

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING**

**ORGANS OF STATE**

**("THE ZONDO COMMISSION")**

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**WITNESS STATEMENT OF MR. IAN SINTON IN RELATION TO PARAGRAPH 1.7 OF  
THE ZONDO COMMISSION'S TERMS OF REFERENCE**

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I, the undersigned,

**Ian Hamish Scott Sinton**

state that:

1.

1.1. For a period ending in June 2018 I was employed as the Group General Counsel of Standard Bank Group Limited (SBG) and its subsidiaries. The Standard Bank of South Africa Limited (Standard Bank) is one such subsidiary. Since June 2018 I stepped down as Group General Counsel but remain employed by Standard Bank to assist with the completion of various projects of a legal nature.

1.2. The facts described herein fall within my personal knowledge, unless I state otherwise or the context of what I say makes it clear that they do not. I confirm that



the facts set out herein are, to the best of my knowledge and belief, true and correct.

- 1.3. Insofar as I make submissions on legal matters I do so on the advice of Standard Bank's legal representatives obtained in the course of consultations and preparation of this witness statement, which advice I accept as correct.

### **Introduction**

2. Much of the information contained in this statement is contained in an affidavit which I deposed to on 13 December 2016 and which was filed on behalf of Standard Bank in an application launched by the then Minister of Finance, Mr Pravin Gordhan (**Minister Gordhan**) under case number 80978/2016 (**the Oakbay litigation**). Standard Bank, other banks, several entities associated with the Gupta family and Oakbay Investments (Pty) Ltd ("**Oakbay**"), and certain regulators were cited as respondents in the application. As such, the information is largely in the public domain. I understand that this resulted in the Zondo Commission approaching Standard Bank to request that Standard Bank provide this witness statement in respect of the Zondo Commission's investigation into "*whether any member of the National Executive and including any Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies*" as set out in paragraph 1.7 of the Zondo Commission's Terms of Reference (**ToR**).
3. This statement, therefore, has been prepared as the basis for evidence which the Zondo Commission requires from Standard Bank in relation to paragraph 1.7 of the



ToR. Given my personal knowledge of the factual averments set out in this statement Standard Bank decided that I should submit this statement pursuant to the Zondo Commission's request. This statement does not, nor is it intended that it should, deal with any of the other Terms of Reference of the Zondo Commission.

4. In this statement I have:
  - 4.1. only included aspects of the affidavit that I deposed to in the Oakbay litigation that are directly relevant to paragraph 1.7 of the ToR; and
  - 4.2. included certain documents which were disclosed by some of the parties to the Oakbay litigation and came to my attention as a result of such disclosure.

***Background facts***

5. Until 6 June 2016 Standard Bank had a banker-customer relationship with various companies in which various members of the Gupta family and Mr Duduzane Zuma held direct or indirect interests. In this statement I will refer to these entities as "**Gupta entities**" or "**Oakbay and its associates**".
6. Standard Bank gave notice on 6 April 2016 to the Gupta entities of its intention to terminate the banker-customer relationships with them as from 6 June 2016, a notice period of two months. On the latter date Standard Bank officially terminated those



relationships. A list of the Gupta entities affected by this decision will be available on request by the Zondo Commission.

7. Following Standard Bank's notice to the Gupta entities, Standard Bank became the subject of a wholesale public campaign whose objective was to compel it to reconsider and reverse its decision and re-instate those relationships. That campaign was conducted through paid advertisements in the media and pressure from the governing party, the African National Congress (**ANC**), and some members of the National Executive of the Republic of South Africa (the **Cabinet**) purporting to act on behalf of the Cabinet.
8. As part of such campaigns Standard Bank's senior executives were requested to attend several meetings to account for Standard Bank's decision. Those meetings took place:
  - 8.1. with some members of the National Executive Committee (**NEC**) of the ANC; and
  - 8.2. with a committee of Cabinet led by the former Minister of Mineral Resources, Mr Mosebenzi Zwane (**Minister Zwane**) (the **Committee**).
9. The purpose of each request for a meeting was evidently to pressurise Standard Bank into reversing the decision it had taken, which would have resulted in it retaining banking relationships with the Gupta entities.



10. In this statement I,
- 10.1. firstly, set out certain facts relating to the Gupta entities' campaign to reverse Standard Bank's decision to terminate banking relationships with them;
  - 10.2. secondly, set out the facts relating to the engagement between Standard Bank and some members of the ANC's NEC;
  - 10.3. thirdly, set out the facts relating to the engagement between Standard Bank and the Committee and other related events which occurred after this engagement;
  - 10.4. lastly, I make some concluding remarks regarding the facts set out in this statement.
11. It is important to stress that Standard Bank's decision to terminate banking relationships with the Gupta entities was taken in accordance with the plethora of laws, regulatory prescripts, international standards and best practices, and domestic obligations including those contained in the Companies Act (regulation 43 where it deals with combatting corruption), Banks Act, Financial Intelligence Centre Act (the FIC Act), Protection of Organised Crime Act, Prevention and Combatting of Corrupt Activities Act (PRECCA), which govern the banker-customer relationship and are therefore applicable to local banks, including Standard Bank. Similarly, this decision was also taken with due cognisance to the adverse consequence to which Standard Bank and other off-shore banks associated with it, as part of SBG, were likely to suffer



in the event of their failure to comply with international and domestic regulatory obligations and standards on banker-customer relationships and/or in the event of any such compliance being overturned pursuant to interventions of the type that Standard Bank was subjected to. Since, as I have explained above, the purpose of this witness statement is to record those facts within the knowledge of Standard Bank that fall within the scope of paragraph 1.7 of the ToR, I do not address these laws, regulatory prescripts, international standards and best practices, and domestic obligations in this statement beyond recording that Standard Bank's decision to terminate all relationships with the Gupta entities was in compliance with them.

***The Gupta entities' campaign to reverse Standard Bank's decision***

12. At the time that Standard Bank decided to terminate its banking relationships with the Gupta entities it believed that its decision to do so was lawful. This remains its view. The Gupta entities also accepted that Standard Bank decision was lawful. This is evident from the following:
  - 12.1. On 24 May 2016 Standard Bank received a letter (the letter is incorrectly dated 5 December 2016, being the date it was printed by Standard Bank's legal representatives) from Oakbay's attorneys in which they threatened to bring an urgent court application for an interdict against Standard Bank unless it kept open the Gupta entities' accounts (pending the institution of litigation proceedings, alternatively a complaint to the Competition Commission). A copy of that letter is annexed hereto and marked "SB1". Following a letter rejecting such threat from

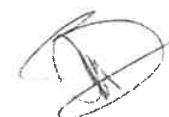
Standard Bank's attorneys, Oakbay's then Chief Executive Officer, Mr Nazeem Howa (**Mr Howa**) advised Standard Bank that the letter from Oakbay's attorneys was sent in error and same was retracted, unconditionally. A copy of Mr Howa's letter is annexed hereto marked "**SB2**". Oakbay and its associates did not institute any legal proceedings against Standard Bank to challenge Standard Bank's decision to terminate the banker-customer relationships with them.

- 12.2. On 24 May 2016, the same day that Oakbay's attorneys were threatening Standard Bank with an urgent application as aforesaid, Mr Howa advised Minister Gordhan, per annexure "**SB3**" hereto, that Oakbay had obtained legal advice from several legal advisors who had informed it that any legal proceedings to reverse the banks' decisions would be still-born.
13. Despite accepting the lawfulness of Standard Bank's decision, Oakbay continued to engage in political strategies and public campaigns to secure the reversal of the decision to close its and its associated entities' banking accounts. An example of the public campaign is the press release, annexed hereto marked "**SB4**", which appeared in the press on several occasions and in which Oakbay's attempt to garner public sympathy and pressure is evident. This was all in an attempt to exert pressure on Standard Bank, amongst others, to reverse its decision, when it was legally entitled to terminate its relationships with the Gupta entities and in circumstances where the Gupta entities had not sought to legally challenge the decision.
14. As a result of representations by Mr Howa to the effect that it would be unfair for



Standard Bank to implement its decision to terminate banking relationships without Oakbay and its associates having been given an opportunity to dissuade Standard Bank from doing so, Mr Howa was invited to bring his colleagues to a meeting with senior executives of Standard Bank where the Gupta entities could make their case. This meeting took place on 13 May 2016 where the Gupta entities were represented by, amongst others, Mr Howa and Ms Ronica Ragavan (**Ms Ragavan**), in her capacity as the Finance Director of Oakbay. I was part of the Standard Bank delegation, and therefore have personal knowledge of what transpired at the meeting.

15. At this meeting Mr Howa, Ms Ragavan and their colleagues sought to persuade Standard Bank to reverse its decision by emphasising that all members of the Gupta family and Mr Duduzane Zuma had resigned from all executive positions within the Gupta entities, that it was unfair to suspect the Gupta entities of unlawful conduct when they had not been convicted by any court and that without access to bank accounts the Gupta entities might be prevented from paying their employees who were innocent of any wrongdoing. After Standard Bank had interrogated some of these representations the meeting ended with Standard Bank promising to give the representations made on behalf of the Gupta entities due consideration. At this meeting Mr Howa informed Standard Bank's representatives that the ANC had requested the meeting with Standard Bank (which I deal with below) at the behest of Oakbay and its associates. Standard Bank was not persuaded by the representations and informed Mr Howa accordingly.
16. Annexed hereto marked "**SB5**" is a copy of a letter addressed by Mr Howa to Oakbay's





employees, and disclosed to the media, in which it is stated that Oakbay had requested the intervention of the former President, Mr Jacob Zuma (**President Zuma**) as well as Ministers Zwane, Ms Mildred Oliphant (**Minister Oliphant**) and Gordhan. It is noteworthy that the Committee appointed to investigate the account closures was made up of those self-same Ministers. Although Mr Howa's letter is undated the media, as per annexure "**SB6**", published the letter on 8 April 2016. That was accordingly prior to the establishment of the Committee on 13 April 2016.

17. From the documents that were disclosed during the Oakbay litigation, I have seen that Mr Howa wrote similar letters, all dated 8 April 2016, to President Zuma, Ministers Zwane, Gordhan and Oliphant and Mr Gwede Mantashe (**Mr Mantashe**), who was then the Secretary General of the ANC. These letters are annexed hereto marked "**SB7**" to "**SB11**" respectively. During the Oakbay litigation, Oakbay also disclosed other similar letters which had been sent to other organisations.

