly recently and they were therefore entitled to arrange their business affairs accordingly.

Termination letters presented a substantial curtailment of this period and this was manifestly unreasonable. Certain other correspondence was also referred to in this same context, but it is not necessary for present purposes to deal with all the detail. I must add that Mr Daniels argued, in the context of weighing-up of harm, that it was unlikely that another bank would be found, but that there was "a glimmer of hope". A Court does not grant an interim interdict on that basis, I may add, nor forcefully extend this relationship for another two or more years on that basis.

15.

Irreparable harm if the "interim-interim" relief is not granted:

It was submitted that this was self-evident inasmuch as the first part of the relief sought would only be heard in December by which time the loan and transactional facilities will long since have been terminated. The Applicants are all large commercial entities and collectively employ some 7 600 employees across various sectors. Calling up the loans, simultaneously with terminating the transactional banking, will have a disastrous impact on their businesses. The harm suffered by the Applicants will inevitably also be visited upon their employees.

16.

Balance of convenience:

It was submitted that the bank merely alleged that it would suffer harm if the present relief was granted. Its Answering Affidavits go no further than to rely upon unsubstantiated media reports, speculative reputational harm, and the alleged risk of very serious legal risks and penalties. It was submitted that the bank made no attempt to substantiate these allegations. Most tellingly also, so it was argued, is that the Respondent provided no explanation as to why it could tolerate this alleged



harm from July 2017 until 30 September 2017, but not also from 1 October until 7 December. The balance of convenience therefore favoured the Applicants.

17.

No other remedy:

The deponent to the Founding Affidavits stated that there were no realistic prospects that other alternative banking facilities will be secured. The Applicants therefore have no other remedy. Again, if this is so, there will be no point in any of the relief that Applicants seek.

18.

Fifth to Twentieth Applicants' argument:

In main, these applicants have associated themselves with the arguments presented on behalf of the first four Applicants. With reference to the first part of the relief sought, at this stage, it was said that for purposes of seeking an extension of the undertaking not to close their accounts pending the determination of Part A, the

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Applicants have at least a *prima facie* (if not a clear) right to have access to Court and to have a legal dispute resolved by a Court, which right is guaranteed to them by s. 34 of the *Constitution*. I agree that there are legal disputes between the parties and I have referred to the main issues. There is also the Applicants' right to have such disputes considered by a Court of law and, as I have said, this consideration depends upon the requirements of the substantive and procedural law. Applicants are before me and the substantive and procedural law will be fairly considered. In the context of the s. 34 of the *Constitution* argument, the following was then said: "if the closure of their accounts occurs before the interim interdict application under Part A is determined, the Applicants' relief sought under Part A and Part B will be entirely academic and irrelevant. By not obtaining an interdict preventing the closure of its accounts until the determination of the issues under Part A and Part B, the Applicants' constitutional right to have those disputes determined by a Court are violated. The Applicants' constitutional rights to have access to Court to have their disputes determined will thus have been completely denied to them".





This is a rather startling and wide-ranging submission, if not conclusion. It boils down to this, if I can give an example, if a Court does not grant interim relief pending the determination in a future hearing of certain interim issues between the parties, in a private contractual relationship, the affected parties' right to have access to Court will be violated. This startling submission loses sight of the fact that in any hearing before a Court, of whatever nature, the merits of the parties' rights to the relief sought will have to be considered by a Court, obviously both from a substantive and procedural law point of view. It cannot be otherwise, and a failure to do so would mean that a litigant would be entitled to interim relief, pending a future hearing, even if there are no merits in the application and even if all procedural requirements have been ignored, and all that under the guise of a constitutional right to have a dispute determined by a Court. In my view the Applicants herein have misread the ambit and import of the provisions of s. 34 of the *Constitution* in the present context. The *Constitution*, and in particular s. 34, does not give a litigant a right to a particular outcome.

See: *Van der Waal v Metcash Trading Ltd* 2002 (4) SA 317 CC at [par.] 19.

The context of the reasonable apprehension of irreparable harm for purposes of the immediate relief sought, the following was said:

1. If the Applicants' bank accounts are closed, they are left effectively unbanked, it will be impossible for them to conduct their businesses in the ordinary course. No commercial entity can exist and transact in the South African economy without banking facilities;
2. Any interruption to the Applicants' banking services without an alternative banker being in place (which was doubtful in the "current climate"), would result in immeasurable financial consequences for the Applicants, and will have significant, direct and material knock-on effects to thousands of people including employees, customers, suppliers, partners and affiliates of the Applicants;
3. All of the harm that the Applicants and their employees and other creditors stand to suffer will be irreversible and permanent;
4. This irreparable prejudice will occur despite the fact that the Court would not yet have had an opportunity to consider the Applicants' case in support of

*J. D. P.*

the grant of an urgent interim interdict under Part A or the main relief under Part B, I do not agree with this argument at all. An application for an interim interdict is now fairly before me with affidavits and annexures of more than 1000 pages. Argument took place over a whole day. Prospects of success in future hearings were fully dealt with, and, most importantly, the nature and source of Applicants' rights that they rely on.

The balance of convenience plainly favoured the Applicants for the interim period of some 10 weeks. It was said that the Respondent had not been able to establish what, if any, prejudice it could suffer during this period. The bank's convenience and interests were unlikely to be harmed in any material way. In argument it was suggested however that because Applicants merely had to show that a "triable issue" existed, the balance of convenience consideration, only played a lesser role in these proceedings.

19.

Respondent's argument:

Mr D. Fine SC on behalf of Respondent again referred me to the proper test that must be applied in these proceedings before me, and obviously as well as in those in December, namely that stated in *Simon N.O. v Air Operations of Europe AB and Others 1999 (1) SA 217 SCA at 228 G to H*, where the relevant test in *Webster v Mitchell 1948 (1) SA 1186 (W) at 1189*, as modified in *Gool v Minister of Justice and Another 1955 (2) SA 682 (C) at 688 B to F*, was again summarized: "The accepted test for a *prima facie* right in the context of an interim interdict is to take the facts averred by the Applicant, together with such facts set out by the Respondent that are not or cannot be disputed and to consider whether, having regard to their inherent probabilities, the Applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the Respondent should then be considered and, if serious doubt is thrown upon the case of the Applicant, he cannot succeed".

The Applicants have elected not to file any Replying Affidavit. They had the opportunity since 17 August 2017, and, I may add, if that was a procedural issue





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then, for purposes of a hearing then, nothing prohibited such a reply thereafter, even if confined to certain issues only.

20.

He also pointed out that Applicants conflated two separate sets of contract with the bank: the loan and overdraft facility agreements granted to the First to Fourth Applicants, on the one hand, and the separate transactional account agreements concluded with the Applicants, on the other. These different facilities raised different considerations.

21.

The termination of the banker-client relationship:

Applicants acknowledge, and it is indeed so, that the relationship between the parties hereto is contractual in nature. As a result, a decision to terminate that relationship is governed by the ordinary rules of contract. I may just add at this stage that as far as considerations of the balance of convenience are concerned, I will



keep in mind that Respondent is subject to a number of statutory obligations, which are aimed at the integrity of the banking system and to prevent dishonesty and corruption amongst others.

## 22.

In *Bredenkamp v Standard Bank supra*, the following principles were laid down for the termination of the banker-client relationship:

1. A bank has a right to terminate a contract with its clients on the notice periods specified in their particular contract. In the absence of an express termination clause, a bank is entitled to terminate on reasonable notice.

See also: *Putco Ltd v TV and Radio Guarantee Company (Pty) Ltd, and Other Related Cases, 1985 (4) SA 809 (A)*, and *Amalgamated Beverage Industries Ltd v Rond Vista Wholesalers 2004 (1) SA 538 (SCA)*.

2. A bank has no obligation to give reasons for terminating this relationship. Its motives for terminating such are generally irrelevant (there may be an exception where there is found to an abuse of rights):

3. There are no self-standing rights to reasonableness, fairness or goodwill in

the law of contract;

4. Even if there were however, it would be fair for a bank to exercise its

contractual right to terminate its relationship with its clients on proper notice:

In this regard the Supreme Court of Appeal said the following: "[57] ... the

fact that the Appellants as business entities are entitled to banking facilities

may be a commercial consideration, but it is difficult to see how someone

can insist on opening a bank account with a particular bank and, if there is

an account, to insist that relationship should endure against the will, bona

fide formed of the bank".

5. A bank is also entitled to terminate the relationship with a client on a basis of

reputational and business risks and Courts should be reluctant to second-

guess that decision: "[65] The Appellants [claimed] that, objectively

speaking, the bank's fears about its reputation and business risks were

unjustified. I do not believe it is for a Court to assess whether or not 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, Fairness has two sides. The Appellants approach the matter from their point only. That, in my view, is wrong\*.

6. Irrespective of whether negative publicity about the client is true, a bank is fully entitled to terminate the relationship with a client that has a bad reputation.

I may repeat that in this case, as in the *Bredenkamp* decision, the bank did not seek to rely on the factual accuracy of the relevant reports, but merely on the particular reputation of its clients;

7. The fact that the client may have difficulty finding another bank does not impose any obligation on the bank to retain the client:

"[60] I find it difficult to perceive the fairness of imposing a bank the obligation to retain a client simply because other banks are not likely to accept that entity as a client. The Appellants were unable to find a constitutional niche or other public policy consideration justifying their demand\*.



This Court recently correctly affirmed these principles in *Hlongwane v ABSA Bank Ltd* [2016] ZAGPPHC 938 (10 November 2016). It was held therein that the bank had no obligation to retain a client whose monitoring in terms of money laundering measures put in place would be more onerous when compared with the benefit, in terms of fees, it would receive from the client. I agree that this is a relevant consideration herein, and I will also deal with it further in the light of the detailed allegations made by Respondent what the monitoring duties in fact entail. I do not agree with the contention that this judgment is materially distinguishable.

23.

**First to Fourth Applicants' loan facilities:**

On the express terms of these agreements, these Applicants have no legal right to any relief that would allow them to avoid repaying their loans, let alone "interim-interim relief" to this effect pending a hearing in December. In the Founding Affidavit the Applicants have acknowledged that these facility agreements give the bank the



express right to cancel them and to claim payment at any time. The identical termination clause is repeated in all of the loan and overdraft facility agreements and provides as follows: "Notwithstanding anything to the contrary contained herein, the credit facilities granted in terms of this agreement may be terminated by the bank in its sole discretion by written notice to that effect, either forthwith or from the date stated in such notice, in which event the facilities in question shall be deemed cancelled and any indebtedness to the bank shall become due owing a payable:

- Immediately if the facilities are terminated forthwith; or
- Otherwise on the date stated in that notice".

24.

It was said by Respondent that on 6 July the bank duly exercised its right of termination and expressly demanded that all advanced accounts be settled by not later than 30 September 2017. On that basis therefore Applicants were not entitled to "reasonable notice". No such term could be read into this agreement as it would be in direct conflict with the express terms.

See: *Transnet Ltd v Rubenstein 2006 (1) SA 591 (SCA) at par. 18 to 19.*

It is true that the banks had at a time extended the term of certain loans, but this extension was made subject to the terms and conditions which contain the same termination clause as the original agreement.

In any event, the notice of termination and repayment is on the facts of the matter more than reasonable notice, being almost three months.

25.

It was also contended that these Applicants did not make out any case in the Founding Affidavit or in argument to suggest that any of their constitutional rights had been breached by the bank's decision to terminate the agreements on the basis of their entitlement in terms of the contract. Bald allegations to this effect would not suffice:

See: *Bredenkamp v Standard Bank supra* at par. 49.

It was therefore contended that Applicants do not have any claim to the final relief that they seek in prayer 3.2 of the Notice of Motion, let alone a prima facie right that would merit "interim-interim relief".

In the context of s.34 right relied on in Applicants' Heads of Argument, and during argument, Mr. G. Marcus SC made the following telling submissions, which can be described as the "killer law point", referred to in *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd [2017] ZACC 32 (5 September 2017)* at *par. 91* where Cameron J said the following:

"A good analogy is when an Applicant at risk of harm seeks an Interim Interdict. When the facts are unclear, the Interdicting Court must weigh prospects, probabilities and harm. But when the Respondent, who is sought to be interdicted, has a killer law point, it is just and sensible for the Court to decide that point there and then. The Court is in effect ruling that, whatever the apprehension of harm and the factual rights and wrongs of the parties' dispute, an interdict can never be granted because the Applicant can never found an entitlement to it."





25.1 An Applicant stands or falls by the Notice of Motion and Founding

Affidavit. This well-known principle also applies to constitutional litigation.

See: *Molausi v Voges 2016 (3) SA 370 CC at par. [27 and [28].*

The purpose of pleading is to define the issues for the other party and

the Court. And it is for the Court to adjudicate upon the disputes and

those disputes alone (I underline).

The principle also applies to the development of the common law.

See: *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd*

*2012 (1) SA 256 (CC) at par. 52.*

He said that despite pleading the ordinary requirements for an interim

interdict in the Founding Affidavit, Applicants sought out to make a new

case in argument for "interim-interim relief". I have referred to that.

25.2 Such a claim was unsustainable. The Founding Affidavit did not mention

§. 34 of the *Constitution* at all. No basis was pleaded for the

development of the common law requirement for an interim interdict. It



was not pleaded how such new test for interim relief would in any way deprive Applicants of the s. 34 right.

25.3 The effect of Applicants' argument would be to deprive the Respondent of its s. 34 right. In fact, nothing that was said in its Answering Affidavit would have any meaning or effect if merely a triable issue was sufficient for the relief sought.

25.4 Such an approach would also deprive Respondent of its right to be associated with the Applicants.

See: *Cronjé v United Cricket Board of South Africa 2001 (4) SA 1361*

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It would also deprive Respondent of its right to protect its reputation.

See: *Media 24 Ltd v South African Securitization (Pty) Ltd 2011 (5) SA*

*329 (SCA) at paras. 42 to 49.*

Respondent's right to contractual autonomy would also be infringed.

See: *Barkhuizen v Napier 2007 (5) SA 323 (CC) at par. 57.*

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

*[Handwritten signature]*

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"SF2A"

First Floor, Saveways Crescent Centre, Mandela Drive, Witbank, 1035  
Private Bag X7279, Emalahleni, 1035, Tel (013) 653 0500, Fax (013) 690 3288

Enquiries: Mr. N.A Tshivhandekano

Ref: 04/05/2016

The Director/s  
Tegeta Exploration and Resources (Pty) Ltd  
Postnet Suit 458  
Private Bag X9  
Johannesburg  
2010

Dear Sir/Madam

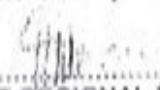
RE: NOTIFICATION IN TERMS OF REGULATION 8 OF THE FINANCIAL  
REGULATIONS PROVISIONS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT  
ACT 107 OF 1998 ("NEMA") KOORNFONTEIN MINES (PTY) LTD

Kindly refer to your letter No. 2016/001KFN dated 29 April 2016. In this regard the Department acknowledge the move of the funds for financial provision held in the Trust Account with First National Bank to the Bank of Baroda, Johannesburg, provided that such bank is registered with the Financial Services Board –South Africa

In this regard please ensure that the funds shall remain in the present Trust created under section 8(1)(c) i.e. Trust Deed No IT 7563/2007

For further enquiries, please contact the Regional Manager on the above contact details

Yours faithfully

  
.....  
THE REGIONAL MANAGER  
DEPARTMENT OF MINERAL RESOURCES  
DATE: 05/05/2016







**mineral resources**

Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

DMR 10

202  
"SF2B"

First Floor, Saveways Crescent Centre, Mandela Drive, Witbank, 1035  
Private Bag X7279, Emalahleni, 1035, Tel (013) 653 0500, Fax (013) 690 3288  
Enquiries: Mr. N.A Tshivhandekano Ref: MP 30/5/12/3 (267) MR

Dear Sir/Madam

The Director/s  
**Tegeta Exploration and Resources (Pty) Ltd**  
Postnet Suit 458  
Private Bag X9  
**Johannesburg**  
2010

Dear Sir/Madam

**RE: NOTIFICATION IN TERMS OF REGULATION 8 OF THE FINANCIAL  
REGULATIONS PROVISIONS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT  
ACT 107 OF 1998 ("NEMA") OPTIMUM COAL MINES (PTY) LTD**

Kindly refer to your letter dated 29 April 2016. In this regard the Department acknowledge moving of the funds for financial provision held in Trust Account with Standard bank to the Bank of Baroda, Johannesburg, provided that such bank is registered with Reserve Bank of South Africa

In this regard please ensure that the funds shall remain in the present Trust created under section 8(1)(c) i.e. Trust Deed No IT 3696/07

For further enquiries, please contact the Regional Manager on the above contact details.

Yours faithfully

.....  
**THE REGIONAL MANAGER**  
**DEPARTMENT OF MINERAL RESOURCES**  
DATE:.....

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## "GROUP COMPANIES" DIRECTORSHIP

No.	Company Name	Applicant No.	Name	Active ("A") / Resigned ("R")	Date of Appointment / Resignation			
1	Annex Distribution (Pty) Ltd	First	Ronica Ragavan	A	2008/07/23			
			Chetali Gupta	R	2016/04/21			
			Atul Kumar Gupta	R	2016/04/21			
			Wayne Basil Britz	R	2008/07/18			
			Mohamed Saleem Razak	R	2008/08/23			
			Ashu Chawla	A	2016/03/01			
			Rajesh Kumar Gupta	R	2016/08/11			
			Varun Gupta	R	2016/08/11			
			Atul Kumar Gupta	R	2008/05/20			
			Arti Gupta	R	2008/05/01			
2	Confident Concepts (Pty) Ltd	Second	Chetali Gupta	R	2008/05/20			
			Gary Naidoo	A	2009/04/02			
			Pushpaveni Ugeshni Govender	A	2016/04/07			
			Atul Kumar Gupta	R	2016/07/19			
			Chetali Gupta	R	2016/07/19			
			Polelo Lazarus Zim	R	2011/11/10			
			Mohamed Saleem Razak	R	2013/08/02			
			Dudzile Zuma	R	2010/03/23			
			Evan Tak	R	Unknown			
			Stephanus Jacobus Daniel Nel	R	Unknown			
3	Sahara Computers (Pty) Ltd	Third	Pushpaveni Ugeshni Govender	A	2015/02/01			
			Salim Aziz Essa	A	2014/01/14			
			Gary Martin Bloxham	R	2007/10/31			
			Wesley Shane Bloxham	R	2011/08/01			
			John Louis van Reenen	R	2007/10/31			
			Esther Nitombuthi Jiyane	R	2015/12/16			
			Madoda John Jiyane	R	2015/04/28			
			Kamal Kant Singhala	R	2016/04/20			
			Ian Angus McNeil	R	2015/04/28			
			Ronica Ragavan	A	2002/06/26			
4	VR Laser Services (Pty) Ltd	Fourth	Atul Kumar Gupta	R	2016/12/14			
			Riyaz Amirari Jimal	R	2005/08/23			
			Mehmoed Patel	R	2002/07/05			
			Hassan Noorali Popat	R	2002/10/09			
			Dudzile Zuma	R	2009/09/30			
			Gary Naidoo	A	2016/04/07			
			Moegsien Williams	A	2016/04/07			
			Phuti Samuel Mosomane	A	2016/04/07			
			Nazeem Howa	R	2017/01/19			
			Vurun Gupta	R	2016/04/11			
5	Sahara Consumables (Pty) Ltd	Fifth	Arpit Goel	R	2016/05/10			
			Laxmi Narain Goyal	R	2016/05/10			
			Atul Kumar Gupta	R	2016/05/10			
			Ashu Chawla	A	2016/04/07			
			Ronica Ragavan	A	2016/04/07			
			Atul Kumar Gupta	R	2016/08/31			
			Rajesh Kumar Gupta	R	2016/05/10			
			Chetali Gupta	R	2016/08/31			
			Arti Gupta	R	2016/04/20			
			Ronica Ragavan	A	2016/04/16			
6	Infinity Media Networks (Pty) Ltd	Sixth	Trevor William Scott	A	2016/04/15			
			Louis Botha Lourens	A	2016/04/15			
			Jacques Theodor Carl Peters	R	2008/07/12			
			Lindani Bennet Mthwa	R	2009/11/20			
			Nkhumeleni Samuel Nematswerani	R	2009/03/30			
			Derek Lydon Kyle	R	2006/09/16			
			Islandelife Investments One Hundred and Eighty (Pty) Ltd					
			7	Islandelife Investments One Hundred and Eighty (Pty) Ltd	Seventh	Ashu Chawla	A	2016/04/07
						Ronica Ragavan	A	2016/04/07
						Atul Kumar Gupta	R	2016/08/31
Rajesh Kumar Gupta	R	2016/05/10						
Chetali Gupta	R	2016/08/31						
Arti Gupta	R	2016/04/20						
Ronica Ragavan	A	2016/04/16						
Trevor William Scott	A	2016/04/15						
Louis Botha Lourens	A	2016/04/15						
Jacques Theodor Carl Peters	R	2008/07/12						
8	Koomfontein Mines (Pty) Ltd	Eighth	Lindani Bennet Mthwa	R	2009/11/20			
			Nkhumeleni Samuel Nematswerani	R	2009/03/30			
			Derek Lydon Kyle	R	2006/09/16			

