IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no:.80978/2016

In the matter between:

MINISTER OF FINANCE	Applicant
and	
OAKBAY INVESTMENTS (PTY) LTD	First respondent
OAKBAY RESOURCES AND ENERGY LTD	Second respondent
SHIVA URANIUM (PTY) LTD	Third respondent
TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Fourth respondent
JIC MINING SERVICES (1979) (PTY) LTD	Fifth respondent
BLACKEDGE EXPLORATION (PTY) LTD	Sixth respondent
TNA MEDIA (PTY) LTD	Seventh respondent
THE NEW AGE	Eighth respondent
AFRICA NEWS NETWORK (PTY) LTD	Ninth respondent
VR LASER SERVICES (PTY) LTD	Tenth respondent
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD	Eleventh respondent
CONFIDENT CONCEPT (PTY) LTD	Twelfth respondent
JET AIRWAYS (INDIA) LTD (INCORPORATED IN INDIA)	Thirteenth respondent
SAHARA COMPUTERS (PTY) LTD	Fourteenth respondent
ABSA BANK LTD	Fifteenth respondent
FIRST NATIONAL BANK LTD	Sixteenth respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth respondent
NEDBANK LIMTED	Eighteenth respondent

GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth respondent
REGISTRAR OF BANKS	Twentieth respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-first respondent

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FILING SHEET

KINDLY TAKE NOTICE THAT the Applicant hereby files his Replying Affidavit to the 1st, 2nd, 3rd, 4th, 6th, 7th, 10th, 11th, 12th and 15th Respondents' Answering Affidavit

DATED AT PRETORIA ON THIS 30th **DAY OF JANUARY 2017**

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
GAUTENG DIVISION, PRETORIA

AND TO:

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no: 90878/2016

In the matter between:

MINISTER OF FINANCE	Applicant
and	
OAKBAY INVESTMENTS (PTY) LTD	First Respondent
OAKBAY RESOURCES AND ENERGY LTD	Second Respondent
SHIVA URANIUM (PTY) LTD	Third Respondent
TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Fourth Respondent
JIC MINING SERVICES (1979) (PTY) LTD	Fifth Respondent
BLACKEDGE EXPLORATION (PTY) LTD	Sixth Respondent
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REGISTRAR OF BANKS	Nineteenth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twentieth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Twenty-First Respondent

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MINISTER OF FINANCE'S REPLYING AFFIDAVIT

I, the undersigned,

PRAVIN JAMNADAS GORDHAN

solemnly affirm that:

1. I am the applicant and the deponent to the founding affidavit, which sets out my position as Minister of Finance.

2. The contents of this affidavit are, save where the context indicates otherwise, within my personal knowledge or derived from records and information under my control. They are true and correct. Where I make legal submissions this is based on advice by the legal representatives of National Treasury.

3. I depose to this affidavit in reply to extensive answering papers (filed on Friday 20 January 2017) to my thirteen-page founding affidavit. That was filed over three months ago. My concise founding papers ask for the determination of a pure question of law. Yet it has been purportedly met with wide-ranging and extraneous factual allegations by Oakbay.

4. This replying affidavit is due within five days of the filing of the answering papers, spanning 437 pages. As Oakbay is obliged expressly to concede, substantial parts of the allegations advanced in answering papers are "not necessary, or appropriate, for this court to determine" because they are "factually and legally complex and incapable of resolution on motion". Yet Oakbay persists in its voluminous and diffuse attempt at a factual answer.

5. The five-day deadline for this reply is pursuant to a timetable directed by the Deputy Judge President at a case-management meeting on 15 December 2016. National Treasury was obliged to ask that this meeting be convened to overcome delay by Oakbay. Oakbay opposed even the meeting taking place.

6. The timetable directed recognises the importance of the matter and the overwhelming public interest in determining the single legal question it raises as expeditiously as possible. This is because the answer to this legal question has far-ranging economic, financial and legal consequences – both nationally and internationally.

7. In the time available for filing this affidavit National Treasury and I have been engaged in important legislative processes in Parliament relating to the Financial Intelligence Centre Amendment Bill. This after only most recently

returning from the World Economic Forum in Davos. Simultaneously the preparation of the 2017 Budget is also a pressing priority demanding the attention of myself and National Treasury. In these circumstances this reply is necessarily focussed on the more material parts of the answering affidavits.

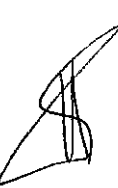
8. I have sought to ensure that service and filing through the State Attorney is accomplished within the stipulated time. Unfortunately this could not happen. I respectfully ask that a delay of one court day be condoned. Because this is a replying affidavit, a short delay will not prejudice the other parties or affect the hearing. Nevertheless, any inconvenience which may be caused to the Court or the other parties is regretted but, for the reasons indicated, unfortunately unavoidable.

9. This affidavit is structured as follows

   (a) First, I provide an overview of the Oakbay respondents' opposition. In doing so I shall show that the "substantive" grounds of opposition are untenable.

   (b) Second, I address the "procedural points" on which Oakbay falls back. They are correctly not raised *in limine* by Oakbay, being merely dilatory. They are technical and tactical in the extreme, and without substance.

   (c) Third, I traverse *seriatim* such allegations advanced in the answering affidavits as the circumstances require and permit. In doing so I shall elaborate further on Oakbay's grounds of opposition and its procedural points.



(d) Fourth, I conclude by asking for what I am advised and submit is appropriate relief: granting the declaratory order in the terms accepted by all parties as appropriately formulated, with costs.

A. Overview of Oakbay's "substantive" grounds of opposition

10. Oakbay's answering affidavit capitulates on the essential issue before Court. Now Oakbay unequivocally adopts the formal stance that I, as Minister of Finance, indeed have no legal authority or duty to interfere in its banker-client relationships. Strikingly this belated concession is now embraced by Oakbay as its first and main ground of opposition.

11. Thus, after having persistently sought to implore my intervention, Oakbay shifts position to ask this Court to refuse my application *on the very basis* that Oakbay now accepts that there was indeed no legal basis on which it could seek to impose pressure on me to prevail on the banks to reverse their application of anti-money laundering and related laws and standards.

12. Yet, even in asserting that my application should somehow fail – because it now concedes the correctness of *my* position – Oakbay simultaneously persists in its stance that "the four major banks [are] aided by the Reserve Bank", that their "interferences" with the Oakbay companies "continue today", and that they therefore "should become the subject of further investigation and decisive action" (Record p 1020 para 94). Oakbay's concession of the illegality of executive intervention is therefore inconsistent with Oakbay's own answering affidavit – which still insists on "decisive action" against the banks.

13. Oakbay's own answering affidavit is therefore also inconsistent with Oakbay's main ground of opposition: the contended academic nature of the declaratory relief. Whether the executive *may* take "decisive action" remains a vital issue. For Oakbay does not suggest that any other arm of State (either the Courts or Parliament) is the appropriate arm of State to "investigate" or take "decisive action". In this respect Oakbay is, I am advised correct. The judiciary is not the arm of State vested with investigative powers (and I understand the Constitutional Court to have stressed this in overturning the Heath Commission); and that the Legislature has no *ad hoc* power to take action against four banks on the basis envisaged by Oakbay (because that would not constitute a law of general application, such as would comply with the Constitution).

14. This raises Oakbay's second ground of opposition. It is purportedly based on the doctrine of separation of powers. Oakbay asserts that this Court is precluded by the doctrine of separation of powers to determine whether in law I, as Minister of Finance, am authorised or obliged to intervene in the banker-client relationship of entities connected with politically-exposed persons. This legal construct is, I am advised, untenable. It is the exclusive constitutional remit of the *Courts* to determine issues of legality and to answer questions of law.

15. Oakbay therefore correctly does not purport to challenge this Court's *jurisdiction* to grant the relief. Nor does it challenge my *standing* to seek the relief. Oakbay also does not oppose the *formulation* of the declaratory relief sought. And Oakbay even expressly accepts the correctness of the legal

advice on which my application rests. The two legal opinions attached to my founding affidavit are therefore not in issue. Thus there is no substantive *legal* objection to the relief sought, other than a self-defeating reliance on the doctrine of separation of powers.

16. Nor is there any tenable *factual* opposition. This is because the factual controversy which Oakbay arduously seeks to raise in respect of the FIC certificate does not affect the relief sought. It is, as mentioned, this document which records multiple suspicious transactions. Oakbay's position on this certificate is that it is "entirely irrelevant to the issues in the declaratory application" (Record p 990 para 9). Thus, on Oakbay's own approach, even were its commissioned report – procured (as Oakbay openly acknowledges) "to show" that there is nothing "untoward" about the 72 suspicious transactions – to pass muster, then the declaratory relief still remains "entirely" unaffected. Thus on Oakbay's own answering affidavit the relief does not depend on the validity or otherwise of the certificate.

17. It is nevertheless significant that – despite all the points it sought to raise – Oakbay evidently has elected to forego any actual challenge to FIC's certificate itself (whether via a collateral review or otherwise). Accordingly, I am advised, as an important principle of law, the certificate stands. This renders Oakbay's objections (technical and otherwise) to the certificate impermissible before this Court, I am advised.

18. In its answer, Oakbay has also elected not to traverse my founding affidavit *seriatim*, as the Rules of Court require. To the extent that the essential facts matter to the purely legal question arising in this application, Oakbay therefore

did not properly place any of them properly in issue. It is therefore common cause *inter alia* that

- this matter indeed arises in circumstances which have considerable importance for the operation of the banking sector, the South African economy, and regulatory powers of Government;

- the resolution of the question of law is required in the public interest, the interest of *inter alia* the affected banks, and affected account-holders' employees;

- I have acted properly in my capacity as Minister of Finance, and with due consideration to ascertain the extent to which I could properly, in terms of law, address the situation arising from Oakbay's serious allegations concerning the banks, and the job losses it threatened;

- I have indeed engaged to the limited extent that I could with Oakbay's CEO, and sought to provide Oakbay with all assistance and advice as regards the regulatory framework in which Oakbay, the banks, and I must operate. Nonetheless Oakbay continued to approach me complaining about the banks' closure of the Oakbay accounts;

- Oakbay's persistent contentions are harmful to the banking sector and thereby to the economy of this country of which it forms a vital part; this had been raised with me by the Governor of the Reserve Bank independently; and

- transactions such as that regarding the Optimum Mining Rehabilitation Fund (for R1,3 billion) is indeed the very real concern of my portfolio in

the circumstances described in my founding affidavit. The circumstances are that this very large transaction has been the subject of detailed adverse findings by the Public Protector;[1] has indeed been reported as suspicious; and it raises issues regarding recoverable revenue and the burden which mining rehabilitation may impose on the fiscus (Record p 19 para 28). My *bona fides* in respect of this extraordinary and other suspicious transactions, and my legitimate concerns regarding the crescendo of controversy surrounding associated corporate entities engaging me to intervene in the banking sector, are therefore not open to factual contestation.

19. Yet the third and final substantive ground of opposition invoked by Oakbay is an alleged lack of *bona fides*. Oakbay asserts that my application is an abuse because it is politically motivated and retaliatory. There is no merit in this allegation; it is simply scurrilous. Oakbay itself concedes its companies' connection with politically-exposed persons.

20. Connections of bankers' clients with politically-exposed persons trigger banks' national and international legal duties. It is because "each of the banks has considered itself under a legal duty pursuant to the international and domestic statutory instruments applying to it" that Oakbay's bank accounts were closed (Record p 16 para 22). This, too, is not traversed by Oakbay. It, too, must therefore be accepted as common cause.

21. Therefore it is not open to Oakbay to contend that I am somehow responsible for Oakbay's accounts being closed. It never suggested this in any of its letters

[1] I reference this report in greater detail later.

to, and meetings with, me. Had Oakbay honestly considered that I have orchestrated a concerted campaign against it, Oakbay would of course not have approached me for assistance.

22. Neither my conduct prior to instituting this application nor my conduct in this litigation is capable of being criticised as *mala fide* or an "abuse". It is precisely because I am concerned *not* to abuse executive power that I have approached this Court to declare whether I have the power to assist Oakbay. Oakbay insisted that I should do so "to serve the national purpose". Whether I am authorised so to serve the "national purpose" is precisely the point raised in this application.

23. As my founding affidavit reflects, I have instituted this application "in the public interest"; and in the interests of the "integrity of South Africa's financial and banking sectors", "financial stability and the standing of the South African regulatory authorities", the South African economy at large", and also "the employees whose interests Oakbay invokes" itself – but whose interests Oakbay did not seek to protect by itself approaching the Court, as I have invited Oakbay to do. Now that I have done so Oakbay alleges that my application is a political plot.

24. Yet it is Oakbay, the Public Protector has found,[2] that influences political appointments. And it is the closure of the accounts which is the subject-matter of the declaratory relief. Ascribing an improper political motive to me, acting

[2] I am aware that an application to review the report has since been lodged, but I am advised that the report stands, until and unless it is set aside by a court.

in my capacity as Minister of Finance, is therefore baseless and, again, simply scurrilous.

25. It is the duty of the Minister of Finance to uphold the integrity of the financial sector and to safeguard National Treasury from inappropriate interference by influential individuals. There is nothing "improper" or "political" in an incoming Minister of Finance distancing himself from an influential family alleged to have been involved in the appointment of his immediate predecessor. There has been no improper conduct or political retaliation on my part.

26. I deny in particular any suggestion of a vendetta against the Guptas. No admissible factual basis exists for this extraordinary claim. Oakbay has indiscriminately advanced similar claims against others. Now it advances the same accusation against me. But *only now* (in Oakbay's answering affidavit) is it for the first time contended that I am somehow the author of a grand political plot against the Guptas.

27. I would note that the Public Protector's report records an attempt by the Guptas to suborn the Deputy Minister of Finance. Accordingly to the report, based on evidence given by the Deputy Minister and which he has confirmed in a public statement, the Deputy Minister was taken to the Saxonwold home of the Guptas. There he was offered money, and promotion as Minister of Finance. The report records the same offer of promotion in respect of a senior member of Parliament. She has also confirmed this publicly.

28. It is advanced to support a contrived proposition under the heading "the parties to the dispute" in Oakbay's answering affidavit that "the application has as its target three businessmen namely Mr Ajay Gupta, Mr Atul Gupta and Mr

Rajesh Gupta" (Record p 1001 para 13). None of these individuals is, however, party to the application (nor, significantly, a deponent to any substantive affidavit). Nor are they the "target" of the application. That there is indeed a "dispute" is, however, clearly correct. But this only returns Oakbay to the untenable first ground of opposition.

29. In short, the first ground of opposition is inconsistent with Oakbay's own answering affidavit. That confirms that Oakbay still insists that the banks should be subjected to "further investigation" and "decisive action". Whether the member of the executive representing Government in respect of the banking sector is authorised to do so is therefore a live issue. But even were it otherwise, the academic nature of the subject-matter of declaratory relief is merely a *factor* which may operate on a court's discretion to refuse declaratory relief. It is not a disqualification, as Oakbay variously presupposes. The founding affidavit makes out a case for the Court's exercise of its discretion in favour of granting declaratory relief. Oakbay did not competently place in issue the contents of the founding papers.

30. Second, the doctrine of separation of powers actually requires that whether such "investigation" and "action" is legally competent be determined by the Courts. It is the constitutional function of the Courts to enforce the rule of law. It is equally a judicial function to determine whether *legal* authority exists which permits the exercise of coercive powers by members of the executive.

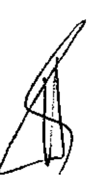
31. Third, whether intervention in banker-client relationships by Government is authorised clearly does raise matters in respect of which the Minister of Finance has a *bona fide* interest. Continued threats of "investigations" by and

"decisive action" against banks after they have acted pursuant to international and national obligations to counter serious crimes (like the financing of terrorism, or money-laundering) are highly prejudicial to the country's economy. As Minister of Finance it is my duty to protect the South African economy against such prejudice.

32. What this summary shows is that the importance of this application is indeed confirmed by Oakbay's own answering affidavit. It has, furthermore, been reiterated by the public and private banking sector. Each of the major commercial banks, the Reserve Bank and FIC itself has filed affidavits strongly supporting the application. Oakbay elected not to respond to any of these affidavits. It is therefore common cause that the declaratory relief sought is indeed required in the public interest.