#### ***Meeting with members of the NEC of the ANC***

18. The first illustration of Oakbay and its associates invoking direct political pressure on Standard Bank, was their request to the ANC in annexure SB11 that it intervene. This resulted in Mr Simpiwe Tshabalala (**Mr Tshabalala**), the then Chief Executive Officer of Standard Bank, being invited by the then Secretary General of the ANC to meet at Luthuli House to discuss the closure of bank accounts. He and I, accompanied by Ms Hannah Sadiki (a senior Standard Bank executive with personal knowledge of Standard Bank's history of account closures), attended that meeting on 21 April 2016.



The ANC was represented by, amongst others, Mr Mantashe, Ms Jesse Duarte and Mr Enoch Ngodongwana.

19. At the commencement of the meeting the ANC representatives accepted Standard Bank's position that it was legally prevented from discussing Oakbay related matters and that it could not lawfully disclose its reasons for closing any customer's accounts, including those of the Gupta entities, to the ANC. The ANC representatives therefore accepted that the discussions had to be about the factors taken into account generally when deciding to close bank accounts rather than those of specific customers. Nevertheless, Standard Bank was asked in the meeting to respond to the accusation that it was colluding with "*white monopoly capital*" to oppress black-owned business in the form of the Gupta entities. Standard Bank was also asked to explain why it continued to bank construction companies that had been fined for collusion in the construction of stadia (Standard Bank, citing confidentiality obligations, neither admitted nor denied that it banked any such companies), yet had closed the accounts of the Gupta entities that had not been convicted by any court.
  
20. Standard Bank has no difficulty in engaging with the governing party or any other political party about issues of national concern or interest. Nor does it take issue with requests for such meetings. However, the fact that the ANC requested the meeting at the behest of Oakbay (as stated by Mr. Howa during our 13 May 2016 meeting) evidenced the extent of Oakbay's political influence at the highest echelons of political office-bearers in South Africa. It moreover shows the willingness of the Gupta entities to bring their influence to bear to reverse a lawful and good faith decision taken in

compliance with legal and regulatory obligations.

21. Following the meeting, I prepared a letter to be sent to the ANC to record, in the most polite, restrained and respectful of terms, some of the issues that had been discussed during the meeting. The letter, which is dated 22 April 2016, was sent to Mr Mantashe and is annexed hereto marked "SB12". The principal purpose of the letter was to record the nature of the meeting and the important issues discussed. It did not seek to exhaustively record the specific details of the meetings. Standard Bank did not receive a response to this letter.

***Meeting with the Committee and issues related thereto***

22. In his media statement of 1 September 2016 (annexure "SB13" hereto) (**Minister Zwane's Statement**) Minister Zwane recorded that "On 13 April 2016, Cabinet established an Inter-Ministerial Committee (IMC) to consider allegations that certain banks and other financial institutions acted unilaterally and allegedly in collusion, when they closed bank accounts and/or terminated contractual relationships with Oakbay Investments". Minister Zwane's Statement records that he issued the statement in his capacity as the Chairperson of the Committee.
23. I am now aware, from a reading of a letter disclosed by Minister Gordhan at the instance of Oakbay's legal representatives during the Oakbay litigation, that it is unclear whether the Committee was a "task team" or an "inter-ministerial committee" appointed by Cabinet. A copy of the letter, which is dated 22 April 2016, from Minister

Gordhan to Minister Zwane (copying Minister Oliphant) is annexed hereto marked "SB14". In the letter Minister Gordhan also advised Minister Zwane that he (Minister Gordhan) was obtaining legal advice on what could be done given the legislative framework governing the financial sector. Minister Gordhan then proposed that the three Ministers first consult on the framework for any discussion with financial institutions and proposed that such consultation occur on 26 April 2016.

24. I am aware from the documents disclosed in the Oakbay litigation that Minister Gordhan received opinions from counsel, dated 25 April and 29 May 2016, that confirmed that Government has no power to interfere with the banker-customer relationship. Indeed the judgment of the High Court in the Oakbay litigation, at paragraphs 54 and 55, confirmed that Members of the National Executive are not empowered to intervene in a private bank-customer dispute.
25. Following the above mentioned meeting with members of the ANC's NEC, Standard Bank was requested to attend a meeting at the purported instance of members of the Committee, on 4 May 2016. Whilst I note that the request for the meeting indicates that the Committee included the Minister of Communications, that averment is not consistent with other statements regarding the composition of the Committee. A copy of the e-mail requesting the meeting and Mr Tshabalala's response thereto is annexed hereto marked "SB15".
26. Mr Tshabalala and I attended the requested meeting, held on 5 May 2016, on behalf of Standard Bank. Ministers Zwane and Oliphant attended the meeting. Minister



Gordhan did not attend and no explanation for his absence was provided. Mr Mzwanele Manyi (**Mr Manyi**) was also present; he stated that he was attending the meeting in his capacity as a ministerial advisor.

27. Minister Zwane introduced himself as the Chair of the Committee and indicated that the Committee had been constituted by the Cabinet at the instance of President Zuma. We started the meeting by informing all present that banker-customer confidentiality obligations prevented us discussing any particular customers, the Gupta entities included, but that we were willing and able to inform the Committee about the factors that influence Standard Bank's decisions to close bank accounts generally. Minister Zwane said that he accepted Standard Bank's position. Despite that, it soon became clear from the comments and enquiries by Ministers Zwane and Oliphant and Mr Manyi that their main concern was the reversal of the decision to close the Gupta entities' accounts. With hindsight we should not have been surprised because subsequently, as explained below, Minister Zwane and President Zuma each stated or at least implied that this was the mandate of the Committee.
28. It was clear at the meeting that they wanted to secure an outcome favourable to the Gupta entities, by using their political and executive power. For instance:
- 28.1. they were concerned about the criteria used by Standard Bank to identify '*politically exposed persons*' (**PEPs**) (such as members of the Gupta and Zuma families) and the risk to PEPs (including themselves) of being denied banking facilities;



- 28.2. they raised an allegation that Standard Bank was not treating its clients fairly in terminating the Gupta entities' related banking relationships;
- 28.3. they suggested that Standard Bank and its competitor banks may have "*colluded*" on behalf of "*monopoly capital*" in the manner in which the Gupta entities were treated;
- 28.4. they asked Standard Bank to explain why it had continued to bank construction companies that had been fined for anti-competitive collusion yet closed the accounts of the Gupta entities that had not been convicted by any court;
- 28.5. they reminded us that Standard Bank conducts business as a bank under a licence provided by the Government and therefore should be responsive to the issues being raised by the Committee on behalf of Government;
- 28.6. they suggested that Standard Bank should have placed the interests of the employees of the Gupta entities over its legal obligations (effectively arguing that Standard Bank should have ignored its legal obligations to avoid suspicious transactions where compliance with them would put the jobs of the Oakbay employees and the livelihoods of their "60 000" dependents at risk); and
- 28.7. they suggested that they had the power to change the law to make the banks accountable for job losses caused by account closures including any at Oakbay and



its related entities.

29. In short, the nature and tone of the Ministers' queries were substantially the same as those posed on behalf of the ANC; they were all directed at inducing Standard Bank into rescinding its decision to terminate all banking relationships with the Gupta entities.
30. After this meeting Standard Bank sent a letter, which was couched in respectful, measured and polite terms, a copy of which is annexed hereto marked "SB16", to the two Ministers, by way of an e-mail from Mr Tshabalala. By e-mail reply the two Ministers' representative thanked Mr Tshabalala for his input. A copy this e-mail is annexed hereto marked "SB17".
31. On 1 September 2016, Minister Zwane, speaking on behalf of the Committee, announced that the Committee had made certain recommendations to Cabinet and that, based on those recommendations, Cabinet had resolved as follows:
  - 31.1. To recommend to President Zuma to appoint a judicial inquiry in terms of section 84(2)(f) of the Constitution.
  - 31.2. To consider the current mandates of the Banking Tribunal and the Banking Ombudsman. It claimed that the evidence presented to the Committee indicated that:



*"All of the actions taken by the banks and financial institutions were a result of innuendo and potentially reckless media statements, and as a South African company, Oakbay had very little recourse to the law."*

- 31.3. To consider the current FIC Act and PRECCA on reporting since *"evidence presented to the [Committee] was unclear on whether the various banks and financial institutions as well as the Reserve Bank and Treasury complied with these and other pieces of legislation"*.
- 31.4. To reconsider South Africa's clearing bank provisions to allow for new banking licenses to be issued. The statement claimed that the evidence before the Committee suggested that:

*"The South African banking system is controlled by a handful of clearing banks which ensured that every other local or international bank participating in the South African banking sector would need to go through these clearing banks in order to have their transaction cleared, thereby creating an oligopoly"*.

- 31.5. The establishment of a state bank of South Africa with a possible corporatisation of the post bank being considered as an option.
32. A copy of Minister Zwane's Statement, as it appeared as a formal notice on the Department of Mineral Resources' website, is already annexed hereto marked SB13.



33. On 2 September 2016 the Presidency issued a statement, a copy of which is annexed hereto marked "SB18". In it, the Presidency purported to repudiate the statement issued by Minister Zwane. Notwithstanding the comprehensive nature of the statement issued by the Department for Mineral Resources through Minister Zwane, the Presidency's statement was terse and simply recorded:

*"The statement issued by the Minister of Mineral Resources, Mr Mosebenzi Zwane yesterday on 1 September 2016, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms to close down their accounts and withdraw audit services from the company named Oakbay Investments, was issued in his personal capacity and not on behalf of the Task Team or Cabinet.*

*Minister Zwane is a member of the Task Team. He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet, the presidency or government. The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof are deeply regretted"*

34. What was lacking from the statement issued by the Presidency was a confirmation or otherwise on whether the Committee had discussed and made the recommendations contained in its statement to Cabinet. Furthermore, what is not



stated is whether or not as a matter of fact Cabinet considered and made the recommendations that are contained in Minister Zwane's Statement.

35. Following the Presidency's disassociation with Minister Zwane's Statement, which was allegedly unauthorised, the latter advised that the matter could only be decided once President Zuma had sufficiently applied his mind to it. A media article recording that fact is annexed hereto marked annexure "SB19". This is a further indication that Cabinet or at the very least some Cabinet Minister/s might have associated with the statement.
36. Annexed hereto marked "SB20" is a transcript of a portion of President Zuma's statements in Parliament on 23 November 2016. The President Zuma's quoted remarks were in response to a question by a Member of Parliament, Mr. Bantu Holomisa, about the status of the recommendation of a judicial commission of inquiry as referred to him by Minister Zwane allegedly at the request of the Cabinet.
37. President Zuma's replies in Parliament show that:
  - 37.1. President Zuma considered the banks' decision to close the Gupta entities' accounts as having been taken without due consideration (i.e. "willy-nilly");
  - 37.2. President Zuma, like Oakbay, the ANC NEC and the Committee believed that there may have been collusion between the banks and other financial

institutions in terminating their relationships with Oakbay;

37.3. Government will continue to "deal" with the banks' decisions to terminate the banking relationship with Oakbay and its related entities;

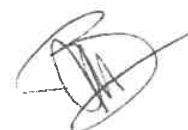
37.4. The contents of Minister Zwane's unauthorised statement were still being considered. This is despite President Zuma alleging that he reprimanded Minister Zwane for his unauthorised statement.

