

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 52883/2017

In the matter between:

**SOUTH AFRICAN RESERVE BANK**

Applicant

and

**PUBLIC PROTECTOR**

First Respondent

**SPECIAL INVESTIGATING UNIT**

Second Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

**ABSA BANK LIMITED**

Fourth Respondent

**MINISTER OF FINANCE**

Fifth Respondent

**NATIONAL TREASURY**

Sixth Respondent

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**FILING NOTICE**

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PRESENTED HEREWITH FOR FILING: **SUPPLEMENTARY FOUNDING AFFIDAVIT**

DATED at SANDTON on this 11<sup>TH</sup> day of SEPTEMBER 2017.



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**WERKSMANS ATTORNEYS**

Applicant's Attorneys

155 - 5th Street

Sandown, Sandton

Tel: (011) 535 8145

Email: [cmanaka@werksmans.com](mailto:cmanaka@werksmans.com)

[cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com)

Ref: Mr C Manaka / Mr C Moraitis  
Ref: SOUT3267.62  
**C/O MABUELA INCORPORATED**  
Charter House, 179 Bosman Street  
Pretoria Central  
Pretoria  
Tel: 012 3253966  
Email: [mabuela@tiscali.co.za](mailto:mabuela@tiscali.co.za)

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

**AND TO:**  
**THE PUBLIC PROTECTOR**  
First Respondent  
Attention: Advocate Mkhwebane  
175 Lunnon Street  
Hillcrest Office Park  
Pretoria  
0083  
**C/O SEFANYETSO ATTORNEYS**  
1064 Arcadia Street  
BMMS Law Chambers  
Unit G01, Metropolitan Life Building  
Hatfield, Pretoria  
Tel: 012 942 8710  
Fax: 086 536 2387  
E-mail: [nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za)

Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

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**AND TO:**  
**SPECIAL INVESTIGATING UNIT**  
Second Respondent  
Rentmeester Building, 2nd Floor  
74 Watermeyer Street  
Watermeyer Park  
Pretoria  
Fax: (012) 843 0115  
E-mail: [jwells@siu.org.za](mailto:jwells@siu.org.za) / [Pseleka@justice.gov.za](mailto:Pseleka@justice.gov.za)

Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

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AND TO:  
**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**  
Third Respondent  
Union Buildings  
Government Avenue  
Pretoria  
Tel: 012 300 5200

Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

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AND TO:  
**ABSA BANK LIMITED**  
Fourth Respondent  
Head Office  
7th Floor, Barclays Towers West  
15 Troye Street  
Johannesburg  
2001  
**C/O WEBBER WENTZEL ATTORNEYS**  
Attention: Dario Milo  
90 Rivonia Road  
Sandton  
Johannesburg  
2196

Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

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AND TO:  
**MINISTER OF FINANCE**  
Fifth Respondent  
**c/o THE STATE ATTORNEY**  
SALU Building  
255 Francis Baard Street  
Pretoria  
Fax: 012 309 1575 / 012 309 1504  
E-mail: TNhlanzi@justice.gov.za

Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

AND TO:  
**NATIONAL TREASURY**  
Sixth Respondent  
40 Church Square  
Pretoria Central  
Pretoria

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Received on this \_\_\_\_ day of \_\_\_\_\_ 2017

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**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

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**NATIONAL TREASURY**

Sixth Respondent

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**SUPPLEMENTARY FOUNDING AFFIDAVIT**

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I, the undersigned,

**JOHANNES JURGENS DE JAGER**

do hereby make the following statements under oath:

- 1 I am an admitted advocate of the High Court of South Africa. I hold the position of General Counsel in the Legal Services Department of the South African Reserve Bank, the applicant in this application.



2 I am duly authorised to represent the Reserve Bank in this application and to depose to this affidavit on its behalf. I deposed to the founding affidavit in this matter.

3 The facts to which I depose are within my personal knowledge except where it is apparent from the context that they are not.

4 The submissions of law I make in this affidavit are made on the advice of the Reserve Bank's lawyers.

### Introduction

5 This affidavit is filed pursuant to the provisions of Uniform Rule 53(4) and the Deputy-Judge President's directive issued on 1 August 2017. The directive requires that this supplementary founding affidavit be filed on 11 September 2017. The Reserve Bank will meet that deadline and file this affidavit on 11 September 2017 despite the fact that the record of proceedings provided by the Public Protector is woefully incomplete, confused and indecipherable in parts. I set out below, the challenges that the Reserve Bank has faced in obtaining a proper and complete record from the Public Protector.