33. Only one Oakbay-associated entity, VR Laser Services (Pty) Ltd (the tenth respondent), filed an affidavit in response to the banks' papers – and this only in respect of a single bank: Standard Bank. Standard Bank requests that the declarator sought in my application be formulated in terms which expressly include *all* other members of the National Executive. VR Laser strenuously opposes this. But it follows, with respect, *a fortiori* that if the representative of the National Executive responsible for the financial sector (i.e. the Minister of Finance) is not even entitled or empowered to intervene in banker-client relations, then a different member of the National Executive is even less so entitled or empowered.

34. This further confirms that the first ground of opposition is untenable. The stance that my application is entirely academic, but that Standard Bank's



similar declarator is highly contentious, reveals a clear inconsistency in the Oakbay respondents' opposition to my application.

B. **Procedural points taken by Oakbay**

35. Oakbay half-heartedly invokes non-joinder and misjoinder as procedural points. These issues are not matter of substance. They merely cause delay. And they are, furthermore, formalistic in the extreme.

36. For instance, the major point underlying the asserted misjoinder is that the fifth respondent is cited with reference to its trading name instead of its registered name. But it is common cause that it is an Oakbay company, there is no confusion or mistaken identity, and had it been cited by any other name it would still have been under the banner of Oakbay's main answering affidavit filed on behalf of the whole stable. If a formal correction in this regard is required, the Court will be asked to effect it.

37. The second allegation of misjoinder relates to the eighth respondent. Oakbay apparently complains that the eighth respondent should not be cited because it is owned by an entity already cited individually as another respondent.

38. Similar complaints are raised in respect of some other respondents. I am advised that these points are clearly capable of being removed from formalistic contestation by filing a notice of amendment. This will be done separately.

39. As regards Oakbay's contention that certain non-parties should be joined, the answer is different.

40. In respect of the contention that e.g. the President should have been cited, this allegation clearly confuses my application with Standard Bank's application which seeks relief which includes a reference to other members of the National Executive.

41. The contention that third parties named in annexures to the founding affidavit should have been cited mistakes the correct legal position, I am advised. Oakbay demonstrates no direct and substantial interest by any of these so-called essential parties to be cited in the relief sought. This is, however, a matter for legal argument. I shall nonetheless address it as appropriate at this stage in the traversal which follows.

C. <u>Traversal of answering affidavits</u>

42. As mentioned, the Oakbay respondents filed two answering affidavits. The first is an affidavit filed on behalf of the tenth respondent, VR Laser Services (Pty) Ltd. It is directed at Standard Bank's relief. This affidavit (to which I refer as "Laser's answering affidavit") therefore only requires limited traversal by me. It is the second affidavit, the 70-page document filed on behalf of the first, second, third, fourth, sixth, seventh, tenth, eleventh, twelfth and fourteenth respondents (to which I refer as "the main answering affidavit") which purports to put up a case against my thirteen-page founding affidavit.

43. I shall traverse each of these affidavits separately. For the reasons stated above, allegations not expressly addressed are denied to the extent that they are inconsistent with the contents of this affidavit and my founding affidavit. It is striking, as I have already noted, that Oakbay's affidavits fail to traverse my founding affidavit.

Ad paragraph 5 of Laser's answering affidavit: Cross-reference to main answering affidavit

44. Although Oakbay's main answering affidavit expressly concedes the legal basis for the declaratory relief which I seek, Mr Van der Merwe purports to "agree[] with the position adopted in the [main answering affidavit] that there is no legal basis for the Minister's application and … that there is no basis for such relief in fact and in law" (Record p 884 para 5). This is untenable.

45. The correct position is that the *legal* basis has now been conceded in the main answering affidavit, and that this concession is presented as the *factual* basis (contending that the concession existed as a fact already earlier) for opposing my application. But the actual facts are these. Firstly, the main answering affidavit itself persists in Oakbay's stance that banks are to be subjected to "decisive action". Secondly, Oakbay was invited to confirm in correspondence whether it is following its attorney's advice to oppose the declaratory relief or abide the application. But it did not do so.

46. Instead Oakbay through the press – it and its attorneys have thought it proper to engage extensively in public comment on matters canvassed in this application – expressed (through Mr Van der Merwe) its "delight" at being able to litigate the issue regarding the closure of its bank accounts. It thereupon filed a notice of opposition, and thereafter refused to withdraw its opposition when engaged by the State Attorney on its diverging stances.

47. In a public statement released by the "Gupta Family lawyer" (evidently Mr Van der Merwe) on 18 October 2016, "[t]he Gupta Family (as majority shareholders) and Oakbay Investments" have "thank[ed]" me for citing the

respondents as I did. This statement already forms part of the papers (Record p 485). None of Oakbay's answering papers purported to explain how this statement is to be reconciled by the stance it now adopts. Its stance in its main answering affidavit is that its capitulation constitutes its defence.

48. Laser's answering affidavit adopts the stance that "[i]t is, however, not necessary, or appropriate, for this court to determine this question which is factually and legally complex and incapable of resolution on motion. Nor has it been asked to do so" (Record p 899 para 38). The question to which Laser here refers is whether – "the *Bredenkamp* decision of the Supreme Court of Appeal notwithstanding" (which operates, as Oakbay concedes, against it) – the banks have acted unlawfully in closing the Oakbay accounts (Record p 899 para 37). But this question, Oakbay now concedes, is <u>not</u> the subject-matter for determination in this application. It is *separate* proceedings, Oakbay insists, which "would constitute the proper forum for the ventilation of the false allegations against the affected respondents and the Gupta family and the facts relevant to the termination of the banking accounts of the affected respondents" (Record p 899 para 37).

49. Oakbay's opposition to my application for purposes of ventilating extraneous factual issues is therefore an abuse. My application seeks a concise declarator. It rests on a pure question of law. Therefore Oakbay's contention that it is *my application* which somehow constitutes an abuse is misdirected. It is Oakbay which sought to hijack my application to allege illegality on the part of the banks. But Laser now retreats: it expressly states that it is <u>not</u> asking the Court to determine the illegality of *others'* conduct. Yet it accuses

me, FIC, the banks and everyone else of unlawful conduct. This without even seeking to set aside the FIC certificate which constitutes *prima facie* proof of the suspicious transactions to which my application refers. The reference merely demonstrates the controversy surrounding the Oakbay accounts, which is the context in which the declaratory relief is sought.

Ad paragraphs 10 to 15 of Laser's answering affidavit: Procedural directives

50. These paragraphs purport to criticise the Deputy Judge President's timetable, to which Oakbay's counsel agreed. The Oakbay respondents have had many months to deal with my short affidavit, and a month to address Standard Bank's affidavit. The criticism now also against the directive is therefore misplaced.

51. The directive was well-understood. It contemplated the filing of answering affidavits by "all of the affected respondents" (Record p 886 para 10), i.e. the Oakbay entities. What the Oakbay respondents understandably elected to do in response was to file a single main answering affidavit and a single answering affidavit in respect of Standard Bank. What this demonstrates is that there is no merit in Oakbay's points regarding citation. Whether a particular Oakbay entity has been cited with reference to the trading name it has chosen for itself, or some other name, is irrelevant for purposes of the declaratory relief. The declaratory relief is sought to be opposed by the Oakbay stable on the bases advanced in the main answering affidavit.

52. The entities concerned are all under the Oakbay banner, and they and their banks are well-aware of whose accounts have been terminated. The relevant respondents are therefore readily identifiable. The main answering affidavit

itself makes this sufficiently clear. It affects no difficulty in identifying, for instance, the fifth respondent.

53. Just as the main answering affidavit has been filed also on behalf of Laser and other Oakbay respondents in respect of my application, it served as answering affidavits for all "effected" Oakbay entities. Entities like the fifth respondent therefore clearly have nothing to add to the main answering affidavit. Citing them by any other appellation does not change this.

54. Therefore Laser's affidavit, which itself piggy-backs on the main answering affidavit, confirms the pointless technicality of the joinder point.

<u>Ad paragraph 16 of Laser's answering affidavit: Joinder of third parties</u>

55. In this paragraph and its subparagraphs Laser's answering affidavit reveals the rationale for the unexplained contention in the main answering affidavit that individuals like the President should somehow have been cited, and the legal conclusion that their non-citation constitutes a non-joinder. It appears that it is actually because *Standard Bank* seeks relief which refers to "the President and all Members of the Cabinet" (para 1 of Standard Bank's notice of motion; reproduced at Record p 885 para 7) that it is contended that *inter alios* the President should have "formally [been] given notice ... of the relief sought and afforded ... the ordinary time periods to file an intention to oppose and answering affidavits" (Record p 888 para 16.2).

56. As mentioned, the relief which I seek only refers to myself and the cited respondents. There is no contention that any of the Oakbay companies who stands to be affected by the declaratory relief which I seek have not received

notice of my application or an appropriate opportunity to associate themselves with or repudiate the main answering affidavit filed by "the Acting Group CEO of Oakbay" (as the main answering affidavit describes its deponent).

<u>Ad paragraphs 21, 35, 36.3 and 36.4 of Laser's answering affidavit: Formulation of Standard Banks' declarator</u>

57. As mentioned, Laser's affidavit does not address or detract from my application. It attacks Standard Bank's application. In seeking to do so it also in passing refers fleetingly to the formulation of the declarator sought in my application. This is misdirected for multiple reasons.

58. Firstly, a major strut of Laser's criticism is that Standard Bank seeks "effectively" or "in substance" an over-extensive interdict (Record p 890 para 21; Record p 896 para 35). Neither the Laser answering affidavit nor the main answering affidavit purports to construct my declaratory order as an interdict. It clearly is not.

59. Secondly, as mentioned, the main answering affidavit does not in any way attempt to criticise the formulation of the declaratory relief which I seek. The main ground of opposition is indeed that Oakbay has <u>no</u> objection at all against the relief which I seek.

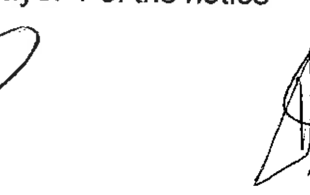
60. Thirdly, the suggestion that "intervene" is a "verb" which is "not at all clear" is untenable. It is quite clear from the declarator which I seek that "intervene" relates to "the relationship between the first to fourteenth respondents, and the fifteenth to eighteenth respondents" – which came to an end by the "closing of the banking accounts". The answering affidavit therefore correctly does not advance the same criticism against my application.

61. Fourthly, the suggestion that banks should simply "refuse to engage" with unlawful interventions (Record p 898 para 36.3) is not a legally competent response. While, I am advised, a private entity may indeed resist unlawful conduct, nothing prevents an individual from proactively obtaining legal relief which clarifies the legal position. I am further advised that I as Minister, on the other hand, am well within my powers to seek a declaratory order in respect of a matter of public importance affecting the functioning of the department of State for which I am responsible and the rights of individual private entities with which my department deals.

62. It must be prejudicial to the banking sector, and the economy at large, if a bank "felt pressurised to revisit its decision" to close bank accounts of politically-exposed persons. This is *particularly* so where "there is no suggestion that the persons with whom it [the bank in question] was meeting had any power to compel it to do so" (Record p 898 para 36.4). I am the member of the Executive responsible for the banking system and the economy. It is therefore my duty to seek clarity on whether overt or covert political pressure should be suffered in silence by banks, or openly declared to be unlawful by the judiciary. Perceptions of political pressure (which Oakbay significantly does not dispute) strongly militate in favour of granting the declaratory relief, at the very least as formulated in my application.

63. Therefore the oblique criticism advanced against the use of the word "intervene" is misplaced.

64. The same applies to the passing reference to the word "empowered" (Record p 890 para 22). It means *vested* with *power* "by law", as prayer 1 of the notice



of motion spells out. The formulation "by law empowered" is, I am advised, used both in caselaw (including a judgment by Chaskalson CJ) and legislation. In a society governed by the rule of law the words are well understood. All public power is constrained by law, and no power exists which is not conferred by law. What my application seeks is that this Court declare that there is indeed no law which empowers what Oakbay seeks: recourse not to court but to the Cabinet member responsible for the banking sector.

Ad paragraphs 33 to 34 of Laser's answering affidavit: Demonising de-risking

65. The Oxfam report and World Bank's briefing note do not support Oakbay's stance. As the latter reflects, it is concerned with the ability "to get humanitarian assistance to refugees from political conflicts or natural disasters" to prevent "death from starvation, exposure, and disease". It is unfortunate that Oakbay seeks to exploit humanitarian concerns in pursuit of its commercial interests. When it was invited to approach this Court to protect any of its employees' interests, Oakbay declined to do so. Hence my application. It expressly invokes *inter alia* my concern for employees' job security. Oakbay, on the other hand, invoked its employees' concerns as a publicity stunt.

Ad paragraphs 36.5 to 38 of Laser's answering affidavit: What Oakbay wants

66. I have already addressed these allegations. I note the revealing qualification that "at present" "the Oakbay respondents" "do not want" the reinstatement of their banking relations (Record p 899 para 36.5). Oakbay's prevarication demonstrates the need for the declaratory relief.

67. It is not true that "no possibility" exists that "absent legal action" powerful commercial entities may not be able to bring formidable pressure to bear on banks to reinstate accounts. Oakbay itself indeed contemplates "decisive action" against the banks.

<u>Ad paragraph 43 of Laser's answering affidavit: Narrow declaratory relief</u>

68. Having sought to contend that Standard Bank's formulation of the declaratory relief it seeks is over-broad, Laser describes "the relief sought by the Minister" as "premised on the narrow proposition that he is not as a matter of law empowered or obliged to intervene in the banking relationship between the affected respondents and their bankers". Therefore, on Laser's own affidavit, the relief I seek is not subject to its criticism. It is clear, concise and unaffected by any factual controversy. It is also conceded.

<u>Paragraphs 44 to 45 of Laser's answering affidavit: Reputation restored</u>

69. Finally, I note the allegation that "the affected respondents" are "confident" that "once all of the issues have been properly ventilated [sic], their reputations will be restored". This ventilation is intended to be the subject-matter of "other legal proceedings", however. This appears to be a reference to a contemplated review of the Public Protector's State Capture report. The report stands until it is set aside.

70. This nonetheless further shows that Oakbay's threatened defamation action against me is misconceived. The threat appears to be advanced merely as an excuse to make bald assertions which Oakbay alleges it might purport to

prove in action proceedings but cannot and does not attempt to substantiate in this application.

71. Malice on my part is, strikingly, not even alleged in Laser's affidavit against me. Laser does, however, baldly attribute "malic" [sic] to "the banks", but does not suggest that I have any role in their attitude towards the "affected respondents".

72. It follows that Laser's answering affidavit undermines Oakbay's case of a grand conspiracy attributable to me. As I shall show in traversing Oakbay's main answering affidavit (to which I now turn), no factual basis exists for this accusation.

Ad paragraphs 2 to 4 of Oakbay's main answering affidavit: Oakbay's new acting CEO

73. The deponent is not the Oakbay representative who approached me during the course of 2016, corresponded with me, and engaged with me. Mr Howa was. He resigned as Oakbay's CEO, ostensibly on grounds of ill-health, the day after this application was served.

74. I deny that the factual allegations are within the deponent's knowledge or in the knowledge of the individuals who have deposed to the formal confirmatory affidavits. The "allegations so levelled" (i.e. without personal knowledge) is not identified. Therefore the confirmatory affidavits are not effective. They do not disclose which parts of the allegations *so levelled* are confirmed by which of the six generic confirmatory affidavits.

75. Significantly, the crucial allegation on which Oakbay's conspiracy theory rests is not supported by <u>any</u> confirmatory affidavit at all. No case is made out for accepting this or other hearsay allegations under section 3 of the Law of Evidence Amendment Act 45 of 1988. The allegation is inadmissible and self-evidently prejudicial to conducting this case, and to my reputation. It therefore falls to be struck out with costs

76. As regards the legal contentions advance in the Oakbay affidavits, these are, for reasons I am advised are to be addressed in legal argument, not correct. The correct position is that even *were* the declaratory relief to be academic (which I deny), the public interest and the interests of justice militate strongly in favour of granting the order. In such circumstances courts do, I am advised, grant declaratory relief.

