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OAKBAY

Minister's Office
Ministry of Finance
120 Plein Street
Cape Town

Oakbay Investments
144 Katherine Street
Sandton 2031

8th April 2016

Dear Minister Pravin Gordhan,

RE: 7,500 POTENTIAL JOB LOSSES AT OAKBAY INVESTMENTS & OUR PORTFOLIO COMPANIES

I wanted to take this opportunity to provide you with advance warning that Oakbay Investments and our portfolio companies may soon be incurring significant job losses.

Following the unexplained decision of a number of banks, and of our auditors, to cease working with us, and of continued press coverage of unsubstantiated and false allegations against the Gupta family, it has become virtually impossible to continue to do business in South Africa.

We believe that this is the result of an anti-competitive and politically motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank and now Nedbank have decided to close our business accounts. KPMG themselves said that there was no audit reason to end their work with us.

Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sectors, challenging the dominant businesses and global players in South Africa, is the source of our success.

Between 2012 and 2015, 47,000 jobs have been lost in South Africa's mining sector. In fact, since 2015, the top three mining companies in South Africa have made more than 10,000 people redundant. In contrast, we have created 3,500 jobs in mining. Our acquisition of Optimum from Glencore also prevented a liquidation that would have seen more than 3,000 South African mining jobs lost.

All of these jobs are now at risk.

With our bank accounts closed, we are currently unable to pay many of the salaries of our more than 4,500 employees. We find it totally unacceptable that the tens of thousands of their dependents would have to suffer as a result of the campaign against Oakbay and the Gupta family.

Therefore the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investments and have stepped down from all executive and non-executive positions and any involvement in the day-to-day running of the business.

By doing so, they hope to end the political campaign against Oakbay.

As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed.

I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

Nazeem Howa
CEO, Oakbay Investments

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OAKBAY
INVESTMENTS (PTY) LTD.

17th April 2016

The Hon. Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

RE: Apology

Let me start with our deepest apology and regret if our recent letter to you came across in any way other than a heartfelt appeal for assistance to save the 7500 jobs within our group following the decision by financial institutions to cut ties with us.

I watched your interview with Richard Quest on CNN last week Thursday and thought I should offer my sincere apologies to you as it was never our intention to come across with any other message other than a plea to you as political head for the financial sector to assist us in avoiding this huge impact on the lives of around 50 000 people, if we include families of our employees.

With your long history as a leader within our democratic struggle, I know you hold the livelihoods of our people very dear to your heart and would hope you would accept our unequivocal apology. I am sure you would agree that our fragile economy cannot in any way afford a single unnecessary job-loss, never mind the 7500 people which would be affected should we not be able to reverse the current hardline stance taken by the institutions.

As you are aware the shareholder has resigned all executive and non-executive roles in our group as a move to address the concerns of the parties about possible association risk, yet we have found the response from the institutions to be intransigent, even in the face of the real threat of significant job losses and the concomitant impact on our economy.

Given your strong relationship with the captains of industry, I would implore you to help us to save the jobs which, in addition to the personal benefit to the affected individuals, we believe is in the best interest of our economy and more broadly our country's overall development.

I look forward to hearing from you about any possible assistance you are able to offer us in these trying times.

Yours sincerely

Nazeem Howa
Chief Executive: Oakbay Investments

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STRICTLY CONFIDENTIAL AND LEGALLY PRIVILEGED

Ex parte: **MINISTER OF FINANCE**

In re: **INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED AGAINST FINANCIAL INSTITUTIONS**

OPINION

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town

25 April 2016

Introduction

1. Our consultant is the Minister of Finance ("the Minister").

2. We have been asked to provide urgent advice on the power of members of the National Executive, in particular the Minister, to intervene in banker-client relationships. This is the essential question for advice. Eight related and ancillary issues have been identified in our instructions for consideration:

   (i) the contractual rights of banks to choose their customers, particularly in the light of requirements relating to international anti-money-laundering, combatting the financing of terrorism (AML-CFT), and politically-exposed persons (PEPs);

   (ii) Government's potential exposure of South African banks to fines by the UK and USA authorities, where they are perceived to be weak on FATF standards and in the context of South African banks having previously been fined by the UK's Financial Conduct Authority and Barclays PLC in its latest results noted that ABSA had lodged suspicious transaction reports without much response from the South African prosecuting authorities; and the potential effect of a large fine against a South African bank by the US or UK authorities to undermine South Africa's financial stability objective, sparking a 2008-type economic crisis in South Africa;

   (iii) whether banks can disclose information to the Minister regarding individual clients in terms of the Protection of Personal Information Act; and whether banks can provide such information to anyone else, like the SARB or the Bank

Supervision Department, the Financial Services Board, the Financial Intelligence Centre, or SARS;

(iv) whether any provision in the Banks Act provides for intervention by the Minister in a specific banker-client relationship;

(v) whether the Oakbay-case fits within the remit of the Banking Ombudsman;

(vi) what a reasonable period is for banks to give to clients when terminating banker-client relationships;

(vii) how de-risking by banks may undermine Governments' (unlegislated) financial-inclusion objective (which strives to ensure that all people have access to banking services); and

(viii) how a meeting with the banks by the Minister (and Government) may undermine Government's legislation (especially the financial sector framework legislation); whether this will set a precedent for anyone else experiencing a problem with any bank; and, more importantly, whether such meeting may undermine the statement made by the Deputy Minister of Finance on the offer made to him by significant owners of Oakbay, and whether this charge should not be investigated first.

3. As appears from the above issues, the request for advice arises in the context of a recent delegation by Cabinet of three members (the Minister of Labour, the Minister of Mineral Resources, and the Minister of Finance) to engage a number of major South African commercial banks. The stated intention, as reported in the media, is to "open constructive talks to find lasting a solution" after the closure of bank accounts held by

Oakbay Investments, an entity owned by the Gupta family.

4. We have been briefed with correspondence between the Minister of Mineral Resources and the Minister of Finance; a circular by the Ombudsman for Banking Services on the closure of bank accounts; and a 2011 National Treasury Policy document titled "A safer financial sector to serve South Africa better". To the extent necessary we refer to some of these documents in the analysis below.

5. For the reasons set out in the analysis which follows we advise that there is no legal basis on which Government may interfere in the banker-client relationship; the banks are required to honour their confidentiality obligations to its current and former customers, and are therefore likely to respond, correctly, that they are precluded by law from answering questions the Ministers may pose; the mooted meeting is likely to cause unintended consequences and adverse perceptions regarding Government's adherence to the relevant principles governing banker-client relationships, international norms and best practice.

Analysis

6. The issues for advice turn on the correct legal framework governing banker-client relationships, and the powers of the Executive. We accordingly deal briefly with each in turn before addressing the specific questions for advice.

Banker-client relationships

7. It is well-established, as our instructions indeed recognise, that the banker-client relationship is governed by the private law of contract.[1] Whether the contractual nature of the relationship is unique (*sui generis*), or one of *mandatum* (mandate) – or some other specific contract – is immaterial for present purposes.[2] It suffices that the banker-client relationship is governed by the law of contract. This does not, however, mean that public law and statutory enactments do not impact on the contractual relationship. They of course do.[3] But it does mean that unless authorised to interfere with the contractual relationship, third parties who intentionally intervene in the banker-client relationship perpetrates a private law wrong (a delict), which is actionable.[4]

8. It is an implied term in the contract between a bank and its customer that the bank is under a duty not to disclose information concerning the customer's affairs.[5] This duty is not absolute, however. A banker may disclose information about the affairs of a

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[1] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–1.
[2] As regards the different constructs, see e.g. Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403; Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–2*ff*.
[3] See e.g. *Pinto v FNB* 2013 (1) NR 175 (HC) at para 93, in which the Namibian High Court held that the relevant provisions of the Namibian Financial Intelligence Act and Prevention of Organised Crime Act "are to be regarded as terms imposed by law on the traditional banker-client relationship and that contractual bond that exists between them."
[4] This applies also after the termination of the contractual relationship, should the interference amount to increasing (or imposing) a contractual obligation which would otherwise have expired (*cf* Neethling *et al Law of Delict* 6th ed (LexisNexis, Durban 2010) at 306).
[5] *FirstRand Bank Ltd v Chaucer Publications (Pty) Ltd* 2008 (2) SA 592 (C) at para 20; *GS George Consultants and Investments (Pty) Ltd v Datasys Ltd* 1988 (3) SA 726 (W) at 735D, not affected in this respect by *Densam (Pty) Ltd v Cywilnat (Pty) Ltd* 1991 (1) SA 100 (A).

client under four circumstances.[6] First, where the bank acts under legal compulsion. Second, where the bank is under a public duty to make the disclosure. Third, where the interests of the bank require disclosure. Fourth, where the disclosure is made by the express or implied consent of the client. When a legal compulsion or public duty arises is addressed below in dealing with the third ancillary issue.

9. The contractual relationship may be terminated either by mutual agreement (between the parties to the contract), or by one party only (acting unilaterally).[7] Nonetheless, contracts generally provide expressly for a unilateral right to cancel.[8] Accordingly the reference to "certain allegedly unilateral actions"[9] is – to the extent that it implies that the *unilateral* nature of the "actions"[10] is a cause for concern or recourse – misconceived. The correct legal position, on the recent authority of the Supreme Court of Appeal (affirmed by the Constitutional Court's dismissal of an attempt to appeal the ruling) is explicitly that a bank may indeed unilaterally close a client's account.[11]

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[6] Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345. See, too, clause 6.1 the Code of Banking Practice, which adds two more instances (an account being in default; and a cheque having been referred to drawer).
[7] Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403.
[8] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–29.
[9] In the 20 April 2016 letter by the Minister of Mineral Resources, which was delivered only two days later to the Minister of Finance.
[10] This is evidently a reference to the closure of Oakbay's bank accounts.
[11] *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 64
"This leaves for consideration the question whether the Bank had (in terms of the relief presently sought) good cause to close the accounts. The bank had a contract, which is valid, that gave it the right to cancel. It perceived that the listing created reputational and business risks. It assessed those risks at a senior level. It came to a conclusion. It exercised its right of termination in a *bona fide* manner. It gave the appellants a reasonable time to take their business elsewhere. The termination did not offend any identifiable constitutional value and was not otherwise contrary to any other public policy consideration. The bank did not publicise the closure or the reasons for its decision. It was the appellants who made these facts public by launching the proceedings and requiring the Bank to disclose the reasons."

10. A bank must, however, give reasonable notice of its intention to terminate a client's account.[12] But the right to terminate is not lost by failing to provide reasonable prior notice – the termination of the account is merely delayed in the event of premature purported closure.[13] This is because "a party to an ongoing contractual relationship terminable on notice should never be denied the right to cancel in terms of the contract, especially when it perceives that the future of the relationship will not be in its interests."[14]

11. Terminating the banker-client relationship does not, however, terminate the bank's duty not to reveal information of a previous client.[15]

The powers of the Executive

12. It is by now well-established that the powers and duties of the National Executive are governed by the Constitution and national legislation. Ministers, in short, are entirely "creatures of statute", as the legal principle is expressed. This means they have no inherent powers, only powers given to them by law. The principle of legality, which is a crucial component of the rule of law (which itself, in turn, is a founding value of the Constitution),[16] provides that an organ of State has no power other than that

[12] We revert to this is addressing the sixth ancillary issue.
[13] *Cf* Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 15–31.
[14] *Ibid.*
[15] Clause 6.1 the Code of Banking Practice; Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 403 fn 19.
[16] Section 1(c) of the Constitution.

conferred by law.[17] It requires that public power be exercised in good faith, and that powers not be misconstrued or used for purposes other than intended.[18]

13. Although ancillary powers not expressly provided may be inferred, this may only be done where this is necessary by implication in order to give efficacy to express powers.

14. The purported exercise of powers by a member of the executive arm of government which is not authorised by law is unlawful, and may be resisted by a private entity – even without first setting aside the purported exercise of public power.[19]

Overarching question for advice: The power of Cabinet to intervene in banker-client relationships

15. From the above the answer to the fundamental question is clear. It is that save to the extent that this is authorised by law, no Cabinet member (or Cabinet collectively) has any power to intervene in the banker-client relationship. As a matter of public law any such intervention is unlawful and may be ignored by a private entity without seeking legal recourse. As a matter of private law any such intervention constitutes a delict,[20] which may result in a claim for damages or other legal remedy (like an interdict).

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[17] *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC) at para 56.
[18] *President of the Republic of South Africa v South Africa Rugby Football Union* 2000 (1) SA 1 (CC) at para 148.
[19] See e.g. *City of Tshwane Metropolitan Municipality v Cable City (Pty) Ltd* 2010 (3) SA 589 (SCA) at para 14; *City of Cape Town v Helderberg Park Development (Pty) Ltd* 2008 (6) SA 12 (SCA) at para 50.
[20] Neethling *et al Law of Delict* 6th ed (LexisNexis, Durban 2010) at 306.