38. In other words, despite the Presidency's public rebuke President Zuma, with the acquiescence, if not support, of Cabinet or some members of Cabinet, subsequently in Parliament confirmed (1) the establishment of the Committee with a mandate to engage with the banks about the account closures and (2) the Committee's recommendations were still being considered.

### ***Concluding remarks***

39. The unlawful interventions set out in this statement can be summarised as follows:

39.1. Where Standard Bank has terminated its relationship with the Gupta entities in order to avoid contraventions of, and therefore in compliance with, legislation not any Minister or the Executive or any judicial commission of inquiry can lawfully direct that the terminated relationship be re-instated;



- 39.2. Judicial commissions of inquiry, generally, require there to be a matter of public concern to justify their establishment. If the Gupta entities had, through the Committee, persuaded President Zuma or the Cabinet to give consideration to establishing a judicial commission of inquiry into the termination of their banking relationships there are no issues of public concern that could justify interfering in a private contractual arrangement between Standard Bank and Oakbay (and its associated entities).
- 39.2.1. Firstly, any "collusion" as invoked by President Zuma would fall under the exclusive jurisdiction of the Competition Commission;
- 39.2.2. Secondly, in as much as reliance for establishing the Committee, as repeated by President Zuma, was placed upon alleged public concern about the impact on investor confidence that closing the Gupta accounts may have had, such reliance was misplaced and unjustified; if anything, Standard Bank's compliance with anti-money laundering and anti-corruption laws to an acceptable global standard was to the public's patent benefit as it would have enhanced rather than diminished South Africa's reputation as an investment destination and helped to avoid withdrawal by our banking industry's correspondent banks from their relationships with South African banks out of concerns about inadequate anti-corruption and anti-money laundering controls.



39.2.3.

Thirdly, it stands to reason that all banks in South Africa are bound by the same laws so when they all independently behave in the same way in order to comply with those same laws in response to widely publicised reports of illegal conduct on the part of common customers such behaviour cannot justify an inference of collusion or oppression of investors let alone be a matter of public concern.

40. The pressure brought to bear on Standard Bank, in the context described above and at the instance of Oakbay and its associated entities, is unprecedented, and to the best of my knowledge has not been experienced by it or any of the other members of SBG, in connection with or arising from a decision to terminate a banker-customer relationship, with any other of its erstwhile customers.

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a cursive flourish.

**Signatory**

13 August 2018



van der Merwe  
&  
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

"SBI"

Director / Direkteur:  
Gert van der Merwe (BLC, LLB)

Associate/Assosiat:  
Hanie Loots (LLB)

Assisted by / Bygestaan deur:  
Ilze van der Merwe (LLB)  
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05-12-2016

Standard Bank of SA

**URGENT**

By Fax: 011 636 6299  
Brian.Busse@standardbank.co.za  
David.Pike@standardbank.co.za

Dear Sirs,

**URGENT APPLICATION: OAKBAY GROUP OF COMPANIES /  
STANDARD BANK OF SA**

We refer to the abovementioned matter and wish to confirm that we act on behalf of the Oakbay group of companies.

It is common cause that Standard Bank (amongst others) decided to terminate their relationship with our clients.

We are of the considered view that the relationship between a bank and its client is contractually regulated and your bank is no stranger to litigation in this regard with specific reference to a recent matter in which you foreclosed on the account of a one Mr Bredenkamp.

In the aforesaid matter heard in the Appellate Division of the High Court, two specific issues were, *inter alia*, highlighted i.e. the fact that the bank had to properly consider its decision and, secondly, give reasonable notice of the closure of bank accounts.

The aforesaid must be read in context with very recent Constitutional Court authority on an obligation to negotiate in good faith and, of course, the obligation of the court's to promote the principles entrenched in the Constitution of our dear land.

It is no secret that the closure of bank accounts will have severe consequences for the business of companies within the Oakbay group and there has been a certain public outcry to persuade the bank to reconsider.

Our clients' representatives exhausted all efforts to meet with the bank in order to maintain Standard Bank as the primary banker on most of their accounts and, at least, the secondary banker on many others.

We got the impression that there seems to be uncertainty with Standard Bank as to the road ahead given the factual history of the correspondence and the meetings held thus far.

If necessary we will of course deal with the aforesaid in papers to be presented to court if necessary.

The purpose of this letter is to indicate that our firm instructions are:

1. Standard bank did not negotiate with our clients in good faith regarding closure of the accounts and did not exercise its discretion in an open, fair or reasonable manner. The aforesaid can be diluted to the fact that the bank did not properly consider closure of the accounts as alleged in the various notices.
2. Even if the bank duly considered the closure of the accounts our instruction is that the notice afforded to our client in order to obtain alternative banking facilities is insufficient and unreasonable given the context and circumstances. We will of course deal with this in the papers but we submit that the closure of the bank accounts on 6 June 2016 is totally unreasonable.

As a result of the aforesaid our instruction is to request you to, firstly, consent to keeping our clients' accounts open and active pending the finalisation of an action and/or application to be issued from the High Court of Pretoria (alternatively the Competition

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Commission determining a formal complaint in this regard) same to be issued/lodged within 60(sixty) days from date of this letter.

Our clients' request is not unreasonable given the circumstances. Some of our clients maintained a relationship with Standard Bank for more than 15(fifteen) years and in light thereof we submit that the sudden and unwarranted action to which our clients are subjected remains unreasonable.

We must, unfortunately, request you to ensure that we receive your formal feedback by 12h00 on 24 May 2016 in absence whereof we hold instruction to proceed with an urgent application to interdict Standard Bank from closing our clients' accounts until the dispute has been resolved.

We have mentioned and we now repeat the fact that the closure of accounts will have disastrous effects for our clients, the suppliers, contractors and of course their employees. There is no reason why you should not consider the severe adverse consequences when taking a decision on this reasonable request.

Kindest regards.

**Gert van der Merwe**  
**VAN DER MERWE & ASSOCIATES**

Handwritten signature and initials, including a large stylized 'G' and 'M' and several smaller scribbles.



JB2  
OAKBAY  
INVESTMENTS (PTY) LTD.

27 May 2016

Brian Busse  
Standard Bank  
Rosebank

Dear Brian

Our telephonic conversation today refers. It is clear from the conversation that much of the cordiality which existed hitherto seems to have been lost. I gather that our notice of intention to undertake legal action may have altered your stance.

I wish to place on record that our primary objective has always been to continue our banking relationships with yourself.

The notice of legal proceedings was sent in error, and it was never our intention to open a legal channel until our commercial discussions had been exhausted. It remains my view that we have some way to go to exhaust those discussions.

I apologise for this letter being sent and urge you to reconsider your position so that we may work towards finding a solution that leads to the continued banking partnership as well as the most important issue of saving the 7500 jobs.

In this regard, we would like to advise that we unconditionally retract the notice of legal proceedings served on yourself, and welcome the consensus view that we continue speaking on Monday.

Yours sincerely

Nazeem Hova  
Chief Executive  
Oakbay Investments

Handwritten signature and initials in the bottom right corner of the page.

"SB3"

OAKBAY

24<sup>th</sup> 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 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 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 stand by 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



SB4

mobile classroom system is in place to allow 'topnotch' pupils to continue their education. The State Education Department will intervene only once the factors ceased.

The area was driven into crisis after residents had to court appeal by the state.

It is believed that the state will not be able to maintain the area.

At least one of the state's main highways for the province is in a state of disrepair.

The state's main highway is in a state of disrepair.

Midwest, Jersey, and Michigan State are also cooperative.

Government, Michigan, and Michigan State are also cooperative.

Government, Michigan, and Michigan State are also cooperative.

There are a lot of motives behind it.

Hope country is talking to.

black to flames. Two girls, who said they were in grade 11, said they came running out of the scene. They are burning all our schools - one school. This is not

Continued on Page 2

**OAKBAY**  
INVESTMENTS (PTY) LTD.

[oakbayinvestments.co.za](http://oakbayinvestments.co.za)

**MARIA RAMOS**  
CHIEF EXECUTIVE OFFICER  
ARSA

**JACQUES CELLERS**  
CHIEF FINANCIAL OFFICER  
PMB

**BEN KRUGER**  
CHIEF SECURITY OFFICER  
STANDART BANK

**MICHAEL BROWN**  
CHIEF COMPLAINTS OFFICER  
STANDART BANK

# THE LIVELIHOODS OF OAKBAYS 7,500 EMPLOYEES AND DEPENDENTS ARE IN YOUR HANDS

Do the right thing and restore banking services to Oakbay

"SB5"

**OAKBAY**  
INVESTMENTS (PTY) LTD.

Dear all,

I wanted to take the time to update you all on some important decisions that were made yesterday. Decisions that were made with your best interests at heart.

To this end, it is with deep regret, that following a period of sustained political attack on the Gupta family and our businesses, and by extension, you our employees, we have come to the conclusion that it is time for the Gupta family to step down from all executive and non-executive positions. In doing this, the family hope to end the campaign against Oakbay and save all of our jobs.

This follows the unexplained decisions by several of our banking partners and our auditors to cease working with us, and the continued press coverage of false allegations.

Oakbay's current executive committee and the CEOs of each of the businesses will continue to oversee the day to day management and running of the business and all portfolio companies going forward.

The closure of our bank accounts has made it virtually impossible to continue to do business in South Africa. Without bank accounts we may find ourselves in a position where we are unable to pay you, our valued employees. We are doing everything in our power to ensure this does not happen. We find it totally unacceptable that you, our employees, and your families could potentially have to suffer as a result of the political campaign against us.

To this end we have been in direct contact with the Ministries of Labour, Finance, Mineral Resources and the Office of the President to express deep disappointment over the decisions of our banking partners and to make it very clear that livelihoods are at risk if we are unable to restore these important banking relationships.