<u>Ad paragraph 6 of Oakbay's main answering affidavit: Contended impermissibility of declaratory relief</u>

77. It follows that Oakbay's attempt to make out a case regarding the "impermissibility" of the declaratory relief is legally misconceived. Declaratory relief is not *impermissible*, it is discretionary. Oakbay's attempt to oust this Court's discretionary remedial powers is legally flawed, I am advised.

78. Factually, the emphatic contention that there is nothing "unique about the current situation" which justifies my resort to Court is untenable. The situation is entirely unique. Thus, even were this a jurisdictional fact (which it is not, I am advised), "Oakbay Group's situation" is indeed "unique".

79. I have never before been pressed by any company, least of all one remotely comparable to Oakbay, to intervene in banker-client relations. The suggestion

that on my "own version" this application is a run of the mill matter which should "on this ground alone" not be "entertain[ed]" is therefore untenable.

80. The further factual contention that for "months" it had been "clear" that there was no legal issue "between the Minister and the Respondents" do not accord with the position set out contemporaneously in the correspondence. Oakbay did not clarify its inconsistent stances, as it was invited to do. It emphatically "delight[ed]" in the prospect of litigating the issue. Furthermore, as mentioned, even in its main answering affidavit Oakbay contends for "investigation and decisive action" against the banks. The extent to which this is lawful therefore remains a live issue.

Ad paragraph 7 of Oakbay's main answering affidavit: Riddled with factual and legal errors?

81. This paragraph contends that my application is "riddled with factual and legal errors". The example provided in an attempt to bear out this claim is that "relevant roleplayers" who "may" have an interest in the relief sought" have not been joined. The "roleplayers" – the deponent declares – are the President, "the Gupta Brothers", Optimum Coal, Trustees of the Optimum Mine Rehabilitation Trust, Koornfontein Mines and its rehabilitation trust (not its trustees), and also the Bank of China. It is, I am advised, Oakbay whose stance is inconsistent with the correct legal position. None of these individuals or entities has a direct and substantial interests in the declaratory relief sought. That they "may" be affected is, firstly, not factually borne out; and, secondly, not the legal test. Quite clearly the relief can competently be put into effect without joining any of these persons or entities.

82. The same applies to the allegation regarding the suspicious transaction reports and other factual issues. No factual "analysis" is required, and it is not explained what "analysis" is suggested to be "flawed". The certificate stands, it speaks for itself, and it clearly does demonstrate a continuing crescendo of controversial transactions – even <u>after</u> the closure of the bank accounts.

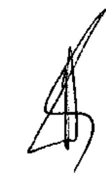
<u>Ad paragraph 8 of Oakbay's main answering affidavit: Only option</u>

83. Oakbay's arguments advanced in this paragraph are inconsistent with the correct legal position and with its own answering affidavit. As a matter of law, I am advised, the suggestion that upon the court concluding "that there is no dispute between the parties" "the only appropriate decision by this Court" is "to dismiss the application" is wrong.

84. The correct approach, I am advised, is first to inquire whether an applicant for declaratory relief has an interest in an existing, future or contingent right or obligation. As the Minister of Finance, I clearly have an interest in whether I have an *obligation* to intervene. This is the subject-matter of the declaratory relief.

85. Therefore the second inquiry arises. It is whether to grant the declarator. This calls for the Court to exercise a discretion. A court *may*, in the exercise of that discretion, decline to grant a declaratory order if the question is "hypothetical, abstract and academic".

86. There is nothing hypothetical, abstract and academic about the question. The closure of the bank accounts held by the specific entities with the particular banks identified in the first prayer of the notice of motion did indeed occur; the



Oakbay companies are indeed associated with suspicious transactions; Oakbay did approach me to intervene; and Oakbay's owners' approach to the Deputy Minister of Finance before my appointment to my current position is a matter of notoriety (it is also set out in the banks' papers; see e.g. Record pp 172-173). But Oakbay elected not to traverse this.

87. My application does not "create unnecessary collateral issues". Oakbay itself asserts that the FIC certificate is irrelevant to the relief sought. It is, moreover, the *existence and contents* of the certificate, not the undisclosed details of the underlying transactions, which is material. As a matter of fact the certificate indeed exists; in law it stands.

88. Oakbay is accordingly wrong at every level to contend that there is only one "appropriate decision". Accordingly the first ground of opposition rests on a legal error.

Ad para 9 of Oakbay's main answering affidavit: Oakbay's "final procedural point"

89. It is in this paragraph that Oakbay emphatically contends that the FIC certificate "is entirely irrelevant to the issues in the declaratory application". It apparently contends that the certificate can be struck out without affecting the relief sought. Oakbay overlooks the fact that even were this to be so, that does not render the certificate irrelevant. It shows, for instance, the concrete context in which this application arises. Oakbay itself opposes the application not on the merits of the relief sought, but on the basis that the relief is sought in the "abstract", and that there is nothing special about Oakbay's circumstances. The certificate demonstrates that the relief does not arise in the abstract, and that Oakbay's

transactions are repeatedly reported as suspicious. Thus the certificate is indeed *relevant*. But even without it the relief can be granted – as Oakbay concedes.

90. Oakbay's reasoning advanced in support of its strike-out application is, furthermore, flawed. It argues that "three-quarters of the 72 allegedly suspicious transactions occurred after the time when the banks ... had already decided to terminate their relationship with the respondents". Therefore, so Oakbay reasons, the transactions "could never have justified the Bank's decision to [close the accounts]".

91. The reasoning is, firstly, misdirected. This is because my application does not seek a declarator that the banks' decision was or was not justified.

92. The reasoning also otherwise fails in logic. This is because if suspicious transaction reports continue to be filed even after the decision to close the accounts, then it demonstrates the *continuation* of the type of transactions which forms the basis for terminating the accounts. The continuation of suspicious transactions despite banks' raising them with the account holders *supports* the banks' decision.

93. Therefore there is no merit in the strike-out application. It is opposed.

94. Oakbay's attempt to plead over is also flawed in logic. It contends that it is "financially inexplicable" that a single transaction is reported which is "greater than the relevant respondent's annual revenues" (Record p 1000 para 11). Precisely. This is most probably what rendered the transaction suspicious in the first place. It indeed is incapable of financial explanation. Oakbay itself

cannot do so. Nor can the foreign forensic accountants which Oakbay has paid to "show" (its word) that there is nothing "untoward" about this and the other 71 transactions, and to torpedo the FIC certificate. Oakbay's response only confirms how "untoward" the transaction in question is.

Paragraphs 13 to 19 of Oakbay's main answering affidavit: "Parties to the dispute"

95. This application does not have "as its target three businessmen namely Mr Ajay Gupta, Mr Atul Gupta and Mr Rajesh Gupta." Nothing in the declaratory order refers to any of them. As mentioned, it is nonetheless significant that the main answering affidavit indeed reflects the parties to this matter as being involved in a "dispute".

96. The character evidence which the main answering affidavit endeavours to advance does not account for the Public Protector's Report on State Capture. As noted, I am advised that in law the report stands until and unless it is set aside on review. Because the main answering affidavit invites evidence on these individual's business practices, I attach (marked "R") the executive summary and most pertinent paragraphs of this report. This is necessary to place the "affected" respondents' own favourable character evidence in a more objective perspective.

97. The full report comprises 355 pages. To avoid burdening the papers it is not attached in its entirety. A copy of the full report will be made available should this be required.[3] Although the report is referred to as "State of Capture", its

[3] The full report is also available online at http://www.pprotect.org/library/investigation_report/2016-17/State_Capture14 October2016.pdf.

full title is *"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"* (emphasis added).

Ad paragraph 20 of Oakbay's main answering affidavit: Fifth, eighth, ninth and thirteenth respondents

98. This paragraph argues that there has been a misjoinder of the fifth, eighth, ninth and thirteenth respondents. This is because, so it appears, these respondents "do not form part of the Oakbay Group and the Gupta Brothers have no interest in them", and because the deponent to the main answering affidavit is "not aware of the basis on which these entities are joined". The declaratory relief makes this quite clear: it is on the basis of their bank accounts having being closed by the respondent banks. Oakbay does not contend that their bank accounts have *not* been closed. They have been served, and have not entered opposition.

99. Even the argument that "the Court cannot properly render a decision until the correct parties are before it" accepts what is self-evident. It is that Oakbay's joinder points are merely dilatory. To the extent that a party to which the notice of motion refers is cited with reference to its trading name instead of its registered name (which is Oakbay's criticism in respect of the fifth respondent), this is a matter for mere formal amendment. A related formal point is taken in respect of the ownership structure of the eighth respondent.

100. To expedite matters and remove any affected cause for obstructiveness on the part of Oakbay, the necessary formal notice will be filed separately.

Ad paragraphs 39 to 42 of Oakbay's main answering affidavit: The nature of the application

101. I have already addressed the material allegations advanced in these paragraphs. To the extent that they are inconsistent with my founding affidavit or this affidavit, the contentions are denied.

102. It suffices to point out that these paragraphs, again, reflect the wrong legal departure point underlying Oakbay's opposition. It is that *because* the Oakbay respondents "agree with this statement" (i.e. the proposition of law as formulated in the declaratory relief sought in prayer 1 of my notice of motion) "therefore this Court need not proceed any further." Oakbay's argument is that because "no consequential relief flows" and because there is (so it contends) "no *lis* between the parties", "a declaratory order of this nature" is not "justifie[d]". The correct position is, I am advised, that consequential relief is not required for a declaratory order. Nor is a *lis* required. What is required is an "existing, future or contingent right or obligation". Oakbay does not contend the absence of this.

103. Therefore the Court is not limited in the way Oakbay seeks to contrive. The Court must determine whether to grant the relief sought. Even had it been true that the order "is therefore entirely unnecessary and of academic interest only" (which is denied), this would – at best for Oakbay – merely provide a basis for a court to decline to exercise its discretion to grant declaratory relief.

104. The discretion must, however, be exercised judicially. In doing so an important factor to take into account is the public interest. Oakbay's opposition does not address this at all. Accordingly Oakbay's opposition is, also for this reason, defective. Oakbay's opposition only observes its own interests.

105. The suggestion that the application is "a waste of the Court's time" is misplaced. It this were true, it is attributable to Oakbay – which insisted on opposing the application. The declaratory relief could otherwise have been granted by consent.

106. It is not an abuse of process for the line-function Minister to clarify whether executive interference in the banking sector is authorised in the circumstances of this case.

<u>Ad paragraphs 43 to 44 of Oakbay's main answering affidavit: "Too scared"?</u>

107. These paragraphs raise what appears to be the second ground of opposition. It is that were this Court to "countenance" this application, then this would "open the floodgates for other weak-kneed political officials who are too scared to take positions on sensitive political and policy matters". This is both a resort to floodgates and scurrilous. The suggestion that the decision whether to interfere with banker-client relationships is a "sensitive political and policy matter" is a revealing misconstruction of the correct position. Whereas I am now being accused of a political plot for <u>not</u> interfering with the banker-client relationship, Oakbay's answering affidavit describes the question whether or not to interfere as "political". It is not. The question is whether the law permits interference. Whereas the first ground of opposition is that Oakbay concedes that the law does not permit interference, its second ground of opposition implies that in its

view a "political official" who views interfering in a banker-client relationship as a mere "political and policy matter" may nonetheless have done just that.

108. The interference Oakbay seeks from me may be contrasted with legally-authorised intervention via regulation of the banks. South Africa is internationally regarded for its highly-regulated banking sector. It is this which enabled South Africa in 2008 to weather the financial storms which afflicted many countries, while enduring the economic crisis ensuing in that year. The supervision of individual banks and how they comply with the law is undertaken by an operationally independent regulator, the Bank Supervision Department in the SA Reserve Bank.

109. Nor has Government been complacent since in this regard. Indeed, I have taken steps to strengthen the regulation of banks to ensure intrusive, intensive and effective supervision of the sector, following the 2008 global financial crisis. These include steps to prevent banks from abusing their position with respect to customers ("market conduct"), and treating customers fairly. This major reform, commonly known as "Twin Peaks", is contained in the policy document *A safer financial sector to serve South Africa better* published in 2011 and to be effected in a Bill currently before Parliament, the Financial Sector Regulation Bill.

110. The second ground of opposition flows from the latter. Executive intervention in the financial sector and banker-client relationships is, under the Constitution, hardly a "political and policy matter". The correct position is that the executive is constrained by law. Whether a power to intervene exists is a pure question of law. It is therefore a mischaracterisation to construe the matter before court

as political and policy-laden. A declaration of rights does not violate the doctrine of separation of powers. The suggestion that "[if] this Court were to 'take the bait'" – this is itself an inappropriate reflection on the Court – it "would be setting itself and the country down on [sic] a dangerous path" is an astounding allegation. The State of Capture report has identified the dangerous paths.

Ad paragraphs 45 to 47of Oakbay's main answering affidavit: Declaratory relief

111. I have already shown that the legal departure point underlying Oakbay's first ground of opposition is misconceived. It follows that I deny the validity of Oakbay's legal argument on declaratory relief. This is however, I am advised, a matter for legal argument.

112. Mr Howa did seek my intervention. That he did so, despite accepting the absence of a legal basis to do so, is compounding. Therefore Oakbay's reliance on its acceptance of the absence of any "legal right to interfere with the decision made by the banks" does not assist it.

113. Nor does it assist Oakbay that it also addressed similar letters to *inter alios* the President, the Minister of Mineral Resources, the Minister of Labour or other individuals. Oakbay correctly does not suggest that it did so repeatedly and insistently, as it did in respect of myself. In the light of Oakbay's political connections and the recent South African history relating to appointments of Ministers of Finance, there is simply no comparison between the facts of this case and "companies and constituents in South Africa and indeed the world over routinely approach[ing] their governments". Inertia on my part, the response Oakbay now contends would have been appropriate (despite itself

repeatedly requesting the opposite and even now contemplating "decisive action"), was no option in the circumstances.

Ad paragraphs 54 to 67 of Oakbay's main answering affidavit: Correspondence

114. Mr Howa's intent was very clear. He indeed insisted that I intervene. The "message" was unmistakable. Not all of this was conveyed in the written correspondence to which Oakbay's deponent – who was not present during personal meeting between myself and Mr Howa – resorts. Mr Howa, as I have noted, chose to resign the day after my application was lodged, citing health reasons.

115. While Mr Howa did depose to a *pro forma* confirmatory affidavit, he did so on 19 January 2017. In it he did nothing other than to purport to confirm the contents of the main answering affidavit "in so far as same relates to [him]" (Record p 1086 para 4). The main answering affidavit was, however, deposed only on 20 January 2017 (Record p 1067). Nowhere is it suggested that Mr Howa read it in its final form. He could not have done so, because it was only deposed *after* Mr Howa's purported confirmatory affidavit. Each of the other confirmatory affidavits were, however, deposed on the same day as the main answering affidavit. But none of them purports to confirm Mr Howa's engagement with me. This underscores the unsatisfactory nature of Mr Howa's purported formal confirmation of what is, on the record, actually a subsequent affidavit.

116. In the circumstances, Mr Howa's confirmatory affidavit, it will be argued, has no value. It follows that the main answering affidavit is not confirmed by Mr Howa. Therefore my founding affidavit is also in this respect not competently placed in issue.

117. I deny these paragraphs to the extent that it is inconsistent with my affidavits. I also deny the "conclusion" sought to be drawn as regards my interest in the declaratory relief sought. I clearly do have an interest in it. I am the Minister of Finance; I am responsible for the well-being of the financial sector; and any unauthorised interference in the banking sector prejudices the economy. So, too, unfounded accusations of misconduct by the banks.

Ad paragraphs 68 to 104 of Oakbay's main answering affidavit: "[T]he motivation behind this application"

118. These paragraphs seek to establish that I "seemingly ha[ve] another agenda" by lodging this application. I deny that any inappropriate "motive" underlies this application. This serious allegation has not been established. I am nonetheless advised that the resort to motive is bad in law.