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			Kenneth Victor Dicks	R	2006/05/15
			Ferdinand Lips	R	2005/09/30 (deceased)
			Kenneth Bruce Kemp Jones	R	2007/01/11
			John Maxkenzie Sibley	R	2005/10/03
			Thuthukile Skweyiya	R	2010/04/14
			Kazunori Yoshimura	R	2005/10/03
			Sandile Donald Zungu	R	2010/04/14
			Savannah Maziya	R	2009/06/01
			Robert van Niekerk	R	2008/08/15
			Neal John Froneman	R	2008/02/21
			Eben Swanepoel	R	2008/09/11
			Willie Bezuidenhout	R	2010/04/14
			Daniel Jean Nortler	R	2010/04/14
			Atul Kumar Gupta	R	2016/06/27
			Duduzani Zuma	R	2016/08/27
			Varun Gupta	R	2016/08/27
			Polelp Loazarus	R	Unknown
			Mark Vivian Pamensky	R	2016/08/05
			Jacques Roux		Unknown
			Nazeem Howa	R	2016/10/24
		Thirteenth	Ashu Chawla	A	2009/09/14
			Ronica Ragavan	A	2007/04/02
			Ravindra Nath	A	2007/11/01
			Mohamed Victor Matongo		2001/11/03
			Seedy Momodou Lette		2011/11/25
			Rajeneesh Pahadia		2009/10/19
			Nazeem Howa	R	2017/01/19
		Fourteenth	Louls Botha Lourens	A	2016/05/09
			Ronica Ragavan	A	2006/07/30
			Abdul Wahab Jaffer	R	2006/07/30
			Ravindra Nath	R	2006/07/30
			Jacobus Gideon Hoon	R	2008/05/26
			Vilasoor Venkatesan Giridhar		2008/05/26
			Menzl Glen Mbatha	R	2009/02/03
			Paramasivan Hurrineethien		
			Naidoo	R	2008/05/26
			Wendy Yvonne Nomathemba	R	2008/12/31
			Jagdish Rassikghandra Parekh	R	2010/04/15
			Duduzane Zuma	R	2016/04/20
			Jalshankar Ramchandran		2010/02/26
			Rajesh Kumar Gupta	R	2016/04/21
			Jacques Roux	R	2010/04/15
		Fifteenth	Ravindra Nath	A	2009/02/02
			Daniel Mjozi Skhosana	R	2013/08/23
			Tielman Myburgh Roux	R	2013/08/23
			Yolanda Nonhlanhla Mohlala		2013/08/13
			Daniel Boyse Mohlala		2013/08/23
		Sixteenth	Ravindra Nath	A	2008/02/07
			Ashu Chawla	A	2009/09/14
			Ronica Ragavan	A	2008/02/07
			Abdul Wahab Jaffer	R	2008/02/07
			Pahadia Rajneesh	R	2009/10/19
			Wendy Yvonne Nomathemba		
			Luhabe	R	2010/08/10
		Seventeenth	Mduduza Joseph Mtshali	A	2016/08/25
			Remona Govender	A	2016/04/07
			Abdul Wahab Jaffer	R	2008/07/08
			Rajesh Kumar Gupta	R	2016/05/06
			Duduzani Zuma	R	2016/08/25
		Eighteenth	Ravindra Nath	A	2010/02/19
			Abdul Wahab Jaffer		2007/07/05

fz

fz

			Kevin Wentworth Eugene Thyssen	2010/02/19
19	Koomfontein Rehabilitation Trust	Nineteenth	Rajeneesh Pahadia n/a	2010/02/19 n/a
20	Optimum Mine Rehabilitation Trust	Twentieth	n/a	n/a

836





Bank of Baroda  
બેંક ઓફ બરોડા  
South Africa

Account Opening Form (Non-Individual)

APPLICATION TO OPEN ACCOUNT (NON INDIVIDUAL)

Branch : JOHANNESBURG

920101935

WE KBOORNPONTEIN REHABILITATION TRUST

(Name of the Company/Close Corporation/Trust etc)

225733

and its Directors / Partners / Proprietors / Trustees:

- 1 PUSHPAVENI VARENNI GOVENDER
- 2 TREVOR WILLIAM SCOTT
- 3 ALTHAF EMMAMALLY
- 4
- 5
- 6

(Hereinafter referred to as "the Applicant(s)") hereby request and agree with Bank of Baroda (hereinafter referred to as "the Bank") that:

A. Current account be opened at the Bank in the Name of

KBOORNPONTEIN REHABILITATION TRUST

B. We shall, from time to time appoint and authorize officials to sign all documents on our behalf and the Bank shall be advised of amendments and / or additions to the authorized signatories, which will / be also be binding in writing and duly signed, on the appropriate bank form.

C. The authorized officials may sign all documents in connection with any transaction between the Applicant and the Bank;

D. The Applicant(s) undertake to pay all the Bank charges and interest which the Bank may from time to time levy in accordance with general banking practice. Should the said account at any stage become overdrawn, the applicant undertakes to pay the Bank on demand the amount with which the account is overdrawn. For this purpose the applicant shall accept that a certificate issued by any Manager of the Bank shall constitute prima facie proof of any amount and its correctness thereof that the Applicant owes the Bank. It shall not be necessary for the Bank to prove the appointment of such Manager.

The terms set out above will be binding on the applicant in respect of all transactions between the applicants in respect of the applicant's account/s.

E. The terms and conditions mentioned hereunder will, in addition to the above terms, be applicable should the Bank open such an account

- 1. All cheques, requisition and withdrawal slips, payment and transfer instructions and other documents which reasonably support to be duly drawn, signed and accepted by the applicant relating to the account and which are to be met by the Bank will be deemed to be proper instructions to the Bank;
- 2. The Applicant admits that the Bank will not be obliged to meet any instructions for payment from the account should the applicant's account not have sufficient funds available or not have made the necessary arrangements with the Bank for the overdraft facilities. Should the account become so overdrawn, the Applicant undertakes to pay the amount with which the account has been overdrawn, to the Bank, on demand;
- 3. Should the Bank permit any withdrawals against uncleared effects, the Bank will be entitled to debit the applicant's account with such withdrawals and or dishonoured cheques, should the Bank have credited the account with the uncleared effects;
- 4. Should the Bank permit that the account become overdrawn in whatever manner or should the Bank permit withdrawal against uncleared effects, such conduct by the Bank will not be deemed to create a preclusion;
- 5. The applicant undertakes to pay all Bank costs and interest the Bank may in general charge from time to time on this class of account;
- 6. The Bank reserves the right to charge the rate of interest and any other condition relating to the amount from time to time subject, however to the maximum rates prescribed from time to time in terms of the Usury Act, Act 73 of 1958 as amended and the National Credit Act;
- 7. Should any legal action with regard to the account be instituted against the applicant, by the Bank, the applicant undertakes to pay all legal costs, including collection costs, as between an attorney and own client. The applicant consents to the jurisdiction of the Magistrate's court irrespective of the amount in dispute and chooses for purposes hereof as *domicilium citandi/executionis* the address mentioned herein;



9. The applicant undertakes to take reasonable precautions in order to prevent the theft or loss of any cheque book, forms, documents etc provided to the applicant in connection with the account. Should such cheque book, form or document be stolen or lost, the applicant undertakes to immediately inform the Bank in writing.
10. Should cheques drawn by the applicant or payment instructions given by the applicant be subject to a guarantee given by the bank, the Applicant undertakes that the Applicant will at no point in time be entitled to stop the payment of such cheques or revoke the payment instructions so given. Should such instruction, nevertheless be given because of any reason whatsoever and be accepted by the Bank and the Bank still remains liable to perform unto a third party in terms of the guarantee inherent to such cheque, the Applicant accepts liability for any such payments notwithstanding such instruction.
11. The Bank as well as any division, affiliate or subsidiary company of the Bank is hereby irrevocably authorized to furnish or to disclose any information with regards to this application and any agreement arising from or as a result of this application, as well as the performance or non-compliance in respect thereof, to any credit bureau or other banks.
12. Any credit balance in any of the Applicant's accounts with the Bank may at any time at the discretion of the Bank be set off against any monies owed by the Applicant to the Bank.

Registered Address	14 KATHERINE STREET, GRAYSTON RIDGE OFFICE
	PARK, BLOCK-A, LOWER GROUND FLOOR, SANDTON, 219-6
Physical Address (Complete if different from Registered Address and also state the period at this address)	SAME AS ABOVE
Postal Address	POSTNET SUITE 458,
	PRIVATE BAG 22,
	BENMORE, 2010

DECLARATION / UNDERTAKING

- I/We undertake that any money deposited in the account is beneficially owned by me/us for the business and that no part nor all of it is associated with illegal/criminal activity and that transactions in the money does not constitute money laundering.
- I/We declare that should there be any change in the circumstance of my/our business, or change in my / our personal details, I/We would inform the Bank about such changes promptly.

SIGNED AT SANDTON on this the 08<sup>th</sup> day of MAY 2016.

1. Signature: <i>[Signature]</i>	2. Signature:
Name: PUSHAYENI VAGESHWI GOVENDER	Name:
3. Signature: <i>[Signature]</i>	4. Signature: <i>[Signature]</i>
Name: TREVOR WILLIAM SCOTT	Name:

(Authorized Signatories)

*[Handwritten initials]*



*[Handwritten signature]*





LETTER OF INDEMNITY FOR FAX / EMAIL INSTRUCTIONS

The Branch Head  
Bank of Baroda  
**JOHANNESBURG Branch**  
South Africa

Account Number: 92020200000519  
Account Name: KOORN FONTEIN REHABILITATION TRUST

In consideration of your agreeing to accept from us, notwithstanding the terms of the relevant mandate, from time to time instructions purporting to come from us in form of facsimile/email not bearing an original signature (faxed/emailed instructions) in relation to our account(s) referred to above without requiring written confirmation in respect of any faxed/emailed instruction prior to acting thereon, we confirm that-

1. We are aware of the possible risks involved in connection with the giving of any faxed/emailed instruction and have taken note of, and acknowledge our understanding and agreement to the "Important Notice" below.
2. You are hereby, irrevocably and unconditionally, authorized to act on any faxed/emailed instruction which, you in your sole discretion believe, emanates from us or otherwise appears to comply with the terms of the mandate for the above account(s) and you shall not be liable for acting in good faith on faxed/emailed instructions, which emanate from unauthorized individuals or in any circumstances whatsoever.
3. In the case of any faxed/emailed instructions, your Bank may refuse to act if such instructions are not in the reasonable opinion of your Bank, sufficiently clear to be read accurately, and, in such event, your Bank shall be entitled not to act upon such instructions until it has established to its reasonable satisfaction the precise details of those instructions.
4. In particular you shall not be under any duty to verify the identity of the person or persons giving any faxed/emailed instructions purportedly made on our behalf or the authenticity of any signature on any faxed/emailed instruction.
5. Any transaction made (including without limitation any transfer of funds from our account(s) referred to above) or service effected (including without limitation any request for change of address, certificate of balance or stop payment of cheques) pursuant to any faxed/emailed instructions shall be binding upon us whether made with or without our authority, knowledge or consent and we shall confirm, the same in writing, such confirmation in each case to be signed on our behalf in accordance with the terms of the mandate and forwarded on the business day upon which faxed/emailed instructions are given.
6. We undertake to keep you indemnified at all times, and to save you harmless from all actions, proceedings claims, loss, damage, costs and expenses which may be brought against you or accrued or incurred by you and which shall have arisen either directly or indirectly out of or in connection with your accepting faxed/emailed instructions from us and acting thereon, whether or not the same are confirmed in writing by us.
7. This letter of indemnity shall remain in force until receipt by your Bank of advice in writing from ourselves varying or purporting to vary or revoke this letter of indemnity signed by an authorized officer(s).

IN WITNESS whereof this letter indemnity has been duly executed by us this 06<sup>th</sup> day of MAY 2016

Signature and Name: [Signature]  
For and on behalf of: KOORN FONTEIN REHABILITATION TRUST

IMPORTANT NOTICE

Customers should consider the possible risks inherent in the giving of instructions by facsimile/email. Non-original signatures on the facsimile/e-mails may be forged and instructions given by facsimile/email may be transmitted to wrong numbers, may never reach our Bank. Our Bank accepts no responsibility for the occurrence of any such circumstances or for any debit, claim loss, damage or cost arising or incurred by customers as a result of or in connection with any such circumstances of the giving of any such instructions by facsimile/email. Customers are and continue to be solely responsible for making their own independent appraisal and assessment of any possible risks in relation to the giving of any such instructions. Accordingly, customers should not authorize our Bank to accept instructions by facsimile/email unless they are prepared to undertake such risks and have specified themselves in all respects with regard to such authorization.

Signature and Name: [Signature]  
For and on behalf of: KOORN FONTEIN REHABILITATION TRUST



[Handwritten initials]

[Handwritten signature]



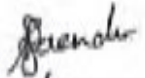

Bank of Baroda  
बैंक ऑफ बरोडा  
South Africa

Account Opening Form (Non Individual)

- 1) Name of the Company/Close Corporation/Trust: KOORN FONTEIN REHABILITATION TRUST
- 2) Date Established: 26<sup>th</sup> JUNE 2007
- 3) Nature of the business: REHABILITATION TRUST
- 4) Ownership: Locally / Foreign Owned Business / USA owned entities LOCALLY
- 5) Name of the holding Company: TEGETA EXPLORATION AND RESOURCES PTY LTD.
- 6) Business Registration Number: IT 7563/2007
- 7) Income Tax Number: 0005/514/17/3
- 8) VAT Registration Number: NOT REGISTERED
- 9) Contact Person: UGESHNI GOVENDER Designation: TRUSTEE
- Telephone No. (011) 430 7640 Cell Number: 082 868 6089
- 10) Source of Funds: CONTRIBUTION BY COMPANY FOR REHABILITATION AND INTEREST INCOME.
- 11) Annual Turnover: APR 2015 = R 25,041,530.00
- 12) Share Holders holding 25% or more of the Voting (At General Meeting) N/A.

Full Name / Registered Name	
Identity / Registration Number	
Residential / Registered Business Address	

I / We the undersigned, hereby declares that the above information is true and correct and undertake to notify the bank in writing of any amendments. I / We shall submit on request any documentary evidence if required. I / We acknowledge that the bank will act upon the information given

- 1) Name and Signature:  (PUSPAVENI UGESHNI GOVENDER)
  - 2) Name and Signature:  (TREVOR WILLIAM SCOTT)
- (Authorized Signatories)





Bank of Baroda  
बैंक ऑफ बड़ौदा  
South Africa

Account Opening Form (Non-Resident)

Incase USD Owned Entities NOT APPLICABLE

a) Registration / Incorporation Address (Including Town and country of incorporation)

\_\_\_\_\_  
\_\_\_\_\_

b) Permanent Address

\_\_\_\_\_  
\_\_\_\_\_

c) Correspondence Address

\_\_\_\_\_  
\_\_\_\_\_

d) Power of Attorney given to or received from USA person (give details)

\_\_\_\_\_  
\_\_\_\_\_

e) USA telephone No.

\_\_\_\_\_

f) USA Global Intermediary Account No. (GIIN)

\_\_\_\_\_

g) USA TIN No.

\_\_\_\_\_

h) Type of Financial Institutions (Bank, Asset Managers, etc.)

\_\_\_\_\_

i) Industry Sector


\_\_\_\_\_

j) Any existing account maintained with other branches of Bank of Baroda. If yes provide details


No. \_\_\_\_\_

I/We understand Bank of Baroda is a USA Foreign Tax Compliance Act (FATCA) complied financial institution and transactions in USA owned accounts shall be shared with the appropriate government agency as per the US FATCA Act.

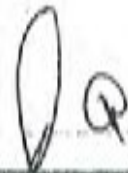
1) Name and Signature:

 (PUSHPAVANI VGESHNI GOVENDER)

2) Name and Signature:

 (TREVOR WILLIAM SCOTT)

(Authorized Signatories)





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051011 Ridge L  
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Tel: 02 11 262 33-0  
Email il for,, egf-1< 011



COAL, COPPER & PGM

The Regional Manager  
Department of Mineral Resources  
Mpumalanga,  
Witbank-1035

Letter No, 2016/002KFN

Date: 04<sup>th</sup> May 2016

Dear Sir,

**RE: NOTIFICATION IN TERMS OF REGULATION 7 READ WITH REGULATION 11 OF THE FINANCIAL REGULATIONS PROVISIONS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 ("NEMA")**

1. Koorfontein Mine (Pty) Ltd ("KFN") is required in terms of Regulation 7 of NEMA to ensure that its financial provision is, at any given time, equal to the sum of the actual costs of implementing the plans and report contemplated in Regulations 6 and 11 for a period of at least 10 years forthwith.
2. The current situation with our group and the big 4 Banks and Insurance Companies seizing to provide services to all our Group companies as is widely mentioned in the media, has led to a critical situation hampering our ability to keep the business and its related jobs afloat. As a result, TER hereby requests that the DMR grants it approval to use the above mentioned funds for mining rehabilitation purposes.
3. Should the DMR provide the necessary approval TER hereby undertakes as follows:
  - a) To get the environmental impact assessment report of KFN reviewed by an specialist twice a year;
  - b) To provide DMR access to the Trusts Bank Statement;
  - c) The results of the assessment of the adequacy of the financial provision contemplated above, and the work completed in relation to any funds that have been used by TER/KFN, must be (i) audited by an independent environment specialist/auditor; (ii) included in the environmental audit report and (iii) submitted by TER/KFN for approval to the DMR; and
  - d) Should there be a shortfall in the financial provision, TER will refill the void within 90 days to increase the financial provision to meet the reviewed, assessed and audited financial provision and will submit proof of such increase to the DMR.

Trust that you find this in order and look forward to a favorable response.

Yours faithfully,

Authorised Signatory

Copy forwarded to The Minister, Department of Mineral Resources, Head Office, Pretoria for information.

Authorised Signatory

Directors  
Kwame Ninsin  
Mogae  
Mogae  
Mogae  
Mogae



214  
"SF6B"



**MINERAL RESOURCES LTD**  
Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

First Floor, Saveways Crescent Centre, Mandela Drive, Witbank, 1035  
Private Bag X7279, Emalahleni, 1035, Tel (013) 653 0500, Fax (013) 690 3288  
Enquiries: Mr. N.A Tshivhandekano Ref: MP 30/5/12/3 (156) MR

The Director/s  
**Tegeta Exploration and Resources (Pty) Ltd**  
Postnet Suit 458  
Private Bag X9  
**Johannesburg**  
2010

Dear Sir/Madam

**RE: NOTIFICATION IN TERMS OF REGULATION 7 READ WITH REGULATION 11 OF THE FINANCIAL REGULATIONS PROVISIONS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 ("NEMA"): KOORNFONTEIN COAL MINES (PTY) LTD.**

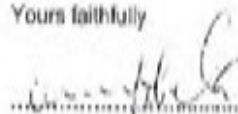
Your letter dated 04<sup>th</sup> May 2018 refers and therefore this letter serves as an acknowledgement and response to the request in the aforementioned letter;

The Department grants approval in principle to access the funds held in the account of "Koorfontein Rehabilitation Trust" (Trust No. IT 7563/07) for concurrent rehabilitation of the mine, However ensure that the following are to be considered:

- a) The current environmental liability assessment report compiled by an independent auditor.
- b) The rehabilitation program accompanied by an implementation plan detailing the timeframes for each rehabilitation phase.
- c) The above plan must be supported with quantified extent to inform the quantum of financial provision in order to determine the amount

For further enquiries, please contact the Regional Manager on the above contact details

Yours faithfully

  
.....  
THE DEPUTY DIRECTOR GENERAL  
DEPARTMENT OF MINERAL RESOURCES  
DATE: 05/05/2018

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"SF7"

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State approved Guptas' raid on mine rehab fund  
The department of Mineral Resources signed off on a request by Tegeta to plunder Koorfontein's R280m rehab trust

SHARE (<https://www.addtoany.com/share?url=http%3A%2F%2Famabhungane.co.za%2Farticle%2F2016-11-04-state-approved-guptas-raid-on-mine-rehab-fund&title=AMABHUNGANE%20%20STATE%20APPROVED%20GUPTAS%20RAID%20ON%20MINE%20REHAB%20FUND>)  
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It took barely 24 hours for the department of mineral resources (DMR) to sign off on Tegeta Exploration and Resources' request to raid a R280-million mine rehabilitation fund.