We are confident that through the family's decision to distance themselves from the business banking relationships will soon be restored, salaries will be paid and business will continue as normal. The success of our business is down to all of your hard work. We need to remain strong as a team during this difficult time. We have every confidence that normalcy will soon be restored.

Nazeem Howa

*Nazeem Howa*  
CEO, Oakbay Investments

*Mr*  
*[Handwritten initials]*

"SBC"

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 'Respect Parliament' says Zuma after SABC chair Mavuso's no-show (<http://www.timeslive.co.za/news/2016/12/09/ezekiel-2016-12-09/ezekiel-parliament-2016-12-09/ezekiel-2016-12-09>)  
 says Zuma after SABC chair Mavuso's no-show



<http://www.timeslive.co.za/2016/12/07/calling-all-matrix-stain-your-face-and-you-could-win-R5000>

Calling all matrix: claim your fame and you could win R5,000 (<http://www.timeslive.co.za/local/2016/12/07/calling-all-matrix-stain-your-face-and-you-could-win-R5000>)

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<http://www.timeslive.co.za/local/2016/04/06/ezekiel-2016-04-06/ezekiel-2016-04-06/ezekiel-2016-04-06>  
**EXCLUSIVE: Oakbay calls on Zuma and Cabinet ministers for help in leaked letter**  
 TMG Digital | 2016-04-08 14:40:42.0



Handwritten signatures and initials.

Nazeem Howa and Atul Gupta, File photo.  
Image by: Gaflo Images / City Press / Lucky Niyemalo

President Jacob Zuma as well as three Cabinet ministers have been contacted by the Oakbay company over the closure of its bank accounts.

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This follows reports of the company being abandoned by Absa and FNB banks and the withdrawal of its auditors, KPMG, and its stock exchange sponsor, Sasfin.

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[Guptas and Zuma see reason from Oakbay company \(http://www.timeslive.co.za/.../Guptas-and-Zuma-see-reason-from-Oakbay-company/\)](#)

On Friday, Oakbay Resources and Energy announced in a statement to the Stock Exchange News Service that non-executive chairman Atul Gupta and chief executive officer Varun Gupta have resigned "with immediate effect".

President Zuma's son, Duduzane Zuma, has also quit as non-executive director of Shiva Uranium, a major subsidiary of the company.

[Why state capture is a regressive step for any society \(http://www.timeslive.co.za/.../Why-state-capture-is-a-regressive-step-for-any-society/\)](#)

Oakbay is at the centre of the "Guptagate" storm over the president's close association with the Gupta family, who have been exposed for "interviewing" for positions in Zuma's cabinet. Oakbay Investments is the holding company for several Gupta-related subsidiaries.

In a letter to staff, leaked to the media on Friday, Oakbay Investments CEO Nazeem Howa states: "It is with deep regret, that following a period of sustained political attack on the Gupta family and our businesses, and by extension, you our employees, we have come to the conclusion that it is time for the Gupta family to step down from all executive and non-executive positions. In doing this, the family hope to end the campaign against Oakbay and save all of our jobs."

He wrote: "The closure of our bank accounts has made it virtually impossible to continue to do business in South Africa.

"Without bank accounts we may find ourselves in a position where we are unable to pay you, our valued employees. We are doing everything in our power to ensure this does not happen. We find it totally unacceptable that you, our employees, and your families could potentially have to suffer as a result of the political campaign against us.

"To this end we have been in direct contact with the ministries of labour, finance, mineral resources and the Office of the President to express deep disappointment over the decisions of our banking partners and to make it very clear that livelihoods are at risk if we are unable to restore these important banking relationships.

"We are confident that through the family's decision to distance themselves from the business banking relationships will soon be restored, salaries will be paid and business will continue as normal."

Howa said Oakbay's current executive committee and the CEOs of each of the businesses would continue to oversee the day-to-day management and running of the business and all portfolio companies.

"We need to remain strong as a team during this difficult time. We have every confidence that normalcy will soon be restored."

[READ THE FULL LETTER HERE \(http://www.timeslive.co.za/.../ST/01/01/OakbayLetter.pdf\)](#)

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"SB7"

## OAKBAY

Office of the President  
The Presidency of the Republic of South Africa  
Union Buildings  
Private Bag X1000,  
Pretoria.  
0001

Oakbay Investments  
144 Katherine Street  
Sandton 2031

8<sup>th</sup> April 2016

Your Excellency Mr President.

RE: 7,500 POTENTIAL JOB LOSSES AT OAKDAY 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 ABISA, 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.

QMM  




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.

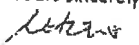
By doing so, they hope to end the political campaign against Oakbay.

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



"588"

## OAKBAY

Minister's Office  
 Department of Mineral Resources  
 Trevenna Campus  
 Building 2 C  
 170 Meinjes and Francis Haard Street  
 (Formerly Schoeman Street)  
 Sunnyside

Oakbay Investments  
 144 Katherine Street  
 Sandton 2031

8<sup>th</sup> April 2016

Dear Mr. Moschenzi Joseph Zwane.

**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.

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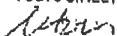
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I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Minister of Finance with the political responsibility to govern the financial sector to end the deadly stranglehold the banks have placed on our businesses. If you have any questions, please do not hesitate to contact me.

Yours sincerely



Nazeem Howa

CEO, Oakbay Investments



"SB9"  
**OAKBAY**  
 INVESTMENTS & PORTFOLIO COMPANIES

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

Oakbay Investments  
 144 Katherine Street  
 Sandton 2031

8<sup>th</sup> 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.

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ⓔ

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



DD IV

## OAKBAY

Minister's Office  
Department of Labour  
Room 1207, 12th Floor,  
120 Plein Street,  
Cape Town

Oakbay Investments  
144 Katherine Street  
Sandton 2031

8<sup>th</sup> April 2016

Dear Ms. Nelisiwe Mildred Oliphant,

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.

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QMA  


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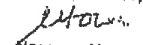
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I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs.

We are seeking your help as Minister of Finance with the political responsibility to govern the financial sector to end the deadly stranglehold the banks have placed on our businesses. If you have any questions, please do not hesitate to contact me.

Yours sincerely

  
Nazeem Howa  
CEO, Oakbay Investments



0011

OAKBAY

8<sup>th</sup> April 2016

Mr Cwede Mantashe  
 Secretary General  
 African National Congress  
 Luthuli House  
 Johannesburg

Dear SG,

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

I wanted to request some time from you for Mr Moegsien Williams and myself to address the national officials on Monday to share with you our huge concerns 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 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.

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QMH



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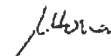
By doing so, they hope to end the political campaign against Oakbay.

As the CFO 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. We would like some times with the leadership of the ruling party to seek advice and assistance to avoid this eventuality.

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

Yours sincerely

  
Nazeem Howa  
CEO, Oakbay Investments

Q M H



"SB 12"



Office of the Chief Executive

Mr Gwede Mantashe  
Secretary General  
African National Congress

Per e-mail: [mmavata@anc.org.za](mailto:mmavata@anc.org.za)

22 April 2016

Dear Mr Mantashe

**Re: Standard Bank and ANC meeting : 21 April 2016**

On behalf of Standard Bank I thank you and your colleagues for our cordial and constructive meeting at Luthuli House on 21 April 2016 and hope you will find this note summarizing what we conveyed to you to be useful.

I confirm that you made it clear that the meeting was requested by the ANC not for the purpose of discussing Standard Bank's relationship with any particular customer(s) but rather to enable the ANC to obtain from Standard Bank -

- (a) a better understanding of the process and criteria applied by Standard Bank in entering into and terminating banking relationships with its customers, especially when politically exposed persons ("PEPs") are involved;
- (b) Standard Bank's response to the perception in some quarters that the banks are using their ability to terminate banking relationships to exercise the power of "white monopoly capital" against black businesses to a degree that should concern policy makers;
- (c) its response to the perception that the four large banks are colluding / acting in concert in withdrawing banking services from a common customer.

In summary, Standard Bank responded with the following answers/submissions:

- (a) The relationship between a bank and its customer is typically established by an indefinite contract and, as is typically the case in all indefinite contracts, can be unilaterally terminated by either party on notice. As was confirmed in the Bredenkamp v Standard Bank Appeal Court judgement, a bank is not obliged to give any reasons should it be the terminating party. More important than the contract terms is the implicit requirement of reciprocal trust between banker and customer, one manifestation being the legal obligation on banks to keep secret the private information of their customers that comes into the banks' possession through the banking relationship. When that trust is lost the relationship needs to be terminated.

Standard Bank Centre 9<sup>th</sup> Floor 5 Simmonds Street Johannesburg 2001  
PO Box 7725 Johannesburg South Africa [www.standardbank.co.za](http://www.standardbank.co.za)  
Tel. Switchboard: +27 (0)11 636 9112 Fax: +27 (0)11 636 4207

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ANA Petralside co-## SP Rufey\* MJD Ruck PD Sullivan### BS Tshabalala EM Woods  
Company Secretary: Z Stephen \*Executive Director #British ##Kenyan ###Nigerian ####Australian 01/01/2016





- (b) Banking is governed by at least 210 different statutes and is highly regulated. This is not a complaint but rather an affirmation that Standard Bank is aware of its legal responsibilities and regards the existence and application of such laws as a major contributor to South Africa's financial sector being ranked within the top 10 globally for safety and soundness.
- (c) The statutes most relevant to the commencement and termination of banking relationships are the Financial Intelligence Centre Act ("FICA") and the Prevention and Combatting of Corrupt Activities Act ("PCCAA").
- (d) FICA obliges all financial institutions to (i) undertake KYC (Know Your Client) procedures before establishing any new relationship with a customer, (ii) undertake enhanced due diligence if the KYC indicates that any PEPs (Politically Exposed Persons) have influence over the customer, (iii) monitor every customer's transactions to understand the source and application of all funds and (iv) report any suspicious transactions by customers to the Financial Intelligence Centre ("FIC").
- (e) Failure to report a suspicious transaction to the FIC is a criminal offence subject to a R10 million fine or 15 years' imprisonment.
- (f) Disclosure to any person that a suspicious transaction report has been made to the FIC is a criminal offence subject to a R10 million fine or 15 years' imprisonment.
- (g) As regards the PCCAA, for ease of reference I will deliver a copy of the Act with this letter. You will see that it contains multiple categories of corruption and in Section 20 creates the offence of dealing in property or using property known or suspected to be part of any "gratification" which is the subject of a corruption offence.
- (h) The best and most logical way for a bank to avoid criminal prosecution under FICA for failing to report any suspicious transaction and/or criminal prosecution under PCCAA for dealing in property that the bank ought to suspect is tainted by a corrupt activity is to simply not have any dealings with persons who foreseeably could be or become involved in suspicious transactions generally and corrupt activities in particular.
- (i) Standard Bank expends in excess of R500 million per annum and employs in excess of 400 compliance officers in order to ensure that it has the systems and controls necessary to comply with the law generally and its obligations under FICA to detect and report transactions suspected to be related to criminality including money-laundering, terrorism financing, economic sanctions and corruption.

