

25 August 2017

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

Per: E-mail

Dear Sirs / Madam

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

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

**INTRODUCTION**

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

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

## RECENT EVENTS

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

10. According to the report (paragraph 5.344):
  - 10.1 As at 23 May 2016 the value of the 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 Koornfontein Mine Rehabilitation Trust (Registration No IT/7563/07).
13. OUTA has to hand a letter dated 5 October 2016 from the Bank of Baroda addressed to 'whom it may concern' certifying that Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) is maintaining four accounts with them which are operative and active. The total outstanding balance on these accounts as at 5 October 2016 was R1 470 338 316,18.
14. There have been recent media reports relating to the imminent closure by the Bank of Baroda of accounts of companies controlled by the Gupta family. The Bank of Baroda reportedly took on the Gupta accounts after South Africa's banks closed their accounts in 2016. According to the reports, the Baroda accounts will be closed by the end of September 2017. It is also reported that the Gupta accounts will be moved to an undisclosed 'new bank'.
15. On the information to hand, OUTA is concerned that the Baroda accounts for the two Trusts will be amongst the accounts that Baroda Bank will be closing and that the monies apparently held by Baroda for the Trusts as statutorily required financial provision for rehabilitation will be in jeopardy as a result.
16. This concern is exacerbated by the recently publicised sale by Oakbay Investments (Pty) Ltd of its Tegeta business comprising Optimum, 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

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**ORGANISATION UNDOING TAX ABUSE (OUTA)**

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

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

**NON EXECUTIVE DIRECTORS:** Phumlani M Majozi, Ms Ferrial Adam

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

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

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

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

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

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

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

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

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

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

23. Kindly acknowledge receipt of this letter.

Yours Sincerely,



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**Stefanie Fick**  
**Head of Legal Affairs**  
**OUTA – Organisation Undoing Tax Abuse**  
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