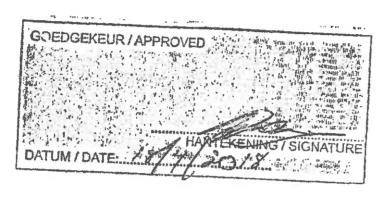
168/2018 -cv 2018-03-09

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA FREE STATE DIVISION

BLOEMFONTEIN



CASE NO: 168-2018

DATE: 2018-03-09

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in the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

THE BANK OF BARODA AND OTHERS

Respondents

JUDGMENT

JORDAAN JA: The National Director of Public Prosecutions brought
an urgent application for orders to preserve certain monies and an
immoveable property in terms of the Prevention of Organised Crime
Act 121 of 1998.

It was alleged that the property was used as an instrument of crime in a corrupt scheme to siphon state funds out of the Free State Department of Agriculture and Rural Development, under the guise of a dairy farming project.

The operation of the farm was to be administered by a company, Estina (Pty) Limited, in terms of an agreement entered into by the Department and Estina. The sole director of Estina, at the relevant time, was one Kamal Vasram.

The application was granted and the order set out in a draft order prepared by the applicant with some amendments were granted ex parte by me on the 18th of January of this year. Some of the affected entities now applies for a reconsideration of the orders, affecting them. I will refer to National Director of Public Prosecutions as the applicant or DPP and the parties applying for reconsideration, as the affected parties.

When the matter served before me initially, I was satisfied that there were sufficient factual averments to justify a reasonable belief that the immovable property was instrumental to the crimes of corruption and fraud, and that the payments made to Estina by the Department constitute the proceeds of unlawful activities. None of the affected parties in their applications for reconsideration, questioned the aforesaid findings.

The sole attack on the specific orders concerning them,
is based on questioning the alleged link between payments they have
received out of the account held by the Bank of Baroda in its Nedbank
account and the payments made by the Department to Estina, and
portions of which were allegedly transferred by Estina to the aforesaid
Nedbank account.

When the matter served before me initially - being an

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urgent application consisting of some 950 pages - I heavily relied on the veracity and sufficiency of the evidence deposed to by the deponent Mr Mradia.

Mr Mradla described himself as a highly qualified forensic investigator, who based his findings on a thorough investigation of the flow of funds from the Department to Estina and from there to the various affected entities or persons, during the period April 2013 to July 2017.

More particularly, Mr Mradla relied on his investigations of Estina's bank accounts held in the Standard Bank and First National Bank as well as the account held by the Bank of Baroda, in Nedbank.

Apart from the copies of the said accounts annexed to the papers, he mentioned that he is in possession of eight lever arch files, detailing all the financial transactions, which files are available but not annexed so as not to burden the application with further voluminous annexures.

Mr Mradla then details the results of his investigations, identifying seven tranches of payment received by Estina from the department and sets out the further flow of funds from Estina to various persons and entities, which allegedly constitute the proceeds of crime.

He then differentiates between payments made by Estina to farming related entities and payments made to entities not so related. The latter entities are then identified as affected parties in respect of whom preservations orders were sought and granted.

Some of the entities, in respect of whom preservation

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orders were granted, was paid by Estina directly out of, either the Standard Bank account or the First National Bank accounts. Insofar as such payments were not farming related expenditure, there can be little doubt that they are suspect and constitute reasonable grounds to believe that they relate to proceeds of crime being disbursed to such entities.

The affected parties who apply for reconsideration are with two minor exceptions - all entities whom allegedly received payments of proceeds of crime through the intervention of the Bank of Baroda. The two exceptions being an amount of R157 320.00 paid from the Standard Bank account of Estina to Linkway, on 8 May 2013 and an amount of R73 277.24 paid to Aerohaven on 30 July 2014. I deal with these later.

Baroda. The position of this bank stands on a somewhat different footing from those of the other affected parties. The bank explains in its application for reconsideration that the account it has in Nedbank, only serves as a method to be able to use clearing facilities through the sponsorship of Nedbank, since Baroda is not a clearing bank itself.

The amount in the Nedbank account comprises of a conglomerate of deposits and withdrawals by various clients of the Bank of Baroda. Separate accounts are held for those clients wherein their respective dealings are recorded.

The Nedbank account, as such, is therefore not a reflection of a flow of funds of specific clients, but a pool account. The

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flow of funds for this different individual clients are reflected in separate accounts in the books of the bank.

The bank does not hold money in the Nedbank account on its own behalf but on behalf of their clients. According to the bank, to investigate the Nedbank account and draw conclusions from that is therefore inaccurate, misleading and unreliable. According to the bank that is exactly what Mr Mradla did.

In any event, on Mr Mradla's own account, the R30-million in regard to which a preservation order is sought against the bank, was transferred to a call-account three days later and did not remain in possession of the bank, nor reflected as a remaining balance in the Nedbank account.

In the same way that preservation orders are sought in respect of specific accounts of affected entities in other banks, if a preservation order is sought it should seek to preserve the account of the specific client's and affected entities held by the bank and not the Nedbank account of the bank itself.

I cannot fault the bank's reasoning, moreover, as will be shown later, the conclusions reached by Mr Mradia are based on a selective reading of the account in Nedbank and in instances demonstrably unsubstantiated.

As far as the other affected parties are concerned, the preservation orders sought against the other affected parties largely rely on Mradla's investigations and conclusions. I do not intend dealing with each of the tranches that he referred to and the alleged flow of

funds in regard to each transaction relied upon by the applicant.

A few examples should suffice:

- 1. As far as tranche one is concerned for instance, on 19 of April 2013, Estina deposited R10-million into the Nedbank account of Baroda. Mr Mradia then avers that the R10-million was transferred to Oakbay Investments on the same date. However, the copy of the account handed in by Mr Ntsimutsi shows that only R5-million was paid to Oakbay on that date.
- Secondly, on 20 April 2013 Estina deposited an amount of R 24,95-million into the account. According to Mr Mradla, R18million of that monies was transferred to Aerohaven and R4,5million to Oakbay on the 22 April 2013.

Page two of the copy of the account handed up by Mr Ntsimutsi, shows that on 22 of April 2013, Oakbay itself deposited R10-million into that account and a further R28-million was deposited into the account from a call-account. There is no rationale and rational basis for concluding that the amounts paid to Aerohaven and Oakbay stems from the Estina deposit and not from the other deposits.

20 3. Thirdly, as far tranche four is concerned, it is alleged that on 20 December 2013, Estina deposited two amounts of R5-million in a total of R10-million in the Nedbank account.

On the same date Westdawn Investments deposited R42,6-million in total, and another R40-million was deposited in that account from a call-account. An amount of R38-million was

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paid to Mr A Gupta.

Mradla concludes that the R10-million deposited by Estina forms part of that payment to Mr Gupta. It is not clear why he comes to that conclusion and why not find that the other deposits made, might be the origin of those monies, namely the deposits by Westdawn or from the call-account.

- 4. Tranche five, it is alleged that on 30 July 2014, R5,5-million was paid into the Nedbank account by Estina and Mr Mradia then alleges of that money, R6-million was paid to Westdawn Investments and R3,2-million to Aerohaven. That is R3,7-million more than the amount paid in by Estina. The arithmetic do not add up.
- Lastly, on 18 August 2014, an amount of R8-million was paid and on 19 August, another R7-million paid from Estina into the Nedbank account, the total being R15-million. Mr Mradla then asserts that the following payments out of that account forms part of those deposits and thus constitute tainted money, namely, to Oakbay Investments R10-million, to Annex Distribution R6-million, to Islandsite Investments R5-million, to Uxolo Diamond Cutting Works R4,5-million, and in total thus R25,5-million, R10,5 more than the amounts deposited by Estina. Again the sum does not add up.

What is more, before those payments are recorded, inter alia, Annex Distributions paid R11-million into the same account and another R10,7-million was deposited from another account.

The above mistakes and omissions in Mr Mradla's evidence, casts serious doubt on the reliability of his findings.

It does not end there. The Bank of Baroda annexed the account of Estina held in the bank. That account was not disputed by the applicants in its answer to the Bank of Baroda's affidavit. Although the account records all the payments and transfers made by Estina into the account, it does not reflect any of the alleged payments to the affected parties. It can be noted that the flow of large amounts of monies, in and out of the Nedbank account is suspicious, but suspicions, unfortunately, do not found a preservation order.

The entities in regard to whom preservation orders were sought, exclusively because of payments from the Bank of Baroda Nedbank account are the following:

Atul Kumar Gupta.

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Oakbay Investments (Pty) Ltd.

VRLS investments (Pty) Ltd.

Uxolo Diamond Cutting Works (Pty) Ltd.

Islandsite Investments 180 (Pty) Ltd.

Westdawn Investments (Pty) Ltd.

20 Annex Distribution (Pty) Ltd.

The larger part of payments to Aerohaven Trading (Pty) Ltd, with the exception of R73 277.24 also stems from payments out of that Nedbank account.

Aerohaven and Linkway Trading (Pty) Ltd also filed a notice to apply for exclusion of the respective amounts paid to them from the operation

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of any forfeiture order.

in the case of Linkway, the draft order initially present by the applicant and granted by me, is clearly wrong in persevering amount of R6-million. Linkway only received R157 320.00.

No application for forfeiture has, as yet, been made at the question of exclusion will be dealt with, if and when surapplication is made. However, it implies at least admission of receipt the aforesaid amounts. At least as to those amounts the preservation orders should stand.

It is necessary to deal with the position taken by the Curator Bonis appointed in terms of the initial order.

In respect of the powers afforded to the Curator Bonis was argued on behalf of the affected parties that the powers set out to the order granted by me, exceed the powers provided for in section of the Act. In terms of Section 42(1)(a) of the Act. the court make appoint a Curator Bonis, to do and I quote:

"Subject to the direction of that High Court, any one or more of the following on behalf of the person against whom the preservation of property order has been made, namely:

- (i) to assume control of the property;
- (ii) to take care of the said property;
- (iii) to administer the said property and to do any act necessary for that purpose; and
- (iv) where the said property is a business or

undertaking, to carry on with due regard to any law which may be applicable, the business or undertaking; and

(b) order any person holding property, subject to the preservation of property order, to surrender forthwith or within such period as that court may determine, any such property into the custody of the Curator Bonis."

In this regard it was argued that the orders, as it stands, allows the

Curator Bonis to search for funds and accounts not specified in the order

and then preserve such funds or accounts to the amount specified in the

order.

That argument holds water as far as identifiable moveable property is concerned, but due to the nature of money itself, loses sight of the fact that, once received by a person or entity it loses its separate identity and becomes part of the totality of funds held by such receiver.

To expect of the DPP to show that the specific tainted money still exists and is located in the specified fund or account, would require proof of the impossible and defeat the purpose of the act.

Once it is proved that a receiver has received a certain amount of money forming the proceeds of crime, the preservation of money to the extent of that amount, can be ordered regardless of which fund or account of the receiver is involved. If that was not so, a receiver of tainted money would be able to simply allege that that money was already

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disbursed and any money remaining in his possession thus not subject to preservation. That is totally unacceptable and anomalous.

As far as the powers conferred on the Curator Bonis in terms of the order are concerned, I remain unconvinced that those powers are ultra vires and exceed the powers provided for in the act.

Section 42(1)(a)(i) and (iii) empowers the curator to assume control over, and administer the property and importantly, to do any act necessary for that purpose. The powers granted in terms of the order goes no further than that. However, it is prudent to amend the order to avoid uncertainty as to that position.

A more vexing question relating to the curator is the position of the Curator Bonis in this matter, in view of the stance he has taken, especially in relation to costs. In its answer to the Bank of Baroda's application for reconsideration, the National Director of Public Prosecutions raised an objection in limine to the effect that the Curator Bonis should have been joined. In an email the Curator Bonis indicated that he was of the same view. Without conceding the necessity of that, for purposes of an application for reconsideration and for the sake of expedience, the affected parties consented to the curator being joined as a party.

The curator then filed an affidavit partly dealing with the results of his investigations and factual issues pertaining to funds preserved and accounts of some of the affected parties. He however saw fit to, in that affidavit, comment on the authority of the deponent Ravigan to act also on behalf of the affected companies.

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He commented on the merits and demerits of the applications for reconsideration and even prays for the applications for reconsiderations to be dismissed. He clearly made common cause with the DPP.

In view of that, he was requested by the affected parties to withdraw his affidavit on pain of an order of costs being sought against him. He refused. The Curator Bonis' affidavit was filed on 26 February of this year. Heads of argument on behalf of the curator, was signed by his counsel on 27 February and filed on 28 February of this year. A notice to abide, was filed by the curator on 27 February of this year.

The first part of the heads of argument on behalf of the curator, deals with the question of whether the powers conferred on the curator, in terms of the order, are *ultra vires* or not. The rest deals with the merits of the matter, it does not deal with the question of cost at all. Notwithstanding the notice to abide, Mr Lotz appeared for the curator during the hearing of argument.

The duties of a Curator Bonis in connection with preservation orders are to locate, take control of and administer the preserved property. That he has to do objectively and impartially. His additional duty to report to court, requires an objective and impartial report on factual issues concerning the performance of his functions.

His views as to the merits or demerits of the application are, in general, irrelevant. Insofar as he might have discovered factual information that might have a bearing on the merits, that should form part of his factual report. His opinion and views as to the effect thereof, on the

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merits, however remain irrelevant. In short, he should refrain from entering the arena. The Curator Bonis' notice to abide conforms to the above principles. His affidavit however insofar as it deals with his views as to the merits and his briefing of counsel to argue those views, do not.

I was asked to show my disapproval of the curator's interference in the merits of the application by means of a special cost order. I am not convinced that the joinder of the curator was necessary at the reconsideration stage at all. However, the joinder was partially brought about and initiated by the stance taken by the applicant in its answer to the application for reconsideration of the Bank of Baroda.

Part of the blame of that, should be accorded to the applicant itself. However, as shown above the Curator Bonis overstepped the bounds of his duties and moreover, chose to blow hot and cold simultaneously, by filing a notice to abide but still saw fit to brief counsel to argue the merits.

I acknowledge that part of the attack against the orders granted by me was aimed at the alleged ultra vires powers of the Curator The curator has a sufficient interest in those powers affecting the Bonis. performance of his duties to be allowed to respond thereto. Part of his affidavit and the argument on his behalf, dealt with that. If he wished to limit his response to those issues, he should have done so and not filed a notice to abide.

Considering all the above factors, I am of the opinion that the Curator Bonis should be held responsible for at least part of the costs occasioned by the filing of his affidavit and the employment of counsel to

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appear during argument on his behalf. I will provide for that in the orders that I propose to grant.

As to costs, in general all the parties, except the Bank of Baroda and the Curator Bonis, employed the services of two counsel, justifiably so.

The papers are voluminous and the issues of great importance to all the concerned parties. Although Aerohaven is only partly successful, it is substantially successful in its application for reconsideration.

In conclusion I grant the following orders, some of which aimed at rectifying mistakes in the original order. I may just mention that the orders that I make is contained in a draft which will be available after the court adjourns and it is not necessary to note it down at this stage.

The following orders are granted:

ORDER

- [1] Paragraph 1 of the order granted on 18 January 2018 is amended by deleting the word 'immoveable'.
- [2] The amount in paragraph 1.2 of the order and paragraph 1 of Annexure A to the order, is amended by substituting the amount of R40,360,154.98 in place of the amount of R220,202,652.00.
- [3] Paragraph 1 of Annexure A to the order is further amended by deleting the words: 'which constitutes proceeds of crime' and adding the words: 'or in any fund or account held by or on behalf of them.'

- [4] Paragraph 12 of the order granted is amended by deleting paragraphs 12.3, 12.5, 12.8, 12.9, 12.10, 12.12, 12.13 and 12.16.
- [5] Annexure A to the court order is further amended by deleting paragraph 1.4, 1.6, 1.7, 1.9, 1.10, 1.11,1.12 and 1.13 and by adding the following at the end of paragraph 1.15: 'an amount of R19-million.'
- [6] Paragraph 1.5 of Annexure A to the order is amended by substituting the amount of R73 277.24 in place of the amount of R21.273,277.24.
- Paragraph 1.14 of Annexure A to the order is amended by inserting the amount of R157 320.00 in place of the amount of R6-million.
 - [8] The paragraph numbers in paragraph 12 of the order, as amended, and Annexure A to the order as amended, are renumbered to run consecutively.
 - [9] The applicant is ordered to pay the costs of the affected parties, being the applicants for reconsideration, including the costs occasioned by the employment of two counsel where so employed.
- [10] The Curator Bonis is ordered, jointly and severally with the applicant, the one paying the other to be absolved, to pay 50% of the costs occasioned by the filing of his affidavit and employment of counsel, de bonis propils.
 - [11] The amended order annexed hereto, is confirmed.

On behalf of the Applicant: Bhana Van der Heever Spiller

On behalf of the Respondent: Ntimutse Naidoo

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that <u>insofar as it is audible</u>, the aforegoing is a true and correct <u>verbatim</u> transcription of the proceedings recorded by means of a digital recorder.

In the matter between THE BANK OF BARODA AND NDPP

Case Number	168-2018
Date of Hearing	2018-03-09
Court Jurisdiction	Bloemfontein, Free State
Stenographer	Brandon Bouwer
J33 number	
Sound System	Javs (Viewer Pro)
Date of Completion	2018-04-04
Total Number of Pages	16 pages (Excluding certificate)

TRANSCRIBER'S NOTES TO THE CLERK OF THE COURT

- 1. Transcript is typed verbatim.
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- 3. Indistinct words and or phrases are indicated with sound system timestamps

Signed off by: H van Rhyn Swom Transcriber Date: 2018-04-05

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FREE STATE HIGH COURT, BLOEMFONTEIN REPUBLIC OF SOUTH AFRICA

Reportable: No
Of Interest to other Judges: Yes
Circulate to Magistrates: No

Case No.: 1540/2018

The ex parte application of:

THE NATIONAL DIRECTOR OF

Applicant

PUBLIC PROSECUTIONS

IN RE an application in terms of section 38 of the Prevention of Organised Crime Act No. 121 of 1998 for the preservation of certain property

CORAM: DAFFUE, J

HEARD: 15 MAY 2018

JUDGMENT BY J P DAFFUE

DELIVERED: 12 JUNE 2018

INTRODUCTION

- [1] The Bank of Baroda ("Baroda") wants this court to reconsider a preservation order granted ex parte and on an urgent basis on 27 March 2018 by Naidoo J.
- [2] The order was obtained in terms of s 38(2) of the Prevention of Organised Crime Act, 121 of 1998 ("POCA") and it is not in the form of a rule *nisi*.
- [3] The only parties featuring in this reconsideration application in terms of rule 12(1)(c) of the Uniform Rules of Court is Baroda and the National Director of Public Prosecutions ("the NDPP") that obtained the preservation order.
- [4] An amount of R33 205 871.86 held by Baroda in its Nedbank correspondent account no 1454095326 has been preserved and Baroda seeks the setting aside of this order.

II THE PARTIES

- [5] The NDPP is the applicant in the application and it was represented by Advv N A CASSIM SC, NTIMUTSE, R NAIDOO and S FREESE before me.
- [6] Baroda is the aggrieved entity who applies for reconsideration, referring to itself as the reconsideration applicant. It its papers the NDPP, Eugene Nel (the person appointed as *curator bonis*) and Nedbank Ltd are cited as 1st, 2nd and 3rd respondents

respectively. Advv A BHAM SC and L M SPILLER appeared for Baroda. The reconsideration application is opposed by the NDPP only. In order to avoid confusion I shall hereinafter refer to the parties as Baroda and the NDDP respectively.

III HISTORY OF THE LITIGATION

- [7] On 18 January 2018 the NDPP obtained an ex parte order under application number 168/2018 for preservation of property against several affected parties including Baroda. The order against Baroda was for the preservation of an amount of R30 m standing to the credit of its Nedbank account, the details of which are mentioned *supra*. Baroda applied for reconsideration of this order and on 9 March 2018 Jordaan J, who gave the preservation order, set aside that order and directed the release of the amount of R30 m.
- [8] A few days later, *i.e.* on 27 March 2018, Naidoo J was approached with yet another urgent application brought ex parte. The learned judge granted orders against Baroda and another entity. In terms hereof an amount of "R33 205 871.86 received by the Bank of Baroda (South Africa) on or about 14 October 2013 from an account conducted by Estina (Pty) Ltd with the Bank of Baroda under account no. 92020200000255 which sum may be held for the benefit of the Bank of Baroda (South Africa) at Nedbank Ltd in account no 145095326 or in any other bank account or fund" was preserved in terms of s 38(2) of POCA. I added the emphasis. The importance of the amount and date of receipt in particular will appear *infra*.

[9] The object of this second preservation order was to preserve funds received by Baroda on or about 14 October 2013 in the amount of R33 205 871.86 in Baroda's account number 1454095326 held with Nedbank. It is common cause that the credit balance of the particular account is made up of deposits by numerous depositors and the account is therefore referred to as a "pool account". Estina (Pty) Ltd ("Estina") does not have any right, personal or real, to the amount standing to the credit of Baroda in this account. The matter is not as simple as would be the case where Estina's bank account with Baroda was seized in order to preserve funds. I shall explain later.

IV THE NDPP'S CASE

[10] Estina received R250 202 652.00 from the Free State Department of Agriculture for the Vrede Dairy Project, but instead of using the funds for *bona fide* dairy farming, most of the money were paid to companies and individuals who had nothing to do with farming. The curator *bonis* appointed in terms of the first preservation order, Mr E Nel, investigated the matter and showed that R110 450 000.00 of these funds were paid into the Baroda account held with Nedbank.

- referred in their heads of argument to the history of the Vrede Dairy Poject and the flow of funds and submitted that money laundering occurred. They stated also that "R33 205 871.86 was paid to the Bank of Baroda to seitle the loans of Kamal Vasram who was a sole Director of Estina." It was specifically submitted that "the offence of money laundering was committed when money was transferred from Estina to other companies whose core function was not agriculture...." Reliance was placed in the founding affidavit of the NDPP on evidence presented by Messrs Schalkwyk and Nel, a financial investigator and the appointed curator bonis respectively. No doubt, counsel's submissions must have influenced the court to grant a preservation order.
- [12] The application presented to Naidoo J consisted of 933 pages contained in three lever arch files. The whole purpose was to present evidence of the alleged fraudulent nature of the Vrede Dairy Project and the fact that money allocated to the project was not used for bona fide farming, but to unlawfully channel funds to several third parties. According to the NDPP's papers several people, including Mr Kamal Vasram ("Vasram"), have been charged recently in the Bloemfontein Magistrate's court in respect of various offences.
- [13] Nel, who was apparently placed in possession of all relevant documentation pertaining to transactions between Baroda and Estina and Baroda and Vasram, made it clear in paragraph 12 of his supporting affidavit that the Baroda account with Nedbank mentioned *supra* was utilised by Baroda to "receive deposits on behalf of Baroda, which deposits were intended for the

benefit of Baroda's clients and from which account payments were made to third parties on the instructions of Baroda and its clients." He submitted that the aforesaid sum should be subjected to a preservation order, it being the proceeds of unlawful activities. However he stressed in paragraph 17 that Baroda was not accused of being a participant in any unlawful activities. On his version, relying on two judgments, the proceeds of crime may be preserved "even if the recipients of such proceeds were innocent recipients and did not participate in the unlawful activities which generated such proceeds." The NDPP's main deponent did not refute this stance in the founding affidavit, but a change of heart can be identified in the replying affidavit.

[14] In the replying affidavit the NDPP indicated that Nei's opinion is not supported. The deponent went so far to state that, on the objective facts, Baroda is not an innocent party. It is stated that no explanation was proffered for the large loans advanced to Estina's sole director. On the NDPP's version Baroda knew on the probabilities that it was unlawful to utilise the proceeds of Estina to repay Vasram's loan. It is alleged that the money received to discharge Vasram's liability remained the proceeds of unlawful activities and therefore subject to preservation. The argument in the affidavit went further and the deponent submitted that it was "not required of the NDPP to show that those self-same monies remain in the Nedbank account." According to the NDPP "Vasram obtained the funds illegitimately from his business relationship" and Baroda "is the holder of those funds having received repayment of a loan it advanced."

V BARODA'S DEFENCE

- [15] Baroda is of the view that the NDPP's argument, based on Nel's submission, is wrong and "premised upon the same flawed understating of the law relating to money held in correspondent bank accounts and the nature of the bank/customer relationship as was the first preservation order." Therefore the order should be rescinded on the same basis that Jordaan J rescinded the first order against Baroda.
- [16] It is submitted that "once Estina's personal right against the bank was extinguished (namely, when Estina withdrew the funds) there are no 'proceeds' that can be attached in the hands of the bank." The argument continues to the effect that the NDPP seeks to preserve Baroda's personal right against Nedbank for payment of R33 205 871.86 in circumstances where neither Estina nor Vasram has a significant credit balance in any account with Baroda. The credit balance in Baroda's Nedbank account constitutes a personal right against Nedbank and represents the deposits of innocent customers of Baroda, having been made in the lawful conducting of the business of a bank, and does not constitute the proceeds of crime.
- [17] Furthermore, Barcda is not implicated in whatever misdeeds
 Estina and its cohorts may have committed and it is not the
 NDPP's case that Baroda is part of the Estina scheme or a
 beneficiary thereof.

[18] It is common cause that Baroda advanced loans to Vasram and that fixed deposits made by Estina with Baroda served as security. Baroda used the pool of funding available to it (being the aggregate of all deposits) to advance the loans to Vasram and its other borrowing customers. It is the bank's case that Estina at a later stage gave a lawful instruction to the bank to make payment to Vasram in an amount equal to Vasram's indebtedness to the bank, i.e to credit Vasram's loan account with an amount equal to his indebtedness to the bank. Simultaneously Estina's account was debited (and therefore reduced) with the same amount. Baroda is not in possession of the "proceeds of crime" for the same reason that the other banks like Standard Bank and FNB were never in possession of the proceeds of crime.

VI BARODA'S RELATIONSHIP WITH BANKS AND CUSTOMERS

[19] Until 31 March 2018 Barcda operated as a "foreign institution" in South Africa as defined in the Banks Act, 94 of 1990. It had only two branches in this country, respectively in Johannesburg and Durban. On 31 March 2018 it ceased to operate and conduct the business of a bank in South Africa. Baroda did not operate as a clearing bank and as a result it had to conduct a correspondent banking relationship with clearing banks which it did with inter alia Nedbank. Consequently it had a general account with Nedbank, a so-called "pool" account which reflected inflows and outflows from

Baroda's customers without any connection between such inflows and outflows. All monies paid to customers of Baroda or paid by such customers holding accounts with Baroda had to pass through the "pool" account.

[20] Baroda does not challenge the evidence of the unlawful and fraudulent nature of the Vrede Dairy Project. This appears to be common cause. Several people and entities have been charged with serious and wide-ranging counts of criminal misconduct. Bearing in mind the findings herein as will be recorded infra, this is irrelevant in the determination of Baroda's liability as neither Baroda, nor any of its officials have been charged. I shall deal with fingers pointing to Baroda's possible knowledge of unlawful and criminal activities infra.

VII PURPOSE AND NATURE OF PRESERVATION ORDERS

[21] Section 38 falls in Chapter 6 of POCA. The primary focus of this chapter is on property that has been used to commit an offence or which constitutes the proceeds of crime, rather than the offenders themselves. The guilt or wrongdoing of the owners or possessors of property is not primarily relevant to the proceedings. See: NDPP v Mohamed NO 2002 (4) SA 843 (CC) at para [17] and NDPP v R O Cook Properties, 37 Gillespie Street Durban (Pty) Ltd and Seevnarayan (Seevnarayan) 2004 (2) SACR 208 (SCA) at para [20].

- [22] As mentioned in *Mohamed NO supra* a two-stage approach is provided for in Chapter 6 of POCA. During the first stage a preservation order is obtained. The purpose of a preservation order is to preserve the particular property until the court is able to deal with the NDPP's application for forfeiture of the property in favour of the State during the second stage.
- [23] The court must grant a preservation order in terms of s 38(2)(b) if it is satisfied that there are reasonable grounds to believe that the property is the proceeds of unlawful activities. See: *Mohamed NO supra* at para [22]. The two other circumstances set out in s 38(2)(a) and (c) are not relevant for purposes hereof.

VIII THE LAW IN RESPECT OF APPLICATIONS IN TERMS OF RULE 6(12)(C)

- [24] Counsel argued in limine how the reconsideration application should be adjudicated. Mr Bham submitted, as the heading of the so-called reconsideration application makes clear, that Baroda is in actual fact the applicant in this application and therefore it had a right to reply to the NDPP's "answering" affidavit. What is more, two further affidavits were filed by the parties. He requested me to consider all the affidavits in order to have a proper conspectus of all the relevant facts.
- [25] Mr Cassim did not agree. He submitted that Baroda's first affidavit in support of its application for reconsideration shall be

regarded as an answering affidavit to the NDPP's founding affidavit and that the NDPP's response thereto is in essence the replying affidavit as the NDPP aptly referred thereto. He submitted that the court should not consider any of the further affidavits filed by the parties, including the NDPP's supplementary affidavit.

- [26] The authorities are not harmonious on the topic. Therefore I ruled that the parties should address me on all issues and facts placed before me in all the affidavits and reserved the right to eventually decide whether or not to consider the extra sets of affidavits.
- [27] The court has a wide discretion under subrule 6(12)(c) and several factors may be taken into account in order to reconsider an order obtained ex parte. See: Erasmus, Superior Court Practice vol 2 at D1-89 and authorities quoted. These include whether an imbalance, oppression or injustice has resulted, and if so, the nature and extent thereof and whether alternative remedies are available.
- [28] The aggrieved party may approach the court in invoking rule 6(12)(c) by not filing an answering affidavit in which case the applicant shall not be allowed to file a supplementary affidavit in an attempt to bolster his/her case. However, if the respondent does file an answering affidavit, the applicant has the right to reply thereto in which case the usual rules pertaining to application procedure will apply: no new matter may be introduced in the replying affidavit by the applicant. In a case

as in the second scenario the parties on reconsideration will be in the same position, had they come to court on notice in the ordinary way. I agree with the pronouncement of the law by Sutherland, J in *IDC v Sooliman* 2013 (5) SA 603 (GSJ) at 606 I – 607 A.

- [29] I do not agree with the procedure followed by Baroda or Mr Bharn's arguments in support thereof. If this procedure is allowed as of right, it would mean that parties will be allowed filling four sets of affidavits which is contrary to the norm applicable in application procedure. There is no reason whatsoever why an aggrieved party seeking the reconsideration of an order granted in his absence shall be allowed as of right the luxury of an additional affidavit. However, special circumstances may exist and it is accepted that further sets of affidavits may be allowed if it would be fair to both sides and considering the fundamental principle that disputes should be adjudicated upon all relevant facts.
- [30] In casu Baroda filed its so-called reconsideration application on 13 April 2018 whereupon the NDPP responded by giving notice to oppose on 18 April 2018 and filed its "answering" affidavit on 30 April 2018. Baroda's "replying" affidavit was filed hereafter and the matter was set down to be heard as an urgent application on Tuesday, 15 May 2018. On Friday 11 May 2018 two further affidavits were filed, to wit a supplementary affidavit by the NDPP and Baroda's response thereto. None of the parties sought leave from the court prior to filing the further affidavits to file these. In fact, leave was never formally sought.

- [31] I have difficulty in understanding why the matter was set down for a Tuesday whilst the parties' legal representatives should have been aware of this Division's Practice Directives in terms whereof opposed applications are heard on Thursdays. I was expected to read more than a thousand pages in a short time. By the time the matter came before me, being six weeks after Baroda had closed its business in this country, it could hardly be regarded as urgent anymore. However! made it clear that I was prepared to hear the application, but my consent should not be regarded as laying down a precedent.
- [32] My approach should perhaps have been to decline considering the affidavits following upon the NDPP's answer (actually the replying affidavit). However, the NDPP invited Baroda in paragraph 31 of this affidavit to place further information and documents before the court which opportunity it was just too eager to accept. The NDPP filed a supplementary affidavit out of time, but Baroda responded thereto. Again, and without trying to lay down any precedent, I decided to consider all the evidence contained in all the affidavits on the basis of expediency and in fairness to both parties.

IX LEGAL PRINCIPLES APPLICABLE TO EX PARTE APPLICATIONS

[33] Preservation orders are often brought by the NDPP ex parte.

This is allowed and the rationale is clear. It is important to note

that the granting of such orders deprives the affected party of a fundamental right to be heard, *i.e.* an opportunity to state their case. These applications should be considered and adjudicated with regard to s 34 of the Constitution: the right to a fair hearing. Yacoob J stated the following at paragraph [11] in the unanimous judgment of *De Beer NO v North-Central Local Council and South-*Central *Local Council and others* 2002 (1) SA 429 (CC):

"It is a crucial aspect of the rule of law that court orders should not be made without affording the other side a reasonable opportunity to state their case."

- [34] In NDPP v Braun and another 2007 (1) SACR 326 (C) at paras [20] and [21] Traverso DJP made it clear that applications under s 38 of POCA do not relieve the NDPP from the normal burden imposed on every applicant who approaches the court for an ex parte order. She continued that it "should be invoked where there is some good cause or reason for the procedure such as genuine urgency or where the giving of notice would defeat the very object for which the order is sought."
- [35] Traverso DJP summarised the principles applicable to *ex parte* applications in paras [22] to [27] with reference to the *locus classicus*, *Schlessinger v Schlessinger* 1979 (4) SA 342 (W) at 349A B as well as the SCA judgment of Southwood AJA in *Powell NO and others v Van der Merwe NO and others* 2005 (1) SACR 317 (SCA). I do not intend to repeat that. In the first judgment Le Roux J made the point that "...unless there are very cogent practical reasons why an order should not be rescinded, the Court will always frown on an order obtained *ex parte* on incomplete information and will set it aside even if relief could be obtained on a subsequent

application by the same applicant." In the latter judgment Southwood AJA went further and stated that "... the approach should apply equally to relief obtained on facts which are incorrect because they have been misstated or inaccurately set out or, as in this case, because they have not been sufficiently investigated....."

- [36] Sutherland J emphasised that the "principle of audi alteram partem is sacrosanct" and "the only times that a court shall consider a matter behind a litigant's back are in exceptional circumstances." The learned judge explained that this means that "it must mean 'very rarely' only if a countervailing interest is so compelling that a compromise is sensible, and then a compromise that is parsimonious in the deviation is allowed." See: South African Airways SOC v BDFM Publishers (Pty) Ltd and others 2016 (2) SA 561 (GJ) at para [22].
- [37] In Thint v NDPP 2009 (1) SA 1 (CC) at para [102] the Constitutional Court reiterated that an applicant in ex parte applications bears a duty of utmost good faith in placing all the relevant material facts within his/her/its knowledge before the court. The court accepted that the test of materiality should not be so high to render it "practically impossible for the State (in that case or in my view any other applicant –) to comply with its duty of disclosure, or that will result in applications so large that they might swamp ex parte judges."

X EVALUATION OF THE EVIDENCE WITH REFERENCE TO LEGAL PRINCIPLES

[38] I intend to deal firstly with legal principles and some case law whereafter I shall consider the evidence and submissions of

counsel. The full bench of this Divsion summarised the bank/customer relationship as follows in *Standard Bank of SA v Mokoena* (A59/2015) [2016] ZAFSHC 69 (12 May 2016) at para [14]:

"It is trite that the relationship between a banker and customer is regarded as a contractual one. The basic although not sole relationship between a banker and customer in respect of a current account is one of debtor and creditor. If the current account of the customer reflects a credit balance he/she is the creditor and the bank the debtor. The customer is the debtor and the bank the creditor if the current account is overdrawn. The roles of the bank and the customer are then reversed insofar as the bank becomes the creditor and the customer the debtor. In either of these two situations the bank still acts as agent when carrying out the instructions of its customers to make payment against their accounts. See: Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd 1995 (4) SA 510C at 530G – 532C and Absa Bank Bpk v Janse van Rensburg 2002 (3) SA 701 SCA at para 16."

- [39] The effect of the relationship between a bank and its customer is that a bank becomes entitled to funds deposited in the customer's account, but obliged to give effect to the customer's payment instructions. See: Muller NO and another v Community Medical Aid Scheme 2012 (2) SA 286 (SCA) para [13]. The bank becomes the owner of the funds deposited and the customer obtains a personal right or claim against the bank based on the bank/customer relationship.
- [40] In my view the legal principle remains the same even in a case such as the present where Baroda was a non-clearing bank and had to make use of other clearing banks such as Nedbank.

- [41] Although POCA was not applicable in the dispute adjudicated by the SCA in Absa Bank v Lombard Insurance 2012 (6) SA 569 (SCA) the legal principle enunciated must be considered. The question to be answered was whether receipt of stolen funds by the two appellants, Absa and FNB, operated as a discharge of their mutual customer's respective debts to them. The customer fraudulently obtained funds from Lombard Insurance and paid that into her current account with FNB from where she transferred funds to her other FNB accounts to extinguish her debts with FNB and also transferred money to her Absa account from where further transfers were made to extinguish her Absa debts. The court held that the customer who caused the fraudulent transfer of money intended to discharge her indebtedness and found in favour of the two appellants by dismissing Lombard Insurance's claims for the amounts of the stolen funds used to discharge the fraudster's debit balances. The court confirmed that it did not matter that payments were made by electronic transfer.
- [42] We are concerned with Chapter 6 of POCA. This chapter provides for the forfeiture, by civil proceedings, of the very proceeds of crime. A preservation order was obtained in terms of s 38. It serves as interim protection or preservation whilst s 48 is utilised to obtain final forfeiture of the actual proceeds of crime. Both these sections are confined to the very proceeds of crime. Both sections require the NDPP to show that the property concerned is the proceeds of unlawful activities.

- [43] It is important to deal with some aspects of POCA and applicable authorities before I evaluate the evidence. The legislature intended to introduce strict measures to combat organised crime and in the process to inter alia provide for the recovery of the proceeds of unlawful activity. I refer to the long title and preamble of POCA. Clearly the intention is to ensure that criminals are not only severely punished by the introduction of severe sentences, but also to prevent these criminals from benefitting from their heinous deeds. I shall consider two relevant definitions and some authorities.
- [44] "Proceeds of unlawful activities" are broadly defined in s 1 of POCA. It relates to "any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly,, in connection with or as a result of any unlawful activity, ... and includes any property representing property so derived."

The Constitutional Court stated in *S v Shaik* 2008 (5) SA 354 (CC) at para [25] that this definition is widely cast, especially if the definition of "property" is considered. "Property" is defined as "money or and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof."

It is accepted that the court in *Shaik* dealt with Chapter 5 and not Chapter 6 of POCA, but the principle enunciated remains applicable.

[45] In *Mohamed NO* and *Seevnarayan supra* the Constitutional Court and the Supreme Court of Appeal respectively referred

to the broad approach to be applied when interpreting the definitions of "property" and "proceeds of unlawful activities". In Seevnarayan the respondent made several investments under fictitious names with the purpose to conceal the origin of the funds in order to evade income tax. The court found at paras [57] to [61] that he committed fraud, but that the funds were not an "instrumentality of an offence." It also found at paras [68] and [69] that the NDPP at no stage claimed that the capital of the investments originated in unlawful activities by the respondent: also that no basis was laid for an inference that they originated in unlawful activities. At paras [70] to [73] the court also found that, even bearing in mind the broad definition of "proceeds of unlawful activities", the interest earned could not be regarded to be "in connection with or as a result of the offence." At para [72] it was emphasised that there must be "some form of consequential relation between the return and the unlawful activity", or put otherwise "the proceeds must in some way be the consequence of unlawful activity."

[46] In NDPP v Abrina 6822 2011(1) SACR 419 (KZP) Wallis J (as he then was) accepted the following based on authorities such as Mohamed NO and RO Cook Properties supra:

"that the guilt or wrongdoing of owners or possessors of property is not primarily relevant to forfeiture proceedings.... Similarly, where one is dealing with s 38(2)(b), one is concerned, not with the mind of the owner of the property, but whether the property constitutes the proceeds of unlawful activities as defined. The phrase must be interpreted independently of the guilt or innocence of the owner of property."

It must be emphasised that the conclusion the learned judge arrived at pertaining to several farms and certain movable properties distinguishes the case from the facts in casu, notwithstanding the wide ambit of the definitions quoted supra. Here, the Estina credit balance in its Baroda account has been utilised, as duly instructed, to settle Vasram's debt. The amount standing to the credit of Estina was extinguished (albeit not completely) in the process.

- [47] I am convinced that the Lombard and Seevnarayan judments should be followed and in so doing the established principles pertaining to the bank/customer relationship should be upheld.
- [48] I dealt with the test applicable to these kinds of proceedings supra, but it is perhaps apposite to reiterate that the SCA stated in Singh v NDPP [2007] SCA 82 (RSA) at para [17] that the NDPP must "...prove facts giving rise to reasonable grounds for believing that the property is an instrumentality of the offence" (or constitutes the proceeds of unlawful activities.)
- [49] Estina was registered on 24 June 2008. Its core business was "business consultant." On 19 October 2012 Estina's core business changed to "agriculture, farming and related activities." Its registered address changed to the same address as that of Oakbay. On 31 July 2012 Estina opened a bank account with Baroda. By that time it was also a customer of Standard Bank. Vasram was Estina's only director.

Previously he was a retail sales manager at Sahara Computers, a flagship Gupta company, and he had no farming or agricultural experience. Three loans were granted to Vasram by Baroda in 2013. Security in the form of Estina's fixed investments with Baroda was provided to the bank. On 14 October 2013, the date mentioned in paragraph 2.1 of the second preservation order, the loans in the total amount of R33 205 871.86 were settled by way of a transfer of funds. In order to effect this, Estina's account with Baroda was debited with the amount and Vasram's loan accounts credited.

- [50] Mr Bham started off his argument on the merits by conceding that Baroda did not have any problem with Naidoo J's declaratory order that the proceeds of unlawful activities dealt with in the NDPP's affidavits amounted to R250 202 652.00. However, he argued that Naidoo J overlooked the principles applicable to a bank/customer relationship set out *supra*. According to him lawful loans were made to Vasram and the payments to settle the loans were not the proceeds of unlawful activities.
- [51] Mr Bham's main argument is that the NDPP's founding papers do not contain evidence of a factual link between the funds which are alleged to be proceeds of unlawful activities and the funds used to pay the Vasram debt. In fact, Nel's affidavit shows that the Vasram debt was paid using funds from a source other than the Estina Standard Bank account. This argument appears to be sound if Nel's affidavit and the bank

statements relied upon is considered thoroughly. On 14 October 2013 (the date mentioned in the preservation order) the credit balance in the Estina Baroda account was only R343 653.78 and on that day two deposits of R25 m and R10 m respectively were made. These amounts were not paid from the Estina Standard Bank account and neither Nel, nor anybody else, alleges that these deposits constituted the proceeds of crime. In fact, Nel only identified payments in the total sum of R110 450 000.00, paid from the Estina Standard Bank account to the Estina Baroda account during the period between 18 April 2013 to 19 August 2014, as the proceeds of unlawful activities. I refer to paragraph 15 of Nel's affidavit, read with annexure EN 27. On 14 October 2013, i.e. the day when the two deposits were made, Estina Baroda's account was debited when Vasram's debt was paid and his account thus credited in order to extinguish the total debt of R33 205 871.86.

[52] Mr Bham's secondary argument is that there is no consequential relation between the R33 205 871.86 that has been preserved and the alleged unlawful activity, the reason being that the credit balance in Baroda's Nedbank account is the result of the conducting of normal banking business. Therefore, Baroda's personal right against Nedbank for payment of the credit balance standing to Baroda's account could not be preserved. Reliance is then placed on Lombard supra and it is furthermore submitted that nothing in POCA purports to create an exception to the rule in Lombard. Mr Bham pointed out that money received by a bank can only be preserved if it stands to the credit of a particular customer of the bank. I agree. Where the

customer's account has a nil or debit balance there is nothing to be attached or preserved.

[53] The NDPP's arguments failed to take the above legal principles into consideration. Also, the issue of commixtio was not properly addressed. No doubt, it is clear that the credit balance of a criminal's bank account may be frezen or preserved even if the funds deposited therein consist of so-called clean and dirty (or tainted) money. That does not mean that the bank's money can be preserved. Cachalia JA stated the following in *Trustees*, Estate Whitehead v Dumas 2013 (3) SA 331 (SCA) at para [13], writing for a unanimous court:

"Generally, where money is deposited into a bank account of an accountholder it mixes with other money and, by virtue of commixtio, becomes the property of the bank regardless of the circumstances in which the deposit was made or by whom it was made."

The learned judge continued to refer to the bank/customer relationship set out *supra*.

[54] The judgment of Jordaan J is apposite in casu. He held that the R30m that the NDPP wanted to preserve was not the proceeds of crime for the following reasons: 1) Baroda held all its customers' money in a single pool and individual amounts lost their identity in the pool: 2) Baroda did not hold the money in the pool on its own behalf but on behalf of customers and 3) the amount of R30m had in any event been transferred to a call-account and was no longer in Baroda's possession. The learned judge concluded that "(i)n the same way that preservation orders are sought in respect of specific accounts of affected entities in other banks, if a preservation order is sought it should seek to preserve

the account of the specific client's (Sic) and affected entities held by the bank and not the Nedbank account of the bank itself."

- differ from those in the case on which Jordaan J made his finding, I am not persuaded. Again, as in that case, Baroda's Nedbank account was preserved. The amounts differ by about R3 m but that is immaterial as the principle remains the same. in the first case there was an instruction by Estina to transfer the funds to a call account, whilst in this case funds were transferred, as instructed, to settle another customer's debt, i.e that of Vasram.
- [55] Mr Cassim submitted that the dispute can be adjudicated based on two short answers, i.e. the broad definition of "proceeds of unlawful activities" and a common sense approach based on reasonableness referred to by Samela AJ in NDPP v Madatt, case no 6488/2007, a judgment in the Cape of Good Hope Division delivered on 25 January 2008. It has to be mentioned that the learned judge relied on several judgments, but in particular Mohamed NO and Seevnarayan supra. I have already referred to both judgments earlier herein.
- [57] Mr Cassim's submission that it was proved that the funds used to settle Vasram's debt were reasonably suspected to be the proceeds of crime does not hold water. I have dealt with the authorities *supra*, but reiterate the following. Even if stolen money was used to pay the Vasram debt, which was not

proven, the current credit balance in Baroda's Nedbank account consists of the deposits of many other customers as a result of Baroda's normal banking business and it cannot be suggested or submitted with conviction that the credit balance is the consequence of or connected to any unlawful activities. There is just no consequential relation as mentioned in Seevnarayan supra.

- [58] I am satisfied that when Estina's money was withdrawn from its Baroda account to settle the Vasram debt, Baroda's liability to Estina was discharged, save for any amount that might have been standing to its credit at that stage. We know that as at 29 December 2017 the credit balance was a mere R2 394.50. These funds could have been preserved, but it is accepted that the NDPP is not interested to do that.
- [59] Although, with the benefit of hindsight and bearing in mind all negative press reports published lately, not to speak of the belated action by the SAPS and the NDPP, one may argue that Baroda should have been aware of irregularities and even fraudulent actions, it would be wrong to jump to such conclusions. I have my suspicion about the involvement and role that Baroda's manager played in granting the loans to Vasram and the settlement thereof, but I am not prepared to go as far as the NDPP wants me to go. Now, in 2018 and after being told how the participants in the fraudulent Vrede Dairy Project went about their business, it may be easy to point fingers and accuse those allegedly involved of money laundering by making use of a "complex system of camouflage" as

our courts have referred to such schemes. However, none of the banks, as Baroda's deponent testified without contradiction, had reason to believe in 2013 that irregularities were the order of the day pertaining to the Vrede Dairy Project and/or Estina and/or Vasram. No evidence was provided that Baroda knew or ought to have known that the proceeds of unlawful activities were deposited into its Nedbank account. Suspicion is not enough.

- [60] Nel attached the first preservation order and two amendments thereof to his supporting affidavit which formed part of the documentation considered by Naidoo J. There is no indication that Jordaan J's judgment was placed before the learned judge and I have reason to believe that the pertinent issues raised therein were never canvassed during an obviously one-sided argument put forward on behalf of the NDPP. Although Mr Cassim tried his best to distinguish the two matters in order to persuade this court not to set aside the second order, I was not convinced. This is sufficient reason to reconsider the second preservation order.
- [61] Mr Cassim relied on American authority as well as certain dicta by Jordaan J in the aforesaid judgment for the submission that Baroda's Nedbank account could be preserved insofar as tainted or stolen money or the proceeds of unlawful activities were deposited in that account. Jordaan J dealt with the principle of commixtio and stated that it would be unacceptable to expect of the NDPP to prove that such tainted money (which would have lost its identity and become part of the totality of

funds in the specific account) still exists and is located in that account. I agree that a preservation order can be made once it has been proven that the receiver has received funds in the particular account which are the proceeds of unlawful activities. This must be clear, but it is a totally different scenario when a bank's account is to be preserved. If this could be done in respect of Baroda's Nedbank account, then the funds of Standard Bank and the other commercial banks involved with Estina could have been preserved as well. Such unfair and oppressive results are too ghastly to contemplate.

[62] I accept that, as clearly stated in the case law referred to *supra*, the focus in these proceedings is on property and not the owner or possessor thereof, but I am satisfied that there was no "property" to be preserved. The NDPP made it clear in paragraph 9 of its replying affidavit that it did not have any "desire to preserve monies rightfully belonging to customers of BoB (Baroda)" However, it is a necessary consequence of the order sought and obtained. Estina did not have any substantial credit balance in any account with Baroda at the time the order was made and the logical conclusion is that funds to which innocent customers have personal rights were preserved.

XI CONCLUSION

[63] In conclusion I am of the view that no facts were proven giving rise to reasonable grounds for believing that any of the funds

deposited in Baroda's Nedbank account on 14 October 2013 were the proceeds of unlawful activities.

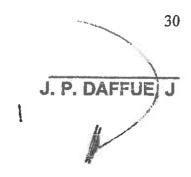
- [64] Even if am wrong in coming to the aforesaid conclusion, the age-old principles applicable to the bank/customer relationship should be applied, the effect being that Estina does not hold any account with a substantial credit balance in the books of Baroda. In any event, the NDPP did not apply for a preservation order in respect of Estina's personal right in such account, but Baroda's Nedbank account.
- [65] Furthermore, and even if it could be proven (which is not the case) that the proceeds of unlawful activities were deposited in Baroda's Nedbank account, that as a result of book entries Estina's account was credited and thereafter debited to settled Vasram's debt with Baroda, the NDPP cannot claim such amount from Baroda based on the principle laid down in Lombard supra. Mr Cassim pointed out quite correctly that the court in Lombard dealt with common law principles. I do not agree with his submission that Lombard is not authority as far as the application of POCA is concerned. I accept that this issue might have been a bone of contention during a possible future forfeiture application, but there is no reason why this court should not at this stage deal with the legal issue and grant relief as requested by Baroda.
- [66] Although Baroda sought a reconsideration of Naidoo J's order, it elected not to argue the matter on the NDPP's founding affidavit and annexures, but responded with a fully-fledged

answering affidavit to which the NDPP replied. As mentioned I even allowed further sets of affidavits. Having considered the evidence, the arguments and the authorities, I am satisfied that the order of 27 March 2018 should be set aside partially as requested.

[67] Baroda seeks the costs of two counsel. This is not an unfair request bearing in mind the number of counsel representing the NDPP and the voluminous papers that had to be studied.

XII ORDERS

- [68] The following orders are issued:
- Paragraph 2.1 of the preservation order granted by Naidoo J on 27 March 2018 under case no 1540/2018 is set aside;
- 2) Paragraphs 3, 4, 5 and 6 of the aforesaid preservation order, insofar as they relate to the amount of R33 205 871.86 held by Bank of Baroda in Nedbank account no 145095326, are set aside;
- 3) Applicant, the National Director of Public Prosecutions, shall pay the costs of the application, such costs to include the fees and expenses of two counsel.



On behalf of applicant:

Adv N A CASSIM SC and ADV A NTIMUTSE and ADV R NAIDOO

and ADV S FREESE

Instructed by:

The State Attorney BLOEMFONTEIN

On behalf of aggrieved party: Adv A BHAM SC

and Adv L M SPILLER

Instructed by: Mervyn Taback Inc BLOEMFONTEIN

IN THE HIGH COURT OF SOUTH AFRICA FOR THE FREE STATE DIVISION HELD AT BLOEMFONTEIN

CASE NUMBER	1778/2018
DATE	2018/05/28

in the matter between OAKBAY INVESTMENTS (PTY) LTD AND OTHERS and NATIONAL DIRECTOR OF PUBLIC PROSECUTION	
BEFORE VOOR	HONOURABLE JUSTICE LOUBSER
ON BEHALF OF THE APPLICANT	ADV HELLENS ADV JOUBERT
ON BEHALF OF THE RESPONDENT	ADV TRENGOVE ADV WRIGHT
CHARGE	As per charge sheet
PLEA	As per charge sheet
INTERPRETER	NOT REQUIRED

CONTRACTOR:

LEPELLE SCRIBES

P O Box 73090 Lynwoodridge 0040

Tel. No.: (051) 430 – 1052 / 431 – 8205 (Free State)

Tel. No.:

(015) 291 - 5522 / 230 - 0030 (Limpopo)

Fax.:

(086) 512 - 9211

Cell.:

(082) - 8669707

Email:

info@lepellescribes.co.za

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OAKBAY INVESTMENTS (PTY) LTD AND OTHERS versus	NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
CASE NUMBER	1778/2018

SIGNATURE:

CAROLINE STEFFERS

TRANSCRIBER:

CAROLINE STEFFERS

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2018-06-01

To: The Clerk of the Court
BLOEMFONTEIN HIGH COURT

The following problems were encountered whilst transcribing this case:

OAKBAY INVESTMENTS (PTY) LTD vs	NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
CASE NUMBER	1778/2018
DATE	28 MAY 2018
BEFORE	LOUBSER J
HELD AT	BLOEMFONTEIN
STENOGRAPHER	CHARMAIN VAN DER WESTHUIZEN

- 1. Soundtrack transcribed verbatim.
- 2. Unknown names typed phonetically.

Name: CAROLINE STEFFERS

TRANSCRIBER

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IN THE HIGH COURT OF SOUTH AFRICA FREE STATE DIVISION, BLOEMFONTEIN

CASE NO: 360/1778/2018

DATE: 2018/05/28

In the matter between

OAKBAY INVESTMENTS (PTY) LTD AND OTHERS

10 and

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

JUDGMENT

LOUBSER J: I will now proceed to hand down judgment in the matter called. On 11 April 2018, this Court issued a provisional restraint order against 13 respondents, in terms of the provisions of Section 26 of the Prevention of Organised Crime Act 121 of 1998, as amended. I will hereafter refer to this Act as POCA.

The order related to realisable property of the respondents, on a wide scale. The application for such an order was brought by the National Director of Public Prosecutions on an urgent and ex parte basis.

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The order was made returnable on 24 May 2018, on which date the respondents could show cause, why the provisional order should not be confirmed. Altogether five of the 13 respondents have chosen to anticipate this return date to 10 May 2018, as they were entitled to do, in terms of the Court Rules and in terms of Section 26 (3) (c) of POCA.

In terms of this section, they became applicants for the varying or the discharging of the provisional order. The five applicants were joined, in the anticipated proceedings, by two further applicants, namely the sixth and the seventh applicants, who were not amongst the 13 respondents, against whom the provisional restraint order was made.

They joined the proceedings as affected parties, as they fall in the category of persons, who have received affected gifts, in terms of paragraph 1.1.5 of the provisional order. On the anticipated return day of 10 May 2018, the Court postponed the proceedings to 17 May 2018, on an application by the NDPP.

On 17 May, the application for a discharge or a variation of the provisional order was heard in open Court. Advocate Hellens SC, appearing for the first to the fifth applicants, Advocate Joubert SC, appearing for the sixth and seventh applicants and Advocate

Trengove SC, appearing for the NDPP.

The submissions and arguments presented, by the respective counsel took up the whole day. This judgment is handed down, following those arguments and submissions.

In terms of Section 25 of POCA, a High Court may issue a restraint order, where firstly, a prosecution for an offence has been instituted against the defendant concerned. Secondly, either a confiscation order has been made against the defendant or it appears to the Court that there are reasonable grounds for believing that a confiscation order may be made against the defendant.

Thirdly, the proceedings against the defendant have not been concluded. Or when that Court is satisfied that a person is to be charged with an offence and it appears to the Court that there are reasonable grounds for believing that a confiscation order may be made against such person.

It is common cause that the first to fifth applicants are all charged in the Bloemfontein Regional Court on charges of fraud, alternatively theft. Further alternatively, conspiracy to commit fraud or theft, as well as the contravention of certain Sections of POCA, which essentially constitutes the crimes of money

laundering.

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Alternatively, acquiring, using or having possession of property and knowing or being expected to reasonably have known that the property is or forms part of the proceeds of unlawful activities of another person.

The first requirement for a restraint order has therefore been met, namely a prosecution already instituted for the offences mentioned, but which prosecution has not been concluded, as yet. I pause here, to mention that it is unknown to the Court, when the criminal case will commence or when it will be concluded.

Therefore, it is only the second requirement, namely reasonable grounds for believing that a confiscation order may be made in the criminal case that has to be determined by this Court. Section 18 of POCA deals with confiscation orders, in terms thereof, whenever a defendant is convicted of an offence, the Court may enquire into any benefit which the defendant may have derived from that offence and any other offence of which the defendant has been convicted, at the same trial and any criminal activity, which the Court finds to be sufficiently related to those offences.