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 PO Box 7725 Johannesburg South Africa [www.standardbank.co.za](http://www.standardbank.co.za)  
 Tel. Switchboard: +27 (0)11 636 9112 Fax: +27 (0)11 636 4207

Standard Bank Group Limited (Reg. No. 156901712806)

Directors: TS Gcabashe (Chairman) Shu Gu\* (Deputy Chairman) RMW Durne# BJ Kruger\* (Chief Executive) Adv KD Moroka Dr. Mt. Oduor-Otieno##  
 AC Parker ANA Peterside coo### SP Ridley\* MJD Ruck PD Sullivan#### BS Tshabalala SK Tshabalala\* (Chief Executive) Wenbin Wang\* EM Woods  
 Group Secretary: Z Stoshen \*Executive Director \*Chinese #British ##Kenyan ###Nigerian ####Australian 01/01/2016





- (j) To illustrate the gravity of the risks that it faces Standard Bank disclosed that it had in recent times been cautioned by the USA government against its funding of a customer with a subsidiary in Iran because that subsidiary was associated with Iran's nuclear program and this could result in Standard Bank itself being subjected to economic sanctions.
- (k) Standard Bank also referred to the fact that its group had been investigated by the USA's Department of Justice (for possible bribery of a foreign public official in contravention of the USA's Foreign Corrupt Practices Act) and by the UK's Serious Fraud Office (for possible contravention of the UK's Bribery Act in failing to prevent bribery of a foreign public official) arising from Standard Bank's Tanzania subsidiary having engaged a local company partly owned by PEPs to assist in securing government business. After a 3 year struggle Standard Bank settled those investigations by paying fines and penalties of US\$38 million to the governments of Tanzania, USA and UK whilst acknowledging that the settlement could be set aside and prosecutions could follow should evidence emerge of any other possible involvement in corrupt activities within the Standard Bank group.
- (l) Standard Bank pointed out that the definitions of corruption contained in the PCCAA are no different to those used in the USA and UK and therefore Standard Bank has, in essence, been put on probation by the USA and UK governments and is compelled to be extra vigilant in its dealings with existing and potential customers who might expose Standard Bank to the risk of being associated with corrupt activities. In this regard Standard Bank opined that, hypothetically, an offer to a public officer to secure his / her promotion in exchange for favours would be an act of corruption as defined in the PCCAA.
- (m) South Africa has a relatively small but open economy that is reliant for its very survival upon international capital and currency flows. If the governments of the UK or USA were to conclude that economic sanctions would be a more effective deterrent than criminal prosecution for perceived repeat offending on Standard Bank's part that could be catastrophic for Standard Bank and South Africa. Standard Bank for its own sake and that of our country simply cannot risk any exposure, direct or indirect, to possibly corrupt activities.
- (n) In response to a concern expressed on behalf of the ANC about a perception that race or political affiliation plays a role in Standard Bank's decisions to retain or terminate a relationship, Standard Bank responded that there is no basis for that perception. Standard Bank is committed to transformation, inclusive growth and treating all customers fairly and subjects all existing and prospective customers to the same objective standards for KYC and enhanced due diligence purposes. Standard Bank does not lightly decide to terminate a relationship as evidenced by the fact that so far in 2016 it has terminated just 52 out of its ~11 million customer relationships; the decision was in each case taken by a competent committee applying objective criteria.
- (o) Standard Bank does not decline a customer relationship simply on the grounds that a PEP is involved; for an adverse decision by Standard Bank it must be satisfied that the PEP is in a position to facilitate suspicious transactions and there is a possibility that he/she could do so.

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Standard Bank Group Limited (Reg. No. 1969/017128/06)

Directors: TS Geabeshe (Chairman) Shu Gu\*\* (Deputy Chairman) RNW Durrne# BJ Kruger\* (Chief Executive) Adv KD Moroka Dr. ML Oduor-Otieno##  
 AC Parker ANA Peterside coo### SP Ridley\* MJD Ruck PD Sullivan### BS Tshabalala SK Tshabalala\* (Chief Executive) Wenbin Wang\*\* EM Woods  
 Group Secretary: Z Stephen \*Executive Director \*\*Chinese #British ##Korean ###Nepali ####Austrian 01/01/2016



- (p) In response to a concern expressed on behalf of the ANC, Standard Bank gave an assurance that it has not colluded or acted in concert with any other bank or banks in its decision to terminate a customer relationship; such would be both unethical and unlawful (in terms of the Competition Act).
- (q) In response to a concern expressed on behalf of the ANC that the stringent requirements of FICA are forcing the dishonest into cash transactions outside of the banking system, Standard Bank conceded that to be the case but opined that cash only transactions are restrictive for the parties to them and cannot occur across national borders whereas millions of new (honest) participants have benefited from entering the financial system since 1994.

In closing may I re-iterate that we are willing to share the above with a wider audience if you so request. I also should re-iterate that we readily agreed to meet with you because we believe in open and honest engagements with all participants in our economy and especially with those that have influence over the policies, laws and practices that affect us.

If I have not summarized the meeting correctly please let me know.

Yours sincerely

**Sim Tshabalala**  
Group Chief Executive

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AC Parker ANA Peterside c:### SP Rodley\* MJD Ruck PD Sullivan### BS Tshabalala SK Tshabalala\* (Chief Executive) Werbin Wang\*\* EN Woods  
Group Secretary: Z Stephen \*Executive Director \*\*Chinese #Brieth ##Kenyan ###Nigerian ####Australia 01/01/2016





"SB13"

Media Statement  
To all media  
1 September 2016

**STATEMENT OF THE CHAIRPERSON OF THE INTER-MINISTERIAL COMMITTEE SET UP BY CABINET TO CONSIDER THE IMPLICATIONS OF THE DECISIONS OF CERTAIN BANKS AND AUDIT FIRMS TO CLOSE THE ACCOUNTS OF AND/OR WITHDRAW AUDITING SERVICES FROM OAKBAY INVESTMENTS**

On 13 April 2016, Cabinet established an Inter-Ministerial Committee (IMC) to consider allegations that certain banks and other financial institutions acted unilaterally and allegedly in collusion, when they closed bank accounts and/or terminated contractual relationships with Oakbay Investments. The IMC was chaired by myself as the Minister of Mineral Resources.

The situation warranted close scrutiny by Government because of the impact that the actions would have, not only on job losses for 7500 South Africans but also the impact that it would have on investor confidence.

The IMC conducted a number of meetings with various banks, financial institutions and insurance companies as well as with representatives of Oakbay Investments. Although the Minister of Finance was a member of the constituted IMC, he did not participate in its meetings.

A Report of recommendations was tabled at Cabinet. After discussion of the Report, Cabinet has now resolved as follows:-

- a. To recommend to the President that given the nature of the allegations and the responses received, that the President consider establishing a Judicial Enquiry in terms of section 84(2)(f) of the Constitution;
- b. To consider the current mandates of the Banking Tribunal and the Banking Ombudsman. Evidence presented to the IMC indicated that all of the actions taken by the banks and financial institutions were as a result of innuendo and potentially reckless media statements, and as a South African company, Oakbay had very little recourse to the law. Looking into these mandates and strengthening them would go a long way in ensuring that should any other South African company

A handwritten signature in black ink, appearing to be 'M. M. M.', located at the bottom right of the page.

find itself in a similar situation, it could enjoy equal protection of the law, through urgent and immediate processes being available to it as it required by the Constitution;

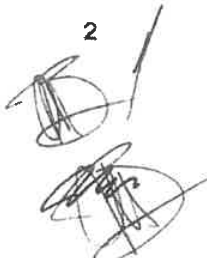
- c. To consider the current Financial Intelligence Centre Act and the Prevention of Combatting of Corrupt Activities Act regarding the relevant reporting structures set out therein as evidence presented to the IMC was unclear on whether the various banks and financial institutions as well as the Reserve Bank and Treasury complied with these and other pieces of legislation. The IMC was also briefly ceased with the implications of legal action against any of these entities and the potential impact that would have on the volatility of the Rand as well as the measures that could be put in place to protect the economy. This was not something that fell within the mandate of the IMC and should therefore be considered by the Judicial Enquiry;
- d. To re-consider South Africa's clearing bank provisions to allow for new banking licences to be issued and insodoing, to create a free market economy. The IMC was presented with evidence suggesting that the South African banking system is controlled by a handful of clearing banks which ensured that every other local or international bank participating in the South African banking sector would need to go through these clearing banks in order to have their transactions cleared, thereby creating an oligopoly. Evidence was also presented that these institutions may have placed undue pressure on banks that sought to assist the company by subjecting them to unwarranted auditing processes. It is unclear why the Reserve Bank will not issue new banking licences to other banks and this would need to be given careful attention by the Judicial Enquiry as it did not fall within the purview of the IMC; and
- e. The establishment of a State Bank of South Africa with the possible corporatisation of the Post Bank being considered as an option. Evidence presented to the IMC suggested that all of South Africa's economic power vests in the hands of very specific institutions, institutions who have shown that their ability to act unilaterally is within their mandate and is protected. These institutions are owned by private shareholders and report to National Treasury who in turn do not need to act on information provided to it.

It was further agreed that the IMC would monitor the process of finalising these matters and would report-back to Cabinet on their progress.

For further media enquiries, kindly contact Mr Martin Madlala on 0635054199 [Martin.Madlala@dmr.gov.za](mailto:Martin.Madlala@dmr.gov.za)

Ends-

Issued by the Department of Mineral Resources

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MINISTER: FINANCE  
REPUBLIC OF SOUTH AFRICA

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PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2834

Mr MJ Zwane  
Minister of Mineral Resources  
Private Bag X59  
PRETORIA  
0001

Dear Minister Zwane

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

I refer to your letter dated 20 April 2016, emailed to my office at 11h48am on 22 April 2016.

As you are aware, I was not present at the Cabinet meeting you refer to but I have consulted the Cabinet Secretariat on the matter.