16. Whether a legal basis for intervention by Cabinet members exists is considered in addressing some of the additional issues identified in our instructions (particularly the fourth), to which we now turn.

First additional issue: Contractual rights of banks to choose their customers

17. Banks do not only have a contractual entitlement, but also a legal obligation to choose their customers carefully. It is a continuing duty, and banks' right to protect their own reputation has been recognised as a valid basis for terminating the banker-client relationship.[21]

18. The Basel Committee on Banking Supervision at the Bank of International Settlements considers that "the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money laundering".[22] The Committee recognises as an essential part of banks' risk management practices the adoption of effective know-your-customer (KYC) standards. Proper KYC policies and practices "not only contribute to a bank's overall safety and soundness", but also "protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money-laundering, terrorist financing and

[21] *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at paras 17-19, holding that "reputation is not necessarily based on fact, but often on perception."
[22] Prevention of criminal use of the banking system for the purpose of money-laundering (December 1988) available at http://www.bis.org/publ/bcbsc137.htm.

other unlawful activities."[23]

19. In practice banks give effect to their KYC obligation by adopting client-acceptances policies.[24] These include *inter alia* minimum standards for establishing and terminating banker-client relationships. These policies generally apply a risk-based approach which focuses on clients with high risk profiles, as indicated by factors like the identity and characteristics of the client; country of origin; the banking product used; and the delivery channel for the business which is being conducted.[25] Examples of factors which increases reputational risk to a bank include any business involvement on the part of the client in arms trading; human rights abuses; environmental damage or pollution; undemocratic political regimes.[26] An important high risk factor is political exposure. So-called "politically exposed persons" (PEPs)[27] are *per se* high-risk customers.[28]

20. Under South African law these principles are given effect to by the Financial Intelligence Centre Act 38 of 2001 (FICA). It imposes a duty on an accountable institution to identify and verify new and existing customers, to keep records of certain information, and to report certain transactions and situations. This reporting duty

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[23] *Ibid.*
[24] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 9–1.
[25] *Id* at 9–3.
[26] *Ibid.*
[27] PEPs are individuals who are or who have been entrusted with prominent public functions, such as heads of state; senior politicians; senior government, judicial or military officials; senior executives of public organisations; and important political party officials (*id* fn 9).
[28] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 9–5.

overrides a bank's duty of confidentiality towards its client. But the duty is to report to the Financial Intelligence Centre – not to Cabinet. Thus, the duty under FICA is for banks to know their clients (which implies an entitlement to terminate a banker-client relationship when reputational risks arise), but banks have no right or duty to keep Cabinet in the know of their clients' (or their own) affairs.

21. To this the Banks Act adds further duties to guard against banks being misused for purposes of market abuse.[29] The Banks Act imposes certain reporting duties on banks. Again the duty is not to report to the National Executive, or any Cabinet member. The Banks Act designates the Registrar of Banks as the only authority to whom information must be furnished under the Act.[30] The Registrar may under certain circumstances disclose information reported to him to third parties.[31] The Banks Act contemplates that should there be any concerns regarding the banking sector this be communicated by the Registrar to *inter alios* the Minister.[32]

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[29] Section 60A of the Banks Act.

[30] Section 7 of the Banks Act.

[31] Section 90 of the Banks Act provides

"Notwithstanding the provisions of section 33 (1) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar may furnish information acquired by him or her as contemplated in that section –

(a) to any person charged with the performance of a function under any law, provided the Registrar is satisfied that possession of such information by that person is essential for the proper performance of such function by that person; or

(b) to an authority in a country other than the Republic for the purpose of enabling such authority to perform functions, corresponding to those of the Registrar under this Act, in respect of a bank carrying on business in such other country:

Provided that the Registrar is satisfied that the recipient of the information so provided is willing and able to keep the information confidential within the confines of the laws applicable to the recipient."

[32] Section 90(2) provides

"The Registrar must inform the Minister and the Governor of the South African Reserve Bank of any matter that in the opinion of the Registrar may pose significant risk to the banking sector, the economy, financial stability or financial markets more generally."

22. It is therefore not consistent with the scheme of the Banks Act or FICA to confer a power on the Minister to extract confidential information from banks.

Second additional issue: Exposure of South African banks to fines by foreign authorities

23. Our instructions identify serious concerns regarding compliance with Financial Action Task Force (FAFT) criteria, and the consequences of non-compliance. Within the South African regulatory regime these are addressed by the Reserve Bank's Directive for Conduct within the National Payment System in respect of the Financial Action Task Force Recommendations for Electronic Fund Transfers, and other measures supported by the Reserve Bank. What these measures essentially require is compliance with KYC principles,[33] to which we have already referred.

24. It is accordingly important that South African commercial banks be permitted to apply national and international best practice in order to choose their clients, know their clients, classify the risk to which their clients expose them, and decide whether their business and reputational risks exposure justifies terminating a specific banker-client relationship. Should Government wrongfully interfere with the exercise of banks' powers and duties, Government may incur delictual liability for any penalty imposed on a banks which is causally connected to Government's conduct.

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[33] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 8–14.

25. Accordingly Government intervention may expose the financial sector and Government itself to legal risks.

Third additional issue: Whether banks can disclose information under the Protection of Personal Information Act

26. The statutory exceptions to a bank's duty of confidentiality are generally considered[34] to comprise those contained in

(i) section 236(4) of the Criminal Procedure Act 51 of 1977;[35]

(ii) section 31 of the Civil Proceedings Evidence Act 25 of 1965;[36]

(iii) section 78(13) of the Attorneys Act 53 of 1979;[37]

(iv) section 33 of the South African Reserve Bank Act 90 of 1989;[38]

(v) section 74A of the Income Tax Act 58 of 1962;[39]

(vi) section 87(2) of the Banks Act 94 of 1990;[40]

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[34] See e.g. Jones *et al An Introduction to South African Banking and Credit Law* (LexisNexis, Durban 2006) at 6 fn 32, 34; Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345 fn 21.

[35] This provision applies to criminal proceedings. It is accordingly of no application in the present circumstances.

[36] This section provides that "[n]o bank shall be compelled to produce its ledgers, day-books, cash-books or other account books in any civil proceedings unless the person presiding at such proceedings orders that they shall be so produced." It accordingly does not apply.

[37] This provision clearly does not apply, because Oakbay is not an attorney, its account is not a trust account, and there is no request for information regarding the account by any law society.

[38] This provision deals with the preservation of secrecy in relation to the business of the Reserve Bank itself. Although an exception exists in relation to information provided to the Minister, the operation of this exception is limited to information the Reserve Bank, a shareholder of the Reserve Bank, or a client of the Reserve Bank.

[39] This provision has been repealed by the Tax Administration Act 28 of 2011.

[40] This provision deals with husbands of wives who are depositors. It is accordingly entirely irrelevant to the current situation. Section 89(2) of the Banks Act is also not relevant, because it authorises the Registrar of Banks to furnish information obtained pursuant to section 33 of the South African Reserve Bank Act to another functionary if the information is essential to the proper performance of that person's function.

(vii) section 37 of the Financial Intelligence Centre Act 38 of 2002;[41]

(viii) sections 64(1) and 65 of the Access to Information Act 2 of 2000;[42] and

(ix) section 69 of the National Credit Act 34 of 2005.[43]

27. Whether and to what extent these (and similar) provisions authorise an exception to the ordinary principle of banker-client confidentiality depends on the particular facts and circumstances in which the question arises. Save where a statutory exception properly applies, banks' common law contractual duty as amplified by the constitutional duty to observe its client's privacy protected by section 14 of the Constitution prevails.[44] Cabinet members may not approach banks to disclose information by usurping powers of other functionaries, and may not purport to use (whether directly or indirectly) powers conferred for specific purposes for extraneous purposes – however well-intended.[45]

28. The nature, purpose and scope of the Protection of Personal Information Act 4 of 2013

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[41] This provision excludes the duty of secrecy or confidentiality or any other restriction on the disclosure of information (whether imposed by legislation or arising from the common law or agreement) to the extent that such duty or restriction affects compliance by an accountable institution, supervisory body, reporting institution, the South African Revenue Service or any other person with a provision of Part 4 and Chapter 4 of this Act. The Act primarily requires that information be reported to the Centre, and only in some instances that information be reported to a person designated by the Minister.

[42] This Act does not apply in these circumstances, because there has been no request for a record.

[43] This provision imposes a duty to report details regarding a credit agreement directly to the national register, or to a credit bureau.

[44] *Cf Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd v Smit NO* 2001 (1) SA 545 (CC) at paras 15-18.

[45] *University of Cape Town v Ministers of Education and Culture (House of Assembly and House of Representatives)* 1988 (3) SA 203 (C) at 212; *Van Eck NO and Van Rensburg NO v Etna Stores* 1947 (2) SA 984 (A), applied in *inter alia Gauteng Gambling Board v MEC for Economic Development, Gauteng* 2013 (5) SA 24 (SCA) at para 46.

render it highly questionable whether a power to disseminate to the Minister of Finance information which is not otherwise liable be to dissemination to him (under legislation governing the financial sector) can be construed in the current circumstances.[46] Although certain provisions of the Act are capable of a construction which could in certain circumstances authorise the dissemination of information to the Minister, provisions like section 57 restrict such construction or operation (at least to the extent that, for instance, prior authorisation has not been obtained from the Regulator, to the extent that this may be necessary).

29. However, on the basis of the information contained in our brief it is not possible to provide any conclusive view on the application of the Promotion of Personal Information Act in the circumstances of this case or more generally. The considerations to which we next turn moreover militate considerably against any positive answer.

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[46] As section 2 records, the purpose of the Act is to

(a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at
  (i) balancing the right to privacy against other rights, particularly the right of access to information; and
  (ii) protecting important interests, including the free flow of information within the Republic and across international borders;
(b) regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe the minimum threshold requirements for the lawful processing of personal information;
(c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act; and
(d) establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act."

Fourth additional issue: Whether any provision in the Banks Act provides for intervention by the Minister in a specific banker-client relationship

30. It is precisely because the overall political responsibility for the banking sector rests with the Minister,[47] and because the Banks Act is a particularly important component of the statutory scheme governing banks, that any ministerial power to obtain information would have been expected to have been provided for in the Banks Act itself. The Act does not, however contain any specific provision which empowers the Minister to obtain information directly from a bank regarding its client.

31. Unsurprisingly the Act also does not contain any provision which contemplates that any oversight responsibility or power the Minister may have under the Act is somehow to be exercised together with the Minister of Labour and the Minister of Mineral Resources. Nor does the Act contemplate that labour matters or the state of the mineral sector may justify the Minister in exercising any power conferred on him by the Act itself. Were the Minister to exercise any such power by taking into account considerations other than those relevant to the banking sector or the dictates of unauthorised third parties (which may include other Cabinet members), his conduct would be *ultra vires* the Banks Act, unlawful, and liable to be ignored by any of the banks with impunity and set aside by a court should the matter become litigious.

[47] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 2--8.

Fifth additional issue: Whether the Oakbay case fits within the remit of the Banking Ombudsman

32. The Ombudsman for Banking Services has jurisdiction over complaints falling under the Code of Banking Practice.[48] This Code applies to personal and small business customers. A small business is one with a turnover of less than R10 million per year.[49] We have not been instructed as regards Oakbay's annual turnover. Should it be more than R10 000 000 per annum (as we suspect), or should any claim which might arise exceed R2 000 000, the jurisdiction of the Ombudsman is excluded on this basis alone. Other factors may also either exclude the Ombudsman's jurisdiction,[50] or render it premature to exercise any jurisdiction which the Ombudsman may otherwise have had.[51]

33. It accordingly appears to us that the remit of the Ombudsman for Banking Services does not include the Oakbay matter.

Sixth additional issue: A reasonable notice period

34. The Code of Banking Practice recognises a bank's right to close a customer's account,

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[48] Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 13–4.
[49] *Cf* the website of the Ombudsman for Banking at www.obssa.co.za, cited in Moorcroft *Banking Law and Practice* (LexisNexis, Durban 2015) iss 11 at 13–4 (which refers to a threshold amount of R5 000 000). See, however, *The Ombudsman for Banking Service Handbook* (Juta, Cape Town 2013) at 7, referring to a business turnover which exceeds R10 million per annum as factor which excludes jurisdiction. See too *id* at 8 fn 2, explaining that the R5 000 000 threshold was increased to R10 000 000 w.e.f. 31 May 2011.
[50] E.g. if the dispute concerns the exercise of the bank's commercial judgment.
[51] E.g. a failure to exhaust internal complaint processes with the particular bank concerned.

and provides that this must generally follow "reasonable prior notice".[52] The Code does not state what a reasonable period is. It does, however, recognise circumstances in which an account may be closed by a bank without any prior notice.[53]

35. The legal position is that what constitutes reasonable notice depends on the circumstances of a particular case. In the context of closing bank accounts the character of the account and any additional special facts are relevant considerations to be taken into account.[54] The Ombudsman for Banking Services has confirmed in a circulated bulletin on closing bank accounts that what constitutes a reasonable notice period will depend on the merits of each particular case. Generally, however, a period of between one and two months would be considered reasonable in respect of an individual account, and two to three months for business accounts. This depends on the nature of the accounts and the number and nature of transactions on the account.