6 The Public Protector produced the record of proceedings on 16 August 2017, in respect of the non-confidential record and 22 August 2017, in respect of the confidential record. The record was not accompanied by a detailed index. Since the filing of the record, there has been extensive correspondence between the Reserve Bank's lawyers and the Public Protector's lawyers about the deficiencies in the record. I attach copies of that correspondence in chronological order as "SFA 1".

- 7 The nub of the correspondence is that there are numerous omissions from the record filed by the Public Protector. These omissions relate to documents that I had already identified, in the founding affidavit to this application, are relevant and ought to have been included in the record. This includes transcripts of the interviews held with Mr Goodson and the State Security Agency after comments were received from affected parties on the preliminary report. By the time of finalising this affidavit, the repeated requests to the Public Protector to supplement the deficient record with these, and other documents, had still not been answered.
- 8 The correspondence also reveals that the Reserve Bank took issue with the claims of confidentiality over some of the documents in the record. This was finally resolved with the Public Protector, on 5 September 2017, when she waived any confidentiality over these documents.
- 9 The record also lacks a detailed index. It is not possible for parties seeking to review the decisions of organs of state intelligibly to understand a record of proceedings without an index to it. The Reserve Bank therefore made requests for an index to be provided. Although there were promises from the Public Protector's lawyers that this would be forthcoming, no index had yet been provided by the time this affidavit had to be finalised.
- 10 The Reserve Bank has therefore been severely prejudiced in its ability to supplement its case on review after consideration of the record. The record is incomplete and unclear in many respects. This supplementary founding affidavit has therefore been prepared on a provisional basis and with a full reservation of rights to further supplement the founding affidavit in the event that the missing documents are provided in due course and a proper index is provided so that the nature and origins of certain documents become clear.

11 Despite these glaring deficiencies, the record of proceedings does disclose two additional grounds of review and provide further support for the review grounds already advanced in the Reserve Bank's founding affidavit. I shall deal with each of these in turn below.

### **New grounds of review**

#### *Bias, ulterior purpose and procedural unfairness*

- 12 The Public Protector's record includes notes of a meeting held on 7 June 2017 with the Presidency's legal advisers. These notes were originally included in the confidential section of the record, but given that the Public Protector has now waived any claim of confidentiality for this document, I am attaching it as "SFA 2".
- 13 The record also shows that by this date, the Public Protector had vastly expanded the reach of her investigation. She had interviewed Mr Goodson and met with the State Security Agency. Although, as I highlighted above, the record does not include transcripts of these interviews, the record does include correspondence both before and after the meetings were held, as well as handwritten notes of the meetings.
- 14 By 7 June 2017, the Public Protector was clearly considering remedial action aimed at expanding the reach of an SIU investigation into the CIEX report. It was also clear that by this stage, she was considering remedial action aimed at amending the Constitution to deprive the Reserve Bank of its constitutionally entrenched power to protect the value of the currency.



- 15 7 June 2017 was twelve days before the Public Protector issued the Report.
- 16 The record therefore reveals that twelve days before the Public Protector issued her final report she had a meeting with the President's legal advisors. The notes of this meeting appear to comprise eight pages. They are annexure "SFA 2".
- 17 The notes appear to have been written by the Public Protector herself.
- 18 The first page of the notes deals with the CIEX report and the Public Protector's remedial action to direct an SIU investigation against various institutions mentioned in the CIEX report and recovery of R1.125 billion from ABSA. It also deals briefly with the state of capture litigation.
- 19 The next three pages appear to be a summary of Dr Stals's evidence before the Tollgate enquiry and his interview with the former Public Protector on 8 September 2016.
- 20 The last four pages of the notes appear to record the interview with Mr Goodson. I make this assumption because of the references in the notes to "SG" and "PP", which appear to be references to Mr Stephen Goodson and the Public Protector. The notes refer to remedial action to change the Constitution and the consequences of a state bank.
- 21 It is unclear whether all 8 pages are notes from the meeting with the Presidency's legal advisors or whether the note of that meeting is confined to the first page. This would have been clarified, had a proper index been provided with the record. Unfortunately, none has been forthcoming.