Former Public Protector Thuli Madonsela's State of Capture report, revealed that two mine rehabilitation trusts, worth a combined R1,75-million, appear to have been mismanaged under the control of Tegeta and the Bank of Baroda.

Tegeta has repeatedly denied allegations that it has tried to access ring-fenced funds in the mine rehabilitation trusts of its two newly-acquired mines, Optimum Coal Mine and Koorfontein.

However, new documents seen by amaBhungane not only confirm that Tegeta, owned by the Guptas, Duduzani Zuma and partners, attempted a brazen raid of the Koorfontein rehabilitation trust, and that in an unprecedented move, the DMR gave the Gupta-owned mine permission to access Koorfontein's R280-million rehabilitation fund.

Mining companies are legally required to set aside funds to pay for the cost of environmental rehabilitation, so that tax-payers are not burdened with the cost of the clean-up.

Documents show that on May 4, Tegeta wrote to the DMR requesting permission to access the funds of the Koorfontein Rehabilitation Trust for "mining rehabilitation purposes".

From the context it is clear that Tegeta's request was to use the funds for "concurrent" rehabilitation. However, mining legislation allows rehabilitation trust funds to be used for rehabilitation at or after the closure of a mine only.

• Read the the correspondence and documents [here \(https://www.dropbox.com/sh/8x0duyxt631bpk/AAAw1uVc9PeauZ38mrkuFna?dl=0\)](https://www.dropbox.com/sh/8x0duyxt631bpk/AAAw1uVc9PeauZ38mrkuFna?dl=0).

"There is no provision in law that allows for a withdrawal of funds, prior to mine closure, from a Rehabilitation Trust Fund set up under the Mineral and Petroleum Resources Development Act (MPRDA) or the National Environmental Management Act (Nema), whether for concurrent rehabilitation or any other purpose.

Funds are to be used for rehabilitation at or after closure only," explains Melissa Fourie, executive director for the Centre for Environmental Rights (CER).

The May 4 letter, a copy of which appears to have also been copied to Minister Mosebenzi Zwane, cited the closure of the Guptas' bank accounts as the reason for their urgent and inexplicable need to start rehabilitation work on the mine.

It stated: "The current situation with our group and the big 4 Banks... has led to a critical situation hampering our ability to keep the business and its related jobs afloat. As a result, (Tegeta) hereby requests that the DMR grants it approval to use the above mentioned funds for mining rehabilitation purposes."



9/20/2017

**amaBhungane - State approved Guptas' raid on mine rehab fund**

The letter signed by Tegeta CEO Ravindra Nath, committed Tegeta to an audit of the rehabilitation requirement and to "refill the void" within 90 days.

"All the 'audits' and 'reviews' of the financial provision offered by Tegeta are largely obligations Koorfontein already has under law," Fourie points out.

"The crux of the request is that Tegeta is requesting DMR to approve an interest-free loan from the Koorfontein Trust Fund to Tegeta, repayable on 90 days' notice."

***Tegeta warned it had no authority to transact on trust's behalf***

The following day, on May 5, Joel Raphela, the then-deputy director general of mineral regulation, seemingly granted their request "in principle".

Raphela's letter contradicted the DMR's written responses sent to amaBhungane in September, in which spokesperson Ayanda Shezi denied that Tegeta had requested permission, or been granted permission by the DMR, to access Optimum or Koorfontein's rehabilitation funds.

Shezi refused to comment on the correspondence between Tegeta and Raphela but instead referred amaBhungane to its press statement of October 22 in which it stated that no permission was sought or granted to Tegeta to use rehabilitation funds.

This is not the first time Tegeta tried to access their newly-acquired mine rehabilitation funds.

The State of Capture report refers to a letter sent by the attorneys of the business rescue practitioners of Optimum Coal Mine to Tegeta on April 24, alleging that Tegeta director Ronica Ragavan had previously "attempted to transact with Standard Bank with regards to the [Optimum] environmental trust".

The letter warned that Ragavan had "no authority to transact on behalf of the trust" as she was not a trustee, and warned that any attempt to do so could be deemed a criminal offence.

Having failed to access the R1.47 billion in the Optimum Mine Rehabilitation Trust, Tegeta seemingly turned its attention to Koorfontein's R280 million rehabilitation fund.

"Despite the fact that the Koorfontein Trust Fund is under separate control by its trustees, the trustees of that trust seem not to have played a part in the request to the DMR at all, and DMR's "approval" does not require proof of consent of the trustees," Fourie notes.

"Any purported "approval" given by the DMR is not lawful, no matter how many "conditions" are attached to such approval."

***The Gupta company has welcomed a judicial inquiry to "clear its name"***

It's not clear whether Tegeta has taken advantage of the DMR's approval and accessed Koorfontein's rehabilitation trust: R280 million was transferred under the funds' name to the Bank of Baroda on May 24, slightly less than the R292 million that the DMR stated was in the fund.

Since being transferred to the Bank of Baroda, the Public Protector's report noted that "the balance in the... account fluctuated drastically".

As a result of the funds not being ring-fenced it is not clear whether Koorfontein's rehabilitation funds have been preserved.

The Public Protector's report found similar transactions with regards to Optimum's R1.47 billion rehabilitation fund, and that at one point in September, over R1 billion appeared to be missing from the fund.

Oakbay Investments released a statement from the Bank of Baroda showing that as of October 5, Optimum Mine Rehabilitation Trust's R1.47 billion had been replaced in various Bank of Baroda accounts.

"The law... makes it clear that such funds are meant to be sacrosanct. If there are not enough funds in the rehabilitation fund [and] if that right holder cannot pay that claim... there is no way to fund rehabilitation - with only the State able to step in," Fourie said.

Oakbay Resources, the owner of Tegeta, said on Thursday the company welcomed a judicial inquiry to clear its name and that it would not comment further at this time.

• ***The story was updated after publication to include a link to emails from the #GuptaLeaks.***



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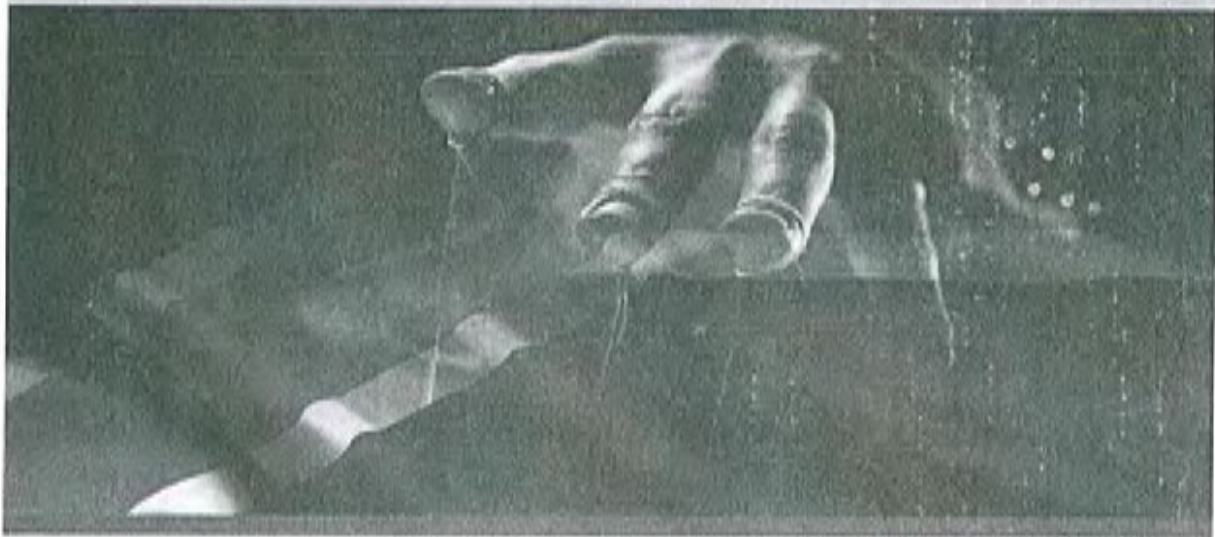


218  
"SF8"

# STATE OF CAPTURE

*Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses*

Report No: 6 of 2016/17



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0800 11 20 40



- 5.266. This letter is from the BRP's to all affected persons dated 19 April 2016. The letter confirms that the business rescue plan has been adopted and the business rescue proceedings of OCH has been concluded.

Optimum Coal Mine Proprietary Limited (In Business Rescue) letter dated 24 April 2016

- 5.267. This letter is sent by Werksmans on behalf of the BRP's to Tegeta on 24 April 2016. The contents of the letter is *inter alia*:
- a) The letter reiterates to Tegeta that all actions taken by the OCM board must be done with the written consent of the BRP's failing which such actions will be deemed void in terms of section 137(4) of the Companies Act.
  - b) All decisions with regards to the environmental trust and the investment thereof should be taken with the consent of the BRP's.
  - c) The letter states that Ms Ragavan, attempted to transact with Standard Bank with regards to the environmental trust. The BRP's further state that Ms Ragavan has no authority to transact on behalf of the trust as this power is vested in the trustees of the trust and subject to their fiduciary obligations to the trust.
  - d) The BRP's expressly stated in the letter that consent is needed from them before transactions of such a nature can be concluded.
  - e) The letter further states that "OCM is under a legislative obligation to maintain sufficient funds in the trusts account to meet rehabilitation obligations of the company under regulation 53 and 54 of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MRPDA") and under section 24P of the





*National Environmental Management Act 107 of 1998 ("NEMA") as read with the regulations promulgated under NEMA on 20 November 2015 dealing with financial provisions for rehabilitation and to ensure that the funds are held or invested into account and/or instruments which meet the requirements of section 37A of the Income Tax Act 58 of 1962 ("Income Tax Act")"*

- f) The letter concludes in saying that "any contravention of the sections of the MPRDA and NEMA described above is a criminal offence under section 98 of the MPRDA and in terms of regulation 18 of the NEMA regulations promulgated on 20 November 2015 and may result in a fine and/or imprisonment in addition to any civil remedies that may be available to the business rescue practitioners, OCM and/or its affected persons."

Minutes of the Eskom Board Tender Committee Meeting 03-2016/17 held at the Huvo Nkulu Boardroom on 21 June 2016 at 09h00

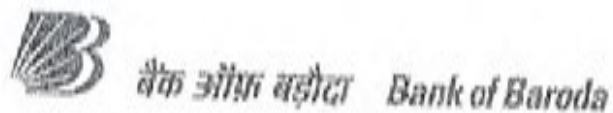
- 5.268. Board Members present during this meeting were Mr Z. Khoza (Chairman of the meeting), Ms C. Mabude and Ms D Naidoo.
- 5.269. No interests were declared during this meeting.
- 5.270. The committee approved that contracts can be negotiated for supply of coal to Hendrina power station from 31 December 2018 onwards.

Report In Terms Of Section 34(1)(A) Of The Prevention And Combatting Of Corrupt Activities Act 12 Of 2004

- 5.271. The following report was received at the Directorate for Priority Crime Investigation ("DPCI") on 1 July 2016 and was drafted by the BRP's. The BRP's:
- "1 We were appointed on 4 August 2015 by the Companies and Intellectual Property Commission ("CIPC") as the joint business rescue practitioners of



221  
"SF9"



JHB/OPE/2016-17/

Date: 05<sup>th</sup> October 2016

To Whom IT May Concern

This is to certify that OPTIMUM MINE REHABILITATION TRUST, Registration No. IT/13093/07, is maintaining following accounts with us.

Type of Account	Account Number	Outstanding Balance as on 05.10.2016 ( am In ZAR Mn)	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



222  
"SFIO"

Tracy Erasmus

---

**From:** Soretha Venter <soretha.venter@outa.co.za>  
**Sent:** 25 August 2017 20:39  
**To:** ronicar@oakbay.co.za; ugeshnin@sahara.co.za; althafe@spoonet.co.za; trevor@bearingway.co.za  
**Cc:** ben.theron@outa.co.za  
**Subject:** IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD  
**Attachments:** Annexures A to C2.pdf; Letter to Trustees.pdf

Dear Sir,

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

OUR REF: SP/ZUMA01/TEGETA

OUR REF: UNKNOWN

1. Please find attached correspondence for your urgent attention.
2. For any media queries kindly contact Mr Ben Theron, OUTA Chief Operating Officer, on 082 941 8444.

Regards,

**OUTA**



**Soretha Venter**  
Senior Legal Advisor  
soretha.venter@outa.co.za  
Office: 0871 700639  
Cell: 0718691959  
OUTA - Organisation Undoing Tax Abuse  
[www.outa.co.za](http://www.outa.co.za)

25 August 2017

To: The Trustees of the Optimum Mine Rehabilitation Trust  
(Registration No IT/13693/07)  
The Trustees of the Koorfontein Mine Rehabilitation Trust  
(No IT/7563/07.)  
Ronica Ragavan  
Acting CEO Oakbay Investments (Pty) Ltd

Per: E-mail

Dear Sirs / Madam

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

**OUR REF: SP/ZUMA01/TEGETA  
YOUR REF: UNKNOWN**

**INTRODUCTION**

1. OUTA is a non-profit civil action organisation, funded by tens of thousands of individuals and businesses, whose main aim is to hold government accountable for the abuse of power, corruption and maladministration. In doing our work, we ensure that more tax revenues are made available and protected to benefit of all in South Africa, especially the poor and vulnerable.
2. We write in connection with the rehabilitation funds held for the rehabilitation of coal mines in which Tegeta Exploration and Resources (Pty) Ltd ('Tegeta') have an interest. The mines are coal mines in Mpumalanga.
3. According to recent reports, the Gupta controlled Oakbay Investment (Pty) Ltd has concluded a sale agreement of Tegeta and will be disposing of its interests therein to Swiss based company, Charles King SA. Tegeta recently took control of Optimum Holdings (Pty) Ltd in April 2016 following a business rescue process.
4. We wish to raise concerns in respect of the rehabilitation funds in light thereof and in light of further recent reports regarding the closure of Gupta linked bank accounts by the Bank of Baroda. As set out below, we request information and prompt assurances in connection with the financial provision for rehabilitation funds.

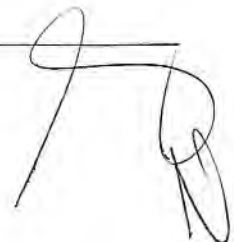




- 5. As you are aware, all mining rights holders are obliged to comply with the requirements of the Mineral and Petroleum Resources Development Act 28 of 2002 ('the MPRDA') and the National Environmental Management Act 107 of 1998 as amended ('NEMA'). A critical provision is what is now contained in section 24P of NEMA the effect of which is that a mining rights holder must comply with the prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts. Furthermore, holders must annually assess their liability in a prescribed manner and must increase their financial provision to the satisfaction of the Minister and also submit an audit report to the Minister on the adequacy of the financial provision from an independent auditor. It is furthermore a material obligation of any rights holder to ensure, on an ongoing basis, that there is adequate financial provision for rehabilitation in line with any approved environmental management programme and mining right.
- 6. These protections are vital to ensure that at the time of mine closure, there is adequate provision for environmental rehabilitation. Environmental rehabilitation is critical to protect the right of all South Africans to an environment that is not harmful to their health and well-being and to ensure that the environment is protected for the benefit of present and future generations. (Section 24 of the Constitution)
- 7. These provisions are also critical to ensure that the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment as contemplated by section 2(4)(p) of NEMA.
- 8. Ultimately, if the financial provision for environmental protection is not properly and duly secured, there is a real and material risk that the need to effect and pay for remediation rests with the State and the tax-payer. (Section 28(7) and (8) of NEMA and section 45(2) of the MPRDA) The financial provision for rehabilitation is designed to ensure that the fiscus and the tax payer do not carry these costs and the burden of rehabilitation does not fall on the State.

**RECENT EVENTS**

- 9. According to the Public Protector's State of Capture report dated 14 October 2016 (report 6 of 2016/2017), there are at least two rehabilitation funds relevant to the Tegeta mines, these being:
  - 9.1 Optimum Mine Rehabilitation Fund
  - 9.2 Koornfontein Rehabilitation Fund





10. According to the report (paragraph 5.344):
  - 10.1 As at 23 May 2016 the value of the Koorfontein Rehabilitation Fund was apparently R280 million.
  - 10.2 As at 21 June 2016, the value of the Optimum Mine Rehabilitation Fund was R1. 469 916. 933.63.
11. The report states that as part of the Tegeta take-over these funds were transferred to the Bank of Baroda on 23 May 2016 and 21 June 2016 respectively.
12. OUTA understands that these funds are held by two Trusts, known as the Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) and the Koorfontein Mine Rehabilitation Trust (Registration No IT/7563/07).
13. OUTA has to hand a letter dated 5 October 2016 from the Bank of Baroda addressed to 'whom it may concern' certifying that Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) is maintaining four accounts with them which are operative and active. The total outstanding balance on these accounts as at 5 October 2016 was R1 470 338 316,18.
14. There have been recent media reports relating to the imminent closure by the Bank of Baroda of accounts of companies controlled by the Gupta family. The Bank of Baroda reportedly took on the Gupta accounts after South Africa's banks closed their accounts in 2016. According to the reports, the Baroda accounts will be closed by the end of September 2017. It is also reported that the Gupta accounts will be moved to an undisclosed 'new bank'.
15. On the information to hand, OUTA is concerned that the Baroda accounts for the two Trusts will be amongst the accounts that Baroda Bank will be closing and that the monies apparently held by Baroda for the Trusts as statutorily required financial provision for rehabilitation will be in jeopardy as a result.
16. This concern is exacerbated by the recently publicised sale by Oakbay Investments (Pty) Ltd of its Tegeta business comprising Optimum, Koorfontein and the Optimum Coal Terminal to Charles King SA. According to the Oakbay media release, Charles King SA is a Special Purpose Vehicle acquired by a Mr Zarooni to facilitate further investments like the Tegeta acquisition. It apparently has no financial track record.
17. Against the background of the likely imminent closure of the Baroda accounts in September 2017 and the intended sale of Tegeta to a SPV with no financial record, OUTA is concerned about whether the trustees of the Trusts have, in the exercise of their fiduciary duties, made satisfactory arrangements to secure the trust funds as these events unfold. OUTA is further concerned about whether these funds are and will be in fact in circumstances where according to OUTA's investigations, the Guptas

**ORGANISATION UNDOING TAX ABUSE (OUTA)**

Co Reg: 2012/064213/08 NPO #: 124381NPO

DIRECTORS: Wayne L Duvenage (Chairman), Robert N Hutchinson, Leopold J J Pauwen,

NON EXECUTIVE DIRECTORS: Phumlani M Majazi, Ms Ferrial Adam



are in debt to Baroda in material amounts, currently estimated at approximately R811 million.