36. The above periods are longer than the one-month period applicable under the equivalent code in the United Kingdom.[55] They have been increased to afford clients sufficient time to change banks and transfer debit orders.[56]

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[52] Clause 7.3.2 of the Code.
[53] Clause 7.3.3, which refers to instances where (i) a bank is compelled to close an account by law or international best practice; (ii) a customer have not used an account for a significant period of time; and (iii) there is reason to believe that the account is being used for any illegal purposes.
[54] *Prosperity Ltd v Lloyds Bank Ltd* (1923) 39 TLR 372.
[55] Hapgood *Paget's Law of Banking* 13th ed (LexisNexis, London 2007) at 153, referring to clause 7.3 of the UK Banking Code.
[56] Ombudsman for Banking *Bulletin no. 3* (15 August 2012) at p 4.

37. In the absence of specific factual instructions bearing on the issue, it accordingly appears that the default reasonable notice period is two to three months.

Seventh additional issue: Whether de-risking by banks may undermine Governments' (unlegislated) financial-inclusion objective

38. As we understand it, this question probes whether banks' duties to assess risks and guard against them (in the interest of banks, their other customers, and a sustainable financial sector) conflict with Government's goal of achieving universal inclusion in the banking system.[57]

39. We do not perceive a real tension between these duties and the stated objective. This is because unqualified and universal access to banking services cannot be a legitimate governmental objective to be pursued at the expense of vulnerable bank users. It is for this reason that the national and international legal infrastructure governing banking presupposes that the financial system indeed be protected against (and, if necessary, closed to) certain individuals, entities and their transactions. The result is that a legal obligation is imposed on banks to manage risk profiles, and banks have a legal entitlement to terminate a banker-client relationship when *in their assessment* the relationship exposes the bank to reputational and business risk.

[57] Our instructions formulate this issue as forming part of the sixth issue, but we address it separately as a seventh issue.

40. It is the unlegislated Government objective of an all-inclusive banking system which has no legal status. However desirable an all-inclusive system might otherwise be, a Government objective with no legal force cannot detract from pre-existing legal rights and duties which are consistent with international norms. This is because common law and statutory rights and duties are of a higher legal status than Government policies.[58]

41. There is, moreover, a binding precedent for the legal principle that a client cannot be imposed upon a bank merely because the client might otherwise be rendered without a bank.[59] In *Bredenkamp* the Supreme Court of Appeal held that any such imposition would be unfair, and was not supported by any constitutional imperative or public policy consideration.[60]

42. Accordingly the objective of achieving a banking sector which leaves no one without a bank cannot dilute banks' legal duties or divested them of vested rights. Otherwise the banking sector will be rendered unsustainable, which would be counterproductive.

Eighth additional issue: Implications of ministerial meeting

43. For the reasons set out above, the mooted ministerial meeting is not authorised by legislation governing the financial sector. To the extent it seeks to extract information or an explanation which is not permitted, it would be unlawful and unenforceable.

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[58] *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at para 7.
[59] *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA).
[60] *Id* at para 60.

Meeting with the banks may undermine Government's or the Minister's authority if either of them is seen to make demands which cannot be enforced.

44. If the banks nonetheless yield to what they may otherwise have regarded as an abuse of public power, then it may indeed set an adverse "precedent" – as our instructions put it. We use the word in inverted commas, because an act of exceeding public power cannot create what in law constitutes a precedent. Even if *de facto* permitted, it still remains *de lege* an illegality without any precedential effect. But it may nonetheless, in the sense contemplated colloquially, set an adverse climate as regards what the financial and other sectors are expected to tolerate. Such conduct may indeed have very adverse national and international consequences. But these are not for us to identify or quantify.

45. Finally, it does appear to us that Government exposes itself to criticism of inconsistent conduct if it were to meet with banks despite the Deputy Minister of Finance's statement remaining unaddressed.[61] If it is correct that significant owners of Oakbay presented themselves as people with power to offer ministerial positions, then they qualify as PEPs. In that event Banks' perception that Oakbay presents business and

[61] The relevant part of the statement to which we understand our instructions refer is para 6 of the media statement of 16 March 2016 issued by the Ministry of Finance. It reads

> "Therefore let me state the facts on the matter of whether I was approached by nongovernmental individuals in respect of the position of Minister of Finance. Members of the Gupta family offered me the position of Minister of Finance to replace then-Minister Nene. I rejected this out of hand. The basis of my rejection of their offer is that it makes a mockery of our hard earned democracy, the trust of our people and no one apart from the President of the Republic appoints ministers. Let me also place it on record that there was no discussion between the Deputy Secretary General of the ANC Ms Jessie Duarte and myself on this matter."

reputational risks to themselves and to their other customers cannot be second-guessed,[62] especially not by Government. But Government might, if it is perceived (even if wrongly so) to meet with banks at the instance of Oakbay's owners, create unintended consequences. In the current context[63] and a climate[64] perception is important.

Conclusion

46. For the reasons set out above we conclude that the contemplated meeting is not authorised by law, and that its potential adverse consequences should be seriously considered and mitigated by appropriate public statements before and after the meeting – were the meeting nevertheless to proceed (despite our advice to the contrary).

We advise accordingly.

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town
25 April 2016

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[62] As the Supreme Court of Appeal held in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 65, it is not even "for a court to assess whether or not a *bona fide* business decision, which is on the face of it reasonable and rational, was objectively 'wrong' where in the circumstances no public policy considerations are involved."

[63] *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 19.

[64] *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly* (CCT 143/15; CCT 171/15) [2016] ZACC 11 (31 March 2016) at para 8.

D

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel. +27 21 464 6100, Fax: +27 21 461 2934

Mr Nazeem Howa
Chief Executive Officer
Oakbay Investments
144 Katherine Street
SANDTON
2031

Dear Mr Howa

MEETING ON CLOSING OF OAKBAY BANK ACCOUNTS: 24 MAY 2016

Thank you for meeting with me this morning, together with some of my officials. The meeting was in response to your letters dated 8 and 17 April 2016 to discuss the recent closure of certain Oakbay bank accounts.

We informed you that banks operate in a highly-regulated environment, and a range of factors could give rise to a bank's decision to close an account. I attach an information document outlining the regulatory framework governing the banking sector and financial sector. More information is also available on our website (www.treasury.gov.za) and several international websites, like www.bis.org and www.fatf.com.

We reiterated that there are legal impediments to any registered bank discussing client-related matters with the Minister of Finance, or any third-party. Further, the Minister of Finance cannot act in any way that undermines the regulatory authorities.

It was evident that you have not, as yet, exhausted all legal remedies, including approaching the court for appropriate relief. It was also pointed out that an application to court can also be in the public interest and help to strengthen the current regulatory regime in order to serve customers better.

We agreed to continue engaging and you would provide us with any relevant information.

In conclusion, we pointed out that the recent attacks on the integrity of the National Treasury are not helpful or in the national interest and should be avoided.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 24-05-2016

Aide Memoire

Background

1. This note arises from a letters 8 and 17 April 2016 Oakbay addressed to the Minister of Finance, and subsequent communication.
2. The aim of the meeting was to clarify and explain the current global and national regulatory framework ; and what can and cannot be done by banks and bank clients, in terms of the regulatory framework.
3. We wish to state emphatically that we will contribute in whatever legally permissable way possible to save the jobs of workers.
4. It is therefore imperative that all parties, including Oakbay, abide by the law and regulatory framework summarised below.

OVERVIEW OF FINANCIAL REGULATORY FRAMEWORK FOR BANKS IN SOUTH AFRICA

1 Overview

Domestic banks are not only regulated by domestically, but also by overseas regulators in countries where such financial institutions have a presence or transact with other financial institutions based in that country. For this reason, financial institutions are regulated in terms of tough international standards like Basel III and Financial Action Task Force (FATF) recommendations on anti-money laundering and combating of financing of terrorism (anti-money laundering and counterfinancing terrorism), the latter endorsed by more than 180 countries. Failure to adhere to these standards would lead to our banks to being excluded from the global financial and payments system, which in turn will signficantly reduce economic growth and result in the loss of many jobs. For example, more than a million jobs were lost in 2008 as a result of a bank failure in the USA.

It is essential that South Africa's financial system remains part of the global financial system. Being part of the global financial system facilitates:

- Selling of government bonds to fund the budget deficit and infrastructure
- Funding of the country's current account deficit
- Foreign direct investment, and the generation of jobs
- Trade, both imports and exports, including financing for such trade.
- Access to global payments system, which enables payments for imports and exports., purchasing goods and serves on-line, and being able to use your credit cards overseas
- Insurance and remittances.

The implications of being excluded from global markets would be catastrophic, with long term structural effects. Such an adverse impact can be seen in countries, such as the Islamic Republic of Iran, which have been at the receiving end of sanctions imposed by jurisdictions like the USA and EU.

Cabinet has since the 2008 Global Financial Crisis adopted numerous decisions (all available on www.gov.za as part of post-Cabinet media statements) intended to protect the integrity of the South African financial system and introduce measures to make it safer and serve SA better. Cabinet has noted that it is in South Africa's best national interests to ensure that the domestic financial sector is

regulated according to international standards in order to promote economic growth and reduce the risk to the national fiscus.

In addition to prudential and anti-money laundering and counter terrorism standards, banks are also expected to comply with market conduct standards, including treating customers fairly, and alternative dispute resolution through the ombuds system.

In addition, it was noted that are 35 deposit-taking banks, of which 17 are locally incorporated. Aside from the four or five banks named by Oakbay, it is not clear whether Oakbay has exhausted its all its options and applied to the other registered banks for banking facilities.

2. How is compliance monitored at an international level?

In order to ensure the consistent implementation of agreed international standards by all countries, all countries subject themselves to a number of assessments and peer reviews. These include, for example, reviews by the G20 on its members (through the Financial Stability Board and IMF's FSAP) and the FATF's Mutual Evaluation assessment process. The intensity of these reviews has been increased following the global financial crisis, with G20 countries and other major economies being evaluated more often under a revised more stringent methodology.

International banking standards prevent a country's government from intervening in the operations of a bank, for example obliging a bank to take on a customer who may pose risk to the bank. Such an intervention will expose South Africa to a negative peer review for undermining its own laws, and for interfering with the operational independence of financial institutions. Further, taxpayer funds will be liable for any damage suffered by banks for accepting such high-risk clients.

3. What could be the consequence of South African banks not complying?

Failure to comply with standards like Basel III and FATF standards exposes a country to punitive measures from overseas regulators. South African financial institutions may also lose or be refused correspondent banking relations with other foreign banks if they are of the view that they operate in, or are not subjected to, a regulatory environment which is not recognised as adequate in the fight against money laundering and terrorism finance. One of the key principles in all the different standards that apply to the financial sector is that of the operational independence of regulators and supervisors.

In 2014, the G20 (through the Financial Stability Board) agreed on a common toolkit available to overseas supervisors to deal with countries deemed to be "non cooperative jurisdictions". The Financial Stability Board describes in its report:

" ...a list of measures that could be taken after a jurisdiction is listed as non-cooperative, to safeguard the global financial system and to apply additional pressure to improve the jurisdictions adherence"

These measures, as applied by overseas regulator to their banks, include:

i) Preventing South African banks from doing business with foreign banks;
ii) Banks will have increased regulatory requirements imposed on them by overseas regulators;

iii) International banks will be banned from doing business in South Africa; and
iv) Increased audit requirements.

In addition to these measures, most jurisdictions commonly impose massive fines for specific contraventions and for lapses in anti-money laundering and counterfinancing terrorism regulatory rules by their financial institutions. Such fines can be high, as can be seen by the $8.9 billion fine imposed on BNP Paribas by US Authorities, and could by themselves generate a financial crisis in a smaller economy like ours. SA banks have recently been fined lesser fines by UK and other authorities.

Cabinet has approved the strengthening of current anti-money laundering and counterfinancing terrorism legislation, as evidenced by the Financial Intelligence Amendment Bill currently before Parliament. When enacted, this Bill will require force greater disclosure by clients of banks with regard to beneficial ownership of entities and politically-influential persons who will be subject to enhanced due diligence by the banking sector.

4. What has happened in other countries?

Given the serious and significant consequences of South Africa being found non-compliant with the international regulatory requirements and the large fines foreign regulators may impose, banks have a duty to monitor bank accounts and to take active steps to ensure that their actions meet the regulatory and international requirements. In this respect South Africa is not an outlier. In February, (2015) a leading US bank (J.P. Morgan Chase & Co.) closed more than 100,000 accounts through anti-money-laundering screening and cut ties with over 5,000 individuals that pose risks to the bank.