- 22 I shall therefore have to deal with these eight pages in two different ways. The first will assume that the subject matter of the meeting with the Presidency covered all the issues referred to in the full eight pages. The second will assume that only the first page reflects the subject matter of the meeting with the Presidency.
- 23 Before I address each of these alternatives, it is important to place this meeting in context.
- 24 The meeting with the Presidency on 7 June 2017 took place *after* the Reserve Bank had responded to the Public Protector's preliminary report. It occurred *after* the Public Protector, without notice to the Reserve Bank, decided substantially to change the focus and remedial action of her investigation. By this stage, the Public Protector's aim was to amend the Constitution to deprive the Reserve Bank of its independent power to protect the value of the currency and to direct the SIU to investigate all the CIEX claims, as well as to recover over a billion Rand from ABSA.
- 25 The meeting took place without any similar meetings being held with the other parties affected by the remedial action.
- 26 The meeting was convened between the Presidency and an institution, the Public Protector, which is constitutionally required to be independent and to conduct its investigations impartially and without fear, favour or prejudice.
- 27 If the subject-matter of the meeting covered all eight pages of annexure "SFA 2", then it was highly irregular. The meeting traversed the Public Protector's proposed remedial action to amend the Constitution to deprive the Reserve Bank of its role in protecting the



value of the currency. This is an aspect of the remedial action that had nothing to do with the Presidency. There is no legitimate basis on which this ought to have been discussed with the Presidency. The Public Protector is required under section 181 of the Constitution to conduct her investigations independently and impartially. Discussing these aspects of the report with the Presidency destroys that independence.

28 If the subject-matter of the meeting covered only the matters reflected on the first page of annexure "SFA 2", then the meeting was procedurally unfair and evidence of bias on the part of the Public Protector. After the Public Protector had decided substantially to change the remedial action of her preliminary report, she was required to give affected parties an opportunity to comment on the new remedial action. The Public Protector did not provide this opportunity to anyone other than the Presidency. To give an opportunity for comment to one party but not to others is inconsistent with the Public Protector's obligation to conduct her investigations impartially. It is also evidence that the Public Protector considered it necessary to consult the Presidency, to the exclusion of others. Such conduct compromises the independence of the Public Protector.

29 The Public Protector was also not frank about disclosing the fact of this meeting in the Report. At paragraph 4.4.3 of the Report, the Public Protector lists the interviews conducted and the meetings held during her investigation. The list includes the meeting with the Department of State Security and Mr Goodson. Both of these meetings took place after comments had been submitted to the Public Protector on the preliminary report. The list does not include the meeting with the Presidency on 7 June 2017. This is a glaring omission. A meeting with the Presidency to discuss the new remedial action in her final report was a material event in the investigation.

30 There is a further document in the record which seriously calls into question the Public Protector's impartiality in this investigation. This is a file note of a meeting with "SSA" on 3 May 2017. I take this to be a reference to the "State Security Agency". This note was also originally included in the confidential section of the record but I attach it here as "SFA 3" because the claim of confidentiality has been waived.

31 In this note, there is a section dealing with the Reserve Bank in which the following question is posed "how are they vulnerable?". As I have set out above, the Public Protector has not included a transcript of the meeting with the State Security Agency in the record. This is a material omission. Nonetheless, the note appears to indicate that one of the matters discussed at the meeting was the vulnerability of the Reserve Bank.

32 It is unclear on what possible basis the vulnerability (and vulnerability to whom) of the Reserve Bank was relevant to the Public Protector's investigation into the CIEX report.

33 The fact that this topic was even discussed with the State Security Agency indicates that the Public Protector's investigation was aimed at undermining the Reserve Bank. It also indicates that by May 2017, the investigation had turned from the question whether the government had implemented the CIEX report to an attack on the Reserve Bank.

34 This attack is evidence of bias or at least a reasonable apprehension of bias on the part of the Public Protector. It also shows that her remedial action had an ulterior purpose.

35 These are serious accusations to make against the Public Protector. I do not make them lightly. I have been hampered in my ability to understand the documents in the record because they have yet to be properly identified by the Public Protector. I have therefore



proceeded cautiously in this section of the affidavit to explain what the documents appear to show. Given the seriousness of these allegations, I respectfully call on the Public Protector to deal with each any every averment set out above when she files her answering affidavit in this matter.

36 It is also incumbent upon the Public Protector to provide a copy of the full transcript of the meeting with the Presidency on 7 June 2017. This is another conspicuous omission from the record. I invite her to cure this deficiency when she files her answering affidavit.