119. In fact, my motivation is clear from my founding affidavit. It is to act in the public interest, the economy, the integrity of the financial sector, the independence of National Treasury, and to protect jobs. It is Oakbay whose motives are extraneous, because Oakbay persists in opposing a declarator despite conceding the legal position. Its attorney was invited to confirm his instructions in circumstances where Oakbay had publicly expressed its intention to oppose the application. This was never properly done.

120. There is no merit in the accusation that it is *my* stance which is "mischievous at best (and misleading at worst)". If it were true that I had a political vendetta against Oakbay, Oakbay would not have approached me. Nor would Oakbay have persisted in contacting me. Nor would I have invited Oakbay to substantiate its allegations against the banks (which Oakbay undertook to do,

but never did). Nor would Oakbay have recorded in its correspondence its acceptance of my integrity and its apology on one occasion.

121. I am therefore surprised to read for the first time in Oakbay's answering affidavit of "the dispute between the Gupta Family and the Minister [which] has a long and unfortunate political history" starting already in January 2016 – long before Oakbay sought my assistance. In none of the letters seeking this is there any hint of this "long and unfortunate political history".

122. The correct factual position as regards the January 2016 meeting is as follows.

123. On 15 January 2016, as between the Presidency and National Treasury a pre-Davos breakfast meeting was convened with all South Africa companies and government departments invited to attend the World Economic Forum in Switzerland. Later that month, at Davos, concerned business people *approached me* (I did not approach them). They identified a need to meet with Government to discuss ways of fostering the South African economy.

124. It is this approach which led to the 29 January 2016 meeting. It was hosted by Nedbank at its offices in Johannesburg (not by me, and not at Treasury). Various JSE listed companies attended the meeting.

125. I did not initiate the event or control it. It arose on the initiative of attendees at the World Economic Forum. The purpose of the meeting was to engage in exploratory discussions to avoid a ratings downgrade as well as address prevailing volatility. No minutes were taken. A programme was, however prepared by Nedbank. It is attached, marked "S". The programme reflects the event commencing at 15h00, and closing after refreshments were served

at 16h30. A list of attendees is attached, marked "T". The list shows that some 26 people confirmed their attendance in advance.

126. Monale Ratsoma, the Deputy Director-General of Economic Policy in National Treasury, also attended the meeting. Mr Ratsoma's confirmatory affidavit is filed separately. Various entities and individuals contributed to the debate. For instance, one of the CEOs spoke of the "need to turn confidence around". Another issue raised was the "authority" of "the minister ... to make tough decisions". Practical steps leading to confidence, and business' commitment to advance South Africa, were also discussed. Integrity was indeed identified as one of twelve important points.

127. What was certainly not discussed was any conspiracy against the Gupta Brothers. I am sure that it is well-understood, and was appreciated already at the time, that no business (whether it also dabbles in politics or not) holds sway over National Treasury, its officials or its political head – myself. Whether this was expressed at the January 2016 meeting by myself or anyone else is not particularly important. I do not, however, recall referring to the Gupta family, or using the words ascribed to me.

128. Oakbay's reference to this family being "involved in politics and business" is its own formulation. Unlike the other text presented in the main answering affidavit in inverted commas, this description is not attributed to me. It appears that it is Oakbay's own deponent which describes the Gupta family as being "involved in politics".

129. How it is that the words which are *verbatim* attributed to me has been obtained is not explained. When these sensational quotes were obtained is also not

explained. How many "various credible sources" exist is not disclosed. The method through which I allegedly made it emphatically clear to whom I was allegedly referring is nowhere suggested. The medium through which the so-called sources conveyed these alleged utterances (whether, for instance, orally or in writing) is not stated. If the latter form of communication was supposedly used (as the inverted commas in the answering affidavit might be intended to imply), it is not claimed that there is any basis why the communication could not have been redacted to conceal the identity of the source.

130. The source or sources are simply said "not [to] want to be named for obvious reasons". It is not said what the reasons are other than to refer to "repercussions". It is certainly not suggested that any of these "credible" sources fear for reprisal. It is therefore to be presumed that the "repercussions" are the ordinary ones which, I understand, follow from making unsubstantiated allegations in motion proceedings: a referral for cross-examination of the deponent. I am deprived even of this opportunity (because there is no deponent advancing this version). Accordingly I am prejudiced in conducting my case and prevented from probing and disproving this serious accusation against me.

131. I therefore ask that all allegations in the main answering affidavit advancing these accusations be struck out with costs. Not only is it inadmissible hearsay, it is also defamatory, scurrilous, vexatious and vague in the extreme.

132. It is not even said whether these so-called sources are part of the "captains of industry", or whether they were attending the meeting in another capacity. As the list of invitees reflects, the meeting was also attended by *inter alios* CEOs of certain State-owned enterprises.

133. The "credibility" of Oakbay's undisclosed source(s) is therefore disputed. The sources' "credibility" is yet further undermined by the inexplicably late stage of the alleged revelation. The first disclosure occurred in Oakbay's main answering affidavit filed on 20 January 2017. This despite the event at which I have allegedly uttered the quoted words (and hatched the supposed political plot with "60 'captains of the industry'") occurring almost a full year prior to the filing of the answering affidavit. Despite the sensational nature of this revelation not one of the Gupta-owned media platforms is alleged to have reported on this allegation prior to the main answering affidavit. Members of the media are, it is well known, by law entitled to confer complete anonymity on and protection of sources. Yet to my knowledge the media has not reflected what is now presented: the *Business Day* article on which Oakbay relies significantly does not offer any support for what is now said.

134. Nor do any of the confirmatory affidavits suggests that this all-important information was ever disclosed to any member of the Gupta family itself (some of whom are deponents to confirmatory affidavits), or even to the-then CEO of Oakbay. The main answering affidavit states only that "I [Ms Ragavan, the current acting CEO of Oakbay] have been informed" of what was allegedly said by me at the meeting. Ms Ragavan does not explain why any of these sources would not have informed *inter alios* Mr Ajay Gupta (the deponent of the second confirmatory affidavit) of this extraordinary revelation. It is entirely improbable that if there were any such disclosure, that the source or sources would not also have informed at least Mr Gupta himself. But on Mr Gupta's and Ms Ragavan's version, only the latter received this information, now suddenly claimed to be so crucial.

135. Yet Oakbay simultaneously alleges "a long and unfortunate political history". It accuses me of having masterminded the closure of the Oakbay accounts and the implosion of Oakbay empire many months ago. But this improbable allegation is entirely inconsistent with Oakbay's own approach to me. I have indeed engaged with Oakbay, and it was Mr Howa who apologised to *me* for *his* inappropriate communications. Oakbay has never before accused me of hostility or impropriety towards it.

136. In short, the conspiracy theory is a latter-day fabrication. I did not place "pressure" on "big business" to "'clip the wings' of the Gupta family and their business".

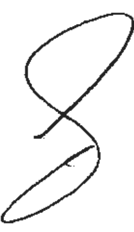
137. There has been no such "instruction". The purpose for which this construct is set up in the main answering affidavit is, moreover, a *non sequitur*. The conclusion which the construct seeks to serve is that banks' execution of their "instruction" shows "why this application was eventually brought in the way it was and at the time it was issued". The reasoning does not follow. If banks were instructed in January 2016 to terminate Oakbay bank accounts (this after Absa had already in December 2015 decided to do so), and then during the first quarter of 2016 other banks do so, and thereafter the Bank of China itself does so in September 2016, it is not apparent how this could bear on the manner and timing of my application in October 2016. The logic of the theory is not explained.

138. Instead, Oakbay's deponent refers to the FIC certificate being received by me on 4 August 2016 and to the discredited Hawks investigation against me, and from this seeks to conclude that my application must be inferred to be in

"retaliation against the Gupta family" as a response to the Hawks investigation. There is, neither in law nor in fact, a proper basis for this extraordinary inference. Contrary to the factual assertion in dealing the "the parties to the dispute", the Gupta Brothers are <u>not</u> the "target" of this application. The attempt to now contend that this application is an abuse after first having welcomed it is simply not a tenable basis for opposing it.

139. The actual explanation for not filing the application any sooner after the FIC certificate was received is that I was still waiting for Mr Howa to honour his undertaking to provide me with the information, as he undertook to do. It is Oakbay to which the delay of two months is attributable. But two months is not an inordinate delay for instituting High Court proceedings. Generally a six-month period is provided to act on administrative action, which I am advised the issuing of a certificate by FIC under its empowering legislation is.

140. Finally, the suggestion that the timing of this application was calculated to coincide with the release of the State of Capture report is also untenable. The inference is inconsistent with the other inference also sought to be drawn, namely that the application was lodged in response to the Hawks disaster. The inferential reasoning process is fraught with too many counter currents. My application was *not* "strategically" lodged "a few days" before the failed attempt to suppress the State of Capture report. My application was lodged on 14 October 2016. The ill-fated litigation surround the State of Capture report only commenced in November 2016. I have had no involvement in, nor any knowledge about that litigation at the time.



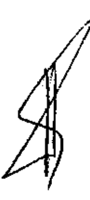
141. I am surprised that the litigation surrounding the State of Capture report is raised at all by Oakbay. As mentioned, it is the Gupta family which is implicated as State captors in that report.

142. I therefore deny the "conclusion on the request for declaratory relief". The declaratory relief is "seriously sought". It is a matter of great public importance to clarify the issue. It has never been determined by any court before. A Full Bench has been designated to hear the application precisely because of the importance of the matter. How Oakbay could seek to contend that the relief is not "seriously sought" is not evident.

143. Indeed, so serious is the matter that each of the commercial banks, the Reserve Bank itself and FIC have filed extensive papers. After the fullest ventilation conceivable of the relevant legal issues, all the parties – even the many Oakbay respondents – are *ad idem* that the relief sought is indeed appropriately formulated. Withholding it merely on a discretionary basis in these circumstances is, with respect, entirely unwarranted – especially in the current economic and financial climate.

Ad paragraphs 105 to 114 of Oakbay's main answering affidavit: Oakbay's persistence in opposing relief which it actually concedes

144. It is Oakbay's opposition of declaratory relief (which it acknowledges reflects the correct legal position) which is unreasonable. As mentioned, Oakbay adopted this stance because it relished the opportunity to litigate against me. It has indeed used this forum to make allegations against me which not even *The New Age* could credibly disseminate.

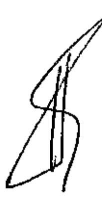


145. Attorney Gert Van der Merwe, acting for the Oakbay respondents, was specifically requested to confirm his clients' position in the light of inconsistent stances adopted *inter alios* by Mr Howa, then at the helm of Oakbay but now replaced. The response speaks for itself. Significantly the State Attorney's letter of 4 November 2016 has been omitted from the answering affidavit. It is attached, marked "U". It records the different iterations adopted by Mr Van der Merwe's client; welcomes his latest version of it; invites him to withdraw the opposition (which he recorded in his 18 October 2016 letter he had advised Oakbay to enter); and pointed out that costs were only sought by the Minister in the event of opposition. It is in response to this letter by the State Attorney (undisclosed in the main answering affidavit) that Mr Van der Merwe's letter of 7 November 2016 ("OB14" to the main answering affidavit) explains what he had "attempted to convey in [his] letter dated 3 November 2016", adding that the Oakbay respondents "want to deal with each of the transactions".

146. Mr Van der Merwe's earlier letter of 19 October 2016 ("OB13" to the main answering affidavit) records the real objection. It is against the phrase "creates an increasingly serious state of affairs" and my concern not to "expose the fiscus to the loss of revenue" in my founding affidavit. There is nothing vexatious or defamatory about this concern. It is my responsibility to protect the fiscus and to monitor the state of affairs of the financial sector. The suggestion that I should have withdrawn my application because Mr Van der Merwe sought tentatively to "submit" that "the deponent to the founding affidavit, curiously so, implicated his clients" in what he classified as "inappropriate and unlawful conduct" is unfounded. He is free to describe his clients' conduct in whatever terms he wishes. Attributing it to me is unwarranted, however.

147. The Public Protector's State of Capture report demonstrates that my concern regarding the risk to tax revenue is indeed well-founded. See para (e) on pp 22-23 of annexure "R". The report also confirms that a certificate by the Bank of Baroda provides no comfort. This is because the manner in which the Bank of Baroda holds funds is, the Public Protector observed, not consistent with "the financial regulations". This is because the funds are "consistently moved around between accounts." See para (d) on pp 21-22 of annexure "R".

148. Furthermore, the Bank of Baroda does not allocate separate accounts to individual entities. It holds funds in a collective account kept in the Bank of Baroda's own name. This is because entities like "Optimum Coal Mine cannot open its own bank account". This was confirmed by Phumi Mncwango, an employee of Optimum Coal Mine, in correspondence with National Treasury. I attach the correspondence, dated 12 October 2016, marked "V". I refer to the confirmatory affidavit in this regard. This confirmation by Optimum Coal Mine itself postdates the certificate of 5 October 2016. Yet in Mr Van der Merwe's letter to the State Attorney dated 18 October 2016, he invoked the certificate. Mr Van der Merwe was either unaware of or did not disclose the important subsequent letter to National Treasury sent to it by Optimum Coal Mines itself. In these circumstances no reliance can be placed on the certificate. As Mr Van der Merwe states, "your client [which is a reference to me, the Minister of Finance] could have ascertained this [the correct state of affairs] with a telephone call". This was not even necessary, however. Optimum Coal Mines itself confirmed the correct factual position in writing to National Treasury. Therefore the curious circumlocution ("[t]he origin of this certificate follows a



request by Advocate Thuli Madonsela on 4 October 2016") is striking. The certificate was clearly generated to satisfy a specific request.

149. It did not serve even that purpose, as the Public Protector's report reflects. Nor does it address the purpose identified in my founding affidavit: protecting tax revenue in respect of R1,3 billion. Mr Van der Merwe's views on whether taxpayer's money should be spent on the costs of this litigation, which is far eclipsed by the revenue in respect of mining rehabilitation, are therefore misconceived.

150. So is Oakbay's deponent's repetition of the same assertion. It is Oakbay's equivocal opposition which has generated unnecessary legal costs to the taxpayer. Oakbay correctly acknowledges that incurring unnecessary legal costs is unfair to the taxpayer. Because Oakbay is responsible for these costs, Oakbay should be held liable for them. Its opposition is, after all, purely in its own commercial interest (which it seeks to serve in its voluminous answering papers).

151. Finally, Oakbay's assertion that my application was "issued ... with the <u>intention</u> to harm the Oakbay Group" (Record p 1036 para 113, emphasis added) is inconsistent with Oakbay's attorney's own correspondence. Mr Van der Merwe's 3 November 2016 letter (attached, marked "W") recorded that the founding affidavit was interpreted as "<u>inadvertently</u> present[ing] an innuendo" that Oakbay was "involved in dubious transaction" (emphasis added). Thus the factual substratum for Oakbay's claim that I have "issued this application with the intention to harm the Oakbay Group and to eliminate the Group and the Gupta Family from South African business" is inconsistent with the Oakbay

respondents' own attorney's correspondence. Therefore the third ground of opposition (a medley of allegations including *mala fides*, abuse, retaliation, and political plotting) is untenable. It seeks to draw an extraordinary inference which is contradicted by contemporaneous correspondence penned by the Oakbay respondents' own attorney.

<u>Ad paragraphs 115 to 117 of Oakbay's main answering affidavit: Application to strike out</u>

152. I have already addressed Oakbay's assertion that it never asserted that I should intervene in or exert pressure on the banks. This is untrue. Contested contents of affidavits are not (I am advised) capable of being struck out on the basis that they are asserted – by a deponent with personal knowledge, and whose affidavit is not competently confirmed by Mr Howa – to be "patently false". Therefore the identified part of paragraph 19 of my founding affidavit is not liable to be struck out.

153. The only other paragraph sought to be struck out from my founding affidavit is paragraph 27. Although the entire paragraph is purportedly attacked, it is only the words "increasingly serious state of affairs" to which Mr Van der Merwe objected in his 18 October 2016 letter ("OB12" to the answering affidavit). I have already addressed this. Neither this phrase nor any other part of paragraph 27 is liable to being struck out, I am advised.