In the EU and UK, Deutsche Bank[1], Barclays and UBS, despite the assessed 'low risk' of their operating environment, have taken significant steps including account closures. The three lenders have closed the accounts of between 20,000 and 35,000 customers. The action by these leading European banks illustrate the increased seriousness and aggressiveness with which the world's biggest banks are closing client accounts which they consider too risky – either under anti-money laundering rules or from other regulatory requirements. Their actions also includes them withdrawing from countries they consider as not having sufficiently robust anti-money laundering and counterfinancing terrorism regulatory frameworks.

National Treasury has taken particular note of this as JP Morgan, Barclays and Deutsche Bank collectively account for about a third (31%), when other US and EU banks are included CitiBank, that number is as much as 50%. Therefore as much as half of the debt the government issued this year to support a variety of the social programmes of government requires fall outside the direct influence of domestic regulators and is maintained only through the 'mutual trust' of domestic regulatory arrangements.

5. Why would a bank close down the accounts of a client?

It should be noted that banks routinely close some accounts every year, where such a client has either not complied with domestic regulatory standards, or simply not adhered to contractual

requirements. Hence the closure of accounts does not set a precedent, but can be regarded as an enforcement measure of last resort. Government policy on banking includes does financial inclusion, market conduct and financial integrity objectives to ensure no community or individual is financially excluded, but this does not apply to non-complying customers.

Banks have also signed up to a Code of Banking Practice. Clauses 7.1, 7.2 and 7.3 cover the process banks have agreed to when closing accounts. These commitments include reasonable prior notice; The responsibilities of the client, including the need for clients to inform banks of changes to the contact details and to their financial affairs; and the circumstances under which banks may close accounts, including if they are compelled to do so under law or international best practice, if the account has not been used for a significant period of time, or if there are reasons to believe the account is being used for illegal purposes.

6. What can affected customers do?

Custumers do have recourse when affected adversely by banks, via the ombuds system and the courts. However, such recourse needs to take into account the following:

- Relationships between banks and their clients are private and confidential.
- Government therefore has limited scope to intervene on behalf of specific clients, but must rather ensure that the regulatory framework governing these relationships is in accordance with the existing legal framework.
- Company clients however may approach the courts to provide relief over elements of the contractual terms of the relationship between themselves, their institution and the banks. Small businesses and individual customers can also approach the banking ombud.

In addition, it should be noted :

A. **Customers that are affected by such a closure can approach the courts, and seek for damages from their bank.** There is an established case law that provides for the circumstances under which the closure of accounts is not allowed.

B. The courts would be best suited to make an impartial judgement on the actions of the bank in relation to its customer.

C. To the best of our knowledge, Oakbay has not waived its customer rights to confidentiality to enable banks to report to their regulator on their reasons for closing their accounts.

D. If there is the willingness to make disclosure and provide full access to transactions, the banks and regulators might be able to respond more clearly and openly to the issues at hand.

E. In the circumstances, an approach to the courts remains an option. Any aggrieved customer or company has nothing to fear from such action, as long as it has adhered to the laws of the country.

E

OAKBAY

INVESTMENTS (PTY) LTD

24th May 2016

Minister Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

RE: Meeting on closing of Oakbay Bank Accounts: 24 May 2016

Thank you very much for the cordial meeting this morning to discuss the decision by the four major banks operating in our country to close our bank accounts.

Thank you, too, for the documents outlining the regulatory environment in which the banks operate.

Given the time challenges facing us during the meeting and your suggestions around legal remedies, I thought it prudent to place on record that following detailed discussions with several legal advisors, we are of the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born. The banks have each said as much to us in their correspondence to ourselves. As mentioned this morning, we have also being told by the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction.

It certainly is our view that this flies in the face of the banking code of good practice, yet, as case law suggests, will fail in a court of law. Given this position, as well as the decisions of the responsible regulators, we seem to have no options open to us other than our appeal to you for assistance.

We were also particularly engaged with paragraph 5 of your Aide Memoire which provided some detail with the reasons why banks would close accounts. As discussed fully with you, no bank has given us any indication of any wrongdoing on our side. I am sure you will also recall the detail shared with you today of the due diligence exercise we underwent around the proposed purchase of a bank, as well as the detail shared with you around the Reserve Bank requests for information around currency exchange. Most importantly, we have 16 years of audit reports from KPMG, one of South Africa's leading audit firms which backs our view that we have done nothing wrong.

It was good to hear this morning that you share our concern around the livelihoods of our 7500 staff, which once again confirms your strong pedigree as a liberation fighter.

As you are aware the shareholder has resigned all executive and non-executive roles in our group as a move to address the concerns of the parties about possible association risk, yet we have found the response from the institutions to be intransigent, even in the face of the real threat of significant job losses.

While I understand the legal impediments facing you as political head of our economy as well as the challenges presented by the current regulatory framework, I would like to believe that our detailed discussion this morning will open the way for you to consider those difficulties against the obvious requirement for South Africa to create a business environment which will promote job creation and economic growth. I would suggest what has happened to us does no such thing and in fact should be viewed as creating a negative perception around foreign direct investment.

Finally, we note your comment around recent attacks on the National Treasury. Let me state for the record, we are fiercely patriotic, and as such support all institutions of our country, including Treasury.

I look forward to hearing from you about any possible assistance you are able to offer us in these trying times. As you would have heard in our meeting and hopefully from this letter we have exhausted all options, and as a South African company – which is fully compliant to all the banking regulations - we are appealing to you to facilitate our rights in terms of Clause 5 of your Aide Memoire which talks very clearly of Government Policy as it applies to any community or individual.

As democrats, we cannot standby as 7500 livelihoods are placed at risk through decisions which seems to have been taken without any due process around compliance.

Yours sincerely

Nazeem Howa
Chief Executive
Oakbay Investments

F

STRICTLY CONFIDENTIAL AND LEGALLY PRIVILEGED

Ex parte: **MINISTER OF FINANCE**

In re: **COMPLAINT BY OAKBAY INVESTMENTS (PTY) LTD AGAINST CERTAIN FINANCIAL INSTITUTIONS**

OPINION

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town

29 May 2016

A. Introduction

1. Our consultant is the Minister of Finance ("the Minister").

2. We have previously advised on issues regarding an inter-ministerial committee established to deal with allegations levelled against financial institutions by Oakbay Investments (Pty) Ltd ("Oakbay"). In an opinion dated 25 April 2016 we advised that Government has no power to interfere with the banker-client relationship, and that banks are under a legal duty to observe their confidentiality obligations to current and former customers. We are now asked to advise on three ancillary issues:

   (1) Whether banks are legally obliged to provide Oakbay with reasons for closing Oakbay's accounts.

   (2) Whether it would be permissible for the Minister to approach the banks to request reasons and whether the banks would be obliged to comply with the request by the Minister if Oakbay waives its right to confidentiality.

   (3) Whether the current regulatory system provides a mechanism through which the Minister can intervene at the instance of Oakbay.

3. We have been briefed with correspondence between the Minister and the CEO of Oakbay dated 8 April 2016, 17 April 2016, and 24 May 2016. In the analysis which follows we first set out the contents of these letters in relevant part before addressing each of the three questions.

B. Analysis

4. The three ancillary questions for advice arise in the context of the correspondence between the Minister and Oakbay. As will be seen, Oakbay's specific request in the last letter (and the basis on which it is advanced) bears particularly on the third question. Accordingly the relevant parts of the correspondence are shortly summarised before turning to each question for advice.

(1) The correspondence

5. In the first of the aforesaid letters, written by Oakbay's CEO to the Minister, the latter is informed of potential job losses following "the unexplained decision of a number of banks, and of our [Oakbay's] auditors, to cease working with us [Oakbay], and of continued press coverage of unsubstantiated and false allegations against the Gupta family", as a result of which "it has become virtually impossible to continue to do business in South Africa."[1] The letter attributes the banks' and auditors' decisions to "an anti-competitive and politically-motivated campaign designed to marginalise our business."[2] It states that Oakbay is "currently unable" to pay "many of the salaries of our more than 4 500 employees".[3] Oakbay envisaged that the political campaign against it would be ended by the Gupta family relinquishing control of Oakbay.[4]

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[1] Second paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.
[2] Third paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.
[3] Seventh paragraph of Oakbay's CEO's letter dated 8 April 2016 to the Minister.
[4] Eighth and ninth paragraphs of Oakbay's CEO's letter dated 8 April 2016 to the Minister.

6. The second letter, again by Oakbay's CEO, apologises to the Minister for any adverse impression that the first letter created.[5] It explains that the first letter was addressed to the Minister in his capacity "as political head for the financial sector",[6] invokes the Minister's involvement in the democratic struggle, and refers to "our fragile economy".[7] It confirms that "the shareholder has resigned all executive and non-executive roles in [the Oakbay] group".[8] Yet Oakbay "found the response from the institutions to be intransigent".[9] On this basis the second letter implores the Minister to assert his "strong relationship with the captains of industry" to save the jobs of Oakbay's employees in the interest of the country's economy and development.[10]

7. In response to these letters a meeting was convened between the Minister and Oakbay on 24 May 2016. The Minister's letter to Oakbay's CEO on the same day recorded what was conveyed at the meeting. It is that the Minister could not intervene in the banker-client relationship or interfere with the regulatory authorities' functions,[11] and that Oakbay has not exhausted its legal remedies (which include approaching a court).[12]

8. The letter attaches an *aide memoire* which confirms the Minister's undertaking to

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[5] Para 1 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[6] Para 2 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[7] Para 3 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[8] Para 4 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[9] Para 4 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[10] Para 5 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[11] Para 3 of the Minister's letter dated 24 May 2016 to Oakbay's CEO.
[12] Para 4 of the Minister's letter dated 24 May 2016 to Oakbay's CEO.

"contribute in whatever legally permissible way possible to save the jobs of workers."[13] But the *aide memoire* also notes that a failure by South African banks to comply with international standards may lead to job losses of more than a million, as the 2008 banking crisis in the USA demonstrated.[14] The *aide memoire* further reflects that 17 locally-incorporated deposit-taking banks exist, and that Oakbay did not indicate whether it applied to any of these institutions for banking facilities.[15] The aide memoire also identifies far-reaching adverse macro-economic consequences should Government intervene in banks' business.[16] It further explains that the regulatory regime governing banks has resulted in over 100 000 accounts being closed by a single leading US bank,[17] and between 20 000 and 35 000 even in "low risk" operating environments in the EU and UK by leading banks like Deutsche Bank, Barclays and UBS.[18] This not only demonstrates reputable banks' conduct in compliance with the regulatory regime, but also the risk of their withdrawal from countries whose regulatory frameworks are perceived as insufficiently robust.[19] It could also hold adverse consequences for the South African Government's social programmes.[20] The *aide memoire* concludes by identifying recourse open to an aggrieved customer whose bank account is closed.[21] It states that "an approach to the courts remains an option" and that "[a]n aggrieved customer or company has nothing to fear from such action, as long

[13] Item 3 s.v. "Background" on the first page of the *aide memoire*.
[14] First para s.v. "Overview" on the first page of the *aide memoire*.
[15] Last para s.v. "Overview" on the second page of the *aide memoire*.
[16] S.v. "How is compliance monitored?" on the second page of the *aide memoire*.
[17] First para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.
[18] Second para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.
[19] Second para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.
[20] Third para s.v. "What has happened in other countries?" on the third page of the *aide memoire*.
[21] S.v. "What can affected customers do?" on the fourth page of the *aide memoire*.

as it has adhered to the laws of the country."[22]

9. In the final letter Oakbay's CEO thanks the Minister for the *aide memoire*.[23] It reveals that Oakbay sought advice from "several legal advisors" who are "of the strong view" that banks have acted within their contractual rights and that "any legal approach may indeed be still-born."[24] This, the letter states, is borne out by correspondence by the banks (which correspondence does not appear to have been shared with the Minister).[25] Hence Oakbay "will fail in a court of law", its letter states.[26] The letter appears to imply that the absence of a legal remedy, and the responsible regulators' responses that they could not intervene, is a basis for a political intervention by the Minister.[27] This despite "the legal impediments facing [him] as political head of [South Africa's] economy as well as the challenges presented by the current regulatory framework".[28] Yet the letter repeats the prior recordal that "the shareholder [of Oakbay] has resigned … as a move to address the concerns of the parties about possible association risk".[29] (It will be recalled that the first letter attributed the banks' decision to close Oakbay's accounts to "an anti-competitive and politically motivated campaign"[30] waged "against the Gupta family".[31] The suggestion was that improper political pressure would have

[22] Para E s.v. "What can affected customers do?" on the fourth page of the *aide memoire*.
[23] Para 2 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[24] Para 3 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[25] Para 3 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[26] Para 4 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[27] Para 4 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[28] Para 8 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[29] Para 7 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[30] Para 3 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[31] Para 2 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.

been remedied by the resignation of the Gupta family as shareholder; not that the remedy is to apply political pressure in the opposite direction.) The letter states vaguely that Oakbay has "exhausted all options",[32] but does not identify whether it had sought to open an account with any of the other financial institutions to which the *aide memoire* refers.