37 In the event that no transcript exists of the meeting then I call on the Public Protector to explain why no recording was made of the meeting. It is standard practice for the Public Protector to record the meetings she conducts with interviewees during an investigation. Accordingly, if no recording was made of this meeting the Public Protector must explain why the meeting with the Presidency was different.

38 In the event that "SFA 2" and "SFA 3" show what I have set out above, the Public Protector's remedial action ought to be reviewed and set aside on the basis that:

38.1 It was taken for an ulterior motive or purpose.

38.2 The Public Protector was biased or reasonably suspected of bias.

38.3 It was procedurally unfair.

39 These grounds of review are covered by sections 6(2)(e)(ii), 6(2)(a)(iii), 6(2)(c) of PAJA and the principle of legality.

### *Separation of powers*

- 40 The record also discloses a further ground of review.
- 41 In its interactions with the Public Protector through-out this investigation, the Reserve Bank was at pains to explain the role that central banks play as the lender of last resort. The Constitution gives the Reserve Bank the power to act as a lender of last resort. Section 225 gives it all the powers and functions customarily exercised and performed by central banks. One of these functions is to act as the lender of last resort to prevent financial instability in the banking sector. The power is a discretionary one. It must be exercised with skill and care by people with expertise in financial matters. It is also a wide power, to step in as lender of last resort when, in the expert opinion of the Bank, the situation demands it.
- 42 The discretionary nature of the power given to the Reserve Bank means that other organs of state, such as the Public Protector, ought not lightly to interfere with its exercise. The Public Protector's mandate is not to second-guess the expert determinations of the Reserve Bank. Her mandate is to pursue maladministration in the functioning of organs of state.
- 43 When she exercises this power, she must do so with a respect for the proper province and expertise of the organs of state that she investigates. In the case of the Reserve Bank, this involves giving due deference to the expertise within the Bank that were exercised when its stepped in to provide financial assistance to Bankorp.


44 The Public Protector's remedial action requires the SIU to now pursue recovery of over a billion Rand of interest that was allegedly earned by Bankorp and, later ABSA, on the financial assistance package and which was used to discharge the liabilities of Bankorp. The money was lent to Bankorp and then to ABSA as an exercise of the Reserve Bank's power to act as lender of last resort. There is nothing unusual or sinister in a central bank acting in this manner to ensure financial stability. It is a power commonly exercised by central banks around the world. The Public Protector established no basis that the exercise of this power by the Reserve Bank was unlawful.

45 The Public Protector's report shows no appreciation of this fact. On the contrary, her remedial action is premised on the fact that she has herself determined that the financial assistance was irregular. The Public Protector's record also fails to contain any credible basis on which the Public Protector could second-guess the Reserve Bank's decision to step in during 1985 to prevent the failure of Bankorp. It is not within the powers of the Public Protector to second-guess this highly polycentric decision of the Reserve Bank more than three decades ago. Her remedial action ought, accordingly, to be set aside under sections 6(2)(a)(i) and 6(2)(f)(i) of PAJA and section 1(c) of the Constitution.

#### **Support for the existing grounds of review**

##### *Irrational investigation of the CIEX report*

46 In paragraphs 94 to 96 of the founding affidavit, the Reserve Bank deals with the irrationality of paragraph 7.1.1.2 of the Report which requires the SIU to approach the President to amend the *Heath Proclamation* to investigate misappropriated funds from various institutions mentioned in the CIEX report. The founding affidavit shows that the



claims in the CIEX report are vague and unsubstantiated and that using public funds to investigate them now would be irrational.

47 The record shows that the Public Protector was told at various stages of her investigation about the unreliability of the Ciex Report.

48 In her meeting with Trevor Manuel on 31 May 2016, Mr Manuel states the following with regard to the Ciex Report:

“. . . So I want to refer to it as a document, not a report and I want to explain why? Because I think Madam PP, a report must have . . . must adhere to certain requirements in normalcy of reports”.

“And then this person whose information is . . . whose skill set is that of a spy, says:

*It is incontrovertible that payment over a period of time would pose no risk to either the bank or the system.”*

49 Copies of these excerpts of the interview are attached as “SFA 4”.

50 On 22 March 2017, Former President Mbeki had this to say about the Ciex Report:

“At some point a decision was taken that this man was playing games with us, he was not bringing in any money and there was no likelihood that he was going to



bring any money, and we were paying him, at least SASS was paying him, and therefore let us terminate this thing because it is not going to go anywhere".<sup>1</sup>

51 A copy of this excerpt from the interview with Former President Mbeki is attached as "SFA 5".

52 These interviewees made it plain to the Public Protector that the CIEX report ought not to be pursued. Against those clear warnings, her decision to order the SIU to investigate the CIEX matters is even more inexplicable. It lacks any rational foundation and was clearly taken without considering relevant considerations. It therefore ought to be reviewed and set aside under section 1(c) of the Constitution and sections 6(2)(f)(ii)(cc) and 6(2)(e)(iii) of PAJA.