154. The final item targeted in the purported strike out application is the so-called annexure "P" to my founding affidavit. However, the notice of strike out specifically refers to "annexure[s] P1 and P2". What Oakbay intends to strike out, it appears, is the FIC certificate reflecting the list of suspicious transaction

reports (STRs). This is on the basis that the certificate "has no bearing on the relief which is sought in this application and is irrelevant" (Record p 1038 p 115. 3). I have already addressed this. In short, the certificate stands. Oakbay has not had it set aside. It serves as proof that a significant number of high-value suspicious transactions related to the Oakbay Group have indeed been reported from 2012 to 2016. In 2012 there was one STR; in 2013 there were 5; in 2014 there were six; in 2015 there were two; and in 2016 there were 58. In total there were 72 during the last five years. The total value of these transactions is R6,8 billion. This indeed demonstrates the significant increase in the number and value of STRs in respect of a single group of companies.

155. Whether I am authorised or obliged to interfere in banks' closing of bank accounts is the subject-matter of the declaratory relief. It is precisely to show that – contrary to Oakbay's contentions – that this is not an abstract question that the certificate is relevant. It constitutes proof of the fact that the STRs were indeed filed. The certificate bears upon the actuality of the question to which the declaratory relief relates. Therefore the certificate quite clearly does have a "bearing" on the relief, and is far from "irrelevant". Accordingly the basis on which it is sought to be struck out is unsustainable.

156. I accordingly deny that Oakbay's strike-out application is legally competent. It is opposed.

Ad paragraphs 118 to 138 of Oakbay's main answering affidavit: FATF recommendations

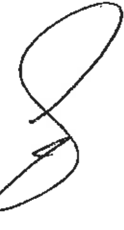
157. Oakbay prefaces its purported exposition on the international and national banking law by describing it as "irrelevant". The relevance and contents of the banking law is, I am advised, a matter for legal argument.

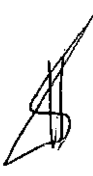
158. These circumstances render any ministerial intervention in the banker-client relationship particularly contentious. Coupled with a high volume of STRs and high transaction values, the situation is extraordinary. I therefore deny that "the Oakbay related companies in fact present low risk ...". The duty to avoid risk in this very context has indeed recently, I am advised, been reiterated by the Constitutional Court. As the Constitutional Court held, the question is not whether the risk materialises or not.

159. In this context the question is not whether STRs *prove* that an underlying transaction *was* corrupt, as Oakbay suggests many of my allegations "hint at". What is relevant is the volume and frequency of STRs. Taken together the risks are very high. I deny Oakbay's version to the contrary. Oakbay's deponent is not qualified to express her "belie[f] that [none] of the Wolfsberg risk factors appl[ies] in general or specifically to the 72 transactions".

<u>Ad paragraphs 139 to 156 of Oakbay's main answering affidavit: Oakbay's response to the 72 STRs</u>

160. These paragraphs attempt to show that the 72 STRs are in fact not suspicious, and that "any attempt to draw conclusions of impropriety for the certificate is misplaced" (Record p 1046 para 139). It is, with respect, Oakbay's approach which is misplaced. As mentioned, the question is not whether the STRs or the certificate establishes impropriety. It is whether they show *risk*.





161. It is denied that any "scandalous, vexatious and irrelevant allegations" are attributable to me, or that they "had devastating effects on the reputation of the Group and the Family" (Record p 1046 para 140).

162. I also deny the allegation that the certificate or FIC's – or my own, to the extent that this might be sought to be suggested – conduct was "unlawful" (Record 1049 para 147; Record p 1050 para 148). The allegation is, I am advised, not properly advanced in circumstances where the certificate has not been reviewed and set aside.

163. For reasons already advanced I deny that my reliance on the certificate is liable to Oakbay's criticisms (Record p 1049 para 147.4). Section 39 of the FICA is clear. It governs the admissibility and evidential value of a FIC certificate. Oakbay's argument that the certificate should be "disregarded in its entirety" finds no support in the Act.

164. As regards the contention regarding non-joinder (Record pp 1050-1051 paras 150-151), I am advised that it is unfounded. Joinder is, I am advised, not determined with reference to the names of individuals in annexures to affidavits. It is determined with reference to the relief sought, and whether an individual has a real and direct interest in the relief – which cannot be implemented without adversely affecting the individual concerned. Oakbay does not address the correct legal test. The test is not whether a person may wish to "refute ... allegations".

165. Furthermore, Oakbay again mistakes the status and purpose of the FIC certificate. It does *not* constitute "allegations" of impropriety against them. It proves the existence of a transaction report.

Ad paragraphs 157 to 162 of Oakbay's main answering affidavit: Attempts to obtain underlying data

166. Oakbay's portrayal of the Deputy Judge President's direction as unfortunate (Record p 1053 para 160) for enrolling the hearing of my main application and Oakbay's separate application issued subsequently under a different case number is, with respect, incorrect. It rests on the misconceived construct underlying much of Oakbay's objections, criticisms and complaints. It is not the underlying data resulting in the report, but the fact that a report was made which is relevant. Impropriety is not the issue; risk is. Furthermore, Oakbay itself contends that the FIC certificate is irrelevant to the declaratory relief. Therefore, with respect, the Deputy Judge President was correct to direct that the two applications not be dealt with, as Oakbay wanted it, in series, but together. If this Court is satisfied – as Oakbay itself significantly suggests it should be – that the FIC certificate is indeed not even required for purposes of the declaratory relief in my application, then Oakbay's application against FIC falls away. If, on the other hand, the certificate is necessary to show, for example, that the relief is not hypothetical, abstract or academic, then section 39 of the FIC Act applies. But even then there is no drilling down to scrutinise underlying data. Pursuant to section 39 the certificate is proof of the facts that STRs *were* lodged. The question is not whether STRs were properly lodged, or whether they prove impropriety on the part of the identified individual.

167. Oakbay's suggestion that it has a constitutional right to the information it seeks (Record p 1054 para 161) is unfounded. None of the provisions in the FIC Act is impugned, and no reliance is placed on the Promotion of Access to Information Act 2 of 2000.

168. I deny that or have "used" the information which FIC withheld "to discredit the Family and the Group" (Record pp 1054-1055 para 162). I, too, have not been provided with the information. In any event, "the Family and the Group" is not being "discredited" by me.

Ad paragraphs 163 to 183 of Oakbay's main affidavit: Nardello's forensic review

169. Oakbay openly states the purpose of appointing Nardello: "to show" that there was nothing "untoward" about the 72 transactions (Record p 1055 para 163). That Nadello did not find any "transgression of any international banking standard" is therefore unsurprising. On the one hand, the FIC certificate does not disclose information intended for this exercise; on the other hand, it is unsurprising that a foreign firm found restricting its investigation to a couple of days, very limited information, and *international* banking standards only found what it was intended it would "show": nothing "untoward".

170. The inferences sought to be drawn from the "huge jump" in STRs, "the filing of my application as an excuse to get it in the public record", and the "submission of the certification" (Record pp 1057-1058 para 171-173) are denied. No sustainable factual basis is advanced for any of these inferences. The reasoning is not consistent with first principle. For instance, as mentioned, the "incredible" nature of a transaction which "exceeds the total turnover" during the relevant period (Record p 1058 para 174) is an own goal. Self-evidently such a *transaction* is indeed *suspicious*, which is why it requires to be *reported*. Hence the designation *suspicious transaction report* (STR). A certificate which reflects that such a transaction was reported is vindicated by Nardello's inability to explain the transaction.

171. Furthermore, the certificate is also corroborated by the Public Protector's State of Capture report. It reinforces my concern over "unnecessary risk to the fiscus" (Record p 1058 para 176). Accordingly the attempt to undermine the "innuendo" to this effect is untenable.

172. In fact, the annexure which Oakbay attaches in an attempt to "dispose[] of any speculation" as regards the certificate issued by the Bank of Baroda is inconsistent with the text of the answering affidavit and the one presented "a few days later", after the Public Protector requested a bank certificate on 4 October 2016. Annexure "OB23" to the main answering affidavit is not the certificate provided to the Public Protector. The latter certificate is dated 5 October 2016. It is at Record p 1185, comprising attachment "A" to annexure "OB12" (which is attached to the answering affidavit). Annexure "OB23", to which the answering affidavit refers here is at Record p 1260. The latter certificate is dated 18 January 2017. Whereas the October certificate reflects the balance of a current account and three fixed deposit accounts, the January certificate only certifies the existence of a current account with a balance of R9 432 524.64. Yet the answering affidavit refers to an amount of R1,461 billion transferred out of the Standard Bank account.

173. The inconsistencies between the January and October certificates are apparent on their face. Clearly "OB23" is not the certificate provided to the Public Protector in October 2016, as the answering affidavit alleges. "OB23" is dated 18 January 2017.

174. Finally, Oakbay seeks to make something of the "finite extent" of business conducted by government institutions with Oakbay companies (Record p 1060

para 183). The implication appears to be that Oakbay does not conduct *infinite* business with Government, and that therefore political exposure presents no risk. I deny that the "finite extent" of its business with Government assists Oakbay.

As paragraphs 184 to 186 of Oakbay's main answering affidavit: Other risks

175. In these paragraphs Oakbay seeks to infer from a tax clearance certificate from SARS, a letter from the Hawks, and an "independent certificate" from Nardello that the 72 STRs are not being investigated because "they view them as lawful". This does not follow. Banks report suspicious transactions to FIC. Some of these reports have only been generated a few months ago. FIC's ordinary procedure is to complete an investigation and thereafter report STRs to the Hawks. The transactions referred to in this matter, it is apparent, are multiple and intricate (as the Public Protector's report also documents). Thus no inference can be drawn from the fact that FIC has not yet completed its report. The Hawks, on the other hand, evidently (as I and others have experienced) have other priorities. Whether the "Gupta Brothers" yet feature in a Hawks investigation, and whether their companies have succeeded in obtaining from SARS a tax clearance certificate, accordingly establish nothing. The FIC certificate stands, and the transactions, as identified in the Public Protector's report (the status of which I have already noted), are on any objective approach suspect.

Ad paragraphs 187 to 196 of Oakbay's main answering affidavit: Sahara deserted by Sandisk

176. These paragraphs merely assert baldly that the Oakbay Group has suffered "devastating effects", and then seek to attribute the effects to the alleged conspiracy to "clip its wings". This is, again, denied. So, too, are the allegations regarding "slanderous innuendos", "calculated applications", "smokescreens" and related clichés.

177. I have already dealt with these unsustainable constructs, showing that they are false. Were it to be true that Oakbay's business has suffered, this is not attributable to me. Nor am I liable to Oakbay for the *bona fide* exercise of my responsibilities as Minister of Finance. At all times my conduct has indeed been *bona fide*. The attempt to outflank this application by alleging a lack of *bona fides* has no factual foundation.

178. It is significant that Oakbay itself merely advances the accusation, but then retreats from substantiating them. This on the basis that it is a fight for another day. Oakbay will therefore have to prove this in another forum on another day. It cannot have it both ways: making far-reaching allegations without the need to prove them.

179. It is nonetheless significant that Oakbay itself again "repeats" that it is only "if any party wishes to draw any inference from the certificate annexed as "P" to the founding affidavit of the Minister" that this court must "then" order FIC to produce the information and postpone the hearing (Record p 1063 para 193, emphasis added). By virtue of the operation of section 39 of the FIC Act it is not necessary for any party to seek to draw *inferences* from the FIC certificate. The certificate stands as proof of the fact that 72 STRs were indeed reported. This suffices for purposes of the relief sought in my application.

180. Indeed, Oakbay itself considers the certificate irrelevant for purposes of obtaining this relief, implying that the certificate is not even needed for purposes of obtaining the declaratory order. Oakbay is held to this formal concession.

D. Conclusion

181. For the reasons set out above I deny that there is any *bona fide* opposition to my application. I therefore ask that the declaratory relief be granted. It is supported by the banks, the Registrar of Banks, the Reserve Bank and FIC. While the Oakbay respondents have no objection against the content and form of the order, they only oppose it on grounds other than the substantive merits.

182. Oakbay's opposition has been shown, I submit, to be unreasonable. It sought to use a concise application as springboard to salvage its commercial and other interests, and filed extensive papers. Yet it did not even address the banks' affidavits (other than, to some extent, Standard Bank's). Instead, it used many months to construct far-ranging accusations against me.

183. In truth, what stands revealed as the real plot is the systematic and highly organised campaign by the Gupta family and its associates against the National Treasury, myself and other targets.

184. Oakbay's opposition, and manner of litigation, has delayed the hearing and consumed undue human and financial resources. Oakbay has acted unreasonably in this regard. It is in the circumstances not reasonable to devolve the legal costs on public funding – as Oakbay itself acknowledges. Therefore Oakbay should pay the costs of the applicant; two counsel have been

engaged to advance the important issues in this application, and I ask for their costs.

PRAVIN JAMNADAS GORDHAN

I certify that this affidavit was signed before me at PRETORIA on this the 29th day of January 2017 by the deponent who acknowledged that he knew and understood the contents of this affidavit, and solemnly affirmed the truth of thereof.

COMMISSIONER OF OATHS

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Practising Attorney
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Executive Summary

(i) *"State of Capture"* is my report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 3(1) of the Executive Members Ethics Act and section 8(1) of the Public Protector Act, 1994.

(ii) This report relates to an investigation into complaints of 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 Entities (SOEs) resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses.

(iii) The Public Protector received three complaints in connection with the alleged improper and unethical conduct relating to the appointments of Cabinet Ministers, Directors and award of state contracts and other benefits to the Gupta linked companies.

(iv) The investigation is conducted in terms of section 182 of the Constitution read with sections 6 and 7 of the Public Protector Act, 1994.

(v) In essence the allegations are as follows:

<u>Key allegations</u>

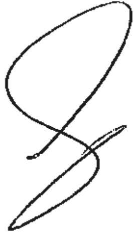
(vi) The investigation emanates from complaints lodged against the President by Father S. Mayebe on behalf of the Dominican Order, a group of Catholic Priests, on 18 March 2016 (The First Complainant); Mr. Mmusi Maimane, the leader of the Democratic Alliance and Leader of the Opposition in Parliament on 18 March 2016 (The Second Complainant), in terms of section 4 of the Executive Members' Ethics

Act, 82 of 1998 (EMEA); and a member of the public on 22 April 2016 (The third Complainant), whose name I have withheld.

(vii) The complaints followed media reports alleging that the Deputy Minister of Finance, Hon. Mr. Mcebisi Jonas, was allegedly offered the post of Minister of Finance by the Gupta family long before his then colleague Mr. Nhlanhla Nene was abruptly removed by President Zuma on December 09, 2015. The post was allegedly offered to him by the Gupta family, which alleged has a long standing friendship with President Zuma's family and a business partnership with his son Mr. Duduzane Zuma. The offer allegedly took place at the Gupta residence in Saxonwold, City of Johannesburg Gauteng. The allegation was that Ajay Gupta, the oldest of three Gupta brothers who are business partners of President Zuma's son, Mr. Duduzane Zuma, in a company called *Oakbay*, among others, offered the position of Minister of Finance to Deputy Minister Jonas and must have influenced the subsequent removal of Minister Nene and his replacement with Mr. Des Van Rooyen on 09 December 2015, who was also abruptly shifted to the Cooperative Governance and Traditional Affairs portfolio 4 days later, following a public outcry.

(viii) The media reports also alleged that Ms. Vytjie Mentor was offered the post of Minister for Public Enterprises in exchange for cancelling the South African Airways (SAA) route to India and that President Zuma was at the Gupta residence when the offer was made and immediately advised about the same by Ms. Mentor. The media reports alleged that the relationship between the President and the Gupta family had evolved into "state capture" underpinned by the Gupta family having power to influence the appointment of Cabinet Ministers and Directors in Boards of SOEs and leveraging those relationships to get preferential treatment in state contracts, access to state provided business finance and in the award of business licenses.

(ix) Specific allegations were made and these are detailed below.