10. Ultimately, what the correspondence reflects is that Oakbay's request to the Minister is for him to exercise a political power pursuant to Government policy reflected in clause 5 of the *aide memoire* – there being, as Oakbay apparently acknowledges, no legal basis for the Minister to intervene. The pressure sought to be brought to bear upon the Minister is the livelihoods of now 7 500 Oakbay employees (previously the number was 4 500)[33] being "placed at risk through decisions [by the banks] which seems [sic] to have been taken without any due process around compliance".[34] Quite what is meant by the latter phrase is not made clear. It does however suggest a legal cause of action: the lack of "due process". This is not consistent with the legal advice Oakbay has disclosed it has received: that Oakbay has no legal recourse against the banks.

(2) <u>The questions for advice</u>

11. In our previous opinion we have dealt with banks' contractual power to terminate the

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[32] Para 10 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.
[33] Para 7 of Oakbay's CEO's letter dated 17 April 2016 to the Minister.
[34] Para 11 of Oakbay's CEO's letter dated 24 May 2016 to the Minister.

banker-client relationship; the duty of banks not to disclose information of a previous client; and the Minister's power conferred by statute. We explained that without a statutory power to do so, the Minister has no legal authority to intervene. Conversely he is under a common-law duty *not* to interfere with the banker-client relationship. We refer to the legal framework set out in the previous opinion and do not repeat it here.

(a) First question: Are banks legally obliged to provide Oakbay with reasons for closing Oakbay's accounts?

12. The duty to provide reasons for conduct is one imposed by administrative law on a public authority exercising public power.[35] A commercial bank's closing of its customer's account is not governed by administrative law.[36] Accordingly there is no legal obligation to provide reasons for closing an account.[37] Nor is any such entitlement or duty created by the Code of Banking Practice.[38] It also does not appear that any such contractual entitlement has been agreed by Oakbay with any of its erstwhile bankers, otherwise Oakbay would not have stated in its letter to the Minister that it has been advised that it has no sustainable legal cause of action.[39]

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[35] Section 33(2) of the Constitution; section 5(1) of the Promotion of Administrative Justice Act 3 of 2000.
[36] Although the Supreme Court of Appeal recorded in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 55 the appellant's contention that "the banking industry is in the hands of few who enjoy significant market power. It is accordingly a case 'where private power approximates public power or has a wide and public impact'", it did not uphold the argument – rejecting it by implication.
[37] Significantly in *Bredenkamp v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) at para 64 the Supreme Court of Appeal appeared to have implied that in order for any duty to exist on a bank to the effect that an account may only be closed on good cause shown, this would require a contractual term or the development of the common law.
[38] Clause 7.3.2 of the Code of Banking Practice merely provides that a bank "will not close [a customer's] account without giving [the customer] reasonable prior notice".
[39] Paras 3-4 of of Oakbay's CEO's letter dated 24 May 2016 to the Minister.

13. Accordingly there is no legal obligation on the banks to provide Oakbay with reasons. But even were it otherwise, the remedy is one only capable of being exercised by Oakbay itself, as the answer to the second question (to which we now turn) confirms.

(b) Second question: May the Minister approach the banks to request reasons for closing Oakbay's accounts, and would the banks be obliged to comply with the request by the Minister if Oakbay waives its right to confidentiality?

14. The client-banker relationship vests a duty in the bank to honour the confidentiality of the client's information, and it imposes a duty on the bank to honour this duty. Accordingly a client may indeed waive its right to confidentiality.[40]

15. The onus of proving a waiver is on the person who raises it. That party must demonstrate that the right-bearer, in this case Oakbay, with full knowledge of its right, decided to abandon it, whether expressly or by conduct plainly inconsistent with an intention to enforce it.[41] Accordingly, should the Minister rely on a waiver, he would bear the onus. A waiver is not lightly presumed. None of the letters to the Minister contains anything which is compatible with an inference of waiver.

16. Thus, at a factual level the first question cannot be resolved on a basis which

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[40] Clause 6.1 the Code of Banking Practice; Joubert *et al* (eds) *The Law of South Africa* 2nd ed (LexisNexis, Durban 2003) vol 2 part 1 at para 345.
[41] *Borstlap v Spangenberg* 1974 (3) SA 695 (A) at 704H.

circumvents the Minister's general duty not to interfere in the banker-client relationship, which survives any termination of the contract between Oakbay and its banks. Only were Oakbay subsequently to waive its right to confidentiality does the legal question as regards the Minister's legal authority and banks' legal entitlements arise.

17. As regards banks' legal entitlements, should Oakbay waive its right to confidentiality, a bank would not be able to invoke it at its own instance to refuse to disclose otherwise confidential information. This is because the confidentiality is that of a client, not a bank. Once the right is waived a bank has no duty to observe confidentiality, and it in any event never had any *right* to resist disclosure: only a duty to do so (for as long as confidentiality subsists).

18. But the correct question is not whether the banks can invoke a waived right to confidentiality. It is whether the Minister has the power to request information in the first place – whether or not the information is subject to confidentiality or not. This is because the Minister only has such powers as are conferred on him by law. As our previous opinion identified, it is the Banks Act which would have authorised the Minister to obtain information from banks. But this Act does not authorise this. It authorises the Registrar of Banks as the only authority to whom information must be furnished under the Act.

19. Accordingly whether or not Oakbay waives its right to confidential information (which

it has not yet done), the Minister is not empowered to approach the banks to obtain information regarding Oakbay. On that basis alone banks are entitled to refuse any request by the Minister to obtain information, including banks' reasons for closing Oakbay's accounts.

(c) Third question: Does the current regulatory system provide a mechanism through which the Minister can intervene at the instance of Oakbay?

20. For the reasons set out in our previous opinion and repeated in answering the second question, the regulatory system does not provide any mechanism through which the Minister may intervene. The Minister's powers, we repeat, are not inherent: they are limited to such powers as are conferred on him by statute. No statutory provision gives him the power to call upon a bank to provide the information which Oakbay wants. Oakbay's reliance on the reference to "government policy on banking" in paragraph of the *aide memoire* is misconceived. Policy – especially a reference such as this to policy in its broadest sense – confers no power such as Oakbay contemplates.[42] (It may further be noted that in invoking paragraph 5 of the *aide memoire*, Oakbay elides the specific qualification: "but this does not apply to non-complying customers.")

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[42] *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at para 7
"The word 'policy' is inherently vague and may bear different meanings. … I prefer to begin by stating the obvious, namely that laws, regulations and rules are legislative instruments, whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise the separation between Legislature and Executive will disappear. Compare *Executive Council, Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) (1995 (10) BCLR 1289) in para [62] …. One thing, however, is clear: policy determinations cannot override the terms of the provincial Act for the reasons already given. …"

21. In these circumstances the question arises whether in the absence of a statutory authorisation the Minister may intervene *ex necessitate*. There appears to be no successful post-constitutional invocation of the exercise of a power not conferred by law but of necessity. This is no doubt because of the importance of the rule of law and the doctrine of legality, which preclude the exercise of a power not conferred by law. While the Constitution itself contemplates National Treasury and confers certain powers on it, it significantly does not confer any power to interfere in contractual relations.

22. There is, moreover, no true factual necessity. This is because if payment to employees cannot be effected through Oakbay's closed bank accounts, it can of course be made through intermediaries – like an attorneys' trust account. More importantly, however, Oakbay did not indicate whether it has approached any of the other banks identified in the *aide memoire* and whether they have refused to open bank accounts for Oakbay. Accordingly the assertion that all available avenues have been exhausted is not borne out. In such circumstances the Minister will expose himself to a successful interdict by a bank were he to assert a power by necessity to intervene at the instance of Oakbay.

C. Conclusion

23. For the above reasons we answer the questions for advice as follows:

(1) Banks are not legally obliged to provide Oakbay with reasons for closing Oakbay's accounts.

(2) It would not be permissible for the Minister to approach the banks to request reasons for the closure of the accounts, and the banks would not be obliged to comply with the request by the Minister – even were Oakbay to waive its right to confidentiality.

(3) The regulatory system does not provide a mechanism through which the Minister may intervene at the instance of Oakbay.

24. We shall be glad to make ourselves available to deal with any issues for further advice or clarification, or settle any correspondence, should this be required.

We advise accordingly.

J.J. GAUNTLETT SC
F.B. PELSER

Chambers
Cape Town

29 May 2016

SAHARA®
ICT SOLUTIONS PROVIDER

Minister's Office
Ministry of Finance
120 Plein Street
Cape Town

Sahara Computers(Pty)Ltd
89 Gazelle Avenue
Corporate Park
Midrand

28th June 2016

Dear Minister Pravin Gordhan,

RE: REQUEST FOR MEETING TO DISCUSS CLOSURE OF SAHARA BANK ACCOUNTS

You may recall that earlier this year (20 April) Nazeem Howa CEO of Oakbay Investments sent a letter to you, updating you on the developments at Oakbay Investments, principally the 140 redundancies that Sahara was forced to make as a direct result of the closing of our business bank accounts by FNB, ABSA, Standard Bank and Nedbank.

Writing to you today as CEO of Sahara I can confirm that vital banking services have still not been restored neither to us, nor for that matter other businesses across the Oakbay group, despite the decision by our shareholders to step away from the day to day involvement in our business.

I now find myself in a precarious position where I am forced to make a number of important strategic decisions concerning the future of our business - decisions which will inevitably lead to further redundancies.

The decisions I will be forced to make over the coming weeks will not only affect the livelihoods of the remaining 103 employees at Sahara, but their families and dependents too.

It would seem that the engagement from my colleagues and me with you on PowerFM on Sunday, 26 June) has been misconstrued in some quarters. I would like to assure you the calls related to the extremely difficult position we find ourselves in following the banking blacklisting crisis at Oakbay. Our frustrations are felt by our employees, who fear for their jobs.

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Reg. No.: 1997/015590/07 Vat No.: 4700182076
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As an addendum to this - following our engagement with you on Sunday evening I have also been the recipient of a threatening phone call aggressively warning against any further appeals to you regarding the reopening of Oakbay's bank accounts. I hope you would publicly condemn acts of intimidation, which are using your name, such as this?

I return to the more important issue at stake - you say you are here, in your capacity as Treasury Minister, to serve the national purpose so that 55 million South Africans can have decent jobs and a better economic future. I humbly plead that you find some way to help us make a small start with our own employees, and therefore request that you meet with me, at your earliest convenience. I can then brief the rest of my colleagues and our employees on what concrete steps are being made to secure the future of my remaining 103 employees, their families and dependents.

Yours sincerely

Stephan Nel
CEO, Sahara

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Mr Murray Michell
Director
Financial Intelligence Centre
Private Bag X177
PRETORIA
0001

Dear Mr Michell

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

1. You will be aware from continued media statements by the CEO of Oakbay Investments and its "portfolio companies" (as the CEO has termed them) regarding approaches to me relating to the closure of accounts in the Oakbay group of companies.

2. My understanding is that the entities in the Oakbay group comprise the following:

   a) Mining interests in Oakbay Resources and Energy,Shiva Uranium,Tegeta Exploration and Resources, JIC Mining Services and Black Edge Exploration;

   b) Media interests in TNA Media (Pty) Ltd , New Age and ANN 7;

   c) Other interests in VR Laser Services, Islandsite Investments 180, Confident Concepts and Jet Airways.

3. In these approaches (culminating in a letter of 28 June 2016 following a similar letter on 24 May 2016, both of which I attach) Oakbay has asserted that Absa, FNB, Nedbank, Sasfin and Standard Bank, without justification, and as "the result of an anti-competitive and politically-motivated campaign designed to marginalise our businesses" (see the further letter of 8 April 2016, which I also attach), closed business accounts of Oakbay entities.

4. Oakbay contends that the consequences for it and its employees (asserted in different letters as numbering 4 500 and 7 500) of the closure of accounts are serious, following the decisions of KPMG and Sasfin, too, to terminate their relationships with the Oakbay group as auditors and JSE sponsor respectively.

5. Clearly the allegations made are inherently adverse to good market conduct practices and the integrity of our banking (and with it, financial) system. At the same time it would be my concern that no loss of jobs be caused in the South African economy by any irregularities such as those suggested by Oakbay.