If the Court then finds that the defendant has so

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benefitted, the Court may in addition to any punishment which it may impose, in respect of that offence, make an order against the defendant, for the payment to the State, of any amount, it considers appropriate. Such order is known as a confiscation order, in terms of this Section.

At this juncture, a few words about the crime of money laundering may be apposite. Section 4 of POCA provides, under the heading money laundering, inter alia that:

"Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and enters into any agreement or engages in arrangement or transaction with anyone, in connection with that property or performs any other act, in connection with such property, which is likely to have the effect of concealing disguising the nature, source, location, disposition or movement of the said property or the ownership thereof, shall be guilty of an offence."

Furthermore, and in terms of Section 6:

"Any person, who acquires, uses or has possession of property and who knows or ought reasonably to have known that it is, or forms part of the proceeds of the unlawful activities of another person, shall be guilty of an offence."

The laundering of illegal proceeds have been explained in more detail, by Nicholls J in S v Van Der Linde 2016 (2) SACR 377 (GJ) in paragraphs 111 to 125, with reference to an article by the well-known author, Prof Louis De Koker, as well as to the judgment in S v De Vries and Others 2012 (1) SACR 186 (SCA). The observation of Nicholls J at paragraph 124 of his judgment is significant, namely that:

"The authorities show, there must be an intention to hide or conceal what is often referred to as hot money. By the very nature of the crime of money laundering and especially where money is concerned, it may be extremely difficult to trace the movement of that money and to establish who eventually benefitted by the receipt thereof."

I now turn to the principles, governing the question,

whether reasonable grounds have been shown, for believing that a confiscation order may be made, in the criminal court, against the defendant concerned. To put it more comprehensively, there must be reasonable grounds for believing that the defendant may be convicted. That the Court may find that the defendant benefitted from the unlawful activities and that the Court may therefore, make a confiscation order, in the exercise of its discretion, in terms of Section 18 (1) of POCA.

In NDPP v Rautenbach 2005 (4) SA 603 (SCA) the Court found at paragraph 51 that:

"The question is not whether the offences were indeed committed or even whether they were probably committed. But, only whether there are reasonable grounds for believing that a Court might find that they were and while the Court must be apprised of at least the nature and tenure of the available evidence and cannot merely rely upon the opinion of the applicant, it is nevertheless not called upon to decide upon the veracity of the evidence. It needs only ask, whether there is evidence that might

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reasonably support a conviction and a consequent confiscation order. Even if all the evidence has not been placed before it and whether that evidence might reasonably be believed."

This appears in paragraph 27 of the judgment. See also *Phillips v NDPP* 2003 (6) SA 447 (SCA) and *NDPP v Kyriacou* 2004 (1) SA 379 (SCA).

In the case before me, it appears that the

10 Free State Department of Agriculture launched a

program in 2012 aimed at inter alia, the upliftment of

members of the Vrede community, through job creation.

This program came to be known as the Vrede Dairy

Project.

In March 2012, Mr MP Thabethe became the head of the department and he was tasked to oversee the execution of the project. He is accused 1 in the criminal case.

Shortly after his appointment, Mr Thabethe 20 travelled to India, where he visited the Paras Dairy. According to him, Paras was interested in becoming involved in the dairy industry in the RSA.

By considering only Paras, Mr Thabethe apparently failed to comply with the code of conduct for Supply Chain Management in his department. A South

African Company, by the name of Estina (PTY) LTD, soon became involved with Paras.

During a presentation, made to the department on 24 April 2012, Estina was indicated as being the local representative of Paras Dairy. Estina's sole director was Mr Kamal Vasram. It had no prior experience in agriculture. It only amended its memorandum of incorporation, to reflect its core business as agriculture, when it embarked on the dairy project, later in 2012.

Eventually, on 5 July 2012, the department and Estina entered into an agreement, in terms of which the scope of the dairy project was for three years and the amount of R114 million per annum was required, to be contributed by the department. It appears that Estina was to establish and manage the project with these funds.

But, it was also found that the processes, surrounding the procurement of Estina took place in violation of Chain Management processes, Treasury regulations and applicable procurement processes. Estina and Mr Kamal Vasram are also accused, amongst the other accused in the pending criminal trial.

According to the founding papers of the NDPP, the department made five payments into the Standard

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Bank account of Estina, between April 2013 and July 2014, in a total amount of some R144 million. In May 2015 and in May 2016, the department made two further payments to Estina in a total amount of some R106 million.

Estina had another account with the Bank of Baroda. During the period April 2013 to August 2014, it made eight transfers from its Standard Bank account to the Baroda account, in a total amount of some R110 million.

Mr Trengove, appearing for the NDPP, before me, referred to these payments, made by the department to Estina, as dirty money or elicit proceeds of the dairy project. On the basis of inter alia, the unauthorised manner, already mentioned earlier, in which the payments were made.

The applicants do not dispute the payments to Estina's Standard Bank account, nor do they dispute the transfer of some R110 million from that account to Estina's Baroda account, during the period mentioned. The overall contention that the payments to Estina constituted the proceeds of unlawful activities is not [indistinct].

Mr Hellens for the applicants, quite correctly pointed out that the NDPP's case against the applicants

rests only on the alleged flow of various payments from that Baroda account of Estina, to the applicants in the wide sense. The Baroda account was a general account, held at Nedbank.

It is referred to as a pool account. He submitted that no connection can therefore be made, between inflows and outflows from that account. With the result that the NDPP's case is flawed, by the fact that it cannot can never be established that the payments that were made to the applicants came from the elicit funds, advanced to Estina, by the department.

In a recent judgment by my Brother Jordaan J, in a preservation order application, in terms of Section 38 of POCA, where some of the present applicants were also involved as parties, the Court came to the same conclusions. Jordaan J, however, had the benefit of an affidavit, by the Bank of Baroda, explaining the mechanisms of the pool account.

When the present matter served before me initially, that affidavit was not included in the papers, filed by the NDPP. At the hearing of the present application, I allowed that affidavit, in the interests of justice and fairness, to form part of the papers.

The applicants made a concerted effort, in alleging that the Baroda affidavit was withheld by the

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NDPP, in the present proceedings. With the intention to conceal the real nature of the pool account and to [indistinct] the Court, into granting a provisional restraint order, on the basis sought, by the NDPP.

A transcribed copy of Jordaan J's judgment was also not attached to the founding papers, filed by the NDPP. I need to point out that, had the two items referred to, been placed before me from the outset, they could have influenced my decision, to grant the provisional order materially.

The Baroda affidavit points out that the pool account comprises of a conglomerate of deposits and withdrawals, by various clients of the Bank of Baroda. This pool account is held at Nedbank. Separate accounts are held, for those clients, wherein their respective dealings are recorded.

The pool account is therefore, not a reflection of a flow of funds of specific clients. The flow of funds for the different clients is reflected in a separate account, in the books of the bank.

To draw conclusions from the inflow and outflow of funds from the pool account is inaccurate, misleading and unreliable, according to the affidavit. With this in mind, I now turn to the allegations, concerning the first to the fifth applicants respectively,

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in a reconsideration of the provisional restraint order made.

Oakbay Investments (PTY) LTD is the first applicant. It is alleged by the NDPP that in the period 19 April 2013 to 21 August 2013, Estina made four payments of altogether R21.1 million to Oakbay, from its Baroda account.

These payments were made, during the time that Estina received some R144 million from the department, into its Standard Bank account and then, transferred some R110 million from that account to its Baroda account. Two defences were raised, on behalf of Oakbay, concerning the transfer of more than R21 million from the Baroda account of Estina to it, in the period mentioned.

The first defence comprised of the pool defence just mentioned. Much was said about this pool defence, at the hearing of the application. Reference was made time and again, to the judgment by Jordaan J, where he upheld this particular defence.

In that case, however, he dealt with an application, in terms of Section 38 of POCA, which provides for a preservation order of the actual proceeds of crime. The inflow and outflow of funds, surrounding a specific bank account and the entities

concerned, therefore had to be determined.

As we have seen, in the present enquiry, the situation is different. The actual proceeds of crime are not the determining factor here, but only the question, whether reasonable grounds have been shown, for believing that a confiscation order may be made, against the defendants, in the future.

Be it as it may, Jordaan J found that the alleged flow of funds to inter alia, Oakbay, is based on unreliable evidence. Since he dealt in detail with the facts, leading him to that conclusion, it is not necessary to repeat them here.

Suffice it to repeat that the evidence shows that Oakbay itself, deposited R10 million into the pool account and a further R28 million was deposited into the account, from a call account. A further anomaly, we find in the allegation that some R110 million was paid from the Standard Bank account of Estina to the pool account of Baroda, which came from the same R144 million, paid by the department to Estina, during the period April 2013 to July 2014.

However, a total amount of some R370 million was paid out to parties, other than the Bank of Baroda, by Estina. With the result that there were millions available in the account of Estina that were not paid in.

by the department, apparently.

It needs to be mentioned here that Jordaan J also came to the conclusion. That there is no rational basis for the contention that the amounts paid to Oakbay stems from the Estina deposit and not from the other deposits.

Mr Trengove conceded that it is not known, whether any other money went into Estina's Baroda account, which did not come from the department. But, he pointed out that the applicants have chosen not to adduce any evidence on this score.

He emphasized that it was a striking feature that the applicants did not offer any exculpatory evidence. But, that they merely relied on the contention that the NDPP's case is deficient in various respects. Therefore, there is no basis for an assumption that clean money went into the account, he argued.

Moreover, it appears from an account, presented by the NDPP, that Oakbay itself deposited R10 million into the pool account. That another deposit of R28 million was made, from a call account on the same day, as the R4.5 million that was allegedly paid, by Estina, from the pool account to Oakbay.

The second defence, raised by Oakbay was that payments made to Estina, represented the repayment

of loans that Oakbay had made to Estina. Interestingly, though, the evidence shows that Mr Kamal Vasram, who was the only director of Estina, received loans from Oakbay. He then lent the same money to Estina.

Estina then, repaid the loan to Mr Vasram, who in turn, repaid his loans to Oakbay. Why the flow of funds between Oakbay and Estina took place, via Mr Vasram, in his personal capacity remains unclear and suspect, to say the least.

Aerohaven Trading (PTY) LTD is the fifth applicant. I deal with the facts, surrounding this entity next, since the defences raised boil down to the same defences, raised by Oakbay.

From the evidence, presented by the NDPP, and I want to correct myself, where I referred to Oakdale incorrectly. I meant Oakbay. From the evidence presented by the NDPP, it appears that Estina paid an amount of R18 million from its Baroda account, to Aerohaven on 22 April 2013 and a further amount of R3.2 million, on 31 July 2014 to Aerohaven, from the same account.

Once again, the timing of these payments coincide with the period within which Estina received some R144 million from the department, into its Standard Bank account and then, transferred some

R110 million from that account to its Baroda account. Apparently and according to the founding papers, filed by the NDPP, another R8.9 million found its way from Estina's Baroda account, via Mr Vasram, the aforementioned, to Aerohaven, on 20 September 2013.

The amount of R18 million that went from the pool account of Baroda to Aerohaven at least, shows some involvement by Estina. According to Mr Hellens, this amount is shown to have been a loan by Aerohaven, from the Bank of Baroda, which was secured by an Estina fixed deposit, in the amount of R19.5 million.

He further pointed out that the alleged payment of R8.9 million to Aerohaven is not shown on any bank statement, put up by the NDPP. But, it is shown to be a loan repayment from Mr Kamal Vasram.

Each time Mr Vasram received a draw down on his loan account with Aerohaven, he paid the amount to Estina's Standard Bank account. Mr Hellens submitted that the loans to Mr Vasram were in keeping with the obligation of Estina, to also contribute to the Vrede Dairy Project.

He further submitted that the full picture, regarding the payments to Oakbay and Aerohaven is totally different from that selectively put forward, by the NDPP. In addition, it appears that the payments to

Aerohaven in main, consisted of payments out of the pool account.

In summary and as far as Oakbay and Aerohaven are concerned, it appears to this Court that there is much to be said, for the criticisms levelled at the case, advanced by the NDPP. That the evidence relied on, by the NDPP, shows many shortcomings that remain unexplained at this point.

Amongst the shortcomings, we find the uncertainty, surrounding the pool account of the Bank of Baroda and the possible veracity of the repayment of loans, as relied upon by the applicants. However, the present enquiry is not dependent on a finding, upon the veracity of the evidence against the applicants.

It is also not dependent on any suspicions. While the Court must be apprised of at least, the nature and tenure of the available evidence and while the Court cannot merely rely on the opinion of the NDPP. The only question that the court is presently seized with is whether there is evidence and I emphasize the word evidence that might reasonably support a conviction and a consequent confiscation order.

Even if all the evidence have not been placed before it and whether that evidence might reasonably

be believed. In the Rautenbach case, referred to earlier, it was stated that the question is not, whether the offences were indeed committed, or even probably committed. But, only whether there are reasonable grounds, for believing that a Court might find that they were.

From the totality of evidence, placed before me, it is evident that many millions of Rands were paid by the department, to Estina. These millions of Rands were paid into Estina's Standard Bank account.

It is further common cause that a massive amount of R110 million was paid by Estina, from its Standard Bank account to its general account, which is the pool account, at the Bank of Baroda. It is not clear, whether that transfer consisted only of funds, emanating from the department or whether it consisted of other funds, as well.

What is clear on the version, presented by Oakbay and Aerohaven themselves, is that several millions of Rands, subsequently found its way to them, from the pool account, albeit in the form of unidentifiable funds or in the form of loans, where Mr Vasram played a key role. Perhaps the observations of the Constitutional Court in S v Shaik 2008 (5) SA 354 (CC) at paragraph 25 are suitable, in

the circumstances, to wit:

"One of the reasons for the wide ambit of the definition of proceeds of crime is as the Supreme Court of Appeal noted, that sophisticated criminals will seek, to avoid proceeds being confiscated, by creating complex systems of camouflage."

And perhaps the famous lyrics of Pete Seeger, in the hit song, where have all the flowers gone, may be quoted in the present case. With one minor adjustment and with some justification namely, where have all the monies gone?

The problem that presents itself here is that the tenure and nature of evidence shows inter alia, that it cannot be established that the amounts paid to Oakbay and Aerohaven flowed from the Estina deposits and not from the other deposits.

In the premises and in the exercise of my discretion, I have come to the conclusion that reasonable grounds are lacking. For believing that the two entities concerned, may one day be convicted of the offences alteged and that a confiscation order may one day follow, upon that conviction.

As far as the first five applicants are concerned,

this brings me to the position, regarding the second, third and fourth applicants. The second applicant, Mr Ashu Chawla, was a director of Oakbay, at all relevant times. It would be reasonable to assume that he knew or ought to have known of the activities of Oakbay and Estina, pertaining to the flow of funds from Estina and the pool account, to Oakbay.

According to the charge sheet, Oakbay received payments from Estina and in turn, distributed its 10 proceeds to other companies that are alleged to have links with the Gupta family. The only evidence against him is therefore, that he was a co-director of Oakbay and that he had therefore known of its activities.

The assumption being that he had also benefitted directly or indirectly from those activities. The third applicant, Mr Varun Gupta, finds himself in the same boat as Mr Chawla.

He was also a co-director of Oakbay, during the relevant times. It can safely be assumed that he knew or ought to have known of the activities of Oakbay and Estina and of the flow of funds, already considered.

It can also be assumed that he had benefitted directly or indirectly from the activities concerned. But, the liability of Mr Chawla and Gupta is however, of an accessory nature, to the liability of Oakbay. In view of

the conclusions already made, in relation to the activities of Oakbay therefore, the cases for Mr Chawla and Mr Gupta have to follow the same result.

Ms Ronica Ragavan is the fourth applicant. She featured in the restraint order, because of her alleged involvement with Oakbay, Aerohaven and the sixth and seventh applicants, namely Westdawn Investments (PTY) LTD and Annex Distribution, respectively.

It is alleged that she only became a co-director of Oakbay, since 14 September 2016. She was also a co-director of Annex, Westdawn and Aerohaven. Her directorship of at least Oakbay, commenced well after the dates of the relevant payments that went the way of Oakbay.

In any event, her liability also depends on the possible criminality of the activities of the entities with which she was involved, as a director. In view of the conclusions already made, in respect of Oakbay and Aerohaven and in view of what is to follow, in respect of Westdawn and Annex, there are also no reasonable grounds, for believing that a confiscation order may one day be made, against her.

I next turn to the allegations, concerning Westdawn and Annex. As mentioned before, they are not accused in the pending criminal proceedings, but

are featuring only, as affected parties.

In terms of Section 12 (1) of POCA, read with Sections 14 and 26 (2) (a) thereof, the amount of a confiscation order may be recovered from the accused's realisable property, which includes any property, held by a third party, to whom the accused had directly or indirectly, made any affected gift.

An affected gift is defined as any gift, made by the defendant, at any time of property received, by that defendant, in connection with an offence, committed by him or any other person, or of property which directly or indirectly represented in that defendant's hands, property received by him, in that connection.

According to the papers, filed by the NDPP, Westdawn received an amount of R6 million from Estina, on 31 July 2014. Annex likewise, received from Estina an amount of R1.5 million, on 19 April 2013 and an amount of R6 million, on 21 August 2014.

There is no suggestion that these two entities gave any consideration for the amounts received. On the basis hereof, the NDPP holds the view that the payments constituted affected gifts.

The sum total of the NDPP's case against the two affected parties comprised of computer printouts, is said to be bank statements of Baroda's general pool

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account, wherein the payments under scrutiny, are reflected. The fallacy underlying the allegation that the amounts were received from Estina lies in the fact that the identity of funds from the pool account cannot be identified, as we have mentioned earlier.

Moreover, the same bank statements reveal that Westdawn and Annex had deposited amounts far in excess of the R6 million and the R7.5 million, into the pool account, prior to the payment thereof, to them. It is therefore quite possible that Westdawn and Annex had withdrawn the amounts concerned, against credits they held, in that account.

It follows that there are also no reasonable grounds for believing that the sixth and the seventh applicants have received affected gifts from Estina, in the form of the amounts referred to. There is another issue that needs to be addressed.

An application was filed, by the applicants in the proceedings for the striking out of what is alleged to be a new matter that was introduced, in the replying papers, filed by the NDPP, as well as irrelevant, vexatious, argumentative and a hearsay matter. This application was opposed, on behalf of the NDPP.

But, Mr Trengove assured the Court that he did not rely on the matter objected to, in his submissions,

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in respect of the main application, in any event. The Court also did not. It therefore, appears that this issue is neither here nor there and I do not propose to take it any further.

As far as costs are concerned, the Court has to mention its displeasure in the failure of the NDPP, to include the Baroda affidavit, in its founding papers and to provide full information, pertaining to the judgment of Jordaan J, at the time when the urgent and ex parte application was launched. On the other hand, the NDPP might have had good reason to believe that the present application, in terms of Section 26 would be determined, on an entirely different basis, than the Section 38 proceedings before Jordaan J.

That those issues were therefore, irrelevant to the present proceedings, as we have seen such beliefs have been proved wrong. I therefore, hold the view that the costs order should not be on a punitive scale.

The following order is therefore made:

- 20 1. The provisional restraint order, in respect of the first to the fifth applicants is discharged with costs, which costs include the costs of two counsel.
 - 2. The provisional restraint order, in respect of the affected parties, namely the sixth and the seventh

P. J. Loubson J)

applicants is discharged with costs, which costs include the costs of two counsel.

The court will adjourn.

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Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Friday, April 6, 2018 at 12:06

Disclosure Certificate: Companies and Close Corporations

Registration Number:

2008 / 015033 / 07

Enterprise Name:

ESTINA



Property Commissions

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ENTERPRISE INFORMATION

Registration Number

2008 / 015033 / 07

Enterprise Name

ESTINA (PTY) LTD

Registration Date

24/06/2008

Business Start Date

24/06/2008

Enterprise Type

Private Company

Enterprise Status

Voluntary Liquidation

Compliance Status

Compliant

Financial Year End

February

TAX Number

9058923187

Addresses

POSTAL ADDRESS

P O BOX 309 **BEDFORDVIEW**

2800

ADDRESS OF REGISTERED OFFICE

144 KATHERINE STREET

BLOCK A 1ST FLOOR

GRAYSTON RIDGE OFFICE PARK

SANDTON

2146

ACTIVE MEMBERS / DIRECTORS

Surname and First Names

Type

Denoctor

ID Number / Date of Birth

1974-06-28

Contrib. (R)

0.00

Interest (%)

0.00

Appoint. Date

01/07/2015

Postal: 111 SHIMBALI SAND,

NAVIASHA ROAD, SUNNINGHILL,

GAUTENG, 2157

Address

Residential: 111 SHIMBALI SAND. NAVIASHA ROAD, SUNNINGHILL,

GAUTENG, 2157

AUDITOR DETAILS

Auditor Name

JEON, SOO YOUNG

Type

Status

Appointment

Date

Resignation **Date**

Email Address

CAP CHARTERED ACCOUNTANTS

Auditor

Current

ACTIVE

KAMAL@ESTINA.CO.ZA

Profession Number: 901 659

CHANGE SUMMARY

2008-06-24

Registration of CC/CO on 24/06/2008.

2008-08-06

Member Change on 01/08/2008.

Surname=LAST Full ForeNames=ANTONY ld No=5704085047084

Status: RESIGNEDNature of Change=DIRECTOR RESIGNED

Page 1 of 3

Physical Address the dti Campus - Block F 77 Meintiles Street Sunnyside 0001

Postal Address: Companies

P O Box 429 Pretoria

0001

Docex: 256 Web: www.cipc.co.za

Contact Centre: 086 100 2472 (CIPC)

Contact Centre (International): +27 12 394 9500



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Registration Number:

2008 / 015033 / 07

Enterorise Name:

ESTINA



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2008-08-06

Member Change on 01/08/2008.

Surname=VA\$RAM Full ForeNames=KAMAL ld No=7906255178080

Status: ACTIVENature of Change=APPOINTMENT AS DIRECTOR

2008-08-06

Member Change on 01/08/2008.

Surname=LAST

Full ForeNames=ANTONY Id No=5704085047084

Status: RESIGNEDNature of Change=DIRECTOR RESIGNED

2008-08-06 1

Member Change on 01/08/2008.

Sumame=VASRAM Full ForeNames=KAMAL ld No=7906255178080

Status :ACTIVENature of Change=APPOINTMENT AS DIRECTOR

2008-08-06

Member Change on 01/08/2008.

Sumame=VASRAM Full ForeNames=KAMAL

ld No=7906255178080

Status: RESIGNEDNature of Change=DIRECTOR RESIGNED

2008-08-06

Member Change on 01/08/2008.

Surname=VASRAM Full ForeNames=KAMAI Id No=7906255178080

Status: ACTIVENature of Change=ADDRESS ADJUSTMENT

2010-10-19

Status changed to Unknown

DEREGISTRATION FOR ANNUAL RETURN NON COMPLIANCE REGISTRATION MONTH = 6 - AR NON COMPLIANCE DATE = 01/08/2009

- 6 MONTHS AFTER = 03/04/2010

Status changed to Unknown.

2010-11-17

Annual Return Non Compliance - Cancellation of Deregistration

2011-03-10

Registered Address Change on 31/03/2011

111 SHIMBALI SANDS NAVAISHA ROAD **JOHANNESBURG**

2157

2011-03-10

Postal Address Change on 31/03/2011

P O BOX 309 BEDFORDVIEW

2800 2011-03-10

Registered Address Change on 31/03/2011

111 SHIMBALI SANDS NAVAISHA ROAD **JOHANNESBURG**

2157

2011-03-10

Postal Address Change on 31/03/2011.

P O BOX 309 BEDFORDVIEW

2800

2011-03-10

Registered Address Change on 31/03/2011.

111 SHIMBALI SANDS NAVAISHA ROAD **JOHANNESBURG**

2157

Page 2 of 3

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Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Friday, April 6, 2018 at 12:06

Disclosure Certificate: Companies and Close Corporations

Registration Number:

2008 / 015033 / 07

Enterprise Name;

ESTINA

Companies and imelectual Property Commission

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2011-03-10

Postal Address Change on 31/03/2011.

P O BOX 309 BEDFORDVIEW

2800

2012-11-27

Principle Business Change on 19/10/2012.

2012-12-12

Postal Address Change on 16/11/2012.

P O BOX 309 BEDFORDVIEW

2012-12-12

2800 Registered Address Change on 16/11/2012.

> 111 SHIMBALI SANDS NAVAISHA ROAD **JOHANNESBURG**

2157

2014-02-06

Annual Return completed on 06/02/2014.

Company / Close Corporation AR Filing - Web Services : Ref No. : 54814880

2015-02-19 1

Annual Return completed on 19/02/2015.

Company / Close Corporation AR Filing - Web Services . Ref No 524483548

2015-06-24 1

Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2008015023

2015-07-13

Member Change on 13/07/2015.

Director SOO YOUNG JEON was added

2015-07-13

Member Change on 13/07/2015

Director KAMAL VASRAM details was Changed

2016-05-27

Annual Return completed on 27/05/2016

Company / Close Corporation AR Filing - Web Services Ref No 534937118

2016-06-07

Email Notification that Annual Return is due was sent on 07/06/2016

E-Mail send to SOO YOUNG JEON for 2016

2017-05-04

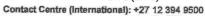
Status changed to Liquidation on 04/05/2017

017-09-12

Member Change on 01/08/2008

DATA CORRECTION: CORRECT RESIGNATION DATE FROM TIME TO 01/08/2008 ON ID NUMBER 5704085047084

Page 3 of 3





THE FREE STATE HIGH COURT, BLOEMFONTEIN REPUBLIC OF SOUTH AFRICA

In the ex parte application of:	CASE NO:		
THE NATIONAL DIRECTOR			
OF PUBLIC PROSECUTIONS	APPLICANT		
Application in terms of Section 38 of the Prevention of Organised Crime Act, Act 121 of 1998, concerning certain Property listed in "Annexure A".			
FOUNDING AFFIDAVIT			
I the undersigned,			
M	OTLALEKHOTSO KNORX MOLELLE		
do hereby state, under oath, the following:			

1.

The facts contained herein are within my personal knowledge, save where indicated otherwise or the context indicates otherwise, and to the best of my belief true and correct.



- 2.1 I am the Acting Special Director of Public Prosecutions in the Republic of South Africa. I have been duly appointed as such in terms of the National Prosecuting Authority Act, No.32 of 1998 ("the NPA Act").
- 2.2 I am the functionary referred to in Section 1 of the NPA Act, which is under the control of the National Director of Public Prosecutions, as contemplated in Section 1(1) of the Prevention of Organised Crime Act, No.121 of 1998 (the POCA).
- 2.3 I have been duly authorised by the National Director of Public Prosecutions to bring this application on his behalf.

THE APPLICANT

The Applicant is the National Director of Public Prosecutions duly appointed in terms of Section 179(1) (a) of the Constitution of the Republic of South Africa, 1996 with offices at No.123 Westlake Avenue, Hartley Weavind, Silverton, Pretoria ("the Applicant").

4.

THE PRESERVATION OF PROPERTY ORDER

- 4.1 This is an application for a preservation of property order in terms of Section 38 of the POCA.
- 4.2 The application relates to certain property referred to in Annexure "A" of the Notice of Motion (hereinafter referred to as the *property*).

- 4.3 The purpose of this application is to prohibit any persons, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.
- 4.4 The order that is sought from this Honourable Court, inter alia, seeks:
 - 4.4.1 to prohibit any other persons from dealing in any manner with any of the property, whether such property is held directly or indirectly by them;
 - 4.4.2 to compel the surrender of the property to the Curator Bonis.
 - 4.4.3 to compel full and *proper* disclosure of information and documents pertaining to the *property*, to the *Curator Bonis*; and
 - 4.4.4 to ensure that the *property* is preserved pending the determination when an application for a forfeiture order would be made in terms of Section 48 of POCA.

JURISDICTION

- 5.1 In so far as it has been identified, as listed in "Annexure A", the property is located within the area of jurisdiction of this Honourable Court I submit that this Honourable court has jurisdiction to hear this application.
- 5.2 With regard to any such further property as may be identified elsewhere and beyond the physical boundaries of this Honourable Court's jurisdiction, I submit that this Honourable Court does have the jurisdiction over such property for the following reasons;
 - 5.2.1 the cause of action giving rise to this application arose out of this Honourable Court's jurisdiction; and



- 5.2.2 the balance of convenience favours this Honourable court to have jurisdiction over any such further *property* as may be identified beyond the physical boundaries of its area of jurisdiction.
- 5.3 l'accordingly submit that this Honourable Court does have jurisdiction to here such application.

- 6.1 In terms of Section 38(1) of **POCA**, the National Director may by way of ex parte application apply to a High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.
- 6.2 In terms of Section 38(2) the High Court shall make an order referred to in subsection 1 if there are reasonable grounds to believe that the *property* concerned;
 - 6.2.1 is an instrumentality of an offence referred to in Schedule1; or
 - 6.2.2 is the proceeds of unlawful activities.
- 6.3 In terms of Section 38(3) a High Court making a preservation order of property shall at the same time make an order authorizing the seizure of the property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.



THE UNLAWFUL ACTIVITIES

- 7.1 The unlawful activities are set out in the respective supporting affidavits of Samson John Schalkwyk (Schalkwyk) and Nkosiphendule Mradla (Mradla). The said affidavits are filed herewith in support of this application
- 7.2 I have read and had regard to the respective affidavits by Schalkwyk and Mradla.
 On the basis of the evidence contained in the Schalkwyk and Mradla's respective affidavits, I submit that the *property* is the proceeds and instrumentality of unlawful activities; namely the fraud, theft and corruption and money laundering.
- 7.3 With specific reference to the respective affidavit by Schalkwyk and Mradla I shall provide a brief summary of the factual and legal basis upon which this application is being sought.

8.

Schalkwyk's Evidence

I shall briefly set out the findings of Schalkwyk's investigations hereunder as follows;

- 8.1 Estina's appointment for the establishment and management of the Free State

 Dairy Project was preceded by several irregularities including the deliberate

 and fraudulent disregard of the Department's prescribed SCM processes;
- 8.2 Several Department officials had colluded with Estina in fraudulently circumventing the Department's SCM processes to the benefit and advantage of Estina in one or more of the following ways;



8.2.1 No proper research and feasibility study was done to establish the necessity for the project and its viability. The project was neither planned nor budgeted for; 8.2.2 No competitive bidding process was followed by the Department none whatsoever. The Department failed to solicit bids from other competitive bidders to test the market. Estina's appointment was based on the HoD's informal research (internet research) and informal visit to India: 8.2.3 Estina's bid and appointment was based on material fraudulent misrepresentations regarding the nature and extent of the services they intended to deliver: 8.2.4 No assessment of Estina's ability and capacity to undertake the project was done and Estina did not have any capacity including any demonstrable track record of handling such projects; Despite Estina receiving a total payment of R220 202 652-00 from 8.2.5 the project, Estina failed to deliver the goods and or render any services. 8.2.6 The Department failed to hold Estina accountable for the funds paid to it in one or more of the following ways; 8.2.6.1 failed to ensure that the funds were used for their intended purpose; and 8.2.6.2 failed to compel Estina to perform and deliver the goods and services as per agreement: 8.2.6.3 failed to recover the funds when it became

apparent that Estina had failed to deliver



Based on the finding of his investigations, **Schalkwyk** makes the following submissions:

- 9.1 that Estina's appointment was null and void because proper procurement processes were not followed and consequently that the appointment was null and void;
- 9.2 that Estina was thus never entitled to any payment of R220 202 652.00 by the Department and that in the circumstances the amount constitutes the proceeds of unlawful activities.
- 9.3 that the nature and extent of the aforesaid irregularities, including fraudulent circumvention of the SCM processes and related criminal acts would have had, amongst others, the following consequences for the Department;
 - 9.3.1 they deprived the Department from effectively testing the market to secure the most competitive bids for goods to be supplied and or services to be rendered;
 - 9.3.2 prevent the Department from effectively getting the best value for money in respect of goods supplied and services rendered;
 - 9.3.3 exposed the Department to serious irregularities that would have resulted in substantial financial losses and further including wasteful expenditure in contravention of the PFMA and related prescripts.



On the basis of the findings of Schalkwyk's evidence, I make the following submissions;

- 10.1 The procurement of Estina's service was for public purposes and was a public function involving the use of public funds.
 - The said procurement was required to be done in accordance with the principles of public procurement set out in section 217(1) of the Constitution of the Republic of South Africa 108 of 1996 (The constitution) and section 38(1) (a) (iii) of the Public Finance Management Act 1 of 1999 (the PFMA) and sections 16A3.2 and 16A6 of the Treasury Regulations (Treasury Regulations).
- 10.2 Estina's appointment did not comply with the above requirement. The entire project including Estina's appointment was in breach of the principles of fairness, equity, transparency and competition required by section 217(1) of the Constitution as well as the contravention of the PFMA and Treasury Regulations.
- 10.3 As is evident from Schalkwyk's evidence there was gross non-compliance of the SCM prescripts. Amongst others, no competitive bidding process was followed whatsoever and Estina had an improper and unfair advantage because no other bidders were approached to submit bids.
- 10.4 The entire appointment favoured Estina to the detriment of the Department and other prospective service providers. The said bid and appointment was accordingly null and void *ab initio*.
- 10.5 Consequently Estina's appointment was not lawfully entitled to any payment from the Department. The said payment R220 202 652.00 was therefore constituted the proceeds of unlawful activities.



Mradla's evidence

I now briefly deal with Mradla's evidence, which can be summarized as follows;

- 11.1 that over a 29 month period commencing April 2013 to 18 May 2016, the Department made 7 payments to Estina to the total amount of R220 202 652.00 in respect of services purportedly rendered;
- 11.2 that the said payment was made into Estina's two bank accounts as follows;
 - 11.2.1 a total amount of *R113 950 000.00* into Estina's Standard Bank A/c No. 3100664860; and
 - 11.2.2 a total amount of *R106 252 652.00* in Estina's First National Bank A/c 62505753906.
- 11.3 that immediately upon the said funds being paid into the aforementioned Estina's aforementioned accounts, several large payments were made to several entities and individuals as follows;
 - 11.3.1 R40 737 080.00 million was paid to Gateway Pty Ltd.
 - 11.3.2 R43 392 660.00 was paid to an entity known as Vargafield Pty
 Ltd, whose Director is an Indian national with a residential
 address in Dubai. The said entity had no apparent business
 history. On or about 2016 the said entity applied for voluntary
 liquidation;
 - 11.3.3 R110 450 000.00 was paid to the bank of Baroda A/c no. 1454095326;



11.3.4	R10 000 000.00 to Atul Gupta;
11.4.5	R14 500 000.00 to Oakbay Investment Pty Ltd;
11.4.6	R21 200 000.00 to Aero haven;
11.4.7	R19 000 000.00 to Stanlib Bedford Gard;
11.4.8	R60 000 000.00 to VLRS Investments;
11.4.9	R6 000 000.00 to West Dawn Investments;
11.4.10	R4 500 000.00 to Uxolo Diamond Cutting;

Mradla's analysis of the aforesaid payments is as follows;

- 12.1 that the bulk of the payments received by Estina were paid to several related entities and individuals that did not appear to have any legitimate business relationship with Estina and its core business;
- 12.2 several of the said entities did not appear to have any apparent legitimate history of being in business and there was further no indication that the payments were made in respect of legitimate goods and services rendered to Estina;
- 12.3 some of the said entities did not have any apparent legitimate history of being in business and there was further no indication that the payments were made in respect of legitimate goods and payments; and
- the totality of the said business transactions did not demonstrate any significant activity of either establishing and or managing a dairy project or conducing the business of a farm;



THE PROCEEDS AND INSTRUMENTALITY OF UNLAWFUL ACTIVITIES

In terms section 38 (2) (a) and (b) this honourable court shall make a preservation order if there are reasonable grounds to believe that the *property* concerned is an instrumentality of an offence referred to in Schedule 1 or is the proceeds of unlawful activities.

13.

Proceeds of Unlawful Activities

- 13.1 On the basis of the totality evidence contained in Schalkwyk and Mradla's respective affidavits, I submit that the entire payment of R220 202 652.00 made by the Department to Estina constitutes proceeds of crime.
- 13.2 My submission in this regard finds support in the following;
 - The Department's appointment of Estina as a service provider
 was unlawful in that it was made in contravention of Section 217
 of the Constitution, the PFMA and related Treasury regulations;
 - The said appointment was clearly preceded by a series of false and fraudulent misrepresentations including the circumvention of the Department's SCM processes;
 - despite the payment being made to Estina, no value for money or benefit passed on to the Department and or its intended beneficiaries;
 - 13.2.4 No credible explanation or justification can be exist for appointing Estina, which had little or no farming or related

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farming experience and related capacity to undertake a project of that magnitude;

- the funds paid by the Department to Estina were siphoned out to several related entities and individuals and in circumstances where there was never an intention to give any value in return to Estina or the beneficiaries of the said project.
- 13.3 I further submit that if one takes due regard to the circumstances under which the entire Vrede Dairy project was initiated, then it becomes evident that the intention could never have been to ensure successful and sustainable implementation of the project.
- 13.4 In this regard there was no apparent indication of any effort on the part of both the Department and Estina to put control mechanisms in place to ensure that the funds are used for their intended purpose or alternatives that the losses are recovered.
- 13.5 All indications from the findings of the investigations are that Estina's appointment was pushed through at great costs and that it was identified as the preferred bidder from the outset without any attempt to first test the market.

 Little or no effort was made to test the market by finding other competitive bids.



Instrumentality of an offence

- 14.1 I submit that the totality of the Schalkwyk's and Mradla's evidence points out to a well-orchestrated plan by Estina and its related entities and individuals and the identified Department officials, designed and intended to effectively swindle the Department of the very funds in question.
- 14.2 From the inception of the said project up to the point of payment of the funds, there was apparent collusion between the role players that was evident by the flagrant disregard of the SCM processes, which amongst others involved false and fraudulent misrepresentations.
- 14.3 I submit that the haphazard manner in which the project was initiated, the gross irregularities occasioned by Estina's appointment as a service provider, Estina and the Department's glaring failure to ensure that the funds are properly accounted for and the failure to put in place, preventative or corrective measures to prevent the financial losses, clearly demonstrate the ultimate intention of the role players, namely to drain Department of the very funds it could ill afford to waste
- 14.4 I submit that it is evident that the entire Project including the very land on which was located, were merely part of the necessary packaging that was required to achieve the ultimate aim and objective of swindling the Department of the funds. The respective parties worked jointly and setting up the project at all costs with the ultimate purpose of forcing the Department to make financial commitments in a business idea that was in clear failure from the outset.
- 14.5 Based on the above, I submit the entire Project was a mere facade right from the outset that was aimed at providing a veil of legitimacy to what was evidently a scheme designed to defraud and steal monies from the Department.



14.6 In the circumstances, I submit that entire Project including the land it was located on were instrumentalities of the evident theft, fraud and money laundering.

15.

EX PARTE AND IN CAMERA

- 15.1 I submit that section 38(1), read with section 74, of the POCA, entitled to the Applicant to approach this honourable court on an *ex parte* basis and for the hearing to be held *in camera*.
- 15.2 I submit that the express provision made for ex parte proceedings under section 38 is based on the Legislature's recognition that there is an inherent need to proceed without notice in applications for preservation orders.
- 15.3 Further, that the structure of Chapter 6 of the POCA is geared towards allowing in general for an initial *ex parte* order to secure assets, with any opposition to be dealt with after this initial objective has been achieved.
- 15.4 Furthermore if the Applicant were to proceed on notice there is a real risk that the property might be disposed of, transferred or sold to innocent third parties. Once the *property* is transferred to a third party it becomes impossible to use the provisions of POCA to retrieve it if the transferree is an innocent party who bought the property for value.
- 15.5 I respectfully submit, therefore, that it will only be in unusual circumstances that an *ex parte* application for a preservation order will be inappropriate. My submission is that no such circumstances exist in this case.

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15.6 In particular, I submit that, despite the ex parte nature of the present application, the provisions of the POCA and of the order that is sought from this honourable court sufficiently safeguard the principle of audi alteram partem. This matter is dealt with in greater detail below.

16

GROUNDS FOR URGENCY

- 16.1 As is evident from the forgoing the substantial portion of the subject matter of this application is the total amount of R220 202 652.00 that was unlawfully paid in and out of the Estina bank account.
- 16.2 The said amount was paid into several bank accounts including offshore accounts, held by identified entities and individuals. Mradla's evidence shows that the funds were essentially siphoned out of the Estina's bank account and laundered through a several bank accounts held by the aforesaid persons and entities.
- 16.3 A substantial portion of the said funds were located in several bank accounts held with the bank of Baroda, which accounts are held by a group of related entities and individuals;
- There is a pending High Court application by the bank of Baroda for the closure of the said accounts. The said application was triggered by, amongst others, the Financial Intelligence Centre and other commercial banks raising suspicion about the legitimacy of the said transactions;
- The indication is that the said matter will be in court for hearing on or about 7

 December 2017. Should the Bank of Baroda succeed in its bid for the foreclosure of the said accounts, then there is a real likelihood of the said funds being moved or dissipated to off shore accounts in jurisdictions which South Africa does not

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have any Mutual Legal Agreement (MLA) protocols for the repatriation of the said funds, thus defeating the very purpose and objective of this application;

16.6 The identified role players appear to have extensive presence and footprint in several jurisdictions where the some of the said offshore entities and accounts are located. This may thus make the repatriation of the said funds impossible.

17.

- 17.1 On the basis of the above, I submit that there exists a reasonable apprehension that the property may well be dissipated.
- 17.2 I accordingly submit in the circumstances, that the matter is of sufficient urgency to justify this Honourable Court from dispensing with the normal rules and allowing it to be heard as a matter of Urgency
- 17.3 Wherefore I ask this matter be heard on an urgent basis in terms of Rule 6(2) of this Honourable Court.

18.

APPOINTMENT OF CURATOR BONIS

- 18.1 In terms of section 42 (1) (a) of the POCA, this honourable court is authorised to appoint a *curator bonis* to take control over the property placed under a preservation order.
- 18.2 I submit that in view of the nature of the relief being sought by the Applicant and the nature of the property being sought, it will be proper and necessary that a Curator Bonis is appointed with the view of giving effect to the relief sought by the Applicant.



- 18.3 Eugene Nel has indicated his willingness to act in this capacity as appears from annexure MKM1, which is a copy of a letter received from him in this respect.
- 18.4 I submit that his expertise is of such a nature that the interests of all parties will be safeguarded by his appointment as curator in this matter.
- 18.5 I accordingly request that this honourable court appoint Eugene Nel of the company Vesticraft, Suite 8, Second Floor, Block C Town Bush Office Park, 460 Town Bush Road, Montrose, Pietermaritzburg as a curator bonis in this matter.

PROVISION OF THE AUDI ALTERAM PARTEM RULE

- 19.1 I submitted that granting the preservation order ex parte does not deprive persons who have a legal interest in the property concerned of the opportunity to have their opposition heard and from safeguarding their interests during the operation of the order.
- 19.2 During the operation of a preservation and seizure order, anybody with an interest in the property concerned may apply to the High Court for rescission or variation of the preservation and seizure order in terms of section 47 of the POCA.
- 19.3 In addition to the specific provisions in the POCA, it is submitted that the honourable court also has a wide discretion in regulating its own processes and to ensure that any interested party who wishes to contest the granting of the preservation order, can do so.



- 19.4 In the present matter, in order to provide any interested party with the opportunity to challenge the preservation order, a prayer for reconsideration is included in the draft order to the notice of motion.
- 19.5 I submit that this provision ensures that interested parties may be heard despite the initial *ex parte* granting of the order, and that it is compatible with the overall structure of the procedure set out in Chapter 6 of the POCA read with the rules of the High Court and the law relating to the inherent jurisdiction of the court.
- 19.6 In addition to the safeguards set out above, I draw this Honourable court's attention to the fact that Chapter 6 of the POCA establishes a two-stage asset forfeiture mechanism. The preservation order is only the first stage in these proceedings, with the second phase involving an application to this court for a forfeiture order.
- 19.7 I further draw this honourable court's attention to the fact that the POCA also contains a number of provisions safeguarding the interests of those who claim to have a legitimate interest in the property. The POCA provides such persons with sufficient opportunity to participate in the subsequent forfeiture proceedings and to oppose the granting of a forfeiture order, or to seek an order excluding their legitimate interests in the property from forfeiture. I refer this honourable court in particular to sections 39, 48(2) to (4), 52 and 54 of the POCA.



NOTICE AND PUBLICATION OF THE PRESERVATION ORDER

- 20.1 In terms of section 39(1) of the POCA, the applicant is obliged, as soon as practicable after the granting of the order, to give notice of the order to any person known to him to have an interest in the property.
- 20.2 The order, which the applicant seeks in the present application, contains the names of the persons who are known to me as possibly having an interest in the *property* that will be affected by the order.
- 20.3 To the best of my knowledge, all the individuals and entities referred in the Draft Order marked Annexure A, as well as the Registrar of Deeds, Bloemfontein are the only persons or entities that may claim to have an interest in the property and must, in terms of section 39(1) of POCA, be served with notice of the order sought from this honourable court once such order is granted.
- In terms of the order sought, the applicant is also directed to cause publication of the order in the Government Gazette. A copy of a notice in terms of section 39(1) is further annexed to the order sought, marked Annexure B.
- 20.5 The terms of **Annexure B** is intended to draw the attention of any person who receives or reads it to the position regarding the order and what he/she should do to safeguard any interests they may have in the **property**.



CONCLUSIONS

In conclusion, I respectfully submit that the factual and legal requirements for the granting of an order under section 38 of the POCA have been satisfied. I thus request this honourable court to grant an order in terms of the draft order attached to the Notice of Motion as Annexure A.

Deponent

I certify that on this ______ day of _______ day of _______ 2017, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience. NATIONAL PROSECUTIONS

2017 -12- 08

DIRECTOR OF PUBLIC PRC SECUTIONS FREE STATE DIVISION

Commissioner of Oaths

BLOEMFONTEIN DIREKTEUR OPENSARE VERVOLGINGS NASIONALE VERVOLGINOSGESAG FUIL Names: THATO JOHNNE NKI YAME

Designation: Aprili Clark

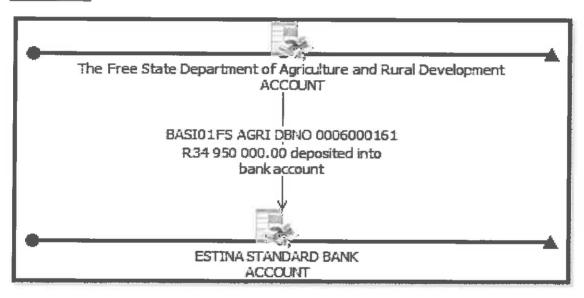
Area: DPP! Bloom for /Eins

Flow of Funds:

The Free State department of agriculture allegedly made seven (7) payments, totalling R220 202 652.00, to Estina "in support of a dairy farming project meant to uplift the poor." The payments commenced in April 2013 until 18 May 2016. Only R2 million was purportedly used to pay for services relating to the farm. Mr Zwane, MEC for rural development and agriculture in the Free State at the time, allegedly visited Tony Gupta in Saxonwold on 06 April 2013. The first payment was made to Estina on 18 April 2013. Estina has three identified bank accounts. A total of R113 950 000.00 was paid into Estina's Standard Bank account (3100664860) and a total amount of R106 252 652.00 was paid into Estina's First National Bank account (62505753906). The 7 payments are briefly depicted below:

TRANCHE 1 - R34 950 000.00

18 April 2013:



 The department paid Estina R34 950 000.00 (the company's account had a balance of R9 690.00)

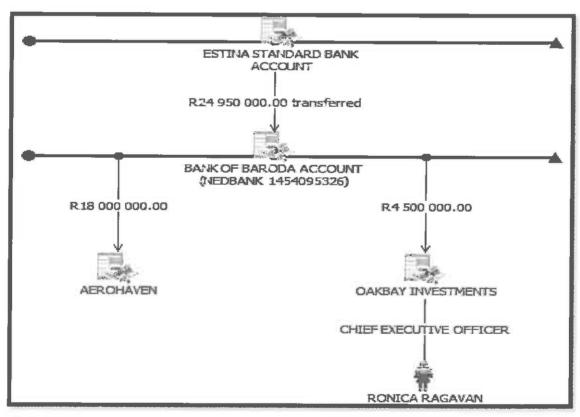
19 April 2013:

- R10 000 000 of the funds received from the Free State department of agriculture was transferred to the BANK OF BARODA (NEDBANK 1454095326)
- This was transferred to Oakbay Investments on the same day.

20 April 2013:



 Two days later, the remaining R24 950 000.00 was transferred to the Bank of Baroda's account, and redistributed two days later to Aerohaven (R18 million) and Oakbay Investments (R4.5 million)

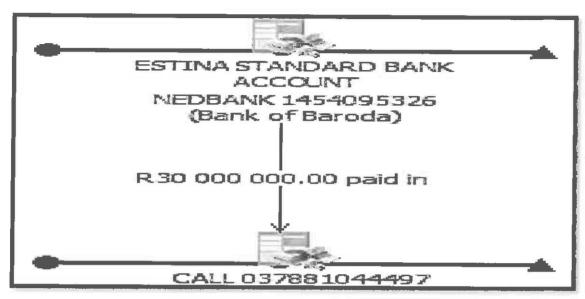


22 April 2013:



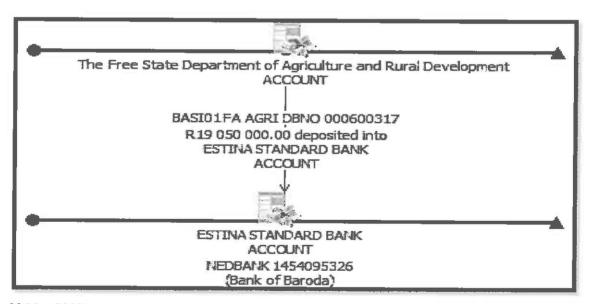
26 April 2013:

- The department paid Estina R30 000 000.00 (R30 million) (the account had a balance of R4 000).
- After receiving the cash, six (6) transfers of R5 000 000.00 (five million rand) each were made to the Bank of Baroda deposit account.
- Three days later, the R30 million was transferred to an account named CALL 037881044497



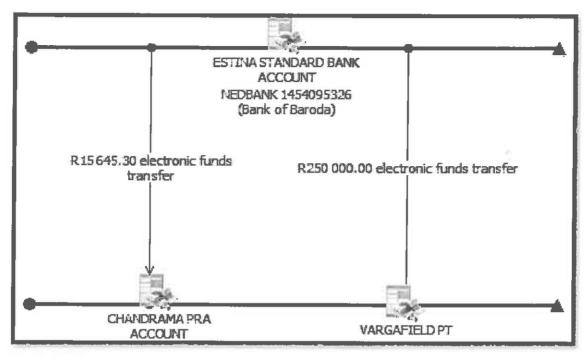
29 April 2013:

TRANCHE 3 - R19 050 000.00



03 May 2013:

- R19 050 000.00 was paid to Estina (Standard Bank Account) by the Free State department of Agriculture. Prior to the deposit, the account had a R2 870.86 balance)
- Three days later, R15 845 was paid to CHANDRAMA PRA and R250 000 to VARGAFIELD PT.

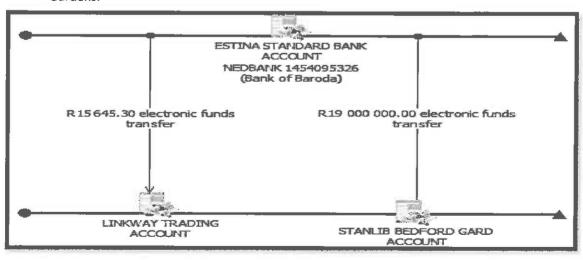


06 May 2013:

Between 18 April 2013 and 30 April 2013, only R4 050 000.00 was deposited into the Estina Standard Bank account

08 May 2013:

 R157 320 was paid to Linkway Trading and R19 million was transferred to Stanlib Bedford Gardens.



TRANCHE 4:

20 December 2013:

- The Free State department of agriculture paid Estina R29 950 000.00 (the account had a R13 143 balance).
- Between 03 May and 20 December 2013, R119 000 000.00 of the funds received from the
 Free State department of agriculture was deposited into the Estina Standard Bank Account
- Between 20 December and 06 January 2014, only R14 000 000.00 of the funds received was deposited into the Estina Standard Bank Account.

TRANCHE 5:

25 July 2014:

- R30 000 000.00 was paid to Estina by the Free State department of agriculture. These funds
 were transferred to various entities.
- Between 06 January 2014 and 20 July, only R6 114 562.87 of the funds received by the Free
 State department of agriculture was deposited into the Estina Standard Bank account.



08 May 2015:

- R60 000 000.00 was paid to Estina (FNB 62505753906) by the Free State department of agriculture.
- On 13 May 2015, R836 479.10 of the funds received from the Free State department of agriculture was paid to VARGAFIELD.
- Between 01 April 2015 and 13 May 2015, only R219 284.89 was deposited to Estina (FNB Account). The rest was immediately transferred to another account.



TRANCHE 7

05 May 2016:

- R46 252 652.00 was paid to Estina (FNB 62505753906) from the Free State department of agriculture.
- On 09 May 2016, R4 577 280.00 of the funds received from the Free State department of agriculture was transferred to a foreign account with the reference GATEWAY LIMITED.
- On 11 May 2016, R5 500 000.00 of the funds received from the Free State department of agriculture was transferred to a different Estina FNB account, which was then further disbursed to other beneficiaries.
- On 28 Juy 2016, a cash cheque to the value of R1 000 000.00 was paid out and R4 384 413.26 was paid to SARS as VAT.

Most of the payments received by Estina were paid to individuals and entities that did not appear to have any apparent legitimate business relationship with Estina and its core business. In his affidavit, the national director of public prosecutions found no indication that the payments were made in respect of legitimate goods and services rendered to Estina. He stated the following: "The funds paid by the Department to Estina were siphoned out to several related entities and individuals and in circumstances where there was never an intention to give any value in return to Estina or the beneficiaries of the said project."



Linkway Trading Proprietary Limited

Annual Financial Statements

for the year ended 28 February 2014

Independently audited in terms of Section 30 of the Companies Act of South Africa

Prepared by: R Ragavan Financial Manager

Linkway Trading Proprietary Limited (Reg. No. 2007/009012/07)

Annual Financial Statements for the year ended 28 February 2014

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Directors' responsibility statement

The directors are responsible for the preparation and fair presentation of the annual financial statements of Linkway Trading Proprietary Limited, comprising the statement of financial position at 28 February 2014, and the statements of comprehensive income, changes in equity and cash flows for the year then ended, and the notes to the financial statements, which include a summary of significant accounting policies and other explanatory notes, in accordance with International Financial Reporting Standards and the requirements of the Companies Act of South Africa. In addition, the directors are responsible for preparing the directors' report.

The directors are also responsible for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error, and for maintaining adequate accounting records and an effective system of risk management.

The directors have made an assessment of the company's ability to continue as a going concern, and have no reason to believe that the business will not be a going concern in the year ahead.

The auditor is responsible for reporting on whether the financial statements are fairly presented in accordance with the applicable financial reporting framework.

Approval of the annual financial statements

The annual financial statements of Linkway Trading Proprietary Limited, as identified in the first paragraph, were approved by the board of directors on 24 June 2014 and are signed on their behalf by:

Authorised Director

Authorized Director

Directors' report

for the year ended 28 February 2014

The directors have pleasure in presenting their report for the year ended 28 February 2014.

Nature of business

The company operates as general trading company.

Review of activities

The financial position of the company and the results of its operations for the year are clearly reflected in the annual financial statements.

Share capital

On incorporation the company was formed with an authorised share capital of 1 000 ordinary shares of RI each an issued share capital of 100 ordinary shares of RI each. There has been no change to the authorised or listed share capital in the current year.

Directors

The directors of the company during the year and to the date of this report were as follows -

Mr KWE Thysse Ronica Ragavan

Business address

Postal address

89 Gazelle Avenue Corporate Park Midrand Private Bag X180 Halfway House 1685

Bankers

Nedbank Limited. State Bank of India

Dividends

No dividends were declared or issued in the current year (2013 - Rnil).

Subsequent events

The directors are not aware of any material fact or circumstances between year end and the date of this report which requires disclosure or adjustment in the financial statements.





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Independent Auditor's Report

To the shareholders of Linkway Trading Proprietary Limited

We have audited the financial statements of Linkway Trading Proprietary Limited, which comprise the statement of financial position at 28 February 2014, and the statements of comprehensive income, changes in equity and cash flows for the year then ended, and the notes to the financial statements, which include a summary of significant accounting policies and other explanatory notes, as set out on pages 6 to 25.

Directors' responsibility for the financial statements

The company's directors are responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards and the requirements of the Companies Act of South Africa, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the emity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of Linkway Trading Proprietary Limited at 28 February 2014, and its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards, and the requirements of the Companies Act of South Africa.

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Other reports required by the Companies Act

As part of our audit of the financial statements for the year ended 28 February 2014 we have read the directors' report for the purpose of identifying whether there are material inconsistencies between this report and the audited financial statements. This report is the responsibility of the directors. Based on reading this report we have not identified material inconsistencies between this report and the audited financial statements. However, we have not audited this report and accordingly do not express an opinion on this report.

KPMG Inc.