(x) The First Complainant, relying on media reports, requested an investigation into:

(a) The veracity of allegations that the Deputy Minister of Finance Mr Jonas and Ms Mentor (presumably as chairpersons of the Portfolio Committee of Public Enterprises) were offered Cabinet positions by the Gupta family;

(b) Whether the appointment of Mr Van Rooyen to Minister of Finance was known by the Gupta family beforehand;

(c) Media allegation that two Gupta aligned senior advisors were appointed to the National Treasury, alongside Mr Van Rooyen, without proper procedure; and

(d) All business dealings of the Gupta family with government departments and SOEs to determine whether there were **irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in the New Age newspaper**, and any other governmental services.

(xi) The second Complainant also relying on the same media reports, requested an investigation into the President's role in the alleged offer of Cabinet positions to Deputy Minister Jonas and MP, Ms. Mentor, and that the investigation should look into the President's conduct in relation to the alleged corrupt offers and Gupta family involvement in the appointment of Cabinet Ministers and Directors of SOE Boards.

(xii) In his complaint, Mr. Maimane stated amongst other things that:

"Section 2.3 of the Code of Ethics states that Members of the Executive may not:

(a) Willfully mislead the legislature to which they are accountable…(c) act in a way that is inconsistent with their position; (d) use their position or any information

entrusted to them, ***to enrich themselves or improperly benefit any other person..."*** *(my emphasis)*

(b) *It is our contention that President Jacob Zuma* ***may have breached the Executive Ethics Code by (i) exposing himself to any situation involving the risk of a conflict between their official responsibilities and their private interests; (ii) acted in a way that is inconsistent with his position and (iii) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person",*** he further stated. (my emphasis).

(xiii) The third complaint was also based on media reports but only those alleging that the Cabinet had decided to get involved in holding banks accountable for withdrawing banking facilities to Gupta owned companies. The Complainant wanted to know if it was appropriate for the Cabinet to assist a private business and on what grounds was that happening. He asked if corruption was not involved and specifically asked if such matters should not be dealt with by the National Consumer Commission or the Banking Ombudsman.

(xiv) While the investigation was conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), which confers the Public Protector power to investigate, report and take appropriate remedial action in response to alleged improper or prejudicial conduct in state affairs, the alleged improper conduct of President Zuma involving potential violation of the Executive Ethics Code, was principally investigated under section 3(1) of the Executive Ethics Code read with section 6 of the Public Protector Act. The provisions of the Prevention and Combatting of Corrupt Activities Act were invoked with regard to allegations regarding the alleged offer of a Ministerial position by the Gupta family to Ms. Mentor in return for cancelling the India route of the SAA, in the vicinity of President Zuma, and related allegations. Deputy Minister Jonas also alleged that the

position offered was on condition that he works with the Gupta family and that too is in contravention of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA). The provisions of the Protected Disclosures Act, 26 of 2000 were also taken into account.

(xv) I decided to combine the complaints and have since conducted an investigation under section 182 of the Constitution which confers on the Public Protector the power to investigate any alleged or suspected improper or prejudicial conduct, to report on that conduct and to take appropriate remedial action; and in terms of section 3(1) of the EMEA which places a peremptory duty on the Public Protector to investigate allegations of unethical conduct or violations of the Executive Ethics Code by the President and other Members of the Executive. The Complaint is also investigated in terms of section 7(1) of the Public Protector Act, which regulates the Public Protector's exercise of her/his investigative powers.

(xvi) Section 182(1) provides that:

The Public Protector has the power, as regulated by national legislation-

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action.

(xvii) Section 3(1) of the EMEA further provides that:

The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.

(xviii) The investigation was principally undertaken because of the Second Complainant having lodged his complaint under the EMEA, which does not allow the Public Protector discretionary power to consider whether or not to investigate a matter falling under his/her jurisdiction. Given that the Executive Members' Ethics Act requires investigations under it to be concluded within 30 days, the investigation was given priority. It was also given priority because of the allegations having the potential of undermining public trust in the Executive and SOEs. Additional resources were requested from government with a view to handling it like a Commission of Inquiry and R1.5 million was allocated by the Department of Justice and Correctional Services for this purpose.

(xix) The investigation process was informed by the provisions of sections 6 and 7 of the Public Protector Act, 1994 (Public Protector Act). Section 6(4) recognises the power of the Public Protector to conduct own initiative investigations while section 6(5)(a) and (b) of the Public Protector Act specifically recognises the Public Protector's investigate any maladministration in connection with the affairs of any institution in which the state is the majority or controlling shareholder or of any public entity as defined in section 1 of the Public Finance Management Act 1 of 1999 (PFMA); and abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct. Section 7 details the processes that may be followed, which involves an inquisitorial process that includes requests for information, subpoenas and interviews.

(xx) The complaint relates to allegations of improper conduct in state affairs and unethical conduct by the President of the Republic, and other state functionaries and accordingly falls within my ambit as the Public Protector. None of the parties challenged the jurisdiction of the Public Protector.

(xxi) Based on an analysis of the complaint, the following issues were identified as relevant for investigation:

Alleged breach of the Executive Member Ethics Act, 1998

a) Whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to be involved in the process of removal and appointment of the Minister of Finance in December 2015;

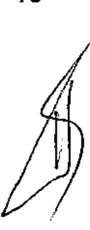
b) Whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to engage or be involved in the process of removal and appointing of various members of the Cabinet;

c) Whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to be involved in the process of appointing members of Boards of Directors of SOEs;

d) Whether President Zuma has enabled or turned a blind eye, in violation of the Executive Ethics Code, to alleged corrupt practices by the Gupta family and his son in relation to allegedly linking appointments to *quid pro quo* conditions;

e) Whether President Zuma and other Cabinet members improperly interfered in the relationship between banks and Gupta owned companies thus giving preferential treatment to such companies on a matter that should have been handled by independent regulatory bodies;

f) Whether President Zuma improperly and in violation of the Executive Ethics Code exposed himself to any situation involving the risk of conflict between his official duties and his private interest or used his position or information entrusted to him to enrich himself and or enabled businesses owned by the



Gupta family and his son to be given preferential treatment in the award of state contracts, business financing and trading licences; and

g) Whether anyone was prejudiced by the conduct of President Zuma.

Awarding of contracts by certain organs of state to entities linked to the Gupta family

a) Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the appointment or removal of Ministers and Boards of Directors of SOEs;

b) Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the award of state contracts or tenders to Gupta linked companies or persons;

c) Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the extension of state provided business financing facilities to Gupta linked companies or persons;

d) Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with exchange of gifts in relation to Gupta linked companies or persons; and

e) Whether any person/entity was prejudiced due to the conduct of the said state functionary or organ of state.

Two Phased Inquisitorial Investigation Process

(xxii) The approach to the investigation was an inquisitorial process which asked questions raised about the President's conduct: What happened? What should have happened? Is there a discrepancy between what happened and what should have

happened and if there is a discrepancy, is it unjustifiable and material in the circumstances and if the President's conduct qualifies to be regarded as improper conduct as alleged. The same approach was taken in relation to allegation of suspected conduct regarding awarding of tenders by SOEs and other organs of state and extension of other benefits to Gupta owned companies.

(xxiii) I must also indicate that the investigation has been divided into two phases and that the first phase of the investigation did not touch on the award of licenses to the Gupta family and superficially touched on state financing of the Gupta-Zuma business while only selecting a few state contracts. The division of work was to accommodate the time and resource limitations by addressing the pressing questions threatening to erode public trust in the Executive and SOEs while mapping the process for the second and final phase of the investigation.

(xxiv) The investigation process included correspondence with key parties implicated by the allegations and potential witnesses, with the President having been the first to be advised by myself in writing between March and April 2016, of the allegations being made and provided with copies of the first two complaints immediately after the complaints were lodged. President Zuma was also advised on 22 April 2016 and before the expiry of the mandatory 30 days for the completion of the investigation that it was not going to be possible to conclude the investigation within 30 days due to resources and communication challenges.

(xxv) Interviews were conducted with identified key witnesses, commencing with alleged whistle-blowers, Deputy Minister of Finance Mr Jonas and Ms Mentor, who confirmed their status as whistle-blowers. The investigation team also interviewed Mr Maseko, who was also identified by the media as a whistle-blower. Interviews were also conducted with several other ministers and other selected witnesses. Documents were requested from appropriate persons and institutions and analysed and evaluated together with the oral evidence to establish if any of the allegations could

be corroborated. Towards the conclusion of the investigation persons who appeared to be implicated by the evidence collected by then were served with notices in terms of section 7(9) of the Public Protector Act to alert them of such evidence and the potential of adverse findings and afford them the opportunity to respond.

(xxvi) In that regard the following people were issued with notices in terms of section 7(9) of the Public Protect Act:

a) President Zuma on 2 October 2016;

b) Dr Ben Ngubane and the Board of Eskom on 4 October 2016;

c) Mr D. Zuma on 4 October 2016;

d) Mr Ajay Gupta on 4 October 2016;

e) Tegeta on 7 October 2016;

f) Minister Lynne Brown on 4 October 2016;

g) Minister Van Rooyen on 10 October 2016; and

h) Minister Mosebenzi Zwane 5 October 2016.

(xxvii) Regarding the standard that was expected of President Zuma as the President of South Africa and the sole custodian of Executive Authority of the republic, the provisions of sections 96, 195 and 237 of the Constitution were taken into account together with the provisions of the Executive Ethics Code, Section 6 of the Public Protector Act and general principles of good governance as outlined below.

(xxviii) The investigation process commenced by notification of President Zuma of the complaints received and that I intended to conduct a formal investigation into the complaints lodged. I also invited President Zuma to comment on the allegations. My investigation was conducted through meetings and interviews with the Complainants and witnesses as well as inspection of all relevant documents and analysis and application of all relevant laws, policies and related prescripts, followed.

(xxix) Key laws and policies taken into account to help me determine if there had been any improper and unethical conduct by the President and/or officials of the implicated State Organs due to their alleged inappropriate relationship with members of the Gupta family were principally those governing the conduct of members of the Executive (Executive Members Ethics Act, 1998 and Executive Ethics Code), the Constitution, policies governing procurement by the State and its organs, the Public Finance Management Act, the Companies Act King III Report on Corporate Governance, the Prevention and Combatting of Corrupt Activities Act and relevant National Treasury prescripts.

(xxx) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following observations:

1. **Regarding whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to be involved in the process of removal and appointment of the Minister of Finance in December 2015:**

(a) President Zuma was required to select and appoint Ministers lawfully and in compliance with the Executive Ethics Code.

(b) It is worrying that the the Gupta family was aware or may have been aware that Minister Nene was removed 6 weeks after Deputy Minister Jonas advised him that he had been allegedly offered a job by the Gupta family in exchange for extending favours to their family business.

(c) Equally worrying is that Minister Van Rooyen who replaced Minister Nene can be placed at the Saxonwold area on at least seven occasions including on the day before he was announced as Minister. This looks anomalous

given that at the time he was a Member of Parliament based in Cape Town.

(d) Furthermore one of the two advisers he brought with to National Treasury on his first day at work, 11 October 2015 had contact with someone at the Saxonwold area the day before.

(e) The coincidence is a source of great concern.

(f) Another worrying coincidence is that Minister Nene was removed after Mr Jonas advised him that he was going to be removed.

(g) If the Gupta family knew about the intended appointment it would appear that information was shared then in violation of section 2.3(e) of the Executive Ethics Code which prohibits members of the executive from the use of information received in confidence in the course of their duties or otherwise than in connection with the discharge of their duties.

(h) The provision of Section 2.3(c) which prohibits a member of the Executive from acting in a way that is inconsistent with their position. There might even be a violation of Section 2.3(e) of the Executive Ethics Code which prohibits a member of the Executive from using information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties.

(i) In view of the fact that the allegation that was made public included Mr Jonas alleging that the offer for a position of Minister was linked to him being required to extend favours to the Gupta family. Failure to verify such allegation may infringe the provisions of Section 34 of Prevention and Combatting of Corrupt Activities Act, 12 of 2004 which places a duty on persons in positions of authority who knows or ought reasonably to have known or suspected that any other person has committed an offence under

the Act must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

2. **Regarding whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to engage or to be involved in the process of removal and appointing of various members of Cabinet**

   (a) There seems to be no evidence of action taken by anyone to verify Ms Mentor's allegation(s). If this observation is true, the provisions of Section 195 of the Constituion as interpreted in *Khumalo v MEC for Education, KZN* would not have been complied with. If this is the case, the provision of Section 2.3(c) which prohibits a member of the Executive from acting in a way that is inconsistent with their position, is applicable. There might even be a violation of Section 2.3(e) of the Executive Ethics Code which prohibits a member of the Executive from using information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties. In view of the fact that the allegation that was made public included Mr Jonas alleging that the offer for a position of Minister was linked to him being required to extend favours to the Gupta family, failure to verify such allegation may infringe the provisions of Section 34 of Prevention and Combatting of Corrupt Activities Act, 12 of 2004 which places a duty on persons in positions of authority who knows or ought reasonably to have known or suspected that any other person has committed an offence under the Act must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

3. **Whether President Zuma improperly and in violation of the Executive Ethics Code, allowed members of the Gupta family and his son, to be**

involved in the process of appointing members of Board of Directors of SOEs

(a) A similar duty is imposed and possibly violated in relation to the allegations that were made by Mr Maseko about his removal. The same to applies to persistent allegations regarding an alleged cozy relationship between Mr Brian Molefe and the Gupta family. In this case it is worth noting that such allegations are backed by evidence and a source of concern that nothing seems to have been done regardless of the duty imposed by Section 195 of the Constitution on relevant State functionaries.

(b) While not relevant to the alleged influence of the Gupta family, the allegations made by Ms Hogan also deserve a closer look to the extent that they suggest Executive and party interference in the management of SOEs and appointments thereto.

4. **Whether President Zuma has enabled or turned a blind eye, in violation of the Executive Ethics Code, to alleged corrupt practices by the Gupta family and his son in relation to allegedly linking appointments to *quid pro quo* conditions**

(a) There seems to be no evidence showing that Mr Jonas' allegations that he was offered money and a ministerial post in exchange for favours were ever investigated by the Executive. Only the African National Congress and Parliament seemed to have considered this worthy of examination or scrutiny.

(b) If this observation is correct then the provisions of section 2.3 (c) of the Executive Ethics Code may have been infringed as alleged.

5. **Regarding whether President Zuma and other Cabinet members improperly interfered in the relationship between banks and Gupta owned companies thus giving preferential treatment to such companies on a matter that should have been handled by independent regulatory bodies;**

    (a) Cabinet appears to have taken an extraordinary and unprecedented step regarding intervention into what appears to be a dispute between a private company co owned by the President's friends and his son. This needs to be looked at in relation to a possible conflict of interest between the President as head of state and his private interest as a friend and father as envisaged under section 2.3(c) of the Executive Ethics Code which regulates conflict of interest and section 195 of the Constitution which requires a high level of professional ethics. Sections 96(2)(b) and (c) of the Constitution are also relevant.

6. **Whether President Zuma improperly and in violation of the Executive Ethics Code exposed himself to any situation involving the risk of conflict between his official duties and his private interest or use his position or information entrusted to him to enrich himself and businesses owned by the Gupta family and his son to be given preferential treatment in the award of state contracts, business financing and trading licences**

    (a) The allegations raised by both Messrs Jonas and Maseko are relevant as is action taken and/or not taken in relation thereto.

7. **Whether anyone was prejudiced by the conduct of President Zuma**

    (a) Deputy Minister Jonas would be regarded as a liar and publicly humiliated unless he is vindicated in his public statement that Mr Ajay Gupta offered

the position of Minister of Finance to him with the knowledge of President Zuma who subsequently denied such offer. Consequently the people of South Africa, who Deputy Minister Jonas took into his confidence in revealing this, would lose faith in open, democratic and accountable government if President Zuma's denials are proven to be false.

8. **Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the appointment or removal of Ministers and Boards of Directors of SOEs**

(a) It appears that the Board at Eskom was improperly appointed and not in line with the spirit of the King III report on good Corporate Governance.