6. I have pointed out to Oakbay that on the independent legal advice I had taken, there are legal impediments to any registered bank discussing client-related matters with me, and furthermore that I cannot act in any way that undermines the regulatory authorities. I have however pointed out that Oakbay has legal remedies, including approaching a court. (I attach in that regard my letter of 24 May 2016, with its attached information document.) I have repeatedly encouraged Oakbay to exercise recourse to a court to establish the legal propositions and factual allegations for which it contends.

7 Oakbay however, following what it terms *"detailed discussions with several legal advisors"*, expresses *"the strong view that given the contractual rights the banks have, any legal approach may indeed be still-born"*. Oakbay also records that it has been told by "the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction. It certainly is our view that this flies in the face of the Banking Code of Good Practice, yet, as case law suggest, will fail in a court of law. Given this position, as well as the decisions of the responsible regulators, we seem to have no option open to us other than our appeal to you for assistance." (Oakbay letter of 24 May 2016, attached)

8. Oakbay asserts in the same letter that *"no bank has given us any indication of any wrongdoing on our side"*.

9. This latter statement is to be viewed in conjunction with an interview of Oakbay's CEO by Carte Blanche (screened on 19 June 2016), in which Mr Howa stated that one of the banks closing Oakbay's accounts gave the following as a reason:

"Without waiving our rights not to furnish reasons for our decision without inviting any debate about the correctness of our decisions, I point out that the law, inclusive of South Africa's Companies Act, Regulation 43 [sic], Prevention of Organised Crime Act, Prevention and Combating of Corrupt Activities Act and [the] UK's Bribery Act prevent us from having dealings with any person or entity who[m] a reasonably diligent (and vigilant) person would suspect that such dealings could directly or indirectly make us a party to or accessory to contraventions of that law.
. . .We have (conducted) enhanced due diligence of Oakbay entities and as required by the FICA and have concluded that continuing with any bank-customer relationship with them would increase our risk of exposure to contravention of the mentioned law to an unacceptable level."

10. Oakbay has persisted in its series of approaches directed to me. As appears from the above, acting on legal advice, it declines to seek any declaratory ruling from a court to support either its legal contentions suggesting a duty on the part of the Minister of Finance to intervene with the banks or its factual contentions that the banks' conduct has an irregular and indeed improper basis. This stance has however been accompanied by a series of radio interviews and media statements by spokespersons for Oakbay in which it continues to assert that *"the response from the institutions [is] intransigent"* (as Mr Howa put it in his letter to me of 17 April 2016), and to assert that the closure of accounts took place on an irregular basis.

11. It is my concern that the continued allegations of irregularity by the banks concerned, in circumstances in which Oakbay itself refuses to obtain an appropriate declaratory

order from the courts, is harmful to the reputation of South Africa's financial system within the global financial system. As you are aware, domestic banks are not only regulated domestically, but also by overseas regulators, in terms of demanding international standards like Basel III and Financial Action Task Force recommendations on money-laundering and financing terrorism. Cabinet has also noted that it is in the national interest to ensure that the domestic financial sector is regulated according to international standards in order to promote economic growth and reduce risk to the fiscus.

12. Cabinet, since the 2008 global financial crisis, took numerous decisions to improve market conduct practices by financial institutions. This is to ensure that customers of financial institutions are treated fairly.

13. In the circumstances, I would be glad to be advised whether or not the registered banks have indeed reported to the Financial Intelligence Centre ("FIC") as indicated by the above public statement by Mr Howa, or whether no such reports have been made.

14. In the circumstances, I am considering the merits of obtaining a definitive court ruling on whether:

    (a) the Minister of Finance (or Governor of the SARB, or Registrar of Banks) has the power in law to intervene with the banks concerned regarding their closure of the Oakbay accounts held with them; and

    (b) a basis exists in fact for the contention that the relevant banks terminated the accounts in question for a reason unrelated to their statutory duties not to have dealings with any entity if a reasonably diligent and vigilant person would suspect that such dealings could directly or indirectly make that bank a party or accessory to contraventions of the relevant laws (identified above).

15. As noted above, it is apparent from Oakbay's own public statement to Carte Blanche on 19 June 2016 that at least one of its erstwhile banks has given as the basis for the closing of accounts that bank's statutory duty to report under Financial Intelligence Centre Act 38 of 2001 ("FICA").

16. In view of the above, I request you, pursuant to your powers aforementioned, read with section 29(4)(a) and (c) of the FICA, to inform me at your very earliest convenience (if at all possible by 4 August 2016).

    (a) Whether FIC has indeed received from the aforementioned banks reports in terms of the FICA relating to any entities in the Oakbay Group, as listed above (or otherwise);

    (b) over what period(s);

    (c) in respect of which entities; and

    (d) in what respective amounts relating to each such entity.

    It is not for my purposes necessary, at this stage, to request further details regarding the nature of each transaction reported, or the parties thereto, but you may hold a different view.

17 I copy this letter to the Governor, given the Reserve Bank's own interest in issues of financial stability to which I have referred, and to the Registrar of Banks, given his own institutional interest (in terms of sections 4 and 7 of the Banks Act) in the matters raised.

18. Your urgent response would be greatly appreciated.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 28 – 07 – 2016

cc. Mr L Kganyago
Governor: South African Reserve Bank

Mr K Naidoo
Registrar of Banks: South African Reserve Bank

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

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Mr Kuben Naidoo
Registrar of Banks
South African Reserve Bank
PO Box 427
PRETORIA
0001

Dear Mr Naidoo

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.. We have (conducted) enhanced due diligence of Oakbay entities and as required by the FICA and have concluded that continuing with any bank-customer relationship with them would increase our risk of exposure to contravention of the mentioned law to an unacceptable level."

10. Oakbay has persisted in its series of approaches directed to me. As appears from the above, acting on legal advice, it declines to seek any declaratory ruling from a court to support either its legal contentions suggesting a duty on the part of the Minister of Finance to intervene with the banks or its factual contentions that the banks' conduct has an irregular and indeed improper basis. This stance has however been accompanied by a series of radio interviews and media statements by spokespersons for Oakbay in which it continues to assert that *"the response from the institutions [is] intransigent"* (as Mr Howa put it in his letter to me of 17 April 2016), and to assert that the closure of accounts took place on an irregular basis.

11. It is my concern that the continued allegations of irregularity by the banks concerned, in circumstances in which Oakbay itself refuses to obtain an appropriate declaratory order from the courts, is harmful to the reputation of South Africa's financial system within the global financial system. As you are aware, domestic banks are not only regulated domestically, but also by overseas regulators, in terms of demanding international standards like Basel III and Financial Action Task Force recommendations on money-laundering and financing terrorism. Cabinet has also noted that it is in the national interest to ensure that the domestic financial sector is regulated according to international standards in order to promote economic growth and reduce risk to the fiscus.

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13. In the circumstances, I am considering the merits of obtaining a definitive court ruling on the whether:

    (a) the Minister of Finance (or Governor of the SARB, or Registrar of Banks) has the power in law to intervene with the banks concerned regarding their closure of the Oakbay accounts held with them; and

    (b) a basis exists in fact for the contention that the relevant banks terminated the accounts in question for a reason unrelated to their statutory duties not to have dealings with any entity if a reasonably diligent and vigilant person would suspect that such dealings could directly or indirectly make that bank a party or accessory to contraventions of the relevant laws (identified above).

14. As noted above, it is apparent from Oakbay's own public statement to Carte Blanche on 19 June 2016 that at least one of its erstwhile banks has given as the basis for the closing of accounts that bank's statutory duty to report under Financial Intelligence Centre Act 38 of 2001 ("FICA").

15. In view of the above, I request you to inform me at your earliest convenience, if at all possible by the 04th August 2016 of the following:

    (a) whether your office has indeed received from the aforementioned banks reports in terms of the applicable banking legislation relating to any entities in the Oakbay Group, as listed above (or otherwise);

    (b) over what period(s);

    (c) in respect of which entities; and

    (d) in what respective amounts relating to each such entity.

    It is not for my purposes necessary, at this stage, to request further details regarding the nature of each transaction reported, or the parties thereto, but you may hold a different view.

16. Your urgent response would be greatly appreciated.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 28 - 07 - 2016

cc. Mr L Kganyago
Governor: South African Reserve Bank

Mr M Michell
Director: Financial Intelligence Centre

J

South African Reserve Bank
Office of the Governor

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Honourable Mr Pravin J Gordhan, MP
Minister of Finance
40 Church Square
Pretoria
0002

Dear Min Gordhan

Cabinet's decision on engaging banks on the closure of individual bank accounts

The recent Cabinet's decision to appoint a subcommittee of three Ministers to engage banks on the closure of an individual entity bank account refers.

As you know, the South African Reserve Bank (the Bank) is responsible for the prudential supervision of commercial banks and the promotion of financial stability. The Bank pursues an approach to regulation and supervision which is forward looking, risk based and outcomes focused. It is this approach, the high level of observance of international standards, and the strong risk management in our domestic financial services firms which has been credited correctly for the emergence of the South African financial sector from the global financial crisis relatively unscathed.

The on-going health and effective functioning of the financial system is an important component of the success of any modern economy. Given its importance, the financial services sector carries the responsibility of supporting and facilitating trade, infrastructure investment, anchoring capital raising activities of both the private and public sectors and providing appropriate and adequately regulated financial services to millions of ordinary people. Importantly, the South African financial services sector is fast becoming a critical bedrock for the Pan African trade and infrastructure development, a key component of the growth and development of the sub-Saharan economies especially. It is in this context that we would like to raise with you our concerns regarding Cabinet's proposed approach and decision on the matter pertaining to the relationship between banks and their individual customers.

In terms of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) as amended, and related regulations thereto, banks are required amongst others to adhere to the highest standards of compliance to laws which govern their relationships with customers. As such, and in order to ensure their adherence to these requirements, they have to continuously assess the risk profiles of their customers. As part of these assessments, and within the normal operations of banks, they may have to close or alter conditions on customer accounts. In any given period, a substantial number of bank accounts are closed or have their conditions altered as provided for in legal

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contracts which govern these arrangements. This is not only critical for maintaining the integrity of the financial system, but it is also important for promoting and ensuring the on-going financial soundness of banks as prudential institutions, in accordance with the provisions of the Banks Act (Act 94 of 1990) as amended, and in the public interest.

Moreover, we note that Cabinet's resolution for certain Ministers to engage with banks was informed by concerns that the actions taken by the banks may deter potential foreign investment. We caution against the unintended consequence of this being viewed as undue political interference in banks' operations, and restricting the ability of banks to make independent operational decisions within the parameters of the existing legal and regulatory frameworks. This could introduce heightened levels of uncertainty and pose a risk to South Africa's financial stability.

It is the Bank's view that sufficient remedies and recourse for bank customers exist in the current financial regulatory framework, including statutory and voluntary ombudsmen, as well as the courts. As such, any aggrieved bank customer should seek recourse through the said established institutions and processes. This approach would enhance the credibility of our institutional and regulatory environment and restore public trust and investor confidence.

I am at your disposal to discuss this matter further if required, at your earliest convenience.

Yours sincerely

Lesetja Kganyago

Governor

Date: 26 APR 2016

K

1 August 2016
Ref: 14/8/1 - Ministry

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Mr P J Gordhan, MP
Minister of Finance
Private Bag X115
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Dear Honourable Minister

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

I acknowledge receipt of your letter dated 28 July 2016.

I have carefully studied the matters raised in the letter and the request for information concerning possible reports made under section 29 of the Financial Intelligence Centre Act, 2001 (the FIC Act).

The disclosure of information concerning reports under the FIC Act is strictly governed by, among others, section 40 of the Act. By virtue of these provisions the Centre is allowed to disclose such information only in limited circumstances and only to a limited group of potential recipients. The FIC Act, in section 29(4)(c), provides for an exception to these controls where such information is to be used for the purpose of legal proceedings. The mechanism provided for in the FIC Act where such information is to be tendered in evidence in legal proceedings is by means of a certificate issued under section 39 of the Act.

Given that your letter indicates your intention to approach a court for a definitive ruling on certain questions of law, and by virtue of my powers under the FIC Act, I have decided to issue a certificate under section 39 of the Act, relating to possible reports that may have been made in relation to the entities mentioned in your letter. I must emphasise that such a certificate is only to be used for the purpose of introducing evidence in legal proceedings and will only confirm or refute the receipt of reports pursuant to the FIC Act. Such a certificate will not

disclose any information concerning the content of any particular report which the Centre has received.

The certificate will be issued on or before 4 August 2016.

Kind regards

MURRAY MICHELL
DIRECTOR

K

South African Reserve Bank
Office of the Deputy Governor
Kuben Naidoo

STRICTLY CONFIDENTIAL

2016-08-12

Honourable Mr Pravin J Gordhan, MP
The Minister of Finance
40 Church Square
Pretoria
0001

Dear Minister Gordhan

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

Your letter dated 28 July 2016, regarding the accounts of the Oakbay Group, refers.