Per J Wessels

Chartered Accountant (SA)
Registered Auditor
Director

24 June 2014

Statement of financial position at 28 February 2014

Assets	Note	2014 R	2013 R
Non-current assets Property, plant and equipment	5	30 005	65 969
Current assets Inventories Trade and other receivables Cash and cash equivalents Prepaid taxation	б 7 8	3 203 774 609 105 2 379 633 126 886 88 150	3 598 051 1 218 755 1 653 354 677 166 48 776
Total assets		3 233 779	3 664 020
Equity and liabilities			
Capital and reserves Share capital Retained earnings	9	453 233 100 453 133	309 749 100 309 649
Liabilities			
Current liabilities Trade and other payables Loan from shareholder	12 11	2 780 546 1 106 728 1 673 818	3 354 271 3 354 271
Total equity and liabilities		3 233 779	3 664 020



Statement of comprehensive income for the year ended 28 February 2014

	Note	2014 R	2013 R
Revenue	13	47 802 800	96 145 298
Cost of sales		(48 838 419)	(95 164 612)
Gross profit		(1 035 619)	980 686
Operating cost	14	(651 590)	(603 428)
Operating (loss)/profit before finance income/(costs)		(1 687 209)	377 258
Finance income Finance costs	15 15	3 156 328 (1 269 836)	21 040
Profit before taxation		199 283	398 298
Taxation expense	16	(55 799)	(77 545)
Profit for the year		143 484	320 753
Other comprehensive income			7.EE
Total comprehensive income for the year		143 484	320 753



Statement of changes in equity for the year ended 28 February 2014

Share capital R	(Accumulated loss)/ retained earnings R	Total R
100	(11 104)	(11 004)
	320 753	320 753
100	309 649	309 749
	143 484	143 484
100	453 133	453 233
	capital R 100	Share capital earnings R R 100 (11 104) - 320 753 - 100 309 649 - 143 484



Statement of cash flows for the year ended 28 February 2014

	Note	2014 R	2013 R
Cash flows from operating activities		K	K
Cash (utilised by)/generated from operations	17.1	(4 015 417)	454 508
Finance income received		3 156 328	21 040
Finance costs paid		(1 269 836)	21 040
Taxation paid	17.2	(95 173)	(56 001)
Cash (outflows)/inflows from operating activities		(2 224 098)	419 547
Cash outflows from investing activities Investments to expand operations			
 purchase of property, plant and equipment 			(2 845)
Cash outflows from investing activities			(2 845)
Cash inflows from financing activities			
Loan advanced by shareholder		1 673 818	-
Cash outflows from investing activities		1 672 010	
out out to the investing activities		1 673 818	
(Decrease)/increase in cash and cash equivalents		(550 280)	416 702
Cash and cash equivalents at beginning of year		677 166	260 464
Cash and cash equivalents at end of the year	8	126 886	677 166



Notes to the financial statements

for the year ended 28 February 2014

1. Reporting entity

Linkway Trading Proprietary Limited is a company domiciled in South Africa. The company's registered address is 89 Gazelle Avenue, Midrand Corporate Park, Midrand, South Africa.

2. Basis of preparation

2.1 Statement of compliance

The financial statements have been prepared in accordance with International Financial Reporting Standards and the requirements of the Companies Act of South Africa.

The financial statements were approved by the directors on 24 June 2014.

2.2 Basis of measurement

The financial statements have been prepared on the historical cost basis.

2.3 Functional and presentation currency

These financial statements are presented in South African Rand, which is the company's functional currency.

2.4 Estimation and judgements

The preparation of financial statements requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

Judgements made by management in the application of International Financial Reporting Standards that have significant effect on the financial statements and estimates with a significant risk of material adjustment in the next year are discussed in note 23.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

3. Changes in accounting policies

Except for the changes below, the company has consistently applied the accounting policies set out in note 4 to all periods presented in these financial statements.

The company has adopted the following new standards and amendments to standards, including any consequential amendments to other standards, with a date of initial application of 1 March 2013.

Presentation of Items of Other Comprehensive Income (Amendments to IAS 1)

The nature and effects of the changes are explained below.

3.1 Presentation of items of other comprehensive income ("OCI")

As a result of the amendments to IAS 1, the company has modified the presentation of items of OCI in its statement of comprehensive income, to present separately items that would be reclassified to profit or loss from those that would never be. No material consequences were noted as a result of the change in accounting policy.

4. Accounting policies

4.1 Revenue

Revenue is measured at the fair value of the consideration received or receivable and represents the amounts invoiced for the sale of goods provided in the normal course of business, net of trade discounts and rebates, and value added tax.

Sale of goods

Revenue from the sale of goods is recognised when all the following conditions have been satisfied:

- the company has transferred to the buyer the significant risks and rewards of ownership of the goods;
- the company retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
- the amount of revenue can be measured reliably;
- it is probable that the economic benefits associated with the transaction will flow to the company; and
- the costs incurred or to be incurred in respect of the transaction and possible return of goods can be estimated reliably.

4.2 Income tax expense

Income tax on the profit or loss for the year comprises current and deferred tax. Income tax is recognised in the statement of comprehensive income except to the extent that it relates to items recognised directly in equity or other comprehensive income, in which case it is recognised in equity or other comprehensive income.

Current tax is the expected tax payable on the taxable income for the year, using tax rates enacted or substantially enacted at the reporting date, and any adjustment to tax payable in respect of previous years.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.2 Income tax expense (continued)

Deferred tax is provided on temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and their tax base. The amount of deferred tax provided is based on the expected manner of realisation or settlement of the carrying amount of assets and liabilities using tax rates enacted or substantively enacted at the reporting date. Deferred tax is charged to the statement of comprehensive income. The effect on deferred tax of any changes in tax rates is recognised in the statement of comprehensive income.

A deferred tax asset is recognised to the extent that it is probable that future taxable profits will be available against which the associated unused tax losses and deductible temporary differences can be utilised. Deferred tax assets are reduced to the extent that it is no longer probable that the related tax benefit will be realised.

Dividends withholdings tax is a tax on shareholders receiving dividends and is applicable to all dividends declared on or after 1 April 2012.

The company withholds dividends tax on behalf of its shareholders at a rate of 15% on dividends declared. Amounts withheld are not recognised as part of the company's tax charge, but rather as part of the dividend paid recognised directly in equity.

Where withholding tax is withheld on dividends received, the dividend is recognised as the gross amount with the related withholding tax recognised as part of the tax expense unless it is otherwise reimbursable in which case it is recognised as an asset.

4.3 Net finance costs

Net finance costs comprise interest payable on borrowings calculated using the effective interest method, interest receivable on funds invested, foreign exchange gains and losses that are recognised in the statement of comprehensive income.

Interest income is recognised in the statement of comprehensive income as it accrues, using the effective interest method.

4.4 Property, plant and equipment

Recognition and measurement

Items of property, plant and equipment are stated at cost less accumulated depreciation and accumulated impairment losses.

Cost includes expenditures that are directly attributable to the acquisition of an item of plant and equipment. The cost of self constructed assets includes the cost of materials and direct labour, any other costs directly attributable to bringing the asset to a working condition for its intended use, and the costs of dismantling and removing the items and restoring the site on which they are located.

When parts of an item of property, plant and equipment have different useful lives, they are accounted for as separate items (major components) of property, plant and equipment.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.4 Property, plant and equipment (continued)

Depreciation

Depreciation is the systematic allocation of the depreciable amount of an item of property, plant and equipment over its estimated useful life. Depreciation is charged on the depreciable amount, to profit and loss, on a straight line basis over the estimated useful lives of items of property, plant and equipment.

The depreciable amount is the difference between the cost of an item of property, plant and equipment and its residual value.

Residual value is the estimated amount that the company would currently obtain from disposal of the item of property, plant and equipment, after deducting the estimated costs of disposal, if the item of property, plant and equipment was already of age and in the condition expected at the end of its useful life. The useful lives currently are:

The depreciation rates for the current and previous year.

Tools and equipment - 5 years

Subsequent costs

Routine maintenance costs are charged to profit or loss as it is incurred. The costs of major maintenance or overhaul of an item of property, plant or equipment are recognised as an expense, except if the cost had been recognised as a separate part of the cost of the item of property, and that amount has already been depreciated to reflect the benefits that had been replaced or restored.

Subsequent expenditure relating to an item of property, plant and equipment is capitalised when it is probable that future economic benefits from the use of asset will be increased and the costs can be measured reliably. All other subsequent expenditure is recognised as an expense in the period in which it is incurred.

Surpluses/(deficits) on the disposal of property, plant and equipment are credited/(charged) to profit and loss. The surplus or deficit is the difference between the net disposal proceeds and the carrying value of the item of property, plant and equipment.

4.5 Impairment

Financial assets

A financial asset is considered to be impaired if objective evidence indicated that one or more events had a negative effect on the estimated future cash flows of the asset.

An impairment loss in respect of a financial asset measured at amortised cost is calculated as the difference between its carrying amount, and the present value of the estimated future cash flows discounted at the original effective interest rate. An impairment loss in respect of an available-for-sale financial asset is calculated by reference to its current fair value.

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Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.5 Impairment (continued)

Financial assets (continued)

Individually significant financial assets are tested for impairment on an individual basis. The remaining financial assets are assessed collectively in groups that share similar credit risk characteristics.

All impairment losses are recognised in profit or loss. Any cumulative loss in respect of an available-for-sale financial asset recognised previously in equity is transferred to profit or loss.

An impairment loss is reversed if the reversal can be related objectively to an event occurring after the impairment loss was recognised. For financial assets measured at amortised cost and availablefor-sale financial assets that are debt securities, the reversal is recognised in the profit or loss. For available-for-sale financial assets that are equity securities, the reversal is recognised directly in equity.

Non-financial assets

The carrying amount of the company's financial assets, other than inventories and deferred tax assets, are reviewed at each reporting date to determine whether there is any indication on impairment. If any such indication exists then the asset's recoverable amount is estimated. For intangible assets that have indefinite useful lives or that are not yet available for use, the recoverable amount is estimated at each reporting date.

An impairment loss is recognised if the carrying amount of an asset or its cash-generated unit exceeds its recoverable amount. A cash-generating unit is the smallest identifiable asset group that generates cash flows that largely are independent from other assets and groups.

The recoverable amount of an asset or cash-generating unit is the greater of its value in used and its fair value less cost to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specified to the asset.

Impairment losses are recognised in profit or loss. Impairment losses recognised in respect of cash-generated units are allocated first to reduce the carrying amount of any goodwill allocated to the units and to reduce the carrying amount of the other assets in the group on a *pro-rata* basis.

Impairment losses recognised in prior periods are assessed at each reporting date for any indications that the loss has decreased or no longer exists. An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount. An impairment loss is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation or amortisation, if no impairment loss had been recognised.

4.6 Inventories

Inventories are valued at the lower of cost and net realisable value. Net realisable value is the estimated selling price in the ordinary course of business, less the estimated costs of completion and selling expenses. The cost of inventories comprises all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition, and is determined using the weighted average method.

Obsolete, redundant and slow moving inventories are identified on a regular basis and are written down to their estimated net realisable values.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.7 Leases

Operating leases

Leases where the lessor retains the risks and rewards of ownership of the underlying asset are classified as operating leases. Payments made under operating leases are charged against profit or loss on a straight line basis over the period of the lease.

4.8 Provisions

Provisions are recognised when:

- the company has a present legal or constructive obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the present value of the expenditure expected to settle the obligation and is determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and, where appropriate, the risks specific to the liability.

4.9 Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid annual leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

The liabilities for employee entitlements to salaries and annual leave represent the amount which the company has a present obligation to pay as a result of employees' services provided to the reporting date. The liabilities have been calculated at undiscounted amounts based on current salary rates.

A liability is recognised for the amount expected to be paid under short-term cash bonus plans if the company has a present legal or constructive obligation to pay this amount as a result of past service provided by the employee and the obligation can be estimated reliably.

Defined contribution plans

A defined contribution plan is a post-employment benefit plan under which an entity pays fixed contributions into a separate entity and will have no legal or constructive obligation to pay further amounts. Obligations for contributions to defined contribution pension plans are recognised as an employee benefit expense in profit or loss when they are due. Prepaid contributions are recognised as an asset to the extent that a cash refund or a reduction in future payments is available.

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Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.10 Financial instruments

Initial recognition

The company classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

Financial assets and financial liabilities are recognised on the company's statement of financial position when the company becomes party to the contractual provisions of the instrument.

Non-derivative financial instruments

Non-derivative financial instruments comprise trade and other receivables, cash and cash equivalents, loans and borrowings, and trade and other payables.

Non-derivative financial instruments are recognised initially at fair value plus, for instruments not at fair value through profit or loss, any directly attributable transaction costs. Subsequent to initial recognition non-derivative financial instruments are measured as described below.

Loans to/(from) group companies

These include loans to holding companies, fellow subsidiaries and subsidiaries and are recognised initially at fair value plus direct transaction costs.

Subsequently these loans are measured at amortised cost using the effective interest rate method, less any impairment loss recognised to reflect irrecoverable amounts.

On loans receivable an impairment loss is recognised in profit or loss when there is objective evidence that it is impaired. The impairment is measured as the difference between the loan's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

Impairment losses are reversed in subsequent periods when an increase in the loan's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the loan at the date the impairment is reversed shall not exceed what the amortised cost would have been had the impairment not been recognised.

Loans to (from) group companies are classified as loans and receivables.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

4. Accounting policies (continued)

4.10 Financial instruments (continued)

Trade and other payables

Trade payables are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest method,

Cash and cash equivalents

Cash and cash equivalents comprise bank balances and is subject to an insignificant risk of changes in value. These are initially and subsequently recorded at fair value.

Interest-bearing borrowings

Interest-bearing borrowings are initially measured at fair value less attributable transaction costs, and are subsequently measured at amortised cost, using the effective interest rate method. Any difference between the costs and the redemption of interest-bearing borrowings is recognised over the term of the interest-bearing borrowings on an effective interest method.

Trade and other receivables

Trade and other receivables are initially recognised at fair value, and are subsequently carried at amortised cost, using the effective interest rate method.

Offset

Financial assets and financial liabilities are offset and the net amount reported in the statement of financial position when the company has a legally enforceable right to set off the recognised amounts, and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

5. Property, plant and equipment

	2014		Cost R	depreciation and impairments R	Carrying value R
	Owned assets				
	Tools and equipment	_	179 816	(149 811)	30 005
	2013				
	Owned assets				
	Tools and equipment		179 816	(113 847)	65 969
	The carrying amounts of fixed assets of	can be reconcile	d as follows:		
	2014	Carrying value at beginning of year R	Additions R	Depreciation R	Carrying value at end of year R
	Owned assets				
	Tools and equipment	65 969	-	(35 964)	30 005
	2013				
	Owned assets				
	Tools and equipment	104 529	2 845	(41 405)	65 969
	Property, plant and equipment is depre	ciated as stated	in note 4.4.		
				2014	2013
6.	Inventories			R	R
	Goods held for resale			609 105	1 218 755
	No impairment allowance for observecognised.	olete inventory	has been		

Accumulated



Notes to the financial statements for the year ended 28 February 2014 (continued)

7.	Trade and other receivables	2014 R	2013 R
7.			
	Trade and other receivables consists of:		
	Trade receivables Other receivables Deposits	2 330 355 7 611	113 644
	Deposits	41 667 2 379 633	1 539 710 1 653 354
	Trade receivables include amounts owing by related parties		
	 Tegeta Exploration and Resources Proprietary Limited Confident Concepts Proprietary Limited All Craze 20 Proprietary Limited Westdawn Investments Proprietary Limited Infinity Media Holdings Proprietary Limited TNA Media Proprietary Limited 	7 611 - 9 758 159 781	74 752 65 371 — — 3 942
8.	Cash and cash equivalents		
	Cash on hand Bank balances	387 126 499	4 539 672 627
		126 886	677 166
9.	Share capital		
	Authorised 1 000 ordinary shares of R1 each	1 000	1 000
	Issued 100 ordinary shares of R1 each	100	100
10.	Deferred tax liability		
	Balance at beginning of year Current year movement in temporary differences	_	(4 824) 4 824
	The deferred tax liability comprises		
	Pair value adjustments	=	[=]
	Deferred tax was provided at a rate of 28% on deductible temporary differences.		\circ



Notes to the financial statements for the year ended 28 February 2014 (continued)

		2014 R	2013 R
11.	Loan from shareholder		
	Islansite Investments 180 Proprietary Limited	1 673 818	e e
	The loan is unsecured, bears interest at prime and repayable on demand.		***************************************
12.	Trade and other payables		
	Trade payables VAT	1 09 8 194 8 534	3 333 455 20 816
		1 106 728	3 354 271
13.	Revenue		
	Sale of goods	47 802 800	96 145 298
14.	Operating cost		
	Operating cost is stated after charging:		
	Audit fees Depreciation Consulting fees	35 513 35 964	25 825 41 405 66 000
15.	Finance income/(costs)		
	Finance income		
	Loan to related party	253 977	(22)
	Foreign exchange profits	2 902 351	21 040
		3 156 328	21 040
	Finance costs Loan from shareholder	1 269 836	-
16.	Taxation expense		
	South African normal tax - current year	(55 799)	(82 369)
	Deferred taxation - current year		4 824
		(55 500)	
		(55 799)	(77 545)
	Reconciliation of tax expenses		
	Effective tax rate	%	%
	Standard tax rate	28	28
	-		



Notes to the financial statements

for the year ended 28 February 2014 (continued)

17,	Notes to the statement of cash flows	2014 R	2013 R
17.1	Cash (utilised by)/generated from operations		
	Operating (loss)/profit before finance income Adjustment for —	(1 687 209)	377 258
	- depreciation	35 964	41 405
	Operating (loss)/profit before changes in working capital	(1 651 245)	418 663
	(Increase)/decrease in trade and other receivables	(726 279)	590 732
	(Decrease)/increase in trade and other payables	(2 247 543)	663 868
	Decrease/(increase) in inventories	609 650	(1 218 755)
		(4 015 417)	454 508
17.2	Taxation paid		
	Taxation prepaid at beginning of year	48 776	75 144
	Statement of comprehensive income charge	(55 799)	(82 369)
	Amount prepaid at end of year	(88 150)	(48 776)
	W. Carlotte	(95 173)	(56 001)
17.3	Cash and cash equivalents		
	Bank and cash balances Bank overdrafts	126 886	677 166
	Cash and cash equivalents at end of year	126 886	677 166

18. Financial instruments

18.1 Liquidity risk

The company's risk to liquidity is a result of the funds available to cover future commitments. The company manages liquidity risk through an ongoing review of future commitments and credit facilities. Cash flow forecasts are prepared and adequate utilised borrowing facilities are monitored.

18.2 Interest rate risk

As part of the process of managing the company's interest rate risk, interest rate characteristics of new borrowings and the refinancing of existing borrowings are positioned according to expected movements in interest rate.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

18. Financial instruments (continued)

18.3 Credit risk

The company only deposits cash surpluses with major banks of high quality credit standing. At reporting date there was no significant concentration of credit risk.

18.4 Capital management

The board's policy is to maintain a strong capital base so as maintain creditors and shareholder confidence and to sustain future development of the business. The board of directors monitors the return on capital, which the company defines as net operating income divided by total shareholder's equity. The board of directors also monitors the level of dividends to ordinary shareholders.

There were no changes in the company's approach to capital management during the year. The company is not subject to externally imposed capital requirements.

18.5 Exposure to credit risk

The carrying amount of financial assets represent the maximum exposure to credit risk.

	2014 R	2013 R
Trade and other receivables Cash and cash equivalents	2 330 355 126 886	1 653 354 677 166
	2 457 241	2 330 520
The maximum exposure to credit risk for trade and other receivables at the reporting date by geographic region was:		
Domestic Foreign	2 330 355	1 653 354
	2 330 355	1 653 354

The ageing of trade receivables at reporting date was:

	201	= =	20	
	Gross R	Impairment allowance R	Gross R	Impairment allowance R
Not past due Past due 30 days Past due 60 – 120 days	2 330 355	_	112 906	*
	-	-	738	77
			=	
	2 330 355		113 644	=

Based on past experience, the company believes that no impairment allowance is necessary in respect of trade receivables not past due.



Notes to the financial statements

for the year ended 28 February 2014 (continued)

18. Financial instruments (continued)

18.6 Liquidity risk

The following are the contractual maturities of financial liabilities.

2014	Carrying amount R	Contractual cash flows	l year R	2 – 5 years R	More than 5 years R
Non derivative liabilities - trade and other payables - loan from shareholder	1 106 728 1 673 818	1 106 728 1 673 818	1 106 728 1 673 818	<u> </u>	
2013	<u> </u>				
Non derivative liabilities					

(3 354 271)

(3 354 271)

18.7 Interest rate risk

 trade and other payables

Profile

The interest rate risk profile of the interest bearing financial instruments was:

(3 354 271)

	2014		2013	}
	Interest rate	R	Interest rate	R
Fixed rate instruments	-			
Variable rate instruments Bank and cash				
balances Loan from	Prime linked	126 886	Prime linked	677 166
shareholder	Prime	(1 673 818)		=4)

18.8 Fair value analyses

	20:	14	201	.3
	Carrying value R	Fair value R	Carrying value R	Fair value
Assets Trade and other receivables Cash and cash equivalents	2 379 633 126 886	2 379 633 126 886	1 653 354 677 166	1 653 354 677 166
Liabilities Trade and other payables Loan from shareholder	(1 106 728) (1 673 818)	(1 106 728) (1 673 818)	(3 354 271)	(3 354 271)



Notes to the financial statements

for the year ended 28 February 2014 (continued)

18. Financial instruments (continued)

18.8 Fair value analyses (continued)

The company has no assets or liabilities measured at fair value, by valuation method, which requires fair value hierarchy disclosure.

Estimation of fair values

The following summarises the major methods and assumptions used in estimates the fair values of financial instruments reflected in the table.

Interest bearing borrowings

Fair value is calculated based on discounting the expected future principal and interest cash flows.

Trade and other receivables/payables

For receivables/payables with a remaining life of less than one year, the notional amount is deemed to reflect the fair value. All other receivables/payables are discounted to determine the fair value.

Non-derivative financial liabilities

Islandsite Investments 180 Proprietary Limited

Fair value, which is determined for disclosure purposes, is calculated based on the present value of future principal and interest cash flows, discounted at the market rate of interest at the reporting date. In respect of the liability component of convertible notes, the market rate of interest is determined by reference to similar liabilities that do not have a conversion option. For finance leases the market rate of interest is determined by reference to similar lease agreements.

19. Related parties

19.1 Identity of related parties

Shareholders

	Pragat Investments Proprietary Limited Ronica Ragavan		22% 25%
			100%
19.2	Sales to related parties	2014 R	2013 R
	Annex Distribution Proprietary Limited All Craze 20 Proprietary Limited Confident Concepts Proprietary Limited TNA Media Proprietary Limited Siva Uranium Limited Sahara Computers Proprietary Limited Westdawn Investments Proprietary Limited Sahara Consumables Proprietary Limited Tegeta Exploration and Resources Proprietary Limited	252 150 136 270 297 496 972 334 	2 059 57 343 93 402 853 189 058 11 100 190 252 1 768 168
	Islandsite Investments 180 Proprietary Limited Oakbay Investments Proprietary Limited Infinity Media Networks Proprietary Limited	11 036 312 454 14 361 301	176 676

19.3 The directors are:

R Ragavan

KWE Thysse

No emoluments were paid to directors by the company. The company has no prescribed officers.

4

53%

Notes to the financial statements

for the year ended 28 February 2014 (continued)

20. Standard and Interpretations not yet effective

At the date of authorisation of the financial statements of Linkway Trading Proprietary Limited for the year ended 28 February 2014, the following Standards and Interpretations were in issue but not yet effective:

	Standard/Interpretation	Effective Date
IFRS 9 (2009)	Financial Instruments	To be decided
IFRS 9 (2010)	Financial Instruments	To be decided

^{*} All Standards and Interpretations will be adopted at their effective date (except for those Standards and Interpretations that are not applicable to the entity).

The directors are of the opinion that the impact of the application of the Standards and Interpretations will not have a material impact on the reported or future results.

IFRS 9 Financial Instruments

IFRS 9 (2009) introduces new requirements for the classification and measurement of financial assets. Under IFRS 9 (2009), financial assets are classified and measured based on the business model in which they are held and the characteristics of their contractual cash flows. IFRS 9 (2010) introduces additions relating to financial liabilities. The IASB currently has an active project to make limited amendments to the classification and measurement requirements of IFRS 9 and add new requirements to address the impairment of financial assets and hedge accounting.

IFRS 9 (2010 and 2009) are effective for annual periods beginning on or after 1 January 2015 with early adoption permitted. The company will adopt this standard for the financial year commencing I January 2015. The adoption of IFRS 9 (2010) is expected to have an impact on the company's financial assets, but not any impact on the company's financial liabilities.

21. Dividends

No dividends were declared or paid to shareholders during the current year.

22. Events after the reporting date

There are no matters which are significant to the financial affairs of the company that have occurred between the reporting date and the date of approval of the financial statements, not otherwise dealt with in the financial statements.

23. Estimation and judgement applied by management in applying accounting policies

No estimates or judgements which would have a significant effect on the 2014 results, have been made by management in applying the accounting policies set out in note 4, at 28 February 2014.



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2007 / 009012 / 07

Enterprise Name:

LINKWAY TRADING



Companies and Intellectual Property Commission

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ENTERPRISE INFORMATION

Registration Number

2007 / 009012 / 07

Enterprise Name

LINKWAY TRADING (PTY) LTD

Registration Date

20/03/2007

Business Start Date

20/03/2007

Enterprise Type

Private Company

Enterprise Status

In Business

Compliance Status

Compliant

Financial Year End

February

TAX Number

9076780163

Addresses

POSTAL ADDRESS

ADDRESS OF REGISTERED OFFICE

P O BOX 7540

HALFWAY HOUSE

1064 16TH ROAD

MIDRAND

MIDRAND

1685

1685

ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Туре	ID Number / Date of Birth	Contrib. (R)	interest (%)	Appoint. Date	Address
THYSSE, KEVIN WENTWORTH EUGENE	Director	4607055140089	0.00	0.00	28/04/2009	Postal: P O BOX 7540, HALFWAY HOUSE, 1685
				100		Residential: 2090 COLLETE DRIVE, BRAMLEY, 2090
RAGAVAN, RONICA	Director	7709170007081	0,00	0.00	28/04/2009	Postal: PRIVATE BAG X180, HALFWAY HOUSE, 1685

Residential: 129A BISHOP BIRD STREET, ROOIHUISKRAAL, CENTURION, 0157

AUDITOR DETAILS

Auditor Name	Туре	Status	Appointment Date	Resignation Date	Email Address	
S AHMED AND COMPANY	Auditor	Resign				
Profession Number: 929719E						
CAJEE RAZAK & ASSOCIATES	Auditor	Resign	2007-05-18		0	
Profession Number: 00217453						
KPMG INC	Auditor	Resign				

Profession Number: 900168

Page 1 of 5

Physical Address the dti Campus - Block F 77 Meintjies Street Sunnyside 0001

Postal Address: Companies

P O Box 429 Pretoria 0001

Docex: 256 Web: www.cipc.co.za

Contact Centre: 086 100 2472 (CIPC) Contact Centre (International): +27 12 394 9573



Disclosure Certificate: Companies and Close Corporations

Registration Number.

2007 / 009012 / 07

Enterprise Name:

LINKWAY TRADING



a member at the distances

SIZWENTSALUBAGOBODO INC

Auditor

Resign

2018-02-14

Profession Number: 946016

M W MTHIMKHULU

Designated Auditor

Resign

2018-02-14

Profession Number: 957755

CHANGE SUMMARY

20/03/2007

Registration of CC/CO on 20/03/2007.

16/04/2007

Registered Address Change on 07/05/2007.

1ST FLOOR SALEY HOUSE 81 CROWN ROAD **FORDSBURG**

2092

16/04/2007

16/04/2007

Postal Address Change on 07/05/2007.

P O BOX 101 **CROWN MINES**

2025 16/04/2007

Member Change on 20/03/2007.

Surname=JAFFER

Full ForeNames=ABDUL WAHAB

ld No=5311275098081

Status : RESIGNEDNature of Change=RESIGNATION

Member Change on 21/03/2007

Sumame=GUPTA Full ForeNames=RAJESH KUMAR

ld No=7208056345186

Status :ACTIVENature of Change=NEW APPOINTMENT

16/04/2007 Member Change on 21/03/2007

Surname=GOOL

Full ForeNames=THARFT

Id No=7006075201087

Status :ACTIVENature of Change=NEW APPOINTMENT

16/04/2007 Member Change on 21/03/2007

Sumame=TONGA

Full ForeNames=CHARLES MLUNGISI

ld No=5807265836083

Status : ACTIVENature of Change=NEW APPOINTMENT

Accounting Officer Change on 18/05/2007.

P.O. BOX 101 **CROWN MINES**

2025

Status : Address Change 18/05/2007

Accounting Officer Change on 18/05/2007.

S AHMED AND COMPANY Reported Material Irregularity on : 18 May 2007 Status : Resign

29/08/2008

18/05/2007

Accounting Officer Change on 29/08/2008.

Change Record

Name: = CAJEE RAZAK & ASSOCIATES

Status: = Current

30/05/2009

Registered Address Change on 20/06/2009.

Page 2 of 5



Disclosure Certificate: Companies and Close Corporations

Registration Number;

2007 / 009012 / 07

Enterprise Name:

LINKWAY TRADING

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an error of Persongues

1ST FLOOR SALEY HOUSE

81 CROWN ROAD FORDSBURG

2092

30/05/2009

Postal Address Change on 20/06/2009.

P O BOX 7540 HALFWAY HOUSE

1685

24/07/2009

Member Change on 02/06/2009.

Change Record

Surname = GUPTA

First Names = RAJESH KUMAR Status = Resigned

24/07/2009

Member Change on 02/06/2009.

Change Record

Surname = GOOL

First Names = THABIT

Status = Resigned

24/07/2009

Member Change on 02/06/2009

Change Record

Sumame = TONGA

First Names = CHARLES MLUNGISI

Status = Resigned

24/07/2009

Member Change on 02/06/2009.

Add Record

Sumame = NARAYAN First Names = ASHOK

Status = Active

24/07/2009 Member Change on 02/06/2009

Add Record Surname = PAHADIA

First Names = RAJENEESH Status = Active

24/07/2009

Member Change on 02/06/2009

Add Record

Surname = THYSSE

First Names = KEVIN WENTWORTH EUGENE

Status = Active

27/07/2009 Member Change on 01/06/2009

Change Record

Surname = NARAYAN

First Names = ASHOK

Status = Active

27/07/2009 Member Change on 01/06/2009.

Change Record

Surname = PAHADIA

First Names = RAJENEESH

Status = Active

27/07/2009 Member Change on 01/06/2009.

Change Record

Sumame = THYSSE

First Names = KEVIN WENTWORTH EUGENE

Status = Active 27/07/2009 Member Change on 01/06/2009.

Add Record

Surname = GUPTA

First Names = RAJESH KUMAR

Status = Resigned

Page 3 of 5



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2007 / 009012 / 07

Enterprise Name:

LINKWAY TRADING



a member of the driggmun

27/07/2009

Member Change on 01/06/2009,

Add Record Surname = THABIT First Names = GOOL

Status = Resigned

27/07/2009

Member Change on 01/06/2009.

Add Record Sumame = TONGA

First Names = CHARLES MLUNGISI

Status = Resigned 14/05/2010

Member Change on 28/04/2009.

Sumame=NARAYAN Full ForeNames=ASHOK ld No=6501180000000

Status: ACTIVENature of Change=NO CHANGE

14/05/2010

Member Change on 28/04/2009.

Surname=PAHADIA Full ForeNames=RAJENEESH

Id No=7303156873185

Status: RESIGNEDNature of Change=RESIGNATION: 28/04/2009

14/05/2010

Member Change on 28/04/2009. Sumame=THYSSE

Full ForeNames=KEVIN WENTWORTH EUGENE

Id No=4607055140089

Status : ACTIVENature of Change=NO CHANGE

14/05/2010

Member Change on 28/04/2009. Sumame=GOVENDER

> Full ForeNames≃RONICA ld No=7709170007081

Status : ACTIVENature of Change=NEW APPOINTMENT: 28/04/2009 19/10/2010

Status changed to Annual Return in De-registration on 19/10/2010.

DEREGISTRATION FOR ANNUAL RETURN NON COMPLIANCE REGISTRATION MONTH = 3 - AR NON COMPLIANCE DATE = 01/05/2009

- 6 MONTHS AFTER = 01/01/2010

07/02/2011 Status changed to Cancellation of Annual Return De-registration Process on 07/02/2011

Annual Return Non Compliance - Cancellation of Deregistration

21/06/2013

Status changed to Unknown

25/06/2013

Postal Address Change on 03/04/2013

P O BOX 7540 HALFWAY HOUSE

1685

25/06/2013

Registered Address Change on 03/04/2013.

1ST FLOOR SALEY HOUSE 81 CROWN ROAD **FORDSBURG**

2092

02/08/2013

02/08/2013

02/08/2013

Accounting Officer Change on 11/07/2013.

Change Record

Name : = S AHMED AND COMPANY

Status : = Resign

Accounting Officer Change on 11/07/2013.

Change Record

Name : = CAJEE RAZAK & ASSOCIATES

Status: = Resign

Accounting Officer Change on 11/07/2013.

Add Record Name : = KPMG INC Status : = Current

Page 4 of 5



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2007 / 009012 / 07

Enterprise Name:

LINKWAY TRADING



Companies and intellectual Property Commission

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27/08/2013

Registered Address Change on 27/08/2013.

DATA RESTORATION: AMEND REGISTERED ADDRESS

27/08/2013

Postal Address Change on 27/08/2013.

DATA RESTORATION: AMEND POSTAL ADDRESS

16/09/2013

Member Change on 03/06/2013.

Change Record
Sumame = NARAYAN
First Names = ASHOK
Status = Resigned

16/09/2013

Member Change on 03/06/2013.

Change Record Surname = THYSSE

First Names = KEVIN WENTWORTH EUGENE

Status = Active 16/09/2013 Member Change on 03/06/2013.

Change Record
Surname = RAGAVAN
First Names = RONICA

14/01/2014

Annual Return completed on 14/01/2014.

Company / Close Corporation AR Filing - Web Services : Ref No. ; 52680250

30/06/2014

Annual Return completed on 30/06/2014.

Company / Close Corporation AR Filing - Web Services Ref No 53797500

06/03/2015

Status changed to Unknown,

No Valid SMS or Email Address for enterprise M2007009012

03/02/2016

Annual Return completed on 03/02/2016

Company / Close Corporation AR Filing - Web Services : Ref No. : 532141369

08/03/2016

Status changed to Unknown

No Valid SMS or Email Address for enterprise M2007009012

29/03/2016

Annual Return completed on 29/03/2016

Company / Close Corporation AR Filing - Web Services Ref No 533410955

10/11/2016

Accounting Officer Change on 89/11/2016.

Change Record Name : = KPMG INC Status : = Resign

10/11/2016

Accounting Officer Change on 09/11/2016

Add Record

Name: = SIZWENTSALUBAGOBODO INC

Status : = Current

10/11/2016

Accounting Officer Change on 09/11/2016.

Add Record

Name : = M W MTHIMKHULU

Status : = Current

05/03/2017

Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2007009012

22/05/2017

Annual Return completed on 22/05/2017.

Company / Close Corporation AR Filing - Web Services: Ref No.: 572343018

20/02/2018

Accounting Officer Change on 20/02/2018.

Notice of change of auditor: M W MTHIMKHULU resigned

05/03/2018

Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2007009012

Page 5 of 5

Sunnyside 0001



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



ENTERPRISE INFORMATION

Registration Number

2002 / 004934 / 07

Enterprise Name

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD

Registration Date

01/03/2002

Business Start Date

01/03/2002

Enterprise Type

Private Company

Enterprise Status

Business Rescue

Compliance Status

Compliant

Financial Year End

February

TAX Number

9355261141

Addresses

POSTAL ADDRESS

PRIVATE BAG X 180 HALFWAY HOUSE ADDRESS OF REGISTERED OFFICE

89 GAZELLE AVENUE

CORPORATE PARK SOUTH

1685

1685

ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Туре	ID Number / Date of Birth	Contrib. (R)	Interest (%)	Appoint.	Address
KNOOP, KURT ROBERT	Business Rescue Practitioner	6803275037084	0.00	0.00	20/02/2018	Postal: P O BOX 181, PIETERMARITZBURG, 3200
						Residential: 19 HOSKING ROAD, ATHLONE, PIETERMARITZBURG, 3201
KLOPPER, JOHAN-LOUIS	Business Rescue Practitioner	5607125051083	0.00	0.00	22/02/2018	Postal: P O BOX 22465, GLENASHLEY, 4022
						Residential: 7 FURN RIDGE, 1 BURNE CRESCENT, GLENASHLEY, 4000
CHAWLA, ASHU	Director	1971-06-24	0,00	0.00	07/04/2016	Postal: 3 SAXONWOLD DRIVE, SAXONWOLD, SANDTON, GAUTENG, 2196
						Residential: 3 SAXONWOLD DRIVE, SAXONWOLD, SANDTON, GAUTENG, 2196
RAGAVAN, RONICA	Director	7709170007081	0.00	0.00	07/04/2016	Postal: PRIVATE BAG X180, HALFWAY HOUSE, MIDRAND, GAUTENG, 1685
						Residential: 129 A BISHOP BIRD STREET, ROOIHUISKRAAL, CENTURION, GAUTENG, 0157

Page 1 of 6

Physical Address the dti Campus - Block F 77 Meintjies Street Sunnyside 0001

Postal Address: Companies

P O Box 429 Pretoria

0001

Docex: 256

Web: www.cipc.co.za

Contact Centre: 086 100 2472 (CIPC)

Contact Centre (International): +27 12 394 9573



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



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AUDITOR DETAILS

Auditor Name

Type

Status

Appointment

Resignation

Email Address

KPMG INCORPORATED

Auditor

Resign

Date

0

Profession Number: 900168E

MXOLISI WISEMAN MTHIMKHULU

Designated Auditor

Resign

2018-02-14

Profession Number: 785326

SIZWENTSALUBAGOBODO INC

Auditor

Resign

2018-02-14

Profession Number: 946016

CHANGE SUMMARY

04/03/2002

Registration of CC/CO on 01/03/2002.

07/08/2002

Postal Address Change on 09/08/2002.

PRIVATE BAG X9
PARKVIEW

2122

07/08/2002

Registered Address Change on 09/08/2002

85 EMPIRE ROAD PARKTOWN

2193

23/08/2002 Member Change on 18/07/2002

Change Record

Surname = BISHOP

First Names = DENNIS JACOBUS

Status = Resigned

23/08/2002

23/08/2002

Member Change on 18/07/2002

Add Record

Surname = GUPTA

First Names = ATUL KUMAR

Status = Active
Member Change on 18/07/2002.

Add Record

Surname = GUPTA

First Names = RAJESH KUMAR

Status = Active

23/08/2002 Member Change on 18/07/2002.

Add Record

Sumame = GUPTA First Names = CHETALI

Status = Active

23/08/2002 Member Change on 18/07/2002.

Add Record Surname = GUPTA

First Names = ARTI Status = Active

01/03/2002

Registration of CC/CO on 01/03/2002.

Page 2 of 6



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



Companies and Intellectual Protectly Commission

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28/03/2008

Accounting Officer Change on 28/03/2008.

Change Record

Name: = KPMG INCORPORATED

Status: = Current

28/03/2008

Member Change on 28/03/2008.

Change Record Surname: = GUPTA First Names: = ATUL KUMAR

Status: = Active

28/03/2008

Member Change on 28/03/2008.

Change Record Sumame: = GUPTA

First Names: = RAJESH KUMAR

Status: = Active

28/03/2008 Member Change on 28/03/2008.

Change Record Surname: = GUPTA

First Names: = CHETALI

28/03/2008

Status: = Active Member Change on 28/03/2008.

> Change Record Surname: = GUPTA First Names: = ARTI Status: = Active

28/08/2008

Registered Address Change on 18/09/2008.

MONUMENT OFFICE PARK BLOCK 3, SUITE 322 79 STEENBOK AVENUE MONUMENT PARK

0174

28/08/2008 Postal Address Change on 18/09/2008

0174

PO BOX 4896 RIETVALLEIRANO

26/04/2012

Postal Address Change on 19/03/2012.

PO BOX 4896 RIETVALLEIRAND

6/04/2012

0174

Registered Address Change on 19/03/2012

MONUMENT OFFICE PARK BLOCK 3, SUITE 322 79 STEENBOK AVENUE MONUMENT PARK

0174

Postal Address Change on 18/06/2013.

PO BOX 25160 MONUMENT PARK

28/06/2013

28/06/2013

0105 Registered Address Change on 18/06/2013.

> MONUMENT OFFICE PARK BLOCK 3, SUITE 5-102 79 STEENBOK AVENUE MONUMENT PARK 0181

28/06/2013

Postal Address Change on 19/06/2013.

Page 3 of 6

Physical Address

the dti Campus - Block F

77 Meintjies Street

Sunnyside 0001

Postal Address: Companies P O Box 429

P O Box 42: Pretoria 0001 Docex: 256 Web: www.cipc.co.za

Contact Centre: 086 100 2472 (CIPC)
Contact Centre (International): +27 12 394 9573



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



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PRIVATE BAG X 180 HALFWAY HOUSE

1685

28/06/2013

Registered Address Change on 19/06/2013.

89 GAZELLE AVENUE CORPORATE PARK SOUTH

17/03/2014

Annual Return completed on 17/03/2014.

Company / Close Corporation AR Filing - Web Services : Ref No. : 54997660

23/07/2014

Member Change on 23/07/2014.

Authorising Director DetailsDirector Full ForeNames=ATUL KUMAR

Sumame=GUPTA ID Number=6806145105189 **Customer Details**

Director Full ForeNames=MARI

Sumame=ROUX

ID Number=7704140014085

23/07/2014

Member Change on 23/07/2014

Authorising Director DetailsDirector Full ForeNames=ATUL KUMAR

Surname=GUPTA ID Number=6806145105189

06/03/2015 Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2002004934

06/03/2015

SMS Notification that Annual Return is due was sent on 06/03/2015

E-Mail send to CHETALI GUPTA for 2015

20/03/2015

Annual Return completed on 20/03/2015.

Company / Close Corporation AR Filing - Web Services Ref No . 525223794

28/04/2015

Member Change on 19/02/2015

Change Record Sumame = GUPTA First Names = ATUL KUMAR Status = Active

28/04/2015 Member Change on 19/02/2015

> Change Record Surname = GUPTA

First Names = RAJESH KUMAR

Status = Active

28/04/2015 Member Change on 19/02/2015.

> Change Record Surname = GUPTA First Names = CHETALI Status = Active

28/04/2015 Member Change on 19/02/2015.

> Change Record Surname = GUPTA First Names = ARTI Status = Active

08/03/2016 Annual Return completed on 08/03/2016.

Company / Close Corporation AR Filing - Web Services : Ref No. : 532993472

13/03/2016 Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2002004934

13/03/2016 SMS Notification that Annual Return is due was sent on 13/03/2016.

E-Mail send to CHETALI GUPTA for 2016

Page 4 of 6

Sunnyside 0001

Docex: 256



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



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20/04/2016

Member Change on 20/04/2016.

Change Record Sumame = GUPTA First Names = ARTI Status = Resigned

10/05/2016

Member Change on 10/05/2016.

Change Record Sumame = GUPTA First Names = RAJESH KUMAR Status = Resigned

18/10/2016

18/10/2016

18/10/2016

Accounting Officer Change on 05/10/2016.

Change Record

Name : = KPMG INCORPORATED

Status : = Resign

18/10/2016

Accounting Officer Change on 05/10/2016.

Add Record

Name: = MXOLISI WISEMAN MTHIMKHULU

Status: = Current

18/10/2016 Accounting Officer Change on 05/10/2016

Add Record

Name: = SIZWENTSALUBAGOBODO INC

Status : = Current Member Change on 31/08/2016.

> Change Record Sumame = GUPTA First Names = ATUL KUMAR

Status = Resigned 18/10/2016 Member Change on 31/08/2016.

> Change Record Surname = GUPTA First Names = CHETA! I

Status = Resigned

18/10/2016 Member Change on 31/08/2016

> Change Record Surname = CHAWLA First Names = ASHU Status = Active Member Change on 31/08/2016 Change Record

Surname = RAGAVAN First Names = RONICA Status = Active

35/03/2017 Status changed to Unknown.

No Valid SMS or Email Address for enterprise M2002004934

20/04/2017 Annual Return completed on 20/04/2017.

Company / Close Corporation AR Filing - Web Services : Ref No. ; 569085790

25/07/2017 Member Change on 25/07/2017.

Director RONICA RAGAVAN details was Changed

25/07/2017 Member Change on 25/07/2017.

Director ASHU CHAWLA details was Changed

20/02/2018 Accounting Officer Change on 20/02/2018.

Notice of change of auditor: SIZWENTSALUBAGOBODO INC resigned

20/02/2018 Status changed to Unknown.

CoR123.1 received and processed

27/02/2018 Member Change on 20/02/2018.

Page 5 of 6



Disclosure Certificate: Companies and Close Corporations

Registration Number:

2002 / 004934 / 07

Enterprise Name:

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY



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Property Commission

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Add Record

Surname : = KNOOP

First Names : = KURT ROBERT

Status: = Active

27/02/2018

Member Change on 22/02/2018.

Add Record

Surname : = KLOPPER
First Names : = IOHANL OL

First Names : = JOHAN-LOUIS Status : = Active

04/03/2018

Status changed to Unknown.

Column msg_adress_to does not belong to table Table1. - M2002004934

04/03/2018

Status changed to Unknown

Column msg_adress_to does not belong to table Table1. - M2002004934

04/03/2018

Email Notification that Annual Return is due was sent on 04/03/2018.

E-Mail sent to ASHU CHAWLA for 2018

1/03/2018

Email Notification that Annual Return is due was sent on 04/03/2018.

E-Mail sent to RONICA RAGAVAN for 2018



Page 6 of 6



7/24/13 GASH WITHDRAWL 7/24/13 GASH WITHDRAWL 7/34/13 CHARGES 8/4/13 CGA	1	425,000.00	(425,000.00)	AND OUR LA	Approximation of the second se		47E 000 001	aDa	NBAD	Z	TOTAL	EQV AED	TOTAL AS PER BS
7/30/3/3/CHARGES 8/4/13/CHARGES 8/4/13/CHARGES 8/4/13/CHARGES 8/11/13/CHARGES	,			177 000 777			in the second	,				THE PERSON NAMED IN COLUMN NAM	and department of the last
8/4/13 CHEQUE GBSZ731 8/4/13/5CB AED 8/11/13 CASH WITHDRAWL 8/11/13 GATEMAV ITE 8/11/13 G			i manufactorium	(7,798.75)	and the state of t	500	(7,798.75)		S STATES	ward the same and same and same		=	(425,000,00)
8/4/131SCB AED 8/11/131CASH WITHDRAWI 8/11/131SCB AED 8/11/13		,		;	g (44 mm) 444 42		-	(25.64)	Menoneman in in the second sec			Publicanian Applicanian Prints	(7,798.75)
8/11/13 CASH WITHDRAWI 8/11/13 SCEA AED 8/11/13 GATEMAN THE 8/11/13 GATEMAN CORPORATION LIC 8/11/13 GENDA PTY LTD 8/11/13 IGLOBAL CORPORATION LLC	01445 ·		(15,750.00)		s c		, ,	-) 5	\$ **			a de la companya de l
#/11/13 fsca aed #/15/13 eathern ft #/11/13 iglobal corporation lic		2 20 350 50	יייים איייים אייייי		5	***************************************	15,750.00 :	(4,289.22)!	:	•	(4.289.27)	271: " (1C 70A 33)	
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				24.000.00	(74 000 00)			LAYS, 975 (80)			1,999,975 60		
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		_	-		with the second		(70	100 000 000		***************************************	***************************************		
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0/10/11 TDAMPEG	· · · · · · · · · · · · · · · · · · ·	***************************************	-		~		11.98	11.986.000.001			ກາດກາດຂອງ	3,275,200.00	
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i B/13/13 CASH DEPOSIT		topopopo cy	2000,000	the World in manual in this Av. or	and arms also		4,000.00	-		,	3		24,000.00
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8/14/14 CLUBAL COMO SECULIARION	,	,	-		3	~~		5.000.00	1		12,000.00	00.002,66	55,200.00 i
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O'LOCAL WILLIAM	and the state of t	35,000.00			(35,000,00)	-	ישט טעט	division measured.	nT)	(nn'nne'nr)	(10,500,00)	0) (38,640.00)	(316.05)
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8/14/13 GLOBAL CORPORATION LLC		5 D 500 5 D 500 5	THE OCE AND		* * * * * * * * * * * * * * * * * * * *		18,000,000				,	Distance and and and an arrange of the same of the sam	10 000 00
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8/14/13 CASH WITH DRAW	2.0.40	1 100 to	11/,000.00			11	117.000.00 (3)	(31,862,75)			1010 000		3
0.70 42 1 1 48 Aut		185,000.00	(185,000.00)			(18		Ant. 1907 Ann. 800	**************************************		(31,862./5)	(117,254.92)	(254.92)
SVIOLITIES OF TOTAL	*	*****	******	593,656.00	before the state of the state o	EG.	EGO CEC OO	}			1		(185,000.00)
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9/5/14/SATEMANITO	*	(cs/mor.mon)			29,000.00		29,000,00 i	3		,	N Jilos varea		66,904.00 !
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9/3/13 GLOBAL CORPORATION LLC		~			Distriction 1100mmmmmmmmmmmmmmmmmmmmmmmmmmmmmmmmmm	A chamma and the same and the form	DOO'T :	WOUND:	The state of the s	Alternational Control of the Control	1,000,000.00	3,680,000,00	3,680,000,00
P-S/13 ESTINA PTV LTD							1	(ALICANOMIC)			(700,000,000)		(2 576 000 00)
9/5/13 TRANSFER			16	-			5,000	2,999,875 00					
9/7/13 GLOBAL CORPORATION LLC	\$ =-	3	;	:			(1,000	(1,000,000,00)	,				, _
9/7/13 CHARGES	· · · · · · · · · · · · · · · · · · ·	4 . 14 nm W hom	· · · · · · · · · · · · · · · · · · ·		44. m 4. m 4444			700	700,000.00	-	מט טטט טטע מטע	1 575 000 00	
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alitz chances			_	(200.00)		300	300 000	mm. () 1	2 2 N A	3 3 3	1 2	-	(1,850,000.00)
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9/8/13 SCB AED	3.6720)	tant (terminal page chromat	750 000 003	1		W Vi IV W Mare		_	(145,000.00)		(145,000.00)	(533.600.00)	(533 600 001
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Office States STINANI GUPIA-ACHIA GUPIA	\$		~~		(737,220.00):	(542)	100 000 757	·	, , ,	, -	· ;	,	750,000.00
9/8/13; DEBIT					(34 00)		440,00p	£	4		•		(737,220,00)!
9/9/13 ISHAN GROVER				a	The same of	4	(34.00)	· •	-			5 1	fad not-
9/9/13 DEBIT	*****	White a successful distance is study	***************************************	The fact of the fa	(5,000.00)	5)	(00'000)	-	-		THE OWN PERSONS NAME OF THE OWNER, WHEN PERSONS NAME OF THE OW	the state was state was	Jonatel
9/9/13 (\$ATRIVAY).DD	The party of the last of the l	and an annual state of the stat	***************************************		(16.00)		(16.00)			- Harman	- Comment of the comm	S -	(2,000.00)
0/0/13 ACT MATE		and a seems on						1.400.000.00	and the same of the same		The second of the second		(16.00)
SINGUINATE			•	- Name			(1 Ann	Topological States	1	,		- ;	-
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9/16/13 CHEUDE 124.03A		The state of the s	TOTAL PROPERTY.		(00,000,cs)		(35,000.00)	The state of the s	disease, and the same of the s		TOTAL	EQV AED	TOTAL	11
9/17/13 CHECHE DEB 375		A COMPANY OF THE PARTY OF THE P		(48,500.00)	(O)		(48 500 001	(4,562.44)	to security-demandary	And the second s	(4,56	(4,562.44) (16,789.78)	(35,000.00)	8 %
9/18/13 TRANSFER	, also ex-	,		· · · · · · · · · · · · · · · · · · ·	25,400.00	2	25,400.00	;	,		70000	,		18
9/18/13 TRANSFER	i .	\$, any ion may ion }					(50,000.00)			to them to be because the country of country		25,400.00	8
9/19/13 CHEQUE DEP 276	den and a state of the state of	*	and the same of th	West	23.250.00	-	00 010 00	(50,000.00)	1. 2 mm		£	t dans	* * * * * * * * * * * * * * * * * * *	
9/41/13/CHARGES		*		The same of the sa		Annual An	23,250.00	The Co.	M. minerally management of the same	and the same of th		-	23.750.00	9
9/23/13 GLOBAL CORPORATION LLC	1		~~~			·		400,000.00	\$,			4
	Viales 1600 44 m	1						(400,000.00)			400,000,00	0.00 1,472,000.00	0 1,472.000.00	8
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9/23/13 CHARGES	J						Ī	(an mondae)		, , , , , , , , , , , , , , , , , , , ,			- Comment	1
GLOBAL CORPORATION ILC		ì		* ***			,	4	İ	(186,137,35)	(186,137.35)	(684,	(684,985,45)	, in
9/73/13 ESTINA PTP.LTC					1,650,000.00	· · · ·	1,650,000,00			(9.26)	1	(9.26): (34.08)	3	00
TRANSPER								2,999,975.00					1,650,000,00	=
9/23/13 TRANSFER	Ti o	200			7 a d	* *		(3,000,000,00)						
9/24/13 ESTINA PTY LTD								(72,231.14)			*			
9/24/13 CASH WITHDRAWL		1,700,000,00			To Table Annual			346,775 00						
9/24/13 CASH DEPOSIT		(1,300,000.00)		1 300 000 00	(4,700,000,00)		(1,700,000.00)				****			
9/24/13 DEPOCONY			· manufel manu	1967 450 001		***************************************	1,300,000.00		***************************************	manufacture and the same persons	Marian Marian Company Commence of the Commence		(1,700,000.00)	
9/24/13 CASH DEPOSIT		(10,000,00)	10.000.00	3	,	3 34 35 5	(367,450.00)	3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3		Otherwood, and and the state of	Information of the control of the co	The same of the sa	1,300,000.00	
9/24/13iCHARGES						3	10,000,00			. 144 10000		3	(367,450.00)	
9/24/13 J TRADING			4				•	*	(10.00)	, 100 mm	, , , , , , , , , , , , , , , , , , ,	(10,00)	707	
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9/25/13 CASH WITHDRAWL	,	370,000,00	The state of the state and state of the stat	100 000 000 g	Miles	Annual Commence of Control of Con	-		(800,000,00)	***************************************	DOUGHER .	1	J	
10/5/13 CHEQUE 184			of the owner was the format of the owner, where	Discourage of the second		A STATE OF THE PERSON NAMED IN COLUMN NAMED IN	(370,000.00)	-		The state of the s	,0000	(20,000,000,000,000)	2	
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10/5/13 CASH WITHDRAWL		400,000,00	-	(400 non non	M. 22,000.00		22,000.00		,	, ^	,		(20,500.00	
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10/8/13 CASH DEPOSIT	*	(1,000.00)	1,000.00		· variable and property of the contract of the	Manny and designation of the last of the l	9,000.00	Abrilanna Languige Communication			and other teachers are about		(400,000,000)	
	200	***************************************	-	man i de l'annument de l'annum	. Comments of the second of th	manufacture and property of the property of th	1,000.00	The state of the s	e comment of the comm	William Control of the Control of th	La planta and the same of the	The state of the s	1,000,00	
10/12/13 ESTENSET 15	, ower.	**************************************		WAS A Annua.	2 3 3 4444 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	*** ** *** ***	3	(5,685.84)	* ***	3	(5,685.84)	.84): (20,923.89)	(20 923 89)	
10/12/13 SCDSAL CORPORATION IN	W WX Minney	HALL PROPERTY OF IN SEC.		Maria Maria Maria			5 p	350,000,000			(2,723.31)	,	(10,021,78)	
10/12/13 SCB AED	3.6720	Chicago and Chicag		annual of the same and the best of the same and	the second secon	The state of the s	WARREN TO W	(350,000,00)	AMA 170 MANA 1700 A. A. A.	\$ 0 E	350,000.00	-	1,288,000.00	
10/12/13: CASH WITHDRAWL	The state of the s	150 000 00 3	130,000,000	ments promote to the characterist brends	The Character of the Control of the		130,000.00	(35,403.05)	teres	attinummer ummerijitimenumpin	(350,000,000)	=	The state of the s	
10/13/13 FUNDS TRF	**		· (nonnoner)	3 2 3 3	,	www.	(150,000.00)		MWANTED STREET, STREET, STREET,	I I	(35,403,05)	05) (130,283.22)	(283.22)	
				(בטיטטטטטטט	3		(20,000,00)			the same and the same			(150,000.00)	
10/19/13 CASH DEPOSIT	W	(70,000.00)		10 TH WAY 10 MAR 10	00 000 OF		- "	(54,466,20)			(CA 466 20)		(20,000.00)	
10/19/13 REVELIN GLOBAL PTY LTD AUSTRALIA	-	-			3 : r	***************************************	70,000.00				, m m 124,400.	(200,435,62)	(200,435.62)	
10/19/13 DEBIT	~	-	- Vac	and the state of t	(73,722,00)		(73,722.00)	W.		manufacture Communication	,	-	70,000.00	
10/19/13 CASH WITHDRAWL	7	70,000.00	,	וטת טטט טצו	(34.00)	3	(34.00)	,		***************************************	Contraction Comments of Comments of the Commen	-	(73,722.00)	
10/20/13 GLOBAL CORPORATION LLC	4 man (man 4	\$	-	(no monto a)	400 000 000		(70,000.00)			3	11 000		(34.00)	_
				1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		5 	400,000,00	1	1				(70,000.00	
10/21/13 TRANSFER	~	-	The second secon	***************************************	was .	mental de la constitución de la	- Contract of the last of the	(108,932.40)	į	\$ 	(10g app Ant		400,000.00	
		a. The comment of the	and the same of th	The character of the ch	The state of the s	City Charles of the Control of the C	A STATE OF THE PERSON NAMED IN COLUMN NAMED IN	(1,086.75)	77	*	, 250,004)	(400,871.23)	(400,871.23)	
10/28/13: CHARGES	,		,				, ;	(65,270,39)		The state of the s	(65,270.39	(34n 195 nA)	(140 101 04)	
TARGES	* ***			;	3			(8.78)	· · · · · · · · · · · · · · · · · · ·		(8.78)	, =	12-40,133.04	
11/1/13 CUADGE		Wa. Hittanamananananananananananananananananan	Period			4 4		(6.81)	***	F	(6.81)	,	125 051	
11/1/12 Cathor	2		***	The state of the s	and the same of th	- House and the same and the sa			The state of the s	(5,833.00):	(5,833.00)	(21,	(21 465 44)	
11/1/13 DERF	-	The state of the s	Ame.		- Ifficant the same of the sam	and the same of th	and different management of the same of th	Property of the Party of the Pa		(9.26)	(9.26)		(34.08)	
11/1/14 CACH WITHDRAW	;	the in our			(36,861.00)	before the second secon	(36 061 001	and the same of the same of the same	Hilbrian . mediconnecticity	10,000,00	10,000.00	36,1	36.800.00	
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Mosebenzi Joseph Zwane

National Assembly

Formerly: Free State Provincial Legislature

Write a public message to this MP

PARTY

African National Congress (ANC)

EMAII

mzwane@parliament.gov.z

CONSTITUENCY OFFICES

ANC Constituency Office (962): Welkom

PROVINCE

Free State

ABOUT MOSEBENZI JOSEPH ZWANF

Mosebenzi Zwane previously served as the Minister of Mineral Resources. Born in Vrede, South Africa, Zwane got involved in politics in the early 1980s as a member of the Thembelihle Youth Congress. He later joined the Thembelihie African National Congress (ANC) branch. Zwane also served in the regional executive committee of the Frankfort region in the early 1990s. He became the first secretary of the Frankfort region that became the Thabo Mofutsunyana region, preceding the amalgamation of local councils. Mr Zwane attained his secondary teacher's diploma from the South African Teachers College in Pretoria. He also holds a certificate in Executive Leadership Municipal Development from the University of Pretoria.