(b) Even though certain conflicts may have arisen after the Board was appointed, there should have been a mechanism in place to deal with the conflicts as they arose and managed actual or perceived bias.

(c) A Board appointed to an SOE, is expected to act in the best interests of the Republic of South Africa at all times and it appears that the Board may have failed to do so.

(d) It appears as though no action was taken on the part of the Minister of Public Enterprise as Government stakeholder to prevent these apparent conflicts.

9. **Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the award of state contracts or tenders to Gupta linked companies or persons**

(a) Minister Zwane's conduct with regards to his flight itinerary to Switzerland appears to be irregular. This may not be in line with the PFMA.

(b) It appears that Minister Zwane's conduct may not be in line with section 96(2) of the Constitution and section 2 of the Executive Members Ethics Act.

(c) In light of the extensive financial analysis conducted, it appears that the sole purpose of awarding contracts to Tegeta to supply Arnot Power Station, was made solely for the purposes of funding Tegeta and enabling Tegeta to purchase all shares in OCH. The only entity which appears to have benefited from Eskom's decisions with regards to OCM/OCH was Tegeta which appears to have been enabled to purchase all shares held in OCH. The favourable payment terms given to Tegeta (7 days) need to be examined further. OCM clearly had 30 day payment terms with Tegeta for the supply of coal to Arnot Power Station, and Eskom appears to have been aware of this. It also appears that Tegeta did not meet all its obligations to OCM as OCM was owed R 148,027,783.91 by Tegeta as at 31 July 2016 and an amount of R 289,842,376.00 as at 31 August 2016.

(d) This may amount to a possible contravention of section 38 and 51 of the PFMA which states that a Board needs to prevent fruitless and wasteful expenditure, which in turn is an act of financial misconduct under section 83(1)(a) of the PFMA and subject to the penalties under section 86(2) of the PFMA.

(e) It appears that the Eskom Board did not exercise a duty of care, which may constitute a violation of section 50 of the PFMA.

(f) Eskom's awarding of the initial contracts to Tegeta to supply coal to the Majuba Power Station will form part of the next phase of the investigation.

10. Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the extension of state provided business financing facilities to Gupta linked companies or persons;

(a) The prepayment to Tegeta in the amount R659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand) inclusive of VAT, may not be in line with the PFMA. This is evidenced in the BRP's section 34 report in which it is stated that the prepayment was not used to fund OCM, it is further emphasised in the financial analysis which shows the prepayment was used entirely for the purposes of funding the purchase of all shares in OCH. On 11 April 2016, Tegeta informed the BRP's and Glencore, who in turn informed the Loan Consortium that they were R600 million short, on the very same day, Eskom held an urgent Board Tender Committee meeting at 21:00 in the evening to approve the prepayment which was R659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) inclusive of VAT.

(b) The Eskom Board does not appear to have exercised a duty of care or acted, which may constitute a violation of section 50 of the PFMA.

(c) Tegeta's conduct and misrepresentations made to the public with regards to the prepayment and the actual reason for the prepayment could amount to fraud. Furthermore, the shareholders of Tegeta (Oakbay, Mabengela, Fidelity, Accurate and Elgasolve) pledged their shares to Eskom in respect of the prepayment and thus knew of the nature of the transaction.

(d) It appears that the manner in which the rehabilitation funds are currently being handled with the Bank of Baroda, are in contravention of section 24P of NEMA as well as section 7 of the financial regulations which provide that

that the financial provision must be *"equal to the sum of the actual costs of implementing the plans and report contemplated in regulation 6 and regulation 11(1) for a period of at least 10 years forthwith"*. This cannot be guaranteed by the Bank of Baroda or Tegeta as the funds are consistently moved around between accounts as well as other branches, Tegeta accordingly may have contravened section 7 of the financial regulations which is an offence under section 18 of the financial regulations which in turn is liable to a fine not exceeding R10 million or to imprisonment not exceeding 10 years or to both.

(e) According to the Financial Provision Regulations (***"Financial Regulations"***), where an applicant or holder of a right or permit makes use of the financial vehicle as contemplated in regulation 9(5) read with 8(1)(b), any interest earned on the deposit shall first be used to defray bank charges in respect of that account and thereafter accumulate and form part of the financial provision. In neither of the funds held in the Bank of Baroda accounts was the interest reinvested for the purposes of capital growth. The interest is transferred back into the Bank of Baroda account and utilised. It seems as if the interest serves as a direct benefit to the Bank of Baroda and not the owner of the invested funds as it would be in terms of a normal capital investment. Tegeta may have contravened section 9(5) of the financial regulations.

By not treating the rehabilitations funds in the prescribed manner and for the prescribed purpose, Tegeta is in contravention of section 37A of the Income Tax Act. The Commissioner may include an amount equal to twice the market value of all property held in the rehabilitation fund, on the date of contravention, in the rehabilitation fund's taxable income, and include the amount that the mining company contributed to the rehabilitation fund (and claimed a tax deduction for), in the mining company's income, to the extent

that the property in the rehabilitation fund was directly or indirectly derived from cash paid to the rehabilitation fund.

(f) The Commissioner may include an amount equal to twice the market value of all property held in the rehabilitation fund, on the date of contravention, in the rehabilitation fund's taxable income, and include the amount that the mining company contributed to the rehabilitation fund (and claimed a tax deduction for), in the mining company's income, to the extent that the property in the rehabilitation fund was directly or indirectly derived from cash paid to the rehabilitation fund. This is potentially a sum of double the amount of R280.000.000.00 which was available in the KRTF and a sum of double the amount R1,469.916.933.63 which was available in the ORTF.

(g) The Bank of Baroda in relation to the purchase of all shares in OCH by Tegeta and the rehabilitation fund. This will form part of the next phase of the investigation.

11. **Whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with exchange of gifts in relation to Gupta linked companies or persons;**

(a) This issue will be attended to further in the next phase of the investigation.

12. **Whether any person/entity was prejudiced due to the conduct of the SOE.**

(a) Eskom may have numerous methods caused prejudiced to Glencore. Glencore appears to have been severely prejuidiced by Eskom's actions in refusing to sign a new agreement with them for the supply of coal to Hendrina Power Station, this was not in line with previous discussions held by Glencore with Eskom, furthermore, it is unclear as to why approval was

needed from the Acting Chief Executive before the agreement was signed, as the necessary approvals appear to already have been obtained. It appears that the conduct of Eskom, was solely for the purposes of forcing OCM/OCH into business rescue and financial distress.

(b) It appears that the conduct of Eskom was solely to the benefit of Tegeta, in that they forced the sale of OCH to Tegeta by stating that OCM could be sold alone. Thereafter, it appears, they have allowed Tegeta to proceed with the sale of a portion of OCH in the form of the Optimum Coal Terminal. This may constitute a contravention of section 50(2) of the PFMA in that they acted solely for the benefit of one company.

(xxxi) The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainant as close as possible to where he would have been had the improper conduct or maladministration not occurred, while addressing systemic procurement management deficiencies in the Department, is the following:

(a) The investigation has proven that the extent of issues it needs to traverse and resources necessary to execute it is incapable of being executed fully by the Public Protector. This was foreshadowed at the commencement of the investigation when the Public Protector wrote to government requesting for resources for a special investigation similar to a commission of inquiry overseen by the Public Protector. This investigation has been hamstrung by the late release which caused the investigation to commence later than planned. The situation was compounded by the inadequacy of the allocated funds (R1.5 Million).

(b) The President has the power under section 84(2)(f) of the Constitution to appoint commissions of enquiry however, in the EFF Vs Speaker of

Parliament the President said that: *"I could not have carried out the evaluation myself lest I be accused of being judge and jury in my own case".*

(c) The President to appoint, within 30 days, a commission of inquiry headed by a judge solely selected by the Chief Justice who shall provide one name to the President.

(d) The judge to be given the power to appoint his/her own staff and to investigate all the issues using the record of this investigation and the report as a starting point.

(e) The President to ensure that the commission is adequately resourced, in conjuction with the National Treasury.

(f) The commission of inquiry to be given powers of evidence collection that are no less than that of the Public Protector.

(g) The commission of inquiry to complete its task and to present the report with findings and recommendations to the President within 180 days. The President shall submit a copy with an indication of his/her intentions regarding the implementation to Parliament within 14 days of releasing the report,

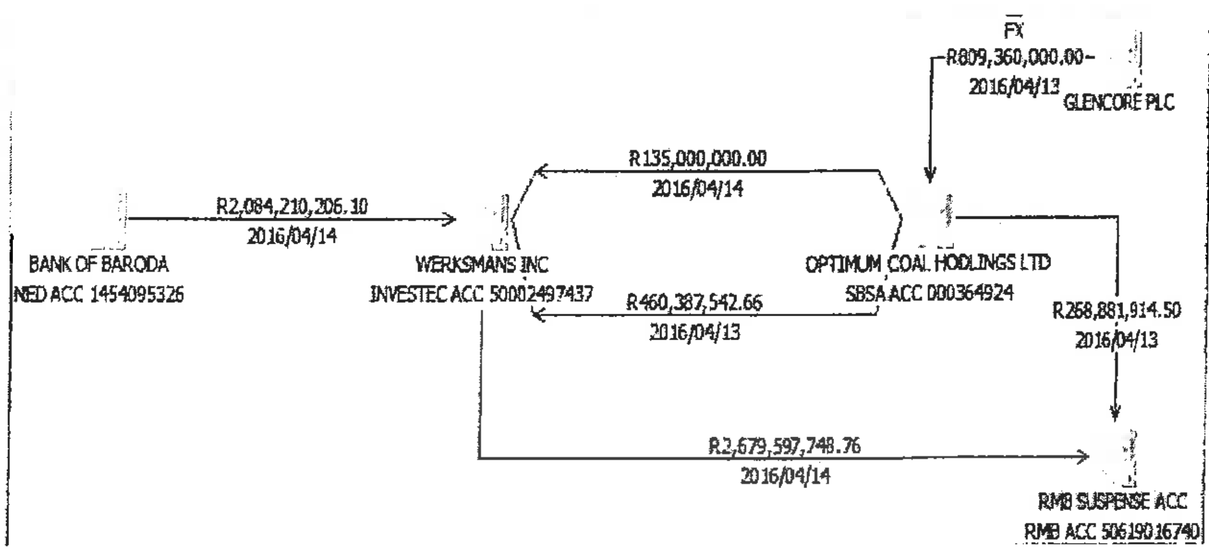
(h) Parliament to review, within 180 days, the Executive Members' Ethics Act to provide better guidance regarding integrity, including avoidance and management of conflict of interest. This should clearly define responsibilities of those in authority regarding a proper response to whistleblowing and whistleblowers. Consideration should also be given to a transversal code of conduct for all employees of the State.

(i) The President to ensure that the Executive Ethics Code is updated in line with the review of the Executive Members' Ethics Act.

(j) The Public Protector, in terms of section 6 (4) (c) (i) of the Public Protector Act, brings to the notice of the National Prosecuting Authority and the DPCI those matters identified in this report where it appears crimes have been committed.

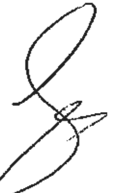
5.340. The total amount owed to the Loan Consortium was R 2,948,479,663.26. This amount was settled as follows: The Bank of Baroda paid R 2,084,210,206.10 and R 864,269,457.1660 was received from Glencore and OCH.

5.341. The afore-mentioned transactions including how the total Glencore/OCH payment was structured is illustrated in detail below:



<u>Tegeta assumes control over Mining Rehabilitation Funds</u>

5.342. As part of the agreement with Glencore for the acquisition of OCH, Tegeta acquired control over the Optimum Mine Rehabilitation Fund Trust and the Koornfontein Rehabilitation Fund. The value of the Optimum Mine Rehabilitation Fund Trust on 21 June 2016 was R 1,469,916,933.63 and the Koornfontein Rehabilitation Fund on 23 May 2016 was R 280,000,000.00. The total value of the Optimum Mine Rehabilitation Fund of R 1,461,265,534.24 was transferred on 21 June 2016 to the Bank of Baroda. The Koornfontein Rehabilitation Fund value was transferred to the Bank of Baroda on 23 May 2016. It is calculated that the combined value of the interest earned off of these funds at 7% is approximately R 122,500,000.00 per annum.



PROGRAMME

MEETING WITH THE MINISTER OF FINANCE
Mr Pravin Gordhan

To be held in the Executive Boardroom, Block A, Ground Floor, Nedbank Sandton, 135 Rivonia Road

Friday, 29 January 2016 at 15:00

Registration	**:**	**14:30 until 15:00**
Welcome	**:**	**15:00 until 15:10** **Mr Jabu Mabuza**
Address by Minister Gordhan	**:**	**15:10 until 15:45**
Dialogue with Minister Gordhan	**:**	**15:45 until 16:30**
Refreshments	**:**	**16:30**

Name	Position	Company	Email Address	Phone 1	Attending	Tentative	Apologies
Minister Pravin Gordhan	Minister of Finance				v		
Ramos, Maria	Chief Executive Officer	Absa Bank Limited					
Schmidt, Mike	Chief Executive Officer	African Rainbow Minerals Ltd					
Motsepe, Patrice	Executive Chairman	African Rainbow Minerals Ltd					
Dower, Rob	Chief Operating Officer	Allan Gray Group (Pty) Ltd					
Griffith, Chris	Chief Executive Officer	Anglo American Platinum Limited					
Cutifani, Mark	Chief Executive Officer	Anglo American Plc					
Sangqu, Andile	Executive Head	Anglo American SA Ltd					
Venkatakrishnan, S	CEO	Anglogoldashanti			v		
Makwana, Mpho	Chairperson	Arcelormittal South Africa Limited					
Saad, Stephen	Chief Executive Officer	Aspen Pharmacare Holdings Limited					
Verster, Kobus	Group Chief Executive Officer	Aveng Ltd					
McKenzie, Andrew	CEO	BHP					
Coovadia, Cas	CEO	Banking Council			v		
Thomson, Clive	Chief Executive Officer	Barloworld South Africa (Pty) Ltd					x
Joffe, Brian	Group Chief Executive Officer	Bidvest					
Zoueihid, Soraya	CEO	British American Tobacco					
Fourie, Gerrie	Chief Executive Officer	Capitec Bank					x
Lennox, Keith	Operations Manager: Gauteng	Capitec Bank			v		
Dos Santos, Jose	Chief Executive Officer	Cell C (Pty) Ltd					
Miller, Paul	Chief Executive Officer	Cipla Medpro South Africa (Pty) Ltd			v		
Kneale, David	Chief Executive Officer	Clicks Group Limited					
Pillay, Anton	Chief Executive Officer	Coronation Fund Managers Ltd					
Bam, Lwazi	Chief Executive Officer	Deloitte					
Dlamini, Patrick	Chief Executive Officer	Development Bank of Southern Africa Limited					
Saltzman, Ivan	Director	Dis-Chem Pharmacies					
Gore, Adrian	Chief Executive Officer	Discovery Health (Pty) Ltd					
Farid bin Adnan, Mohd	Chief Executive Officer	Engen Petroleum Ltd					
Katz, Michael	Chairman	ENS			v		
Molefe, Brian	Chief Executive Officer	Eskom Holdings Soc Ltd					
Luthuli, Sibusiso	Ceo & Principal Officer	Eskom Pension and Provident Fund					
Nkosi, Sipho	Chief Executive Officer	Exxaro Resources Ltd			v		
Botha, Santie	Chairman	Famous Brands Ltd					x
Burger, Johan	Chief Executive Officer	Firstrand Bank Ltd			v		
Nxasana, Sizwe	CEO	Firstrand Bank Ltd					
Cluer, Paul	Chief Executive Officer	Foord Asset Management (Pty) Ltd					
Murray, Doug	Chief Executive Officer	Foschini Retail Group (Pty) Ltd					x
Glasenberg, Ivan	CEO	Glencore South Africa (Pty) Ltd					
Coleman, Colin	Managing Director	Goldman Sachs			v		
Olivier, Alan	Chief Executive Officer	Grindrod Ltd					
Vemer, Eric	Chief Executive Officer	Group Five Ltd					
Kohler, Nic	CEO	Holliard			v		