The following emerges:

1. The Cabinet meeting was on the 13<sup>th</sup> April 2016 – not 16<sup>th</sup> April 2016 which was a Saturday.
2. No Inter-Ministerial Committee was established.
3. Three Ministers were nominated: Finance, Labour and Mineral Resources.
4. No one Minister was designated as convenor.
5. The financial services sector is not "already distressed" as your letter indicates, and care must be taken not to compromise financial stability.

Whilst I appreciate the urgency of the matter for some, I must emphasise that the legal and regulatory environment has both global (BASEL III, Financial Action Task Force) and local (SA Reserve Bank; Financial Services Board; Financial Intelligence Centre; National Consumer Commission; etc) regulators and regulations.

I am currently seeking legal advice on what could be done in the present circumstances, given the intensive legislative framework we have governing the financial sector.


In the circumstances, it will be advisable for the three Ministers to first consult on the framework for any discussion with financial institutions. I prefer that this takes place on the



margins of the Cabinet meeting of the 26<sup>th</sup> April 2016. You might also be aware that discussions of the nature envisaged have already taken place elsewhere.

Accordingly, I look forward to discussing the way forward next Tuesday.

Kind regards

  
**PRAVIN J GORDHAN, MP**  
**MINISTER OF FINANCE**  
Date: 22 - 4 - 2016

cc. Ms MN Oliphant, MP  
Minister of Labour



"SB16"

Hansa, Ayesha A

Subject:

FW: Inter-Ministerial Committee

From: Tshabalala, Sim S (CEO)  
 Sent: 04 May 2016 06:07 PM  
 To: 'Zarina.Kellerman@dmr.gov.za'  
 Co: Kruger, Ben B  
 Subject: FW: Inter-Ministerial Committee

Dear Ms Kellerman

Ben Kruger is in London this week and therefore has referred your invitation to meet with the IMC to me. In my capacity as CEO of The Standard Bank of South Africa Limited I am in any event qualified to engage with the Ministers on the matters that you mention. I am available, together with one of our subject matter experts, to meet with the Ministers at 11h30 tomorrow subject of course to the venue being identified and accessible. As a minor correction, please note that Standard Bank has made no public statements with regards to the closing of bank accounts and/or termination of relationships beyond acknowledging receipt of a memorandum from workers last week.

I trust that this is in order.

Yours sincerely

Sim Tshabalala | Chief Executive Officer | Standard Bank Group | 9th Floor, Executive Entrance, 5 Simmonds Street, Johannesburg, 2001 | Tel +27 11 636 1820 | [sim.tshabalala@standardbank.co.za](mailto:sim.tshabalala@standardbank.co.za)

From: Zarina Kellerman <[Zarina.Kellerman@dmr.gov.za](mailto:Zarina.Kellerman@dmr.gov.za)>  
 Date: 04 May 2016 at 11:11:16 AM SAST  
 To: Nicoll, Susan SR <[Susan.Nicoll@standardbank.co.za](mailto:Susan.Nicoll@standardbank.co.za)>, Kruger, Ben B <[Ben.kruger@standardbank.co.za](mailto:Ben.kruger@standardbank.co.za)>  
 Subject: Inter-Ministerial Committee

Dear Sir

I write to you on behalf of the Inter-Ministerial Committee set up by Cabinet to look into certain allegations made against certain financial institutions ("the IMC"). The IMC consists of the Ministers of Mineral Resources, Finance, Labour and Communications.

I have been requested to make contact with Mr Kruger alternatively a suitable alternative with requisite authority, and request that he please make himself available for a discussion with the IMC on Thursday, 05 May 2016 at 11h30-12h00. There is no set agenda for the discussion but, I am advised, is anticipated to be a discussion to gain clarity on the current media reports and public statements made by Standard Bank with regards to the closing of bank accounts and/or termination of relationships. Should Mr. Kruger not be available in person, a teleconference call could certainly be accommodated.

Should the allotted time not be suitable, we will attempt to accommodate you accordingly. Given the nature of the matter and the sensitivities involved, the IMC apologises for the late notice but would certainly appreciate the engagement.

Should Mr Kruger not be willing to participate, please advise me accordingly so that I may indicate same to the IMC.

I look forward to your response.

Sincerely

Zarina Kellerman

093 960 9188

012 444 3400

Secretary to the IMC

Handwritten signature and initials in the bottom right corner of the page.

"SB 16"

**Hansa, Ayesha A.****Subject:**  
**Attachments:**FYI: Standard Bank and IMC meeting 05 May 2016  
IMG\_1487.jpg; Adv Kelleman IMC May 2016.pdf**From:** Tshabalala, Sim S (CEO)  
**Sent:** 06 May 2016 04:36 PM  
**To:** [zafina.kelleman@dmr.gov.za](mailto:zafina.kelleman@dmr.gov.za)  
**Subject:** Standard Bank and IMC meeting 05 May 2016

Afternoon Advocate Kelleman

Please find the attached documentation for the attention of Ministers Zwane and Oliphant.

Regards

Sim

Sim Tshabalala, Chief Executive - Standard Bank Group | 5 Simons Street, 9<sup>th</sup> floor | Johannesburg | Tel: +27 11 411 1130  
1810 | Fax: 011 2027 296 | [Sim.Tshabalala@standardbank.co.za](mailto:Sim.Tshabalala@standardbank.co.za)



Office of the Group CEO

The Inter-Ministerial Committee  
c/o Advocate Zerina Kelleman  
Secretariat to the IMC

Per e-mail: Zerina.Kelleman@dmr.gov.za

6 May 2016

Dear Ministers

Re: Standard Bank and IMC meeting: 05 May 2016

On behalf of Standard Bank I convey our sincere appreciation to Ministers Zwane and Ollphant for our cordial and constructive meeting with them and their advisers on 5 May 2016 in the DMR offices. Whilst we observed the secretary taking notes during the meeting we consider that it could be helpful, because of the technical nature of the information orally presented, if we set out below a summary of the submissions made and responses given by Standard Bank during the meeting.

I confirm that on behalf of the IMC it was made clear that the meeting was requested by the IMC not for the purpose of discussing Standard Bank's relationship with any particular customer(s) or to further the interests of the Oakbay/Gupta entities but rather to enable the IMC to obtain from Standard Bank -

- (a) a better understanding of the processes and criteria applied by Standard Bank in entering into and terminating banking relationships with its customers, especially when politically exposed persons ("PEPs") are involved;
- (b) its response to the perception that banks are not treating customers fairly by closing bank accounts without giving any reasons and/or apparently without regard to the negative consequences for the employees of the customers concerned;
- (c) its response to the perception that the four large banks are colluding / acting in concert in withdrawing banking services from a common customer;
- (d) most importantly, an indication as to whether anything could be done to save the jobs of 16,000 employees plus 80,000 dependants of the Oakbay / Gupta group that are claimed ("claimed" because the number does not accord with the attached advertisement by Oakbay that sets the

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Standard Bank Group Limited  
Incorporated in South Africa  
Standard Bank Group Limited is a member of the Standard Bank Group, which is a financial institution.  
Standard Bank Group Limited is a member of the Standard Bank Group, which is a financial institution.  
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number of employees plus dependants (at 7,500) to be at risk due to the four banks having withdrawn transactional banking services to that group.

The IMC also assured us that we could speak freely in the meeting because nothing said would be repeated outside of the meeting except in Cabinet to whom the IMC must report.

Standard Bank's submissions and responses can, in no particular order of importance, be summarised as follows:

- (a) The relationship between a bank and its customer is typically established by an indefinite contract and, as is typically the case in all indefinite contracts, can be unilaterally terminated by either party on notice. As was confirmed in the *Bradenkamp v Standard Bank* Appeal Court judgement, a bank is not obliged to give any reasons should it be the terminating party. In terms of the Financial Intelligence Centre Act a bank is prohibited from giving any reason at all if termination results from suspicious transaction reporting as more fully explained below.
- (b) The law imposes the requirement of reciprocal trust between banker and customer, one manifestation being the legal obligation on banks to keep secret the private information of their customers that comes into the banks' possession through the banking relationship. When that trust is lost the relationship cannot be maintained.
- (c) The Code of Banking Practice states that banks 'will treat all your [the client's] personal information as private and confidential, and, as a general rule, we will not disclose any personal information about you or your accounts except when required to do so by law, or with your consent, or when we are pursuing our right to the repayment of debt.' In obedience to this principle, Standard Bank has at no time confirmed or denied in the media that we have ever operated or closed accounts belonging to Oakbay/the Guptas. Over the period from 6 April 2016 to 5 May 2016, 2766 media items were published in South Africa on the Oakbay's complaints about banks. Of these, Standard Bank was mentioned in 511 items. Our stance throughout has been completely consistent with our original statement on this matter, which I quote: 'Standard Bank does not comment on its relationship with customers or potential customers to protect client confidentiality. As such Standard Bank can neither confirm nor deny that it has business relationships and dealings with Oakbay.'
- (d) To the extent that the details of any relationship between Standard Bank and Oakbay have become public, this is entirely because representatives of Oakbay have chosen to comment in the media about this matter. Before discussing elements of the relationship between Standard Bank and Oakbay, we were constrained to assume that duly authorised representatives of Oakbay/the Guptas had consented to your discussing Oakbay/Gupta related banking matters with Standard Bank.
- (e) Banking is governed by at least 210 different statutes and is highly regulated. This is not a complaint but rather an affirmation that Standard Bank is aware of its legal responsibilities and regards the existence and application of such laws as a major contributor to the soundness of South Africa's financial sector.
- (f) The statutes most relevant to the commencement and termination of banking relationships are the Financial Intelligence Centre Act ("FICA"), Prevention and Combating of Corrupt Activities Act ("PCCAA") and Prevention of Organised Crime Act ("POCA").
- (g) FICA obliges all financial institutions to (i) undertake KYC ("Know Your Client") procedures before establishing any new relationship with a customer, (ii) undertake enhanced due diligence if the