#### *Procedural unfairness*

53 In the founding affidavit, the Reserve Bank challenges the Public Protector's remedial action on the basis that it was procedurally unfair. The allegations of unfairness included the following:

53.1 The preliminary report did not contain the remedial action that appeared in the Report issued on 19 June 2017. The effect of this is that none of the parties were given the opportunity to comment on it.

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<sup>1</sup> File 4, page 5 of the interview with Thabo Mbeki.

53.2 The Public Protector indicated in her interview with Dr Stals on 8 September 2016 that she was not investigating the issue of interest yet that is precisely what the Report makes a finding on.

53.3 After parties submitted their comments on the preliminary report, the Public Protector conducted two further interviews with the Department of State Security and Mr Stephen Goodson. The Reserve Bank was not given an opportunity to comment on the input from either of these interviewees.

54 The record indicates that there was a further procedural unfairness in the process leading up to the final report. I have touched on this in the first new review ground above. To the extent that the Public Protector gave the Presidency an opportunity to comment on the newly revised remedial action in a meeting on 7 June 2017, she failed to afford this opportunity to the other affected parties. Her final report was therefore the product of a procedurally unfair process and ought to be set aside under section 6(2)(c) of PAJA or section 1(c) of the Constitution as being procedurally irrational.

WHEREFORE, the Reserve Bank persists in seeking an order in terms of the notice of motion on the additional grounds set out above.



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DEPONENT

affirmed

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Mossel Bay..... on this the 12<sup>th</sup> day of September 2017 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**KARIN STEARS**

Commissioner of Oaths / Kommissaris van Ede  
Paralegal - Dekker Attorneys / Prokureurs  
Kerkstraat 33 / Church Street  
Mosselbaai / Bay. 6500  
Verw. / Ref: 9;1;8/2 (05:02/2016)  
Mosselbaai / Bay & George

  
COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

EX OFFICIO:

8

**DELIVERED BY EMAIL**

Sefanyetso Attorneys  
Email: Nomsas@sefattorneys.co.za

**Johannesburg Office**  
155 5th Street  
Sandton 2196 South Africa  
Private Bag 10015  
Sandton 2146  
Docex 111 Sandton  
Tel +27 11 535 8000  
Fax +27 11 535 8600  
www.werksmans.com  
enquiries@werksmans.com

YOUR REFERENCE: NU Sefanyetso/S82  
OUR REFERENCE: Mr C Manaka/td/SOUT3267.62/#4385935v1  
DIRECT PHONE: +27 11 535 8145  
DIRECT FAX: +27 11 535 8645  
EMAIL ADDRESS: cmanaka@werksmans.com

30 August 2017

Dear Sirs

**RE: SOUTH AFRICAN RESERVE BANK vs PUBLIC PROTECTOR AND 5 OTHERS.**  
**CASE NOs: 52883/2017; 46255/2017 and 48123/2017**

- 1 We refer to the non-confidential Rule 53 Record ("the non-confidential Record") and the proposed Confidential Rule 53 Record ("the proposed Confidential Record") delivered by your client on 16 August 2017 and 22 August 2017 respectively in relation to the abovementioned matters. We further refer to the index delivered with the proposed Confidential Record, containing your client's "reasons" for confidentiality, being that:
  - 1.1 In respect of File 1, the documentation contained therein contains information relating to other matters and individuals which do not form part of this matter and sensitive information which, if disclosed, might be detrimental to certain individuals and entities;
  - 1.2 In respect of File 3, the documents contained therein constitute legal advice sought externally, which is confidential and privileged in its nature; and

**Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa**  
**Directors** D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PP Coetser C Cole-Morgan JN de Villiers R Driman S Fodor SJ Gardiner D Gewer JA Gobetz R Goolkin JD Gouws GF Griessel J Hillesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo SM Moerane C Moraltis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhir L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

D J



- 1.3 in respect of File 8, the documents contained therein are legal opinions and think tank notes and documentation obtained from various individuals and entities, and contains sensitive information which if disclosed might be detrimental to certain Individuals and entities.
  