## THE TRUSTEE'S FIDUCIARY DUTIES AND OUTA'S REQUESTS

18. The Trustees are, of course, vested with onerous fiduciary duties in respect of the property of the Trust which includes the trust funds which are held in the public interest and for purposes of statutory compliance. The trustees' responsibilities are ultimately directed at ensuring the protection of vital constitutional rights and the performance of statutory obligations. Failure to adhere to these duties attracts legal sanction.
19. In view of OUTA's role as a civil society organisation seeking to protect the public interest as set out above, OUTA requests various information from you for purposes of assuring OUTA and the people it serves that the financial provision for rehabilitation will not be compromised by recent events.
20. OUTA hereby requests the following information from the addressees in their capacity as Trustees of the Trusts and the Oakbay CEO:
  - 20.1 Full details of all Trusts or other entities responsible for funds relating to the financial provision for rehabilitation in connection with any Tegeta mining interest.
  - 20.2 Confirmation of the identity and current contact details of the relevant Trustees and auditors.
  - 20.3 Confirmation that the Koorfontein and the Optimum Mine Rehabilitation Trust Funds and any other relevant Trust funds remain fully in tact;
  - 20.4 Confirmation that no monies have been transferred out of the Trusts' accounts from the time that they were transferred to Baroda until the present time.
  - 20.5 If no such confirmation can be provided, full details are required relating to what payments have been made, when, to whom, for what purpose and upon whose authority.
  - 20.6 Precisely what amounts are currently in each Trusts' account/s.
  - 20.7 What arrangements have the Trustees put in place to ensure that the funds are not placed in jeopardy by and the rights holder will remain compliant with the relevant legislation in light of:
    - 20.7.1 the imminent closure of the Baroda accounts;
    - 20.7.2 the imminent sale of Tegeta.

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### ORGANISATION UNDOING TAX ABUSE (OUTA)

Co Reg: 2012/064213/08 NPO #: 124381NPO

DIRECTORS: Wayne L Duvenage (Chairman), Robert N Hutchinson, Leopold J J Pauwen,

NON EXECUTIVE DIRECTORS: Phumani M Majozl, Ms Ferrial Adam





20.8 Without derogation of the generality of the above request, please advise:

20.8.1 Whether or not each of the account/s will continue to be held at Baroda Bank.

20.8.2 Whether the financial provision for rehabilitation will be retained under the current trust arrangements, and if so, at what bank or banks will the Trusts' accounts be held and under what arrangements.

20.8.3 If the financial provision will not be so retained, what new arrangements will be put in place.

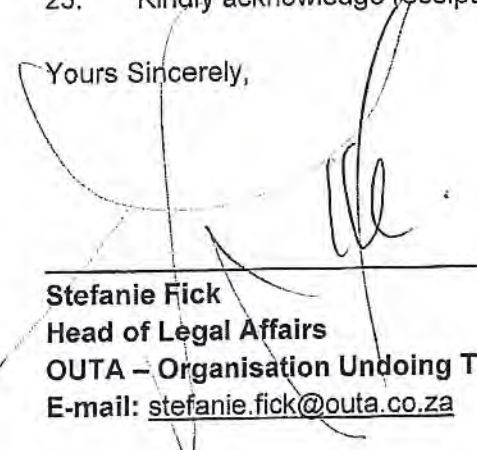
20.9 Has any Tegeta related entity lodged a request for consent in terms of section 11 of the MPRDA to approve the transfer or similar transaction in respect of the sale of Tegeta to Charles King SA? If so, kindly supply all relevant information.

21. Kindly contact our legal advisor Ms. S Venter at [soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za) in the event of any queries.

22. We trust that you find the above in order and look forward to receiving your response on or before close of business on 1 September 2017.

23. Kindly acknowledge receipt of this letter.

Yours Sincerely,

  
\_\_\_\_\_  
**Stefanie Fick**  
**Head of Legal Affairs**  
**OUTA – Organisation Undoing Tax Abuse**  
**E-mail: [stefanie.fick@outa.co.za](mailto:stefanie.fick@outa.co.za)**

**Tracy Erasmus**

**From:** Soretha Venter <soretha.venter@outa.co.za>  
**Sent:** 25 August 2017 20:39  
**To:** seipati.dlamini@dmr.gov.za; mosebeneziz.mail@gmail.com  
**Cc:** ben.theron@outa.co.za; queen.poolo@dmr.gov.za; martin.madlala@dmr.gov.za; mamabefu.modipa@dmr.gov.za; thabo.mokoena@dmr.gov.za; khayalethu.matrose@dmr.gov.za; shrikem@mweb.co.za; jlorimer@parliament.gov.za  
**Subject:** IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD  
**Attachments:** Annexures A to C2.pdf; Letter to Minister.pdf

Dear Sir,

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

**UR REF: SP/ZUMA01/TEGETA**

**YOUR REF: UNKNOWN**

1. Please find attached correspondence for your urgent attention.
2. For any media queries kindly contact Mr Ben Theron, OUTA Chief Operating Officer, on 082 941 8444.

Regards,

**OUTA**



**Soretha Venter**  
Senior Legal Advisor  
[soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za)  
Office: 0871700639  
Cell: 0718691959  
OUTA - Organisation Undoing Tax Abuse  
[www.outa.co.za](http://www.outa.co.za)



25 August 2017

To: The honourable Minister:  
Mineral Resources and Energy  
Mosebenzi Zwane

Per: E-mail

Dear Honourable Minister Zwane

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

**OUR REF: SP/ZUMA01/TEGETA  
YOUR REF: UNKNOWN**

**INTRODUCTION**

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2. We write in connection with the rehabilitation funds held for the rehabilitation of coal mines in which Tegeta Exploration and Resources (Pty) Ltd ('Tegeta') have an interest. The mines in question are coal mines in Mpumalanga.
3. According to recent reports, the Gupta controlled Oakbay Investment (Pty) Ltd has concluded a sale agreement of Tegeta and will be disposing of its interests therein to Swiss based company, Charles King SA. Tegeta recently took control of Optimum Holdings (Pty) Ltd in April 2016 following a business rescue process.
4. We wish to raise concerns in respect of the rehabilitation funds in light thereof and in light of further recent reports regarding the closure of Gupta linked bank accounts by the Bank of Baroda. As set out below, we request information and prompt assurances in connection with the rehabilitation funds.
5. As you are aware, all mining rights holders are obliged to comply with the requirements of the Mineral and Petroleum Resources Development Act 28 of 2002 ('the MPRDA') and the National Environmental Management Act 107 of 1998 as amended ('NEMA'). A critical provision is what is now contained in section 24P of NEMA the effect of which is that a mining rights holder must comply with the

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NON EXECUTIVE DIRECTORS: Phumlani M Majozí, Ms Ferrial Adam





prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts. Furthermore, holders must annually assess their liability in a prescribed manner and must increase their financial provision to the satisfaction of the Minister and also submit an audit report to the Minister on the adequacy of the financial provision from an independent auditor. The Minister and the Department of Mineral Resources ('DMR') also have extensive investigative and monitoring powers and functions under the aforesaid legislation relating to compliance and environmental rehabilitation.

6. These provisions are vital to ensure that at the time of mine closure, there is adequate provision for environmental rehabilitation. Environmental rehabilitation is critical to protect the right of all South Africans to an environment that is not harmful to their health and well-being and to ensure that the environment is protected for the benefit of present and future generations. (Section 24 of the Constitution)
7. These provisions are also critical to ensure that the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment as contemplated by section 2(4)(p) of NEMA.
8. Ultimately, if the financial provision for environmental protection is not properly and duly secured, there is a real and material risk that the need to effect and pay for remediation rests with the State and the tax-payer. (Section 28(7) and (8) of NEMA and section 45(2) of the MPRDA) the financial provision for rehabilitation is designed to ensure that the fiscus and the tax payer do not carry these costs and the burden of rehabilitation does not fall on the State.

#### RECENT EVENTS

9. According to the Public Protector's State of Capture report dated 14 October 2016 (report 6 of 2016/2017), there are at least two rehabilitation funds relevant to the Tegeta mines, these being:
  - 9.1 Optimum Mine Rehabilitation Fund
  - 9.2 Koornfontein Rehabilitation Fund
10. According to the report (paragraph 5.344)
  - 10.1 As at 23 May 2016 the value of the Koornfontein Rehabilitation Fund was apparently R280 million.
  - 10.2 As at 21 June 2016, the value of the Optimum Mine Rehabilitation Fund was R1, 469 916 933,63.

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#### ORGANISATION UNDOING TAX ABUSE (OUTA)

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11. As part of the Tegeta take-over these funds were transferred to the Bank of Baroda on 23 May 2016 and 21 June 2016 respectively. These funds are held by two Trusts, known as the Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) and the Koornfontein Mine Rehabilitation Trust (Registration No IT/7563/07.)
12. OUTA has to hand a letter dated 5 October 2016 from the Bank of Baroda addressed to 'whom it may concern' certifying that Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) is maintaining four accounts with them which are operative and active. The total outstanding balance on these accounts as at 5 October 2016 was R1 470 338 316.18. A copy of this letter is Annexure 'A'.
13. In recent months, there have been certain media reports relating to the closure by the Bank of Baroda of accounts of companies controlled by the Gupta family. The Bank of Baroda reportedly took on the Gupta accounts after South Africa's banks closed their accounts in 2016. According to the reports, supplied as 'B', the Baroda accounts will be closed by the end of September 2017. It is also reported that the Gupta accounts will be moved to an undisclosed 'new bank'.
14. On the information to hand, OUTA has reason to be concerned that the Baroda accounts for the two Trusts may well be amongst the accounts that Baroda Bank will be closing. In this regard, OUTA understands that the Tegeta appointed Trustees initially included Ms Pushpaveni Govender, Mr Emmamally Althaf and Mr Trevor Scott. Each of these individuals were at a stage directors and employees of Gupta-owned companies. The current trustees are, as far as OUTA is aware, Ms Govender and Mr Scott. Ms Govender was employed by the Gupta owned Sahara Computers in 2010 and by Gupta-owned Oakbay Investments (Pty) Ltd in 2017. She is currently a director of Oakbay Investments (Pty) Ltd.
15. Furthermore, OUTA understands that the auditors of the Trust are Sizwe Ntsaluba Gobodo Inc, who are auditors for various Gupta owned companies and have continued with the Oakbay account despite KPMG's exit.
16. On 23 August 2017, Oakbay Investments (Pty) Ltd, which is a Gupta controlled company issued a statement announcing that it has reached an agreement to sell its Tegeta business comprising Optimum, Koornfontein and the Optimum Coal Terminal. Tegeta will be sold to the Swiss based Charles King SA for R2.97 billion.
17. The owner of Charles King SA is a Mr Amin Al Zarooni who Oakbay describes as 'a leading businessman' in the United Arab Emirates. Oakbay has explained publicly that Charles King SA is itself a Special Purpose Vehicle acquired by Mr Zarooni to facilitate further investments like the Tegeta acquisition. It has no financial track record.
18. The related Oakbay releases are supplied as C.

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**ORGANISATION UNDOING TAX ABUSE (OUTA)**

Co Reg: 2012/064213/08 NPO #: 124381NPO

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19. Against the background of the likely imminent closure of the Baroda accounts in September 2017 and the intended sale of Tegeta to a SPV with no financial record, OUTA is concerned about whether satisfactory arrangements are in place to secure the financial provision for rehabilitation. OUTA is further concerned about whether these funds are and will be in tact in circumstances where according to OUTA's investigations, the Guptas are indebted to Baroda in material amounts, currently estimated at approximately R811 million.

#### **RESPONSIBILITY OF THE MINISTER, THE DME AND OUTA REQUESTS**

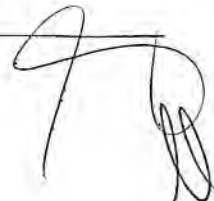
20. The Minister is ultimately responsible for the security of these funds. This is in terms of the Constitution and in terms of the MPRDA and NEMA.
21. In light thereof, OUTA hereby requests the following information from the Minister:
- 21.1 Confirmation that the Koornfontein and the Optimum Mine Rehabilitation Trust Funds remain fully in tact;
- 21.2 Confirmation that no monies have been transferred out of the Trusts' accounts from the time that they were transferred to Baroda until the present time.
- 21.3 If no such confirmation can be provided, full details are required relating to what payments have been made, when, to whom, for what purpose and upon whose authority. Full documentation should be supplied.
- 21.4 Precisely what amounts are currently in each Trusts' account/s.
- 21.5 What arrangements are in place or are being made to the satisfaction of the Minister to ensure that the funds are not placed in jeopardy by:
- 21.5.1 the imminent closure of the Baroda accounts;
- 21.5.2 the imminent sale of Tegeta.
- 21.6 Without derogation of the generality of the above request, please advise:
- 21.6.1 Whether the financial provision for rehabilitation will be retained under the current trust arrangements, and if so, at what bank or banks will the Trusts' accounts be held and under what arrangements.
- 21.6.2 If the financial provision will not be so retained, what new arrangements will be put in place.
- 21.7 Has any entity lodged a request for consent in terms of section 11 of the MPRDA to approve the transfer or similar transaction in respect of the sale of

**ORGANISATION UNDOING TAX ABUSE (OUTA)**

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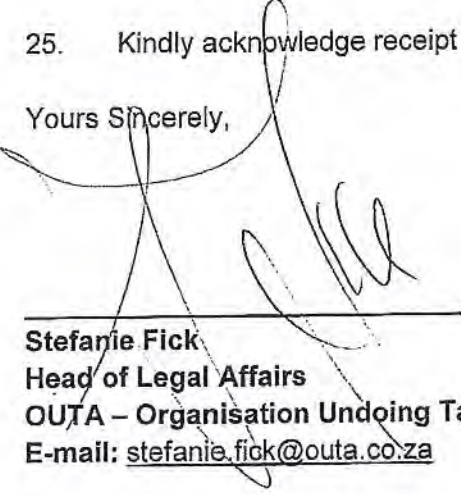




Tegeta to Charles King SA. If so, kindly supply all relevant information and documentation.

22. OUTA also seeks the following assurances from you:
- 22.1 That the Minister will as a priority take steps to ensure that the financial provision for rehabilitation is protected and secured in view of the imminent closure of the Baroda accounts and will keep OUTA informed of such steps.
- 22.2 If no section 11 application has to date been made, kindly confirm that the Minister (or delegee) will provide OUTA with the application and all relevant documentation when it is made.
- 22.3 Kindly confirm further that OUTA will be afforded an opportunity to make representations regarding the future security of the funds in any section 11 application.
23. Kindly contact our legal advisor Ms. S Venter at [soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za) in the event of any queries.
24. We trust that you find the above in order and look forward to receiving your response on or before close of business on 1 September 2017.
25. Kindly acknowledge receipt of this letter.

Yours Sincerely,


  
\_\_\_\_\_  
**Stefanie Fick**  
Head of Legal Affairs  
OUTA – Organisation Undoing Tax Abuse  
E-mail: [stefanie.fick@outa.co.za](mailto:stefanie.fick@outa.co.za)

**ORGANISATION UNDOING TAX ABUSE (OUTA)**

Co Reg: 2012/064213/08 NPO #: 124381NPO

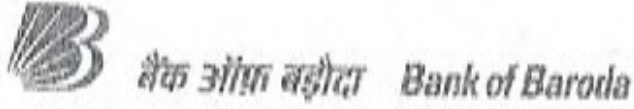
DIRECTORS: Wayne L Duvenage (Chairman), Robert N Hutchinson, Leopold J J Pauwen,

NON EXECUTIVE DIRECTORS: Phumlani M Majozl, Ms Ferrial Adam



"A"

234



JHB/OPE/2016-17/

Date: 05<sup>th</sup> October 2016


To Whom IT May Concern

This is to certify that OPTIMUM MINE REHABILITATION TRUST, Registration No. IT/13003/07, is maintaining following accounts with us.

Type of Account	Account Number	Outstanding Balance as on 05.10.2016 ( am in ZAR Mn)	Remarks
Current Account	92020200000524	9,338,316.10	-
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



"B1"

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## Guptas sue Bank of Baroda in attempt to stop account closures

Aug 17 2017 07:51 Renee Bonorchis and Anto Antony, Bloomberg

Johannesburg - Companies controlled by the Guptas family, whose accounts are being closed down by Bank of Baroda, said they're taking legal action against the lender to try and stop the termination, which comes after South Africa's four biggest lenders cut banking services for the family that's in business with a son of President Jacob Zuma.

A number of companies forming part of the Gupta-controlled Oakbay Group "are presently involved in litigation against the Bank of Baroda concerning its unlawful attempts to close the companies' accounts, and particularly in light of the unreasonable notice period given," Gary Naidoo, a spokesperson for the family and their companies, said in an emailed statement on Wednesday.

The deadline for the closure of the accounts has been extended to the end of September by the India-based bank, he said. He didn't answer a call made to his mobile phone seeking further information.

"This has not been afforded by the Bank of Baroda to enable these companies to transfer their banking facilities to a new bank, but rather has occurred in the context of the ongoing litigation between the parties," Naidoo said. "No other bank has agreed to offer them alternative banking services."

Bloomberg on Tuesday reported that the family had told the Indian lender that they've found another company willing to offer them banking services, citing a person familiar with the matter who asked not to be identified because the matter was confidential.

**Mines, TV news**

The Gupta family controls businesses in South Africa ranging from coal and gold mines to newspapers, a computer business and a 24-hour news channel and have previously said bank account closures could affect their ability to pay about 7 000 employees.

The family's businesses lost their other South African banking relationships after the lenders, including Barclays Africa Group (Absa) and Standard Bank, said they risked falling foul of regulators and the law by continuing to offer services to the family and their companies.

The Guptas were last year named in a probe by former Public Protector Thuli Madonsela into government-linked bribery and corruption. Madonsela said her findings weren't conclusive and instructed Zuma to set up a judicial inquiry. Zuma and the Guptas have denied any wrongdoing.

Two calls to the office of a Mumbai-based spokesperson for Bank of Baroda outside office hours went unanswered.



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USD/ZAR - 13.00 (-1.46%)

AUD/ZAR - 10.33 (-0.88%)

# Guptas said to have found alternative after Bank of Baroda snub

Aug 15 2017 18:25 Anil Antony and Renee Bonerechts, Bloomberg News

Johannesburg - The Gupta family, whose accounts are being closed down by the Bank of Baroda's South African unit, have told the Indian lender that they've found another company willing to offer them banking services, according to a person familiar with the matter.

The Bank of Baroda, which took on the Guptas after South Africa's four biggest lenders closed their accounts, have given the family's businesses two extra months to transfer their accounts to the new bank, the person said, declining to name the institution and asking not to be identified because the details are confidential.

The family's businesses have paid back most of their loans from Bank of Baroda, the person said.

Gary Naidoo, a spokesperson for the Guptas, didn't respond to a message on his mobile phone or an email. TNA Media, owned by the family, didn't immediately respond to emailed questions seeking comment.

The Gupta family, friends of President Jacob Zuma and in business with one of his sons, lost their banking relationships after the lenders, including Barclays Africa Group and Standard Bank Group, said they risked falling foul of regulators and the law by continuing to offer services to the family and their companies.

**READ: Noose tightens as Bank of Baroda drops Guptas - report**

The Guptas were last year named in a probe by SA's former Public Protector into government-linked bribery and corruption. The Public Protector said her findings weren't conclusive and instructed Zuma to set up a judicial inquiry. Zuma and the Guptas have denied any wrongdoing.

The Bank of Baroda has significantly wound down activities related to the family. PS Jayakumar, CEO of the Indian-based lender, told reporters in Mumbai on Friday. Bank of Baroda has explained to South African regulators that "banking transactions were bona fide", he said.

The Guptas' Johannesburg-based newspaper The New Age, and their television station ANN7 told staff on July 25 that Bank of Baroda was closing their accounts and asked the employees to petition the lender. Johannesburg's Star newspaper reported last month, citing unidentified employees.

The bank gave the Guptas one month to move their money to another lender before all accounts were terminated, the Star said.

### Loans repaid

The family's Oakbay Resources and Energy, which in July stopped trading its securities on the JSE after falling in debt, repaid its loans and transferred its assets to a new lender.