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- KYC indicates that any PEPs ("Politically Exposed Persons") have influence over the customer, (iii) monitor every customer's transactions to understand the source and application of all funds and (iv) report any suspicious transactions by customers to the Financial Intelligence Centre ("FIC").
- (h) Failure to report a suspicious transaction to the FIC is a criminal offence subject to a R10 million fine or 15 years' imprisonment.
- (i) Disclosure to any person that a suspicious transaction report has been made to the FIC is itself a criminal offence subject to a R10 million fine or 15 years' imprisonment.
- (j) As regards the PCCAA, you will see that it contains multiple categories of corruption and in Section 20 creates the offence of dealing in property or using property known or suspected to be part of any "gratification" which is the subject of a corruption offence.
- (k) The best and most logical way for a bank to avoid criminal prosecution under FICA (for failing to report any suspicious transaction and/or criminal prosecution under PCCAA or POCA for dealing in property that the bank ought to suspect is tainted by a corrupt activity) is to simply not have any dealings with persons who foreseeably could be or become involved in suspicious transactions generally and corrupt activities in particular.
- (l) Standard Bank spends in excess of R600 million per annum and employs in excess of 400 compliance officers in order to ensure that it has the systems and controls necessary to comply with its statutory obligations under FICA to detect and report transactions suspected to be related to criminality including money laundering, terrorism financing, economic sanctions and corruption.
- (m) To illustrate the gravity of the risks that it faces Standard Bank referred to the fact that its group had been investigated by the USA's Department of Justice (for possible contravention of the USA's Foreign Corrupt Practices Act) and by the UK's Serious Fraud Office (for possible contravention of the UK's Bribery Act) arising from Standard Bank's Tanzania subsidiary having engaged a local company partly owned by REPs to assist in securing government business. After a 3-year struggle Standard Bank settled those investigations by paying fines and penalties of US\$38 million to the governments of Tanzania, USA and UK whilst acknowledging that the settlement could be set aside and prosecutions could follow should evidence emerge of any other possible involvement in corrupt activities within the Standard Bank group.
- (n) Standard Bank pointed out that the definitions of corruption contained in the PCCAA are not materially different to those used in the USA and UK and therefore Standard Bank has, in essence, been put on probation by the USA and UK governments and is compelled to be extra vigilant in its dealings with existing and potential customers who might expose Standard Bank to the risk of being associated with corrupt activities. In this regard Standard Bank opined that, hypothetically, an offer to a public officer to secure his/her promotion in exchange for favours would be an act of corruption in the USA, UK and SA (as defined in the PCCAA).
- (o) South Africa has a relatively small but open economy that is reliant for its survival upon international capital and currency flows. If the government of the UK or USA were to conclude that economic sanctions would be a more effective deterrent than criminal prosecution for perceived repeat offending on Standard Bank's part that could be catastrophic for Standard Bank, its 35,000 employees and the South African economy, Standard Bank for its own sake, that of its shareholders and

employees and that of our country, simply cannot risk any exposure, direct or indirect, to corrupt activities.

(p) Standard Bank is committed to treating all customers fairly and subjects all existing and prospective customers to the same objective standards for KYC and enhanced due diligence purposes. Standard Bank does not lightly decide to terminate a relationship as evidenced by the fact that so far in 2016 it has terminated just 52 out of its ~11 million customer relationships; the decision was in each case taken by a competent committee applying objective criteria.

(q) It is not feasible for a bank to assume a customer to be innocent of wrongdoing until he/she is convicted in a court of law. Both PCCA and POCA have created the offences of dealing in money or property where the accused should have suspected that it was tainted by or the proceeds of corruption or money-laundering; the offence is not dependent upon the accused knowing that the money or property comes from a person who has already been convicted.

(r) Standard Bank does not decline a customer relationship simply on the grounds that a PEP is involved; for an adverse decision by Standard Bank it must be satisfied that the PEP is in a position to facilitate suspicious transactions and there is a possibility that he/she could do so.

(s) We mentioned that there are many categories of terminations. Given our commitment to customer confidentiality, we cannot provide detail about which customers' accounts we have chosen to close, but, speaking in general terms, we have closed the accounts of customers who have been demonstrably dishonest, who have been racist or otherwise seriously abusive towards our staff, or whose activities or reputation have been such that they are likely to damage the reputation of Standard Bank by association. Further, the perception that we discriminate in account closings on the basis of race is false. In recent years, for instance, we have closed the accounts of several very prominent white individuals, including a prominent lawyer who is now a fugitive from justice and two very high-profile businessmen. It is also noteworthy that we closed the accounts of a well-known white mining magnate and the associated companies.

(t) Standard Bank gave an assurance that it has not colluded or acted in concert with any other bank or banks in its decision to terminate any customer relationship; such would be both unethical and unlawful (in terms of the Competition Act).

(u) Standard Bank does consider the effects of any decision to terminate a banking relationship upon the employees of the affected customer but cannot, where the reason for the termination is compliance with FICA, PCCA or POCA, seek to mitigate those consequences by not complying with those statutes; non-compliance with the law to save jobs is simply not an option.

(v) Standard Bank declined to say whether or not it had terminated a banking relationship with any construction company that had been fined by the Competition Tribunal for contravening the Competition Act but did opine that an administrative fine for anti-competitive behaviour would be regarded as less significant than a suspicion of corruption, money-laundering or terrorism financing and that the second leg of the test, namely whether the construction company has related persons likely to expose the bank to corruption or money-laundering etc., would still need to be considered.

(w) In response to a closing query as to whether there is any possibility of Standard Bank reversing any decisions that could help save the jobs of the employees of Oakbay/the Guptas, Standard Bank indicated that it applies the known facts (and suspicions as envisaged by PCCA and

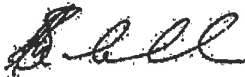
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POCA) to the law to reach its decisions and therefore if the facts should change there could be a resultant review of the decisions reached. Consequently the IMC requested, and Standard Bank indicated a willingness, that Standard Bank give consideration to informing the IMC, in due course, of what changes in the ownership and/or control of the Oakbay/Gupta group of companies could be required for Standard Bank to review any decisions it may have made to terminate banking relationships with them and thereby save jobs claimed to be at risk.

The above summary does not purport to be a complete summary of all that was discussed; it is intended only to summarise those submissions and responses that Standard Bank believes should be most relevant to the IMC's mandate. If I have not summarized the submissions and responses as are set out above correctly (according to the secretariat's notes) please let me know.

Yours sincerely



Sim Tshabalala

Standard Bank Moving Forward™



"SB17"

Hansa, Ayesha A

Subject: FW: Standard Bank and IMC meeting 05 May 2016.

From: Zarina Kellerman [mailto:Zarina.Kellerman@dmr.gov.za]  
Sent: 09 May 2016 12:59 PM  
To: Tshabalala, Sim S (CEO)  
Subject: Re: Standard Bank and IMC meeting 05 May 2016

Dear Simphiwe

Ministers have asked me to thank you for this input.



Sincerely  
Zarina

On 06 May 2016, at 4:36 PM, Tshabalala, Sim S (CEO)  
<Sim.Tshabalala@standardbank.co.za> wrote:

Afternoon Advocate Kellerman

Please find the attached documentation for the attention of Ministers Zwane and Oliphant.

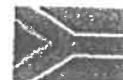
Regards

Sim

Sim Tshabalala, Chief Executive - Standard Bank Group | 5 Simmonds Street, 9<sup>th</sup> floor | Johannesburg  
| Tel +27 11 636 1810 | Fax: 0862027296 | [Sim.Tshabalala@standardbank.co.za](mailto:Sim.Tshabalala@standardbank.co.za)

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<Adv.Kellerman IMC May 2016.pdf> <IMG\_1487.jpg>



## Statement of Minister of Mineral Resources is not Government position

02 September 2016

The Presidency wishes to assure the public, the banking sector as well as domestic and international investors of Government's unwavering commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin our economy.

The statement issued by the Minister of Mineral Resources, Mr Mosebenzi Zwane yesterday on 1 September 2016, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms to close down the accounts and withdraw audit services from the company named Oakbay Investments, was issued in his personal capacity and not on behalf of the task team or Cabinet.

Minister Zwane is a member of the task team. He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet, the Presidency or Government. The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof, are deeply regretted.

The Presidency wishes to assure the public, the banking sector as well as domestic and international investors of Government's unwavering commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin our economy.

Enquiries: Dr Bongani Ngqulunga on 082 308 9373 or bongani@presidency.gov.za

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# Gordhan contradicts Zwane on call for banking inquiry

NEWS

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Finance Minister Pravin Gordhan has contradicted his Cabinet colleague, Mineral Resources Minister Mosebenzi Zwane, who is calling for a judicial commission of inquiry into banks.

Gordhan said if there was anything wrong with South Africa's banks, there were strong regulatory bodies that could deal with such problems and that our regulations were among the best in the world.

He reminded MPs that this country had a banking ombudsman among others, who had powers, and if there were people with complaints about the banks, those powers could be reviewed.

Zwane came under fire in Parliament yesterday but still refused to expand on or explain why he issued a press statement last week in which he announced "a Cabinet resolution" for a judicial inquiry into South Africa's banking system following the decision by the banks to terminate their relationships with Oakbay Investments, a company owned by the politically-connected Gupta family.

The Presidency distanced itself from Zwane's statement, saying he had issued it in his personal capacity and that the contents of the statement were not the government's position.

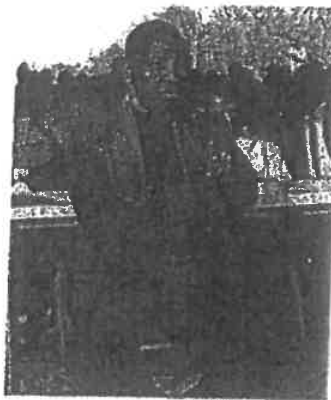
DA MP David Maynier asked Zwane whether he would resign from the Cabinet and when he would do so.

Zwane would not answer the question directly.

He said in terms of the principle of separation of powers, the matter belonged to Cabinet and not to Parliament, adding that Maynier had no jurisdiction to ask him whether he would resign.

"As I stated during my interview with the SABC ... I stated that the matter of inquiry which Maynier seems to be problematising can only be decided by the president once he has sufficiently applied his mind to the matter.

"We have been on record on this matter. It is indeed unprecedented that banks could unilaterally close accounts. This matter can therefore not be left hanging," said Zwane.



Mosebenzi Zwane. Picture: Lobo Mareela

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@City\_Press: RT @shandumul: Police clearing up Benja Street in #Braamfontein. Protestors put rocks on the road to block traffic. hit

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@City\_Press: RT @the\_pikelet0r: #Wits A police car has been set alight outside N-Block in #Braamfontein <https://t.co/4v5PZ7x>

**"PAT-DOWNS", LOCKED VENUES: STUDENTS FUME OVER EXAM SECURITY AT RHODES**

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He said many other people had come forward, indicating that they have suffered at the hands of banks.

"It is important therefore to understand the importance of this matter as Parliament," he added.

Zwane said the people of South Africa were crying over these issues and the opposition should allow the due processes to unfold.

"... And during these processes we can prove once and for all that the people of South Africa have issues with banks," he said.

Maynier said Zwane had allowed himself to become a hired gun for the Guptas, but he misfired when he issued the statement and the damage was already done by the time the Presidency rejected his statement.