Copelyn, John	Chief Executive Officer	Hosken Consolidated Investments Ltd					
Mkwanazi, Mafika	Chairman	Hulamin Limited					
Jacob, Richard	Chief Executive Officer	Hulett Aluminium Group			v		
Dalgleish, Gavin	Chief Executive Officer	Illovo Sugar Ltd					
Lamberti, Mark	Chief Executive Officer	Imperial Holdings Ltd					
Qhena, Geoffrey	Chief Executive Officer	Industrial Development Corporation			v		
Koseff, Stephen	Chief Executive Officer	Investec Bank Limited					
Newton-King, Nicky	Chief Executive Officer	JSE Limited				?	
Hoole, Trevor	Managing Partner	KPMG Inc			v		
Dloti, Thabo	CEO	Liberty			v		
Magara, Ben	Chief Executive Officer	Lonmin Platinum (Pty) Limited			v		
Hayward, Guy	Chief Executive Officer	Massmart Holdings Ltd					x
Hathorn, David	Chief Exeutive Officer	Mondi Group					x
Kruger, Nicolaas	Group Chief Executive Officer	MMI Holdings Limited					
Bird, Stuart	Chief Executive Officer	Mr Price Group Ltd			v		
Nhleko, Phutuma	Chief Exeutive Officer	MTN					
Laas, Henry	Group Chief Executive	Murray & Roberts Ltd					x
Whyte, Geoff	Chief Executive Officer	Nando's					
Brown, Mike	Chief Executive	Nedbank Group			v		
Subramoney, Stanley	Non-executive Director	Nedbank Group			v		
Bekker, Koos	Chairman	Naspers Limited					
Friedland, Richard	Chief Executive Officer	Netcare Limited					
Otty, Rob	Managing Director	Norton Rose Full Bright			v		
Mupita, Ralph	Chief Executive Officer	Old Mutual Emerging Markets			v		
Wiese, Christo	Chairman	Pepkor Holdings Ltd					x
Ackerman, Gareth	Chairman	Pick 'n Pay Holdings Ltd					x
Brasher, Richard	Chief Executive Officer	Pick 'n Pay Stores Limited					
Mouton, Jannie	Chairman	PSG Group Ltd					
Mouton, Pieter	Chief Executive Officer	PSG Group Ltd			v		
Matjila, Dan	Chief Executive Officer	Public Investment Corporation			v		
Rupert, Johan	Chairman	Remgro Finance Corporation Ltd					
Durand, Jannie	Chief Executive Officer	Remgro Finance Corporation Ltd					
Mothoa, Mpho	Managing Director	Richards Bay Minerals					
Rotchild, Geoff	Chairman	Rothschild			v		
Kingston, Martin		Rothschild				?	
Ngwababa, Bongani	CEO	Sasol Limited					x
Basson, Whitey	Chief Executive Officer	Shoprite Holdings Ltd					
Seketse, Victor	Chief Executive	SizweNtsalubaGobodo			v		
Kruger, Ben	Executive Director	Standard Bank					
Tshabalala, Sim	Chief Executive Officer	Standard Bank			v		
Jooste, Markus	Chief Executive Officer	Steinhoff International Holdings Ltd					x
Stephens, Graeme	Chief Executive Officer	Sun International					
Mabuza, Jabu	Chairman	Telkom SA Ltd			v		
Maseko, Sipho	Chief Executive Officer	Telkom SA Ltd					

Name	Position	Company					
O'Connor, Graham	Chief Executive Officer	The Spar Group Ltd			v		
Hankinson, Mike	Chairman	The Spar Group Ltd					
Staude, Peter	Chief Executive Officer	Tongaat Hulett Limited					x
Gama, Siyabonga	Chief Executive Officer	Transnet Limited					
Mark, Michael	Chief Executive officer	Truworths					
Faragher-Thomas, Ross	Chief Executive Officer	Virgin Active South Africa (Pty) Ltd					
Joosub, Shameel	Chief Executive Officer	Vodacom (Pty) Ltd					
Rylands, Zyda	Chief Executive Officer	Woolworths (Pty) Ltd					
Moir, Ian	Chief Executive Officer	Woolworths Holdings Ltd					
					26	2	11

Office of the State Attorney
Pretoria

PRIVATE BAG X 91
PRETORIA
0001

SALU BUILDING
255 FRANCIS BAARD (SCHOEMAN) STREET
CNR THABO SEHUME (ANDRIES) STREET
[ENTRANCE IN THABO SEHUME (ANDRIES) STREET]

TEL: (SWITCHBOARD): (012) 309 1500
(DIRECT LINE): (012) 309 1575
(SECRETARY): (012) 309 1504
FAX: (012) 309 1649/50
DOCEX: 298

4 NOVEMBER 2016

MY REF: 2427/16/Z32
YOUR REF: MR GT VD MERWE/st/078

ENQ: T. NHLANZI
EMAIL: TNhlanzi@justice.gov.za

VAN DER MERWE & ASSOCIATES INCORPORATED
P O Box 27756
Sunnyside
0132

Per e mail: simone@vdmass.co.za

Dear Sirs,

RE: MINISTER OF FINANCE // OAKBAY INVESTMENTS (PTY) LTD AND OTHERS

Your letter dated 3 November 2016 refers.

We note your recordal in the last sentence of the (unnumbered) sixth paragraph that "[t]he relief in the notice of motion (costs excluded) is *common cause* [sic] *and there is no dispute about the legal obligation of the applicant*".

This latest iteration of your clients' position is welcomed. It is at odds with certain of the previous iterations, as reflected in the application (and annexures).

Since your clients' formal position is now stated to be that it neither opposes the substantive relief, nor contends that the Minister is under any legal obligation to intervene in the banks' relationships with your clients, we invite the withdrawal of the notice of opposition filed by you on behalf of your clients.

(As regards costs, you would have noted that the Minister only sought a costs order in the event of opposition.)

In the circumstances, given your formal recordal in your open letter that the substantive relief sought in the application is now not opposed, and that there is no dispute relating to any contended legal obligation by the Minister, there can be (its lack of merit beside) no basis for the interlocutory application you are considering to enforce production of the "information" and documentation you have purported to procure under the Rule 35(12) Notice. It is not accepted that it is "of imperative importance" (or indeed open to your clients) to do so. Their contemplation (noted by you in your penultimate paragraph) to use Rule 35(12) in the present proceeding to address "inadvertan[t] ... innuendo" or meet a "public perception" regarding your clients is now a matter of record.

In the circumstances, it is not accepted that your clients have any proper ground not to comply with the time periods prescribed by the Rules of Court to file any affidavit they wish to advance (this notwithstanding your acknowledgement noted in paragraph four above).

In relation to other matters advanced by you in your letter under reply, we do not propose to conduct a trial by correspondence. It is unnecessary in particular to address you being "fairly disappointed" by a response from a party separately cited (FIC). The same applies to several other contentions the relevance of which is not evident.

All our client's rights are reserved.

In the interests of transparency in the litigation, we copy this letter, with your request of 3 November, to the attorneys of all other parties now on record.

Yours Sincerely

Ms Thembelihle Nhlanzi
FOR: STATE ATTORNEY PRETORIA
DEPARTMENT OF JUSTICE &
CONSTITUTIONAL DEVELOPMENT

CC: dlambert@ensafrica.com
Gerhard.Rudolph@bakermckenzie.com
Widaad.Ebrahim@bakermckenzie.com
Callum.OConnor@bakermackenzie.com
ghay@macrobert.co.za
aslam.moosajee@nortonrosefulbright.com
cmanaka@werksmans.com
cmoraitis@werksmans.com

>
> From: Tumelo Ntlaba
> Sent: Monday, 07 November 2016 10:25 AM
> To: 'Phumelele Mncwango'
> Cc: Moritz Botha
> Subject: RE: URGENT_OPTIMUM COAL MINE_MAAA0329790
>
> Good morning,
>
> Kindly note that the CSD does not the support the request as indicated below. We will not be able to verify a bank account that does not belong to the supplier.
> Please contact the government institution that you are doing business with and for them to work out an exception for utilising the bank account provided.
>
> The account provided below will not pass verification on CSD.
>
> Regards,
> Tumelo Ntlaba
> 060 996 0098
>
> From: Phumelele Mncwango [mailto:Phumelele.Mncwango@optimumcoal.com]
> Sent: Thursday, 03 November 2016 10:12 AM
> To: Tumelo Ntlaba
> Subject: URGENT_OPTIMUM COAL MINE_MAAA0329790
>
> Good morning Tumelo
>
> Any feedback re below?
>
> <image001.jpg>
>
> From: Phumelele Mncwango [mailto:Phumelele.Mncwango@optimumcoal.com]
> Sent: 12 October 2016 03:57 PM
> To: Reuben Voster
> Cc: nomsama@stlm.gov.za
> Subject: FW: URGENT_OPTIMUM COAL MINE_MAAA0329790
>
> Reuben,
> Can you please escalate this, to your Senior Management if possible.
> What Welhelmina is asking is not possible - Optimum Coal Mine cannot open its own bank account.
> It could be that Welhelmina is not informed about our situation, hence I am asking you to escalate this.
> This is really a matter of urgency, we have pending payments that Steve Tshwete Municipality needs to make.

>
> Your immediate assistance will be highly appreciated
>
>
>
> <image002.jpg>
>
> Phumi Mncwango
> Contracts
> Optimum Colliery
>
> Pullenshope Road
> Private Bag X1201
> Pullenshope, 1096
> South Africa
>
> Tel: +27 (13) 296 5418
> Web: www.optimumcoal.com
>
>
> DISCLAIMER: The information contained in this message is confidential and is intended for the addressee(s) only. If you have received this message in error or there are any problems please notify the sender immediately. The unauthorized use, disclosure, copying or alteration of this message is prohibited. Optimum Coal and its associated companies will not be liable for direct, special, indirect or consequential damages arising from alteration of the contents of this message by a third party or as a result of any malicious code or virus being passed on.
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> From: Central Supplier Database [mailto:CSD@treasury.gov.za]
> Sent: Wednesday, October 12, 2016 1:46 PM
> To: Phumelele Mncwango
> Subject: RE: URGENT_OPTIMUM COAL MINE_MAAA0329790
>
>
>
> Good Day

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no: 90878/2016

In the matter between:

MINISTER OF FINANCE	Applicant
and	
OAKBAY INVESTMENTS (PTY) LTD	First Respondent
OAKBAY RESOURCES AND ENERGY LTD	Second Respondent
SHIVA URANIUM (PTY) LTD	Third Respondent
TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Fourth Respondent
JIC MINING SERVICES (1979) (PTY) LTD	Fifth Respondent
BLACKEDGE EXPLORATION (PTY) LTD	Sixth Respondent
TNA MEDIA (PTY) LTD	Seventh Respondent
THE NEW AGE	Eighth Respondent
AFRICA NEWS NETWORK (PTY) LTD	Ninth Respondent
VR LASER SERVICES (PTY) LTD	Tenth Respondent
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD	Eleventh Respondent
CONFIDENT CONCEPT (PTY) LTD	Twelfth Respondent

JET AIRWAYS (INDIA) LTD (INCORPORATED IN INDIA)	Thirteenth Respondent
SAHARA COMPUTERS (PTY) LTD	Fourteenth Respondent
ABSA BANK LTD	Fifteenth Respondent
FIRST NATIONAL BANK LTD	Sixteenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
REGISTRAR OF BANKS	Nineteenth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twentieth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Twenty-First Respondent

---

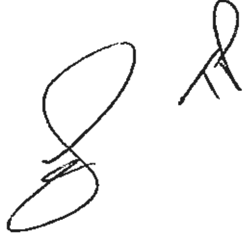
CONFIRMATORY AFFIDAVIT

I, the undersigned,

TUMELO TLABA

make oath and state as follows:

1. I am the Director in the National Treasury responsible for the Central Supplier Database (CSD).



2. The facts to which I depose are within my personal knowledge, or derived from the documents in my possession and under my control in my aforesaid capacity, and true and correct.

3. I have read paragraph 148 of the replying affidavit of Minister Gordhan, with annexure "V" to his affidavit. I confirm what is stated in relation to the correspondence of Phumi Mncwango, directed on behalf of Optimum Coal Mine to CSD.

TUMELO TLABA

Thus signed and sworn at Pretoria on this 29th day of January 2017 by the deponent, who has declared that he knows and understands the contents of this affidavit, that it is true and that he considers it binding on his conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

GILBERT PHETHEDI NGOEPE
Commissioner Of Oaths
Practising Atterney
6th Floor Die Meent Building
Cnr Pretorius and Andries Streets
Pretoria
Tel: (012) 323 1095

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no: 90878/2016

In the matter between:

MINISTER OF FINANCE	Applicant
and	
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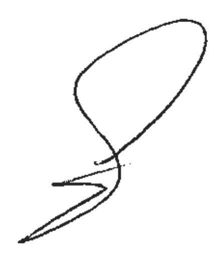
TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Fourth Respondent
JIC MINING SERVICES (1979) (PTY) LTD	Fifth Respondent
BLACKEDGE EXPLORATION (PTY) LTD	Sixth Respondent
TNA MEDIA (PTY) LTD	Seventh Respondent
THE NEW AGE	Eighth Respondent
AFRICA NEWS NETWORK (PTY) LTD	Ninth Respondent
VR LASER SERVICES (PTY) LTD	Tenth Respondent
ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD	Eleventh Respondent
CONFIDENT CONCEPT (PTY) LTD	Twelfth Respondent



JET AIRWAYS (INDIA) LTD (INCORPORATED IN INDIA)	Thirteenth Respondent
SAHARA COMPUTERS (PTY) LTD	Fourteenth Respondent
ABSA BANK LTD	Fifteenth Respondent
FIRST NATIONAL BANK LTD	Sixteenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
REGISTRAR OF BANKS	Nineteenth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twentieth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Twenty-First Respondent

---

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MONALE RATSOMA

make oath and state as follows:

1. I am the Deputy Director-General of Economic Policy in National Treasury.

2. The facts to which I depose are within my personal knowledge, and true and correct.

3. I have read the replying affidavit of Minister Gordhan, and confirm all references to me.

4. I confirm in particular the contents of the paragraphs in the replying affidavit dealing with the January 2016 meeting. I, too, do not recall the Minister (or anyone else, for that matter) referring to "clip[ping] the wings" of any family. There was to my recollection no discussion of the Gupta family at all. Nor was any conspiracy against the Gupta family and interests discussed, let alone devised.

MONALE RATSOMA

Thus signed and sworn at Pretoria on this 29th day of January 2017 by the deponent, who has declared that he knows and understands the contents of this affidavit, that it is true and that he considers it binding on his conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

GILBERT PHETHEDI NGOEPE
Commissioner Of Oaths
Practising Attorney
6th Floor Die Meent Building
Cnr Pretorius and Andries Streets
Pretoria
Tel: (012) 323 1095

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no: 90878/2016

In the matter between:

MINISTER OF FINANCE	Applicant
and	
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OAKBAY RESOURCES AND ENERGY LTD	Second Respondent
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REGISTRAR OF BANKS	Nineteenth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twentieth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Twenty-First Respondent

---

CONFIRMATORY AFFIDAVIT

I, the undersigned,

THEMBELIHLE NHLANZI

make oath and state as follows:

1. I am an attorney of this Honourable Court employed in the office of the State Attorney, Pretoria. I am the attorney of record for the applicant, the Minister of Finance.

2. The facts to which I depose are within my personal knowledge, and true and correct.

3. I have read the replying affidavit of Minister Gordhan, and confirm all references to me and correspondence in which I have engaged with Mr Van der Merwe, the attorney of record for the Oakbay respondents.

THEMBELIHLE NHLANZI

Thus signed and sworn at Pretoria on this 29th day of January 2017 by the deponent, who has declared that she knows and understands the contents of this affidavit, that it is true and that she considers it binding on her conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

GILBERT PHETHEDI NGOEPE
Commissioner Of Oaths
Practising Attorney
6th Floor Die Meent Building
Cnr Pretorius and Andries Streets
Pretoria
Tel: (012) 323 1096