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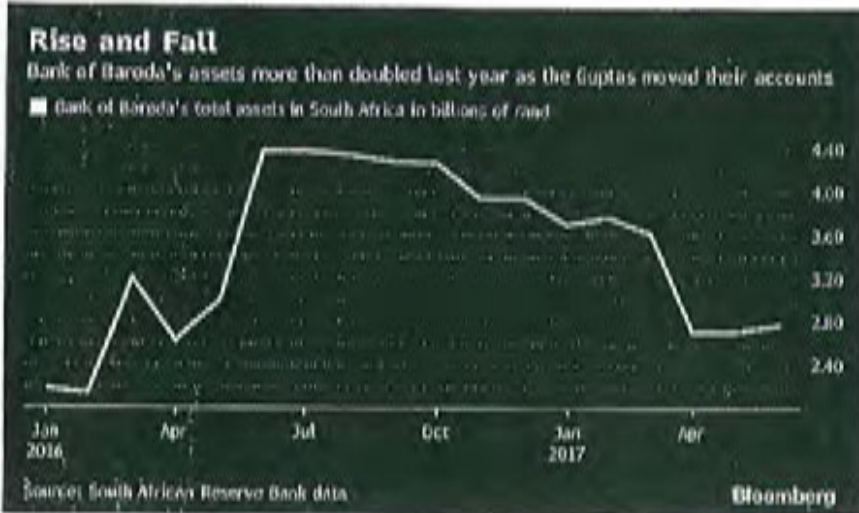
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SA has 16 registered banks and 15 registered local branches of foreign banks, according to the annual report of the SA Reserve Bank's supervision unit. Apart from local lenders, there are registered banks from countries including Pakistan, India, Taiwan, China, Bahrain, France, Germany, the UK and the US.



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2017-08-25 15:37

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11/11

**From:** corp comm <corpcomm@oakbay.co.za>  
**Sent:** Wednesday, August 23, 2017 8:12 AM  
**To:** corp comm  
**Subject:** Oakbay Takes Another Decisive Action To Save Employees' Jobs

23 August 2017

## Oakbay Takes Another Decisive Action To Save Employees' Jobs

Oakbay Investments ("Oakbay") today announced that it has reached an agreement to sell its Tegeta Exploration and Resources business ("Tegeta").

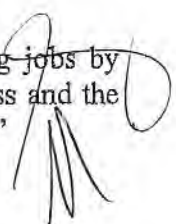
Tegeta, comprising Optimum, Koornfontein and the Optimum Coal Terminal, has recently seen a radical transformation in its fortunes. Emerging from business-rescue less than a year ago, the three businesses are now set on a sustainable and profitable trajectory.

- In order to preserve the employment of its loyal staff, Oakbay has agreed to the sale of Tegeta to the Swiss-based Charles King SA for R2.97 billion.
- The sale is subject to regulatory requirements and the fulfilment of the conditions in the agreement which are expected to be concluded within 12 months.
- Oakbay has stipulated that the purchaser safeguards employment in the mines. Additionally, the agreement has stipulated that the purchaser must have a minimum of 30% of the shares allocated to a Black Empowerment Partner.

The sale is part of Oakbay's commitment to preserve jobs, provide certainty to over 7500 hard-working employees throughout the Group and to safeguard the inherent value of the businesses in which they work. Under new ownership, Oakbay believes that the business and its employees will have the bright and prosperous future they deserve. The sale will also allow the shareholder the time to focus on clearing its name in the face of unfounded media allegations.

Commenting on the agreement, Ronica Ragavan, Acting Chief Executive of Oakbay, said:

"The sale of Tegeta represents a further step forward in delivering our strategy of preserving jobs by securing the future of the businesses we have developed and grown. Tegeta is a strong business and the Charles King company will be an excellent new owner. We wish both of them well for the future."



Commenting on the agreement, Mr Amin Al Zarooni, the owner of Charles King SA, said:

"Opportunities in mining in South Africa are extremely attractive and we have been looking for a long time to invest in the Rainbow Nation. And once we have bought the business we will, of course, be looking for a Black Economic Empowerment Partner. Mining is an excellent growth sector on the continent and with this acquisition, our expansion plans on the African continent kick starts."

Ends

For more information, please contact: [corpcomm@oakbay.co.za](mailto:corpcomm@oakbay.co.za)

--

Contact:  
Oakbay Investments  
[corpcomm@oakbay.co.za](mailto:corpcomm@oakbay.co.za)



240

"C2"

From: corp comm <corpcomm@oakbay.co.za>  
Sent: Wednesday, August 23, 2017 2:22 PM  
To: corp comm  
Subject: Background on the owner - Charles King SA - Mr Amin Al Zarooni

**Background on the owner - Charles King SA**

**Mr Amin Al Zarooni**

Mr Amin Al Zarooni is a leading businessman in the United Arab Emirates and a highly respected and active participant in global Private Equity markets. As such he is involved with various commodity businesses around the world. Mr Zarooni's businesses include: Arep Ville Abu Dhabi (joint venture Arep Group France); Egis Emirates Abu Dhabi (joint venture Egis Industries France); Gimaex – One Seven (joint venture Gimaex International); Golden Triangle Investment; Nepteam Middle East (joint venture Nepteam France); Jaffar Al Zarooni Real Estate; Triangle Business Connection.

Charles King SA itself is a Special Purpose Vehicle acquired by Mr Zarooni to facilitate further investments like Tegeta's Optimum Coal, Koomfontein and Optimum Coal Terminal acquisition.

Ends

Contact:  
Oakbay Investments  
[corpcomm@oakbay.co.za](mailto:corpcomm@oakbay.co.za)



Politics

## Mining funds intact for Gupta operations, says Zwane

28 August 2017 - 13:16 By Genevieve Quintal



Mineral Resources Minister Mosebenzi Zwane. File photo.  
Image: Sizwe Ndingane

Rehabilitation funds worth R1.6-billion for the mines owned by Gupta-owned Tegeta are intact, the department of mineral resources said.

The Organisation Undoing Tax Abuse (Outa) wrote to Mineral Resources Minister Mosebenzi Zwane on Friday asking him to ensure that the funds are ring-fenced and secured, following the announcement that the family was selling its mining asset.

Outa believed the imminent closure of the Guptas' Bank of Baroda account may have put the funds - a R280m Koornfontein fund and Optimum Colliery's R1.6bn fund - at risk.

Zwane has until Friday to respond to Outa. If he fails to do so the civil rights group will take the matter to court.

"The bank and the company concerned have a responsibility to notify the department when there are any changes in a rehabilitation fund account registered in the records of the department," the department said.

"Such notification has not yet been received by the department. The rehabilitation funds are still intact and subject to annual review."

Oakbay Investments announced the sale of Tegeta for R2.97-billion. The company, which includes Optimum Coal, was sold to Swiss-based Charles King SA, owned by United Arab Emirates businessman Amin al-Zarooni.

The sale is subject to regulations and conditions in the agreement.

Outa asked Zwane to confirm that the Koornfontein and Optimum mine rehabilitation trust funds remained intact and that no money had been moved from the accounts.

Last year, amaBhungane reported that the Koornfontein fund had been raided by Tegeta.

In a written response to parliament last year, the mineral resources minister said the Optimum Colliery's fund was held by Bank of Baroda.

Oakbay Investments has not responded to questions sent to it regarding the funds.



9/13/2017

Mining funds intact for Gupta operations, says Zwane

Oota also wants Zwane to provide the current values of the funds.

The department of mineral resources said it has been notified of the intention to sell Tegeta.

The sale was subject to processes outlined in section 11 of the Mineral and Petroleum Resources Development Act. It said Tegeta was yet to submit its section 11 application.

"The department welcomes all investors into the mining industry, both local and foreign," it said.

- *BusinessLIVE* - Additional reporting by Kyle Cowan

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Tracy Erasmus

**From:** Soretha Venter <soretha.venter@outa.co.za>  
**Sent:** 01 September 2017 12:06  
**To:** Bernard Hotz; sjcowen@thulamelachambers.co.za  
**Cc:** stefanie.fick@outa.co.za; ben.theron@outa.co.za  
**Subject:** FW: IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD  
**Attachments:** Outa Reply 1 Sept 2017.pdf

FYI...

First written response.



**Soretha Venter**  
Legal Manager  
[soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za)  
Office: 0871700639  
Cell: 0718691959  
OUTA - Organisation Undoing Tax Abuse  
[www.outa.co.za](http://www.outa.co.za)

**From:** Ronica Ragavan [mailto:[ronica@oakbay.co.za](mailto:ronica@oakbay.co.za)]  
**Sent:** Friday, 01 September 2017 11:53 AM  
**To:** Soretha Venter <soretha.venter@outa.co.za>; Reshma Moopnar <reshmam@oakbay.co.za>; Ashu Chawla <ashu@oakbay.co.za>  
**Subject:** Re: IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Dear Ms Venter

Please find a letter for your attention.

Regards

Ronica Ragavan

**Acting Group CEO**

On Fri, Aug 25, 2017 at 8:46 PM, Soretha Venter <[soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za)> wrote:

**From:** Soretha Venter [mailto:[soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za)]  
**Sent:** Friday, 25 August 2017 8:39 PM  
**To:** '[ronicar@oakbay.co.za](mailto:ronicar@oakbay.co.za)' <[ronicar@oakbay.co.za](mailto:ronicar@oakbay.co.za)>; '[ugeshnin@sahara.co.za](mailto:ugeshnin@sahara.co.za)' <[ugeshnin@sahara.co.za](mailto:ugeshnin@sahara.co.za)>; '[althafe@spoonet.co.za](mailto:althafe@spoonet.co.za)' <[althafe@spoonet.co.za](mailto:althafe@spoonet.co.za)>; '[trevor@bearingway.co.za](mailto:trevor@bearingway.co.za)' <[trevor@bearingway.co.za](mailto:trevor@bearingway.co.za)>  
**Cc:** [ben.theron@outa.co.za](mailto:ben.theron@outa.co.za)  
**Subject:** IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD



Dear Sir,

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND  
IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED  
TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND  
RESOURCES (PTY) LTD**

**OUR REF: SP/ZUMA01/TEGETA**

**YOUR REF: UNKNOWN**

1. Please find attached correspondence for your urgent attention.
2. For any media queries kindly contact Mr Ben Theron, OUTA Chief Operating Officer, on 082 941 8444.

Regards,

**Soretha Venter**

Senior Legal Advisor

soretha.venter@outa.co.za

Office: 0871700639

Cell: 0718691959

OUTA - Organisation Undoing Tax Abuse  
[www.outa.co.za](http://www.outa.co.za)



Date: 31/08/2017

Stefanie Fick  
Head of Legal Affairs  
OUTA- Organization Undoing Tax Abuse

Per Email

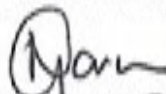
Dear Sir

**Re: Closing of Gupta Bank Accounts by Bank of Baroda and Implications for  
Rehabilitation Funds in connection with Mines Related to Optimum Coal Mine  
(Pty) Ltd**

We refer to your letter dated 25/08/2017

We fail to see on what basis you are entitled to address the long list of interrogatories to us and we accordingly decline to engage with you.

Yours Faithfully



Ronica Ragavan  
Acting Group CEO

DIRECTORS : A CHAWLA R RAGAVAN

144 Katherine Street, Grayston Ridge Office Park  
Block A Lower Ground Floor, Johannesburg, South Africa  
Tel.: +27 11 262 3870 www.oakbay.co.za





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7/6/2017

oakbay.co.za Mail - KOORNPOFTEIN REHABILITATION TRUST

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बैंक ऑफ़ बड़ौदा Bank of Baroda

BOB:SA:2017-18/63

Date: 06.07.2017

KOORNPOFTEIN REHABILITATION TRUST

Grayston Ridge Office Park

144 Katherine Street

Sandton, Johannesburg

Republic of South Africa

Dear Sir,

Re: KOORNPOFTEIN REHABILITATION TRUST - 9207020000519

You are aware that the firm/group, for quite some time, has been in the news and has been attracting adverse publicity in media, which in the opinion of the bank, is a potential risk and may affect the interests of the bank to its detriment. We have several times conveyed our bank's concern telephonically but to no avail.

In the circumstances, bank has no other option except to sever all its ties with the firm. Therefore, please be informed that

- o all deposit accounts such as savings, current and other deposit accounts which are in operation will be deactivated on 17<sup>th</sup> July, 2017;
- o all advance accounts, if any, be settled not later than 30<sup>th</sup> September 2017;
- o Non-fund based facilities, if any, should be supported by 100% cash margin in the respective current account.

Yours sincerely,

(Matic) K Jha

Chief Executive (Act.)

Territory Office: Sandton City Twin Towers, East Wing, 3<sup>rd</sup> Floor, Sandton, Johannesburg, Republic Of South Africa  
Tel No. +27 11 784 0718 / 23. +27 11 784 0736 (D), Email: ce.aa@bankofbaroda.com

Johannesburg Branch: Sandton City Twin Towers, East Wing, 2<sup>nd</sup> Floor, Sandton, Johannesburg, Republic Of South Africa.  
Phone: +27 11 784 0718 / 23, Fax: +27 11 784 0739, Email: joburg@bankofbaroda.com, Website: www.bankofbaroda.com

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oahbay.co.za Mail - OPTIMUM MINE REHABILITATION TRUST



बैंक ऑफ बड़ौदा Bank of Baroda

BOB.SA:2017-18/86

Date: 06.07.2017

OPTIMUM MINE REHABILITATION TRUST  
GRAYSTON RIDGE OFFICE PARK  
144 KATHERINE STREET  
SANDTON, JOHANNESBURG

Dear Sir,

Re: OPTIMUM MINE REHABILITATION TRUST - 92020700000524

You are aware that the firm/group, for quite some time, has been in the news and has been attracting adverse publicity in media, which in the opinion of the bank, is a potential risk and may affect the interests of the bank to its detriment. We have several times conveyed our bank's concern telephonically but to no avail.

In the circumstances, bank has no other option except to sever all its ties with the firm. Therefore, please be informed that

- o all deposit accounts such as savings, current and other deposit accounts which are in operation will be deactivated on 17<sup>th</sup> July, 2017;
- o all advance accounts, if any, be settled not later than 30<sup>th</sup> September 2017;
- o Non-fund based facilities, if any, should be supported by 100% cash margin in the respective current account.

Yours sincerely,

(Manoj K. Jha)  
Chief Executive (Act.)

**Territory Office:** Sandton City Twin Towers, East Wing, 2nd Floor, Sandton, Johannesburg, Republic Of South Africa  
Tel No: +27 11 784 0715 / 03, +27 11 784 0735 (D), Email: [ca.sad@bankofbaroda.com](mailto:ca.sad@bankofbaroda.com)

**Johannesburg Branch:** Sandton City Twin Towers, East Wing, 2nd Floor, Sandton, Johannesburg, Republic Of South Africa  
Phone: +27 11 784 0715 / 03, Fax: +27 11 784 0759, Email: [johurg@bankofbaroda.com](mailto:johurg@bankofbaroda.com), Website: [www.bankofbaroda.com](http://www.bankofbaroda.com)



OPTIMUM & ROOYFONTEIN GROUP						
A	LOCALLY CONTROLLED BANKS	CONTACT NUMBER	Email	Notes	Notes	Notes
1	African Bank Limited (Reg no: 2014/174096/06)	0861000151	zab@customersupport@afribank.co.za	Next documents, email address doesn't work. Called - bank doesn't offer current accounts. Therefore unable to assist.		
2	African Bank Limited	0114074000	info@afribank.co.za	no email assist		
3	Eastern Bank Limited	0860067043	st@easternbank.co.za	Do not offer international banking		
4	FNB Bank Limited	0113821101 & 0873113111	ask me they can do it over the phone/web and don't have a email address for that		Need to complete application forms online.	
5	FirstRand Bank Limited	0114551880	no answer	Apply online and they will review the not offer international banking		
6	Investec Bank Limited	0124248000	zab@investec.co.za	not in able to provide any accounts		
7	NetBank Limited	0860555533	customers@netbank.co.za	is not in a position to provide our support, as it is not within NetBank's risk appetite		
8	Sasfin Bank Limited	0126487651 & 0873991155	info@sasfin.com	Not in a position to accept business from our company		
9	The Standard Bank of South Africa Limited	0860120000	info@standardbank.co.za	unable to consider establishing business relationships		
10	UBANK Limited	0115160000	info@ubank.co.za	Send request. Received a reply stating that they are from Ubank to assist. They are not in the office.	Phoned no answer	Phoned still no answer. Keep on being set off
FOREIGN CONTROLLED BANKS						
1	ABSA Bank Limited	0860070802	phone or on the web	Apply online and they will review	Need to Apply online	
2	Abn-Amro Bank Limited	0860021736	customerservice@abn.co.za	To much risk involved with our companies so they will not open accounts		
3	Bank Oversee Bank Limited	0118517441	info@bankoversee.co.za	Cannot assist		
4	HSB Bank Limited	031209440	info@hsb.co.za	Do not want to open accounts with our company		
5	Merrill Lynch Bank Limited	0113028300	info@merrilllynch.co.za & info@merrilllynch.co.za	Cannot assist		
6	The South African Bank of Athens Limited	0861102705	customerservice@sabathens.co.za	Do not want to open accounts with our company		
BRANCH OF FOREIGN BANKS						
1	Bank of Baroda	0117840735	email@bankofbaroda.com & info@bankofbaroda.com			
2	Bank of China Limited (Johannesburg Branch) (Trading as Bank of China Johannesburg Branch)	0413046000	bankofchina.co.za	Called - consultant sent all docs required. Need complete documents/Waiting for feedback.		
3	Bank of India	0118039993	info@bankofindia.co.za			
4	Bank of Taiwan South Africa Branch	0118604000	0114074000	Called - no answer. Will follow up and e-mail the request. Lines open at 9:00	Called gave a new email address	Phoned still no feedback. Keep on getting a new person to talk to
5	BNP Paribas SA	0110881101	no answer	Called - no answer. Will follow up and e-mail the request. Lines open at 9:00 still no answer	still no answer	still no answer
6	Canara Bank	08082115020	bankofcanara@canara.com	Called 011 784 5273. Still no answer.	still no answer	Still no answer from bank no
7	China Construction Bank Corporation - Johannesburg Branch	0118039993	info@ccb.co.za	cannot assist		
8	Cibank N.A.	0119480881 0800 02 34 84	phone tomorrow lines closed	Called - need to contact Benelux. E-mailed Benelux the request. Benelux were not in office	Phoned again still no answer from Benelux	Phoned again still no answer from Benelux. Got a new no for him still no answer 01194-0030
9	Deutsche Bank AG	0117757000	phone tomorrow lines closed	Called - not a retail bank. Therefore unable to assist.		
10	HSBC Bank plc - Johannesburg Branch	0114264200	phone tomorrow lines closed	Called - unable to assist in opening account (reason: "ONE is being deleted and bank can't assist with the nature of your business")		
11	Ind Bank Limited	0114767500		Do not offer international banking		
12	JPMorgan Chase Bank, N.A. (Johannesburg Branch)	0118070300	no answer	Called - consultant said I need to email Luis. E-mailed Luis. Luis is not in the office.	Phoned again still no answer from Luis	Phoned again still no answer from Luis. Keep on getting out off
13	Société Générale			Called - not a retail bank. Therefore unable to assist.		
14	Standard Chartered Bank - Johannesburg Branch	0113174600	info@southafrica@sc.com	Called - no answer. Will follow up and e-mail the request. Lines open at 9:00	give me a new email address	Phoned still no feedback. Keep on getting a new person to talk to
15	State Bank of India	0117704500	info@southafrica@sbic.com	Called - no answer. Will follow up and e-mail the request. Lines open at 9:00	still no answer	still no answer

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143 In terms of chapter 3 of the Prevention of Organised Crime Act 121 of 1998 (POCA) it is an offence for any person to deal with any property (including funds in a bank account) that he or she ought reasonably to have known is the proceeds of unlawful activities. This offence carries a fine of up to R100 million or imprisonment for up to 30 years.

144 In addition, the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA) prohibits any participation in corrupt activities and imposes a duty on the Bank to report any corrupt activities, over and above the requirements of FICA. Section 34(1) makes it an offence for any person that holds a position of authority (which includes executive manager of any bank) to fail to report a matter to the Hawks where he or she ought to have known or suspected that a person has engaged in corruption or other specified offences over the value of R100,000.00.

145 Faced with these substantial legal risks, the Bank has to carefully scrutinise its relationship with high risk clients and PEPs, particularly where there are widespread reports of involvement in corrupt or unlawful activities. Again, the clearest way to avoid these risks is to cut ties with these clients where the risks become too great.

#### Statutory duties in other jurisdictions

146 The Bank's operations South Africa could also give rise to additional legal risks in the more than 25 countries in which it operates. The Bank operates as one legal entity in most of the jurisdictions where it conducts business and typically

not via subsidiaries or the like. Accordingly, any transaction conducted by any branch of the Bank in any jurisdiction internationally, is a transaction conducted by the Bank and attributable to it in every jurisdiction. Accordingly it is subject to the regulatory and oversight system, in respect of all of its operations, in all 25 jurisdictions.