A number of DA MPs followed up, pushing for Zwane to answer the question as to why he issued the statement. But with the "protection" of National Assembly Speaker Baleka Mbete, he got away without answering the question.

Things got heated with DA MPs accusing Mbete of undermining the Constitution in protecting Zwane – DA chief whip John Steenhuisen told her "she was worse than the minister [Zwane]".

"You are trampling on the Constitution. You are a disgrace as a Speaker. You are an embarrassment to this House and you are a bigger embarrassment than the minister," he said.

When Gordhan was asked by the EFF's Floyd Shivambu whether he supported the inquiry into the banks, he pointed out that banking regulation was part of the brief that his ministry has.

"As far as we are concerned, we are compliant as South Africa and amongst the most compliant. We have international requirements which emerged from the crisis and financial stability bodies and other bodies. Our standards of regulation are best as they can be.

"We also have the banking ombud which has certain powers that perhaps can be reviewed if there are customers that have problems with the banks," said Gordhan to loud applause from the opposition benches and blank stares from his ANC comrades.

He said as far as financial institutions were concerned, there was a difficult balancing act between ensuring that there is stability in the sector, that it is well-regulated and that it doesn't constitute a risk to the country's economy and fiscus as learnt from 2008/09 financial crisis.

"On the other hand, we need to be equally aware that the banking sector can run away with itself. Its charges might be excessive, its service might be poor, its market conduct might be questionable as far as that is concerned. Let's have a debate whether the powers need to be tightened," said Gordhan.

Read more on: masebenzi zwane | pravin gordhan | guptas

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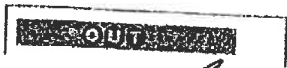
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TRANSCRIPTION OF THE

**PART PROCEEDINGS IN PARLIAMENT****PRESIDENT'S Q & A****HELD ON**

23 NOVEMBER 2016      PAGES 1 TO 7

**HELD AT**

PARLIAMENT IN CAPE TOWN

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23<sup>rd</sup> November 2016

I

## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 [PROCEEDINGS ON 23 NOVEMBER 2016]

2 [38:20 to 51:38]

3 PRESIDENT ZUMA: Thank you, Madam  
4 Speaker.

5 MS MBETE: We now come to question number  
6 20, raised by the Honourable Holomisa. The Honourable, the  
7 President?

8 PRESIDENT ZUMA: Honourable Speaker, as a  
9 cabinet and the presidency have publicly stated on numerous  
10 occasions before cabinet appointed the ministers of  
11 finance, labour and mineral resources to open a  
12 constructive engagement with the banks on the matter of the  
13 closure of bank accounts the team reported back to cabinet,  
14 no other mandate was given to this team of ministers as we  
15 have stated before, the statement released by Minister  
16 Zwane does not represent the views of government and  
17 cabinet. I reprimanded the minister for the remarks and he  
18 apologised. You will remember that when I was answering  
19 questions here on this matter, I said I was going to engage  
20 the minister and I did and this matter is now closed. The  
21 minister has apologised. Thank you very much.

22 MS MBETE: The Honourable Holomisa.

23 MR HOLOMISA: Madam Speaker. Thank you,  
24 Mr President. On the 2<sup>nd</sup> of September this year you told  
25 the nation, I agree with what you have just said, you told

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 the nation that the statement made by Minister Zwane was  
 2 not representing the presidency, cabinet or government and  
 3 it is unfortunate, however, five days later on the 7<sup>th</sup> of  
 4 September, Minister Zwane said in this house, I quote, "the  
 5 inter-ministerial committee made five recommendations to  
 6 the cabinet. Four of the recommendations were approved and  
 7 one was referred to the president for further consideration  
 8 as it was not within the purview of cabinet to take a  
 9 decision on that matter." The question, what is the status  
 10 of this recommendation which was referred to you as  
 11 reported by honourable minister?

12 MS MBETE: The Honourable, the President.

13 PRESIDENT ZUMA: Thank you, Madam  
 14 Speaker. That recommendation is under considerations by  
 15 the president. Thank you, Madam Speaker.

16 MS MBETE: The Honourable Esterhuizen.

17 MR ESTERHUIZEN: Thank you, Madam  
 18 Speaker. Honourable President, the President, I heard what  
 19 you said the matter is now closed and thing but Sir,  
 20 banking will always remain a voluntary and a private  
 21 relationship between the bank and the client and it can  
 22 only be addressed by the parties concerned. Madam Speaker,  
 23 neither Oakbay, nor the family that runs that companies  
 24 have made public the real reasons the bank's foreclosed on  
 25 their account and they were informed, they were definitely

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 informed under the bank, confidential bank-client  
2 relationship act, they were informed. Honourable  
3 President, banks are subject to supervision by the South  
4 African Reserve Bank and as a service provider, also to the  
5 national consumer's commission and if any client feels that  
6 they were treated unfairly in any way, then they can report  
7 them to these bodies, which never happened. The simple  
8 fact is that Oakbay never complained or reported any  
9 irregularities or any nature to this commission to the  
10 reserve bank and they did not want the reasons made public.

11 MS MBETE: Do you have a question  
12 Honourable Member? Your minute is over now.

13 MR ESTERHUIZEN: Honourable President,  
14 won't you agree then and with respect to your position Sir,  
15 that is not yours neither the minister of mineral  
16 resources' place to break this confidentiality act unless  
17 you were party to the original contract. Thank you.

18 MS MBETE: Honourable, the President.

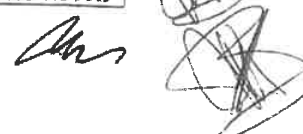
19 PRESIDENT ZUMA: Thank you, Madam  
20 Speaker. I don't think there is anyone who questions the  
21 confidentiality between the client and the bank. I think  
22 many of us here deal with the banks under general and  
23 there's nothing that becomes a national concern. I think  
24 the difference that you must make, if a number of banks act  
25 in the same way simultaneously, not one bank, not two

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 banks, including some financial institutions. To any  
2 ordinary person, that is not an ordinary act. It suggests  
3 that there is something, the banks can't act together on  
4 the same manner in the same way. It gives a feeling that  
5 there is something going on here. Now if you are a  
6 government, as government intervenes in many things if it  
7 believes it is putting the image of the country into some  
8 problems, bear in mind that the government has always  
9 continued to ask for private sector to invest including the  
10 investors from outside of South Africa. If you are sitting  
11 at the level of government and you see an action of this  
12 nature highly publicised you have to say what will the  
13 investors out there think of coming to invest in South  
14 Africa if they think the banks can willy-nilly and act in a  
15 manner that suggest collusion about the economy of your  
16 country. As a government you can't sit and say I'm doing  
17 nothing. It was therefore absolutely correct because if  
18 the investors don't come here because they fear the actions  
19 of the banks, the country will say what is the government  
20 doing. We therefore needed to know what is happening, as a  
21 government, there's no law that says you cannot do so. You  
22 are talking about the bank and individual, here there was  
23 an action by a number of banks at the same time, it  
24 suggested there is something untoward here and as  
25 government, we wanted constructively to interact with the

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 banks to find out what is this, what are they doing, where  
2 has this come from, that was the reason. There's no  
3 government than can just sit because any other company that  
4 would want to come to South Africa will say sorry, I'm not  
5 going there because if the banks are angry with me, they  
6 will collude and act together. We want to look into that  
7 matter and get to the bottom of it because we can't say any  
8 other time, any business person will be dealt with and the  
9 government just stand and look. It is not, we're not  
10 dealing with the company, we're dealing with the actions of  
11 the bank, that is what we're dealing with and we'll  
12 continue to do so. We are responsible because we are a  
13 government of this country. There is nothing that sounds  
14 very suspicious that we are going to look at and do  
15 nothing, that is the reason why we acted on this one.  
16 Thank you, Madam Speaker.

17 MS MBETE: The Honourable Maynier.

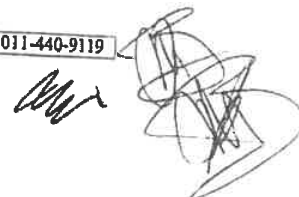
18 MR MAYNIER: Mr President, now if there  
19 is one minister who should be sprayed with Doom, it is the  
20 minister of mineral resources, Mosebenzi Zwane, for issuing  
21 a midnight statement on behalf of the Guptas in his  
22 personal capacity calling for an enquiry into the Banks and  
23 so my question is why was the minister simply reprimanded  
24 and not fired and why was the letter of reprimand not  
25 tabled in this parliament?

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 MS MBETE: The Honourable, the President.

2 PRESIDENT ZUMA: Well, any president in  
3 the world looked at the gravity of the matter and the  
4 conclusion would not produce the same kind of action,  
5 there's nothing abnormal here. Ministers are reprimanded  
6 and at times ministers could be taken out of their jobs, it  
7 depends on the thing that has been done. So we did the  
8 right thing, reprimanded the minister, the minister  
9 apologised, what else do you need? Thank you very much.

10 MS MBETE: The Honourable Shaik Imam.

11 MR SHAIK IMAM: Thank you, Honourable  
12 Speaker. Mr President, I think you have actually responded  
13 to a previous question but let me just say Mr President, do  
14 you believe that the closure of the bank account by several  
15 financial institution was premature given the fact that  
16 Oakbay Investments have not been proven to have violated  
17 any banking regulation to date, mindful of the fact that  
18 millions of rands are flowing into this country into local  
19 bank accounts by political parties to destabilise this  
20 country? Is there not, Mr President, is there not an  
21 attempt by these imperialists to dictate and control the  
22 financial sector that they have done pre-apartheid days?  
23 Thank you.

24 MS MBETE: The Honourable, the President.

25 PRESIDENT ZUMA: Thank you, Madam

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## PART PROCEEDINGS IN PARLIAMENT - PRESIDENT'S Q &amp; A

1 Speaker. That is precisely the reason why government  
2 cannot ignore such an action. The action looks suspicious  
3 and as government responsible to govern this country, we'll  
4 certainly have to investigate what is this and we started  
5 very politely by sending a team to meet the banks to say  
6 what is happening. The banks did not say look, there's are  
7 the faults that this company has done or what led to our  
8 actions, so up to now we don't know. We have laws in this  
9 country, if let us say any company violate the laws, there  
10 are enforcement institutions that you would report to.  
11 Just to stand willy-nilly and close simultaneously a number  
12 of banks as well as other financial institutions, it does  
13 not look innocent and that's a problem, that's the problem  
14 we have. Thank you, Madam Speaker.

15 [Up to 51:38]

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