Mosebenzi Zwane became a regional executive committee member of the Thabo Mofutsunyana region and subsequently its chairperson. Zwane has been the regional chairperson of the Thabo Mofutsunyana ANC region since 2006.

Zwane was a Member of Free State Legislature (provincial legislature) since 21 May 2014. He has previously served as MEC in the Portfolio of Agriculture and Rural Development, Tourism and Environmental Affairs in the Free State provincial government (www.gov.za)

Committee Attendance Positions held Messages Appearances

2018 COMMITTEE ATTENDANCE AS MINISTER/DEPUTY

Attended 1 meeting

2017 COMMITTEE ATTENDANCE AS MINISTER/DEPUTY

Attended 5 meetings

2016 COMMITTEE ATTENDANCE AS MINISTER/DEPUTY

Attended 5 meetings

2015 COMMITTEE ATTENDANCE AS MINISTER/DEPUTY

Attended 0 meetings

- Attendance records reflect Committee not Plenary Attendance
- Minister/Deputy Minister attendance is not compulsory.
- · MP attendance is compulsory unless an apology is given
- · MPs are recorded as absent whether they have, or have not submitted apologies
- . This is not the official committee attendance record of
- Plenary Attendance is not made public by Parliament although it has been requested.

RECENT MEETINGS ATTENDED

NCOP Petitions and Executive Undertakings -Minister of Environmental Affairs & Minister of Mineral Resources Progress Reports - 21 Feb 2018

Mineral Resources - Lung Diseases on Mines and silicosis class action cases: ex-mineworkers lawyers briefing - 22 Nov 2017

Mineral Resources - State Capture Allegations: responses by Minister of Mineral Resources - 18 Oct 2017

Mineral Resources - DMR & Mine Health and Safety Council on their Annual Performance Plans; DPME input, with Minister - 3 May 2017

Mineral Resources - Mining Licencing turnaround times, with intro by Minister - 8 Mar 2017

All meetings attended

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NATIONAL (HTTPS://MG.CO.ZA/SECTION/NEWS-NATIONAL)

Gupta past haunts new mines minister

AmaBhungane Reporters (https://mg.co.za/author/amabhungane-reporters), Mail & Guardian Reporters (https://mg.co.za/author/mail-guardian-reporters) 24 Sep 2015 00:00



Mosebenzi Zwane's name crops up in several Gupta-related scandals, from Waterkloof to a controversial Free State dairy. (Delwyn Verasamy, M&G)

(https://mg.co.za/article/2015-09-23-gupta-past-haunts-new-mines-minister)

Linkedin Twitter Google+ GOOGLE+ COMMENTS (HTTPS://MG.CO.2A/ARTICLE/2015-09-23-GUPTA-PAST-HAUNTS-NEW-MINES-MINISTER#COMMENT_THREAD)

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Early on Sunday evening this week, a presidential-level motorcade, complete with a large contingent of traffic police on motorcycles, paid a visit to the Gupta family compound in Saxonwold in Johannesburg.

On Tuesday night, President Jacob Zuma unexpectedly – and to the surprise of even top members of his own party – announced that he would fill a six-month-old vacancy in his Cabinet by appointing the relatively unknown Mosebenzi Zwane to the critically important mineral resources portfolio.

Zwane would be sworn in by the following afternoon, Zuma said in a short statement.

On Wednesday, the presidency did not respond to questions on whether Zuma was in the motorcade, or whether he had discussed his new Cabinet with the Gupta family. But the coincidence is sure to raise eyebrows.

Read: New minister of mines tainted by Gupta family link (https://mg.co.za/article/2015-09-23-new-minister-of-mines-tainted-by-gupta-family-link)

On previous occasions, leaders in the ANC have expressed concern about the Guptas' influence in appointments, and rumours about consultations with the family before Cabinet appointments are made have swirled around for years.

No mining experience

Zwane's appointment as a minister plucked him from obscurity after a very brief stint in Parliament and, before that, in the Free State provincial government. He has experience in neither mining nor the handling of an important national portfolio.

He was central to the controversial Estina dairy project outside his hometown of Vrede (https://mg.co.za/article /2013-05-31-00-guptas-farm-cash-cows-in-free-state), a project driven by associates of the Gupta family, although the family itself has denied being involved in the business.

And, in March 2013, a letter on behalf of Zwane, then the MEC for agriculture in the Free State, appeared to provide an official alibi of sorts to turn a visit by Indians into an official government visit – elements that allowed a private plane of Gupta wedding guests (https://mg.co.za/article/2013-05-03-00-zuma-fury-over-the-guptas-wedding-jet-scandal) to land at the Waterkloof air force base.

In recent years, the Gupta family has moved into mining (https://amabhungane.co.za/article/2014-12-04-another-state-bonanza-for-the-guptas), primarily uranium – a feedstock that will be in demand if South Africa moves ahead with plans to build a massive new fleet of nuclear power stations – and coal, part of which is sold to Eskom.

Gupta and Gupta-linked companies involved in mining have several times run into trouble with regulatory requirements, including those on environmental compliance.

Zwane will now be in charge of enforcing those regulations.

Read:

- Row over 'unpaid' bills at Gupta's family mine (https://amabhungane.co.za/article/2011-09-09-row-over-unpaid-gupta-mine-bills)
- Zuma 'meddled in mine buyout' (https://amabhungane.co.za/article/2010-05-14-zuma-meddled-in-mine-buyout)

Total surprise to ANC NEC members

Zuma has an absolute prerogative over the composition of his Cabinet, but previous reshuffles and ministerial appointments have come up for discussion in ANC structures. This week, members of the ANC's national executive committee said Zwane's appointment had come as a total surprise – no hint of it was given at an NEC meeting at the weekend.

The controversies he became entangled with during his time in the Free State have not yet run their full course, and ongoing investigations could still draw him back into them – in one case, sooner rather than later.

The investigation of the Vrede farm matter (https://mg.co.za/article/2013-06-07-00-gupta-dairy-project-milks-free-state-coffers) has been completed and the report is being written, Kgalalelo Masibi, the spokesperson for the public protector, Thuli Madonsela, said on Wednesday in reply to questions about the Estina investigations.

The report is unlikely to leave Zwane smelling of roses.

• Read: Will Zwane even slap his mining friends' wrists? (https://mg.co.za/article/2015-09-23-will-zwane-even-slap-his-mining-friends-wrists)

The national treasury launched a full-scale investigation (https://amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation) of the dairy project following several amaBhungane exposés about it in the *Mail & Guardian* in mid-2013.

The reports suggested the deal with Estina, a company without agricultural experience and led by a computer sales manager,

flouted treasury rules and was designed to milk provincial government coffers.

Estina

In 2014, amaBhungane published the transcript of an interview (https://cdn.mg.co.za/content/documents/2014/02 /06/ensinterviewdlamini.pdf) with the then Free State department of agriculture chief financial officer, Dipatle Dlamini, that was conducted as part of the treasury's investigation.

The transcript suggested the dairy project was conceived during a visit to India by senior department officials and Zwane, the then agri-culture MEC.

Following the visit, officials in Bloemfontein were summoned in May 2012 to a presentation on the project by Estina. Just three days later, the head of department wrote to Estina accepting its proposal.

In 2013, municipal officials and local politicians told amaBhungane they were not surprised that Vrede was chosen for the project because Zwane, they alleged, "runs the municipality as his little farm".

"As the ANC regional chairperson, whatever Zwane wants he gets; people are scared of him and because he is close to [premier] Ace [Magashule], this makes him more powerful. No one dares to challenge him."

'Ace's best friend'

A councillor said at the time the project was presented to the town council late in 2012 by Zwane, whom he described as "Ace's best friend ... they are like brothers".

On Wednesday, Zwane was attending a funeral in Vrede and was travelling back to Pretoria for his inauguration ceremony when contacted.

He confirmed he was the initiator of the Vrede dairy project (https://amabhungane.co.za/article/2014-06-05-estinas-cowscome-home-to-roost), which he said was merely part of a broader development concept called Mohoma Mobung, which involved the whole agricultural value chain.

He said: "The concept is still with the department ... it was agreed that the administration should implement the project." He said, as a politician, his role was not to implement but to develop policy and exercise oversight.

The call dropped when Zwane was asked about his relationship with the Gupta family.

He did not respond to subsequent questions sent by SMS before the M&G's deadline.

Narayan, Transnet, Neotel and Homix

The 2013 Estina articles (https://amabhungane.co.za/article/2014-02-06-free-state-dairy-project-damned-in-treasury-investigation) also flagged allegations of the Gupta family's proximity to the project and several of the role-players.

A well-placed source subsequently told amaBhungane that Zwane was good friends with Ashok Narayan, who served as an executive of the Gupta company, Sahara Systems, until about three years ago.

Narayan's name also came up recently (https://amabhungane.co.za/article/2015-07-30-transnet-scandal-ex-gupta-man-shows-his-hand) in connection with controversial commission payments by telecommunications company Neotel to a company associated with Narayan, Homix, to secure contracts with the parastatal Transnet.

The same source said Zwane flew to a wedding in India in December 2013 with Narayan, members of the Gupta family and Chandrama Prasad "CP" Yadav, the then manager of the dairy project.

Narayan was said to be a key person who liaised with Yadav about the project.

A source told amaBhungane that Atul Gupta was also involved in negotiations to buy a home in Vrede for the use of "CP".

Guests

Yadav is the former secretary to Uttar Pradesh chief minister Mulayam Singh Yadav, the brother of the current Indian public works minister, Shivpal Singh Yadav, who was a guest at the infamous Gupta family wedding at Sun City at the end of April 2013. (https://mg.co.za/article/2013-05-19-name-game-blamed-for-gupta-debacle)

The M&G previously reported (https://mg.co.za/article/2013-05-10-00-free-state-government-gave-gupta-guests-an-alibi) that, in a letter dated early March 2013, the Free State department of agriculture extended an invitation to Shivpal Yadav to visit the province.

The invitation appeared to provide official sanction, which paved the way for a private Airbus chartered by the family to land at Waterkloof.

The invitation was on the letterhead of the Free State agriculture department and was signed on behalf of Zwane.

It was dated after the government was approached by a representative of the Gupta-owned Sahara Computers for permission to use Waterkloof, a request that was initially denied.

Denials and links

In 2014, the Free State provincial government and the Gupta family denied Gupta involvement in the dairy project, (https://amabhungane.co.za/article/2013-06-07-gupta-dairy-project-milks-free-state-coffers) save for a short consulting contract performed by Linkway Trading, a Gupta company.

Spokesperson Gary Naidoo said the Gupta family "has no business involvement in the project".

Attempts to pose questions to the family about their relationship with Zwane were unsuccessful at the time of going to press.

The Democratic Alliance in the Free State has on several occasions vowed not to let the Estina matter rest, and requested an investigation by the public protector into, among other things, Zwane's involvement.

The opposition party has also called for investigations into what it branded "a mini Nkandla" in Warden, a town in the same district as Vrede.

Zwane has a home in Warden that, the DA alleged last year, had been built on municipal land and, according to community rumours, had been built using materials pilfered from a troubled government housing project in the town.

"MEC Zwane's house has been valued at R29 000 while other houses in the vicinity have been valued at R300 000," the DA said, implying the valuation had been manipulated to save Zwane money on rates and taxes, and to benefit him if a sale agreement for the land is reached.

A camera crew was attacked by a group of "concerned local citizens", who objected to visuals being captured of Zwane's private residence.

* Got a tip-off for us about this story? Click here (https://amabhungane.co.za/page/contact-amabhungane).



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(http://www.re.za/micle/filingleson/the warming to ganting interpretable in 2018-10-04-00-bobi-wine-the-writing-is-on-the-wall-in-uganda)

Ugandan MP and musician Robert Kyagulani, aka Bobi Wine, writes that a united Uganda is snubbing the regime's divide-and-rule strategy

By Robert Kyagulanyi Aka Bobi Wine (Https://mg.co.za/author/robert-kyagulanyi-aka-bobi-wine)



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Nhlanhla Nene told the state capture commission he had met with the Gupta family on four occasions between 2010 and 2013 on invitation from Ajay

By Ra'eesa Pather (Https://mg.co.za/author/raeesa-pather)



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Women scientists still 'undervalued' despite twin Nobel wins (https://mg.co.za/article/2018-10-03-women-scientists-still-undervalued-despite-twin-nobel-wins)

Canadian scientist Donna Strickland became just the third woman in history to win the Nobel Physics Prize

By Patrick Galey (Https://mg.co.za/author/patrick-galey)



(h#stallte@apita/eticle/2018-10-03-statecaptureinquiry-how-zuma-fakeda-job-for-nene)

Former president Jacob Zuma did not give Nhlanhla Nene any reason why he was fired from his position as finance minister in December 2015

By Sarah Smit (Https://mg.co.za/author/sarah-smit)

BHEKISISA (HTTPS://MG.CO.ZA/SECTION/NEWS-HEALTH)

[FROM OUR ARCHIVES] 'The people told me they are coming to take me away tonight' (http://bhekisisa.org/article/2014-05-30desperate-search-for-answers-to-schizophrenia-puzzle)

Where traditional beliefs are more real than textbooks, treating mental illness is a balancing act for sangomas and medical doctors alike.

By Mia Maian (Https://mg.co.za/author/mia-maian)



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During his testimony before the commission, Minister Nhlanhla Nene detailed how pressure to approve a R1.6-trillion nuclear deal led to his axing

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Fugitive attorney Ronald Bobroff: I ran for my life

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September 25, 2018

was sneaked in

Andisiwe Makinana and Setumo Stone D 2015-09-27 17:13

Johannesburg - A series of secret manoeuvres were undertaken for more than a month and culminated in the shock appointment of Free State agriculture MEC Mosebenzi Zwane

President Jacob Zuma and Mosebenzi Zwane, the new minister of mineral resources, at the swearingin ceremony in Parliament. Picture: Siyabulela Duda / GCIS

as the new mineral resources minister last week,

City Press can reveal that the first steps for Zwane's redeployment were taken as early as the beginning of this month, when he mysteriously disappeared from the Free State cabinet of Ace Magashule. No announcement was made about his departure until a few days before he was announced as minister.

Last week, it also emerged that Zwane was flown to Cape Town by Magashule's office, catching off guard the troop of parliamentary officials who are usually involved when a new MP is to be sworn in.

A source in the National Assembly Table (senior parliamentary staff) told City Press that officials in Parliament were surprised when Deputy Speaker Lechesa Tsenoli informed them that Zwane, the new MP, was already in his office.

It subsequently emerged there was a last-minute rejig of the party political list of those eligible to become MP.

This was highly unusual, according to the source.

"No one at the National Assembly Table was aware of a member who had to be swom in. They normally obtain the information before the member even comes to Cape Town," said the source.

Zwane was nominated as an MP on September 2 and his membership of Parliament was announced by Tsenoli the next day. The announcement came as a surprise, as the provincial government had kept mum about the departure of the MEC from the province to join the National Assembly.

The provincial ANC only issued a press statement about the provincial cabinet reshuffle on September 18, the day after Magashule appointed Zwane's replacement in his cabinet and more than two weeks after Zwane had left the provincial government to become an MP. The Gupta-owned New Age newspaper ran a small item about his staff's farewell party for him.

The parliamentary source said logistical arrangements would usually be made with the necessary paperwork. Only then would the Speaker or deputy Speaker be secured to administer the swearing-in.

"In this case, the man was flown to Cape Town by Magashule [his office].

"The table was informed by Tsenoli that there was a person to be sworn in, who was already in his office.

"The table was taken by surprise. Even the list had to be quickly amended at Luthuli House so he was at the top so as to be the next in line," added the source.

The appointment was "a shock", said an ANC national executive committee (NEC) member.

"We were aware of his presence in Parliament over the last few weeks and anticipated that he was being positioned for a Cabinet post," said the NEC member.

But the source said: "We thought it would be a post like agriculture as part of a bigger reshuffle. We did not expect it to be such an important portfolio."

Parliament denied some of the allegations. Its spokesperson Luzuko Jacobs said "the relevant authorities at Parliament were aware of the nomination and

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September 25, 2018

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IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO: 65616/17

In the matter between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

THE TRUSTEE(S) FOR THE TIME BEING OF THE OPTIMUM MINE REHABILITATION TRUST

First Respondent

THE TRUSTEE(S) FOR THE TIME BEING OF THE KOORNFONTEIN MINE REHABILITATION TRUST

Second Respondent

PUSHPAVENI GOVENDER

Third Respondent

TREVOR SCOTT

Fourth Respondent

OPTIMUM COAL MINE (PTY) LTD

Fifth Respondent

KOORNFONTEIN MINE (PTY) LTD

Sixth Respondent

BANK OF BARODA

Seventh Respondent

MINISTER OF MINERAL RESOURCES

Eighth Respondent

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DATED at PRETORIA on this 20th day of September 2017.

WERKSMANS ATTORNEYS

Plaintiff's Attorneys 155 - 5th Street Sandown, Sandton, 2196

Johannesburg

T: +27 (0)11 535 8106 / +27 (0)11 535 8445

F +27 (0)11 535 8545

Email: bhotz@werksmans.com / jgobetz@werksmans.com

Ref: Mr B Hotz/Mr J Gobetz/ORGA36432.2

C/O BRAZINGTON & McCONNELL

424 Hilda Street

2nd Floor, Hatfield Plaza, North Tower

Hatfield Pretoria

Tel: (012) 430 4303

e-mail: andrew@bsmlaw.co.za

Ref: Mr A McConnell

TO:

THE REGISTRAR OF THE HIGH COURT (GAUTENG DIVISION, PRETORIA)

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO: 65616/17

In the matter between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

THE TRUSTEE(S) FOR THE TIME BEING OF THE OPTIMUM MINE REHABILITATION TRUST

First Respondent

THE TRUSTEE(S) FOR THE TIME BEING OF THE KOORNFONTEIN MINE REHABILITATION TRUST

Second Respondent

PUSHPAVENI GOVENDER REGISTRAR OF THE HIS SOUTH MERICA GAUTENG DO

Third Respondent

TREVOR SCOTT

Fourth Respondent

OPTIMUM COAL MINE (PTY) LTD

Fifth Respondent

KOORNFONTEIN MINES (PTX) 110

Sixth Respondent

BANK OF BARODA

Seventh Respondent

MINISTER OF MINERAL RESOURCES

Eighth Respondent

NOTICE OF MOTION

2017 -09- 2 1

Court on Tuesday 26 September 2017 for an order in the terms set out in PART A be head below:

PART A

Dispensing with the forms and service provided for in the Uniform Rules of Court and allowing the matter to be heard as one of urgency in terms of Rule

6(12) and granting condonation for any non-compliance with or deviation from Section 13.12 of the Practice Manual of the above Honourable Court.

- 2 Pending a decision on the relief sought in Part B or a further order by this Court:
- 2.1 Insofar as the Bank of Baroda does not consent thereto, directing the Bank of Baroda to continue to hold the Trust funds of the Optimum Mine Rehabilitation Trust ('the Optimum Trust') and the Koornfontein Mine Rehabilitation Trust ('the Koornfontein Trust'), in an interest-bearing bank account or accounts in the name of the Trusts.
- 2.2 Interdicting the Trustee(s) for the time being of the Optimum Trust and any signatory on its bank account(s) or any other person who may have been authorised by the trustees to act on behalf of the Optimum Trust,
- 2.2.1 from directly or indirectly dealing in any way with, disposing of or removing from the Republic of South Africa any of the funds or assets of the Trust including but not limited to the Trust's funds held in any account of or at the Bank of Baroda;
- 2.2.2 without detracting from the generality of 2.2.1 above, from ceding, assigning, delegating, making over, diverting or diluting any present or future funds, and including further all moneys received or receivable in future owed to the Trusts.

- 2.3 Interdicting the Trustee(s) for the time being of the Koornfontein Trust and any signatory on its bank account(s) or any other person who may have been authorised by the Trustees to act on behalf of the Koornfontein Trust:
- 2.3.1 From directly or indirectly dealing in any way with, disposing of or removing from the Republic of South Africa any of the funds or assets of the Trust including but not limited to the Trust's funds held in any account of or at the Bank of Baroda;
- 2.3.2 Without detracting from the generality of 2.3.1 above, from ceding, assigning, delegating, making over, diverting or diluting any present or future funds, and including further all moneys received or receivable in future owed to the Trusts.
- Within 15 days of this order, directing the Trustee(s) of the Koornfontein Trust and the Optimum Trust to file with the Registrar of this Court and serve on the parties, an affidavit setting out full details of the Trusts' property and its location, subject to any order relating to maintaining any confidentiality as the Court may deem fit.
- 4 Directing that any party may, upon reasonable notice and good cause shown, apply to the Court to vary this order.
- 5 Granting the applicant leave within 30 court days of the grant of this order to:

- 5.1 Amend the notice of motion;
- 5.2 Effect the joinder of any other interested party including the trustees of the Trusts in their personal capacities should any relief be sought against them and the Master and;
- 5.3 Supplement its founding affidavit in respect of the relief sought in PART B.
- Directing that the costs of Part A be ordered against any party who opposes the relief sought in Part A and are otherwise reserved for determination in the proceedings contemplated by Part B.
- 7 Further and / or alternative relief.

PART B

TAKE NOTICE THAT the applicant intends to apply, on a date to be determined by the Registrar, for the relief set out below, subject to any amendments contemplated by Prayer 5 of Part A:

1 Removing the trustee(s) of the Koornfontein Trust and Optimum Trust;

- Appointing a minimum of two independent or otherwise suitable trustees to the Koornfontein Trust and the Optimum Trust alternatively ordering the Master of the High Court to appoint such trustees within one month of the date of the Court's order.
- In the alternative to prayer 1, appointing a minimum of one independent trustee to the Koomfontein Trust and Optimum Trust alternatively ordering the Master of the High Court to appoint such trustees within one month of the date of the Court's order.
- Directing that the Trustees of the Trusts appointed in terms of prayers 2 or 3 above, hold a Trustees meeting within a period of one month from the date of their appointment to take a decision on the depositing and / or investment of the Trusts' funds and thereafter swiftly implement such decision.
- Directing the Trustees for the time being of the Koornfontein and Optimum

 Trusts as at the date of institution of these proceedings to deliver an affidavit to
 the Registrar of the Court and the parties containing a full accounting relating
 to the Trusts' property from 30 March 2016 to the date of the Court's order in

 Part A.
- In the alternative to prayers 1 to 4 above, directing that the Minister take such steps as are necessary to ensure that alternative satisfactory arrangements are in place for the financial provision for rehabilitation in respect of Koornfontein and Optimum as contemplated by NEMA.

- 7 Costs of suit against any party who opposes this relief.
- 8 Further and / or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of STEFANIE FICK together with annexures thereto, and the affidavit of MARTIN LANGE will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed WERKSMANS ATTORNEYS C/O BRAZINGTON McCONNELL ATTORNEYS at 2ND FLOOR, HATFIELD MALL, 424 HILDA STREET, HATFIELD as the address at which it will accept notice and service in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing PART A of this application you are required to:

- a) Notify the applicant's attorneys of such intention by 2pm on Friday 22 September 2017; and
- b) Deliver your answering affidavit, if any, by 7pm on Sunday 24 September 2017;

KINDLY ENROL THE MATTER ACCORDINGLY

DATED at PRETORIA on this 21st day of September 2017.

WERKSMANS ATTORNEYS

Applicant's Attorneys 155 - 5th Street Sandown, Sandton,

2196

Johannesburg

T: +27 (0)11 535 8106 / +27 (0)11 535 8445

F +27 (0)11 535 8545

Email: bhotz@werksmans.com / jgobetz@werksmans.com

Ref: Mr B Hotz/Mr J Gobetz/ORGA36432.2

C/O BRAZINGTON & McCONNELL

424 Hilda Street

2nd Floor, Hatfield Plaza, North Tower

Hatfield Pretoria

Tel: (012) 430 4303

e-mail: andrew@bsmlaw.co.za

Ref: Mr A McConnell

TO:

THE REGISTRAR OF THE HIGH COURT (GAUTENG DIVISION, PRETORIA)

AND TO:

THE TRUSTEE(S) FOR THE TIME BEING OF THE OPTIMUM MINE REHABILITATION TRUST

First Respondent Grayston Ridge Office Park 144 Katherine Street Sandton

Received on September 2017

for: THE TRUSTEE(S) FOR THE TIME BEING OF THE OPTIMUM MINE REHABILITATION TRUST

AND TO:

THE TRUSTEE(S) FOR THE TIME BEING OF THE KOORNFONTEIN MINE REHABILITATION TRUST

Second Respondent Grayston Ridge Office Park 144 Katherine Street Sandton

Received on September 2017

for THE TRUSTEE(S) FOR THE TIME BEING OF THE KOORNFONTEIN MINE REHABILITATION TRUST

AND TO:

PUSHPAVENI GOVENDER

Third Respondent

Email: ugeshnin@sahara.co.za

SERVICE BY EMAIL

AND TO:

TREVOR SCOTT

Fourth Respondent

Email: trevor@bearingway.co.za

SERVICE BY EMAIL

AND TO:

OPTIMUM COAL MINE (PTY) LTD

Fifth Respondent Grayston Ridge Office Park 144 Katherine Street Sandton

Received on September 2017

for: OPTIMUM COAL MINE (PTY) LTD

AND TO:

KOORNFONTEIN MINES (PTY) LTD

Sixth Respondent Grayston Ridge Office Park 144 Katherine Street Sandton

Received on September 2017

for: KOORNFONTEIN MINE (PTY) LTD

AND TO: **BANK OF BARODA**

Seventh Respondent 2nd Floor - Atrium of 5th Sandton

Received on September 2017

for: BANK OF BARODA

AND TO:

MINISTER OF MINERAL RESOURCESE

Eighth Respondent

Email: mosebenziz@gmail.com C/O THE STATE ATTORNEY

North State Building 95 Market Street

Pretoria

Received on September 2017

for: THE STATE ATTORNEY

SERVICE BY EMAIL

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO: 65616/17

in the matter between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

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Second Respondent

PUSHPAVENI GOVENDER

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OPTIMUM COAL MINE (PTY) LTD

Fifth Respondent

KOORNFONTEIN MINES (PTY) LTD

Sixth Respondent

BANK OF BARODA

TREVOR SCOTT

Seventh Respondent

MINISTER OF MINERAL RESOURCES

Eighth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

STEFANIE FICK

do hereby make oath and say that:

A. INTRODUCTION

1 I am an adult female and the Head of Legal Affairs at the Organisation Undoing

Tax Abuse NPC ('OUTA'). OUTA is the applicant in this application.

- The allegations in this affidavit are true and correct, and save where the context indicates to the contrary, are within my personal knowledge. Where I make legal submissions, I do so on the advice of OUTA's legal representatives.
- Some of the information upon which OUTA relies in this application relates to, or is sourced from affidavits in urgent interdict proceedings instituted by *interalia* the first to fourth respondents against the fifth respondent, the Bank of Baroda ('BoB'), in this Court. I refer to these proceedings as the 'Baroda interdict proceedings'.
- The applicants in the Baroda interdict proceedings sought interim relief to prevent the closure by the BoB of various bank accounts and the calling up of various loans. I refer to relevant portions of the affidavits or features of the proceedings below. To avoid burdening the papers unduly, I do not attach these papers in full but they will be available to the Court should this be required.
- The purpose of this application is to protect the financial provision for rehabilitation required in terms of the National Environmental Management Act 107 of 1998 ('NEMA') and the Mineral and Petroleum Resources Development Act 22 of 2002 ('the MPRDA') in respect of certain coal mines in Mpumalanga.
- The financial provision constitutes funds held by two trusts, (collectively 'the Trusts') in respect of two mining companies' mines, these being:

- the Optimum Mine Rehabilitation Trust (Registration Number:

 17/13693/07) ('the Optimum Trust') which holds rehabilitation funds in respect of Optimum Coal Mine (Pty) Ltd ('Optimum'); and
- the Koornfontein Mine Rehabilitation Trust (Registration Number IT/7563/07) ('the Koornfontein Trust') which holds rehabilitation funds in respect of Koornfontein Mines (Pty) Ltd ('Koornfontein').
- These companies in turn are wholly owned by another company known as Tegeta Exploration and Resources (Pty) Ltd ('Tegeta'). Tegeta, Koornfontein and Optimum are part of what is now popularly referred to as the Oakbay / Gupta group of companies, to which I refer more fully below.
- 7 This application is in two parts, Part A and Part B.
- In Part A, OUTA seeks urgent relief to preserve the Trusts' funds pending the determination of the relief in Part B. The urgency flows most immediately and critically from the BoB's imminent closure at the end of September 2017 of the Trusts' bank accounts and the fact that the trustee(s) of the trusts will not be able to secure alternative banking facilities for the Trusts in South Africa due to their association with the Gupta / Oakbay group. In this regard, on 21 September 2017, the applicants in the Baroda interdict proceedings (which included the Trusts) failed in their attempt to prevent the BoB from closing their accounts. Fabricius J dismissed the applicants' application. A copy of his

judgment is Annexure SFA. The effect is that the BoB is free to close the Trusts' accounts as at the end of September 2017 which it intends to do. Together the Trusts' funds constitute or ought to constitute an amount in the region of R1.7 billion plus interest.

- As I explain below, these funds are imminently at risk. This application has been instituted as soon as possible after the judgment of Fabricius J was handed down and its implications considered. The judgment was handed down at 10 am. It is a lengthily judgment. Due to the logistical difficulties in finalising this application and affidavit between 10 am and noon on 21 September 2017, the applicant's legal representatives were able to issue the Notice of Motion in time, but were unable to cause this accompanying affidavit to be delivered prior to noon on 21 September 2017. I respectfully submit that this affidavit will be delivered at the earliest opportunity practicably possible after noon on 21 September 2017. Condonation is sought insofar as is necessary.
- In Part B, OUTA seeks to ensure that satisfactory arrangements are soon put in place for the long-term protection of the Trusts' property, as contemplated by NEMA and the MPRDA. The relief to be sought in Part B will include an accounting to the Court in respect of trust monies and the removal of the current trustees and their replacement with independent or otherwise suitable trustees. As alternative relief, the applicant will seek a mandamus against the Minister to ensure that alternative satisfactory arrangements are put in place for the financial provision for rehabilitation for Optimum and Koornfontein.

As I explain more fully below, the Trusts' property is at risk not only due to the imminent closure of the Trusts' accounts at the BoB and the inability of the current trustee(s) to secure alternative banking facilities in South Africa but also because of the ongoing failures on the part of the Trustee(s) properly to perform their fiduciary and statutory duties in respect of the Trusts' and the Trusts' property. The Trusts' property is held by the Trusts in the public interest and to ensure that the Koornfontein and Optimum mines are rehabilitated in a manner that protects the environment for present and future generations and without burdening the public purse.

- I deal with the following issues in turn:
- 11.1 The parties;
- 11.2 Legal provisions governing financial provision for rehabilitation and the Trusts;
- 11.3 The factual background; and
- The need for urgent relief to protect the funds pending Part B.
- OUTA has, for purposes of these proceedings, obtained a preliminary report from accountant and auditor Martin Lange, a technical accounting specialist and expert consultant to Howath Forensics. An affidavit from Lange attaching his CV and preliminary report is supplied herewith. I refer to some of his specific

findings below but request that the Court have regard to its general content insofar as it relates to the Trusts and the conduct of the Trustees.

B. THE PARTIES

The applicant and its standing

- The applicant is the Organisation Undoing Tax Abuse. OUTA is a non-profit company with limited liability, with registration number 2012/0642/1308 and NPC number 124-38, duly registered in accordance with company laws of the Republic of South Africa, and with its principal place of business situated at 10th Floor, O'Keefe & Swartz Building, 318 Oak Avenue, Randburg, Gauteng.
- OUTA's main aim is to hold government accountable for the abuse of power, corruption and maladministration. In doing its work, OUTA ensures that more tax revenues are made available and protected to the benefit of all in South Africa especially the poor and the vulnerable. One of OUTA's focus areas is the protection of the environment. South Africa faces immense challenges and threats to the environment arising from mining activities including coal-mining activities in Mpumalanga. The environmental degradation that can ensue from mining activities is notorious with devastating impact for affected people. Failure to comply with the statutory duties governing the protection of financial provision for rehabilitation, results in the burden and cost of rehabilitation falling on the state and the taxpayer.

- OUTA is funded by tens of thousands of individuals and businesses across

 South Africa. This includes people who live and work in Mpumalanga and who
 will be directly affected by any failure to rehabilitate the Koornfontein and
 Optimum mines. Ultimately the burden on the fiscus affects the South African
 population at large and the environment.
- OUTA has duly resolved to institute these proceedings and has authorised me to depose to this affidavit on its behalf. It institutes these proceedings in the public interest, its own interests, in the interests of those who live in Mpumalanga and who are directly affected by the mining activities in question and in the interests of protecting the environment. OUTA has standing to do so in terms of section 32 of NEMA and section 38 of the Constitution.

The first and second respondents – the trustee(s) of the Optimum and Koornfontein Trusts

- The first respondent is the trustee for the time being of the Optimum Trust, or should there be more than one, the trustees. The Optimum Trust is a trust duly registered in terms of the Trust Property Control Act 57 of 1988 with registration number IT13693/17. Its principal place of business is at 144 Katherine Street, Grayston Ridge Office Park, Sandown, Sandton.
- The second respondent is the trustee for the time being of the Koornfontein Trust, or if there is more than one, the trustees. The Koornfontein Trust is a trust registered in terms of the Trust Property Control Act with registration

number IT7563/07. Its principal place of business is at 144 Katherine Street, Grayston Ridge Office Park, Sandown, Sandton.

- Both the Koornfontein Trust and the Optimum Trust are trusts constituted in terms of the MPRDA and NEMA for the purposes of mining land rehabilitation.
- 19 Until recently, the trustees of both of the Trusts were Pushpaveni Govender ('Govender') and Trevor Scott ('Scott'). Govender and Scott were both trustees as at 25 August 2017. This was confirmed by Scott during a telephone conversation on 25 August 2017 with OUTA's Ms Soretha Venter ('Venter'). I refer to her affidavit.
- Scott also informed Venter that a Ms Ronica Ragavan ('Ragavan') should be copied on any correspondence. OUTA understands that Ragavan does not have any formal legal role and that she is not a signatory on the Trusts' BoB accounts.
- On 15 September 2017, Venter learnt that Scott has now resigned as a trustee of the Trusts. However, OUTA is mindful that it is likely that he is or was serving out a notice period and that his resignation may not automatically be effective. Furthermore, he may remain a signatory on the Trusts' banks accounts at the BoB. Venter explains the circumstances in which she learnt this in her affidavit. On 15 September 2017, he refers to the remaining trustee as a Ms Naidu. Venter has since confirmed with him telephonically that this was a reference to Mrs Govender and that Naidu is Govender's maiden surname.

- Against this background, OUTA has taken steps to ensure that the application comes to the attention of all of these individuals (Govender, Scott and Ragavan) and will also serve it on the Trusts' principal place of business referred to above, this being the address cited by Ragavan in the Baroda interdict proceedings as the Trusts' address.
- On 25 August 2017 and 12 September 2017, OUTA requested Ragavan and the Trustees to confirm the current trusteeships and contact details but save for the e-mail correspondence from Scott referred to by Venter, they have declined and/ or failed to do so. I refer to this below. Against this background, OUTA invites the relevant respondents to confirm with the Court the identities of the current trustees and account signatories and with effect from what dates. Upon being informed of the correct position, OUTA will ensure that any necessary consequential procedures are attended to pursuant to the Rules of Court. OUTA has complied with the Rules of Court as far as possible in the circumstances.

The third and fourth respondents - Govender and Scott

The third and fourth respondents are Govender and Scott who are cited not only insofar as they are trustees of the Trusts but in their personal capacities.

This is due to the nature of the allegations made regarding the conduct of the trustees and because they have an interest in the relief sought in their individual capacities.

The application will be served on Govender and Scott both at the Trusts' principal place of business and via such e-mail contact details as OUTA has to hand. In this regard, Venter confirmed current e-mail addresses with Scott on 25 August 2017.

The fifth and sixth respondents – the mining rights holders, Optimum and Koornfontein

- The fifth respondent is Optimum Coal Mine (Pty) Ltd, (defined above as Optimum), a private company duly registered and incorporated in accordance with the company laws of South Africa with registration number 2007/005308/07. Optimum's registered address is Grayston Ridge Office Park, 144 Katherine Street, Sandton. Optimum is a company incorporated for the purposes of coal mining and exploration. It holds the mining rights in the mines to which the Optimum Trust financial provision for rehabilitation relates.
- The sixth respondent is Koornfontein Mines (Pty) Ltd, (defined above as Koornfontein) a private company duly registered and incorporated in accordance with the company laws of South Africa with registration number 2006/013073/07. Koornfontein's registered address is 144 Katherine Street, Grayston Ridge Office Park, Sandown, Sandton. Koornfontein is a company incorporated for the purposes of coal mining and exploration. It holds the mining rights in the mines to which the Koornfontein Trust financial provision for rehabilitation relates.

The Trusts' property that is sought to be protected in these proceedings vests in the Trusts not the mining companies. However, the fifth and sixth respondents are cited because they have an ongoing residual statutory obligation to maintain and retain adequate financial provision for rehabilitation under the MPRDA and NEMA. They accordingly have an interest in the relief sought. OUTA understands that they are probably also the beneficiaries of the Trusts albeit that the Trust property must be used exclusively for its designated statutory purpose which relates to rehabilitation upon closure of the mines, and in the public interest. It may not be used for other purposes of the companies or related entities such as discharging debt or concurrent rehabilitation.

The seventh respondent – the Bank of Baroda

- The seventh respondent is the Bank of Baroda a duly registered and incorporated bank with registration number 1997/012717/10. The BoB's South African principal place of business is situated at 2nd Floor Atrium on 5th, Sandton, Johannesburg, Gauteng. The BoB is an Indian bank and was incorporated in the Republic of India on 20 July 1908. The Bank's majority shareholder is the Government of India.
- The BoB operates as a 'foreign institution' in South Africa as defined in the Banks Act 94 of 1990. It has a relatively small operation in South Africa consisting of only two branches one in Durban and one in Johannesburg together with a regional office which is attached to the Johannesburg branch.

10h

The BoB is cited because it is directly affected by the relief sought in this application. The BoB (understandably) wishes to terminate its banking relationship with the Trusts due *inter alia* to the reputational and other risks associated with doing business with those in the Gupta / Oakbay fold. OUTA is seeking to preserve the Trusts' funds pending the relief sought in Part B in the Trusts' accounts held at BoB subject to necessary protections. OUTA has invited the BoB to consent to holding the funds in order to ensure that the applicable legislation is not breached and to protect the rights in section 24 of the Constitution. In doing so, and as appears below, it invites the BoB to indicate the basis upon which it may be willing to do so, whether under an order of court or otherwise. Only to the extent that no suitable arrangements can be arrived at by consensus, OUTA requests relief against the BoB to require it to continue to hold the funds.

The eighth respondent - the Minister of Mineral Resources

The eighth respondent is the Minister of Mineral Resources in his official capacity as the member of the executive responsible for the administration of the MPRDA and the relevant portions of NEMA ('the Minister'). The office is currently held by Minister Mosebenzi Joseph Zwane. The Minister's address is Trevenna Campus, Building 2C, c/o Meintjies and Francis Baard Street, Sunnyside, Pretoria. He will be served both by e-mail (as his personal mail address is to hand) and c/o the State Attorney.

OUTA has sought assurances from the Minister that urgent steps will be taken by him to ensure that there are satisfactory arrangements in place for the protection of the Trusts' funds in view of the imminent closure of the BoB accounts. These requests were made in view of the Minister's powers in terms of NEMA and the MPRDA. The Minister has declined and/or failed to respond to OUTA. The Minister is cited as alternative relief is sought against him in Part B of this application and he may have an interest in Part A of the application.

C. LEGAL PROVISIONS GOVERNING FINANCIAL PROVISION FOR REHABILITATION AND THE TRUSTS

- I now briefly explain the legal framework governing financial provision for rehabilitation and the Trusts. The provisions are all designed to promote, protect, respect and fulfil the rights in section 24 of the Constitution of everyone to:
- 34.1 An environment that is not harmful to their health and well being; and
- To have the environment protected for the benefit of present, and future generations, through reasonable legislative and other measures that –
- 34.2.1 Prevent pollution and ecological degradation;
- 34.2.2 Promote conservation;

34.2.3

Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

These rights are centrally protected in the provisions of NEMA and the MPRDA in context of mining activities. The Constitution and legislation confers not only rights but imposes duties on the State as well as private bodies to realise these rights in accordance with their detailed provisions.

The MPRDA and NEMA - the primary statutory duties

- Until 2013, financial provision for rehabilitation was governed by section 41 of the MPRDA. Section 41 imposed an obligation on applicants for mining rights (before the Minister approved an environmental management plan or environmental management programme) to 'make the prescribed financial provision for the rehabilitation or management or negative environmental impacts.' The requirement on the applicant 'to maintain and retain' the financial provision remains intact throughout the duration of mining activities.
- The required financial provision was prescribed by the Regulations made under the MPRDA (the Mineral and Petroleum Resources Development Regulations GNR527 of 2004) and more particularly Regulations 53 and 54. Regulation 53 provided that such financial provision had to be provided by one or more of the following methods, namely:

- A contribution to a trust fund as required in terms of section 10(1)(cH)

 (later substituted by section 37A) of the Income Tax Act 58 of 1962 and which must be in the format as approved by the Director General from time to time;
- 37.2 A financial guarantee from a South African registered bank;
- 37.3 A deposit into the account specified by the Director General in the format as approved by the Director-General from time to time; or
- 37.4 Any other method as the Director-General may determine.
- 37.5 OUTA respectfully submits that if Regulation 53 and the Income Tax Act are properly construed, funds held by a trust may not be used for purposes of concurrent rehabilitation.
- Section 41 was repealed with effect from 7 June 2013 by the Mineral and Petroleum Resources Development Amendment Act 2008. It was replaced by section 24P of NEMA. Section 24P similarly requires applicants for mining environmental authorisations to comply with prescribed financial provision for rehabilitation. It also requires holders of mining rights to assess their liability annually in the prescribed manner to the satisfaction of the Minister upon the submission of an audit report.

- In turn, the MPRDA Regulations were replaced by Regulations made in terms of NEMA although these were gazetted and took effect only on 20 November 2015 ('the NEMA Regulations'). Similar to Regulation 53, the NEMA Regulations require the use of financial guarantees, deposits into an account administered by the Minister or a contribution to a trust fund for purposes of retaining and maintaining financial provision. However, under NEMA, a trust fund can only be used for purposes of remediation of latent or residual environmental impacts which may become known post closure including the pumping and treatment of polluted or extraneous water, as reflected in an environmental risk assessment report. The trust fund, if used, must be established by a deed of trust in the format set out in Appendix 2 to the Regulations, a copy of which is supplied as SF1C.
- The Department of Mineral Resources ('the Department') takes the view that Regulation 53 and Regulation 54 remain relevant to the use of the funds of trusts formed prior to the gazetting of the NEMA Regulations on 20 November 2015. This is apparent from a 'Clarification note' published in 2016 by the Department and will be supplied by OUTA's legal representatives to the Court at the hearing of the matter if required.
- As far as OUTA is aware, the financial provision for rehabilitation that is held by the Trusts was approved in terms of section 41 of the MPRDA. Whether and to the extent that either Regulation 53 and 54 or the NEMA Regulations now apply to the Trusts, they both impose strict legal requirements concerning the use and trusteeship of the Trust property.

The rights holders in respect of the mines for which the Trusts were established are third and fourth respondents, Optimum and Koornfontein. Optimum and Koornfontein thus have ongoing obligations to maintain and retain the financial provision for rehabilitation throughout the life of the mines.

The Trusts

- OUTA has been unable to source copies of the Trust Deeds of either the Optimum Trust or the Koomfontein Trust. OUTA's legal representatives, Werksmans Attorneys, have requested the deeds from the office of the Master. However, to date there has been no response. In these circumstances, OUTA relies on what are standard trust terms applicable to these trusts. I point out that on 25 August 2017, Scott informed Venter that the trusts are indeed standard trusts as contemplated by the applicable legislation. The relevant respondents are invited to supply copies of the trust deeds to the Court and to OUTA.
- In terms of Regulation 53 of the MPRDA referred to above, the Trusts must comply with:
- 44.1 Section 37A of the Income Tax Act; and
- Be in a format as approved by the Director-General from time to time.

- OUTA has, through its attorneys, managed to source two documents that reflect a format as previously approved by the Director General (circa 2012). These are SF1A and SF1B. SF1A is a standard trust deed used by the Department of Mineral Resources ('the Department') attached to a report of the World Wildlife Fund dated 2012 sourced on the internet and SF1B is a pro forma trust deed for an individual holder obtained from the applicant's attorneys. They are substantially similar.
- For present purposes OUTA assumes and contends that the Trusts' deeds are, in material respects, the same as SF1A and SF1B. The relevant respondents will presumably clarify whether the trust deeds have been amended to date so as to conform with Appendix 2 of the NEMA regulations and thus SF1C.
- Section 37A(5)(a) of the Income Tax Act requires that the instrument establishing a trust contemplated in the section must incorporate the provisions of the section. Accordingly, OUTA assumes that the provisions of the section are in fact incorporated into the relevant deeds of the Trusts. This includes restrictions on the purposes for which the funds can be used as well as restrictions on the investments that may be made by trustees of trust properties.
- In light of the above OUTA contends that at least the following material requirements must govern the Trusts:
- Subject to transitional arrangements where a second trustee vacates office, there must at all times be not less than two Trustees (See Clause

5.3 of SF1A and SF1B). This in turn is consistent with the NEMA Regulations.

- A trustee when resigning must give notice of the intention to do so to the remaining trustees (Clause 6.1.2 of SF1A and 6.2 of SF1B)
- The quorum for a meeting is two trustees (Clause 9.1 of SF1A and SF1B)
- The Trust funds are expressly to be used for purposes of covering rehabilitation obligations discharged at the time of or after the discontinuation of operations of the mines and not concurrent rehabilitation costs. (See Clauses 1.2, 1.3, 3.1, 3.2, 12.3 and 13.8 of SF1A and Clause 1.6, 3.2, 12.1 and 12.3 of SF1B and section 37A(1) of the Income Tax Act.) The NEMA Regulations are even stricter on this score.
- The trustees are only entitled to make such investments in institutions and investment vehicles as referred to in section 37 of the Income Tax Act. (Clause 12.5.1 of SF1A and SF1B)
- The Trustees are obliged to open a bank account in the name of the trust which shall be operated upon by the joint signatories of one of the Trustees and the secretary, or another duly appointed authorised joint signatory. (Clause 13.3 of SF1A and SF1B)

- Should OUTA be materially incorrect about any provision of the Trust deeds once the deeds are supplied or further material provisions come to light, OUTA may seek leave to supplement these papers as necessary.
- The Trustees are bound by the common law relating to Trusts and by the Trust Property Control Act. They have very high fiduciary duties in respect of the protection of trust property to which I return below. They also have a duty to avoid conflicts of interests including with the associated mining company or their own interests.
- In order to discharge their statutory and common law duties as trustees, a trustee of a mining trust must be able to secure banking facilities. If a trustee cannot secure such facilities, the duties of the trustee cannot be fulfilled.
- The trustees also have strict duties to comply with the provisions of NEMA and the MPRDA in respect of the legal provisions governing financial provision for rehabilitation held in trusts.

The Minister's duties

Under the MPRDA and NEMA it is ultimately the Minister who is responsible to ensure that satisfactory arrangements are in place for the prescribed financial provision for rehabilitation for a mining rights holder. This is so both as regards the vehicle through which financial provision is retained and the amount that is,

retained. There are strict procedures in place that govern how any adjustments to financial provision are made year to year and over time. These processes are subject to the approval of the Minister and the Department.

A bank's duties

I refer below to what OUTA contends regarding the bank's duties in this context.

D. FACTUAL BACKGROUND

Tegeta's acquisition of Optimum and Koornfontein and control over the Trusts

- Tegeta acquired its interests in Optimum and Koornfontein with effect from 30 March 2016. They did so in circumstances where the company that had held the interests (known as Optimum Coal Holdings (Pty) Ltd) was in business rescue. As part of the agreement for the acquisition of that company, Tegeta acquired control over the Optimum Trust and the Koornfontein Trust.
- Tegeta's acquisition of Koornfontein and Optimum is mired in controversy. It is one of the themes of the Public Protector's State of Capture report published in October 2016 and in respect of which the Public Protector directed that a judicial commission of enquiry be established. One of the issues that is dealt with in the report is the manner in which the acquisition was funded, which included an advance payment by Eskom for coal in an amount of nearly R600 million which constituted the approximate amount of a shortfall in the purchase

price the purchasers suffered at the time the transaction had to be finalised and in respect of which they were unable to secure a loan.

The value of the Trusts' funds at the time of the Tegeta acquisition of Optimum Holdings was substantial. According to the State of Capture report, the combined available amounts of the Trusts' funds as at 31 January 2016 was R 1,750,000,000.00 (1 billion and seven hundred and fifty million).

After the Tegeta acquisition, the Trusts' funds were transferred to BoB with the approval of the Department. In respect of the Koornfontein Trust this appears from SF2A which Werksmans sourced from the internet. Werksmans has also sourced from the internet a draft letter in respect of the Optimum Trust to similar effect albeit that the letter reflects a different trust registration number to that referred to above and cited in the Baroda interdict proceedings. (I refer to SF2B.)

According to the State of Capture report, during May 2016 and June 2016, the full value of these trust funds was transferred to the BoB, the fifth respondent, whose main account is at Nedbank. The value of the Optimum Trust as at 21 June 2016 was R 1,469,916,933.63 and the value of the Koornfontein Trust as at 23 May 2016 was R280,000,000.00. In the intervening period, substantial interest ought to have accrued to and in respect of both funds. The Public Protector calculated that at an annual rate of interest of 7%, R122 500 000.00 would be earned on these amounts annually.

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The timing of the transfer of the Trusts' funds to BoB is significant. It occurred in the wake of a decision by South Africa's four largest banks (Nedbank, Standard Bank, Absa Bank and First National Bank) to close the bank accounts of entities in the Oakbay / Gupta group. When accepting responsibility for the Trusts' accounts, the BoB was aware that the accounts involved politically exposed and high-risk individuals and entities.

The Trusts and the Gupta/Oakbay group

- At the time that the Trusts applied to open the Trusts' accounts with the Bank of Baroda in mid 2016, the trustees of both Trusts were:
- 61.1 Govender;
- 61.2 Scott: and
- 61.3 Althaf Emmamally ('Emmamally').
- On 25 August 2017, OUTA's Venter spoke to Emmamally who advised her that he had resigned as a trustee of the Trusts shortly after his appointment and that he had only served as such for a brief transitional period. On the same day, Venter learnt telephonically from Scott that the then extant trustees of both Trusts were Govender and Scott. Scott also requested that she direct any correspondence to the Trusts to both the Trustees and to a Ronica Ragavan ('Ragavan').

- In view of the obligation of any trustee to avoid conflicts of interest in the exercise of their fiduciary duties as trustees, OUTA has scrutinised the relationship between the trustees and related companies. In this regard, OUTA has gleaned important information from the answering affidavit deposed to by the Acting Chief Executive of the BoB, Mr Manoj Kuma Jha in the Baroda interdict proceedings. In those proceedings, the BoB supplied the Court with information about the relationship between various companies in what is known as the Oakbay or Gupta group of companies and their shareholdings and directorships.
- By way of background, the reference to the 'Gupta' group is a reference to a family who immigrated to South Africa from India in the early 1990s and which is led by three brothers, Messrs Ajay, Atul and Rajesh 'Tony' Gupta. Other members of the family are also involved in the businesses. One of the family's first business ventures in South Africa was Sahara Computers (Pty) Ltd. The family has since diversified their business interests substantially including in the mining sector amongst others (such as print and news media and defence.)
- The family's business interests are now consolidated in the form of the Oakbay group of companies and its affiliates in which the Gupta family and their close associates hold substantial shares, as Mr Jha explained.
- All of the companies whose bank accounts the BoB intends to close are part of the Oakbay group or affiliated to the group closely. They are all owned and

controlled, directly or indirectly, by members of the Gupta family and their associates. Mr Jha explained this to the court inter alia through the use of three documents containing information obtained by BoB 'as part of the standard customer identification and verification procedures that are prescribed under the (Financial Intelligence Centre Act 38 of 2001 ('FICA'))'. Two of these documents are attached hereto as follows:

- An organogram marked SF3 which illustrates the connections between various companies in the group. The document was marked 8.1 in Jha's affidavit in the Baroda interdict proceedings and is entitled 'Oakbay Group shareholding';
- A table marked **SF4** which shows the list of current and former directors of various companies. The document was marked Annexure 9 in Jha's affidavit in the Baroda interdict proceedings and is entitled 'Group-Companies' Directorships.
- This information demonstrates the following.
- First, this information confirms what OUTA has understood to be the case, namely that Optimum and Koornfontein are both owned by Tegeta (100%). Ragavan is a director of Tegeta. Govender is a director of Optimum. Ragavan and Scott are referred to as two of three directors of Koornfontein. (It may be that Scott has since resigned.)

- 67.2 Secondly, Tegeta is owned by Oakbay Investments (Pty) Ltd (34%) ('Oakbay') and Mabengela Investments (Pty) Ltd (29%) ('Mabengela').

 BoB does not identify the remaining 37% shareholder(s). In turn:
- Oakbay is 100% owned, either directly or indirectly, by members of the Gupta family. Ragavan is a director of Oakbay.
- Mabengela is owned inter alia by Duduzane Zuma (45%), Rajesh Gupta (25%), Aerohaven Trading (Pty) Ltd ('Aerohaven') (15%) and Mfazi Investments (Pty) Ltd ('Mfazi') (3%). Aerohaven in turn is 100% owned by Ragavan and Mfazi is owned 15% by Govender.
- Accordingly, the persons who were the trustees of the Trusts until recently were directors of related companies in the Gupta-Oakbay group and indeed the mining companies in question, and Govender has an indirect interest in *inter alia* Tegeta. Insofar as Ragavan may have any formal role *vis á vis* the trusts, she too is firmly part of the Gupta / Oakbay stable, holding several directorships in related undertakings including the affected mines, and having an indirect interest in *inter alia* Tegeta.
- Importantly, there are express duties on the trustees to avoid conflicts of interests which may readily present themselves where a person is associated directly with the mining company and related / interrelated undertakings. Notably, under the NEMA Regulations, where the

trustees are natural persons no more than one may be in the employ of the mine / beneficiary or any related or interrelated person save with special approval.