#### The controversy surrounding the Gupta family and the applicants

147 The Gupta family and the applicants were all classified as "high risk clients" and "PEPs" in terms of the risk-based assessment process that I have just described.

148 This risk assessment is based, in large part, on the series of increasingly damaging allegations levelled against the Gupta family and the applicants.

149 In this section I will provide a chronological summary of these various allegations, which have influenced the Bank's decision to terminate its relationship with the applicants. As I have previously indicated, the Bank takes no view on the truth or falsity of these allegations. Irrespective of their truth, the sheer volume and severity of these allegations have caused reputational, legal and business risks for the Bank.

#### Connections between the Gupta family and President Zuma

150 The starting point is that the Gupta family are widely reported as being friends of President Zuma and his family. They are also business associates of the President's son, Duduzane Zuma.

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151 The Public Protector's State of Capture Report, to which further reference will be made below, summarises this relationship between the Gupta and Zuma families:

"5.3 The Gupta family are known friends of the President Zuma. President Zuma has openly acknowledged his friendship with them, most notably during a discussion in the National Assembly on 19 June 2013 where he admitted that members of the Gupta family visit his friends. Mr Ajay Gupta (Mr A. Gupta), also admitted to being friends with President Zuma when I interviewed him on 4 October 2016.

5.4 President Zuma's son, Mr Duduzane Zuma (Mr D. Zuma) is a business partner of the Gupta family through an entity called Mabhengela Investments (Mabhengela). Mabhengela has a 28.5% interest in Tegela Exploration and Resources (Tegela). Mr D. Zuma is a Director of Mabhengela."

152 I pause to mention that Mabhengela Investments is the seventeenth applicant in these proceedings and Tegela Exploration and Resources is the sixteenth applicant. As the Public Protector's report notes, Mr Duduzane Zuma holds substantial shares in these companies.

153 In media reports and public debate, President Zuma and the Gupta family are now perceived to be so closely intertwined that they are popularly referred to using the appellation "Zupta". This public perception has been fuelled by a series of scandals.

"Guptagate" and the Waterkloof Airforce Base

154 In May 2013, the alleged connections between the Gupta family and President Zuma came under close scrutiny after it emerged that the family had been granted permission to land a commercial aircraft at the Waterkloof Airforce Base. The Gupta family had chartered this aircraft to bring guests to a family

wedding hosted at Sun City. The resulting scandal came to be widely known as "Guptagate".

155 An investigation conducted by an inter-ministerial committee found that the Gupta family's use of the Waterkloof Airforce Base was unlawful and had come about "as a result of the manipulation of the process by the Gupta family" and other individuals (para 4.3). I attach relevant excerpts of the inter-ministerial committee's report, reflecting those findings, marked Annexure 15

The firing of the Minister of Finance in December 2015

156 The public controversy surrounding the Gupta family and their associates escalated further in the wake of the President's decision to fire the Minister of Finance, Ntlanhla Nene in December 2015.

157 On 8 December 2015, the President announced that he was replacing Mr Nene with Mr Des Van Rooyen, an ANC MP who was a relative unknown at the time. It is a matter of public record that the President's decision had calamitous effects on the South African economy and investor confidence. Several days later, on 14 December 2015, the President removed Mr Van Rooyen and replaced him with the respected former Minister of Finance, Mr Pravin Gordhan.

158 In the wake of these decisions, there was widespread public speculation about the role of the Gupta family in the President's decision to fire Minister



159 As I will explain below, it was at this time that the Bank took the decision to classify the applicants as 'PEPs'. 640

160 On 15 March 2016, the Deputy Minister of Finance, Mr Mcebisi Jonas, released a public statement in which he alleged that the Gupta family and the President's son, Mr Duduzane Zuma, had approached him in 2015 with the offer of making him Minister of Finance. Deputy Minister Jonas further alleged that the Gupta family had offered him a bribe of \$6000 million if he accepted this offer. I attach a copy of Mr Jonas' statement as Annexure 16. In his statement, Mr Jonas stated the following:

*The narrative that has grown around the issue of 'state capture' should be of concern to all responsible and caring South Africans, particularly those of us who have accepted the task to lead our people. We cannot afford to ignore the obvious impact these sentiments may have on our country and the resultant potential of undermining our moral authority. Neither can we afford to allow the attempts to capture the state to divert us from dealing with the challenges that our country faces. History will judge us on the extent to which we have stayed true to the commitments we have made to our people through our public pronouncements and private conduct.*

*Therefore let me state the facts on the matter of whether I was approached by non-governmental 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 Alistair Hore. 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.' (Emphasis added)*

161 That same day, Ms Vyfje Mentor, an ANC MP, alleged that the Gupta family offered her the job of Minister of Public Enterprises in 2010 on condition that she would stop SAA Rights to India and give the Gupta family the contract for

this route. I attach a copy of a news report on her revelations, marked Annexure 17. 641

162 These revelations led the Public Protector to initiate an investigation into complaints of "state capture" by the Gupta family. These investigations culminated in the State of Capture report, to which I will return in a moment.

The 'big four' banks terminate their relationship with the Oakbay Group

163 Soon after the firing of Minister Nene, four of the largest banks in South Africa - Standard Bank, First National Bank, Absa Bank, and Nedbank - took the decision to close the bank accounts of several companies in the Oakbay group (including accounts held by the second, third, fourth, seventh, ninth, tenth, twelfth, thirteenth and sixteenth applicants).

164 In April 2016, the CEO of Oakbay Resources publicly announced the closure of various Oakbay group bank accounts. Oakbay Resources also announced that KPMG, its auditor, and Sasfin, its sponsor with the Johannesburg Stock Exchange, had similarly terminated its relationships with the applicants. I attach a news report on this announcement, marked Annexure 18.

The Public Protector's State of Capture Report

165 In October 2016, the Public Protector finalised her State of Capture report, following months of investigations. On 2 November 2016, this Court ordered that the report should be published, after the President brought an application in an attempt to block its release.

165 To avoid further burdening these papers, I will not attach the Public Protector's 642  
report, which is publicly available online. I will briefly summarise the key

findings, with references to the relevant sections of the report.

166 The Public Protector's report addresses alleged unlawful conduct by the  
President, his son, the Gupta family, and several of the applicants in these  
proceedings. The scope of the Public Protector's investigations is summarised  
in the Executive Summary. These investigations covered, *inter alia*:

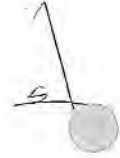
166.1 Whether the President acted improperly and unlawfully by allowing  
members of the Gupta family and his son, Duduzane Zuma, to be  
involved in the removal and appointment of the Minister of Finance in  
December 2015, the removal and appointment of other members of the  
Cabinet and the appointment of members of the Boards of Directors of  
state-owned enterprises (SOEs).

166.2 Whether the President turned a blind eye to corrupt practices by the  
Gupta family and his son, Duduzane Zuma.

166.3 Whether the President improperly interfered in the relationships between  
the banks and Gupta-owned companies.

166.4 Whether the President exposed himself to conflicts of interest through his  
connections with the Gupta family.

166.5 Whether state contracts had been unlawfully awarded to companies  
linked to the Gupta family and whether state owned enterprises acted  
unlawfully in their dealings with the Gupta family.

167 Due to time constraints, the Public Protector proposed that her investigations 643  
would be divided into two phases. The first phase, which is reflected in the

*State of Capture* report, considered the President's conduct and only  
investigated some of the state contracts with Gupta-affiliated companies,  
focusing particularly on the acquisition of the Optimum Mine. The Public  
Protector envisaged that her office would conduct further investigations into  
allegations of unlawful conduct by the Gupta family and several of the  
applicants at some later stage (Report, p 12).

168 In respect of the allegations of the Gupta family's involvement in the firing and  
appointment of the Minister of Finance, the Public Protector's findings included  
that:

168.1 There was evidence that the Gupta family had been aware of the  
President's decision to fire Minister Nene before this decision was  
announced and that there was cellphone evidence placing Mr Des Van  
Rooyen at the Gupta family's Saxonwold compound on at least seven  
occasions, including on the day before he was appointed as Finance  
Minister (Report pp 14 - 15, pp 343 - 344).

168.2 Deputy-Minister Jonas' claims that the Gupta family had offered him the  
position of Finance Minister deserved further investigation (Report pp 14  
- 15, para 7.1.4, p 344)

168.3 Similarly, Ms Mentor's claims about being offered the position of Minister  
of Public Enterprises also required further investigation (Report p 16,  
para 7.2, pp 344 - 345)

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168.4 The President had potentially turned a blind eye "to alleged corrupt practices by the Gupta family and his son in relation to allegedly linking appointments to *quid pro quo* conditions." (Report p 17, para 7.4 and p 345)

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168.5 The Cabinet's decision to intervene in the dispute between the banks and the Guptas raised potential conflicts of interest that required investigation (p 18, para 7.5, 345)

169 In respect of alleged unlawful state contracts, the Public Protector focused her attention on the purchase of Optimum Coal Mine (Pty) Ltd (the eleventh applicant) and related companies by the sixteenth applicant, Tegeta Exploration and Resources (Pty) Ltd ("Tegeta"). She gave particular attention to allegations that Eskom and the Minister of Mineral Resources had improperly assisted Tegeta in acquiring Optimum from the Swiss-based resources company, Glencore.

170 The Public Protector's findings in respect of Tegeta's Optimum Mine deal included, *inter alia*, that:

170.1 It appeared there were irregularities in the appointment of the Eskom Board (p 19; para 7.7, p 347) and that several members of the Eskom Board had conflicts of interest due to links with the Gupta family and the Oakbay group, including a number of the applicants (Report, pp 255 - 300, 347).

170.2 It appeared that Eskom had forced Glencore's hand in selling the Optimum Coal Mine to Tegeta by refusing to sign new agreements with Glencore for the supply of coal to one of its power stations (pp 23 - 24; 7.11, p 351 - 352).

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170.3 There were credible allegations that the Minister of Mineral Resources, Mr Moshebeni Zwane, had acted improperly in allegedly brokering the deal with Glencore.

170.4 That Eskom potentially acted unlawfully in making pre-payments to Tegeta which allowed Tegeta to purchase the Optimum Coal Mine and related companies (19 - 23; para 7.9, pp 345-351). The Public Protector noted that these payments were channelled through accounts held with the Bank of Baroda (Report, p 271).

170.5 That several of the applicants were involved in channeling funds to Tegeta's Bank of Baroda account for the purchase of the Optimum Mine, including Anesa Distribution (the first applicant), Confident Concepts (the second applicant), Islandite Investments (the seventh applicant), Oakbay Investments (the ninth applicant), Shiva Uranium (the twelfth applicant), and Wisobam Investments (the fourteenth applicant). The Public Protector specifically labelled these various transactions as "suspicious" (Report pp 273, para 5.325; pp 275 - 276, para 5.333).

171 The Public Protector also made adverse findings in respect of the Optimum and Koomfontein Rehabilitation Trusts (the sixteenth and seventeenth applicants). The Public Protector found that these rehabilitation funds appear to have been

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misused by the applicants as funds were not ring-fenced and the interest on these funds was not reinvested (Raport pp 22 - 23, para 7.3(c) and p 350).

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172 On the basis of these findings, the Public Protector directed the President to appoint a commission of inquiry headed by a judge selected by the Chief Justice to investigate the matters in greater detail (Raport, pp 353 - 354).

173 I am advised that the President has subsequently taken the Public Protector's remedial action on review, although he has subsequently indicated a willingness to appoint a judicial commission of inquiry.

Reaction to the Public Protector's report in November

174 The Public Protector's report generated further public outcry against the President and the Gupta family. This resulted in the tabling and debating of a motion of no confidence against the President in the National Assembly on 19 November 2016, which largely focused on the President's relationship with the Gupta family.

175 The Bank suffered further negative publicity during this time. I refer in this regard to examples of news reports published during November 2016, attached as Annexure 13. The Fin24 article titled 'Bank of Baroda's conduct appears highly suspicious', is indicative of the type of negative coverage that the Bank received in the wake of the Public Protector's report. It goes without saying that the Bank denies any suggestion that it was party to any unlawful conduct. Nevertheless, these reports are indicative of the reputational harm that the

Bank has suffered by being associated in the public mind with the Gupta family and the applicants.

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176 As I will explain further below, in response to the State of Capture Report and the mounting reputational damage to the Bank, the Bank accelerated its process of calling up various loans extended to the applicants.

The Minister's litigation against the Oakbay Group

177 While these events were unfolding, the then Minister of Finance, Mr Pravin Gordhan, launched an application in this Court for a declaratory order to the effect that "he is not by law empowered or obliged to intervene in the relationship between [the banks] and [Oakbay companies] as regards the closing of [these] bank accounts".

178 This application followed numerous attempts by representatives of the Oakbay group to request the Minister to intervene on their behalf in their dispute with the big four banks over the closure of their accounts.

179 The litigation that unfolded between October 2016 and March 2017 is a matter of public record and I am advised that judgment is pending. Extensive affidavits were filed by the Minister, the Oakbay group of companies, and the four South African banks. These affidavits are presumably in the applicants' possession and I do not propose to attach them here.

180 Three specific matters emerged during this litigation that are of relevance to this application.

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181 First, as I have mentioned above, it is notable that Oakbay group made no

attempt to challenge the bank's termination of their accounts in court, but instead sought to recruit help from members of government.

182 The reasons for Oakbay group's decision not to mount a legal challenge emerged in the Minister's founding affidavit. The Minister attached a letter that he had received from the CEO of Oakbay Investments, in which the CEO conceded that the group had no prospects of success in challenging the bank's decision. The CEO stated the following:

*I thought it prudent to place on record that following detailed discussions with several legal advisors, all six of the strong view that given the contractual rights the banks have, any legal approach may indeed be self-born. The banks have said as much to us in their correspondence to ourselves.*

*[A]s the case law suggests, [any legal proceedings against the banks] will fail in a court of law.*

A copy of that letter is attached as Annexure 20.

183 It is notable that the applicants have elected to proceed with this application, despite this previous concession that any legal challenge to the closure of their bank accounts would be "self-born" and "will fail in a court of law".

184 Second, the Minister's founding affidavit also disclosed a list prepared by the Financial Intelligence Centre reflecting 72 "suspicious transactions", to the value R5.5 billion, concluded by the Gupta family and members of the Oakbay group. The listed transactions had been reported to the Financial Intelligence

Centre in terms of section 23 of FICA.

184.1 I am advised that this list of suspicious transactions was ultimately struck out of the Minister's papers as being irrelevant to the narrow legal question before the Court in those proceedings.

184.2 Nevertheless, the fact of the list's existence and the intense media scrutiny of this list are now matters of some notoriety. The list and the subsequent public reaction to its disclosure are certainly relevant to this application.

184.3 I therefore attach this list of 72 suspicious transactions, marked Annexure 21, which reflects a host of transactions involving the applicants in these proceedings.

184.4 Media reports at the time suggested that the list provided evidence of potential unlawful activities by the Oakbay group. I attach examples of these media reports, attached as Annexure 22. This list of 72 transactions also resulted in an opposition party requesting the Hawks to investigate several of the applicants for alleged criminal activity relating to these transactions.

184.5 Faced with the public disclosure of this list of suspicious transactions and the public allegations levelled against the applicants, the Bank had serious concerns about the potential damage to its reputation.

184.6 This list also undermined the legal risks of dealing with clients that have generated such an unusual quantity of reportable transactions under FICA.

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185 A third notable feature of this litigation is that each of the four banks filed extensive affidavits in which they explained their reasons for closing the various Oakbay group accounts.

186 These four banks' affidavits highlighted the serious reputational, legal and commercial risks of maintaining a banker-client relationship with the Oakbay Group of companies, which resulted in the banks' decision to close their accounts. For example:

186.1 Standard Bank's affidavit set out a detailed list of the allegations of corruption, money-laundering and unlawful conduct that had been levelled against the Gupta family and the Oakbay group in the media and in other public forums (paras 97 – 98). These were all described as 'red flags' that alerted the bank to the legal and reputational risks posed by the Oakbay group. As the affidavit explains, the bank decided to terminate its relationship with Oakbay group after conducting an assessment of these risks (para 96). I attach relevant excerpts of this affidavit, marked Annexure 21.

186.2 Absa Bank's affidavit also indicates that it had listed the Oakbay group of companies as PEPs, in accordance with the requirements of FICA and international best practice. The affidavit explains that the bank took the decision to terminate the relationship with the applicants after performing a full assessment of the risks of maintaining a relationship with the Oakbay group. The bank's reasons for this decision are set out at para 29 to 30 of the affidavit.




There was ... evidence of large unexplained transfers of funds between the Oakbay companies and related parties, and to other banks. As already indicated, Absa could not account for these transfers in accordance with its above-mentioned obligations.

29.3 Moreover, the revenue received by Absa from the portfolio of the Oakbay companies' accounts had declined materially over the previous three years. The costs to Absa of fulfilling its monitoring obligations in respect of these accounts would accordingly be significant relative to the revenue that Absa would derive from the accounts concerned.

29.4 There was also adverse media publicity regarding the Oakbay companies and related persons that had occurred prior to the review. This increased the reputational and conduct risk for Absa arising from a continued relationship with these companies and persons.

30. In the circumstances, and after having assessed the risks and rewards involved, it was determined by the PEP review committee that continuing to provide banking services to the Oakbay companies and related parties exceeded Absa's current and forward-looking risk appetite." (Emphasis added)

I attach the relevant excerpts of Absa's affidavit, marked Annexure 24.

187 These frank assessments of the risks of doing business with the Oakbay group of companies again gave the Bank of Baroda further reason to review its ongoing relationship with the Oakbay group, as I will explain below.

The firing of Minister Gordhan

188 On 29 March 2017, this Court reserved judgment in Minister Gordhan's application against the Oakbay group.

189 The following day, on 30 March 2017, President Zuma fired Minister Gordhan in a major reshuffle of the Cabinet.





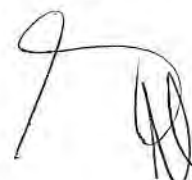
190 The President's decision sparked a wave of protests across the country calling for the President's resignation, which included a protest outside the Gupta family's Saxonwold compound. I attach an illustrative example of news reports at the time, reflecting this further criticism of the Gupta family, marked **Annexure 25.**

The "GuptaLeaks"

191 The allegations against the Gupta family and the applicants have increased in intensity since the release of the "GuptaLeaks" at the end of May 2017. This is a cache of emails allegedly sent between members of the Gupta family, representatives of the Oakbay group, and their associates which have been leaked to investigative journalists.

192 The existence of these emails was first announced in the *Sunday Times* on 28 May 2017, in a report titled "*Here they are: the emails that prove the Guptas run South Africa*". Several days later, on 1 June 2017, the investigative journalism NGO, *amaBhungane*, announced that there were between 100,000 and 200,000 emails in its possession. I attach a copies of these articles, marked **Annexure 26.**

193 The full cache of emails has not yet been made public. Instead, the alleged contents of these emails have been revealed through a series of media reports. These reports have produced almost daily allegations of corruption, money-laundering and other unlawful activities involving the applicants, the Gupta family and their associates.




194 I do not propose to address the full range of allegations stemming from the GuptaLeaks. Nevertheless, a few examples give an indication of the scope and magnitude of these allegations, which have directly implicated many of the applicants:

194.1 In the initial *Sunday Times* reports on 28 May 2017, previously attached as Annexure 26, it was alleged that the emails provided direct evidence of corrupt activities including, *inter alia*, that the Gupta family and its associates had hand-picked Minister Zwane; that they paid for Minister Van Rooyen's trip to Dubai; that they received confidential information on Cabinet meetings from then Minister of Communications, Ms Faith Muthambi; and that the family attempted to acquire President Zuma and his family residency in Dubai.