The contents of the letter have been noted as well as your intention of approaching the Court for a definitive ruling on the issue. With regard to these issues, the South African Reserve Bank ("SARB" or "Bank") has acquired the services of senior legal counsel to provide the Bank with legal advice and guidance in the matter.

In the interim however, you have requested me to address you with regard to any reports received by the Office of the Registrar of Banks "...in terms of the applicable banking legislation relating to any entities in the Oakbay Group ...". It is hereby confirmed that to the best of my knowledge, acting on available information, this Office has not received any such reports from the banks regarding the issues you raise in your letter. The information that banks provide to the Financial Intelligence Centre regarding specific transactions are, in general, not forwarded to the Office of the Registrar of Banks.

I have however been informed by the Financial Surveillance Department of the Bank ("FSD") that Standard Bank has informed FSD about a particular foreign exchange transaction involving VR Laser Asia, an associated company of Oakbay, which could form the basis of an exchange control related investigation by that department.

Yours sincerely

Kuben Naidoo
Registrar of Banks

Date: 12/08/2016

OAKBAY
INVESTMENTS (PTY) LTD

25 July 2016

Minister Pravin Gordhan
Minister of Finance
Republic of South Africa

Dear Minister

Closing of Oakbay Bank Accounts

Thank you for your letter dated July 14 which I received on July 18.

My apologies for not sending you the bank letters. Unfortunately, I did not have the request in the notes I jotted down at our last meeting. I have, however, attached the notice letters from all four banks today.

Hopefully, we can jointly find a way to understand the real reasons for the banks decision to unilaterally close our accounts.

With regards to your question about the letter in the public domain, it is critical that you see the correspondence within the context of the letters that followed (attached for your ease of reference) in which we asked the writer to clarify his reference to the many pieces of legislation and whether Standard Bank had found any evidence of us transgressing any piece of legislation.

For the record, we have made the same request to each of the banks and to date we have not been provided with a single example of where we have transgressed any of the legislation mentioned in their letters. Further, we have not once had a query from any of the banks on any of our transactions. In detailing the contents of the Standard Bank letter in my TV interview with Carte Blanche, I was merely trying to illustrate that these were the allegations that were being made, but without being provided with a shred of evidence.

We have not decided against approaching the courts. Our first priority has been to move decisively to stabilize the business, ensure some level of sustainability which would safeguard the 7500 jobs across our business. Once we have achieved a moderate level of stability and sustainability and when we deem our current initiatives to reverse the current position are exhausted, we will certainly consider the legal option which we understand to be a lengthy and arduous process. As you would understand, without banking facilities we won't have a business to operate well before the conclusion legal proceedings.

Let me also clearly state our support for any and all legislation which advances the clampdown on corruption and money-laundering. As such, please be assured that despite the many unproven media articles, as a company we will not be party in any way to any steps to undermine the financial stability of our country.

89 Gazelle Avenue, Corporate Park South, Old Pretoria Main Road, Midrand Johannesburg, South Africa
Postal Address : Private Bag X 180, Halfway House, 1685, Johannesburg, South Africa
Tel.: +27 11 542 1000 Fax: +27 11 542 1100 www.oakbay.co.za

Finally, let me assure you of our support for all initiatives to create and sustain jobs within our economy. With reference to your comments about the recent disciplinary action against staffers at ANN7, let me assure you that they are due to transgressions of our disciplinary code and that our processes are fully compliant with the existing legislation. If you so wish, I can provide you with greater detail on this matter when we next meet.

Let me also assure you that no matter the outcome of the hearing, the number of jobs that exist at ANN7 will continue to increase as we offer young South Africans an opportunity that has remained closed for so many years. As an executive team charged with leading the business, we will continue to build our business on sound and good governance, always using our constitution as a guiding principle.

I would also like to give you an update on the ripple-effect the banks' actions have had on Oakbay and its operations when we meet hopefully in the not too distant future. I will also bring along my full file of all the correspondence with the banks so that you can understand our frustration at not getting a proper explanation for their unprecedented action.

Yours sincerely

Nazeem Howa

Chief Executive
Oakbay Investments

M

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Mr Nazeem Howa
Chief Executive Officer
Oakbay Investments
144 Katherine Street
SANDTON
2031

Dear Mr Howa

CLOSING OF OAKBAY BANK ACCOUNTS

Your letter of 25 July 2016 refers.

The letter does not indicate why "the full file of all the correspondence with banks" (as you term it) has not been provided. Every opportunity has been provided for Oakbay to do so since your first approach to me in April.

My letter dated 24 May 2016 recorded that you had undertaken to provide "*all* relevant information", based on my request at the meeting for all relevant correspondence from banks. I requested again this information in my letter of 14 July 2016 when I also pointed out that to date I had not received any copies of these letters from banks related to the closure of your accounts.

It is concerning that Oakbay still does not accept that the Minister of Finance, in law, is unable to interfere with the relations between registered banks and their clients. This assertion by Oakbay also remains inconsistent with the legal advice that Oakbay has received from several of its own legal advisers. This (as explicitly recorded by you in your previous correspondence) is that it has no case against the banks arising from the closing of the accounts.

In regard with the contention in the third paragraph of your letter that "the real reasons" for the banks' closing of accounts have not been disclosed, Oakbay's suggestion that the closure of its accounts was irregular (this in conflict with both the legal advice I have received and that which you have recorded you have received) continues to be a serious concern in terms of the functioning and reputation of the South African financial sector and, in particular, banking. Banks in South Africa are highly regulated, not only by South African laws, but in all countries where they may operate, in order to facilitate trade and transactions for South African companies and residents.

I am also concerned if Oakbay continues, as first stated in correspondence four months ago, with the possible contemplation of implementing job losses among its employees (and to subject certain of its journalist-employees to disciplinary proceedings).

Under these circumstances, further delay is clearly undesirable in my consideration of the matter. Should you wish to honour the undertaking made and recorded on 24 May and again on 14 July, or would like to make any further representations to me, I request that you convey these electronically to me by 9h00 on Friday, 12 August 2016. On receipt of the above documents, I shall then schedule a meeting with you as requested in your letter and in your earlier letter dated 18 July 2016.

Yours sincerely

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 10 - 08 - 2016

N

Rebecca Tee

From: Ministry Registry
Sent: 17 August 2016 06:22 AM
To: Ismail Momoniat; Rebecca Tee
Subject: FW: Closing of Oakbay Bank Accounts

For your information.

From: Nazeem Howa [mailto:nazeemh@oakbay.co.za]
Sent: 17 August 2016 06:06 AM
To: Ministry Registry
Subject: Re: Closing of Oakbay Bank Accounts

Dear Ms Scott

I am currently out of the country. I will respond formally upon my return to South Africa.

Nazeem

From: Ministry Registry <Minreg.Registry@treasury.gov.za>
Date: Wednesday, 10 August 2016 at 3:57 PM
To: Nazeem Howa <nazeemh@oakbay.co.za>
Subject: Closing of Oakbay Bank Accounts

Dear Mr Howa

Please find attached correspondence for your attention from Minister of Finance.

Please could I humbly request that you confirm receipt.

Kind regards
Joanne Scott
Ministry of Finance
40 Church Square, Old Reserve Building, PRETORIA
Private Bag X115, PRETORIA, 0001
Tel: +27 12 315 5158
Fax: +27 12 323 3262
Mobile: +27 72 257 7961
E-mail for official correspondence: minreg@treasury.gov.za

OAKBAY
INVESTMENTS (PTY) LTD.

09 September 2016

The Hon Pravin Gordhan
Minister of Finance
Pretoria

Dear Hon Minister

Thank you for your letter of August 10, and my apologies for not responding earlier.

I am very happy to share with you my full file of correspondence with the banks as suggested in my last letter to you. It makes for interesting reading.

I would prefer if possible that we meet to discuss the processes we have engaged in as they have been supplemented by several meetings and telephone calls which will add considerable flavour to the correspondence and provide you with a much fuller picture.

I am happy to meet at your convenience to show you my file and inform you of my various meetings and telephone calls.

I am happy to further engage constructively with the other points you make in your letter which I believe can best be dealt with through a meeting, rather than letters.

Yours sincerely

Nazeem Howa
Chief Executive

P1

4 August 2016
Ref: 14/8/4 - Ministry

Office of the Director
Tebogo Shakwane

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Centurion 0046
Tel +27 12 641 6000
Fax +27 12 641 6407
tebogo.shakwane@fic.gov.za

Mr P J Gordhan, MP
Minister of Finance
Private Bag X115
Pretoria
0001

Dear Honourable Minister

REPORTS BY REGISTERED BANKS REGARDING ACCOUNTS OF OAKBAY GROUP

I refer to your letter of request dated 28 July 2016 and my subsequent reply dated 1 August 2016.

I have carefully studied the matters raised in your letter and am satisfied there is legal merit and relevance in the request as it relates to the mandate, powers and functions of the Financial Intelligence Centre ("the Centre").

Herewith please find attached a Certificate, issued under my hand in terms of section 39 of the Financial Intelligence Centre Act ("the Act") in which certain information as reported to the Centre in terms of section 29 of the Act (subject to section 38(3) of the Act in respect of protecting reporters' identities) is set out.

In addition, please note that in terms of section 39 of the Act, a certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of Section 28, 29 or 30(2) or 31 is on its mere production in a matter before court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

Kind regards

MURRAY MICHELL
DIRECTOR

P2

CERTIFICATE IN TERMS OF SECTION 39 OF FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT NO 38 OF 2001)

I the undersigned,

MURRAY STEWART RODON MICHELL

An official of the Financial Intelligence Centre ("FIC"), hereby states that:

1. The Financial Intelligence Centre (Centre), was established in terms of section 2 of the Financial Intelligence Centre Act 38 of 2001 ("the Act")

2. Section 3 of the Act states that the principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities, the combating of money laundering activities and the financing of terrorist and related activities.

3. I am appointed under section 6 of the Act as the Director of the Centre.

4. My responsibilities as the Director are defined in section 10 of the Act and includes:

   4.1 the performance by the Centre of its functions and

   4.2 taking all decision of the Centre in exercise of its powers in performance of its functions, except those decisions taken in consequence of a delegation or instruction in terms of Section 16 of the Act.

5. A function of the Centre is to receive suspicious transaction reports, reported / sent to the Centre as contemplated in Section 29 of the Act.

6. On 28 July 2016 I received a request for information from the Minister of Finance; the request is attached as Annexure A.

7. I studied the request and:

   7.1 was satisfied that there was legal merit and relevance in the request as it relates to the Centre's mandate, powers and functions and

   7.2 noted that the request did not contain data discriminators in relation to the persons or entities mentioned in the request.

8. The Centre used the following data discriminators to identify the information specified in this certificate relating to persons or entities associated with the persons or entities mentioned in the request:

Identity Number	Surname	Initials	Full Names	
6602056061184	GUPTA	AK	AJAY KUMAR	
6806145105080	GUPTA	AK	ATUL KUMAR	
7004042051081	GUPTA	C	CHETALI	
7005101418186	GUPTA	S	SHIVANI	
7208056345087	GUPTA	RK	RAJESH KUMAR	
7710240935087	GUPTA	A	ARTI	
8607146112184	GUPTA	V	VARUN	
9408046139081	SINGHALA	S	SRIKANT	(Minor)
9511156045087	SINGHALA	S	SASHANK	(Minor)

Company Name	Registration Number
Aeon Diamonds	2003/017679/07
Afripalm Managed Services	2007/026575/07
Afripalm Resources	2006/011933/07
Comair	1967/006783/06
Confident Concept	2006/023982/07
Cyret Technologies	2008/014823/07
Green Fig Trading 5	2005/021117/07
Infinity Media Networks	2011/003219/07
Islandsite Investments 254	2007/035464/07
JIC Engineering Services	2007/005004/07
JIC Mining Services Africa	2007/011186/07
JIC Mining Services Asia	2007/008414/07
Moetapele Projects	2006/021771/07
Northam Platinum	1977/003282/06
Sahara Computers	1997/015590/07
Sahara Media Holdings	2006/013459/07
Sahara Press	2006/010256/07
Shiva Uranium	1921/006955/06
Sunzi Equity Investments	2004/014322/07
Surya Crushers	2012/037510/07
Thelo Cement	2006/028825/07
Thelo Investments	2006/031859/07
Tna Media	2010/006569/07
Uni Africa Holdings	2004/015237/07
Vusizwe Media	2008/023317/07
Woodlane Consortium	2007/031952/07

9. By virtue of the powers vested in me as the Director of the Centre under section 39 of the Act, and subject to section 38(3) in respect to protecting the identity of the reporter, I hereby confirm that the

information set out below was reported or sent to the Centre in terms of Section 29 of the Act:

Row No.	Date	STR Number	Subjects Reported	Value Reported
1	2012-12-10	STR/00040/20121210/I/E	Ajay Kumar Gupta	859,933
2	2013-05-17	STR/00155/20130517/I/E	Ajay Kumar Gupta	961,932
3	2013-05-17	STR/00167/20130517/I/E	Atul Kumar Gupta	961,932
4	2013-05-17	STR/00179/20130517/I/E	Rajesh Kumar Gupta Shubhangi Gupta	31,009
5	2013-05-20	STR/00061/20130520/I/E	Atul Kumar Gupta	948,150
6	2013-07-11	STR/00161/20130711/I/E	Atul Kumar Gupta	961,932
7	2014-02-06	STR/00224/20140206/I/E	Atul Kumar Gupta	38,000,000
8	2014-02-07	STR/00043/20140207/I/E	Atul Kumar Gupta	38,000,000
9	2014-04-10	STR/00102/20140410/I/E	TEGETA RESOURCES (PTY) LTD	5,000,000
10	2014-07-24	STR/00391/20140724/I/E	JNT CHAWLA-A/GUPTA-RK Rajesh Kumar Gupta	32,045
11	2014-12-12	STR/00093/20141212/I/E	OAKBAY RESOURCES AND ENERGY (PTY) LTD	2,000,000
12	2014-12-15	STR/00026/20141215/I/E	Atul Kumar Gupta	1,070,749
13	2015-02-06	STR/00441/20150206/I/E	SHIVA URANIUM LTD	6,000,000
14	2015-03-16	STR/00221/20150316/I/E	SAHARA COMPUTERS (PTY) LTD Ajay Kumar Gupta Atul Kumar Gupta Rajesh Kumar Gupta	1,550,000
15	2016-01-26	STR/00131/20160126/I/E	ANNEX DISTRIBUTION (PTY) LTD	1,242,386
16	2016-02-04	STR/00213/20160204/I/E	Atul Kumar Gupta	17,133,000
17	2016-02-05	STR/00573/20160205/I/E	SAHARA HOLDINGS (PTY) LTD Atul Kumar Gupta	Multiple Transactions
18	2016-02-05	STR/00589/20160205/I/E	SAHARA HOLDINGS (PTY) LTD Atul Kumar Gupta	Multiple Transactions
19	2016-02-07	STR/00007/20160207/I/E	SAHARA HOLDINGS (PTY) LTD	4,250,000

Row No.	Date	STR Number	Subjects Reported	Rand Value Reported
20	2016-02-07	STR/00008/20160207/I/E	SAHARA HOLDINGS (PTY) LTD	11,475,000
21	2016-02-09	STR/00009/20160209/I/E	Rajesh Kumar Gupta Atul Kumar Gupta	18,146,000
22	2016-02-26	STR/00595/20160226/I/E	SAHARA COMPUTERS (PTY) LTD Rajesh Kumar Gupta Atul Kumar Gupta Chetali Gupta	Multiple Transactions
23	2016-02-29	STR/00626/20160229/I/E	ANNEX DISTRIBUTION (PTY) LTD	Multiple Transactions
24	2016-03-04	STR/00338/20160304/I/E	ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD Atul Kumar Gupta	Multiple Transactions
25	2016-03-07	STR/00015/20160307/I/E	OAKBAY INVESTMENTS (PTY) LTD ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	Multiple Transactions
26	2016-03-17	STR/00474/20160317/I/E	SAHARA DISTRIBUTION (PTY) LTD	Multiple Transactions
27	2016-03-17	STR/00084/20160317/I/E	CORRECT MARKETING C C	5,000
28	2016-03-18	STR/00013/20160318/I/E	SAHARA HOLDINGS (PTY) LTD SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta	Multiple Transactions
29	2016-03-31	STR/00149/20160331/I/E	MABENGALA INVESTMENTS (PTY) LTD Rajesh Kumar Gupta	Multiple Transactions
30	2016-03-31	STR/00156/20160331/I/E	Atul Kumar Gupta	Multiple Transactions
31	2016-03-31	STR/00158/20160331/I/E	MABENGALA INVESTMENTS (PTY) LTD Rajesh Kumar Gupta	Multiple Transactions
32	2016-03-31	STR/00172/20160331/I/E	Atul Kumar Gupta	Multiple Transactions
33	2016-03-31	STR/00187/20160331/I/E	OAKBAY INVESTMENTS (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	Multiple Transactions
34	2016-03-31	STR/00357/20160331/I/E	TNA MEDIA (PTY) LTD Atul Gupta	Multiple Transactions

Row No.	Date	STR Number	Subjects Reported	Rand Value Reported
35	2016-03-31	STR/00367/20160331/I/E	TNA MEDIA (PTY) LTD Atul Gupta	Multiple Transactions
36	2016-03-31	STR/00385/20160331/I/E	SURYA CRUSHERS (PTY) LTD Varun Gupta	Multiple Transactions
37	2016-03-31	STR/00275/20160331/I/E	NEWSHELF 960 (PTY) LTD	Multiple Transactions
38	2016-03-31	STR/00158/20160331/I/E	MABENGALA INVESTMENTS PTY LTD	10,000,000
39	2016-03-31	STR/00187/20160331/I/E	OAKBAY INVESTMENTS(PTY) LTD	374,713,699
40	2016-04-01	STR/00338/20160401/I/E	ISLAND SITE INVESTMENTS ONE HUNDRED (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	158,278,904
41	2016-04-05	STR/00374/20160405/I/E	BLACKEDGE EXPLORATION (PTY) LTD	Multiple Transactions
42	2016-04-06	STR/00360/20160406/I/E	CONFIDENT CONCEPTS (PTY) LTD Rajesh Kumar Gupta Varun Gupta	Multiple Transactions
43	2016-04-07	STR/00011/20160407/I/E	Varun Gupta	282,074
44	2016-04-07	STR/00166/20160407/I/E	SHIVA URANIUM LIMITED Atul Kamar Gupta Varun Gupta	125,848,620
45	2016-04-07	STR/00276/20160407/I/E	INFINITY MEDIA NETWORKS (PTY) LTD Atul Kumar Gupta Varun Gupta	24,115,385
46	2016-04-08	STR/00429/20160408/I/E	INFINITY MEDIA NETWORKS (PTY) LTD Atul Kumar Gupta Varun Gupta	6,938,305
47	2016-04-11	STR/00011/20160411/I/E	Atul K Gupta	531,570
48	2016-04-11	STR/00302/20160411/I/E	SAHARA DISTRIBUTION (PTY) LTD Atul Kumar Gupta	100,000
49	2016-04-11	STR/00314/20160411/I/E	SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta	5,018,417
50	2016-04-11	STR/00348/20160411/I/E	SAHARA SYSTEMS (PTY) LTD Atul Kumar Gupta	2,000,000

Row No.	Date	STR Number	Subjects Reported	Value Reported
51	2016-04-11	STR/00503/20160411/I/E	SAHARA DISTRIBUTION (PTY) LTD Atul Kumar Gupta	4,992,558
52	2016-04-12	STR/00389/20160412/I/E	Arti Gupta	86,579
53	2016-04-12	STR/00396/20160412/I/E	Chetali Gupta Atul Kumar Gupta	119,766
54	2016-04-12	STR/00405/20160412/I/E	SAHARA CONSUMABLES (PTY) LTD Atul Kumar Gupta	4,016,374
55	2016-04-12	STR/00460/20160412/I/E	ANNEX DISTRIBUTION (PTY) LTD Atul Kumar Gupta	3,657,164
56	2016-04-13	STR/00034/20160413/I/E	SAHARA COMPUTERS (PTY) LTD Atul Kumar Gupta Chetali Gupta	41,833,304
57	2016-04-13	STR/00374/20160413/I/E	TNA MEDIA (PTY) LTD Atul Gupta	7,999,992
58	2016-04-19	STR/00432/20160419/I/E	UNI AFRIKA HOLDINGS (PTY) LTD Atul Gupta	Multiple Transactions
59	2016-04-21	STR/00090/20160421/I/E	ISLANDSITE INVESTMENTS ONE UNDRED (PTY) LTD Arti Gupta Atul Kumar Gupta Chetali Gupta Rajesh Kumar Gupta	172,464,887
60	2016-04-21	STR/00607/20160421/I/E	CONFIDENT CONCEPTS (PTY) LTD Rajesh Kumar Gupta Varun Gupta	78,859,600
61	2016-04-21	STR/00586/20160421/I/E	ANNEX DISTRIBUTION (PTY) LTD SAHARA COMPUTERS (PTY) LTD SAHARA HOLDINGS (PTY) LTD	876,001
62	2016-04-21	STR/00455/20160421/I/E	OPTIMUM COAL MINE PTY LTD	1,372,756,090
63	2016-04-21	STR/00511/20160421/I/E	KOORNFONTEIN MINES (PTY)	1,207,859,627
64	2016-04-22	STR/00908/20160422/I/E	ANNEX DISTRIBUTION (PTY) LTD SAHARA COMPUTERS (PTY) LTD SAHARA HOLDINGS (PTY) LTD	256,476
65	2016-05-06	SAR-160506-0000129	OAKBAY RESOURCES AND ENERGY (PTY) LTD	327,421,132
66	2016-05-06	SAR-160506-0000130	SHIVA URANIUM LTD	327,421,132

Row No.	Date	STR Number	Subjects Reported	Value Reported
67	2016-05-11	STR-160511-0000323	OPTIMUM MINE REHABILITATION TRUST	1,341,426,552
68	2016-05-11	STR-160511-0000325	OPTIMUM VLAKFONTEIN MINING AND EXPLORATION PTY LTD	410,237
69	2016-05-11	STR-160511-0000351	OPTIMUM OVERVAAL MINING AND EXPLORATION PTY LTD	418,989
70	2016-05-11	STR-160511-0000435	OPTIMUM COAL TERMINAL PTY LTD	173,244,916
71	2016-05-16	SAR-160506-0000130	SHIVA URANIUM LTD	510,064,228
72	2016-06-03	STR-160603-0000380	OAKBAY INVESTMENTS (PTY) LTD	407,332,455
			Total Value	**R6,839,974,102**

10. In terms of section 39 of the Act, a certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of Section 28, 29 or 30(2) or 31 is (subject to Section 38(3)) on its mere production in a matter before court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

Issued under my hand at CAPE TOWN on 04 August 2016.

MURRAY STEWART RODON MICHELL
DIRECTOR: FIC

WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

South African Reserve Bank

Attention: Registrar of Banks
Email: rene.vanwyk@resbank.co.za

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155 5th Street
Sandton 2196 South Africa
Private Bag 10015
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YOUR REFERENCE:
OUR REFERENCE: Mr E Levenstein/OPTI13168.19/#3821963v2
DIRECT PHONE: +27 11 535 8237
DIRECT FAX: +27 11 535 8737
EMAIL ADDRESS: elevenstein@werksmans.com

27 June 2016

Dear Sirs

URGENT

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

1 As you are aware, Optimum Coal Mine Proprietary Limited ("OCM"), the company that owns the Optimum coal mine, was placed in business rescue on 4 August 2015 and remains in business rescue.

2 We act on behalf of Piers Marsden and Peter van den Steen, the joint business rescue practitioners of OCM and on behalf of OCM.

3 OCM is the beneficiary of the Optimum Mine Rehabilitation Trust Fund ("Trust"), a Trust established for the purpose of holding funds to secure the environmental rehabilitation obligations of OCM.

4 There is currently an amount of approximately R1.5 billion which is held in an account, in the name of the Trust, with The Standard Bank of South Africa Limited ("Standard Bank").

5 Standard Bank has advised the trustees of the Trust that it does not intend to establish business relationships with Tegeta Resources and Exploration Proprietary Limited ("Tegeta") (who nominated, and who subsequently have been appointed, the trustees of the Trust) and that it will be terminating its relationship with all companies in the Tegeta group.

6 OCM is a subsidiary of Tegeta.

7 The effect of this is that Standard Bank will be closing the Trust's bank account and has requested that the Trust's funds be transferred to another banking institution, with the written approval of the Department of Mineral Resources ("DMR").

8 The trustees of the Trust have advised the business rescue practitioners that they have identified the Bank of Baroda as the banking institution to whom the Trust's funds will be transferred. At present the trustees intend to transfer an amount of R1.5 billion.

9 In light of the fact that the DMR has indicated that it is agreeable to the Trust's funds being transferred to the Bank of Baroda, provided they are a bank registered as such by the South African Reserved Bank ("SARB") and recent press reports which have indicated that SARB is investigating the Bank of Baroda, the business rescue practitioners have requested us to write to you to enquire whether SARB has any reservations or concerns with the trustees transferring the Trust's funds to the Bank of Baroda.

10 We understand that the DMR has approved of the transfer of the funds, subject to the condition referred to above, and that the transfer of the funds is imminent.

11 Your urgent attention and response to this would be appreciated.

12 We look forward to hearing from you.

Yours faithfully

Werksmans Attorneys
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.