- Baroda to open an account with them. (Ragavan supplied this document to the Court as an attachment to her founding affidavit in the Baroda interdict proceedings.) The document confirms that the original trustees of the Koornfontein trust are as set out above: Emmamally, Govender and Scott. It appears from this document that the signatories to the account when it was opened are only Govender and Scott. There is nothing on the papers in the Baroda interdict proceedings to suggest that that is no longer the case. Scott's position is unclear in light of his apparent resignation. The relevant respondents are invited to clarify the position to the Court.
- Lange refers to this application in item 12 of his report and I refer to what he says. He points out that the Trustees do not name the Trust correctly in the application. He points out further that the Trustees were dishonest in the application form in stating that the Trust's holding company is Tegeta.

Attempts to access the Trust's funds

OUTA has to hand an exchange of correspondence dated 4 and 5 May 2016 between Tegeta and the Department on the internet. Copies of the letters are

SF6A and SF6B. These documents are also referred to in an AmaBhungane media report dated 11 April 2016, a copy of which is SF7.

- 72 SF6A is a letter from Tegeta (whose directors include Ragavan) to the Regional Manager of the Department, Mpumalanga in respect of the Koornfontein Trust.
- 73 In paragraph 2 of the letter, the following request is made:

'The current situation with our group and the big 4 Banks and Insurance Companies seizing (sic) 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 (ie Tegeta) hereby requests that the DMR grants it approval to use the ubove (sic) mentioned funds for mining rehabilitation purposes.'

- The request is apparently made in terms of Regulation 7 and Regulation 11 of the NEMA Regulations which govern the process of annual review to ensure that there is always adequate financial provision as prescribed. They do not entail access to the funds as contemplated above. Nor is such access contemplated by the Trust deed.
- In his report, Lange has commented on this letter (being item 2) and I refer to what he says. As Lange notes, the reasons Ragavan provided for accessing the funds did not have relevance to the rehabilitation of the mine. Lange also refers to how financial provision must be dealt with in the legislation in terms of itemised costs and annual reviews. He points out that any amount by which the provision can be reduced must be supported by a revised program which does not appear to have been done. As Lange notes, Ragavan is not a trustee

but purports to act in the role of a trustee and furthermore, she was not acting in the best interests of the Trust as the Trust could be left with insufficient funds to pay for rehabilitation.

- Quite extraordinarily, the very next day, on 5 May 2016, the Deputy Director of the Department granted 'approval in principle access the funds held in the account of (the Koornfontein Trust) for concurrent rehabilitation of the mine.'

 This appears from SF6B.
- Quite apart from the fact that the application could not possibly have been effected overnight at the highest level in terms of the process of annual review contemplated by Regulation 11, neither the application nor the 'in principle' approval are contemplated by the regulation. Indeed, it is probable that, at best, the funds were intended and if accessed pursuant to the approval in fact used for the purpose foreshadowed by SF6A i.e. to assist Tegeta with the 'critical situation hampering [its] ability to keep the business and its related jobs afloat.' I emphasise that Tegeta is the holding company and not the mining rights holder, nor can it lawfully act in the stead of the Koornfontein Trustees. There is no reference at all to the trustees on the correspondence.
- Lange comments on this letter in item 3 of his report and I refer to what he says.

 For example, he comments from a financial and accounting perspective that the overnight approval is unusually swift given the nature of what had to be considered.

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Unless Ragavan / Tegeta was acting without even informing the trustees, which is highly improbable, then the trustees have acted in dereliction of their duties by enabling this process to proceed. The trustees would or should have known that such resort is unlawful as it is outside of the purposes for which they are holding the Trusts' funds. In any event, the trustees ought not to be allowing such requests to be made without their active involvement.

The AmaBhungane report of 11 April 2016 (SF7) recorded similar concerns to the contentions I make above. However, I point out that the Department reportedly denied granting any approvals to access the Trusts' funds. This denial is difficult to understand in the face of Annexure SF6B which refers expressly to an 'in principle approval' and I point out that the Departmental spokesman apparently simply refused to comment on the correspondence. In these circumstances OUTA contends that absent an explanation from the relevant respondents these documents can be treated as what they purport to be.

However, the AmaBhungane report also referred to a separate attempt by Ragavan to access the Optimum Trust funds in the hands of Standard Bank. The relevant information is sourced from the State of Capture report, which in turn refers to a letter dated 24 April 2015 (ie after the transaction with Optimum Holdings took effect) from the business rescue practitioners of Optimum to Tegeta. I quote the content of the letter as reported in the State of Capture report at pp181 to 182, which I respectfully contend can be accepted as an accurate report of the content of portions of the letter.

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

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:

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.

All decisions with regards to the environmental trust and the investment

thereof should be taken with the consent of the BRP's.

- 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.
- The BRP's expressly stated in the letter that consent is needed from d) them before transactions of such a nature can be concluded.
- 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")"
- 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."

A copy of the relevant pages of the State of Capture report is supplied as SF8. 82 Although it appears that the attempt by Ragavan to access the Optimum Trust funds was not successful, the fact that Ragavan has sought twice to access the Trusts' funds without the involvement of the trustees demonstrates that the current trustees either have insufficient control over the trusts' affairs or are allowing an unauthorised person to control the trusts' affairs and to take steps to access its funds. If Ragavan was acting without their knowledge or authorisation, they are invited to inform the Court accordingly. Up all the

circumstances, it is more probable that Ragavan was acting at least with their knowledge. But if not, then the trustees are simply not in control of the trusts' affairs.

The BoB letter of 5 October 2016

- A copy of a letter dated 5 October 2016 from the BoB addressed to 'Whom it may concern' and issued at the request of Optimum Mine Rehabilitation Trust, is attached as SF9. In this letter, the BoB certifies that the Optimum Trust is maintaining four accounts with them which are operative and active. The total balance on these accounts as at 5 October 2016 was R 1 470 338 316.18 constituted by:
- 83.1 R9 338 318.18 in a current account number: 92020200000524;
- 83.2 R500 000 000.00 in a fixed deposit account number: 92020300000653;
- 83.3 R500 000 000.00 in a fixed deposit account number: 92020300000654; and
- 83.4 R461 000 000.00 in a fixed deposit account number: 92020300000655.
- It is not clear why the document refers to 'outstanding' amounts. OUTA assumes that the reference is probably meant to refer to a credit balance in favour of the Optimum trustees' account. In item 6 of Lange's report, he points

out that the letter confirms that the Optimum funds were held by the Bank of Baroda at that date.

Bank of Baroda account closures

Reports of account closures and OUTA's response

- During August 2017, there were media reports relating to the imminent closure by the BoB of accounts of companies controlled by the Gupta family. According to the reports, the accounts would be closed by the end of September 2017. It was also reported that interdict proceedings were being pursued against the BoB and that the Gupta accounts would be moved to an undisclosed 'new bank'.
- As pointed out above, South Africa's four biggest lenders and providers of banking services (being Standard Bank, Absa Bank (Barclays Africa Group), Nedbank and FNB) had, in 2016, closed their accounts for the Gupta or Oakbay group.
- In the face of the August 2017 reports, OUTA took steps to ascertain whether the Trusts' funds were protected. To this end on 25 August 2017, OUTA sent two letters to various persons as follows:
- A letter was addressed to the Trustees of the Trusts, a copy of which is SF10. It was sent by Venter by e-mail to inter alia Ragavan

(ronicar@oakbay.co.za) Scott (trevor@bearingway.co.za) and Govender (ugeshnin@sahara.co.za). These addresses were confirmed by Scott to be the correct e-mail addresses and Scott confirmed that he and Govender were trustees.

- A letter was addressed to the Minister, a copy of which is **SF11**. It was sent by Venter by e-mail.
- Copies of the relevant news reports of 15 and 17 August 2017 in Fin24 sourced on the internet are attached to SF11 as B1 and B2. I point out that there had been reports earlier in the year in the media that the BoB would be closing accounts but these were unconfirmed and even in August 2017 it remained unclear to OUTA whether the Trusts' accounts would be affected too.
- 89 I wish to draw certain portions of the letters to the attention of the Court.

The letter to the Trustees: SF10

The letter to the Trustees was addressed to the Trustees and to Ragavan. In this regard as mentioned above, Scott had informed Venter that Ragavan should be provided with any correspondence. Various information was requested from the Trustees including the following:

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- 90.1 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.
- 90.2 Confirmation of the identity and current contact details of the relevant

 Trustees and auditors.
- 90.3 Confirmation that the Koomfontein and Optimum Trust funds and other relevant Trust funds remain fully intact.
- 20.4 Confirmation that no monies have been transferred out of the Trusts' accounts from the time that they were transferred to BoB until the present time.
- 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.
- 90.6 Precisely what amounts are currently in each Trusts' account/s.
- What arrangements have the Trustees put in place to ensure that the funds are not placed in jeopardy by the imminent closure of the BoB accounts (and to ensure that the rights holder will remain compliant with the relevant legislation in light thereof).

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- 90.8 Whether or not each of the account/s will continue to be held at the BoB;
- Whether the financial provision for rehabilitation will be retained under the current trust arrangements and if so at what bank or banks;
- 90.10 If the financial provision will not be so retained, what new arrangements will be put in place.
- 91 A response was requested on or before close of business on 1 September 2017.

The letter to the Minister: SF11

- In the letter to the Minister, OUTA drew the Minister's attention to the recent events including *inter alia* the imminent closure of the BoB accounts and the related statutory duties on the Minister and the rights holders. OUTA requested various information and assurances.
- 93 OUTA sought the following information:
- 93.1 Confirmation that the Trusts' funds remain fully in tact;
- Confirmation that no monies have been transferred out of the Trusts' accounts from the time that they were transferred to the BoB until the present time;

- 93.3 If no such confirmation could be provided, details relating to any payments.
- 93.4 The amounts in the accounts;
- 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 the imminent closure of the BoB accounts:
- 93.6 Whether the financial provision for rehabilitation will be retained under the current trust arrangements and if so at what bank or banks and under what arrangements and if not what new arrangements would be in place.
- OUTA sought an assurance from the Minister (amongst others) 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.'
- 95 OUTA requested a response by close of business on 1 September 2017.

No response

96 Save for the response from Scott referred to in Venter's affidavit, there was no response to OUTA from either the Trustees or the Minister to these letters.

On 28 August 2017, a news report appeared in the Sunday Times relating to the matter and OUTA's requests. The report referred to certain comments made by the Department. More particularly the Department referred to the duty on the part of the bank and the rights holder to notify it when there are any changes in a rehabilitation fund account registered in the records of the department and advised that: 'Such notification has not yet been received by the department. The rehabilitation funds are still intact and subject to annual review.' I respectfully contend that this is not an adequate response quite apart from the fact that no response was addressed to OUTA. The Minister has a duty to ensure that financial provision for rehabilitation is secure in circumstances where there is an imminent threat that it may not be, such as the imminent closure of the BoB accounts when drawn to its attention. A copy of the report is annexure SF12.

Ragavan did respond to OUTA. She did so on a letter head for Oakbay Investments (Pty) Ltd. A copy of her response dated 31 August 2017 (sent 1 September 2017) is SF13 from which it is apparent that she declined outright to engage with OUTA.

The Baroda interdict proceedings

On Friday 08 September 2017, this court heard the Baroda interdict application.

It was an urgent application launched by 18 Gupta controlled companies and the two Trusts, against the BoB. The application sought to interdict the BoB

from closing certain accounts and calling up certain sums owed to the respondents in terms of loan agreements pending a final determination *interalia* on whether the bank is entitled to sever ties with the applicants.

- OUTA learnt that the matter was to be heard on 8 September 2017 on 6 September 2017 when we sourced copies of the papers through our attorneys.

 After hearing argument Judge Fabricius reserved judgment until Thursday 21 September 2017.
- The founding affidavit in those proceedings was deposed to by Ragavan. She deposed to the affidavit on behalf of both of the Trusts. Notably, the trustees were not named in the affidavit and no confirmatory affidavits were filed by the trustees. The only express reference to the trustees in the founding affidavit was in paragraphs 23 and 24 where Ragavan alleged simply that the Trusts were 'duly represented by the trustees' of the respective trusts. The only mention of any trustees by name is Annexure SF5 referred to above (the application to open the Koornfontein Trust account.)
- As mentioned above, the deponent to the Bank of Baroda's answering affidavit was a Mr Jha. He too does not refer to the trustees.
- 103 Very little indeed is said about the Trusts in the application. However, what is said confirms that the Trusts' property is at risk both in the hands of the current trustee(s) and given the imminent closure of the BoB accounts.

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104 <u>First</u>, the papers confirm that the BoB intends to close the accounts of the two Trusts by 30 September 2017 (absent an interdict). In this regard, I attach as **SF14A** and **B** copies of the relevant letters from BoB to the Trusts dated 6 July 2017. These are *pro forma* letters that were sent to all of the applicants in those proceedings. I point out the following from these letters:

- The account numbers referred to are current account numbers and are:
- 104.1.1 Koornfontein Trust: 92020200000519; and
- 104.1.2 Optimum Trust: 92020200000524.
- Baroda advises in the letters that: '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.'
- The letters advise that the bank has no option but to sever all of its ties with 'the firm' and advised that deposit accounts will be deactivated in July 2017, advance accounts will be settled and non-fund based activities should be supported by 100% cash margin in the respective current account.

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- OUTA does not know precisely what accounts the Trusts have at the BoB. However, it is apparent from the papers exchanged in the application that BoB will only deactivate accounts at the end of September 2017. OUTA has established that the two accounts referred to above are current account numbers. As I explain below, it appears that the bulk of the Trusts' funds were until June 2017 in fixed deposit accounts. OUTA does not know whether the bulk of the Trusts' funds that were in such accounts are now in the current accounts, but it appears from Lange's report that they probably are as they appear to be reflected as such in the BoB's reports to the Reserve Bank. In turn, this means that the trustees are not making use of the preferential interest rates that are available on fixed deposit accounts even of a short-term nature. I refer to what Lange says in item 1 of his report.
- Secondly, the applicants in those proceedings which includes the Trusts have confirmed with the Court that they will be without banking facilities when the accounts are closed at the end of September and that despite numerous efforts banks are not willing to transact with them. This appears from the following allegations which are made by Ragavan in the founding affidavit.
- 106.1 'Since receiving BoB's termination notices, the applicants have approached other banks in South Africa and endeavoured to open or reopen accounts with them, so that the remaining balances held in the BoB accounts may be transferred and so that regular and scheduled payments may still occur. Their applications have either been unsuccessful or have gone unanswered.' (Paragraph 43.1)
- 'In the meantime, the applicants have embarked on a time-consuming and complex process of endeavouring to contact all the banks in South Africa in order to obtain alternative banking facilities. I have prepared a consolidated spreadsheet of all the individual applicants' approaches to the various South African controlled banks, foreign controlled banks and

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branches of foreign banks which currently operate in South Africa and which could provide alternative solutions. A copy of these various spreadsheets is attached marked 'FA29'. So far, all of these efforts have come to nothing, either because the banks have refused outright to transaction with the applicants, or because they have been dilatory in their responses or have completely failed to respond.' (Para 89)

- 106.3 'Despite the applicants' considerable and concerted efforts to locate an alternative banker in the time available, they have been unable to do so. ...'
- A copy of the portion of Annexure FA29 referred to in paragraph 89 of Ragavan's affidavit which relates to the Koomfontein and Optimum Group is attached hereto as SF15. It indeed reveals that the applicants have gone to great lengths to find alternative banking facilities in South Africa for members of this group, to no avail. Where it appears that the applicants are still trying to get hold of some branches of foreign banks, there is no real prospect of the Trusts finding alternative banking facilities by the end of September. Ragavan made it clear that this will be the case if the applicants (including the Trusts) are not successful in the interdict proceedings as the applicants were seeking more time to achieve this. The BoB, through Mr Jha, alleged that these prospects were not going to change. Those banks who have responded have made it quite clear that they will not deal with the group.
- The reasons the banks are adopting this attitude are understandable as the reputational, commercial and legal risks associated with the banking relationship are very high. In this regard, I refer the Court to the reasons advanced by the BoB as explained by Mr Jha in his answering affidavit in the BoB proceedings. He explains:

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- "It goes without saying that the Gupta family and the applicants face very serious allegations of unlawful conduct, including corruption and money laundering. These allegations have been levelled by various sources, including members of Cabinet, the public protector, members of parliament, civil society groups, and investigative journalists (Para 13)
- Since the end of May 2017, the so called 'Gupta leaks' have added fuel to these allegations. The Gupta leaks are a collection of approximately 100 000 to 200 000 e-mails which were leaked to investigative journalists and civil society groups. Over the last two months, these e-mails have been featured in countless media reports, with new allegations of unlawful conduct surfacing every day. (Para 14)
- The controversy surrounding the applicants show no signs of abating. The President has now indicated an intention to initiate a judicial commission of enquiry in alleged 'state capture' in the wake of the Public Protector's State of Capture report. A motion is also expected to be tabled in the National Assembly for the creation of an ad hoc parliamentary committee to investigate these allegations. No doubt, these processes will result in further scrutiny of the Gupta family and the applicants. (Para 15)
- 107.5 I emphasise at the outset that the Bank of Baroda takes no position on the truth of the extensive allegations levelled against the Gupta family and the applicants. (Para 16)
- 107.6 Irrespective of the truth of these allegations, the volume and seriousness of these allegations has already caused the bank significant prejudice and poses real risks to the bank;
- 107.6.1 The bank has suffered reputational damage as a result of the extensive media reports and public allegations against the applicants. It also has a well-founded fear that it will suffer further reputational and commercial risks if this relationship continues beyond 30 September 2017. (Para 17.1)
- The bank also faces substantial legal risks and mounting costs by continuing to provide banking services to the applicants. The applicants are all classified as "High Risk" clients and "Politically Exposed Persons". This imposes onerous legal duties on the bank to monitor the applicants' transactions and to report on suspicious and unusual transactions. It also exposes the bank to severe fines and other sanctions if it should in any way fail in these duties. (Para 17.2)
- 107.7 Given these risks, the Bank of Baroda is merely one of a long line of banks and other firms that have decided to sever ties with the applicants and the Gupta family. It is also not the last to do so. Soon after the Bank of Baroda took its decision, the Bank of India and the State Bank

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of India suspended transactions on the applicants' accounts with immediate effect. (Para 18.)"

Jha provided the Court with a chronological summary of the various allegations that influenced the BoB's decision to terminate its relationship with the applicants. In doing so, he emphasised that the Bank takes no view on the truth or falsity of the allegations as irrespective of their truth the volume and severity of the allegations have caused reputational, legal and business risks for the Bank. I do not repeat this summary of allegations. However, I attach an extract from Jha's affidavit hereto as SF16 and draw the Court's attention to paragraphs 149 to 241. I refer to this summary not for purposes of demonstrating the truth of its contents but for purposes of demonstrating the nature of the allegations that are in issue and that have led the Bank of Baroda to terminate the relationship with the applicants.

Against this background it is improbable that the Trusts will be able to secure banking facilities unless independent trustees are appointed. In any event, this will clearly not be possible in the near future when the Bank of Baroda wishes to terminate the banking relationship at the end of September 2017. At the very least, the Bank of Baroda cannot reasonably be expected to continue to hold the funds unless the current trustees are precluded from dealing with the accounts.

I point out that Lange agrees with Mr Jha that the association of the BoB with the applicants in the Baroda interdict proceedings, including the Trusts, poses real risks to the bank. I refer to item 5 of his report.

- Thirdly, it is clear from the affidavits exchanged in the Baroda interdict proceedings that BoB is seeking to call up all of its loans advanced to the Gupta and Oakbay group of companies. These include loans advanced to the first to fourth applicants in those proceedings being Annex Distribution (Pty) Ltd, Confident Concepts (Pty) Itd, Sahara Computers (Pty) Ltd and VR Lazer Services (Pty) Ltd.
- It is not clear from the affidavits exchanged precisely how the applicants and BoB intend to conduct themselves in respect of these loans and what the implications, if any, are for the Trusts. However, what is clear from the affidavit filed on behalf of BoB is that the trustees have concluded at least one contract that would have allowed BoB to use the Koornfontein Trust's funds (and more particularly a fixed deposit) as security against a loan to Koornfontein.
- In this regard Mr Jha explained to the Court that the bank entertained various concerns in the wake of the release of the State of Capture report in late 2016 including its ability to be able to recover amounts then due to it which then stood at approximately R1 billion and the reputational risk of continuing a banking relationship with the applicants. Mr Jha explained that as a result and '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 exiting the relationship. The Bank proceeded to recover and then terminate four accounts held by the applicants during this time.' (Paragraph 226)

- The details of one of the closures is described as follows in paragraph 226.1 of Jha's affidavit: 'A loan facility of R150 million granted to Koomfontein 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.'
- 115 A copy of annexure 37 to Jha's affidavit is attached as **SF17** and comprises two letters dated 23 August 2016. The first is addressed to Koornfontein Mines (Pty) Ltd. It states the following:

"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 26.07.2017 with officials of our Bank's corporate office at MUMBAI with regard to adjusting the loan availed to you against fixed deposits with us, details are here under.

Depositor	Date/Due	Amount	Loan availed	Loan limit
	Date	(Face	by & date	
		value)		
M/s	06.06.2016/	ZAR 170.00	M/S	ZAR
"Koomfontein	06.06.2017	mn	Koomfontein	150.00mn
Rehabilitation			Mines (Pty)	(availed
Trust" (Trust			Ltd	ZAR
No. IT				100.00
7563/07)				mn)

In the meeting, it was assured that the Loan against the 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 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 against you."

- The second letter is addressed to 'the Trustee' of the Koornfontein Trust and is in substantially similar terms save that it refers to a discussion '... with regard to your fixed deposits with us and the loan availed by (Koomfontein) against this FDR ...'
- OUTA does not know whether the funds in the Trusts' fixed deposits were indeed used to settle the loans owed to BoB by Koornfontein. The relevant parties are invited to clarify this to the Court.
- However, what is clear is that a contract was concluded that permits this. This is unlawful in light of the restrictions on the use of Trust funds contemplated by both statute and the applicable trust deeds. The conclusion by the trustees of this contract means that the trustees have allowed their conflict of interests with respect to the related undertakings in the Oakbay/ Gupta group in fact to affect the manner in which they have dealt with Trust property which is in breach of their fiduciary duties.
- Lange deals with the letters in item 9 of his report and I refer in full to what he says about what these letters show both in terms of what happened and in terms of what it shows as regards the Trustees' conduct.

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- 120 <u>Fourthly</u>, a set of concerns arise from the content of Ragavan's founding affidavit insofar as it deals with the harm that Ragavan says that the Trusts will suffer should Baroda terminate the banking relationship.
- 121 The following is alleged specifically in respect of the Trusts:
- "Any non-compliance with the provisions of the governing legislation could endanger the mining licences that have been awarded to the mines with which those trusts are associated..." (Para 43.9)
- "The rehabilitation work that is currently underway will have to be halted, which will affect the environment and will also mean that government resources must be allocated to continue with such rehabilitation." (Para 43.9)
- These allegations alone confirm that the Trusts' funds are being used for unlawful purposes, namely concurrent rehabilitation. This is a very recent confirmation that the trustees have permitted the ongoing use of the Trusts' funds which is unlawful.
- Furthermore, the case made out in those proceedings is that government resources will have to be allocated to continue with rehabilitation. In other words, the funds are not being used for their intended statutory purpose and it appears that state funded rehabilitation will be necessary or is at least likely to be necessary. This in turn suggests that substantial funds may have been used

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to date and that there will be no prospect of recovering the cost of rehabilitation from either Koomfontein or Optimum.

- 124 It is clear that a full accounting of the Trusts' funds is necessary. It is also clear that there has been unlawful use of the Trusts' funds in the hands of the current trustees.
- 125 What is also troubling is that the apparent primary concern is the status of the mining licences. The concern ought to be the ability of the Trustees to perform their statutory duties of the rights holders to rehabilitate on closure, this being the statutorily designated purpose of the Trusts.
- Ragavan also makes a number of general comments in respect of the harm that they say they will suffer if the Baroda accounts are closed. These are:
- "The net effect is that the applicants' businesses will grind to an irreversible halt if they become unbanked for any period of time. Once this has happened, for any period of time, there will be nothing left of the applicants' businesses that could be salvaged in the ordinary course." (Para 43.10)
- "All of this irreparable and considerable harm will be caused as a direct result of BoB's purported termination of the applicants' banking facilities on severely truncated and patently unreasonable time periods, which appear to have been deliberately designed to cause the applicants the maximum amount of harm possible, and without any regard for the deleterious knock-on effects which will be magnified for their employees and other creditors." (Para 44)
- "Even if BoB undertook to release the balance of what is held in the accounts, this could not assist in mitigating the harm that will be suffered by the applicants and other stakeholders since the applicants have nowhere for the funds to be released." (Para 45)
- 126.4 "The effect of BoB's purported termination will be the applicants' complete inability to satisfy these liabilities, or to continue

to conduct their businesses or to trade in the South African economy. The applicants will be entirely hamstrung, and the only foreseeable outcome is their imminent, if not immediate, demise as a result." (Para 32)

The Deloitte report

- During August 2017, there were news reports about a Deloitte's report into the activities of the BoB and which came about as a result of a direction given by the Reserve Bank to the BoB in November 2016 in terms of section 7(1)(b) of the Banks Act 94 of 1990. Deloitte was appointed to conduct an investigation into Baroda in connection *inter alia* with the issues that arose from the State of Capture report. Attached are two documents relating to this process via a journalist, which are attached as SF18 and SF19.
- SF18 is a copy of a letter from a Mr Naidoo of the Reserve Bank to the Chief Executive Officer of BoB dated 21 November 2016 advising of the direction. The issues for investigation included matters concerning the Trusts and more particularly the following was required:
- 128.1 "A detailed analysis of all transactions processed by BOB related to the Trusts as well as supporting documentation for these transactions."
- 128.2 "Establish whether these transactions are in compliance with the legal requirements applicable to these types of trust accounts."
- The Deloitte report was delivered to BoB on 24 February 2017. It was supplied to BoB under cover of a letter from a Mr Shipp of Deloitte. A copy of the letter and its annexures is **SF19**. **SF19** is made up of various documents and I highlight the following:

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- 129.1 The letter from Mr Shipp of 24 February 2017;
- 129.1.1 An appendix 1 which summarises the Deloitte's section 7 report.

 I refer in particular to sections 3 and 4 on pp15 to 18.
- 129.1.2 Annexures D and E to Appendix 1 which set out chronologies relating to the Trusts' fixed deposit accounts.
- An appendix 3 which contains a list of relevant documentary evidence obtained directly from the BoB supporting the findings in the Deloittes report.
- Trusts' funds in recent months. They are also amongst the documents considered by Lange and to which he refers in his report under item 14. I note in particular the concern he highlights in respect of the Trustees.

Information relating to the Optimum Trust

- 131 The Optimum Trust is dealt with in section 3 of Appendix 1 to the report. The first part of the section deals with the transactional history.
- 132 First, the report states that an amount of R1 469 917 000.00 was transferred from Standard Bank on 21 June 2016 and received into the BoB current

account 92020200000524. (This account number is referred to in Appendix 3 to the letter in item 3 as an Optimum Trust account. The same account is referred to in the letter of 5 October 2016 albeit at that stage with a lower balance.)

- Secondly, on the 24th June 2016 the funds were invested into three fixed deposit accounts held at the Bank of Baroda with interest due on 24 June 2017.

 This is reflected in an Annexure D which details the receipt and investment of the funds into fixed deposit accounts as follows:
- 133.1 500 000 000.00 into fixed deposit account 92020300000653;
- 133.2 500 000 000.00 into fixed deposit account 92020300000654;
- 133.3 461 000 000.00 into fixed deposit account 92020300000655.
- A residual amount being an amount of R8 916 934 remained in the current account and constituted interest. The report indicated that that was in line with the instruction as received from Optimum Mine in a letter of 23 June 2016.
- 135 The report notes that upon investigating the monthly statements of these fixed deposit accounts until the latest statement received dated 14 December 2016 there was no movement in and out of the accounts. The maturity date of all 3 fixed deposit investments is recorded as 24 June 2017.

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- of a sample of transactions processed after the receipt of the trust funds)

 'enquire from management if any of the accounts were collateralised by the

 Trust Fund accounts.' The answer to this question is as follows: 'As per

 management and inspection of the underlying account opening documentation,

 the sample of transactions selected relate to current accounts and thus no

 collateral or security is held for the accounts.'
- 137 Importantly, this does not address the obvious concern, namely whether trustees of the Optimum Trust allowed any of the fixed deposits of that Trust at any stage to be used for security against any loans to companies in the group as occurred with Koornfontein. The relevant respondents are invited to clarify this. Lange also deals with this concern.

Information relating to the Koornfontein Trust

- The Koornfontein Trust is dealt with in section 4 of Appendix 1 to the report.

 The first part of the section deals with the transactional history.
- 139 First, the report states that an amount of R280 000 000 was transferred from Standard Bank on 23 May 2016. It was received into the BoB <u>current account</u> 92020200000519.
- 140 Secondly, on the 6th June 2016 R170 000 000 of the funds were transferred into a 12 month fixed deposit account with interest due on 6 June 2017. The

remaining portion remained in the current account ending 519. This is reflected in an Annexure E which confirms the fixed deposit account number as 92020300000649.

- 141 Again, Deloitte asked and answered a question relating to security in respect of a sample of transactions processed after the receipt of the trust funds as follows: '[e]nquire from management if any of the accounts were collateralised by the Trust Fund accounts.' The answer to this question is as follows: 'As per management and inspection of the underlying account opening documentation, the sample of transactions selected relate to current accounts and thus no collateral or security is held for the accounts.'
- The use of the Koornfontein Trust fund as security for a loan to Koornfontein is not mentioned. It is quite clear however that such a transaction was concluded.

 Lange deals with this issue.
- Save for the concerns relating to the use of the Trusts' funds as security for loans, the Deloitte's report appears to confirm that the Trusts' funds were in a combination of current and fixed deposit accounts until June 2017 when the fixed deposits were to mature. It is not known what interest was earned on these accounts. It is also not known how much has been dipped into by the trustees for purposes of the 'concurrent rehabilitation' and when this occurred.
- Lange deals with these issues in his report and I refer to item 7 and the comments he makes there.

Recent correspondence

With the Trustees

- On 12 September 2017, OUTA wrote again to the Trustees requesting a response to the letter of 25 August 2017. Further queries were addressed in light of the information that had come to light through the affidavits in the Baroda interdict proceedings. I refer to its content and more particularly to the queries in paragraph 9 of the letter in which the following was asked:
- 145.1 "We require full details regarding precisely what will happen to the Trusts' funds should the BoB accounts be closed by the end of September 2017;
- 145.2 Kindly confirm whether and in what amounts any Trust funds have been used to pay loans or any other liability of any related companies or entities;
- 145.3 Kindly indicate whether and in what amounts it is intended to use Trust funds to pay loans or any liability of any related companies or entities.
- 145.4 Kindly advise precisely what amounts of Trust funds have been and are being used for purposes of concurrent rehabilitation.
- 145.5 Kindly advise whether the Trustees rely on any ministerial or departmental authority for the use of such funds in such manner and provide full details.
- 145.6 Provide us with a complete breakdown of the funds withdrawn and the type of rehabilitation it was used for."
- A copy of this letter is **SF20**. (I have omitted the annexure to avoid unduly burdening the papers. It is **SF10** hereto). The Trustees did not respond to this letter.

With the Minister

- On 12 September 2017, OUTA also sent a follow up letter to the Minister. A copy is attached as SF21. (I do not attach the annexures to avoid unnecessarily burdening the court.) As appears from paragraph 12 thereto OUTA made further queries and requests in light of the information that had come to light. OUTA required:
- 147.1 Full details regarding precisely what will happen to the Trusts' funds should the BoB accounts be closed by the end of September 2017 and more particularly what arrangements have been made to your satisfaction to ensure their safety and integrity.
- 147.2 Confirmation that you will take urgent steps to prevent the use of any further Trust funds to secure or pay loans or other liability of a related company or entity.
- 147.3 Confirmation that you will take such steps as are necessary immediately to prevent the further unlawful use of trust funds for concurrent rehabilitation.
- 148 There was no response to this letter.

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With BoB

- On 12 September 2017, OUTA wrote to BoB regarding any use of Trusts' funds for security of any loans. A copy is SF22. BoB responded on 14 September 2017 through its attorneys Tabacks, a copy of which is SF23. For present purposes I draw to the court's attention the following advice in paragraph 4: 'In addition, we confirm that such amounts as standing to the credit of the Koomfontein and Optimum Rehabilitation trust funds according to our client's records are not encumbered in any way, whether as security for any loan facilities or otherwise.' In the face of this advice OUTA accepts that the BoB does not intend to use the Trusts' funds as security for any of the loans that it is currently calling up.
- However, the extent to which the trustees have caused the Trusts' funds to be encumbered over time remains unclear: what is clear is that this has happened in the past at least once. This alone is a serious breach of the trustees' duties.
- On 18 September 2017, OUTA's attorneys Werksmans wrote to Tabacks regarding the unfolding events. A copy of the letter is SF24. The letter referred to the history of the events and advised Tabacks that in the event that the Court rules in the BoB's favour in the Baroda interdict proceedings OUTA intends to institute proceedings to freeze and preserve the Trusts' funds whether in the Trusts' existing accounts or in another account as may be agreed or directed by the Court. OUTA noted that BoB will, if it is to continue holding the Trusts' funds, reasonably require the protection of a court order. Against that background, Werksmans sought confirmation and an undertaking from the BoB.

that it would continue to hold the Trusts' monies pending the outcome of the urgent application should it obtain a ruling in its favour.

- On 19 September 2017, Tabacks responded. A copy of the response is **SF25**.

 In the letter Tabacks advises as follows:
 - '2. It is required of us to respond only to paragraph 11 of that letter. We accept that you appreciate that our client is not in a position to deal with funds standing to the credit of any customer's account (or prevent any such dealing) otherwise than in accordance with either the proper instructions of the customer, or any binding legal or statutory directive.
 - 3. Our client will obviously take notice of the urgent application referred to by your client, should it be issued. It will likely abide the outcome thereof without opposition, depending on the relief then actually sought.
 - 4. Our client will also do whatever could reasonably and lawfully done to prevent any frustration of such order as your client might seek to obtain.
 - 5. Save as aforesaid, our client is unfortunately unable to extend the undertaking sought in paragraph 11 of your letter.'

The judgment

On 21 September 2017, Judge Fabricius delivered his judgment. A copy attached as SFA. The Court's findings appear from the judgment and the applicant may refer to various portions during the course of arguments. For present purposes, I highlight certain findings. Legal submissions will be advanced at the hearing regarding the materiality of these to the relief sought. In sum, OUTA contends that the judgments and the findings below amongst others support the case advanced by the applicant.

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- 2.1. 'The bank does not need to establish the truth of allegations relating to 'State capture by the Guptas' or the 'Oakbay group' or allegations in the media that the 'Gupta group' has made itself guilty, with the knowledge and assistance of highly placed officials, of corruption, money-laundering and other such like criminal activities. It is sufficient that it relies on damage to its reputation in that context as the banker of the applicants.' (p13, para 7)
- 2.2. '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.' (P 30, para 17)
- 2.3. ';The context of the reasonable apprehension of irreparable harm for purposes of the immediate relief sought the following was said:
 - 1. If the applicant's 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 applicant's 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 consider the applicant's case in support of 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 ... (p33-34, para 18)
 - 5. The fact that the client may have difficulty finding another bank does not impose any obligation on the bank to retain the client: (p39, para 22.7)
 - 6. Mr D Fine also pointed out that on the applicant's own version there was little prospect that they would ever find alternative banking facilities inasmuch as they alleged in the founding affidavit that no other banks were prepared to do business with them. Therefore, on the applicants own version whether they are afforded an additional three months' notice or a further two years notice, the prospects of finding alternative banking facilities are not likely to improve. It is therefore not reasonable for the applicants to insist that the bank must forced against its will and irrespective of its resources to provide transactional facilities until December 2017 and then for the further period of two years. The applicants have therefore failed to demonstrate that the notice period was not reasonable and on their own version the longer period proposed will likely not place them in a more favourable position than they would be in by 30 September 2017. In my view this reasoning is sound and almost of its own would defeat the purpose of a December 2017 order. I say

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- 'almost' because Mr Marcus' argument is in fact wholly destructive of applicants' case. (para 31, p 51)
- 7. In (context of irreparable harm) ... applicants will not likely find another bank with whom to do business (p52, para 32)
- 8. On p 61, para 39 the court made findings regarding the reputational risks that the BoB would suffer. See in full items 1.1 to 1.16 (pp 61 to 69)
- 9. On p 70, para 40 the court held: 'The bank can obviously not rely on the truth of such allegations and neither does it have to. I am obviously also not in a position to comment save to say the following: when reading details of the various allegations in the answering affidavit I could not help to wonder whether unbeknown to me democracy and the rule of law and somehow been suspended pro tanto? Could it be possible that the future so bright in 1994 was now only history? ...'
- 10. On balance of convenience, the Court held (at para 41, pp71-72): 'There is in my view another important factor: as I have set out in some detail the Respondent is subject to a number of statutory provisions which in the main seek to uphold the integrity of the financial system in the country. It seeks to uphold such integrity with honest transparency. On the other hand, there is the well-founded suspicion, having regard to the uncontested events that I have referred to, that the applicants subverted the integrity of the financial system, to put it gently. I am aware of the fact that I am unable to make conclusive findings in this regard, but it is in any event not necessary'. Respondent does not rely on the accuracy of all the allegations made against the applicants. It need not do so, and a reasonable suspicion is sufficient for it to enable it to exercise its rights. Where a contractual party, subject to specific regulatory provisions seeks to act honestly and openly to safeguard its rights and to uphold the integrity of the relevant financial order and the other party on the face of it seeks to undermine and subvert it to its own benefit, the balance of convenience in my view clearly favours the former.'

E. URGENT RELIEF AND PART A

I respectfully submit that against the background set out above, OUTA has demonstrated that it has a reasonable apprehension that the Trusts' funds are at risk both in circumstances where its bank accounts are very imminently to be closed by the BoB and in the hands of the current trustee or trustees in view inter alia of the following considerations:

- The imminent closure of the BoB accounts at the end of September 2017:
- The fact that the current trustee (or trustees) will be unable to secure alternative banking facilities for the Trusts as contemplated by the Banks Act not least in the time available given that they are part of the Gupta / Oakbay stable;
- The requirement in the Trust deed that a Trust maintain a bank account and the importance of being able to invest the Trusts' funds in a bank under the Banks Act read together with the requirements of the Trust Property Control Act.
- The risk of flight of funds that attaches to the funds in the wake of the judgment of Fabricius J.
- The fact that the trustee (or trustees) for the time being have a conflict of interest and do not have the independence required of them to conduct the trusts' affairs.
- The fact that the trustees have through their conduct allowed their conflict of interests to influence the manner in which the trusts' affairs are conducted.

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- The apparent failure to deposit the Trusts' funds in a fixed deposit account since the fixed deposits matured in June 2017.
- The use of Trust funds for concurrent rehabilitation and in breach of the applicable law.
- The use of at least the Koornfontein Trust funds for purposes of securing a loan to Koornfontein.
- The apparent absence of control over Trust affairs by the trustees and failure dutifully to manage the affairs of the trust.
- The Trustees have allowed Ragavan to conduct Trust affairs or at least done so without their adequate involvement or supervision.
- The Trustees' provision of incorrect information to the BoB when opening the Koornfontein Trust bank account.
- 155 I refer too to the comments of Lange in his report.
- DUTA appreciates the reasons why the BoB wishes to terminate its contractual banking relationship with inter alia the Trusts. As appears from the correspondence referred to above, the BoB is also sympathetic to the objectives of OUTA and the concerns that OUTA is seeking to address in this application. OUTA has also noted that the BoB is seeking to ensure compliance

with the law and wishes to conduct itself transparently and lawfully. In these circumstances, OUTA invites the BoB to consent to continue holding the Trusts' funds as contemplated by prayer 2.1 of the notice of motion. In this regard the BoB is invited to indicate to the Court and to OUTA whether there are any terms and conditions upon which it is wishes or would be willing to do so, so as to ensure that it's not adversely affected. In this regard, OUTA is mindful that the BoB may, for reputational purposes, wish to request the court to issue directions or may wish to subject itself to a court order recording that it is only holding the funds for purposes of protecting the public interest and to ensure the protection of the Trusts' funds as contemplated by the MPRDA and NEMA. OUTA will inform the Court promptly should the BoB indicate the basis upon which it is willing to consent to holding such funds (whether under court order or otherwise) prior to the hearing of this matter.

- 157 Insofar as the BoB is not willing to consent to holding the funds (whether under court order or otherwise) OUTA contends that it is under a duty to do so which duty flows from:
- 157.1 Section 24 of the Constitution;
- NEMA and the MPRDA read with the Income Tax Act, and more particularly the statutory duties that are placed on banks to facilitate the holding of trusts' funds in the public interest in respect of financial provision for rehabilitation especially on closure of a mine.

- 158 OUTA contends that these duties are independent constitutional and statutory duties.
- However, they also inform the content of the duties of a bank when terminating any banking relationship with a client under contract. In this regard, it is contended that the bank's freedom to terminate a banking relationship on notice (under the specific terms of its contracts) is subject to an implied overriding duty to do so in a manner that does not cause or threaten to cause the breach of constitutional and statutory duties and rights protected by NEMA and the MPRDA. Where a bank contracts with a mining rehabilitation trust and provides it with a bank account, its private law right to terminate on notice is accordingly tempered by the duty to do so in a manner that will not cause the breach of the governing environmental legislation and will do nothing that will prejudice the safe deposit of the Trusts' funds into another suitable institution as contemplated by legislation at termination.
- In Part B of the application, OUTA will seek relief *inter alia* removing any remaining trustee as the remaining trustees are Gupta / Oakbay linked and appointing independent / otherwise suitable trustees. OUTA also will seek relief requiring an accounting to the Court. Further relief is sought to ensure that new trustees swiftly assume responsibility for the Trusts' funds. In the alternative to relief altering the trusteeships to the Trust, OUTA seeks relief against the Minister to put in place satisfactory arrangements for the protection of the funds as he is entitled to do under NEMA and the MPRDA.

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- 161 I respectfully submit that OUTA has made out a *prima facie* case for this relief in the circumstances set out above.
- So as to preserve the funds in the meantime OUTA requests the Court to grant the orders in Part A of the notice of motion. In view of the response of Tabacks on 19 September 2017 (SF25), OUTA is hopeful that provided the trustees are interdicted from dealing with the funds it will not insist on closing the Trusts' accounts but will hold the funds pending the determination of the relief in Part B and that they will hold them in an interest-bearing account. As indicated above, OUTA invites the BoB to indicate whether it is so willing and whether it requires the Court to issue any further directions relating to the conditions under which it is willing to hold the money.
- OUTA has taken such steps as it could to ensure that this application could be instituted as soon as possible after the delivery of the judgment of Fabricius J. This was because the acute urgency that attaches to this application is consequential upon the order that he has made. As previously stated, due to the logistical difficulties in finalising this application and affidavit between 10 am and noon on 21 September 2017, the applicant's legal representatives were able to issue the notice of motion in time but were unable to cause this accompanying affidavit to be delivered prior to noon of 21 September 2017. I respectfully submit that this affidavit will be delivered at the earliest opportunity practically possible after noon on 21 September 2017. Insofar as it may be necessary, OUTA seeks condonation as far as is necessary and requests the

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Court to have regard to the circumstances in which the application has been filed.

- 164 Time frames have been determined so as to allow the parties an opportunity to file answering papers and OUTA to reply thereafter before the matter is set down on Tuesday 26 September 2017.
- As I explain above, OUTA has sought to engage the Minister and requested him to intervene to protect the Trusts' funds. He has declined to respond.

 OUTA has no alternative satisfactory remedy but to seek the Court's assistance.
- The balance of convenience favours the grant of the relief in Part A. In this regard, I emphasise that the funds are held for very specific statutory purposes in the public interest. Further there can be no prejudice to the Trusts if its funds are held under suitable arrangements as sought by OUTA pending the outcome of the relief sought in Part B.
- The relief sought contemplates that any party may approach the Court on good cause to vary the relief sought. This in turn will ensure that the Court's order can be varied to cater for the exigencies that may arise and will cure any difficulties that emerge in due course.
- 168 Further OUTA intends to prosecute Part B of the application diligently. To this end, it will effect any amendments to the notice of motion, any necessary

joinders and supplement its papers within 30 days of the Court's order. As regards the necessary joinders, OUTA has refrained at this stage from citing the Master as he has no interest in Part A of the application and pending finalisation of the relief to be sought in Part B. Furthermore, OUTA anticipates that once the relevant respondents clarify who the existing trustees are, it may have to effect changes to the parties and to this end OUTA seeks leave to join any such trustee whose identity surfaces at the time of supplementing its papers.

169 In the premises, OUTA seeks the relief sought in the notice of motion.

STEFANIE FICK

I certify that this affidavit was signed and sworn to before me at refer a on this day of September 2017 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

SHAUN DAVID COLLINS COMMISSIONER OF OATHS

Address:

EX OFFIC.O Practising Attorney R.S.A. Hatfield Pleza, North Tower

Capacity

Hatfield, Pretoria,0083

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IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG HIGH COURT, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE VES NO.

(2) OF INTEREST TO OTHER JUDGES VES NO.

(3) REVISED.

21 9 17 WHICHEVER IS NOT APPLICABLE

SEGMATURE

SEGMATURE

Case Number: 52590/2017

In the matter between:

in

ANNEX DISTRIBUTION (PTY) LTD
CONFIDENT CONCEPTS (PTY) LTD
SAHARA COMPUTERS (PTY) LTD
VR LASER SERVICES (PTY) LTD
SAHARA CONSUMABLES (PTY) LTD
INFINITY MEDIA NETWORKS (PTY) LTD
ISLANDSITE INVESTMENTS ONE HUNDRED
AND EIGHTY (PTY) LTD
KOORNFONTEIN MINES (PTY) LTD
OAKBAY INVESTMENTS (PTY) LTD
OAKBAY RESOURCES & ENERY (PTY) LTD
OPTIMUM COAL MINE (PTY) LTD
SHIVA URANIUM (PTY) LTD
TEGETA EXPLORATION AND RESOURCES (PTY) LTD
WESTDAWN INVESTMENTS (PTY) LTD
IDWALA COAL (PTY) LTD

3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
6TH APPLICANT
7TH APPLICANT
8TH APPLICANT
9TH APPLICANT
10TH APPLICANT
11TH APPLICANT
12TH APPLICANT
13TH APPLICANT

15TH APPLICANT

1ST APPLICANT 2^{NO} APPLICANT

•

TEGETA RESOURCES (PTY) LTD

16TH APPLICANT

MABENGELA INVESTMENTS (PTY) LTD

17TH APPLICANT

MABENGELA RESOURCES AND ENERGY (PTY) LTD

18TH APPLICANT

KOORNFONTEIN REHABILITATION TRUST

19TH APPLICANT

20TH APPLICANT

And

BANK OF BARODA

RESPONDENT

JUDGMENT

Fabricius J.

1.

In this urgent application for "interim-interim" relief, the following was sought:

2. Pending the final determination of the action referred to in paragraph 3 of this notice of motion, the respondent is interdicted and restrained from:

- 2.1 De-activating and/or closing the applicants' banking accounts held at the respondent and or from terminating the banker-customer relationship between the applicants and the respondent:
- 2.2 Demanding that the first to fourth applicants repay the sums owed by each of these applicants to the respondent in terms of their loan agreements with the respondent;
- 2.3 In any way limiting the manner in which the banking accounts are operated by the applicants so as to ensure that the applicants are permitted to operate the banking accounts in the same manner as they did prior to the notices of termination date 6 July 2017;
- 2. Within 15 days of the granting of this order, the applicants shall institute an application against the respondent in terms of which the applicants seek the relief set out in paragraphs 3.1, 3.3, 3.4 and 3.5, and the first to fourth respondents seek the relief set out in paragraphs 3.2, 3.3, 3.4 and 3.5;
- 3.1 Declaring that the respondent's notices to the applicants dated 6 July 2017 to de-activate the applicants' bank accounts are invalid and

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ineffective and that 31 July 2017, or such other date after 30 September 2017 as the Court may determine, is the date for the expiry of a reasonable notice period for the respondent to de-activate and/or to close the applicants' bank accounts held at the respondent and/or terminate the banker-customer relationship between the applicants and the respondent;

3.2 Declaring that the respondent's notice to each of the first to fourth applicants to repay their loans to the respondent by 30 September 2017 is invalid and ineffective and that 31 July 2018, or such other date after 30 September 2017 as the Court may determine, is the date upon which it would be reasonable for the respondent, in the exercise of its rights to do so, to demand the repayment of the sums owed by each of the first to fourth applicants to the respondent in terms of the loans between these applicants and the respondent:

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3.3 Directing that discovery of documents in the application/applications to be instituted shall take place in accordance with the provisions of Rule 35 of this Court's Rules".

Costs were also sought on a punitive scale including costs of two Counsel.

2.

At the hearing a Draft Order was handed up by Applicants' Counsel in terms of which the relief sought was as follows:

- *The application in paragraph 2 of the notice of motion under the above case number (52590/17) ("the applicant") is to be argued on 7 and 8 December 2017.
- Pending the determination (hearing and judgment) of the application which is to be argued on 7 and 8 December 2017, the respondent is interdicted and restrained from;

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- 2.1 De-activating and/or closing the applicants' banking accounts held at the respondent and/or from terminating the banker-customer relationship between the applicants and the respondent;
- 2.2 Demanding that the first to fourth applicants repay the sums owed by each of these applicants to the respondent in terms of their loan agreements with the respondent; and
- 2.3 In any way limiting the manner in which the banking accounts are operated by the applicants so as to ensure that the applicants are permitted to operate the banking accounts in the same manner as they did immediately prior to the notices of termination dated 6 July 2017.
- 3. The order in paragraph 2 above shall not preclude the respondent from taking such action as it would in law be entitled to take against any of the applicants by reason of such applicant's default in relation to the express terms applicable to such applicant's banking account or loan facility, the provision of proper and sufficient notice to remedy such breach and the resultant fallure by the applicant concerned to remedy the breach timeously.

- 4. For purposes of the hearing on 7 and 8 December 2017:
- The applicants will supplement their founding papers by 21 September 2017;
- 4.2 The respondent will supplement its answering affidavit by 12 October 2017;
- 4.3 The applicants will file their replying affidavit/s by 2 November 2017:
- 4.4 The applicants will file heads of argument by 14 November 2017:
- 4.5 The court file will be indexed and paginated by 14 November 2017;
- 4.6 The respondent will file heads of argument by 23 November 2017:
- 4.7 A joint practice note will be filed by 30 November 2017.
- 5. The costs of this application are reserved for the determination at the hearing on 7 and 8 December 2017.*

It will be noted from the relief sought, in whichever form, that the Applicants' case is based on the allegation that insufficient or unreasonable notice of termination of the relationship with the Respondent bank was given. It will also be noticed that there is no relief sought, in whatever form, that relates to the submission made in Court by

Mr J. P. Daniels SC on behalf of First to Fourth Applicants, that the relevant written agreements between Applicants and the bank, or certain clauses thereof, are invalid for being contrary to public policy. He envisaged during argument that the Court in the main hearing sometime in the future, i.e. not the "December Court", would need to decide this alleged issue, which might well also involve the hearing of oral evidence. He conceded in that particular context, that this would mean that the parties would live in a forced relationship on uncertain terms. I may immediately say that I would not grant an order that would have this effect for an indeterminate period.

3.

The application was launched when the Respondent notified the Applicants by way of letters dated 5 July 2017, that it would sever all ties with them, close their accounts and call up all relevant loans. The Respondent subsequently extended the deadline which is now 30 September 2017.

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4.

Applicants now seek this interim relief so as to make provision for the period between 1 October 2017 until the hearing of the actual interim relief on 7 and 8 December. Without this interdictory relief the first part of Applicants' case becomes moot, so it was argued.

5.

It is abvious from the wording of prayer 2 of the Notice of Motion, and prayer 2 of the Draft Order, that on 7 and 8 December 2017, the Applicants will seek interim relief pending the outcome of the application referred to in prayer 3 of the Notice of Motion, in which proceedings the Applicants seek a declaration that the deactivation of the Applicants' bank accounts are invalid and ineffective, and that the demand that they repay their loans to the bank is similarly invalid and ineffective, at least until a date upon which it would be reasonable for the Respondent, "in the exercise of its rights to do so" to demand such repayment.

The application before Court on 7 and 8 December 2017 is therefore not a review application, but one for an interim interdict. The question before me is therefore whether or not I ought to grant the Applicants' interim relief pending the decision on 7 and 8 December 2017, and that question is obviously inextricably linked to the question: what test must a Court apply when an "interim-interim" interdict was sought?

Mr Daniels SC was of the view that the traditional requirements for an interim interdict need not be shown. I merely had to find that there was a triable issue in the context of the provisions of s. 34 of the *Constitution of South Africa*, which deals with the right to access to a Court, and to consider a "lower" threshold relating to the balance of convenience test which would involve the weighing-up of the interests of the parties. In that context I would exercise a discretion. Respondent's Counsel, Mr D. Fine SC and Mr G. Marcus SC in turn submitted that neither the *Superior Courts Act Na. 10 of 2013*, nor the *Uniform Rules of Court*, nor the common law provided for such an "interim-interim interdict" on the basis as contended for. The application before me and the relief sought, had to be dealt with on the basis of the usual



Applicants' case had not even been properly and fully pleaded and that the Founding Affidavit did not contain a single reference to Applicants' rights, and the intringement thereof, under s. 34 of the *Constitution*. That is so, I will deal with his submissions hereunder.

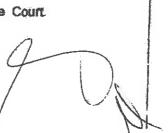
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Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC), where in par. [31] Moseneke DCJ cautioned that a Court granting interim relief should not prejudge the issue that would be before a Court hearing a review application.

Consequently he submitted it was not necessary for me at this stage to make a finding that the Applicants have a prima facle right in regard to setting aside of the relevant termination notices, since these would be the very questions that would be considered in December.



The National Treasury decision supra must be read in the proper context. The hearing in December will not be subject to a Rule 53 procedure which might result in the lodging of a supplemented case record which would obviously not be before me at all, and which might entail material new matters or disputes of fact which would be best dealt with by the review Court itself. Even the relief referred to in prayer 3 of the Notice of Motion would not be subject to the Rule 53 procedure, but according to prayer 3.3 thereof would be subject to further discovery of documents in accordance with the provisions of Rule 35 of the Rules of Court. I may add at this stage that no doubt the Applicants have the provisions of Rule 35 (12) in mind. In fact, on 25 August 2017, I received a copy of the Applicants' Notice in terms of this Rule, which required the Respondent, by no later than 17h00 on 28 August 2017, to produce for inspection all the documents referred to in its Answering Affidavit of 16 August 2017. The provisions of this Rule do not apply automatically, The Rule states clearly that although the provisions of Rule 35 relating to discovery of documents applied to applications, such is subject to the proviso that the Court



direct that it be so. It is also clear that such directive is only ordered by the Court in exceptional circumstances and certainly, the nature of the Defendant's defence, the relevance of the documentation requested and the timing of such application are all factors to be considered.

See: Erasmus, Superior Court Practice, 2nd Edition, Vol 2 at D1/482 C. For the present I need not determine this question, but having considered the relevance of the documentation sought, I have serious reservations in that context, inasmuch as the Respondent in its Answering Affidavit and in its approach to the present application, does not rely on the accuracy of the various serious and disturbing allegations in the media made against the Applicants as a group.

The bank does not need to establish the truth of allegations relating to "State capture by the Guptas" or the "Oakbay group" or allegations in the media that the "Gupta group" has made itself guilty, with the knowledge and assistance of highly placed officials, of corruption, money-taundering and other such-like criminal activities. It is sufficient that it relies on damage to its reputation in that context, as the banker of the Applicants.

The decision in Bredenkamp and Others v Standard Bank of South Africa 2010

(4) SA 468 SCA at par. [63], clearly supports this approach.

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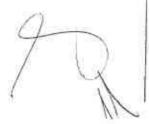
Having considered the context of the comments made by the learned Deputy Chief Justice in the National Treasury opinion, I am not convinced that they oblige me to hold that the Applicants do not in the proceedings before me need to establish that they have a prima facie right in regard to the setting aside of the Respondent's notices, or that they do not have to fulfil the requirements for an interim interdict at this stage. In fact, in Applicants' own Founding Affidavit they rely on the requirements for the grant of interdictory relief, and allege that they have all been met in the present case. They say that this application has been brought essentially in two parts - the first seeking merely interim relief to preserve the status quo pending the outcome of proceedings which will seek to set aside the purported termination, or at least to have a reasonable, adequate and meaningful notice period imposed in which the Applicants could endeavour to establish alternative banking



relationships, or assess the various re-structuring options. In argument, a different approach was followed, and one, as I have said, that was not pleaded at all.

9.