194.2 On 29 June 2017, an *amaBhungane* report claimed that leaked emails indicated that a R114 million payment from the Free State Provincial government was laundered through various companies connected to the Gupta family and their associates, with a portion of this money used to pay for the Gupta family wedding in 2013. The article further alleged that a portion these funds were transferred to Oakbay Investments, the ninth applicant, after allegedly being laundered through various South African and Dubai-based companies. I attach a copy of this report, marked **Annexure 27.**

194.3 On 11 July 2017, *amaBhungane* alleged that leaked emails showed that the German software company, SAP, allegedly paid CAD House (another company with close links to the Gupta family) a sum of R100



million to secure contracts with Transnet. The report further alleged that leaked financial records showed that portions of this R100 million payment were then transferred to Sahara Computers, the third applicant. The article stated:

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"The first SAP payment we know about landed in CAD House's bank account in April 2015. The R17-million did not stay there long: on the same day R2-million was transferred out to Sahara Computers and R2.3-million to an obscure Eastern Cape company whose owner we have been unable to trace.

Within five days another R10-million was transferred out: R8-million to Sahara Computers and a million to Baroda, the Gupta's bank of choice."

I attach a copy of this article, marked Annexure 28.

194.4 On 8 August 2017, amaShungane published a further report alleging that Islandale Investments (the seventh applicant) had paid R11,15 million to assist the President's wife, Ms Mbongzi Zuma, in purchasing her Pretoria home. The report further alleged that Oakbay Investments (the ninth applicant) and Mibongela Investments (the 17<sup>th</sup> applicant) had contributed to Ms Mbongzi-Zuma's bond payments, alleging using funds that were "laundered" from payments received from Transnet. I attach a copy of this article, marked Annexure 29.

195 This is but a small sample of the various media reports on the applicants and the Gupta family that have emerged from the GuptaLeaks.

The possibility of further investigations

196 The GuptaLeaks have dominated public debate since they were first released at the end of May 2017. These leaked emails and further allegations of state

capture featured prominently in the latest motion of no confidence in the President, which was debated on 8 August 2017.

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197 These emails have also led to further calls for a judicial commission of inquiry into 'state capture'. On 22 June 2017, the President announced in the National Assembly that he would initiate a commission of inquiry, although no further details have been provided. This followed calls by the ANC for the establishment of such an inquiry. I attach a news report on the President's announcement, marked Annexure 30.

198 An opposition party is also seeking the appointment of an ad hoc committee of the National Assembly to investigate these allegations of state capture. Reports suggest that this motion will be scheduled for debate and a vote later this year. I attach a report in this regard, marked Annexure 31.

199 If these further investigations go ahead, this will likely result in even more damaging allegations against and media scrutiny of the applicants.

The media context and allegations levelled against the applicants

200 In the founding affidavit, the applicants have suggested that the various public allegations and media reports on the Gupta family and the members of the Oakbay group have only singled out some of the applicants.

201 This is incorrect. I attach a table, marked Annexure 32, which provides references to a sample of the adverse publicity that each of the applicants have received in the media and in the other public forums, including the Public

Protector's *State of Capture* report. This document is not intended to be exhaustive, but it demonstrates that each of the applicants has been the subject of serious and extensive allegations of wrongdoing.

202 It is also important to stress again that, in the public mind, the Gupta family and the Oakbay group of companies are treated as being synonymous. Allegations levelled against the Gupta family and their close associates have a direct impact on the reputation of all the companies in the Oakbay group or otherwise affiliated to this group.

203 In addition, all of the applicants have been classified as "high risk" by virtue of the fact that they are owned and controlled, directly or indirectly, by members of the Gupta family and their close associates. The serious allegations levelled against the Gupta family and their associates have therefore had a direct impact on the risk-profile of all of the applicants.

*Circumstances leading to the Bank's decision to terminate the relationship with the applicants*

Risk assessments and monitoring

204 As the various scandals were unfolding, the Bank was engaged in a process of reviewing the risk profiles of the applicants and the Gupta family.

205 In the last quarter of 2015, the Bank performed an evaluation of the Gupta family, the applicants, and other associated companies. It concluded that, given the alleged close affiliation between the Gupta family and President

Zuma, all the account holders posed a "high risk" of involvement in money laundering and were "politically exposed persons" ("PEPs").

206 On 13 December 2015, Mr Gurbax Singh prepared a written recommendation to the then local chief executive officer of the Bank, Mr Sanjiv Gupta, recommending that the applicants, members of the Gupta family, and other associated companies be designated as PEPs. A copy of the recommendation is attached as Annexure 33.

207 The then CEO agreed with the recommendation and approved the classification of all of those account holders as posing "High" risk. I point specifically to the handwritten note by the CEO at the foot of the second page of that document which reads as follows:

*"... The accounts may be continue as reported above that all the accounts from serial number 1 – 35 are normal business accounts but due to media reports all the above accounts may be classified as PEP accounts but enhance due diligence may be obtained in all above accounts by 31 Dec 2015. Transactions may be monitored in the accounts"*

208 The reference to "monitoring" indicated that every transaction (other than ordinary, run of the mill deposits or payments) on every account had to be monitored and investigated to assess whether there was anything unusual and/or suspicious in respect of each transaction.

209 As to the meaning of "enhanced due diligence":

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208.1 This means that all information, across all of the accounts, must be compared on a regular basis to establish whether any information appears to be "unusual" or "out of step".

208.2 In its simplest form, if one account of a company in the Oakbay group or affiliated to the Oakbay group was to receive a deposit for a particular reason as stipulated by the client, but other deposits to the credit of other account holders, appear to be justified by exactly the same reason as the first deposit, enhanced due diligence has to be performed to ensure that no reason for one payment is duplicated for another. Again, exactly the same process applies, but in reverse, in aspects of deposits to group accounts.

210 In order to demonstrate the burden placed on the Bank in relation to transaction monitoring, it must be recognised that there are three stages involved when a transaction is processed:

210.1 At stage 1, the processing of local payment transactions involves the following:

210.1.1 the bank receives a request from a client via email and this is printed by the operations manager. The signatures contained on the request are then verified against the authorized signatories list that the bank has on record. The purpose of the transaction is then ascertained and the relevant supporting documents are scrutinised in order to verify --

(a) whether the invoice has in fact been raised in favour of the client;

(b) whether the amount on the request document correlates to the amount on the invoice; and

(c) that the services or goods that have been supplied are in line with the business activities of the client.

(d) if the operations manager at the bank is satisfied that the transaction is genuine, he will manually enter the transaction into the Bank's Core Banking Application, called Finacle. Thereafter, the transaction will be loaded onto the Netbank business platform. The request is then passed on to the branch head for further verification (additional verification takes place on the Finacle Application as well as the Netbank business platform).

210.2 At stage 2, the monitoring of the transaction involves the following:

210.2.1 Manual monitoring: If at any stage, either the operations manager or the branch head, become suspicious regarding a transaction, the transaction will be reported to the compliance officer, along with the reasons for such suspicion.

210.2.2 Automated monitoring:

(e) All transactions are screened at the back-end based on various parameters, which in turn, generate alerts on the

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Bank's transaction screening system, Financial Crime Reporting Manager (FCRM).

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- (b) Transactions which trigger alerts, are investigated by the Assistant Money-laundering Reporting Officer in the compliance department ("Reporting Officer").
- (c) The Reporting Officer will thereafter scrutinise the relevant transaction, together with the supporting documents, in order to establish whether any money-laundering is suspected. The Reporting Officer may also request additional information and/or documentation in relation to the transaction, from the operations department.

(d) If the reporting officer is satisfied that the transaction is not suspicious, he or she is required to state and capture reasons for not reporting the transaction into the FCRM system.

210.3 At stage 3, there is the reporting of suspicious and unusual transactions:

210.3.1 In the event that a transaction remains suspicious notwithstanding the various levels of scrutiny, the transaction will be reported to the Financial Intelligence Centre through an online platform that requires the insertion of particular information that relates to the client and the transaction.

210.3.2 The Reporting Officer and the Money-laundering Reporting Officer verify the information that pertains to the suspicious transaction and the report is thereafter submitted.

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211 This process can be illustrated with a specific example of a suspicious transaction involving one of the applicants, Optimum, which involved the transaction involves an inward remittance from an offshore account. As the CEO of the Bank's operations in South Africa, I have personal knowledge of what transpired.

211.1 The operations manager logged into the SWIFT platform and extruded a report to check whether any inward remittances had been received (i.e. credits).

211.2 USD 11 729 555.00 had been received by Optimum from Glensone Interacional ("The Transaction").

211.3 Optimum submitted a BOFCUS form, together with supporting documents (being the invoice and the contract on which the transaction was based) in respect of the transaction.

211.4 The operations manager thereafter scrutinized the BOFCUS form and the related supporting documentation.

211.5 When the operations manager was satisfied that the Transaction was in the ordinary course of Optimum's business, he credited the equivalent Rand amount into Optimum's account.

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211.6 The BOPCUS form and supporting documentation was thereafter passed on to the branch head, who conducted a further level of verification of the Transaction, using the supporting documentation. The Transaction was not found to be suspicious at this stage.

211.7 However, in the days that followed, Optimum's account underwent further scrutiny and as a result of the quantum involved in the transaction, and Optimum's risk classification (being "High") as a politically exposed person, the transaction was deemed to be suspicious.

211.8 The branch head thereafter sent an email to the compliance department, setting out his reasons for the perceived suspicion relating to the Transaction.

211.9 The Reporting Officer thereafter considered the Transaction and obtained the supporting documentation from the branch.

211.10 Pursuant to this further verification process, the Reporting Officer was of the view that the transaction was suspicious and inserted the relevant Transaction information into the Financial Intelligence Centre online platform.

211.11 This information was verified by the Money-Laundering Reporting Officer and the report was submitted.

211.12 This process required that in respect of every payment made by the account-holder, the Bank has to contact the account holder and demand an explanation for why such payment was being made. Every underlying document, agreement with third parties and/or invoice evidencing the

legitimate nature of such payment has to be produced by the customer and reviewed by the Bank to satisfy itself that the payment is in fact properly based on such documentation.

211.13 Investigations are also required from such public records as may be available to determine whether the third party recipient of such payment appears to be a proper operating entity actually conducting business.

211.14 In respect of every payment to the credit of the account, exactly the same process is required but obviously in reverse.

212 As is evident from this description, the classification of the applicants as PEPs hugely increased the volume of oversight work required of the Bank. I again emphasise that the Bank only has 15 employees in South Africa.

213 From the period of 25 December 2015 to 30 May 2016, the bank was approached by several of the applicants and associated companies seeking to open new accounts. I attach, as Annexure 34, copies of these further risk assessment recommendations. As is evident from these annexures.

213.1 In each case, Mr Singh informed the then CEO that the persons approaching the bank were "PEPs" and thus "pose a high money laundering risk to the bank".

213.2 The then CEO approved the opening of these new accounts, but subject to stringent client identification, verification and monitoring requirements. In the handwritten notes to each recommendation, the CEO stated that the "accounts may be opened but enhanced due diligence documents

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and KYC / AML [Know Your Client / Anti-Money Laundering] 664 documents may be obtained before opening the above accounts." He also added that "transactions may be monitored in the account". The 'may' in this case was in fact a 'must'.

213.3 On 30 May 2016, the Bank opened the last two accounts for the Optimum Cool Mine (Pty) Ltd and the Optimum Rehabilitation Trust. This was well before the Public Protector's report exposed the questionable dealings of these applications.

213.4 Since the end of May 2016, and to the best of my knowledge, the Bank has refused to open any further accounts for the applicants.

The Bank's decision to limit its relationship with the Gupta family and the applicants

214 In or about June 2016, the Bank first informed representatives of the applicants that the Bank was not prepared to open any further account for any person or entity connected with the Oakbay group or the Gupta family. This decision was the ultimate result of the FICA based risk assessment that had then performed and the continuous monitoring of the applicants' thereafter. That assessment, in turn, had been conducted because of the constant adverse publicity which the applicants, and particularly also the Gupta family, had then been attracting. As a first step in managing what the Bank then perceived as the escalating risk, the decision (taken by the Regional Office) was not to open any further accounts, thereby limiting the Bank's risk exposure to those accounts which were then already in operation.

215 Mr Rajesh Gupta was not prepared to accept this decision and shortly arranged a meeting with the Bank's senior executives at the Corporate Office in Mumbai. This 'Corporate Office' is the office in the respondent's internal structures that ultimately takes responsibility for the South African (and other territorial) operations.

216 I was not present at this meeting in Mumbai. However, in late August 2016, the General Manager of International Operations visited South Africa and informed the staff of the Bank that a meeting with Mr Rajesh Gupta had indeed occurred. The General Manager gave two instructions to the Regional Office during this visit to South Africa:

216.1 First, the decision of the Bank's South African office not to open any new accounts for the applicants, members of the Gupta family or any company associated with the family, was confirmed;

216.2 Secondly, the Bank's South African office was instructed to implement a process of winding down the relationship and reduce its exposure with a view to ultimately closing all accounts. In banking parlance the description is to 'exit' the relationship and that is the term the Bank, and I, consistently use thereafter; and

216.3 These facts are confirmed in an email exchange between the then CEO of the Bank, Mr Sanjiv Gupta, and Corporate Office on 9 and 10 September 2016. I attach copies of these emails marked Annexure 35.

217 On 15 September 2016, the Assistant General Manager of International Operations, Mr Achevini Sharma, sent a letter to then CEO of the Bank's South Africa office confirming the instruction from the Corporate Office in India to exit from the banking relationship with the applicants. I attach a copy of this letter marked Annexure 26.

217.1 In this letter, Mr Sharma confirmed that the Bank's Credit Approval Committee of Board (CACB) advised the South African office to reduce its exposure to the applicants by 25% by 30 September 2016.

217.2 Mr Sharma further confirmed that this was pursuant to the decision to "exit from [Rauf] group."

218 At that time, the respondent's total exposure to the applicants in terms of all loan and overdraft facilities was approximately R1.5 billion.

219 Accordingly, Mr Shaikh Rauf, the senior manager of the Johannesburg branch, on several occasions had discussions with the applicants' representatives, Mr Nath and Ms Ragavan, and requested that group reduce their total exposure to the Bank by 25% by no later than 30 September 2016, as a precursor to the overall termination of the relationship with the group.

220 Mr Rauf wrote to Sahara Computers on 26 September 2016, demanding that the group reduce its total exposure by depositing at least 25% of the outstanding loans by 30 September 2017. A copy of this letter is attached to the applicants' founding affidavit as Annexure FA 14.

220.1 It will be seen that the written notice is dated a mere four days before the due date for the partial debt repayment.

220.2 This short period was not an issue, precisely because that message had previously been conveyed orally as set out above.

221 I pause here to point out that the reference in that (and other) letters to the "review" of the facility and the "extension" or the like of facilities, does not indicate any intention by the Bank to continue any relationship with a client.

221.1 Where the Bank intends termination of the banker-client relationship it will typically advise the client that its facilities (which would typically have been extended for 12 months), have been reviewed and extended for a lesser period, say of 3 months.

221.2 Accordingly, the customer will be required to settle all debt balances and then to make other banking arrangements within 3 months. This is clear notice to the client that its future relationship with the Bank is under review.

221.3 Similarly, should the Bank have provided a 3 month period but the customer were to have requested (and the Bank to have agreed) a 6 month settlement and termination period, then the Bank will formally advise the customer that its facility had been reviewed and had been extended for 6 months.

222 In summary on this point, in terms of the Bank's internal processes and jargon, a "review" and "extension" of facilities indicate nothing more than the Bank's

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requirements at that moment. Certainly, it does not amount to any indication of a "happy embrace" of the customer or any desire for a long-term relationship.

223 Pursuant to the Bank's instruction to the applicants that it would not be opening new accounts, coupled with its demands to repay the various outstanding loans, the permanent reduction of the Bank's exposure proceeded (albeit not always satisfactorily) until October 2016.

224 As I have outlined above, the Public Protector's State of Capture Report was formally released on 2 November 2016.

225 The Bank was alarmed by the findings in the Public Protector's report. Our concerns were two-fold:

225.1 First, the Bank feared that we would be unable to recover the remaining amounts still due to us by the applicants, then still standing at approximately R1 billion. We also uncertain whether the various securities we held for the exposure might be legally at risk.

225.2 Secondly, the reputational risk of continuing a banking relationship with the applicants escalated substantially, as the public perception created by the report was that the Bank may have been complicit in the alleged unlawful conduct of the Gupta family and the applicants.

226 Accordingly, during the last quarter of 2016, we increased our focus on recovering the outstanding amounts as far as and as soon as possible, before finally ending the relationship. The Bank proceeded to recover and then

laminated four accounts held by the applicants during this time. The details of these closures are as follows:

226.1 A loan facility of R150 million granted to Kooonforrein Mines (Pty) Ltd was closed on 7 November 2016, after notice was given to this applicant on 23 August 2016. I attach copies of this correspondence, marked Annexure 37.

226.2 In respect of Tegata Exploration & Resources (Pty) Ltd, the Bank closed the following accounts:

226.2.1 On 17 January 2017, the Bank terminated a loan facility with a limit of R14.5 million;

226.2.2 On 23 February 2017, the Bank closed a loan facility with a credit limit of R152 million; and

226.2.3 On 3 May 2017, the Bank closed a further loan facility with a limit of R942.23 million.

226.2.4 The Bank first notified Tegata of these intended closures on 8 August 2016.

226.2.5 On 5 September 2016, a representative of Tegata wrote back to the Bank specifically stating that "we understand your keenness for an early settlement for this facility". I attach copies of the original notices and this response, marked Annexure 38.

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The South African Reserve Bank's investigations and sanctions

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227 During this same period, between 19 September to 7 October 2016, the South African Reserve Bank ("SARB") conducted a detailed on-site inspection of the Bank in order to assess its level of compliance with FICA.

228 On 15 December 2016, the SARB sent a letter to the Bank confirming the purpose and results of its earlier inspection together with the annexure thereto which sets out the detailed findings. I attach as Annexure 35 a copy of this letter and the accompanying attachment. The attachment to that letter is duly redacted in order to ensure that only matters relevant to the issues in dispute here (i.e. findings 5, 7 and 8) are now dealt with.

229 In finding number 8, the SARB reviewed the Bank's various reports to the Financial Intelligence Centre on "suspicious and unusual transactions" ("USTs") under section 28 of FICA. The basis of finding 8 is that the respondent correctly identified and reported all USTs to the Centre, and no such transaction escaped its supervision. However, the Bank's internal procedures did not cope with the duty to record, contemporaneously, the exact progress of its investigations in respect of each UST. I point out that the "suspicious and unusual" transactions forming the basis of that finding 8, relate only to transactions executed by the applicants.

230 As I have explained above, FICA, the ML&FT Regulations and the Guidance Notes, place a duty on the Bank to record, in respect of every UST being investigated (and to maintain such record separately), the details of every

discussion, every telephone call, every statement by every customer and every third party, and the provisions of every underlying document, record and invoice reviewed by the Bank. Most importantly, every decision not to report any UST, and the reasons therefor, with reference to the evidence, has to be documented.

231 At the time, the Bank was simply not equipped to cope with this obligation, when faced with a deluge of USTs involving the applicants. I repeat that the Bank has never before had to deal with the position where virtually every single transaction by every single individual and company has to be reviewed.

232 On average, the applicants execute in the order of 150 to 200 banking transactions per week, each and every one of which must be subjected to the oversight investigation prescribed under FICA. As I have explained, on average, each one of those investigations (without the contemporaneous recording) takes ten to twenty minutes to be investigated, assessed and a decision taken as to whether a formal UST report to the Financial Intelligence Centre should be made or not.

233 This requires an average commitment of eight hours per day from a senior executive. Now that the Bank is putting in place more stringent contemporaneous recording duties, the time required to monitor these transactions has more than doubled. I stress, again, that the Bank is not, and never had been, set up to commit such resources.

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234 My fear is that the Bank may at any time, fall short of the extensive investigative and recording duties imposed on it by FICA. If it does, the consequences would likely be catastrophic, as the Bank may face any number of the legal sanctions that I set out in detail above.

235 After receiving the SARS's letter in December 2016, the Bank has attempted to engage with the SARS and has sought to enhance its internal rules (as dealt with in Sec 42(1) of FICA) in order to address the subject matter of the findings, and particularly to improve its contemporaneous record keeping capacity.

236 Nevertheless, on 12 April 2017, the SARS formally notified the Bank (as required in terms of section 45C(3) of FICA, of its intention to impose administrative sanctions. A copy of that notice is attached as Annexure 43.