The proceedings before me are therefore of an "interim-interim" nature, but this does flot mean that I cannot and should not have regard to the requirements for an interim interdict. If there is obviously no ment in the "main" application in December, which of course is also intended to be of an "interim nature only", there is no purpose in granting an order at this stage either, quite apart from the other requirements for an interim interdict, in my view an Applicant cannot approach the Court and allege that it has an arguable case in the future, but that the Court may not have regard to the merits of that case, but nevertheless grant an interim order preserving the status quo in the meantime, irrespective of substantive law or procedural law considerations. In my view a party that seeks interdictory relief on an interim basis, must show that it has at the very least a prima facie right, that such right will be unlawfully infringed, that the balance of convenience is in its favour, and



that irreparable harm will result if an interim order is not granted in the meantime which would protect that right. These requirements and all other relevant authorities dealing therewith were fully discussed by this Court in *Afrisake NPC and Others v* City of Tshwane Metropolitan Municipality and Others [2014] ZAGPPHC 191 (14 March 2014), and in the National Treasury case, supra, at par. [45].

Most applications for an interim interdict are decided on the basis of the balance of convenience, which must favour the grant of an interdict, and this is an exercise that must involve weighing the harm to be endured by an Applicant if interim relief is not granted, as against the harm that a Respondent will bear, if the interdict is granted.

A Court must assess all relevant factors carefully in order to decide where the balance of convenience rests.

See: National Treasury supra at [par. 55]. I am also mindful of the view of that Court that the requirements for an interim interdict that have been applied since 1914 still continue to exist, subject to constitutional considerations. See par. [45].

In its Founding Afficient and the Heads of Argument on behalf of the First to Fourth Applicants, the background was described as follows: each off the first four Applicants holds a credit facility with the Respondent pursuant to a facility loan agreement. The termination letters dated 6 July 2017, notify each of the Applicants that their respective loan facilities are to be terminated on 30 September 2017. The submission to be made at the first part of the hearing would be that the termination letters result in multiple breaches of the Applicants' rights under the loan facility agreements. These are triable issues between the Applicants and the Respondent.

- 1. Firstly, the bank purported to rely upon its right to terminate for default in circumstances in which none of the respective Applicants were in default in any of their obligations;
- Secondly, the bank purported to exercise a right to terminate upon demand, notwithstanding that that right is, at least in respect of the Second Applicant's agreement, contrary to public policy;

- 3. Thirdly, the bank purported to exercise its right to terminate upon demand in circumstances in which it acted either reasonably or in good faith: the exercise of this right was therefore contrary to public policy;
- 4. Fourthly, heither the termination letters of 6 July 2017, nor a subsequent letter of 10 August 2017, gave the Applicants reasonable notice. This represented a further breach by the bank of its contractual obligations.

However, as I have said, the relief sought relates in the main to the alleged absence of reasonable notice.

11.

It was submitted that to the extent that it was necessary for the Applicants in these proceedings to make out a prima facile right, the right at issue arose from s. 34 of the *Constitution* which provides the following: "Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a Court or, where appropriate, another Independent and impartial tribunal or forum". It was said that the substance of the Applicants' rights under s. 34 of the

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Bill of Rights, is the right to have the disputes about the loan facility agreements and termination letters properly heard by a Court. This provision emphasizes the rights of a party to have a justiciable dispute decided by a Court of law in a fair hearing, but it must add that it obviously entails the fact that substantive and procedural law must apply to any such hearing.

There is no doubt that this right lies at the heart of the Rule of Law. I also agree that the Applicant has a right to be heard in the context of the present proceedings which obviously will be resolved by the application of law. The substantive law put very simply in the present context is: the Applicant must show that the requirements for an interim interdict are present, failing which there would be no reason in the context of a contractual dispute to preserve the status quo against the will of the one contractual dispute to preserve the status quo against the will of the one and irrespective of the question where the balance of convenience lies having regard to the harm that needs to balanced. This right to be heard must also be subject to all relevant provisions of procedural law, such as the *Uniform Rules of Court:*

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With reference to certain allegedly missing documentation, it was submitted in the written Heads of Argument that I am not presently in any position to adjudicate upon Applicants' contentions as to their contractual rights under the loan facility agreements, nor could I meaningfully pronounce upon the bank's contention that it was within its rights to call up the loan facilities. It was therefore not open to the bank to complain that the "interim-interim" relief might cause it to suffer prejudice since it is, at least insofar as certain missing documentary evidence is concerned, the author of its own misfortune. The Applicants' Founding Affidavit however does not support this argument inasmuch as the Applicants clearly set but the relevant contractual terms that they rely upon, and which they say have not been reasonably enforced by the bank. They in fact allege that the lawfulness of the termination notices must be decided in due course, and in the context of the transactional account they allege that reasonable notice must be given, which it has not, and in the context of the loan account agreements with the First to Fourth Applicants, they

say the bank has indeed the right to demand repayment in terms of the contracts, but that this must be done in a reasonable and on reasonable notice.

To the extent that it was necessary at this stage to demonstrate that the Affidavits

disclose triable issues that merit consideration at the hearing on 7 and 8 December

2017, certain submissions were referred to that would be made on those dates and

I merely summarize them hereunders

The bank repudiated the loan facility agreements by purporting to terminate by reason of defaults by the Applicants, each termination letter purported to rely on two distinct bases to terminate the loan facility agreements: first, the bank's right to terminate the agreements on demand; and second, the bank's right to ferminate the agreements by reasons of default by the borrower.

It was said that the simultaneous reliance upon these two clauses results in an inconsistency. With reference to a breach of Applicants' obligations upon which the bank relied, it was said that Applicants have attracted adverse media coverage, that the bank perceives this coverage to be detrimental to its interests and that it had on several occasions raised its concerns. It was said that there

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any adverse publicity. It was also said that there was no obligation on the part of any of the Applicant companies to report on publicity affecting the other 17 Applicants. The termination letters were defective, because they purported to rely on a non-existent default by each individual Applicant.

this however clear from Respondent's approach that "Applicants are owned and controlled by the Gupta family and close associates, either directly or indirectly.

They form part of the Oakbay group of companies and are otherwise closely affiliated". The bank annexed a schedule reflecting this close alliance with reference to shareholders and directors.

2. The termination upon demand clause is contrary to public policy. Clause 10.5 of the loan facility agreement reads as follows: "The said loan facility sanctioned at the discretion of the bank and subject to the usual provise that same is repayable on demand at any time at the sole discretion of the bank and that the terms and conditions are subject to change without notice". With reference to the termination upon demand clause in each of the first four Applicants' agreements



it was said that upon a proper construction, such was subversive to each loan agreement in that:

- 2.1 It allowed the bank to terminate the relationship at any time, notwithstanding the bank's knowledge both of its stated purpose and of either its periodic nature or, in the case of the Fourth Applicant, that it was a term loan;
- 2.2 It allowed the bank at any time to terminate, seemingly without the need for any commercially-defensible reason. With reference to a comment made Harms JA in Bredenkamp and Others v Standard Bank of South Africa Ltd supra [par. 7], it was submitted that where an abuse of the bank's rights was evident, the terms of the contract between the parties became subservient to this consideration. The termination upon demand clause purported to permit the bank to "change" the terms and conditions subject to which a loan facility was granted "without notice". This had the effect of affording the bank the power to vary the terms of that contract without the consent of the other and this was contrary to public policy, and therefore unenforceable.

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 yalid, 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 protegonists 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

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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.

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

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 ment 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 hard. 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 herm if the "interim-interim" relief is not granted:

fit 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:

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

haim 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

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 Pert 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 Walt v Metcash Trading Ltd 2002 (4) SA 317 CC at [par.] 19.

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

- T, 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

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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 prime 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

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

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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:

- L. 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 Amelgamated Beverage Industries Ltd v Rand 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 <u>may</u> be an exception where there is found to an abuse of rights);

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- 3. There are no self-standing rights to reasonableness, fairness or goodwill in the law of contract:
- Leven 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 bone fide business decision, which is on the face of it reasonable and rational, was

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objectively "wrong" where In the circumstances no public policy considerations are involved. Falmess 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".

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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 often 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 mortitoring 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 "interimination relief" to this effect pending a hearing in December. In the Founding Affidavif the Applicants have acknowledged that these facility agreements give the bank the

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termination clause is repeated in all of the Iban 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:

- a 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 notics". No such term could be read into this agreement as it would be in direct conflict with the express terms.

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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 pat. 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 y 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 never4 be granted because the Applicant can never found an entitlement to it."

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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.

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

5. 34 of the Constitution at all. No basis was pleaded for the

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

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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: Cronje 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 vNapier 2007 (5) SA 323 (CC) at par. 57.

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Also, if granted, the relief would amount to an abuse of process, because it would permit Applicants to re-litigate the same issue in due course.

See: Caesarstone Solot-Yam Ltd v World of Marble and Granite 2000 (CC) 2013 (6) SA 499 SCA at paras. 45 to 47.

26.

The relief, if granted, would also breach the subsidiary principle in that, as I have said, neither the Practice Manual for this Division, nor the *Uniform Rules of Court*, nor the *Superior Courts Act of 2013* makes any provision for the granting of "interim-interim relief". The rights in s. 34 of the *Constitution* are given effect to, inter alia, by the *Uniform Rules of Court*:

See: Glesecke & Devrient Southern Africa (Pty) Ltd v Minister of Safety and Security 2012 (2) SA 137 (SCA) at par. 24.

In this context the principle of subsidiary means that where legislation gives effect to constitutional rights, it is impossible to go behind that legislation by relying on the Constitution directly. A litigant's remedy is to attack the legislation for its deficiency.

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The regulatory practice of this Division was indeed criticized by Mr Daniels, but not in the Founding Affidavit or by way of the relief sought.

27.

There is in any event he self-standing right to good faith and reasonableness in contract.

See: Barkhulzen v Napier 2007 (5) SA 323 (CC) at par. 80; Bredenkamp supra at paras. 50 to 51; and Potgieter and Another v Potgieter N.O. 2012 (1) SA 624 SCA at paras. 31 to 32.

28.

Other relevant considerations are that there is no right for asserting an entitlement to banking services as a property right. Freedom of trade as a right only applies to natural persons.

See: City of Cape Town v Ad Outport 2000 (2) SA 733 (C) at 747A.

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The Applicants' transactional facilities:

The bank submitted that the Applicants are not entitled to compel it to provide them with transactional account facilities, against its will, until December 2017. Firstly, the Applicants had a reasonable notice, secondly, they would not suffer the irreparable harm contended for, and thirdly, the bank would rather suffer severe prejudice should the order be granted.

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purposes of obtaining the interim relief in December, and the interim relief pending that relief, that they have a prima facie right to the final relief that they seek in the main application. The final relief sought by the Applicants is to force the bank to provide them with transactional facilities for up to 24 months, at least, and perhaps longer if the dispute is referred to evidence as envisaged by Mr Daniels.

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I am unable to see or appreciate any basis for this relief sought. It is clear from the Amalgamated Beverages industries Ltd decision supra that there is no Rule of Law that suggests that it is implicit in a contract which may be terminated by notice, that such termination can only be effected for a valid commercial reason. One of the objects of requiring reasonable notice is to allow the receiving party sufficient time within which to regulate its affairs. A prima facie notice period is reasonable if a longer hotice period would not place the party in a more favourable position in the circumstances. This finding is particularly apposite in the present case inasmuch as the Applicants have stated that all their major banks have closed their account, and that it is unlikely that they would be able to find a willing contractual partner under the circumstances. Respondent also alleges in the Answering Affidavit that long before the 6 July 2017 notice was delivered, the Applicants were provided with a more informal notice that the bank was considering terminating its relationship with the Applicants. In this context it was said that the following interactions took place between the bank and the Applicants prior to their formal notice:

- The bank refused to open any new accounts for the Applicants, the Gupta family, and associated companies from at least June 2016;
- 2. From August 2016, the bank set about reducing its exposure by calling up loans granted to the Applicants, which at the time had an approximate value of R1.5 billion;
- 3. Also during this time, the bank's representatives advised the Applicants' representatives that it intended to sever ties with the group;
- Over this period the bank succeeded in recovering approximately R1.2 billion from the Applicants.

terminate the relationship with the Applicants in 2016 ought to have provided a clear indication that the Bank of Baroda would also consider this option. On this basis it was simply not correct for the Applicants to assert that the 6 July 2017 termination notices came out of the blue. I have of course also kept in mind in this context that the Applicants did not file a Replying Affidavit giving their version of these assertions of the bank.

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Mr D. Fine also pointed out that on the Applicants' own version there was little prospect that they would ever find alternative banking facilities inasmuch as they alleged in the Founding Affidavit that no other banks were prepared to do business with them. Therefore, on the Applicants' own version, whether they are afforded an additional three months' notice or a further two years notice; the prospects of finding alternative banking facilities are not likely to improve. It is therefore not reasonable for the Applicants to insist that the bank must be forced, against its will, and irrespective of its resources, to provide transactional facilities until December 2017, and then for the further period of two years. The Applicants have therefore failed to demonstrate that the notice period was not reasonable and on their own version the longer period proposed will likely not place them in a more favourable position than they would be in by 30 September 2017,

In my view this reasoning is sound and almost of its own, would defeat the purpose of a December 2017 order. I say "almost", because Mr Marcus' argument is in fact wholly destructive of Applicants' case.



Apprehension of irreparable harm:

Applicants must demonstrate a reasonable apprehension that the continuance of the alleged wrong cause irreparable harm.

In this context Applicants have alleged prejudice based on three assertions.

Applicants will not likely find another bank with whom to do business, if Respondent terminates their accounts, they will be unable to pay their employees and suppliers will be unable to receive payments from them, and this would bring about the Applicants' "inevitable demise".

33.

It was said that all of these allegations are without foundation. Respondent has never paid any of the Applicants' employees directly and will never be in a position to do so. It is also not in any position to pay all of the Applicants' suppliers. The Applicants themselves acknowledged that these expenses have been paid by a third party. Terbium Financial Services (Pty) Ltd, as a so-called payment agent "on

behalf of the Applicants". Terblum receives amounts from the Applicants and then pays the Applicants' amployees and suppliers using its own banking facilities. Applicants did allege that this arrangement with Terbium will terminate on 31 August 2017, but this did not mean that the Bank of Baroba could simply take over Terblum's role. The uncontested allegations are that the bank has no infrastructural capacity to administer such payments of salary wages. The bank's operations in South Africa consist of only two branches and it employs a total of only 16 people across its entire South African operations. In these circumstances any urgent "interim-interim relief" would have no effect on whether the Applicants can pay their employees and suppliers until December 2017, or in fact thereafter. The bank will not be in the position to make these payments even if I order it to keep the Applicants' transactional accounts open.

I agree that this is a particular rejevant consideration.

It was also stated that Applicants have not been truthful about the existing pay-agent arrangements inasmuch as they have falled to disclose to this Court that at least six of the Applicants have in fact concluded new pay-agent agreements before the

Applicants filed their papers in this application on 28 July 2017. I agree with Respondent's Counsel's contention that the failure to disclose this material fact is highly objectionable. Mr Daniels could not explain this in Court either. In this context it was argued, and in my view correctly so, that in addition to suffering no prejudice, the Applicants also do have a suitable alternative remedy to the relief that is being sought. The agreements with Terbium and the new pay-agents indicate quite clearly that Applicants will be perfectly capable of paying their employees and suppliers. It was said that pay-agents could also be paid from any foreign bank account held by the Applicants, other companies in the Oakbay group, off-shore companies controlled by the Gupta family and their associates, or individual members of the Gupta family. It was also possible for the Applicants to simply instruct the debtors to make payment directly to the pay-agents. The prejudice that the Applicants relied on therefore was not real. I agree with these contentions and they were not challenged by way of a Replying Affidavit in any event. In my view, they could have been and aught to have been. It cannot be expected of a Court to simply ignore the bank's assertions in this context.



34.

Substantial prejudice to the bank:

Before dealing with Respondent's contentions, I deem it important to point out that Respondent is not merely a contractual partner of the Applicants in the Private Law sphere. Its conduct and transactions are subject to a number of statutory and other legal duties under domestic, as well as international law. By virtue of its global operations, the bank is subject to a host of international and domestic legal duties to combat money laundering and other unlawful activities. These various instruments impose clear duties on the bank to put in place proper control to identify its clients, manage the risk of financial crimes risks, including money-laundering, and to report unlawful activities. It is also subject to supervision by its primary regulator the Reserve Bank of India. At International level, the Basel Committee on Banking Supervision ("Basel Committee") plays a leading role in establishing international standards for combatting money laundering and other financial crimes. The Committee's core principles require all banks to have adequate policies and processes in place to promote high ethical and professional standards in the banking



sector and to prevent the bank from being used, intentionally or unintentionally for criminal activities. The guidelines also draw specific attention to the risks that the bank faces, but falls to implement the relevant measures effectively. South Africa is also a member of the Financial Action Task Force which was created by the G20 Group of States to establish global standards for the combatting of money laundering, terrorists financing and other threats to the international financial system. in terms of domestic legislation the bank operates in South Africa by virtue of the Banks Act 94 of 1990 and the relevant regulations governing foreign banks as published in the Government Gazette 30627 of 1 January 2008. Section 60 B of the Banks Act imposes the duty of the bank to establish and maintain an adequate and effective process of corporate governance to ensure that it complies with all laws and regulations applicable to it. Regulation 50 of the Bank Act Regulations further requires that every bank must have in place "robust structures, policies, processes and procedures to guard against the bank being used for purposes of market abuse such as insider trading and market manipulation, and/or financial crimes such as fraud, financing of terrorist activities and money laundering".



The Financial Intelligence Centre Act 38 of 2002 ("FICA") is the primary legislation which governs the banks' responsibilities to monitor and report on money laundering and other unlawful activities. FICA also imposes extensive reporting duties on the bank and in particular, by way of s. 29, imposes the duties to report all "suspicious or unusual transactions to the Financial Intelligence Centre, Further, the Money Laundering and Terrorists Financing Control Regulations contained in Government Gazette 24176 of 20 December 2002, give greater specificity to accountable institutions' duties under FICA. Regulation 21 places a particular obligation on accountable institutions to obtain further information where reasonably necessary to identify:

- a) Business relationships or transactions that impose a particularly high risk of facilitating money faundering and
- b) The proceeds of any unlawful activity or money laundering activity".

 **Regulation 21 must also be read with Guldance Notice 3A published by the Financial Intelligence Centre in March 2013. This requires a "risk-based approach"

to the Identification and verification of entities and reporting in line with International standards. It specifically requires banks to identify "trigh risk" clients, transactions and business relationships which attract heightened information gathering and monitoring requirements. In line with the mentioned recommendations paragraph 25 of the Guildance Notes includes politically exposed persons ("PEP's") within the category of "high disk" clients who must be subjected to heightened strutiny. These PEP's and any person acting on his or her behalf must be exposed to "enhanced due diligence" and "heightened scrutiny". It was said that the these heightened duties serve an important purpose in that, given the position and influence held by PEP's, there was a heightened risk that they may engage in transactions designed to conceal unlawful transactions and the misappropriation of public funds.

36.

The bank would be liable to substantial penalties if it failed to comply with the requirements of FICA and the applicable Regulations. Severe administrative

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sanctions can be imposed and the Act also specifies a range of offences which attract substantial finds and even jail terms.

37.

Given these stiff penalties for failures to comply with FICA, even inadvertently, or due to lack of resources, the logical means to avoid these risks is to terminate the banking relationship with clients that are deemed to be of unusually high risk. I agree with this contention. It is sound and it is based on the regulatory provisions that I have referred to. Such decision by a bank would also enhance the integrity of the financial system, support openness rather than subversion and enhance the Rule of Law rather than undermine it.

38.

Respondent also stated that in addition the owner's monitoring and informationgathering duties that apply to high risk clients and PEP's come at a cost. The bank has to incur substantial and administrative costs in putting in place and implementing

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day-to-day monitoring of these individuals and their transactions. In addition there are other relevant statutes that could subject the bank to further risks. For instance, in terms of Chapter 3 of The Prevention of Organized Crime Act 121 of 1998, it is an offence for any person to deal with any property (including funds in the bank accounts) that he or she ought reasonably to have known is the proceeds of unlawful activities. Further, the Prevention and Combatting of Corrupt Activities Act 12 of 2004, 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. Again, s. 34 (1) of this Act imposes a substantial penalty for an offence in that context. In addition the bank operates in more than 25 countries. 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.

39.

The controversy surrounding the Gupta family and Applicants:

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In the Founding Affidavit and the written argument the Respondent sets out in some detail the severe reputational risks due to its relationship with the Gupta family and Applicants. They obviously were not obliged to show, on any basis whatsoever, that the allegations made against these entities were true. The decision *Bredenkamp* supra makes this abundantly clear. They are however, as already said, entitled to consider the risks to its reputation and in this context said the following were the major considerations:

I. The Gupta family and the Applicants have faced very serious allegations of unlawful conduct, levelled by Cabinet members, the Public Protector (the former), investigative journalists and civil society. They annexed a comprehensive timeline of these allegations. As I have said, these were not dealt with by the Applicants in a Replying Affidavit, and this is a significant consideration, even at this stage of the proceedings. This comprehensive timeline clearly shows that the Applicants have been the subject of media reports and damaging allegations. The bank said that irrespective of the truth of these allegations, the sheer volume and severity of them has caused



1.1

reputational, legal and business risks for the bank. I will briefly refer to the televant considerations that Respondent had in mind:

The Gupta family is widely reported as being friends of the President and his family, including President's son. They refer in this context to the Public Protector's report titled "The State of Capture Report", which was released to the public by way of a Court order on 2 November 2016. This report addresses alleged unlawful conduct by the President, his son, the Gupta family and several of the Applicants in these proceedings. The report refers also to alleged unlawful State contracts including references to the Eleventh Applicant and the Sixteenth Applicant. In that context irregularities also occurred at the State entity Eskom, which made illegal payments to the Sixteenth Applicant, The Minister of Mineral Resources was also implicated. There were also adverse findings in regard to the Nineteenth and Twentieth Applicants. The bank then gave substantial detail in the Answering Affidavit of allegations contained in the so-called "Gupta leaks", which is a cache of smalls allegedly sent between

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members of the Gupta family, representatives of the Oakbay Group and their associates. These reports have produced almost daily allegations of corruption, money-laundering and other unlawful activities. Examples were given in the Answering Affidavit, but it is not necessary for present purposes to repeat these.

- 1.2 The public reacted to this report with outrage which resulted also in a noconfidence debate in the National Assembly in November 2016.
- 1.3 The bank suffered further negative publicity during this time and reference was made to a Fin. 24 article titled "Bank of Baroda's Conduct Appears Highly Suspicious". This was indicative of the type of negative coverage that the bank received in the wake of the Public Protector's report.
- The Respondent referred to the Minister of Finance Mr P. Gordhan's litigation against the Oakbay Group. Judgment in that case was delivered by the Full Court of this Division 18 August 2017 (Case No. 80978/16). In the course of those proceedings, the Minister disclosed a list prepared by the Financial Intelligence Centre reflecting 72 "suspicious

transactions' to the value of R6.8 billion concluded by the Gupta family members of the Oakbay Group. These listed transactions had been reported by the Financial intelligence Centre in terms of Section 29 of *FICA*. This list of 72 transactions also resulted in an Opposition Party requesting the Hawks (a special unit of the police), to investigate several of the Applicants for alleged criminal activity relating to these transactions.

been classified as "high risk", and "politically exposed persons" (PEP's).

As said, this imposes duties of "enhanced due diligence" and "neightened security" to monitor the transactions of the Applicants in terms of *FICA*.

In just a 10-month period, between September 2016 and July 2017, the Applicants engaged in no less than 36 suspicious and unusual transactions, with a combined value of over R4.25 billion, which the bank duly reported to the Financial Intelligence Centre. These transactions

accounted for the overwhelming majority of the suspicious and unusual

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annexed a full list of these transactions to their Answering Affidavit. The bank therefore said that the substantial number of reportable transactions generated in such a short period indicates that the bank is at risk that it may inadvertently fail to detect and report on such transactions, which would expose the bank and its employees to severe penalties. The volume of the Applicants transactions had been increasing and was likely to increase further still after the State Bank of India and the Bank of India terminated the Applicants' accounts in July 2017.

In the application by the Minister of Finance (80978/2016, Minister of Finance v Oakbay Investments (Pty) Ltd and Others), Standard Bank's affidavit sets 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 other public fora. These were all described as "red flags" that alerted the bank to the legal and reputational risks posed by the Oakbay Group. The bank then decided to

terminate its relationship with the Group after conducting an assessment of the relevant risks.

- 1.8 A similar affidavit was made by ABSA Bank which stated that "there was evidence of large unexplained transfers of funds between the Oakbay Companies and related parties, into other banks".
- 1.9 Respondent also considered the circumstances surrounding the dismissal of Finance Minister Gordhan on 30 March 2017 and the resultant protests.
- that the Applicants (as a 'group'), had received in the media and other public fora including, as I have said, the previous Public Protector's report, Respondent stressed in this context that in the public mind, the Gupta family and the Oakbay Group of Companies were being treated as being synonymous. In addition, all of the Applicants have been classified as "high risk".

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- Gupta family, the Applicants and other associated companies. It concluded that, given the alleged close affiliation between the Gupta family and the President, all the account holders posed a "high risk" of involvement in money-laundering and were "politically exposed persons" ("PEP's").
- 1.12 It gave an example of a suspicious transaction involving the Optimum Applicant, in the context of a transaction of an inward remittance from an offshore account. Almost \$8 million was involved in this particular transaction. Obviously, as I have said, this transaction was not explained by the Applicants herein.
- 1.13 Since June 2016, the bank informed representatives of the Applicants that it 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 been performed and the continuous monitoring of the Applicants

thereafter. The bank's South African office had been instructed by the Head Office in India to implement a process of winding down the relationship and reduce its exposure with a view to ultimately closing all accounts. This occurred in September 2016 already.

- 1.14. Respondent emphasized that it was particularly alarmed by the findings in the Public Protector's report formally released on 2 November 2016. It feared that it would be unable to recover the remaining amounts still due to them by the Applicants, at that stage standing at approximately R1 billion. 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. Mr Daniels submitted that this report was irrelevant as it was under review. I do not agree. That is not the test as I have said.
- 1.15 Respondent also referred to the fact that the South African Reserve Bank, between 19 September and 7 October 2016, conducted a detailed

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with FICA On 19 June 2017, the Reserve Bank imposed a financial penalty on the bank of R11 million for non-compliance of certain regulatory obligations. Respondent pointed out that 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 over-side investigation prescribed under FICA. This would require an average commitment of eight hours per day from a senior executive.

Affidavit: "To be clear, the Applicants posed a 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, including members of the Gupta family, and other companies associated with the Gupta family who have also received notice of termination of their accounts. These suspicious

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transactions amount to over R4.25 billion. No less than 36 of these reports related transactions generated by the Applicants*.

40.

The above is but a summary of the allegations made against the Applicants, the "Qaldbay Group" and the Gupta family. The bank can obviously not rely on the truth of such allegations, and neither does it have to. I am obviously also not in a position to comment, save to say the following: when reading details of the various allegations in the Answering Affidavit, I could not help to wonder whether, unbeknown to me, democracy and the Rule of Law had somehow been suspended pro tanto? Could it be possible that the future, so bright in 1994, was now only history? Do the constitutional obligations imposed upon the Prosecuting Authority as set out in Section 179 of the Constitution of the Republic still exist? Do the various investigating bodies of the Police Service referred to in Section 205 of the Constitution still remember their constitutional duty to combat and investigate

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crime? I cannot give an answer in these proceedings for obvious reasons, but the mere fact that the questions that arise, gravely concerns each and every one of us.

41.

The balance of convenience:

application has very little prospect of success in the fight of the considerations referred to above, the state of the law in this particular relationship, and the harm that Respondent is very likely to suffer should it be forced, against its will, to continue with the relationship with the Applicants. There is in my view another important factor: as I have set out in some detail, the Respondent is subject to a number of statutory provisions which in the main seek to uphold the integrity of the financial system in the country. It seeks to uphold such integrity with honest transparency. On the other hand, there is the well-founded suspicion, having regard to the unconfested events that I have referred to, that the Applicants subverted the integrity of the financial system, to put it gently. I am aware of the fact that I am



necessary. Respondent does not rely on the accuracy of all the allegations made against the Applicants. It need not do so, and a reasonable suspicion is sufficient for it to enable it to exercise its rights. Where a contractual party, subject to specific regulatory provisions seeks to act honestly and openly to safeguard its rights, and to uphold the integrity of the relevant financial order, and the other party on the face of it seeks to undermine and subvert it to its own benefit, the balance of convenience in my view clearly favours the former.

42.

It is also clear from all the authorities pertaining to Interim Interdicts that a Court always retains a wide discretion to refuse an interim interdict even if all the requisites have been established. Such discretion is a judicial one which must be exercised according to law and upon established facts.

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See: Knox D'Arcy Ltd v Jamieson 1996 (4) SA 348 A (at 361 to 362) and Hix

Networking Technologies CC v System Publishers (Pty) Ltd 1997 (1) SA 391 A

(at 401) and Afrisake NPC v City of Tshwane supra.

Based therefore on all the considerations that I have referred to in this judgment, factual, procedural and legal, I also, and in any event, exercise my judicial discretion against the Applicants.

43.

Summary:

- In our law there is no recognized cause of action for an "interim-interim" interdict based on requirements other than those recognized at common law for an interim interdict;
- Applicants have not pleaded a cause of action based on the provisions of s.
 34 of the Constitution.
- 3. The common-law requirements for an interim interdict have not been established herein:

4. The balance of convenience weighs heavily in favour of a party which seeks to uphold and preserve the integrity of the established financial system and the Rule of Law.

44.

The following order is made:

- 43.1 The application is dismissed;
- Applicants, jointly and severally, the one paying, the others to be absolved, are to pay the costs of Respondent, including the costs of two Senior Counsel and two Junior Counsel.

JUDGE H.J FABRICIUS

JUDGE OF THE GAUTENG HIGH COURT, PRETORIA DIVISION

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Case number: 52590/17

Counsel for the 1ST to 4TH Applicants: Adv P. J. Daniels SC

Instructed by: Vasco Dé Óliveira Inc

Counsel for the 5TH to 20TH Applicants:

Adv R. A. Bhana SC

Ady F. Ismail

Adv J. Griffiths

Instructed by: Abba Barak Inc.

Counsel for the Respondent:

Adv D. M. Fine SC

Adv G. J. Marcus SC

Adv C. Mcconnachie

Adv G. Singh

Instructed by: Mervyn Taback Inc.

Date of Hearing:

8 September 2017

Date of Judgment:

21 September 2017 at 10:00

Bradley Brazington

From:

Clarise Oberholzer <c.oberholzer@dbolaw.co.za>

Sent:

21 September 2017 09:09 AM

To:

Bradley Brazington

Subject:

RE: SA BUSH CLEARING CC / BEAUTIFUL STEPS TRADING CC

Morning Bradley,

We shall attend to the necessary and will revert accordingly.

We thank you for the valued instruction.

Regards,

CLARISE OBERHOLZER JE BRUIN OBERHOLZER ATTORNEYS

27 General Joubert Street PO Box 3615 POLOKWANE

0700

CELL: 082 665 1867 TEL: 015 - 291 2147 FAX: 015 - 291 4250

E-mail: c.oberholzer@dbolaw.co.za



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From: Bradley Brazington [mailto:bradley@bsmlaw.co.za]

Sent: 21 September, 2017 8:41 AM

To: Clarise Oberholzer < C.Oberholzer@dbolaw.co.za>

Subject: RE: SA BUSH CLEARING CC / BEAUTIFUL STEPS TRADING CC

Morning Clarise,

This is a new instruction.

I discussed it briefly with Jaco earlier this week.

TON

I attach, in word format, the summons commencing action. Please check the heading, court address and complete your firms details for me.

The particulars of claim are in PDF. Please use them as is.

The Annexures referred to therein have been marked and are also in PDF format.

Please put the summons together for me and have it issued today.

Once issued, please scan and mail me the face of the summons, so that I can show my client that it has been done.

I will also make contact with the office of the relevant Sheriff to arrange service of the summons.

Once I have arranged, I will give you instructions.

Bradley Brazington

rom: Fiona Cohen

Sent: 21 September 2017 08:34 AM

To: Bradley Brazington

Subject: SA BUSH CLEARING CC / BEAUTIFUL STEPS TRADING CC

Herewith -

Summons in word format Particulars in pdf format and Annexures in pdf format

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Appendice: Standard trest dece (Individual) west by filefic

DEED OF TRUST

Made and entered into by and between	
(here	inafter referred to as the 'Founder')
AND	
(the 1	name(s) of the Trustee(s))
	is Agreement, the following expressions have the meaning respectively set opposite them s it appears otherwise from the context:
1,1.	'the Acts and Regulations' means all the relevant laws of the Republic of South Africa and the regulations thereunder, being <i>inter alia</i> , the Minerals Act, 1991, the Atmospheric Pollution Prevention Act, 1965, the National Water Act 1998, and any legislation and regulations which may be imposed from time to time to control the management of all the impacts of mining activities.
1.2.	'beneficiary's Accounts' means separate accounts in the accounting records of the Trusto be maintained and administered by the Trustees in respect of the beneficiary as the case may be which are required by this document.
1.3.	'the beneficiary' means
1.4.	'the Commissioner' means the Commissioner for the South African Revenue Service as referred to in the Income Tax Act No 58 of 1962 as amended ('the IT Act').
1.5.	'the DMD' means the Director Mineral Development for the Province concerned of the Department of Mineral and Energy.
ı.6.	'the Founder' means
7.	'the Rehabilitation Trust' means a Trust created in terms of the Provisions of clause 3 hereof.
.8.	'Statutory Obligations' mean the obligations described in clauses 2.2 and 2.3 of the recordal, clause 2.
.9.	'the Trustees' means, and, jointly, who have agreed to be the first trustees of the
	jointly, who have agreed to be the first trustees of the



1.1	The Founder is engaged in mining activities consisting of
1.2	The beneficiary is legally obliged to carry out rehabilitation and to prevent and control pollution at its mining operations in terms of the Acts and Regulations. The costs to be covered are set out in sections 10(1) (cH) (i) (A) (B) (C) of the IT Act.
1.3	For the purpose of making provision for the discharge of the beneficiary's obligations as defined in clause 2.2 and contingent liabilities as set out in point 2.2 above, the Founder is desirous of creating a Rehabilitation Trust to receive, hold and apply such amounts as may be contributed by the beneficiary for the purpose of covering the costs, other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of the mine or part of the mine. The costs will cover obligations discharged at the time of or after the discontinuation of the operations on a mine or part of a mine.
1.4	The Founder wishes to create a Trust for the benefit of the beneficiary and for this purpose wishes to donate R100.00 (one hundred rand) to the Trustees of the trust.
3.1	There is hereby created with the approval of the Commissioner for the South African Revenue Service in accordance with section 10(1)(cH) of the IT Act a Trust called the
3-2	The sole object of the Trust is to act as the financial provider for expenditure which the beneficiary is required to undertake at the time of or after the discontinuation of operations on a mine or part of a mine in order to comply with the Statutory Obligations.
3.3	The Trust shall be a body corporate having perpetual succession and be capable of acquiring and disposing of and owning property and assets and contracting in its own name and suing and being sued in its own name. The rights and obligations of the Fundshall vest in it independently of its beneficiary and/or contributing company.
4.1	The Founder hereby irrevocably donates the sum of R100.00 (one hundred rand) to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purpose and subject to the conditions of this Trust.
4.2	The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this Deed.
5.1	Trustees appointed by the Founder shall administer the Trust.
5.2	The Trustees shall not receive any remuneration from the Trust for their services.
5 ∙3	There shall at all times be not less than two or more than Trustees.
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The Trustees shall hold office until they resign or are deemed to have vacated their 5.4 offices in terms of clause 6. The Trustees shall control and administer the Trust, and shall perform and discharge 5.5 the duties incumbent on them hereunder. Should a Trustee resign then the remaining Trustees shall immediately appoint a Trustee to fill that vacancy A trustee may resign at any time on giving notice in writing to the remaining Trustees of his intention to do so and shall in any case be deemed to have vacated his office if he is no longer or any of its employed by subsidiaries. However the Commissioner in consultation with the DMD may upon application by the Trustees grant approval for a non-employee to be appointed as a trustee. The Trustees shall from time to time nominate one of their numbers to be Chairman 7.1 of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee. Should the Chairman be absent at any meeting of the Trustees, the Trustees present 7.2 shall appoint one of their number as Chairman to preside at that meeting. Ouestions arising at meeting of Trustees shall be decided by a simple majority of 7.3 votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote. The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present.

Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in ______

9.2 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.

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- The Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through their wilful misconduct or gross negligence in which event only the Trustees concerned and not all the Trustees shall be jointly and severally liable.
- The Trustees shall have no responsibility or liability for the efficacy of the measures taken by it in terms of clause 16 or for the sufficiency of contributions and amounts paid by the beneficiary of the Trust in terms of clause 14.
- The Trustees shall not have any liability whatsoever in respect of the creation of any of the conditions referred to in the recordal in clause 2 caused by the operations of the beneficiary or in respect of any claims arising from the presence of such conditions.
- The beneficiary indemnifies the Trustees against claims made against the Trustees arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken on its behalf proving to be ineffective and/or the contributions and/or amounts obtained from it proving to be insufficient.

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

- 12.1 The Trustees shall have general control over the funds of the Trust and shall strive to attain the sole object for which the Trust is established.
- 12.2 The Trustees shall have plenary powers to enable them to achieve the sole object of the Trust.
- 12.3 The Trustees shall receive, hold, and apply amounts as may be contributed to the Trust in terms of this agreement by the beneficiary, which amounts have been approved by the DMD, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of its profits or gains to any person and
 - shall use the funds solely for the objects for which the Trust has been established.
- The Trustees in their personal capacity shall not engage in any trade, undertaking, or business of the Trust nor shall participate in any of the affairs, of the Trust, or provide any financial assistance or services or facilities other than such as required in terms of clause 12.3.

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- The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
- to invest, realise and re-invest the contributions made to the Trust by the beneficiary and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that they shall be limited to making investments in institutions and investment vehicles as referred to in section 10 (1)(cH) (ii), (aa), (bb) and (cc) of the IT Act;
- to appropriate firstly the net income defined in 13.6 and secondly the contributions and/ or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the beneficiary;
- 12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgement debtors;
- 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and
- 12.5.6 generally to perform all acts connected with any of the Trust's affairs.
- 13.1 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.
- The financial statements of the Trust for each financial year (which shall be reckoned from 1 March to 28 February) shall be forwarded by the Trustees to the beneficiary of the Trust and to the Commissioner and the DMD within six calendar months after the end of each financial year of the Trust.
- 13.3 The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of one of the Trustees and the secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- 13.5 All costs, charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expense shall be paid out of income of the
- The balance of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year, but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.
- 13.7 Such net income or net loss, as the case may be, shall be transferred (credited/debited) to the account of the beneficiary. Should there be a multiple of beneficiaries, the net income or net loss shall be allocated to the respective accounts on a proportionate basis.

- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trusts solely for investment or the objects for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with paragraph 18.2.
- Annually but at least ninety days before the end of its financial year, the beneficiary shall cause written estimates to be prepared, by suitably qualified persons, of the probable cost of measures other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine. The estimates may be made separately in respect of each duty, requirement or function of each group of duties, requirements, or functions as may be necessary or convenient. The estimates shall be certified as being fair by the beneficiary and shall thereafter be forwarded together with the calculations per formula referred to in clause 14.2 for approval to the DMD, on an annual basis.
- 14.2 The beneficiary shall before the end of its financial year concerned pay into the bank account of the Trust the approved contribution towards the estimated cost of implementing the measures so approved. The contributions shall be calculated in accordance with the formula as set out in section 11(hA) of the IT Act.
- The DMD shall upon approval of the contributions, issue a certificate confirming that they are satisfied with the contributions and forward it to the beneficiary. The beneficiary shall forward the certificate to the Commissioner together with the income tax return for that particular year of assessment. The certificate will reflect the following:
 - that the contribution has been approved and complies with the provisions of clause
 2.2 and 2.3;
 - the year of assessment to which the contribution relates;
 - the specific amount which has been approved, which should be broken down separately for each mine;
 - that the taxpayer has complied with all the requirements of sections 11(hA) and 10(1)
 (cH) of the IT Act.
- 15.2 The Commissioner will only allow a deduction of the amount of the contribution as reflected on the certificate.
- 16.1 The Trustees undertake to ensure that the Statutory Obligations, as stated in clauses 2.2 and 2.3 herein, shall be properly carried out by the beneficiary in accordance with the requirements laid down by the DMD. The funds will be placed at the disposal of such beneficiary to carry out the Statutory Obligations as and when so required. This undertaking shall be a stipulation in favour of the DMD and be enforceable by him.

- 16.2 In fulfilling the before mentioned undertaking the amount made so available by the Trustees will be limited to the amount which stands to the credit of the beneficiary concerned in the books of the Trust.
- 16.3 Any withdrawals of amounts from the fund shall be endorsed by the DMD.
- Should there be a balance standing to the credit of any beneficiary after all the measures required to be taken in order to comply with its Statutory Obligations have been executed to the satisfaction of the DMD, the said balance shall be paid to a body referred to in 18.
- Should a beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) and/or should the beneficiary go into liquidation prior to it having complied with all of the Statutory Obligations as set out in clause 2.2 and 2.3, which it may have, it shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations or going into liquidation, as the case may be, have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations which shall be certified and approved as provided in 14.1.
- 18. 17.2 On or after the date of termination of the mining activities, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of a beneficiary's account, the beneficiary shall forthwith pay to the Trust the shortfall.
- 19.1 The Trust may only be terminated after all the beneficiary's obligations including any post closure obligation set out in terms of clauses 2.2 and 2.3 have been met to the satisfaction and approval of the DMD.
- 19.2 Should any amount and/or other assets remain after the Statutory Obligations as set out in clauses 2.2 and 2.3 have been met to the satisfaction of the DMD those amounts and other assets should be transferred to a company society, or other association of persons or a trust which fulfil the requirements of section 10(1)(cH) of the IT Act, provided such transfer has been approved by the Commissioner.

The provisions of this agreement may from time to time be amended by a resolution of the Trustees and beneficiary and after the prior approval of the Commissioner.

The Commissioner will apply the provisions of section (10)(1)(cH), (a), (b) and (c) of the IT Act in the case of non-compliance.

THUS done and signed in ______on the ______day of _____by the Founder.

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AS WITNESSES:		
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2	For and on behalf of	
THUS done and signed in by the Trustee.	on the	day c
AS WITNESSES:		
1 2	For and on behalf of	
THUS done and signed in	on the	day of
by the Trustee. AS WITNESSES:		
A5 WITHESSES: 1		
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as witnesses:		
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AS WITNESSES:		
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AS WITNESSES:		
	For and on bel	alf of

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(Individual Beneficiary)

DEED OF TRUST

Made and entered into by and between
(hereinafter referred to as the "Founder")
AND
(the name(s) of the Trustee(s))

1. DEFINITIONS AND INTERPRETATION

In this Agreement, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:

- 1.1 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder which do now or may hereafter regulate mining operations, being *inter alia*, the Minerals Act, 1991, the Atmospheric Pollution Prevention Act, 1965, the National Water Act 1998, the Mineral and Petroleum Resources Development Act, 2002, and which impose the statutory obligations as defined herein.
- 1.2 "beneficiary's Accounts" means the separate accounts in the accounting records of the Trust to be maintained and administered

	by the Trustees in respect of the beneficiary which	are required by
	this document.	
1.3	"the beneficiary" means	, being a
	person to whom the statutory obligations apply.	
1.4	"the Commissioner" means the Commissioner for the	ne South African
	Revenue Service as referred to in the Income Tax A	Act No 58 of
	1962 as amended ("the IT Act").	
1.5	"the Founder" means	, a natural
	person, who is engaged in mining prospecting, quar	
	operations in the Province at	<u>.</u>
	(and the	
	Province at), whether	
	as representative of a company duly incorporated in	
	South Africa and/or a Trust registered with the Maste	
	Court.	
1.6	"funds" mean the cash amounts paid to the Trust wit	hin the
	meaning of sec 11(hA) of the IT Act by a taxpayer as	identified
	therein and does not include costs which are require	
	any law to be incurred on an ongoing basis during the	
	or part of a mine, but does cover obligations discharg	
	of or after discontinuation of the operations in a mine	or part of a
	mine.	
1.7	"theRehabilitation Trus	t", means a
	Trust created in terms of the Provisions of clause 3 he	
1.8	"the RM" means the Regional Manager: Mineral Deve	elopment for
	the Province concerned of the Department of Minerals	=

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or such other official, irrespective of designation, who may hereafter be required to exercise those powers and discharge those functions.

- 1.9 "statutory obligations", mean the obligations imposed on the beneficiary in terms of any law which regulates mining operations, and which obligations comprise any of the following:
 - the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;
 - (ii) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and
 - (iii) the demolition or removal of any building, structure or other thing erected or constructed in connection with mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state.

as envisaged by sections 10(1)(cH)(i)(A), (B) and (C) of the IT Act.

1.10	"the	trı	ustees"		mean					
			<u></u>	and					jc	intly,
	who	have	agreed	to	be	the	first	trustees		_
	-				REHA	BILIT	ATION	TRUST.		

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- in interpreting this Deed, and subject to a contrary intention evidenced by the context,
 - 1.11.1 a reference to the singular includes the plural and vice versa:
 - 1.11.2 a reference to the masculine includes reference to the feminine and neuter and vice versa;
 - 1.11.3 a reference to a natural person includes a reference to any juristic persona and vice versa.

2. RECORDAL

- 2.1 The Founder is engaged in mining activities consisting of
- 2.2 The beneficiary is subject to the statutory obligations.
- 2.3 The Founder wishes to constitute a Rehabilitation Trust to receive, hold and apply the funds which the Trust may receive in order to discharge the statutory obligations of the beneficiary.
- 2.4 The Founder wishes to create the Trust for the benefit of the beneficiary and for this purpose wishes to donate R100,00 (one hundred rand) to the trustees of the Trust.

3. THE TRUST AND ITS OBJECTS

3.1 There is hereby created subject to the approval of the Commissioner for the South African Revenue Service in accordance with section 10(1)(cH) of the IT Act a Trust called the

REHABILITATION TRUST

- 3.2 The sole object of the Trust is to receive, hold and apply the funds received by it in accordance with s. 11(hA) of the IT Act in order to discharge the statutory obligations of the beneficiary.
- 3.3 The Trust shall be a body corporate having perpetual succession and be capable of acquiring and disposing of and owning property and assets and contracting in its own name and suing and being sued in its own name. The rights and obligations of the Fund shall vest in it independently of its founder, beneficiary and/or any other person.

4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of R100,00 (one hundred rand) to the Trust, and its trustees hereby accept such donation for the purpose and subject to the conditions of this Trust.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the trustees but always subject to the terms of this Deed.

5. ADMINISTRATION OF THE TRUST

- 5.1 The first trustees will be appointed by the Founder to administer the Trust.
- The trustees shall not receive any remuneration from the Trust for their services, but shall be reimbursed for any personal expenditure reasonably incurred in the proper discharge of their duties as trustees.



- 5.3 The number of trustees will be not less than two nor more than
- The first trustees as well as those subsequently appointed, shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.5 The trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder, and shall have the power to delegate from time to time any of their powers and functions to any one or more of their number as they may deem expedient in the discharge of their duties.

6 RESIGNATION AND REMOVAL OF TRUSTEES

- 6.1.1 Should a trustee resign then if the number of trustees remaining is still two or more the remaining trustees shall decide whether or not to fill the vacancy in which case they shall have the power to do so by assumption.
- 6.1.2 If only one trustee remains he or she must appoint a second trustee within three months of the vacancy/ies occurring.
- 6.1.3 If the number of trustees falls to one and that one fails to appoint a co-trustee within three months, the beneficiary shall be entitled to do so; so also if for any reason no trustee remains in office, then the beneficiary shall be entitled to appoint two trustees to constitute the necessary quorum and the provisions of clause 6.1.1 will then apply.
- A trustee may resign at any time on giving notice in writing to the remaining Trustees of his intention to do so and shall in any case

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be deemed to have vacated his office if he is no longer employed
by or any of its subsidiaries. However
the Commissioner in consultation with the RM may upon application
by the trustees grant approval for a non-employee to be appointed
as a trustee.

- 6.3 A trustee shall be automatically removed from office:
 - 6.3.1 if his/her estate is sequestrated;
 - 6.3.2 if he/she becomes of unsound mind;
 - 6.3.3 if he/she is convicted of any offence involving dishonesty.

7 CHAIRMAN AND VOTING

- 7.1 The trustees shall from time to time nominate one of their numbers to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a trustee.
- 7.2 Should the Chairman be absent at any meeting of the trustees, the trustees present shall appoint one of their number as Chairman to preside at that meeting.
- Questions arising at meeting of trustees shall be decided by a simple majority of votes each trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.
- 7.4 Notwithstanding the aforegoing it shall be competent for the trustees to decide any matter by way of a round robin procedure viz. in the form of a written resolution signed by each one of them



which resolution shall be deemed to constitute a minute of a meeting of trustees.

8. SECRETARY

The trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one trustee, convene a meeting of the trustees and be responsible for the minutes to be kept of all meetings and decisions of the trustees.

9. MEETINGS AND QUORUM

- 9.1 The trustees shall meet from time to time and not less than twice a year to transact the business of the Trust and the necessary quorum for any such meeting shall be two trustees personally present. Reasonable notice of every such meeting shall be given to each trustee and all meetings of the trustees shall, unless otherwise decided by the trustees, be held at
- 9.2 A resolution signed by all the trustees shall have the same effect as if it had been passed at a duly constituted meeting.

10. TRUSTEES' LIABILITY

10.1 Subject to any liability imposed by law and not capable of being waived, the trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through their willful misconduct or gross

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negligence in which event only the trustees concerned and not all the trustees shall be jointly and severally liable.

- The trustees shall have no responsibility or liability for the efficacy of the measures taken in terms of clause 16 hereof or for the sufficiency of contributions and amounts paid by the beneficiary of the Trust in terms of clause 14.
- The trustees do not by the assumption or the exercise of office herein incur any of the statutory obligations of the beneficiaries or become liable directly or indirectly for any breach of the statutory obligations or failure of compliance therewith.
- The beneficiaries indemnify the trustees against claims made against the trustees arising from loss or damage of whatsoever nature in the course of their administration of the Trust (other than as a result of willful misconduct or gross negligence on the part of the trustees).

11. SECURITY BY THE TRUSTEES

The trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

12. TRUSTEES' POWERS AND DUTIES

The trustees shall have general control over the funds of the Trust and shall strive to attain the sole object for which the Trust is established.



- The trustees shall have plenary powers to enable them to achieve the sole object of the Trust, and any matters necessarily incidental thereto.
- The trustees shall receive, hold, and apply funds contributed to the Trust in terms of this agreement by the beneficiary, which amounts have been approved by the RM, together with the net income thereon. Except as may be otherwise provided herein, the trustees shall not distribute any of its profits or gains to any person and shall use the funds solely for the objects for which the Trust has been established.
- The trustees will not permit any conflict of interest to arise between themselves and the Trust in any aspect of its business and affairs, nor provide any financial assistance or services or facilities other than such as required in terms of clause 12.3.
- The management of the affairs and all the powers of the Trust shall vest in the trustees and without derogating from the generality of the foregoing, the trustees shall have full legal power:
 - to invest, realise and re-invest the contributions made to the Trust by the beneficiary and the net income accrued thereon on such terms and at such rates of interest as the trustees shall decide provided that, they shall be limited to making investments in institutions and investment vehicles as referred to in s. 10(1)(cH)(ii), (aa), (bb) and (cc) of the IT Act;
 - 12.5.2 to appropriate and utilise firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause14 for the measures taken for

compliance with the statutory obligations of the beneficiary;

- 12.5.3 to institute any legal action including arbitration proceedings for the recovery of monies owing to the Trust, or to assert or protect the rights of the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgment debtors;
- 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the trustees or to one of the trustees and the Secretary of the Trust;
- 12.5.6 to employ professional advisers and representatives;
- 12.5.7 to effect such insurances as deemed necessary on behalf of the Trust or in its interests; and
- 12.5.8 generally to perform all acts connected with any of the Trust's affairs.

13. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES

The trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.

- The financial statements of the Trust for each financial year (which shall be reckoned from 1 March to 28 February) shall be forwarded by the Trustees to the Founder and beneficiary of the Trust and to the Commissioner and the RM within six calendar months after the end of each financial year of the Trust.
- The trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of one of the trustees and the secretary, or another duly appointed authorised joint signatory.
- All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the trustees.
- All costs, charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expenses shall be paid out of income of the Trust.
- The balance of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year, but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.
- 13.7 Such net income or net loss, as the case may be, shall be transferred (credited/debited) to the account of the beneficiary on a monthly basis. Should there be more than one beneficiary, the net income or net loss shall be allocated to the respective accounts on a proportionate basis.

- The trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the funds solely for investment or the objects for which the Trust has been established.
- No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with clause 17.2 below if applicable or else clause 18.2 below.

14. ESTIMATES OF COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST

- Annually but at least ninety days before the end of its financial year, the beneficiary shall cause written estimates to be prepared, by suitably qualified persons, of the probable cost of measures other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine. The estimates may be made separately in respect of each duty, requirement or function of each group of duties, requirements, or functions as may be necessary or convenient. The estimates shall be certified as being fair by the beneficiary and shall thereafter be forwarded together with the calculations per formula referred to in clause 14.2 for approval to the RM, on an annual basis.
- The beneficiary shall before the end of the financial year concerned pay into the bank account of the Trust the approved contribution towards the estimated cost of implementing the measures so approved. The contributions shall be calculated in accordance with the formula as set out in s. 11(hA) of the IT Act. If for any reason such contribution has not yet been considered and approved by the RM by the time such payment must be made, then such payment shall be made conditionally on obtaining such approval.



14.3 Provided the RM shall give his prior approval in each case it shall be competent for the beneficiaries and trustees to revise estimates of the cost of measures required in the event of changed circumstances and on adjusted payment, certified in terms of clause 14.1, may be made in accordance with clause 14.2 above.

15. APPLICATION FOR AN ANNUAL CONTRIBUTION WITH THE RM

- 15.1 It is envisaged that the RM will upon approval of the contributions, issue a certificate confirming his satisfaction with the contributions and forward it to the beneficiary. The beneficiary shall forward the certificate to the Commissioner together with the income tax return for that particular year of assessment. The certificate will reflect the following:
 - that the contribution has been approved and complies with the provisions of clauses 2.2 and 2.3;
 - the year of assessment to which the contribution relates;
 - the specific amount which has been approved, which should be broken down separately for each mine;
 - that the taxpayer has complied with all the requirements of sections 11(hA) and 10(1)(cH) of the IT Act.
- The Commissioner will only allow a deduction of the amount of the contribution as reflected on the certificate.
- 15.3 If for any reason the RM declines to undertake or to continue the process of certification as here envisaged, the Commissioner will

prescribe such alternative procedures as may be required to permit of any such deductions.

16. COMPLIANCE WITH THE STATUTORY OBLIGATIONS

- The trustees undertake to ensure that the funds are utilised to discharge the statutory obligations in accordance with the requirements laid down by the RM. The funds will be placed at the disposal of such beneficiary to carry out the statutory obligations as and when so required. This undertaking shall be a stipulation in favour of the RM and be enforceable by him.
- In fulfilling the before mentioned undertaking the amount made so available by the trustees will be limited to the amount which stands to the credit of the beneficiary concerned in the books of the Trust.
- 16.3 Any withdrawals of amounts from the Fund shall be endorsed by the RM.
- Should there be a balance standing to the credit of any beneficiary after all the measures required to be taken in order to comply with its statutory obligations have been executed to the satisfaction of the RM, the said balance shall be utilised as provided by clause 17.2 below if applicable or by clause 18.2 below.

17. CESSATION OF MINING ACTIVITIES AND SHORTFALL

17.1 Should a beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) and/or should the beneficiary go into liquidation prior to it having complied with all of the statutory obligations, which it may have, it shall, not earlier than three months and not later than one month prior to

taking any steps for the winding up of such mining operations or going into liquidation, as the case may be, have final estimates prepared of the probable cost of compliance with such outstanding statutory obligations which shall be certified and approved as provided in clause 14.1.

On or after the date of termination of the mining activities, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of a beneficiary's account, the beneficiary shall forthwith pay to the Trust the shortfall, and conversely in the event of the account remaining in credit such surplus shall subject to the consent of the Commissioner be used to defray the cost of compliance by that beneficiary with any statutory obligations imposed in respect of other mining operations conducted by that beneficiary, failing which the surplus balance shall be transferred in terms of clause 18.2 below.

18. TERMINATION OF THE TRUST

- The Trust may only be terminated after all the beneficiary's statutory obligations including any post closure obligation have been met or provided for to the satisfaction and approval of the RM.
- Should any amount and/or other assets remain after the statutory obligations have been met or provided for to the satisfaction of the RM that amount and other assets may be transferred only to a company society, or other association of persons or a trust which fulfill the requirements of s. 10(1)(cH) of the IT Act and further provided such transfer has been approved by the Commissioner.

19. AMENDMENT OF THIS DEED

The provisions of this Deed may from time to time be amended by written agreement between the Founder and the trustees with the concurrence of the beneficiary/ies and after the prior approval of the Commissioner thereto.

20. ADAPTATION TO LEGISLATIVE CHANGES

Provided the sole object of the Trust can still be lawfully attained, no change to any relevant legislation regulating or relating to this Trust, its object or its provisions shall have the effect of preventing the Trust from continuing to operate, but insofar as necessary the Trust Deed shall be read and interpreted as if it had incorporated such changes *mutatis mutandis*.

21. CONSEQUENCES FOR NON-COMPLIANCE WITH THE TRUST DEED AND THE PROVISIONS OF SECTION 10(1)(cH)

The Commissioner will apply the provisions of s. 10(1)(cH), (a), (b) and (c) of the IT Act in the case of non-compliance.

THUS done and signed in		on the	day of
	by the Founder.		
AS WITNESSES:			
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		For and on beha	alf of
THUS done and signed in		on the	day of
	_ by the Trustee.		

AS WITNESSES:			
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AS WITNESSES:	by the Trustee.		
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THUS done and signed in		_ on the	day of
	by the Trustee.		9

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STAATSKOERANT, 20 NOVEMBER 2015

No. 39425 23

APPENDIX 2

DEED OF TRUST

(hereinat	ter referred to as the "Founder")
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(the name(s) of the Trustee(s))

1. DEFINITIONS

In this deed, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:

- 1.1 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being inter alia:
- 1.1.1 National Environmental Management Act No. 107 of 1998;
- 1.1.2 Environmental Impact Assessment Regulations, 2014;
- 1.1.3 Financial Provisioning Regulations, 2015;
- 1.1.4 Mineral and Petroleum Resources Development Act No. 28 of 2002;
- 1.1.5 National Environmental Management: Air Quality Act No. 39 of 2004;
- 1.1.6 National Environmental Management: Biodiversity Act No. 10 of 2004;
- 1,1,7 National Environmental Management: Waste Act No. 59 of 2008;
- 1.1.8 National Environmental Management: Protected Areas Act No. 57 of 2003;
- 1.1.9 any applicable Land Use Planning Ordinance or similar instrument;
- 1.1.10 Companies Act No. 71 of 2008; and
- 1.1.11 Income Tax Act No. 58 of 1962,

including all amendments and/or replacements of any such legislation or subordinate legislation, and any other legislation and/or regulations which may be imposed from time to time to control the management of any or all the impacts of mining activities;





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thereto.

1.2	"the beneficiary" means or any other such person as may be agreed to by the beneficiary and the Trustees with the prior written approval of the Minister responsible for mineral resources or, should any person which is a beneficiary (i) commit an act which is or would, if such person were a natural person, be an act of insolvency (as defined in the Insolvency Act 1936), or (ii) be or become financially distressed (as defined in the Companies Act 71 of 2008) or (iii) be declared by a competent court to be insolvent (whether provisionally or finally), then with effect from the date of such event, the Department;
1.3	"the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the Income Tax Act No 58 of 1962 as amended ("the IT Act");
1.4	"the Department" means the Department responsible for mineral resources or its successor from time to time;
1.5	"the Founder" means;
1.6	"the Minister" means the Minister of Mineral Resources or any person to whom the responsibility has been delegated or assigned pursuant to any law for ensuring that, within the Province(s) concerned, adequate financial provision is made for the fulfilment of the Statutory Obligations;
1.7	"the Trust" means the Rehabilitation Trust, a Trust created in terms of the Provisions of clause 3 hereof;
1.8	"exploration operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
1.9	"mining operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act No. 28 of 2002;
1.10	"production operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
1.11	"prospecting operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
1.12	"Statutory Obligations" mean the obligations described in the "Financial Provisioning Regulations, 2015" promulgated in terms of the National Environmental Management Act No. 107 of 1998 and as amended from time to time or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters; and
1.13	"the Trustees" means,, who have agreed to be the first trustees of the REHABILITATION TRUST.
	the first trustees of theREHABILITATION TRUST.
2. R	ECORDAL
2.1	The beneficiary is or is to be, as at the date of this deed of trust, engaging in prospecting,

exploration, mining or production operations on the site approved by the Minister responsible for mineral resources and once issued, updated in line with the right or permit or any amendment

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- 2.2 The beneficiary is legally obliged, at the time of and after the discontinuation of the operations on a mine or part of a mine, to carry out rehabilitation and closure operations to prevent and control pollution at its mining operations in terms of the Acts and Regulations and to bring the area back to an agreed environmental state and to bear the cost of such rehabilitation, prevention and control. The costs to be covered are set out in the Regulations from time to time which, for the avoidance of doubt, exclude any costs which are required for implementing the annual rehabilitation plan as approved by the Minister of mineral resources to be incurred on an ongoing basis during the life of the operations or part of the operations.
- 2.3 For the purpose of making provision for the discharge of the beneficiary's Statutory Obligations, the Founder wishes to establish the Trust to receive, hold and apply such amounts as may be contributed by the Founder and the beneficiary from time to time to provide for the cost of discharging the Statutory Obligations.

3. THE TRUST AND ITS OBJECTS

- 3.2 The sole object of the Trust is to act as the financial provider in whole or part for expenditure which the beneficiary is required to undertake in order to comply with the Statutory Obligations.

4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of ______to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purpose and subject to the conditions of this deed.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this deed.

5. ADMINISTRATION OF THE TRUST

- 5.1 The Trustees shall administer the Trust.
- The Trustees shall not receive any remuneration from the Trust for their services, unless the Trustee is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of trustee services.
- 5.3 There shall at all times be no less than two but no more than ______ Trustees, who shall be natural persons unless the Trustee is a professional fiduciary services company, in which event such company may be the sole corporate Trustee. If the Trustees are natural persons, no more than one of them may, subject to clause 6.4, be in the employ of the beneficiary or any related or interrelated (as defined in the Companies Act No. 71 of 2008) person. The Commissioner in consultation with the Minister responsible for mineral resources may upon application by the Trustees grant approval for more than one natural person who is an employee of the beneficiary any related or interrelated (as defined in the Companies Act No. 71 of 2008) person to be appointed as a Trustee.

- No person may be a Trustee if he or she would not be eligible to be a director of a company under the Companies Act No. 71 of 2008, or has been convicted of any offence involving dishonesty.
- 5.5 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.6 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

6. RESIGNATION OF TRUSTEES

- 6.1 Should a Trustee resign then the remaining Trustees shall immediately appoint a Trustee to fill that vacancy. Should there be a sole corporate Trustee and should such sole Trustee wish to resign, it may do so on 30 days' notice in writing to the Commissioner and the Minister responsible for mineral resources. In such event the Founder shall appoint a new corporate Trustee, or two or more natural persons as Trustees, by no later than the date of resignation of the sole Trustee.
- 6.2 A Trustee may resign at any time on giving 30 days' notice in writing to the remaining Trustees of his or her intention to do so and shall in any case be deemed to have vacated his or her office if he or she is no longer employed by the beneficiary or any of its subsidiaries.
- 6.3 A Trustee shall be deemed to have vacated his/her office if he/she is or becomes ineligible to be a Trustee under this deed for any reason.
- 6.4 Should (i) the remaining Trustee/s not appoint a new Trustee to replace one who has resigned or is deemed to have vacated his or her office within 30 days of such resignation or vacation being effective, or (ii) the Founder not appoint a new Trustee or Trustees to replace a corporate Trustee who has resigned within one month of such resignation being effective, then in either such case the Minister responsible for mineral resources shall be entitled to appoint one or more Trustees hereunder.

7. CHAIRMAN AND VOTING

- 7.1 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.2 Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.
- 7.3 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.
- 7.4 The provisions of this clause 7 shall be held in abeyance if there is a sole corporate Trustee.

8. SECRETARY

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee,

convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

9. MEETINGS AND QUORUM

- 9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present. Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in ______.

 Meetings may be held by telephone or any other electronic medium, provided that each Trustee is able properly to participate in the proceedings using such medium.
- 9.2 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.
- 9.3 The provisions of this clause 9 shall be held in abeyance if there is a sole corporate Trustee, which conduct the business of the Trust as it may deem fit, having regard to the requirements of this deed and the Acts and Regulations.

10. TRUSTEES' LIABILITY

- 10.1 Subject to applicable law, including but not limited to the Trust Property Control Act No. 57 of 1988 (or any amendment or replacement thereof) the Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through the wilful misconduct or gross negligence of any Trustee(s). in which event the Trustee(s) concerned, and not all the Trustees, shall be jointly and severally liable for any such loss.
- 10.2 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by the beneficiary to fulfil the Statutory Obligations or for the sufficiency of contributions and amounts paid to the Trust in terms of clause 14.
- 10.3 The beneficiary hereby indemnifies the Trustees against any claims made against the Trustees arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken the beneficiary to fulfil the Statutory Obligations proving to be ineffective and/or the contributions and/or amounts obtained from it proving to be insufficient.

11. SECURITY BY THE TRUSTEES

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

12. TRUSTEES' POWERS

- 12.1 The Trustees shall have general control over the funds of the Trust and shall strive to attain the sole object which the Trust is established.
- 12.2 The Trustees shall have plenary powers to enable them to achieve the sole object of the Trust.



- 12.3 The Trustees shall receive, hold, and apply the donation in clause 4 and such amounts as may be contributed to the Trust in terms of this deed, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of the Trust's profits or gains to any person and shall use the funds solely for the object for which the Trust has been established.
- 12.4 The Trustees in their personal capacity shall not engage in any trade, undertaking or business of the Trust, nor shall any of them participate in any of the affairs of the Trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as Trustee.
- 12.5 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
- 12.5.1 to deposit with any bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990) and/or to invest, realise and re-invest the contributions made to the Trust and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that they shall be limited to making investments which are capital guaranteed and are made in:
- 12.5.1.1 financial instruments issued by any—
- 12.5.1.1.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- 12.5.1.1.2 long-term insurer as regulated in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);
- 12.5.1.1.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
- 12.5.1.1.4 mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993); and/or
- 12.5.1.2 financial instruments issued by any sphere of government in the Republic which are fully guaranteed out of the National Revenue Fund;
- 12.5.2 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the beneficiary;
- 12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgement debtors;
- 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust: and
- 12.5.6 generally to perform all acts connected with any of the Trust's affairs,

provided that the Trustees shall not be entitled on behalf of the Trust to (i) incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative

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instrument) save for non-interest bearing trade credit incurred in the ordinary course of the Trust's business or (ii) encumber the Trust assets or any of them in any manner whatsoever.

13. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES

- 13.1 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.
- 13.2 The financial statements of the Trust for each financial year (which shall be reckoned from 1 March to 28 February) shall be forwarded by the Trustees to the beneficiary and to the Commissioner and the Minister within six calendar months after the end of each financial year of the Trust.
- 13.3 The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of two of the Trustees and the Secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- All costs charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expenses incurred in any financial year shall be paid or provided for out of the income of the Trust in that financial year. The Founder hereby undertakes to pay or procure the payment of any such costs, charges and expenses which cannot be borne out of the income of the Trust. The Founder shall have no claim against the Trust for any such costs, charges and expenses so paid.
- 13.6 The balance, if any, of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year.
- 13.7 Such net income shall form part of the funds of the Trust and subject to this deed.
- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trust solely for investment in accordance with clause 12.5.1 and the object for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with clause 17.2.

14. COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST

- On an annual basis, the contribution to be made to the Trust (if any) shall be calculated in accordance with the requirements of the Statutory Obligations.
- 14.2 The Founder shall, or shall procure that the beneficiary shall, before the end of its financial year concerned, pay into the bank account of the Trust the necessary contribution to comply with the financial provision approved by the Minister of mineral resources towards the costs of implementing the measures so approved. The undertakings by the Founder in this clause 14 shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.



15. COMPLIANCE WITH THE STATUTORY OBLIGATIONS

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- 15.1 The Trustees undertake to ensure that funds of the Trust shall be used only to allow the beneficiary properly to fulfil the Statutory Obligations. The funds will be placed at the disposal of such beneficiary to carry out the Statutory Obligations as and when so required. In the event that, at any time, the Minister of mineral resources gives notice to the beneficiary and the Trustees that the Statutory Obligations or any of them are required to be fulfilled, and (i) the beneficiary is insolvent, is or has been provisionally or finally liquidated or sequestrated, has been or is placed under supervision for business rescue proceedings, is financially distressed (as defined the Companies Act 71 of 2008, as amended from time to time), or (ii) the Trustees refuse to apply the funds of the Trust (or any applicable part thereof) to allow the beneficiary to fulfil the Statutory Obligations within 3 months of such notice from the Minister of mineral resources or (iii) the beneficiary, having been placed in funds by the Trustees, fails to apply such funds or allow their application in the approved manner to fulfil the Statutory Obligations (or any applicable part thereof) within 3 months of such notice from the Minister of mineral resources, then the Trustees shall, within 30 days of receipt by them of a notice to such effect from the Minister of mineral resources, pay over the funds of the Trust, or such portion thereof as from time to time as is notified to the Trustees by the Minister of mineral resources, to the Minister of mineral resources or his/her nominee in order to allow the Statutory Obligations to be fulfilled by the Minister of mineral resources or his/her nominee in place of the beneficiary. The undertakings in this clause shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.
- 15.2 In fulfilling the before mentioned undertaking the amount made so available by the Trustees will be limited to funds held by the Trust.
- 15.3 Any provision of funds by the Trustees must be approved in advance in writing by the Minister responsible for mineral resources.

16. CESSATION OF MINING ACTIVITIES AND SHORTFALL

- Should the beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) at any mine or part of any mine and/or should the beneficiary be placed into liquidation (whether provisional or final) prior to it having complied with all of the Statutory Obligations, the Founder shall, or procure that the beneficiary shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations and within one month of the beneficiary having been placed in liquidation (whether provisional or final), have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations, including the cost should a third party be required to effect the measures required to meet the Statutory Obligations, also including providing for the remediation and management of latent or residual environmental impacts which may become known in the future, as well as including the pumping and treatment of polluted mine water, which shall be certified and/or approved as required in the Statutory Obligations.
- On or after the date of termination of any relevant mining activities or any liquidation referred to in clause 16.1, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of the beneficiary's account, the Founder shall forthwith pay to the Trust the shortfall.
- 16.3 The undertakings in this clause 16 are stipulations in favour of the Minister responsible for mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

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17. TERMINATION OF THE TRUST

- 17.1 The Trust may only be terminated after all the beneficiary's Statutory Obligations in respect of all its mining operations at any time have been met to the satisfaction of the Minister of mineral resources.
- 17.2 Should any amount and/or other assets remain after all the Statutory Obligations in respect of all the beneficiary's mining operations at any time have been met to the satisfaction of the Minister of mineral resources including remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water, those amounts and other assets should be transferred to a company, society, or other association of persons or a trust which fulfils the requirements of section 37A(3) of the Income Tax Act No 58 of 1962, as amended or replaced from time to time, provided such transfer has been approved by the Commissioner.

18. VARIATION OF THIS DEED

The provisions of this deed may from time to time be amended by a resolution of the Trustees only with the prior written approval of each of the beneficiary, the Minister of mineral resources and the Commissioner.

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APPENDIX 2

DEED OF TRUST

	DEED OF TRUST
Mad	e and entered into by and between
(here	einafter referred to as the "Founder")
AND	
(the r	name(s) of the Trustee(s))
1. 1	DEFINITIONS
! 8	n this deed, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:
1.1	"the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being <i>Inter alia</i> :
1.1.1	National Environmental Management Act No. 107 of 1998;
1.1.2	Environmental Impact Assessment Regulations, 2014;
1.1.3	Financial Provisioning Regulations, 2015;
1.1.4	Mineral and Petroleum Resources Development Act No. 28 of 2002;
1.1.5	National Environmental Management: Air Quality Act No. 39 of 2004;
1.1.6	National Environmental Management: Biodiversity Act No. 10 of 2004;
1.1.7	National Environmental Management: Waste Act No. 59 of 2008;
1.1.8	National Environmental Management: Protected Areas Act No. 57 of 2003,
1.1.9	any applicable Land Use Planning Ordinance or similar instrument;
1.1.10	Companies Act No. 71 of 2008; and
1.1.11	Income Tax Act No. 58 of 1962,

including all amendments and/or replacements of any such legislation or subordinate legislation, and any other legislation and/or regulations which may be imposed from time to time to control

the management of any or all the impacts of mining activities;

GOVERNMENT GAZETTE, 20 NOVEMBER 2015 24 No. 39425 or any other such person as may be 1.2 "the beneficiary" means agreed to by the beneficiary and the Trustees with the prior written approval of the Minister responsible for mineral resources or, should any person which is a beneficiary (i) commit an act which is or would, if such person were a natural person, be an act of insolvency (as defined in the Insolvency Act 1936), or (ii) be or become financially distressed (as defined in the Companies Act 71 of 2008) or (iii) be declared by a competent court to be insolvent (whether provisionally or finally), then with effect from the date of such event, the Department; "the Commissioner" means the Commissioner for the South African Revenue Service as referred 1.3 to in the income Tax Act No 58 of 1962 as amended ("the IT Act"); "the Department" means the Department responsible for mineral resources or its successor from 1.4 time to time: 1.5 "the Founder" means "the Minister" means the Minister of Mineral Resources or any person to whom the responsibility 1.6 has been delegated or assigned pursuant to any law for ensuring that, within the Province(s) concerned, adequate financial provision is made for the fulfilment of the Statutory Obligations; Rehabilitation Trust, a Trust created in terms of the 1.7 "the Trust" means the Provisions of clause 3 hereof: 1.8 "exploration operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002; "mining operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum 1.9 Resources Development Act No. 28 of 2002; "production operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum 1.10 Resources Development Act. 2002: "prospecting operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum 1.11 Resources Development Act, 2002; "Statutory Obligations" mean the obligations described in the "Financial Provisioning 1.12 Regulations, 2015" promulgated in terms of the National Environmental Management Act No. 107 of 1998 and as amended from time to time or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters; and Trustees" "the 1.13 , who have agreed to be the first trustees of the

2. RECORDAL

2.1 The beneficiary is or is to be, as at the date of this deed of trust, engaging in prospecting, exploration, mining or production operations on the site approved by the Minister responsible for mineral resources and once issued, updated in line with the right or permit or any amendment thereto.

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- 2.2 The beneficiary is legally obliged, at the time of and after the discontinuation of the operations on a mine or part of a mine, to carry out rehabilitation and closure operations to prevent and control pollution at its mining operations in terms of the Acts and Regulations and to bring the area back to an agreed environmental state and to bear the cost of such rehabilitation, prevention and control. The costs to be covered are set out in the Regulations from time to time which, for the avoidance of doubt, exclude any costs which are required for implementing the annual rehabilitation plan as approved by the Minister of mineral resources to be incurred on an ongoing basis during the life of the operations or part of the operations.
- 2.3 For the purpose of making provision for the discharge of the beneficiary's Statutory Obligations, the Founder wishes to establish the Trust to receive, hold and apply such amounts as may be contributed by the Founder and the beneficiary from time to time to provide for the cost of discharging the Statutory Obligations.

3. THE TRUST AND ITS OBJECTS

- 3.1 There is hereby created with the approval of the Commissioner a Trust called the REHABILITATION TRUST.
- 3.2 The sole object of the Trust is to act as the financial provider in whole or part for expenditure which the beneficiary is required to undertake in order to comply with the Statutory Obligations.

4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of _______to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purpose and subject to the conditions of this deed.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this deed.

5. ADMINISTRATION OF THE TRUST

- 5.1 The Trustees shall administer the Trust.
- 5.2 The Trustees shall not receive any remuneration from the Trust for their services, unless the Trustee is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of trustee services.
- 5.3 There shall at all times be no less than two but no more than ______ Trustees, who shall be natural persons unless the Trustee is a professional fiduciary services company, in which event such company may be the sole corporate Trustee. If the Trustees are natural persons, no more than one of them may, subject to clause 6.4, be in the employ of the beneficiary or any related or interrelated (as defined in the Companies Act No. 71 of 2008) person. The Commissioner in consultation with the Minister responsible for mineral resources may upon application by the Trustees grant approval for more than one natural person who is an employee of the beneficiary any related or interrelated (as defined in the Companies Act No. 71 of 2008) person to be appointed as a Trustee.

- No person may be a Trustee if he or she would not be eligible to be a director of a company under the Companies Act No. 71 of 2008, or has been convicted of any offence involving dishonesty.
- 5.5 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.6 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

6. RESIGNATION OF TRUSTEES

- 6.1 Should a Trustee resign then the remaining Trustees shall immediately appoint a Trustee to fill that vacancy. Should there be a sole corporate Trustee and should such sole Trustee wish to resign, it may do so on 30 days' notice in writing to the Commissioner and the Minister responsible for mineral resources. In such event the Founder shall appoint a new corporate Trustee, or two or more natural persons as Trustees, by no later than the date of resignation of the sole Trustee.
- 6.2 A Trustee may resign at any time on giving 30 days' notice in writing to the remaining Trustees of his or her intention to do so and shall in any case be deemed to have vacated his or her office if he or she is no longer employed by the beneficiary or any of its subsidiaries.
- 6.3 A Trustee shall be deemed to have vacated his/her office if he/she is or becomes ineligible to be a Trustee under this deed for any reason.
- Should (i) the remaining Trustee/s not appoint a new Trustee to replace one who has resigned or is deemed to have vacated his or her office within 30 days of such resignation or vacation being effective, or (ii) the Founder not appoint a new Trustee or Trustees to replace a corporate Trustee who has resigned within one month of such resignation being effective, then in either such case the Minister responsible for mineral resources shall be entitled to appoint one or more Trustees hereunder.

7. CHAIRMAN AND VOTING

- 7.1 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.2 Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.
- 7.3 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.
- 7.4 The provisions of this clause 7 shall be held in abeyance if there is a sole corporate Trustee.

8. SECRETARY

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee.

convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

9. MEETINGS AND QUORUM

- 9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present. Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in ______. Meetings may be held by telephone or any other electronic medium, provided that each Trustee is able properly to participate in the proceedings using such medium.
- 9.2 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.
- 9.3 The provisions of this clause 9 shall be held in abeyance if there is a sole corporate Trustee, which conduct the business of the Trust as it may deem fit, having regard to the requirements of this deed and the Acts and Regulations.

10. TRUSTEES' LIABILITY

- Subject to applicable law, including but not limited to the Trust Property Control Act No. 57 of 1988 (or any amendment or replacement thereof) the Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through the wilful misconduct or gross negligence of any Trustee(s), in which event the Trustee(s) concerned, and not all the Trustees, shall be jointly and severally liable for any such loss.
- 10.2 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by the beneficiary to fulfil the Statutory Obligations or for the sufficiency of contributions and amounts paid to the Trust in terms of clause 14.
- 10.3 The beneficiary hereby indemnifies the Trustees against any claims made against the Trustees arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken the beneficiary to fulfil the Statutory Obligations proving to be ineffective and/or the contributions and/or amounts obtained from it proving to be insufficient.

11. SECURITY BY THE TRUSTEES

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

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- 12.2 The Trustees shall have plenary powers to enable them to achieve the sole object of the Trust.

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- 12.4 The Trustees in their personal capacity shall not engage in any trade, undertaking or business of the Trust, nor shall any of them participate in any of the affairs of the Trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as Trustee.
- 12.5 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
- 12.5.1 to deposit with any bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990) and/or to invest, realise and re-invest the contributions made to the Trust and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that they shall be limited to making investments which are capital guaranteed and are made in:
- 12.5.1.1 financial instruments issued by any-
- 12.5.1.1.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- 12.5.1.1.2 long-term insurer as regulated in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998):
- 12.5.1.1.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
- 12.5.1.1.4 mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993); and/or
- 12.5.1.2 financial instruments issued by any sphere of government in the Republic which are fully guaranteed out of the National Revenue Fund;
- 12.5.2 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the beneficiary;
- 12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgement debtors;
- 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and
- 12.5.6 generally to perform all acts connected with any of the Trust's affairs,

provided that the Trustees shall not be entitled on behalf of the Trust to (i) incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative

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- 13.3 The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of two of the Trustees and the Secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- All costs charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expenses incurred in any financial year shall be paid or provided for out of the income of the Trust in that financial year. The Founder hereby undertakes to pay or procure the payment of any such costs, charges and expenses which cannot be borne out of the income of the Trust. The Founder shall have no claim against the Trust for any such costs, charges and expenses so paid.
- 13.6 The balance, if any, of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year.
- 13.7 Such net income shall form part of the funds of the Trust and subject to this deed.
- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trust solely for investment in accordance with clause 12.5.1 and the object for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with clause 17.2.

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- 14.2 The Founder shall, or shall procure that the beneficiary shall, before the end of its financial year concerned, pay into the bank account of the Trust the necessary contribution to comply with the financial provision approved by the Minister of mineral resources towards the costs of implementing the measures so approved. The undertakings by the Founder in this clause 14 shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

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- 15.1 The Trustees undertake to ensure that funds of the Trust shall be used only to allow the beneficiary properly to fulfil the Statutory Obligations. The funds will be placed at the disposal of such beneficiary to carry out the Statutory Obligations as and when so required. In the event that, at any time, the Minister of mineral resources gives notice to the beneficiary and the Trustees that the Statutory Obligations or any of them are required to be fulfilled, and (i) the beneficiary is insolvent, is or has been provisionally or finally liquidated or sequestrated, has been or is placed under supervision for business rescue proceedings, is financially distressed (as defined the Companies Act 71 of 2008, as amended from time to time), or (ii) the Trustees refuse to apply the funds of the Trust (or any applicable part thereof) to allow the beneficiary to fulfil the Statutory Obligations within 3 months of such notice from the Minister of mineral resources or (iii) the beneficiary, having been placed in funds by the Trustees, fails to apply such funds or allow their application in the approved manner to fulfil the Statutory Obligations (or any applicable part thereof) within 3 months of such notice from the Minister of mineral resources, then the Trustees shall, within 30 days of receipt by them of a notice to such effect from the Minister of mineral resources, pay over the funds of the Trust, or such portion thereof as from time to time as is notified to the Trustees by the Minister of mineral resources, to the Minister of mineral resources or his/her nominee in order to allow the Statutory Obligations to be fulfilled by the Minister of mineral resources or his/her nominee in place of the beneficiary. The undertakings in this clause shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.
- 15.2 In fulfilling the before mentioned undertaking the amount made so available by the Trustees will be limited to funds held by the Trust.
- 15.3 Any provision of funds by the Trustees must be approved in advance in writing by the Minister responsible for mineral resources.

16. CESSATION OF MINING ACTIVITIES AND SHORTFALL

- Should the beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) at any mine or part of any mine and/or should the beneficiary be placed into liquidation (whether provisional or final) prior to it having complied with all of the Statutory Obligations, the Founder shall, or procure that the beneficiary shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations and within one month of the beneficiary having been placed in liquidation (whether provisional or final), have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations, including the cost should a third party be required to effect the measures required to meet the Statutory Obligations, also including providing for the remediation and management of latent or residual environmental impacts which may become known in the future, as well as including the pumping and treatment of polluted mine water, which shall be certified and/or approved as required in the Statutory Obligations.
- On or after the date of termination of any relevant mining activities or any liquidation referred to in clause 16.1, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of the beneficiary's account, the Founder shall forthwith pay to the Trust the shortfall.
- The undertakings in this clause 16 are stipulations in favour of the Minister responsible for mineral resources, the benefits of which may be accepted by him/her in any manner and at any time/

STAATSKOERANT, 20 NOVEMBER 2015

No. 39425 31

17. TERMINATION OF THE TRUST

- 17.1 The Trust may only be terminated after all the beneficiary's Statutory Obligations in respect of all its mining operations at any time have been met to the satisfaction of the Minister of mineral resources.
- 17.2 Should any amount and/or other assets remain after all the Statutory Obligations in respect of all the beneficiary's mining operations at any time have been met to the satisfaction of the Minister of mineral resources including remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water, those amounts and other assets should be transferred to a company, society, or other association of persons or a trust which fulfils the requirements of section 37A(3) of the Income Tax Act No 58 of 1962, as amended or replaced from time to time, provided such transfer has been approved by the Commissioner.

18. VARIATION OF THIS DEED

The provisions of this deed may from time to time be amended by a resolution of the Trustees only with the prior written approval of each of the beneficiary, the Minister of mineral resources and the Commissioner.

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							For and	i on behalf	of		
THUS	done	and	sig	ned in by the	Truste	e.		on	the	 day	of
AS W	ITNESS	SES:									
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No. 39425 GOVERNMENT GAZ	ZETTE, 20 NOVEMBER 2015	
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For and on behalf of





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. 1T 7563/2007

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

Yours faithfully

ATHE REGIONAL MANAGER
DEPARTMENT OF MINERAL RESOURCES

DATE: ALLE

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mineral resources

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 (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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"OAKBAY GROUP" SHAREHOLDING

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BN/70/800S	A	Wayne Basil Britz		1	
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2016/03/07	A	Ashu Chawla	Second	Confident Concepts (Pty) Ltd	5
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2016/08/11	8	Varun Gupta			
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2016/04/15	A	Trevor William Scott			
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			Mike Frank Flemming	Я	11/80/6661
	-		John Hume Scholes	ਬ	
		j	Dean Roy Cunningham	Я	2002/02/30
			Peter Edwin Skeat	Я	60/90/£00Z
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7	Shiva Uranium (Pty) Ltd	rifilewT	Mduduza Joseph Mtshali	A	2016/11/24
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			Michael Boyd Scott	Я	10/60/0102
			Michael Solomon Teke	Я	2012/11/22
			Miungisi Kwini	Я	2010/11/26
			Thomas Ignatius Borman	심	2010/11/26
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	1		Peter Kennedy		
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	/ `\		Jagdish Rassikghandra Parekh	Я	72/11/27
	`~'		Ashu Chawla	뇝	2014/11/06
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	1		George Peter van der Merwe	A	Z017/03/07
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	~		Terence William Rensen	A	\$2/60/ * L02
	[(Pty) Ltd) ⁻		Buduzile Jaqueline Myamane	Α	2014/09/26
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			Ravindra Vlath	Я	2006/06/13
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			Pahadia Rajeneesh	Я	\$1/60/600Z
			Abdul Wahab Jaffer	Я	2006/06/13
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6	Oskbay Investments (Pty) Ltd	rbriiV.	Ashu Chawla	A	71/60/600Z
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2016/08/25	8	Duduzani Zuma				
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2008/02/07	Α	Ravindra Nath	rltnaetxi2	Tegeta Resources (Pty) Ltd	91	
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20/20/6002	A	Ravindra Math	Fifteenth	idwala Coal (Pty) Ltd	121	
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2006/07/30	A	Ronica Ragavan				
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61/10/2102	В	Nazeem Howa		<u></u>		
2009/10/19		Rajeneesh Pahadia				
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2010/04/14	Я	Daniel Jean Mortier				
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2008/08/15	<u> </u>	Savannah Maziya Robert van Niekerk				
10/90/007	A	Sandile Donald Sungu				
20/01/04/14	A	Kazunori Yoshimura Sandile Donald Zungu				
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0	2010/02/19		Rajeneesh Pahadia			
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			Kevin Wentworth Eugene			-





Account Opening Feron Non-menunch

APPLICATION TO OPEN ACCOUNT (NON INDIVIDUAL)

Branch: TOHANNESBURG	920101935		
WE KOORNFONTEIN REHABILITATION TRUST	1		
Name of the Company / Close Corporation / Trustetc)	225733		
and its Stractors / Partners / Proprietor/ Trustees			
1 PULHABVENT UGELHAL GOVENDER			
2 TREVOR WILLIAM SCOTT			
8 ALTHAF EMMAMALLY			
4			
5			
à L			

(histelnatter referred to as "the Applicants") hereby request and agree with Bank of Banda (hereinatter referred to as "the Bank") they

A Corrent account be opened at the Bankin the Marie of

KOORNFONTEIN REHABILITATION TRUST

- We shall, from thing to line appoint and authorize officials to sign all documents on our behalf and the Bank shall be advised of amendments and for additions to the authorized signatories, which will likewise be binding in writing and duly signed, on the ġ. speropriste bank folm.
- Ġ. The authorized officials may sign all documents in connection with any transaction between the Applicant and the Bank;
- The Applicantis) undertake to pay all the Bank charges and interest which the Bank may from time to this levy in accordance with general banking practice. Should the said account stary stage become overdrawn, the applicant undertakes to pay the Bank on demanding anount with which the eccept is overdrawn. For this purpose the applicant shell accepts that a certificate issued by any Manageriol the Bank shall constitute prima facts proof of any amount and the corrections thereof that the Applicant owns the Bank. It shall not be necessary for the Bank to prove the appointment of such Manager. Ď.

The teams set out about will be bloding on the applicant to estrict of all transactions between the autilicants it respect of the applicant's accounts.

- The terms and conditions mentioned bereunder will, in addition to like above leave, be applicable should the Bank open such air
 - All chaques, equisition and withdrawal stips, payment and transfer instructions and other decuments which responsibly purport 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 deamed to be proper instruction to the Bank;
 - The Applicant admits that the Benk will not be childed 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 Benk for the 'Overdoot floorities'. Should the account become so overdown, the Applicant undertakes to pay the amount with which the
 - Coverdant sommes, sommes and massessing become no overdayer, the Approximationages to pay pre amogen, who which me account hab been relativistic the Beart, and defined; Should the Beart permit any withdrawers against uncleared effects, the Beart will be entitled to debtit the applicant's account with sight will drawers, and or distinct permit of the permit with account of the Beart permit withdrawers against uncleared effects, such opening by the Beart will not be deemed to create a practice;
 The applicant uncleared effects, such opening by the Beart will not be deemed to create a practice;
 The applicant uncleared effects against costs and interest the Beart may in general charge from time to time on this class.

 - the Sally reserves the right to charge the rais of Interest and any other condition relating to the account from those to lime subject, however, to the maximum rates prescribed from time to time in terms of the Usury Act, Act 73 of 1968 as amended.
 - -stappers, more can be measured as a support of the appoint be instituted against the applicant, by the Bank, the applicant undertakes for pay all legal costs, including collection costs, as between an atterney and own client. The applicant consents to the jurisdiction of the Magistrate's count incorporate of the amount in dispute and ofigees for purposes hereof as d'originally and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue and ofigees for purposes hereof as d'originally avenue.



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The applicant undertakes to take seasopable precautions in order to prevent the theft or loss of any cheque hook, forms, abcuments sistemoniate to the applicant in connection with the account. Should such cheque toof, form or document be stoler on its, the applicant undertakes to indreadately inform the Bank in writing.
 Should substitute 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 chaques or revoke the payment instructions. Should such learned on, nevertheless the given because of any reason whetever and be accepted by the Bank and the Bank subject to perform unto a third party in terms of the quarantee inherent to such cheque, the Applicant accepts Ribbilly for any such payments notwithstanding such instruction.
 The Bank de-well as any division, editabled or subjection and any superments notwithstanding such instruction.
 The Bank de-well as any division, editabled or subjection and any superments arising from or as a result of this application, as well as the partonname of compliance in respirate to the any side bureau or other banken.
 Any and it balance on any of the Applicant to the Bank.

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

DECLARATION/UNDERTAKING

- L/ We undertake that any money deposited in the account is beneficially owned by melus for the business and that no part nor all old is associated with illegal/canaload activity and that consequent in the money does not constitute money laundering.
- If Wedeclare that should there be easy change in the direction at ance of my four business or change in my four personal details. If Wew ould inform the Bankabours ich changes probably.

<u>ay of MA7</u> 2016.
2. Signature:
Name:
4. Olginature : 355
Name:



LETTER OF INDEMNITY FOR FAX / EMAIL INSTRUCTIONS

The Branch Head Bank of Baroda TOH AN NESBURGEranch

Account Number:	92020200000519
Account Name:	KOORNFONTEIN REHABILITATION TRUST

In consideration of your agreeing to accept from us, advitisfeading the James of the relevant mandals, from tinks to time their colors purporting to come from us in form of fact-imitelembil not bearing an original signature (flowddemailed instructions) in election to our account(s) referred to above without requiring written confirmation in respect of any faced greated instruction prior to acting thereon, we

- 4.
- We are aware of the possible date involved in connection with the giving of any fated/emailed instruction and have taken note of, and according any are taken and according and according and according and according and according and according and according any fated and according any fated according to a series of the mandate for the above accounts and our state on the liable for acting in good failth on faxed emailed instructions, which emanate from unsuthorized individuals. 2 or in any circumstances what spever.
- 3
- 4.
- or in any circumstances what speed in protection is between the colors, which contains non the reasonable opinion of in the case of any faxed emailed instructions, your Bank may refuse to and it such instructions are not in the reasonable opinion of your Eank, sufficiently clear to be mist excutately, and, insuch event, your Bank shall be entitled not to set upon such instructions until it has established to be reasonable satisfaction the pension delaits of those instructions. In particular, the case of which is person or persons giving any faxed emailed instructions purportedly made on under any eight to deal the identity of the person or persons giving any faxed emailed instructions. Any transaction made including without institution any request for change of address, confliction in behalf instruction, any expension any eight person of the payment of changes; purportedly made on any expension of instruction any request for change of address, confliction in the instruction any expension and towards and towards on the business shall be binding upon us which each case with or without operationably, from high person of the mandate and towards of orther businesses any upon which based emailed instructions against the accordance with the terms of the mandate and towards or the businesses and process and expension with the terms of the mandate and towards or the businesses and process and expension with the terms of the same as either threathy or any expension of indirection with your acceptable or incurred by your and which shall have assess either threathy or indirectly of or in coloration with your acceptable of incurred by your and which shall have assess either threathy any or resolve this letter of indemnity signed by ensuthers and officer(a). 5
- €.
- 7.

INWITNESS whereast this letter indefaulty transition duly executed by 4s this 05th day of MAY 2016
Signature and Manae
For and conspiration KCORNFONTEIN: REHABILITATION TRUST

IMPORTANT NOTICE

gafa La veg komu ta, heribida Maradala

Existomess should consider the possible risks inhemician the gluing of instructions by fiscalmitelentali. Non-prightal signatures on the facilities are not provided to the construction of the control o authorization.

Signature and Name: KOPRNFONTEIN REHABILITATION TRUST For and on-behalf of:_







- 1) Name of the Company/Close Corporation/Trust: KOO R N FON TEIN REHASILI THID N TRUST
- 2) Date Established: 26 TUNE 2007
- 3) Nature of the business: REHABILITATON TRUST.
- 4) Ownership: Locally / Foreign Owned Business / USA swined entities LOCALLY
- 5) Name of the holding Company, TEGETA EXPLORATION AND RESOURCES FTY LID.
- 6) Business Registration Number: IT 7563/2007
- 7) Income Tax Number: 0005/SIA/14/9
- 8) VAT Registration Number: NOT REGISTERED
- 9) Contact Person: WAESHNI GOVENDERDesignation: TRUSTEE

Telephone No. (01() 430 7640 Cell Number 082 858 6085

- 10) Source of Funds: CONTRIBUTION BY COMPANY FOR REHABILITATION AND INTEREST INCOME.
- 11) Annual Tumquer APS 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, frereby declares that the above information is fole 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 seknowledge that the bank will act upon the information given

1) Name and Signature:

Branch

(PUSPAVENT UGESHNI GOVENDER)

2) Name and Signature:

Name and Signature;

(TREVOR WILLIAM SCOTT)

(Authorized Signatories)



(Authorized Signatories)

<u>1h</u>	case USD Owned Emittes NOT APPLICABLE			
a')	Registration / Incorporation Address (Including Town and country of incorporation)			
6.4	4.25.2			
b)	Pennanent Addresis			
c)	Correspondence Address			
	0			
d)	Power of Attorney given to or received from USA person (give details)			
4,	Total of Patolines given to or received front dark person (give details)			
e)	USA telephone No.			
f)	USA Global Intermediary Account No (G[IN)			
σì	USÁTÍN No.			
h)	Type of Financial Institutions (Bank, Asset IVianagers, etc.)			
i)	Industry Sector			
j)	Any existing account maintained with other branches of Bank of Baroda, if yes provide details			
	No.			
1				
inst	e understand Bank of Baroda is a USA Foreign Tax Compliance Act (FATCA) complied financial nution and transactions in USA owned accounts shall be shared with the appropriate government ney as per the US FATCA Act:			
1)	Namos and Signature: GOUSHPAVENI UGESHNI GOVENDER			
2}	Name and Signature: (TREVOR WILLIAM SCOTT)			

P11-29 BJ 04 33mr3 60-}

Tel: •2 11 262 33+0 Email I for, ecP-1<:011



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

Letter No. 2016/002KFN

Date: 04th 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. Koornfontein Mine (Ply) 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.
- 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 ubove 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;
- d) 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
- c) 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

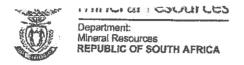
Copy forwarded to The Minister, Department of Mineral Resources, Head Office, Pretoria for Information.

/· *I*/

Authorised Signatory

Directors And (# 24 And And 7 Br And (# 25)





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 04th May 2016 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 "Koomfontein Rehabilitation Trust" (Trust No. IT 7563/07) for concurrent rehabilitation of the mine, However ensure that the following are to be considered;

- 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 OF ICE OF MINERO



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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 Koornfontein.

However, new documents seen by amaßhungane not only confirm that Tegeta, owned by the Guptas, Duduzani Zuma and partners, attempted a brazen raid of the Koornfontein rehabilitation trust, and that in an unprecedented move, the DMR gave the Gupta-owned mine permission to access Koornfontein's R280million 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

Documents show that on May 4, Tegeta wrote to the DMR requesting permission to access the funds of the Koornfontein 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/8x0duyxqt631bpk/AAAw1ucVc3PeauZ238mrkuPna2dl=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 (Nerna), whether for concurrent rehabilitation or any other

Funds are to be used for rehabilitation at or after closure only," explains Mellssa Fourle, 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 purpose

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 Koornfontein already has under law," Fourle points out.

"The crux of the request is that Tegeta is requesting DMR to approve an interest-free loan from the Koornfontein 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, loel 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 Koormontein'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 falled to access the R1.47 billion in the Optimum Mine Rehabilitation Trust, Tegeta seemingly turned its attention to Koornfontein's R280 million rehabilitation fund.

"Despite the fact that the Koornfontein 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 Koornfontein'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 Koornfontein'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.



(http://www.amabhungane.co.za)

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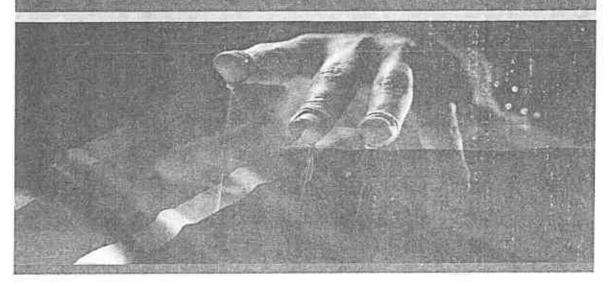




STATE OF CAPTURE

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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A Report of the Public Protector



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 find 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





JH8/OPE/2016-17/

Date: 05th October 2016

To Whom IT May Concern

This is to certify that OPTIMUM MINE REHABILITATION TRUST, Registration No. 17/13693/07, is maintaining following accounts with us.

Time the second second		
Account Number	Outstanding Balance	Remarks
	as on 05.10.2016 (am	
	In ZAR Mn)	
92020200000524	9.338 316 18	
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	92020300000653 92020300000654	as on 05.10.2016 (am ln ZAR Mn) 92020200000524 9,338,316.18 92020300000653 500,000,000,000 92020300000654 500,000,000,000

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

Johannusburg Bronch, Sandton Cay Twic Tuwora, Call Yring, 24 Fbas Sendion, Johannesturg, Point-lier of Solah Alice Prone + 27-11 73567 (5/2), Fex +27-11 7840768, Burell joburg/sbanke/berode com, vren banke/barode com

7 N



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@spoornet.co.za;

trevor@bearingway.co.za ben.theron@outa.co.za

Cc: 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

PUR 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.

1

Regards,



00

Soretha Venter

Senior Legal Advisor soretha.venter@outa.co.za Office: 0871700639

Cell: 0718691959

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25 August 2017

To: The Trustees of the Optimum Mine Rehabilitation Trust

(Registration No IT/13693/07)

The Trustees of the Koomfontein 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

- 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.
- 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.

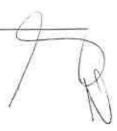




- As you are aware, all mining rights holders are obliged to comply with the requirements of the Mineral and Petroleum Resources Development Act 28 of 2002 ('the MPRDA') and the National Environmental Management Act 107 of 1998 as amended ('NEMA'). A critical provision is what is now contained in section 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 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.
- 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 Koomfontein 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'.
- 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, Koornfontein 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 tact in circumstances where according to OUTA's investigations, the Guptas





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 Koomfontein 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.





- 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 in the event of any queries.
- 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



Tracy Erasmus

From:

Soretha Venter <soretha.venter@outa.co.za>

Sent:

25 August 2017 20:39

To:

seipati.dlamini@dmr.gov.za; mosebenziz.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

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,

Subject:

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 PLORATION 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,

00



Soretha Venter

Senior Legal Advisor soretha.venter@outa.co,za Office: 0871700639

Cell: 0718691959

OUTA - Organisation Undoing Tax Abuse

www.outa.co.za





Hillview Building, 318 Oak Avenue, Randburg PO Box 2627, Northriding, 2162 +27 (87) 170 0639 - info@CUTA.co.za 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

- 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 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 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





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

- 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.



- 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 Koomfontein 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.
- 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.





Against the background of the likely imminent closure of the Baroda accounts in 19. 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

- The Minister is ultimately responsible for the security of these funds. This is in terms 20. of the Constitution and in terms of the MPRDA and NEMA.
- in light thereof. OUTA hereby requests the following information from the Minister: 21.
 - Confirmation that the Koornfontein and the Optimum Mine Rehabilitation Trust 21.1 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.
 - If no such confirmation can be provided, full details are required relating to 21.3 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.
 - What arrangements are in place or are being made to the satisfaction of the 21.5 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:
 - Whether the financial provision for rehabilitation will be retained under 21.6.1 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.
 - Has any entity lodged a request for consent in terms of section 11 of the 21.7 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 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 <u>soretha.venter@outa.co.za</u> 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







वैक ऑफ़ बड़ीदा Bank of Baroda

JH8/OPE/2016-17/

Date: 05th October 2016

To Whom IT May Concern

This is to certify that OPTIMUM MINE REHABILITATION TRUST, Registration No. 17/13693/07, is maintaining following accounts with us.

Type of Account	Barring Street		
Type of McCount	Account Number	Outstanding Balance	Remarks
		as on 05.10,2016 (am	ŀ
		in ZAR Mn)	
Current Account	92020200000524	9,338,316.18	
Fixed Deposit Account	92020300000653	500,000,000.00	at
Fixed Deposit Account	92020300000654	500,000,000.00	-
Fixed Deposit Account	92020300000655	461,000,000.00	

Account is operative and active.

This certificate has been issued at the request of OPTIMUM MINE REHABILITATION TRUST without any risk or responsibility of the bank or any of its officers.

(SHAIKH RAUF)

SENIOR BRANCH MANAGER



Johannesburg Branch, Sancton Cay Twin Towers, Cast Yis-p. 2-f Fixer, Sanction, Johannesburg, Frenchic et tis en Abest Phone +27-11-7846/15/22, Fex +27-11-7840/e8, Empit plumpliciseko/bereda com, vrant bankt/fbereda.com M

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EDITOR'S CHOICE

Guptas sue Bank of Baroda in attempt to stop account closures

Aug 17 2017 07:51 Rense Benerchis and Anto Antony, Bloomberg

Johannesburg - Companies controlled by the Gupta 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

A number of companies forming part of the Guptacontrolled Oakbay Group "are presently involved in litigation against the Bank of Baroda concerning its unlawful altempts 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

The deadline for the closure of the accounts has been extended to the end of Saptember 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 lo 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," Naldoo 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 Bardays 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. Madonsels 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 Mumbal-based spokesperson for Bank of Baroda outside office hours went unanswered,



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Guptas said to have found alternative after Bank of Baroda snub

Aug 15 2017 18:28 Anto Antony and Renes Bonorchis, 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 Mumbal 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 tast 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



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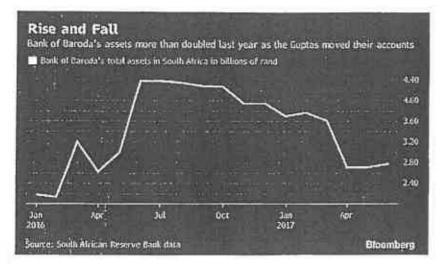
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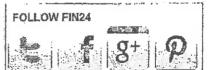
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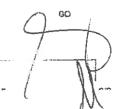
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MONEY CLINIC

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, Koomfontein 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

Contact:
Oakbay Investments
corpcomm@oakbay.co.za



 $C2^{1}$

From: corp comm < corpcomm@oakbay.co.za>
Sent: Wednesday, August 23, 2017 2:22 PM

Commence of the Commence of th

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, Koornfontein and Optimum Coal Terminal acquisition.

Ends

Contact:
Oakbay Investments
corpcomm@oakbay.co.za



Politics

Mining funds intact for Gupta operations, says Zwane



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 Koomfontein 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 Koomfontein 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.

1/2

9/13/2017

Mining funds intact for Gupta operations, says Zwane

Outa 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
Office: 0871700639
Cell: 0718691959
OUTA - Organisation Undoing Tax Abuse
www.outa.co.za

From: Ronica Ragavan [mailto:ronica@oakbay.co.za]

Sent: Friday, 01 September 2017 11:53 AM

To: Soretha Venter <soretha.venter@outa.co.za>; Reshma Moopanar <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.



Ronica Ragavan

Acting Group CEO

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

From: Soretha Venter [mailto:soretha.venter@outa.co.za]

Sent: Friday, 25 August 2017 8:39 PM

To: 'ronicar@oakbay.co.za' <ronicar@oakbay.co.za'; 'ugeshnin@sahara.co.za' <ugeshnin@sahara.co.za'; 'althafe@spoomet.co.za'; 'trevor@bearingway.co.za'

<a href="mailto: 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

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





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



,7/6/2017

salbay.co.za Mail-KOORNFONTEIN REHABILITATION TRUST



9.



808:SA:2017-18/63

Date: 05.07.2017

KOORNFORTERN REHABILITATION TROST Graythen Ridge Office Park 140 Ketherines Street Sendron, Jahannesburg Bepublic of Scuth Africa

Deor Sir,

ROLED OR RELATION REMARKS TRUST - STUDIOS TRUS

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

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

- all deposit accounts such as savings, current and other deposit accounts which are in operation will be deacthrated on 13th July, 2017;
- all advance scrounts, If any, be settled not later than 30th September 2017;
- More-fund based facilities, if any, should be supported by 100% cash margin in the respective current account.

- bring

Chief Executive (Act.)

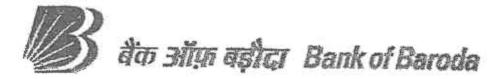
Territory Offices Services City Twin Towards, East Wing, Sho Fixor, September Johannesburg, Republic Of South Africa Tel No. 127 11 784 0715 / 20. 427 11 784 0735 (D), Email: ce.se@uarhoftbercda.com

Johannesburg Branch: Sendron Cay Turn Yowers, Sest Wing, And Floor Sandron, Jestimostoria. Republic Ci Sculti Africa. Phone: +27 11 784 07 15 / 23, Floor +27 11 784 0759, Sinse John phone: +27 11 784 0759, Sinse John phone: +27

a 10

7/6/2017

oakbay.co.za Mali - OPTIMU MINE REHABILITATION TRUST



BOB-SA-2017-18/06

Date: 06.07.2017

Optiesure mines rehabilitation trust Grayston: Budge office park 145 Batherine Storet Sakuton. Loharneskurg

Dear Sir.

Sec OPPHAGE LANGE REMAINING TRUST - 9207 OFFICE AND A

You are aware that the firm/group, for quite some time, has been in the news and has been attracting adverse problety 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 avait.

in the circumstances, bank has no other option except to severe all he ties with the firm. Therefore, please be informed that

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

Yours cincorely,

__(District K. Sha)
Chief Executive (Act.)

Territory Office: Sandron City Tren Towner, East Virry and Floor, Sundron, Johannesburg, Republic Of South Africa Tel Nov. +27 11 784 0715 / 32, +27 11 784 0735 (D). Emer. on Sadibankolbando.com

Johanniashurg Branch: Sancton Cey Twin Towers, East Ping. 2nd Pitter, Sanmort, Johanniaburg, Republic Of Study Africa. Phona: 427 11 764 0715 739, Fait; 427 11 784 0759, Emait joburgiftusckioftaxodo.com, Website www.banko/boroda.com

	OPTIMUM & KOORNFONTEIN GROU			1		
A	LOCALLY CONTROLLED BANKS	CONTACT NUMBER	Equal			
2		0861030351	zinthwasmenninsincznbank co.72	Sent documents, o-mail address decan work, Called bank doesn't offer corre- accounts. Therefore anable to assist.	nt .	Notes
2		0114073000 0860102043	intoPhidventhanicm.co.co	rannot assist.		
4	The second secon	0112021808 & 0873112111	cilenteare@capitachonic.co.za unid me they can do it over the prone/wo and don't have a email adress for that	Do not offer transactional banking	Herd to complete application form online	
5	Grindred Bank Limited	0114591860	no answer	Apply unities and they will review Do not offer transactional banking		
5	Insertec Bank Limited	0124178300	peledi.mokeciane@linvestec.ca.za	not be able to picule any accounts		
7	Nedbark Limited	0860553333	hushess@pectrople.co.za	Is not in a position to accede to our trouct, as it is not within Netbank's risi		
a	Saslin Bank Limited	0124256251 & 0878501325	กสครั้นวิวาทีต.ออก	Not in a position to accept business from our company		
3	The Standard Bank of South Africa Limited	0869129000	Information@standardbonk.co.12	unable to conclude establishing business		
10	DEANK Umited	0115185000	exlicentre@phank.co.ta	Sant request, Received a reply stating that Thapelo from Ubank to assist. Thapelo Where not in the office ,	Phoned so answer	Phoned still no answer . Keeps on being cut off
В	FOREIGN CONTROLLED BANKS					- and encost
1	ABSA Bank Limited	0850040302	phone or on the web	Apply anilne and they will raview	Need to Apply ariline	
2	Albaraka Bank Limited	0860225786	gustomerservices@albarato.co.za	To much risk involved with our companies so they will not open accompanies		
3	Habib Overseas Bank Umited	0118347441	habib@nabib.overseas.co.to	Cannot assist		
A	HBZ Barjk Limiteri	031267440	\$25000@hbjbenk.co.zz	Do not want to open accounts with our company		
· .—	Mercantile Back Limited	0118020900	niscorus@mercentile.co.za & stvayskeli@mercentile.co.za	Cannot sissist		
6	The South African Bank of Athens Limited	0861102205	cutiomerrare@bankolarlusas.co.zo	Do not want to open accounts with our company		
=	BRANCH OF FOREIGN BANKS					
1	Bank of Barcida	0117840735	jobing@bankolbaroda.com & jobing@bankolbaroda.com	Called - consultant sent all does		
3	bank Of China Umited Johannesburg Branch (trading as Bank Of China Johannesburg Branch) Bank of India	U£15209600 D£188399QZ	hosiph@hor.co.ra	required, Need complete documents.Walting for feedback		
	SHI ON BIL (S) MAG	MITOGRAPHIC	al as significated Considerant and local			
4	Bank of Talwan South Africa Granch	0118206000	014@barts.co.ze	Called - no answer. Will follow up and e- mail the requeal. Lines open at \$700	Called gave a new email advess	Phoned still no feathark, Keep on getting a new person to talk to
5	RNP Paribas SA	0110887167	no insuer	Called - no unswer, Will follow up and e- mail the request-lines open at \$100 still no answer	Still no answer	Still go answer
_	Cepára Bank	08022125526	<u>Іннезн≅езпана́ранік, сонт.</u>	Called 011 754 3771. Still No asswer,	Still co answer	Stilt no answer fro
7	China Construction Bank Corporation - Johannesburg Branch	0136369111	inhfi@standardbank.cu.za	cannot assist.		both no
ā	Cithent, M.A.	01,1541080.1 0800 02 24 B4	phasia tomorraw lines closed	Called - need to contact Renaldo. E-	Phoned sgain .Still no answer from flenside	Phoned again, 200 ao answer from Renaldo. Got I new no for him sill no answer ,019440530
19	Dzułsche Sank AG	0117757800	phone tomorrow lines closed	Called - not a retail bank. Therefore		
10	HSBC Bank plc - Johunnesburg Branch	0116764200		Unite to Select. Called - Unable to assist in opening account (fleason: "URG is being delisted and bank can't assist with the nature of your business")		
31	ickì Bank Umited	01.16767600		o not offer transactional banking		
12	JPMorgan Chase Bank, N.A. (Johannesburg Branch)	0115070900		Called - consultant said I need to e-mail Luis. E-mailed turb, Luis is not by the office.	Phoned again -Still no answer from Luts	Phoned again, Still no answer from Luis. Keep on getting cut off
£3	Société Sépérale			Called - not a retail bank. Therefore unable to assist.		- VIII
14	Standard Chartered Bank - Johannesburg Branch	0112175600	inlo SouthAirica State com	unanie to system. elled - no answer, Will follow up and e- mall the request. Lines open at 9:00	gave me a new email adress	Phoned still no feedback, Keep on terling a new person to talk to
15	State Bank of India	0117784500	shipturgasapsarebenk com	elled - no answer. Will follow up and a- mail the request lines open at 9:00	Still no answer	Still no answer



("PRECCA") prohibits any participation in 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.

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 dulies 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

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not via subsidientes or the like. Accordingly, any transaction conducted by any 637 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 Cupta 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.