237 On 19 June 2017, SARS implemented an Administrative Sanction against the Bank, it issued a Directive in terms of section 45C(3)(c) of FICA, and, in addition levied, a financial penalty on the Bank of R11 million. I attach as Annexure 41 a copy of the formal SARS sanction.

238 I point out that a Directive is the most severe sanction that may be imposed, before the imposition of a restitution or suspension of the Bank's business in terms of Sec 45C(3)(d) of FICA.

239 As a result of this Directive, the Bank has to be extremely cautious. If it were to fail to comply with the Directive or if it were to commit further breaches of FICA, it could face the risk of a complete restriction or suspension.




240 To be clear, the applicants pose the single greatest risk to the Bank of breaching FICA and the other legal requirements set out above. Between the period of 16 September 2016 to 14 July 2017, the Bank has made no less than 45 suspicious transaction reports to the Financial Intelligence Centre on the applicants, individual members of the Gupta family, and other companies associated with the Gupta family who have also received notice of the termination of their accounts. These suspicious transactions amount to over R4,25 billion. No less than 36 of these reports relate to transactions generated by the applicants. I attach a summary of the Bank's list of suspicious transaction reports, marked Annexure 42.

241 Given this volume of suspicious and unusual transactions, there is a risk that the Bank may, through inaction and despite its best efforts, either miss further suspicious transactions, or fail fully to record and maintain its contemporaneous investigations and decision which would expose it to the very real risk of having its operations suspended and further sanctions imposed.

242 It is impossible to overstate the effect on the Bank should SARS impose sanction in terms of Sec 45C(3)(d) of FICA, one notch up from what it has in fact done. Two major consequences which immediately spring to mind concerns its international operations and its local correspondent relationship with Nedbank.

243 On the international front, every other banking regulator in those jurisdictions where the Bank operates will launch investigations and inspections akin to that performed by SARS. This will become common knowledge in the international



banking community in no time at all and the Bank will be shut out of all international business (especially corporate deposits) will withdraw their deposits from the Bank and (also especially corporate) borrowers will refuse to take up facilities from the Bank. The adage that the currency of every bank is trust is absolutely true and the international financial community will lose all trust in the Bank. This is the very real consequence of the "reputational risks" that I have been referring to throughout this affidavit.

244 On the local front, if such a further sanction was to be imposed by the Bank, there is no doubt that Nedbank will terminate its correspondent banking relationship. No other clearing bank in South Africa would even consider taking on the Bank as a customer, let alone a correspondent banking customer. That is so because the oversight and investigation duties that would then fall on Nedbank would be extended hugely, to include those transactions which currently fall subject to the respondent's FICA duties.

The Bank's decision to terminate the banker-client relationship

245 It was on the basis of these legal, reputational and commercial risks that the Bank took the decision to terminate its relationship with the applicants, the individual members of the Gupta family and other companies associated with the family and the Caltbay group.

246 This decision was taken by the Bank of Baroda's Board of Directors on 1 July 2017. I refer in this regard to Annexure 10. This decision was then communicated to the applicants by means of the notices issued on 6 July 2017.

247 The further correspondence that has ensued between the parties is summarised in the applicants' founding affidavit and the further supplementary affidavit which was filed on 14 August 2017.

247.1 I do not propose to set out this correspondence in detail again here.

247.2 I note the applicants' summary of this correspondence, to the extent that it accurately reflects the contents of that correspondence.

247.3 However, I deny the various allegations in the applicants' correspondence to the extent that they suggest that the Bank has no right to terminate the accounts in the manner in which it has done or that the Bank's conduct has been in any way improper.

#### VI THE REQUIREMENTS FOR AN INTERIM INTERDICT

248 I now turn to explain why the applicants have failed to make out a case for the interim relief that they will seek at the hearing on 7 and 8 December 2017.

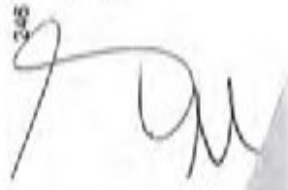
249 As I have indicated above, I reserve my right to supplement this and other sections of the affidavit. Nonetheless, I will briefly address the question of interim relief as this is also relevant to the question of "interim injunctive relief" that is presently before this Court.

250 I am advised that the test for interim relief requires that the applicants must demonstrate:

250.1 A prima facie right to the final relief that is not cast in substantial doubt;

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બંક ઓફ બરોડા Bank of Baroda

JHB/ADV/06/474/2016-17

23.08.2016

M/S. Koornfontein Mines Pty. Ltd.

Grayston Ridge Office Park,

144, Katherine Street.

Sandton-2196

Re: Your Loan of ZAR 150.00 mn against FDR no 03/649 dated 06.06.2016 for ZAR 170.00 MN. of M/s "Koornfontein Rehabilitation Trust" (Trust No. IT 7563/07).

We understand that a detailed discussion took place on 26.07.2016 with officials of our Bank's corporate office at- MUMBAI with regard to adjusting the loan availed by you against fixed deposits with us. details are here under.

Depositor	Date/Due date	Amount( Face value)	Loan availed by & Date	Loan Limit
M/s "Koornfontein Rehabilitation Trust" (Trust No. IT 7563/07)	06.06.2016/ 06.06.2017	ZAR170.00 mn	M/S. Koornfontein Mines Pty. Ltd. Dt. 06.06.2016	ZAR150.00 mn (availed ZAR 100.00 mn)

In the meeting it was agreed that the Loan against the above FDR will be gradually liquidated and fully settled by 30.09.2016.

We request you to ensure that the loan against the above FDR is repaid fully by 30.09.2016. In the event of failure to repay the above loan latest by 30.09.2016, it is notified that the above loan will be adjusted and liquidated by prematurely paying the said FDR as also mentioned in form LDOC 16(A) executed by you.

Yours faithfully

(Sanjiv Gupta)

Chief Executive

Bank of Baroda

South Africa

Handwritten signature



बी.बी.बी. बैंक ऑफ़ बरोडा Bank of Baroda

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JHB/ADV/06/474/2016-17

23.08.2016

The Trustee,

M/s "Koorfontein Rehabilitation Trust" (Trust No. IT 7663/07)

Grayston Ridge Office Park,

Block A, Lower Ground Floor,

144, Katherine Street,

Sandton-2195

Re: FDR no 03/649 dated 06.06.2016 for ZAR170.00 MN.

We understand that a detailed discussion took place on 26.07.2016 with officials of JHB Bank's corporate office with regard to your fixed deposits with us and the loan availed by M/S Koorfontein Mines Pty. Ltd. against this FDR as detailed here under.

Depositor	Date/Due date	Amount/ Face value)	Loan availed by	Loan Limit
M/s "Koorfontein Rehabilitation Trust" (Trust No. IT 7663/07)	06.06.2016/ 06.06.2017	ZAR170.00 mn	M/S, Koorfontein Mines Pty. Ltd.  Dt. 06.05.2016	ZAR150.00 mn (availed ZAR 100.00 mn)

In the meeting it was assured that the Loan against the above FDR will be gradually liquidated and fully settled by 30.09.2016.

We request you to ensure that the loan against the above FDR is repaid fully by 30.09.2016. In the event of failure to repay the above loan latest by 30.09.2016, it is notified hereby that the above loan will be adjusted and liquidated by prematurely paying your FDR as provided in form LDOC 16(A) executed by you.

Yours Faithfully

*(Signature)*  
(Sanjiv Gupta)

Chief Executive

Bank of Baroda

South Africa

*(Signature)*  
*(Signature)*

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"SF 18"



South African Reserve Bank  
Office of the Deputy Governor  
Kuben Naidoo

Ref.: 15/1\_BOB

2016-11-21

Mr S Agarwal  
Chief Executive Officer  
Bank of Baroda, South Africa  
Premises No.14  
2nd Floor City Twin Towers, East Wing  
Sandton  
2146

Dear Mr Agarwal

**Bank of Baroda, South Africa: Report in terms of section 7 of the Banks Act, 1990 (Act No. 94 of 1990)**

This Office wishes to refer to the following:

- The State of Capture report, report no. 6 of 2016/2017 issued by the Public Protector of South Africa (State of Capture report).
- The meeting held between representatives from the Office of the Registrar of Banks (this Office) and representatives from Bank of Baroda, South Africa (BOB) on 8 November 2016.

During the meeting under reference, this Office highlighted with concern the references in the State of Capture report to the alleged actions of BOB regarding, *inter alia*, (a) the Optimum Coal Mine transactions, (b) the application of the Optimum Mine Rehabilitation Trust Fund deposit which had been transferred by The Standard Bank of South Africa Limited to BOB, and (c) BOB's compliance with applicable legislation. BOB representatives were also informed about this Office's intention to conduct an investigation to establish whether the branch complied with its licensing and other applicable requirements as outlined in the Banks Act, 1990 (Act No. 94 of 1990 – the Banks Act) and the Regulations relating to Banks.



Accordingly, BOB is hereby directed, in terms of the provisions of section 7(1)(b) of the Banks Act, to furnish this Office with a report issued by a public accountant, as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), which addresses the items listed in the terms of reference enclosed herewith as Annexure A. The independent audit firm assigned to the aforementioned section 7 review of your institution is Deloitte, and in this regard you will be contacted by Mr Darren Shipp of Deloitte. Should you wish to contact Mr Shipp, his telephone number is 011 806 6039.

Kindly furnish this Office with a copy of the report after finalisation thereof. Following receipt of the aforementioned report, a meeting will be arranged between yourself (or your designated representative), the external auditors and representatives from this Office to discuss the findings. We trust that you appreciate the need for this review and that you will afford the external auditors the necessary co-operation.

Yours sincerely



**Kuben Naidoo**  
Deputy Governor and Registrar of Banks

Date: 21/11/2016

Encl. 1



## Annexure A

**Terms of reference for the review of Bank of Baroda, South Africa in terms of section 7 of the Banks Act, 1990 (Act No. 94 of 1990)**

The primary objective of the review is to establish whether there have been instances of mismanagement or non-compliance with the provisions of the Banks Act, 1990 (Act No. 94 of 1990) and the Regulations relating to Banks (the Regulations) by Bank of Baroda, South Africa (BOB) as stated in the Public Protector's report titled "State of Capture".

Agreed-upon procedures are to be performed on the following matters:

**1. Deposit**

- 1.1 Obtain an understanding of whether any deposits received related to the letter of comfort issued in the Optimum Coal Mine transaction.
- 1.2 Establish whether these deposits complied with, and were treated as required by, the Banks Act and the Regulations.
- 1.3 Establish whether these deposits were correctly reflected in the BA returns of BOB.

**2. Letter of comfort**

- 2.1 Establish whether the letter of comfort for the amount of R2.15 billion, provided by BOB to the business rescue practitioners of Optimum Coal Mine and the consortium of banks that held the mines assets as security against loans they had granted, amounted to a guarantee and whether the facility had been collateralised.
- 2.2 Establish whether the facility had been correctly treated, for regulatory purposes, and reported (according to the nature of the facility) on the BA forms.
- 2.3 Establish whether there is evidence that the branch had considered the liquidity and funding implications of its commitments prior to issuing a letter of comfort. Furthermore, establish whether the branch had secured funding for the facility in the event of the facility having been drawn down on.
- 2.4 On account of the magnitude of the facility, establish whether the branch considered the probability of draw-down as well as the additional regulatory capital which would have been required in the event of a draw-down on the facility, as part of its capital planning exercise.

**3. Optimum Mine Rehabilitation Trust Fund (Trust Fund)**

- 3.1 Obtain a detailed analysis of all transactions processed by BOB related to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.
- 3.2 Establish whether these transactions are in compliance with the legal requirements applicable to these types of trust accounts.





274  
"SF19"

24 February 2017

Chief Executive Officer  
Bank of Baroda, South Africa  
Premises No. 14  
2<sup>nd</sup> Floor City Twin Towers, East Wing  
Sandton  
2146

Dear Sir

## BANK OF BARODA, SOUTH AFRICA ("THE BANK") REPORT IN TERMS OF SECTION 7 OF THE BANKS ACT, 1990 (ACT NO. 94 OF 1990)

### Background

In a letter sent to the Bank from the Deputy Governor and Registrar of Banks, dated 21 October 2016, ("the letter") the Bank was directed, in terms of the provision of section 7(1)(b) of the Banks Act, to furnish the South African Reserve Bank ("SARB") with a report issued by a public accountant, as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), which addresses the items listed in the terms of reference enclosed within the letter (Annexure A). This letter furthermore indicated that Deloitte was assigned as the independent audit firm for the Section 7 review of the Bank. We have attached the letter as an appendix to this report (Refer to Appendix 1).

The primary objective of this engagement was to establish whether there was any instances of mismanagement or non-compliance with the provisions of the Banks Act, 1990 (Act No. 94 of 1990) and the Regulations relating to Banks (the Regulations) by the Bank, as stated in the Public Protector's report titled "State of Capture".

We have completed our engagement in respect of the procedures stipulated in Appendix 1 and our report is hereby attached. Our report includes an appendix detailing our findings and observations in respect of each procedure (refer Appendix 2). We have also included in Appendix 3 all relevant documentary evidence obtained directly from Bank of Baroda supporting the findings of our report.

Our reports are not made in respect of an assurance engagement within the scope of the International Framework for Assurance Engagements. We have not followed any pronouncement as issued by the International Auditing and Assurance Standards Board ("IAASB") for the completion of this assignment and as a result our report does not contain any assurance opinion or conclusion in relation to our testing performed.

With regard to information provided in Appendix 3 which forms the basis of our report we would like to draw your attention to the following observations:

- Management have indicated to us that this represents all the information relating to the issue identified in Appendix 1. We cannot attest to the completeness of this information as we have relied upon management's representation although given the size of the transaction and given the size of the bank, in our experience we would have expected more correspondence with the parties involved.



- Through our procedures it is evident that this was a complex transaction involving various third parties. We have not tested the authenticity of the documentary evidence provided to us with the various third parties as this was beyond our remit.
- We have not performed additional procedures to corroborate the information received to the Bank's core systems and have once again relied on management's representation.

### **Management's responsibility**

Management is responsible for compliance with the provisions of the Banks Act, 1990 (Act no. 94 of 1990) and the Regulations relating to Banks, including the preparation of the calculations in respect of the management accounts.

It is also management's responsibility to ensure that we have been provided with all information relevant and in response to our enquiries.

### **Restriction on use and distribution**

The report attached is provided solely for the purpose of meeting your responsibility to report to the Registrar as indicated above. Our report is not suitable for another purpose and should not be distributed or used by any other parties other than Registrar and the management of the Bank.

It is confidential and it should not be used, reproduced or circulated for any other purpose, in whole or in part, without our prior written consent. Deloitte accepts no responsibility, liability or duty of care to any other third parties other than the parties mentioned above for any matter, observations or conclusions that are stated or implied in the report as it is private and confidential and has been prepared only for the purpose of meeting our responsibilities as mentioned above.

Should you have any questions regarding this matter, please do not hesitate to contact Darren Shipp (0824416798).

Yours faithfully



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**Darren Shipp**

**Partner**



No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
1.	Letter of Comfort		
1.1.	Establish whether the letter of comfort for the amount of R2.15 billion, provided by BCB to the business rescue practitioners of Optimum Coal Mine ("OCM") and the consortium of banks that held the mines assets as security against loans they had granted, amounted to a guarantee and whether the facility had been collateralised.	a. Assess if the letter of comfort meets the definition of a legally enforceable guarantee and if it complies with the Bank's Act Regulations.	<p>a. With reference to the two letters issued by Bank of Baroda dated 18 December 2015 and 4 March 2016, the contents of both letters are similar, the major difference being that the document dated 4 March 2016 is addressed to FirstRand Bank Limited ("FRB"), while the 18 December 2015 document is addressed to "whom so ever it may concern" ("the Documents"). Refer to Annexure C for a timeline regarding the issuance of the letters of comfort.</p> <p>In order to determine whether the Documents amount to a guarantee we performed the following:</p> <ol style="list-style-type: none"> <li>i. Referred the Documents to our in-house legal counsel to consider whether either of, or both Documents, constitute a guarantee in terms of which Bank of Baroda has guaranteed payment to the lenders of Optimum Coal Holdings (Pty) Ltd ("OCH") at the request of Tegeta Exploration and Resources (Pty) Ltd ("Tegeta")</li> <li>ii. Assessed the contents of the Documents against the definitions of a lending related and performance related guarantee as specified in bank's Act Regulation 67.</li> </ol> <p>Refer below where we have dealt with each procedure separately in our assessment.</p> <p>i. <i>Assessment by our in-house legal counsel</i> Our in-house legal counsel assessed the Documents against the following definitions and criteria:</p> <ul style="list-style-type: none"> <li>• A 'guarantee' is defined as: "a contractual undertaking that a certain fact, unconnected with the guarantor's performance or with that of a third person, is or will be as it is stated or promised to be".</li> <li>• A 'demand guarantee' is generally "a short and simple instrument issued by a bank (or other financial institution) under which the obligation to pay a stated or maximum sum of money arises merely upon the making of a demand for payment in the prescribed form and, occasionally, also upon the presentation of documents as stipulated in the guarantee, within the period of validity of the guarantee."</li> </ul>

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			<ul style="list-style-type: none"> <li>A 'performance guarantee' as instruments are merely forms of demand guarantees - it is normal practice for construction contracts to require the contractor to provide some form of security to guarantee the performance of his obligations under the contract. In practice, performance guarantees tend to be used where the underlying obligation is not the payment of money, but the performance of other obligations such as those arising under a construction or engineering contract.</li> </ul> <p>Based on the above definitions in order for either of the Documents to constitute a performance guarantee, such must provide for the payment of money to a beneficiary by the guarantor on the happening of a certain or defined event which is unconnected with the performance of the guarantor or a third party.</p> <p>In other words, Tegeta, as the party requesting Bank of Baroda to issue the guarantee must be obliged to perform some act for the benefit of the lenders of OCH, failing which the Bank of Baroda will be obliged to make payment of the 2,150,000 to the lenders of OCH. While both Documents reference a payment to the lenders of OCH, such payment is not dependent on Tegeta failing to perform some act which will trigger the payment of the performance guarantee by the Bank of Baroda to the lenders of OCH.</p> <p>In terms of both Documents, Tegeta has requested Bank of Baroda to make payment to the lenders of OCH to close the deal for the purchase by Tegeta of certain of the shares and claims in OCH, subject to four conditions precedent, which if fulfilled will trigger the payment by the Bank of Baroda to the lenders of OCH. The Documents therefore constitute a recordal of a contract between the Bank of Baroda and Tegeta, which contain a stipulation for the benefit of a third party, being FRB, to the effect that the Bank of Baroda will pay FRB on the fulfilment of the stipulated conditions precedent, if the conditions precedent are not fulfilled by the specified date, the obligation to pay lapses.</p>



No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
			<p>ii. Assessment against Regulation 67 definition of lending and performance related guarantee</p> <p><b>Definition as per Regulation 67 for lending related guarantee:</b> "in relation to the off balance sheet exposure includes any undertaking issued by a bank on behalf of a person in respect of which undertaking the said bank will be liable for a specific financial obligation of the person in respect of which the undertaking was issued in the event that the said person does not fulfill that person's obligation at the due date."</p> <p>In order for the said Documents to constitute a lending related guarantee such must provide for an undertaking that the said bank will be liable for the specified financial obligation in the event that the said person does not fulfill that person's obligation at the due date. Whilst both Documents reference a payment to the lenders of OCH, such payment is not specified as being dependant on Tegeta failing to fulfill a financial obligation which will trigger the payment by Bank of Baroda of the said amount of 2,150,000 to the lenders of OCH.</p> <p><b>Definition as per Regulation 67 for performance related guarantee:</b> "in relation to a bank's off-balance sheet exposure includes-</p> <ul style="list-style-type: none"> <li>• any undertaking given by a bank on behalf of one person to another person in respect of which the potential obligation of the bank as to the value or time of performance cannot be determined at the time of issue of the guarantee but only in the event and at the time of default by the first-named person; or</li> <li>• any undertaking issued by a bank on behalf of a person in respect of which undertaking the said bank will be financially liable to a third person in the event that the relevant person in respect of which the undertaking was issued fails to perform in accordance with a non-financial obligation made to the said third person." <p>In order for either of the Documents to constitute a performance related guarantee as defined in Regulation 67, such must provide for an undertaking whereby the said bank will be financially liable to a third party in the event that the relevant person in respect</p> </li></ul>