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 Guota 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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638 151 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:

June 2013 where he admitted that members of the Gupta family were his friends. Mr Ajay Gupta ("Mr A. Gupta), also admitted to being friends with President Zuma when I interviewed him on 4 "6.3 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 The Gupta family are known friends of the President Zuma. October 2016. 5.4. President Zume's son, Mr Duduzene Zume ("Mr D. Zume") is a business partner of the Gupta family through an entity called Mabengele investments ("Mabengele"). Mabengele has a 28.5% interest in Tegeta Exploration and Resources ("Tegeta"). Mr D. Zuma is a Director of Mabengele."

152 I pause to mention that Mabengela Investments is the seventeenth applicant in applicant. As the Public Protector's report notes, Mr Duduzane Zuma holds hese proceedings and Tegeta Exploration and Resources is the sixteenth 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

The Gupta family had chartered this aircraft to bring guests to a family 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 afroraft at the Waterkloof Airforce Base,

wedding hosted at Sun City. The resulting scandal came to be widely known 639 as "Guptagate".

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

The firing of the Minister of Finance in December 2015

escalated further in the wake of the President's decision to fire the Minister of The public controversy surrounding the Gupta family and their associates Finance, Nhlanhla Nene in December 2015. 56

effects on the South African economy and investor confidence. Several days replaced him with the respected former Minister of Finance, Mr Pravin 157 On 9 December 2015, the President announced that he was replacing Mr Nene It is a matter of public record that the President's decision had calemitous later, on 14 December 2015, the President removed Mr Van Rooyen and with Mr Des Van Rooyen, an ANC MP who was a relative unknown at the time. 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

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

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 sort, 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 R600 million if he accepted this offer. I attach a copy of Mr Jonas' statement as Annexure 18. 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 sentitrents may have on our country and the resultant potential of sentitrents may have on our country and the resultant potential of 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 nongovernmental individuals in raspect of the position of Minister of Finance. <u>Mambers of the Gupta family offered me the position of Minister of Finance to replace then. Minister Nene.</u> I rejected this out of hand. The basis of my rejection of their offers that It makes a mookery of our hard earned democracy, the trust of our people and no one apart from the President of the Republic appoints ministers." (Emphasis added)

160 That same day, Ms Vytjie 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 flights to India and give the Gupta family the contract for

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

161 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

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

63 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

164 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.

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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 Protectors' investigations is summarised in the Executive Summary. These investigations covered, inter alia:

members of the Gupta family and his son, Dudazane 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 166.1 Whether the President acted improperly and unlawfully by allowing state-owned enterprises (SOEs).

. .

186.2 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.

Due to time constraints, the Public Protector proposed that her investigations 643allegations of unlawful conduct by the Gupta family and several of the would be divided into two phases. The first phase, which is reflected in the focusing particularly on the acquisition of the Optimum Mine. The Public Protector envisaged that her office would conduct further investigations into State of Capture report, considered the President's conduct and only investigated some of the state contracts with Gupta-affiliated companies, applicants at some later stage (Report, p 12). 187

168 In respect of the allegations of the Gupta family's involvement in the fiting 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 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 President's decision to fire Minister Nene before this decision was Minister (Report pp 14 - 15, pp 343 - 344).

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

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, 346)

and Resources (Pty) Ltd ("Tegeta"). She gave particular attention to allegations that Eskom and the Minister of Mineral Resources had improperly assisted 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 Tegeta in acquiring Optimum from the Swiss-based resources company, 170 The Public Protector's findings in respect of Tegeta's Optimum Mine deal included, infor alla, that: 170.1 It appeared there were irregularities in the appointment of the Eskorn Board had conflicts of interest due to links with the Gupta family and the Board (p 19; para 7.7, p 347) and that several members of the Eskom Oakbay group, including a number of the applicants (Report, pp 295 -300, 347).

170.2 If appeared that Eskom had forced Glencore's hand in selling the 645Optimum 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).

170.3 There were credible allegations that the Minister of Mineral Resources, Mr Mosebenzi 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 349-351). The Public Protector noted that these payments were channelled through accounts held with the Bank of Baroda (Report, p 271).

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170.5 That several of the applicants were involved in channelling funds to including Annex Distribution (the first applicant), Confident Concepts (the Oakbay Investments (the ninth applicant), Shiva Uranlum (the twelfth applicant), and Westdawn Investments (the fourteenth applicant). The Public Protector specifically labelled these various transactions as regeta's Bank of Baroda account for the purchase of the Optimum Mine, second applicant), Islandsite investments (the seventh applicant), suspicious" (Report pp 273, para 5,325; pp 275 - 276, para 5,333).

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

misused by the applicants as funds were not ring-fenced and the interest on 646these funds was not reinvested (Report pp 22 - 23, para 7.9(d) and p 350).

- 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 (Report, pp 353 - 354).
- remedial action on review, although he has subsequently indicated a 173 I am advised that the President has subsequently taken the Public Protector's willingness to appoint a judicial commission of inquiry.

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Reaction to the Public Protector's report in November

- 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 10 174 The Public Protector's report generated further public outcry against the November 2016, which largely focused on the President's relationship with the **Gupta** family
- received in the wake of the Public Protector's report. It goes without saying that Nevertheless, these reports are indicative of the reputational harm that the 175 The Bank suffered further negative publicity during this time. I refer in this egard to examples of news reports published during November 2016, attached as Annexure 19. The Fin24 article titled "Bank of Baroda's conduct appears highly suspicious", is indicative of the type of negative coverage that the Bank the Bank denies any suggestion that it was party to any unlawful conduct.

Bank has suffered by being associated in the public mind with the Gupta family 647and the applicants.

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

The Minister's litigation against the Oakbay Group

- 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 177 While these events were unfolding, the then Minister of Finance, Mr Pravin closing of [their] bank accounts".
- 778 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.
- affidavits were filed by the Minister, the Oakbay group of companies, and the four South African banks. These affidavits are presumably in the applicants' 179 The ittigation that unfolded between October 2016 and March 2017 is a matter of public record and I am advised that judgment is pending. Extensive 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.

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, <u>we are of the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born</u>. The banks have said as much to us in their correspondence to ourselves.

[A]s the case law suggests, fany legat proceedings against the banks] will fall 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 "still-born" and "will fall in a court of law".

184 <u>Second</u>, the Minister's founding affidavit also disclosed a list prepared by the Financial Intelligence Centre reflecting 72 "suspicious transactions", to the value R8.8 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 29 of FICA.

184.1 I am advised that this list of suspicious transactions was ultimately struck 64.9 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.

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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 underlined the legal risks of dealing with clients that have generated such an unusual quantity of reportable transactions under FICA.

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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:

188.1 Standard Bank's affidavit set out a detailed list of the allegations of conruption, 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 terminate its relationship with Oakbay group after conducting an assessment of these risks (para 96). I attach relevant excerpts of this affidavit, marked Annexure 23.

86.2 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 Cakbay 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 confirming to provide banking services to the Oakbay companies and related parties exceeded Absa's current and forward-looking risk appetite. (Emphasis added)

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

187 These frank assessment 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.

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190 The President's decision sparked a wave of protests across the country calling 652 for the President's resignation, which included a protest outside the Gupta family's Saxonwold compound. Lattach an illustrative example of news reports at the time, reflecting this further criticism of the Gupta family, marked Annexure 25.

The "Guptal eaks"

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.

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- 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, ameBhungane, 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, moneylaundering and other unlawful activities involving the applicants, the Gupta family and their associates.

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194 I do not propose to address the full range of allegations stemming from the 653 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.

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194.2 On 29 June 2017, an *amaBhungane* report claimed that leaked emalls 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 feaked 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

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million to secure contracts with Transnet. The report further alleged that 654 leaked financial records showed that portions of this R100 million payment were than transferred to Sahara Computers, the third applicant. The article stated:

"The first SAP payment we know about landed in CAD House's bank account in April 2016. 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; R9-million to Sahara Computers and a million to Baroda, the Guptas' bank of choice."

attach a copy of this article, marked Annexure 28.

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194.4 On 8 August 2017, amaBhungane published a further report alleging that Islandsife Investments (the seventh applicant) had paid R1.15 million to assist the President's wife, Ms Mbongi Zuma, in purchasing her Pretoria home. The report further alleged that Oakbay Investments (the ninth applicant) and Mabengala Investments (the 17th applicant) had contributed to Ms Mbongi-Zuma's bond payments, alleging using funds that were "laundered" from payments received from Transnet. Lattach a copy of this article, marked Annexura 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 655 President, which was debated on 8 August 2017.

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. Lattach a news report on the President's announcement, marked Annexure 30.

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

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

The media coverage 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

Public

Protector's State of Capture report. This document is not intended to be 656 exhaustive, but it demonstrates that each of the applicants has been the subject of serious and extensive allegations of wrongdolng.

the Cakbay 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 657 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 abounts."

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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account holders, appear to be justified by exactly the same reason as the 209.2 in its simplest form, if one account of a company in the Oakbay group or reason as stipulated by the client, but other deposits to the credit of other 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 respects of deposits to group affiliated to the Oakbay group was to receive a deposit for a particular accounts.

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

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

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 ist that the bank has on record. The purpose of the transaction is there after established and the relevant supporting documents our scrutinised in order to verify -

(a) whether the invoice has in fact been raised in favour of the $\,659\,$

(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.

Thereafter, the transaction will be loaded onto the Nedbank business platform. The request is then passed on to the takes place on the Finacle Application as well as the (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. branch head for further verification (additional verification Nedbank business platform.

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

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

210.2.2 Automated monitoring:

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

Bank's transaction screening system, Financial Crime 660 Reporting Manager ("FRCM"),

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

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(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

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 661 Officer verify the information that pertains to the susplicious transaction and the report is thereafter submitted.

- 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 extracted a report to check whether any inward remittances had been received (i.e.
- 211.2 USD 11 729 595.00 had been received by Optimum from Glencore international ("the Transaction").
- 211.3 Optimum submitted a BOPCUS 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 scrutinised the BOPCUS 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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- 211.7 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 663 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.

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- 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 16 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 than 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 "fajcocunis may be opened but enhanced due diligence documents.

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213.3 On 30 May 2018, the Bank opened the last two accounts for the Optimum Coal 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

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 665 a meeting with the Bank's senior executives at the Corporate Office in Mumbal,

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 Mumbal. However, in late August 2016, the General Manager of international of 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;

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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 pariance 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.

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- 217 On 16 September 2016, the Assistant General Manager of International 666Africa 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 Operations, Mr Ashwani Sharma, sent a letter to then CEO of the Bank's South marked Annexure 36.
- 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 (the) 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
- Nath and Ms Ragavan, and requested that group reduce their total exposure to on several occasions had discussions with the applicants' representatives, Mr the Bank by 25% by no later than 30 September 2016, as a precursor to the 219 Accordingly, Mr Shailkh Rauf, the senior manager of the Johannesburg branch, 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.

- 520.1 It will be seen that the written notice is dated a mera four days before the 667due 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 debit 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.
- customer were to have requested (and the Bank to have agreed) a 6 221.3 Similarly, should the Bank have provided a 3 month period but the nonth 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.
- a "review" and "extension" of facilities indicate nothing more than the Bank's 222 In summary on this point, in terms of the Bank's internal processes and jargon,

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requirements at that morrient. Certainly, it does not amount to any indication of 668 a "happy embrace" of the customer or any desire for a long-term relationship.

- 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.

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- 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 then due to us by the applicants, then still standing at approximately R1billion. 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 exiting the relationship. The Bank proceeded to recover and then

terminate four accounts held by the applicants during this time. The details of 669 these closures are as follows:

- 226.1 A loan facility of R150 million granted to Koomfontein Mines (Pty) Ltd was closed on 7. November 2018, 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 Tegeta Exploration & Resources (Pty) Ltd, the Bank closed the following accounts;

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226.2.1 On 17 January 2017, the Bank terminated a loan facility with a limit of R74.5 million;

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

226.2.3 On 3 May 2017, the Bank closed a further loan facility with a

lmit of R842.23 million.

- 228.2.4 The Bank first notified Tegata of these intended closures on 8 August 2016.
- 226.2.5 On 5 September 2016, a representative of Tegeta 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

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.

which sets out the detailed findings. I attach as Annexure 39 a copy of this redacted in order to ensure that only matters relevant to the issues in dispute 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 letter and the accompanying attachment. The attachment to that letter is duly here (i.e. findings 6, 7 and 8) are now dealt with.

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 229 In finding number 8, the SARB reviewed the Bank's various reports to the with the duty to record, contemporaneously, fire exact progress of its Financial Intelligence Centre on "suspicious and unusual transactions" ("USTs") under section 29 of FICA. The basis of finding 8 is that the respondent correctly identified and reported all UST's to the Centre, and no such transaction escaped its supervision. However, the Bank's internal procedures did not cope 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 $\, 671\,$ and the reasons therefor, with reference to the evidence, has to be 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, documented.

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

recording) takes ten to twenty minutes to be investigated, assessed and a 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 decision taken as to whether a formal UST report to the Financial Intelligence 232 On average, the applicants execute in the order of 150 to 200 banking Centre should be made or not.

transactions has more than doubled. I stress, again, that the Bank is not, and 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 never had been, set up to commit such resources.

234. My fear is that the Bank may at any time, fall short of the extensive investigative 672 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 lise tout in detail above.

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- 235 After receiving the SARB's letter in December 2016, the Bank has attempted to engage with the SARB 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 taking capacity.
- 236 Nevertheless, on 12 April 2017, the SARB formally notified the Bank (as required in terms of section 45C(5) of FICA, of its intention to impose administrative sanctions. A copy of that notice is attached as Annexure 40.
- 237 On 19 June 2017, SARB 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 SARB sanction.
- 238 I point out that a Directive is the most severe sanction that may be imposed, before the imposition of a restriction 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 fall 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.

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- 240 To be ofear, the applicants pose the single greatest risk to the Bank of 673 breaching FtCA 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 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 inadvertence and despite its best efforts, either miss further suspicious transactions, or fall fully to record and maintain its contemporeaous 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 SARB 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 offier banking regulator in those jurisdictions where the Bank operates will launch investigations and inspections akin to that performed by SARB. This will become common knowledge in the international

is so because the eversight and investigation duties that would then fall on 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 Nedbank would be extended hugely, to include those transactions which 244 On the local front, if such a further sanction was to be imposed by the Bank, currently fall subject to the respondent's FICA duties.

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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 Oakbay group.

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

675 247 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 confents of that correspondence.

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 247,3 However, I deny the various allegations in the the Bank's conduct has been in any way improper.

THE REQUIREMENTS FOR AN INTERIM INTERDICT

248 I now turn to explain why the applicants have failed to make out a case for the nterim 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. Nevertheless, I will briefly address the question of interim relief as this is also relevant to the question of "interim interim relief" that is presently before this Court. 250 1 am advised that the test for InterIm relief requires that the applicants must demonstrate:

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



JHB/ADV/06/474/2016-17

23.08.2015

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 06.05.2016 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 bere under.

Depositor	Date/Due date	Amount(Face Loan availed t	y : Loan Limit
		value)	& Dale	
M/s	06.06.2016/	ZAR170,00	mm M/S.	, ZAR150.00 sin
"Koornfontein	06.06.2017	1	Koornfontein	, (availed EAR)
Rehabilitation		1	Mines Pty. Ltd	L = 100,00 mni
Trust" (Trust	1	:	į	
No. IT 7563/07)		į.	DL 06.06.2016	

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 30.09.20.6. 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

a Just Coll

(Sanjiv Gupta)

Chief Executive

Bank of Baroda

South Africa

deficience being Branch (1994) (1994) by the first of the

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JHB/ADV/06/474/2016-17

23.08.2016

The Trustee.

M/s "Koornfontein Rehabilitation Trust" (Trust No. IT 7563/07)

Grayston Ridge Office Park,

Block A. Lower Ground Floor,

144, Katherine Street,

Sandton-2198

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

We understand that a detailed discussion took place on 28:07.2018 with officials of acr Bank's corporate office with regard to your fixed deposits with us and the loan availed by MIS Koornfontein Mines Pty. Ltd. against life FDR as detailed here under

Depositor	Date/Due date	Amount(Face value)	Loan availed by	Loan Limit
M/s "Koornfontein	06.06.2016/ 06.06.2017	ZAR170.00 mn		ZAR150.00 mar
Rehabilitation	1		Koornfontein Mines Pty, Ltd.	laveiled ZAR
Trust" (Trust			Di de comana	
140-11 1903/01	.l., <u></u>	I:	Dt. 06.06.2016	In the control of

In the meeting it was assured that the Loan against the above FDR will be gradually liquidated and fully settled by 30.09.2015.

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

Yours Falthfully

(Sanjiv Gupta)

Chief Executive

Bank of Baroda

South Africa

7 DM



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

Maidap

Kuben Naidoo

Deputy Governor and Registrar of Banks

Date: 21/1/2016

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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.

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Deloitte.

Private Bag X6 Gallo Manor 2052 South Africa Deloitte & Touche Registered Auditors Financial Services Team FIST Boilding 8 Deloitte Place The Woodlands Woodlands Drive Woodlands Drive Woodmead Sandton Docex 10 Johannesburg

Tel: +27 (0)11 806 5200 Fax: +27 (0)11 806 5222 www.deloitte.com

24 February 2017

Chief Executive Officer
Bank of Baroda, South Africa
Premises No. 14
2nd 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.

National Executive: *LL Barn Chief Executive Officer *TMM Jordan Deputy Chief Executive Officer *M; Jarvis Chief Operating Officer *GM Pinnock Audit *N Sing Risk Advisory *NB Kader Tax TP Pillay Consulting S Gwala BPaaS *K Black Clients & Industries *JK Mazzocco Talent & Transformation *Mj Comber Reputation & Risk *TJ Brown Chairman of the Board

A full list of partners and directors is available on request

* Partner and Registered Audito

B-BBEE rating: Level 2 contributor in terms of the Chartered Accountancy Profession Sector Code

Associate of Deloitte Africa, a Member of Deloitte Touche Tohmatsu Limited



- 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

Darren Shipp

Partner

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No.	Procedure as per Section 7 letter etter of Comfort	Work performed	Findings Amount R'000
1.1.	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 ("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.	Assess if the letter of comfort meets the definition of a legally enforceable guarantee and if it complies with the Bank's Act Regulations.	Nith 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. In order to determine whether the Documents amount to a guarantee we performed the following: 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 Tegata Exploration and Resources (Pty) Ltd ("Tegata") 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. Refer below where we have dealt with each procedure separately in our assessment. 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". 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."

APPENDIX 1

No. Procedure as per Section 7 letter	Work performed	Findings Amount R'000
		 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. 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. 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.
		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 stipulatio 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.

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Na.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
			ii. Assissment against Regulation 67 definition of lending and parformance regulation 67 for lending related guarantee: "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." 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 fulfil 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 fulfil a financial obligation which will trigger the payment by Bank of Baroda of the said amount of 2,150,000 to
			Definition as per Regulation 67 for <u>performance related quarantee</u> : "In relation to a bank's off-balance sheet exposure includes- 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 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." 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

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R 000
Yes construction of the second			of which the undertaking was issued falls to perform in accordance with a non-financial obligation made to the said third person. 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 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 non-financial act which will trigger the payment of the performance guarantee by the Bank of Baroda to the lenders of OCH.
			Based on the above assessments, it is our view that the Documents do not constitute a legal guarantee as assessed by our in-house legal counsel against the specified definitions nor does it meet the definitions as per Regulation 67 for lending related or performance related guarantees.
1.1.	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 ("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.	Should the letter of comfort amount to a guarantee establish if the facility had been collateralised.	b. As per enquiry from management the letters of comfort did not constitute a guarantee and therefore no collateralised facility was required. Furthermore, following on from our assessment in point 1.1. (a) above, the letters of comfort do not constitute a guarantee and therefore we would not expect there to be a guarantee facility in place which requires collateral to secure the facility. Based on information provided to us by management we found no evidence of a collateralised facility relating to the letters of comfort.
1.1.	Establish whether the letter of comfort for the amount of R2.15 billion, provided by 808 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	c. Provide us with an understanding of the governance process undertaken by Bank of Baroda South Africa branch in order to approve the granting of the letter of comfort to the loan consortium.	c. We noted the following from management regarding the governance process followed by the Bank with regards to the issuance of the letters of comfort to the loan consortium on behalf of Tegeta: The letters of comfort provided no surety or assurance and hence were not considered a legal guarantee or credit commitment. The letters were issued by the signatories without referring the matter to senior management or assessment by the respective territorial credit committee. Therefore no credit proposal for the issue is on record.

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APPENDIX 1

, No.	Procedure as per Section 7 letter	Work performed	Findings Amount 97000
	whether the facility had been collateralised.		
1.1.	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 ("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.	d. Was the letter of comfort approved by branch and/or Head Office? Provide all correspondence with Head office in relating to the letters of comfort undertaken by branch.	d. As per enquiry from management we noted that there is no correspondence with the branch's Head Office on record in respect of the issuance of the letters of comfort.
1.1.	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 ("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.	e. Provide all correspondence relating to the granting of the letters of comfort in respect of the OCM transaction, this may include for e.g. letters or emails between representatives of consortium and Bank of Baroda, or with business rescue practitioners, minutes of board or committee meetings, credit team assessments, or any internals reviews or reports to senior management etc.	e. No information was provided by management to evidence any correspondence between Bank of Baroda and the business rescue practitioners or consortium representatives.
1.1.	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 ("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.	f. Obtain all correspondence with the South African Reserve Bank ("SARB") with regards to the letter of comfort in respect relating to the OCM deal? Please provide all correspondence with SARB related to the granting of the letter of comfort / guarantee or deposits received relating to OCM deal.	f. As per enquiry from management we noted that there is no correspondence with the SARB relating to the granting of the letters of comfort and any related facility/ies.

APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'2000
1.2.	Establish whether the facility had been correctly treated, for regulatory purposes, and reported (according to the nature of the facility) on the BA forms.	BA returns to establish if the facility had	in our view do not meet the definition of a guarantee. Consequently no off-balance sheet exposure is required to be reported on the BA returns
1.3.	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.	Review the Asset and Liability Committee ("ALCO") minutes to identify whether the Bank considered the liquidity and funding implications in respect of the facility in the event of a draw down.	a. As per management the letters of comfort were not considered to be a legal guarantee therefore no assessment was performed to determine the probability of draw down or impact on regulatory capital. Per inspection of the ALCO minutes from December 2015 to September 2016 no reference was made to the letters of comfort or any related facility to Tegeta.
1.3.	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.	Trace any information per the ALCO minutes relating to the OCM deal to the BA returns and management information.	b. Following on from point 1.3. (a) above, no information could be traced to the BA returns and management information as there was no evidence that the branch had considered the liquidity and funding implications of its commitments prior to issuing the letters of comfort.
1.4.	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.	Assess that if the draw down occurred, there would have been sufficient deposits / and or liquidity available to cover the guarantee.	As per management the letters of comfort were not considered to be a legal guarantee therefore no assessment was performed to determine the probability of draw down or impact on regulatory capital. Per inspection of the ALCO minutes from December 2015 to September 2016 no reference was made to the letters of comfort or any related facility to Tegeta. Furthermore based on our assessment in point 1.1.(a) above, the letters do not constitute a guarantee and therefore no off-balance sheet exposure should be reported on the BA returns and no capital is required to be held in respect of the Bank's capital adequacy ratio.

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No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
1.4.	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.	 If there was insufficient funds available would the Bank have been able to meet its capital and liquidity requirements. 	b. Refer point 1.4. (a) aboye.
2 Dep	osits		
2.1.	Obtain an understanding of whether any deposits received related to the letter of comfort issued in the Optimum Coal Mine ("OCM") transaction.	Obtain from management an understanding of all deposits received related to the letter of comfort issued by Bank of Baroda in respect of the OCM purchase transaction. Where applicable requests a list of the respective depositors and amounts.	a. Upon enquiry management provided us with an understanding of the following: i. Deposits received relating to the letters of comfort ii. Deposits received related to the OCM transaction i. Cappada received related to the OCM transaction i. Cappada received related to the OCM transaction i. Cappada received related to the OCM transaction Per management the letters of comfort did not constitute a guarantee, therefore no deposits were required or received relating to the letters of comfort. ii. Cappada received related to the OCM and provided to us by management we noted that seven deposits were received by Bank of Baroda during March 2016 and April 2016 from Tegeta's FNB account, totalling 1,113,000. Refer to Annexure A for the list of deposits received by Tegeta into Bank of Baroda account 92020200000042. Furthermore, per management in connection with the OCM transaction, deposits were received by Centaur Mining SA (Pty) Ltd, Trillian Management Consulting (Pty) Ltd and Albatime (Pty) Ltd into their respective Bank of Baroda accounts. These deposits were utilised to secure three loans issued to Tegeta from Bank of Baroda. We confirmed the cession of these deposits per inspection of the following documentation provided by management: Loan application from Tegeta Loan application from Tegeta

APPENDIX 1

, No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
			 Letters of fixed deposit collateral undertaking signed by Centaur Mining SA on the 12 April 2016, and Albatime and Trillian Management Consulting both signed on the 14 April 2016 Appraisal note and credit proposal submitted to Corporate Head Office in respect of the loan sanctioned to Tegeta against Bank's deposit through post sanction reporting (PSR). PSR response from Corporate Head Office regarding the loans sanctioned to Tegeta Request letter from Centaur Mining SA, Albatime and Trillian Management Consulting to place funds in fixed deposit Minutes of Tegeta's Board of Directors meetings detailing resolutions passed in respect of the loans to be obtained from Bank of Baroda and related security. Minutes of Board meetings for Centaur Mining SA, Albatime and Trillian Management Consulting to approve the cession of the fixed deposits as security against Tegeta's loan. Per discussion with management the secured loans with a total value of 1,098,000 were issued on the 14 April 2016 to fund a portion of the purchase price of OCH. Therefore the loans were issued with 100% fixed deposits from Centaur Mining SA (Pty) Ltd, Trillian Management Consulting (Pty) Ltd and Albatime (Pty) Ltd as collateral. Per inspection of documentation referred to above, we noted the following details regarding the collateralised loans issued to Tegeta: 1. 842,231 (loan account 920206/467) approved on 12th April 2016 and disbursed on 14 April 2016. This loan has a 12 month loan period and is secured by a fixed deposit (account 9202030000641), totalling 886,560, in the name of Centaur Mining SA (Pty) Ltd. 2. 152,000 (loan account 920206/468) approved and disbursed on 14th April 2016. This loan has a 12 month loan period and is secured by a fixed deposit (9202030000643), totalling 160,246, in the name of Trillian Management Consulting (Pty) Ltd.

No.	Procedure as per Section 7 letter	Work performed	Findings Amount K'000
			 104,500 (loan account 920206/469) approved and disbursed on 14th April 2016. This loan has a 12 month loan period and is secured by a fixed deposit in the name of Albatime (Pty) Ltd.
2.1.	Obtain an understanding of whether any deposits received related to the letter of comfort issued in the Optimum Coal Mine ("OCM") transaction.	b. As Bank of Baroda utilises the Nedbank banking platform to conduct its banking operations, trace any deposits received to Bank of Baroda's Nedbank account 14540959326 statement to confirm receipt of deposits as specified per management's listing of deposits received.	b. The letters in our view do not constitute a guarantee as per our assessment against the requirements of the Regulations, refer point 1.1(a). Per management as the letters of comfort did not constitute a legal guarantee no deposits were received relating to a guarantee facility. In respect of the transaction to purchase OCM, we traced the deposits received from Tegeta's FNB account and the deposits received from Centaur Mining SA (Pty) Ltd, Trillian Management Consulting (Pty) Ltd and Albatime (Pty) Ltd to secure the loans to: Nedbank statement for account 14540959326 Tegeta's Bank of Baroda account statement Statements of fixed deposit Refer to Annexure A for list of deposits received by Tegeta during March 2016 and April 2016. Furthermore refer to Annexure B for a timeline relating to deposits received.
2.1.	Obtain an understanding of whether any deposits received related to the letter of comfort issued in the Optimum Coal Mine ("OCM") transaction.	c. Enquire from management if any of the deposits received relate to related party accounts of Tegeta.	c. Centaur Mining SA, Albatime and Trillian Management Consulting provided security in the form of fixed deposits for the loan issued to Tegeta. Per management these entities are not considered related parties to Tegeta by Bank of Baroda. Refer to Annexure A for list of deposits received by Tegeta. Furthermore refer to Annexure B for a timeline relating to the deposits received.
2.1.	Obtain an understanding of whether any deposits received related to the letter of comfort issued in the Optimum Coal Mine ("OCM") transaction.	d. Review the FICA report to ensure that the Bank complied with the FICA requirements in respect of deposits received.	d. Per management no FICA report was submitted in respect of the deposits received relating to the OCM purchase transaction.
2.	Establish whether these deposits complied with, and were treated as required by the Banks Act and regulations.	Obtain an understanding of the classification of the funding or deposits received in the BA 100, BA 200 and BA 300. Trace the treatment to the relevant returns to ensure compliance with the Banks Act regulations.	Based on the understanding provided by management of the deposits received in point 2.1.(a) above, assessed the classification and treatment of the deposits received against the Banks Act Regulations. We have limited our assessment to the BA 100, BA 200 and BA 300 for the period December 2015 up to September 2016.

No. Procedure as per Section 7 letter	Work performed	Findings Amount R'000
		Our assessment is detailed below as follows: I. Deposits relating to the letters of comfort II. Deposits related to the OCM transaction in respect of: Deposits received into Tegeta's Bank of Baroda Deposits received / held as security against the loans issued to Tegeta Deposits received / held as security against the loans issued to Tegeta Deposits received / held as security against the loans issued to Tegeta Deposits received / held as security against the loans issued to Tegeta Per management as the letters of comfort did not constitute a legal guarantee no deposits were received relating to a guarantee facility. Therefore no deposits were required to be traced to the BA returns. Deposits received into Tegeta's Bank of Baroda We noted the following in respect of the deposits received into Tegeta's Bank of Baroda account during March 2016 and April 2016: BA 100 Balance sheet - December 2015 to March 2016: Per inspection of client data supporting the BA 100, Tegeta's current accounts, totalling 181,797, were classified between current accounts (amount of 175, 537) and fixed deposits (amount of 6,260). BA 200 and BA 210 Credit risk: The deposits relate to liabilities therefore the Bank has correctly not reported this on the BA 200 or BA 210. BA 300 Liquidity risk: March 2016: Per inspection of the ten largest depositor listing supporting BA 300 line 69 "Ten largest depositors", we noted that the Bank reported Tegeta as a top ten largest depositor in the BA 300 as at March 2016.
L		April 2016

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APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
			Per inspection of the client data supporting the BA 300 at April 2016 Tegeta's deposits amounted to 19,607 (decrease from 181,797 at March 2016). We noted that the OCM purchase transaction concluded on the 14 April 2016 and funds were transferred from Tegeta's current account. Per inspection of the ten largest depositors listing for April 2016, Tegeta is therefore not included as a ten largest depositor in line 69.
			Matters noted in respect of the BA 300 ten largest depositors:
			We note that the Bank does not group its BA 300 top ten depositors on a per person basis. Regulation 26(11)(a) which requires a bank to aggregate all types of liabilities to a particular counterparty or group of connected parties, associated or affiliated counterpartles, and all other relevant direct borrowings. Therefore the Bank incorrectly considers each company on a solo basis without connected parties aggregated to determine the Bank's concentration of deposit funding. Tegeta, Oakbay Investments, Sahara Computers, Westdawn Investments and Oakbay Resources and Energy should be grouped as they are connected parties. Therefore the Bank is not complying with Regulation 26(11)(a).*
			We have not reperformed the computation of the ten largest depositors and have therefore relied upon management's calculation and amounts provided.
			Deposits received / held as security against the loans issued to Tegeta
.1			We have dealt with the treatment of the fixed deposits held as security and Tegeta loan separately below:
			Deposits received / held as security Centaur Mining SA, Albatime and Trillian Management Consulting provided security in the form of fixed deposits for the loan issued to Tegeta, Refer to the deposits timeline in Annexure A which

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APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R:000
			details timing, counterparty and amount of deposits received from March 2016 leading up to the OCM purchase on the 14 April 2016.
			o BA 100 Balance sheet March 2016 The deposits from Centaur Mining SA, Trillion Management Consulting and Albatime as at March 2016 were classified as current account deposits in the BA 100: Centaur Mining SA, totalling 792,260 Trillion Management Consulting, totalling 101,025 Albatime, totalling 65,064
			April 2016 The following fixed deposits as at end of April 2016, totalling 1,126,806, were held to secure the loans to Tegeta: Centaur Mining SA, totalling 886,560 Trillion Management Consulting, totalling 160,246 Albatime, totalling 80,000 Per inspection of the signed letters of deposit with each counterparty, the letters state that the security for the loan facility to Tegeta will remain with Bank of Baroda as security for the duration of the facility.
			BA 200 and BA 210 Credit risk The fixed deposits represent eligible cash collateral which has been utilised as credit risk mitigation against the gross credit risk exposure relating to the loans issued to Tegeta.
			BA 300 Liquidity risk Per inspection of the ten largest depositors listing from March 2016 up to September 2016, we noted that Centaur Mining SA, Trillion Management Consulting and Albatime were included as part of BA 300 concentration of deposit funding line 69 "Ten largest depositors". Refer below for amounts included in March 2016:

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APPENDIX 1

No. Procedure as per Section letter	7 Work performed	Findings Amount R'	
		Counterparty	Amount
		Centaur Mining SA	792,260
		Trillian Management Consulting	65,107
٠. ا		Albatime	101,025
		depositors and have therefore re and amounts provided. Term loans issued to Tegeta BA 100 Balance sheet: There loans were issued to Te loans issued to Tegeta, totall was correctly classified as a term loans. BA 200 and BA 210 Credit risk upon inspection of the BA 200 the period April 2016 up to the period	and related credit workings for September 2016. The following assification 10 return and related credit rish nent, we noted that the loan to SME retail customer. It of the asset classification: puires that for an exposure to be ortfolio, the aggregated credit onversion factors should be less sure to Tegeta loan is greater p's turnover being greater than hould have been classified as a BA 210 and not as a SME retail
	4	 Risk weighting of Tegeta id 	an

APPENDIX 1

No. Procedure as per Section 7 letter!	Work performed	Findings Amount 8 000
		Per inspection of the credit risk data provided by management, the loan is 100% secured by eligible cash collateral being the fixed deposits. The Bank applied a risk weighting of 100% to the net exposure of 74 million (post the credit risk mitigation ("CRM")). This risk weighting appears reasonable as the exposure relates to an unrated corporate.
		Consideration of Tegeta loans as a large exposure Section 73(1) and (2) of the Bank's Act requires that: "a bank, controlling company, branch or branch of a bank;
		o shall not make investments with or grant loans or advances or other credit to any person, to an aggregate amount exceeding 10 per cent of such amount of its capital and reserves as may be prescribed, without first having obtained the permission of its board of directors, or of a committee appointed for such purpose; and shall not without the prior written approval of the Registrar make an investment with or grant a loan, advance or other credit to any private sector non-bank person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that private sector non-bank person, results in the bank, controlling company, branch or branch of a bank being exposed to that private sector non-bank person to an amount exceeding 25 per cent of a prescribed amount."
		As Bank of Baroda (South Africa) is a branch of a foreign parent company, Regulation 23(7)(b)(iii) requires that: "In the case of a foreign institution that conducts the business of a bank through a branch in the Republic, the specified amount shall be 10 per cent of the qualifying capital and reserve funds of the said foreign institution that conducts the business of a bank through its branch in the Republic." Therefore the branch is required to utilise the qualifying capital and reserve funds of the foreign institution which is

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APPENDIX 1

, No.	Procedure as per Section 7 Jetter	Work performed	Findings Amount R'000
-			tne parent company in order to determine its exposure to concentration risk.
*			Per inspection of the parent company's financial statements for the year ended 31 March 2016, the consolidated capital and reserve funds at March 2016 is 30,586 crore (Rupees). This translates to R68,822,285 (Rupees/R = 4.4442). The gross credit exposure to Tegeta at end of April 2016 is 1,072,736 which equals 1.56% of qualifying capital and reserve funds. The Bank's aggregate gross exposure to Tegeta is less than the concentration risk threshold of 10% of qualifying capital and reserve funds for a private sector non-bank person as specified by the Bank's Act section 73. Therefore the loan to Tegeta is not a large exposure and Bank of Baroda has correctly excluded this amount in the BA 210 line 64 "Credit concentration risk: Large exposure – Private sector non-bank person".
2.3.	Establish whether these deposits were correctly reflected in the BA returns of Bank of Baroda.	Refer point 2.2. Assessment above. Assess if the deposits were correctly reflected in the respective BA returns e.g. BA 100, BA 300.	Refer point 2.2 above.
в. с	Optimum Mine Renabilitation Trust	Fund ("Trust Fund")	
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.		Per inspection of a Standard bank statement for account 402264746 an amount of 1,469,917 was transferred on 21 June 2016 and received into Bank of Baroda current account 92020200000524 on 22 June 2016.
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	b. Trace the transfers of funds from Bank of Baroda's transactional account to the fixed deposit accounts and review supporting documentation relating to these transfers from Trust Fund owners or representatives.	b. On the 24 June 2016 these funds were invested into three fixed deposit accounts held at Bank of Baroda with interest due on the 24 June 2017. Refer Annexure D for a timeline detailing the receipt and investment of funds into fixed deposit accounts and related maturity dates.

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APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	withdrawal transactions via Bank of Baroda's Nedbank transactional account which were processed post	c. Per management no instruction was received from the Trust fund owners to effect changes to funds in the Trust fund. Per inspection of the Nedbank account statements we noted no transfers or withdrawals of funds relating to Trust Fund monies out of Bank of Baroda accounts other than the investment of funds into internal fixed deposit accounts. Confirmed this per inspection of the fixed deposit account statements provided by management for the period 22 June 2016 up to end of December 2016. Based on this we noted no movements or transactions in respect of the fixed deposit accounts.
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	point (c) obtain the remittance advice and identify if any of the transactions related to the trust	d. Selected a judgmental sample of withdrawal transactions via Bank of Baroda's Nedbank transactional account which were processed post the receipt of the related trust funds. Assessed if any of the withdrawals related to payments made from the Trust Fund accounts. Refer to Annexure F for sample of transactions traced to remittances. Based on our sample selected, we noted no instances where the transactions related to the Trust Fund accounts. Refer to 3.1. (e) and (f) below for further details of the findings.
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	e. In respect of the sample selected in point (c) enquire from management if any of the accounts were collateralised by the Trust Fund accounts.	e. As per management and inspection of the underlying account opening documentation, the sample of transactions selected relate to current accounts and thus no collateral or security is held for the accounts. Refer to Annexure F for sample of transactions traced to remittances.
3.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	f. If new accounts were opened in respect of Optimum Coal Mine with Bank of Baroda, inspect account opening documentation and identify if any collateral is held related to the new accounts, I.e. did OCM utilise the Trust Funds to secure any facility.	f. Per inspection of client account statements we noted that a new account was opened during May 2016 in the name of OCM. Inspected account opening documentation as provided by management relating to current account 9202020200000523. Based on the information provided to us by management we noted no information to indicate that the new current account in the name of OCM is secured by any collateral.

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APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
3.2.	Establish whether these transactions are in compliance with the legal requirements applicable to these types of trust accounts.	Once detail of transactions has been obtained per 3.1 above assess if these transactions are in compliance with the legal requirements related to these types of accounts.	The funds received were invested into fixed deposit accounts in order to earn interest. Per inspection of the fixed deposit account statements provided by management for the period June 2016 up to December 2016 we noted no movements or transactions in respect of the fixed deposit accounts. We note that Bank of Baroda does not have an internal policy regarding mine rehabilitation trust funds and its respective legal requirements. We recommend that Bank of Baroda formalise a policy in order to monitor and manage Tegeta's trust funds against the legal requirements of the Mineral and Petroleum Resources Development Act and any other relevant requirements.
	fontein Rehabilitation Trust Fund ven though this was not stated in the		d wilth SARB, our procedures are required to include Koomfantein Trust
4.1.		Obtain evidence from Standard Bank in respect of the transfer of the Trust Fund amount to Bank of Baroda.	Per inspection of a Standard bank statement for account 402264746 an amount of 280,000 was received into Bank of Baroda current account 92020200000519 on 23 May 2016.
4.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	b. Trace the transfers of funds from Bank of Baroda's transactional account to the fixed deposit accounts and review supporting documentation relating to these transfers from Trust Fund owners or representatives.	b. On the 06 June 2016 a portion of the total trust funds transferred, totalling 170,000, was invested into a 12 month fixed deposit account held at Bank of Baroda with interest due on 6 June 2017. The remaining portion of the trust funds could be traced to a client current account 9202020000519. Refer Annexure E for a timeline detailing the receipt and investment of funds into fixed deposit accounts and related maturity dates.
4.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	c. Select a judgmental sample of withdrawal transactions via Bank of Baroda's Nedbank transactional account which were processed post the receipt of the related trust funds.	c. Per management no instruction was received from Trust Fund owners to effect changes to the Koornfontein Rehabilitation Trust fund accounts other than the instruction to lovest the funds into the respective fixed deposit accounts. Confirmed this per inspection of the fixed deposit account statements provided by management for the period 23 May 2016 up to December 2016 we noted no

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APPENDIX 1

No.	Procedure as per Section 7 letter	Work performed	Findings Amount R'000
			movements or transactions were noted in respect of the fixed deposit accounts.
4.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions,	d. In respect of the sample selected in point (c) obtain the remittance advice and identify if any of the transactions related to the trust fund accounts.	of Baroda's Nedbank transactional account which were processed post the receipt of the related trust funds. Refer to Annexure F for
4.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	e. In respect of the sample selected in point (c) enquire from management if any of the accounts were collateralised by the Trust Fund accounts.	
4.1.	Obtain a detailed analysis of all transactions processed by BOB relating to the Optimum Mine Rehabilitation Trust Fund, as well as supporting documentation for these transactions.	e. If new accounts were opened in respect of Optimum Coal Mine with Bank of Baroda, inspect account opening documentation and identify if any collateral is held related to the new accounts. I.e. did OCM utilise the Trust Funds to secure any facility.	f. Per Inspection of client account statements we noted that a new account was opened during May 2016 in the name of Koornfontein Mines. Inspected account opening documentation as provided by management relating to current account 9202020200000520. Based on the information provided to us by management we noted no information to indicate that the new current account in the name of Koornfontein Mine is secured by any collateral.
4.2.	Establish whether these transactions are in compliance with the legal requirements applicable to these types of trust accounts.	Once detail of transactions has been obtained per 3.1 will assess if these transactions are in compliance with the legal requirements related to these types of accounts.	The funds received were invested into fixed deposit accounts in order to earn interest. Per inspection of the fixed deposit account statements provided by management for the period June 2016 up to December 2016 we noted no movements or transactions in respect of the fixed deposit accounts. We note that Bank of Baroda does not have an internal policy regarding mine rehabilitation trust funds and its respective legal requirements. We recommend that Bank of Baroda formalise a policy in order to monitor and manage Tegeta's trust funds against the legal requirements of the Mineral and Petroleum Resources Development Act and any other relevant requirements.

14/04

Albatime

10m

47.2m

14/04

Transfer of 2,084m to Werksmans to effect payment for OCH

DEPOSIT TIMELINE

13/04 18/03 29/03 03/03 02/04 Tegeta Exploration 10/03 Tegeta Exploration Tegeta Exploration Tegeta Exploration Centaur Centaur 100m 100m 50m 94.3m 883m 50m 05/04 09/03 15/03 23/03 30/03 Centaur 165m Trillian Advisory Centaur Centaur Centaur 136m 200m 190m

Trillian Capital 65m

Total deposited by: Centaur: 885.3m Trillian Capital: 65m Trillian Advisory: 47.2m Tegeta Exploration: 1133m

Alhatime: 10m

Deposits per timeline = 2140.5m

*ine deposit timeline was constructed using Nedbank statements as provided by management for the period 1 March 2016 up to the date of the effective payment of the purchase price for OCH shares.

ANNEXURE C

Letter of comfort: Optimum Coal Mine

11/12/2015

ABSA performance guarantee issued to Tegeta on behalf of Eskom R1.68 bn

18/12/2015

Letter issued that BOB will effect payment of R2.15 bn to lenders of Optimum Coal Holdings*

04/03/2016

BOB issued letter of comfort to FirstRand Bank Limited to effect payment of R2.15 bn to lenders of OCH*

31/03/2016

- Expiry of ABSA guarantee issued to Tegeta on behalf of Eskom
- 2. Expiry of BOB letter of comfort

14/04/2016

Purchase price transferred from BO8 to Werksmans and conclusion of purchase

^{*}The payment is subject to terms and conditions detailed in letters of comfort.

OPTIMUM MINE REHABILITATION FUND

22/06/2016

24/06/2016

14/12/2016

24/06/2017

Receipt of Trust funds from Std Bank Note 1

Transfer of funds from 808 Current account to Fixed deposit accounts Note 2

Note 3

Expiry date of all 3 fixed

Note 1: Amount of 1,469,916,934 was traced to statement of current account number 92020200000524 on 22/06/2016.
 Note 2:

Balances were transferred from account 92020200000524 into fixed deposit investments on 24/06/2016 as follows: 500,000,000 into Fixed Deposit account 9202030000653; and

- 500,000,000 into Fixed Deposit account 92020300000654; and
 461,000,000 into Fixed Deposit account 92020300000655 respectively.
 The residual amount being the interest totalling 8,916,934 remained in the current account. This is in line with the instruction as received from Optimum Mine in their letter dated 23 June 2016.
- Note 3:
 - Note 3:

 Upon investigating the monthly statement of the Baroda fixed deposit for account 9202030000653, where the 1st batch totalling 500,080,000 was moved to, there were no movements in the account from deposit date until the latest statement received, dated 14/12/2016

 Upon investigating the monthly statement of the Baroda fixed deposit for account 9202030000654, where the 2nd batch totalling 500,000,000 was moved to, there were no movements in the account from deposit date until the latest statement received, dated 14/12/2016

 Upon investigating the monthly statement of the Baroda fixed deposit for account 9202030000655, where the 3nd batch totalling 461,000,000 was moved to, there were no movements in the account from deposit date until the latest statement received, dated 14/12/2016

KOORNFONTEIN REHABILITATION FUND

23/05/2016 280m deposited into current account Note 1

> 06/06/2016 170m transferred out to fixed deposit account 9202030000649 Note 2

06/06/2017 Maturity date of fixed deposit

Note 1:

280m was deposited into current account 62341938572.

Note 2:

170m was moved out of the above current account into a fixed deposit account. Furthermore, interest accrues monthly on the remainder of the amount in the current account. This was done per instruction of Koomfontein Rehabilitation Trust Fund. The fixed deposit statement was inspected from inception until the latest statement available 19/12/2016 and no withdrawais had been made during this period.

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List of all relevant documentary evidence obtained directly from Bank of Baroda supporting the findings in our report.

Description of document:

- 1. Documents relating to the OCM transaction, include the following:
 - a. Letters of comfort issued by Bank of Baroda dated 18 December 2015 and 4 March 2016
 - b. Letter from Tegeta requesting Bank of Baroda to issue a letter on their behalf to the lenders of OCH in respect of amount to be paid of R2.15 billion
 - ABSA performance guarantee issued to Tegeta in the amount of R1.68 billion signed 11 December 2015
 - d. Letter dated 14 April 2016 from Tegeta to Bank of Baroda regarding the release of funds from escrow in respect of Optimum deal
 - e. Letter from Bank of Baroda to attorneys Van Der Merwe & Associates dated 14 April 2016
- 2. Confirmation from Werksmans of funds received for payment of Optimum Coal Holdings
- 3. Statement of account 92020200000524 for Optimum Mine Rehabilitation Trust
- 4. Letter to Bank of Baroda from Optimum Mine Rehabilitation Trust in respect of the placement of funds in term deposit dated 23 June 2016
- 5. Deposit receipts and details in respect of the term deposit placements in respect of the Optimum Rehabilitation Trust Funds
- 6. Minutes of the meeting of the Trustees of Optimum Rehabilitation Trust held on the 23 June 2016 to place the Trust Fund monies under term deposit
- 7. Tax clearance certificate for Optimum Mine Rehabilitation Trust
- 8. Confirmation of withdrawal of Optimum Rehabilitation Trust funds from Standard Bank
- 9. Standard Bank statement for account 402264746 Optimum Mine Rehabilitation Trust for period at 22 June 2016
- 10. Letter from Department of Mineral Resources acknowledging the movement of Optimum Rehabilitation Trust Funds from Standard Bank to Bank of Baroda dated 5 May 2016
- 11. Deed of Trust for the establishment of the Optimum Mine Rehabilitation Trust Fund
- 12. Account statement for Koornfontein Mine Account 920200000519
- 13. Closing account notification from RMB
- 14. Letter from Department of Mineral Resources acknowledging the movement of Koornfontein I rust funds from FNB to Bank of Baroda dated 4 May 2016
- 15. Extracts of Minutes of meetings Koornfontein
- 16. Koornfontein fixed deposit request and receipt
- 17. Koornfontein Trust Deed
- 18. Koornfontein Mine Rehabilitation Trust monthly account statements iro fixed deposits
- 19. Koornfontein Mine Rehabilitation Trust Fund Tax clearance certificate
- 20. ZAR 280 million Koornfontein Mine Rehabilitation Trust Fund remittance proof
- 21. BA returns and related workings for the period from December 2015 up to September 2016
- 22. Statement of the following client accounts:
 - Koornfontein Mines Account 92020200000520

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APPENDIX 3

- Oakbay Investments Account 92020200000034
- Oakbay Resources and Energy Account 92020200000353
- Optimum Coal Mines Account 92020200000523
- Tegeta Exploration and Resources Account 92020200000042
- Tegeta Resources Account 92020200000046
- Westdawn Investments Account 92020200000188
- 23. Documentation including letters and email correspondence with Corporate Head Office relating to the ratification of breaches in Single Depositor Limit relating to Centaur Mining SA and the Optimum Mine Rehabilitation Trust March 2016, June 2016 and September 2016
- 24. Asset and Liability Committee Minutes from December 2015 up to September 2016
- 25. Loan Policy for Bank of Baroda South Africa
- 26. Letter from Bank of Baroda addressed "To whom it may concern" to certify that Optimum Rehabilitation Trust Fund maintains a current and fixed deposit accounts with Bank of Baroda
- 27. Nedbank account 1454095326 statement from January 2016 to June 2016
- 28. Tegeta Utilisation of funds
- 29. Loan application forms for Tegeta Exploration and Resources Pty Ltd
- 30. Letters of fixed deposit collateral undertaking signed by Centaur Mining SA on the 12 April 2016 and Albatime and Trillion Management Consulting both signed on the 14 April 2016
- 31. Appraisal note and credit proposal submitted to Corporate Head Office in respect of the loan sanctioned to Tegeta against Bank's deposit through post sanction reporting (PSR).
- 32. PSR response from Corporate Head Office regarding the loans sanctioned to Tegeta
- Request letter from Centaur Mining SA, Albatime and Trillion Management Consulting to place funds in fixed deposit
- 34. Minutes of Tegeta. Trillian, Centaur, Albatime Board of Directors meetings detailing resolutions passed in respect of the loans to be obtained from Bank of Baroda and related security.
- 35. Bank of Baroda Territorial loan committee minutes of meeting
- 36. Sanction letters of credit facilities
- 37. SARB BA queries for April 2016 and May 2016
- 38. Account opening documentation for Koornfontein Mine Account 92020200000520
- 39. Account opening documentation for Optimum Coal Mine Account 92020200000523
- 40. Account opening documentation for Tegeta Exploration and Resources Account 92020200000042
- 41. Account opening documentation for Oakbay Investments Account 92020200000034
- 42. Account opening documentation for Westdawn Investments Account 92020200000188
- 43. Account opening documentation for Trillian Management Consulting Account 92020200000512
- 44. Remittance advices for sample in Annexure F
- 45. Centaur Mining SA Standard Bank account statement

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Tracy Erasmus

From:

Soretha Venter <soretha.venter@outa.co.za>

Sent:

12 September 2017 11:06

To:

ugeshnin@sahara.co.za; althafe@spoornet.co.za; trevor@bearingway.co.za; althafe@spoornet.co.za; althafe@telkomsa.net; althafe@ce-commerce.biz;

althaf@commerce.co.za; aemmamally@gmail.com

Cc:

ben.theron@outa.co.za; ronicar@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.

Attachments:

12_09_2017 2nd Letter to Trustees.pdf

Importance:

High

Dear Sirs.

CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION JNDS 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

Legal Manager soretha.venter@outa.co.za Office: 0871700639 Cell: 0718691959

OUTA - Organisation Undoing Tax Abuse

www.outa.co.za

rrom: Soretha Venter [mailto:soretha,venter@outa.co.za]

Sent: Friday, 25 August 2017 8:39 PM

To: 'ronicar@oakbay.co.za' <ronicar@oakbay.co.za>; 'ugeshnin@sahara.co.za' <ugeshnin@sahara.co.za>; 'althafe@spoornet.co.za' <althafe@spoornet.co.za>; 'trevor@bearingway.co.za' <trevor@bearingway.co.za> Cc: ben.theron@outa.co.za

Car Delicine Ton Contract Cont

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.

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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







Hilfview Building, 318 Oak Avenue, Randburg PO Box 2627, Northriding, 2162 +27 (87) 170 0639 • info@outa.co.za www.outa.co.za

12 September 2017

To: The Trustees of the Optimum Mine Rehabilitation Trust

(Registration No IT/13693/07)

The Trustees of the Koornfontein Mine Rehabilitation Trust

(Registration No IT/7563/07)

Per: E-mail (ugeshnin@sahara.co.za)

(althafe@spoornet.co.za)

(althaf@telkomsa.net)

(althafe@ce-commerce.biz)

(althaf@commerce.co.za)

(aemmamally@gmail.com)

(trevor@bearingway.co.za)

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

- 1. Our letter dated 25 August 2017 refers.
- A copy of the letter is attached for your ease of reference. We have to date received no response from you nor any acknowledgement of receipt.
- 3. We did receive a letter from Ms Ronica Ragavan, the acting CEO of Oakbay Investments (Pty) Ltd on 1 September 2017, indicating in effect that she did not intend to engage with us. However, as far as we are aware, Ms Ragavan is not a trustee. We addressed you in your capacity as trustees and request a response from you as such.
- 4. As you know, in our letter of 25 August 2017, we wrote in connection with the rehabilitation funds held for the rehabilitation of coal mines in which Tegeta Exploration and Resources (Pty) Ltd has an interest. The mines are coal mines located in Mpumalanga.





- 5. More particularly, we wrote in connection with the funds held in the Optimum Mine Rehabilitation Trust¹ and the Koornfontein Mine Rehabilitation Trust² ('the Trusts'). As you must be aware, OUTA has a direct interest in the safety and integrity of the Trusts' property, as contemplated by section 32 of the National Environmental Management Act 107 of 1998.
- 6. Since we sent our letter, we have become apprised of information supplied to the Pretoria High Court in interdict proceedings instituted by inter alia the Trusts against the Bank of Baroda ('BOB'). The proceedings proceeded on Friday 8 September 2017 ('the BOB proceedings'). In the BOB proceedings, it was confirmed that the BOB will, unless interdicted, close the Trusts' accounts at the end of September 2017. We understand that the Court will deliver its judgment in the BOB proceedings (in which interim relief was sought)³ on Thursday 14 September 2017. If no interim interdict is granted the accounts will be closed very shortly and on the applicants' version, irreparable harm will be suffered in respect of the Trusts.
- 7_{to} Other information has come to light as a result of the BOB proceedings. This includes, *i.a*:
 - 7.1. Confirmation that the Trusts' funds are currently being used for concurrent rehabilitation purposes.
 - 7.2. Evidence that the Koornfontein Trust's funds were used in 2016 to secure (and possibly) pay loans of Koornfontein Mines (Pty) Ltd.
- 8. This is unlawful and demonstrates that the Trusts' funds are not only already compromised but such funds as remain are clearly at risk.
- 9. We now request an urgent response to our letter of 25 August 2017.
- 10. In addition to the queries in that letter:
 - 10.1. We require full details regarding precisely what will happen to the Trusts' funds should the BOB accounts be closed by the end of September 2017.
 - 10.2. Kindly confirm whether and in what amounts any Trust funds have been used to pay loans or any other liability of any related companies or entities.

ORGANISATION UNDOING TAX ABUSE (CUTA)

Co Reg: 2012/064213/08 NPO #: 124381NPO
DIRECTORS: Wayne L Duvenage (Chairman), Robert N Hutchinson, Leopold J J Pauwen,
NON EXECUTIVE DIRECTORS: Phumlani M Majozi, Ms Ferrial Adam



¹ Registration No IT/13693/07

² Registration No IT/7563/07

³ Indeed, we understand they were cast as 'interim' interim proceedings.



- 10.3. Kindly indicate whether, and in what amounts, it is intended to use Trust funds to pay loans or any liability of any related companies or entities.
- 10.4. Kindly advise precisely what amounts of Trust funds have been and are being used for purposes of concurrent rehabilitation.
- 10.5. Kindly advise whether the Trustees rely on any ministerial or departmental authority for the use of such funds in such manner and provide full details.
- 10.6. Provide us with a complete breakdown of the funds withdrawn and the type of rehabilitation it was utilised for.
- 11. Kindly contact our legal advisor Ms. S Venter at soretha.venter@outa.co.za in the event of any queries.
- 12. We trust that you find the above in order and look forward to receiving your response on or before 10:00am on Thursday, 14 September 2017.
- 13. Should you fail to respond and to provide the requested information and assurances, OUTA may have no choice but to approach a court for relief to protect the Trust funds.

14. 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

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