- 2 At the outset, we record that in terms of clause 3.2 of the Confidentiality Agreement ("the Agreement") concluded between the parties, your client undertook to provide reasons for claiming confidentiality over the documents produced as part of the Confidential Record. The "reasons" provided by your client are, at best, general statements, are wholly inadequate and are not supported by the documentation provided in the proposed Confidential Record. In the absence of cogent reasoning, we are not in a position, nor are we obliged, to comply with the provisions of clause 3.3 of the Agreement, which require us to provide a response to the confidentiality claim.
  
- 3 Notwithstanding the above, and in the absence of proper reasons as to why your client considers the documents provided in the proposed Confidential Record to be confidential, we place on record that it is our view that your client is not entitled to claim confidentiality over any of the documents included in the proposed Confidential Record.
  
- 4 Your client has furthermore included documentation in the proposed Confidential Record, which documentation is also contained in the Non-Confidential Record and/or is already annexed to the Applicants' respective founding affidavits, which are already in the public domain. Such documentation includes, *inter alia* the:
  - 4.1 CIEX Report titled "*Operations on behalf of the South African Government, August 1997 – December 1999*". This document furthermore appears as Annexure "MR8" to ABSA's founding affidavit under case number 48123/2017 ("the ABSA founding affidavit");
  
  - 4.2 Heath Report dated 1 November 1999: this document appears three times in the Non-Confidential Record, and is also annexed to both ABSA and the Minister's founding affidavits;
  
  - 4.3 transcript of the meeting between your client and Judge Dennis Davis held on 22 July 2013. This document is also included in File 4 of the Non-Confidential Record;

A handwritten signature in black ink, appearing to be a stylized 'J' or similar character.



- 4.4 transcript of the meeting between your client and the Governor and Former Governor of the South African Reserve Bank on 2 September 2013. This document is also included in File 4 of the Non-Confidential Record;
- 4.5 Report of the Governor's Panel of Experts to Investigate the S A Reserve Bank's Role with regard to the Financial Assistance Package to Bankorp Limited ("the Davies Report"). This document is included in file 5.3 of the Non-Confidential Record and also appears as Annexure "MR11" to the ABSA founding affidavit;
- 4.6 Memorandum to the Public Protector re: Financial Assistance Package to Bankorp Limited (ostensibly authored by Judge Davis) is included in the proposed Confidential Record, as well as File 7 of the Non-Confidential Record;
- 4.7 Second Supplementary Opinion of Advocate E Bertelsmann SC (as he was then) dated January 1998. This opinion also appears in File 2 of the Non-Confidential Record;
- 4.8 First Report of the Commission of Inquiry into the Affairs of the Masterbond Group and Investor Protection in South Africa appears in the proposed Confidential Record, as well as file 2 of the Non-Confidential Record;
- 4.9 Correspondence exchanged between Mr Tito Mboweni and Mr Michael Oatley appears both in the Confidential and Non-Confidential Records.
- 5 In addition there are documents and opinions in the proposed Confidential Record which are already in our client's possession.
- 6 In the circumstances your client cannot claim confidentiality in respect of documents:
  - 6.1 which are already in the possession of the parties and/or have been annexed to their founding papers, and are therefore in the public domain; and/or
  - 6.2 which have been included by your client in that portion of the Record which she does not consider to be confidential; and/or
  - 6.3 where no basis for confidentiality has been established.

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a vertical line.



7 We further wish to place on record that the Rule 53 Record provided is incomplete in that it does not contain documentation which, according to your client's final report, was considered by your client in her investigations and in reaching the conclusions contained in her report. In particular, we note that the following documentation has not been included in the Record:

7.1 transcripts of, and/or minutes, and/or notes taken, at the meeting held between your client and the Department of State Security on 3 March 2017;

7.2 transcripts of, and/or minutes, and/or notes taken, at the meeting held between your client and Mr Stephen Mitford Goodson on 23 April 2017;

7.3 transcripts of, and/or minutes, and/or notes taken, at the meeting held between your client and Black First Land First held on 8 August 2016;

7.4 any and all notes produced pursuant to the Inspections *in loco*; and

7.5 the draft of the report that was presented to your client by the former Public Protector, Advocate Thuli Madonsela, on 14 October 2016.

8 Our client requires that your client immediately produces the aforementioned documents and all other documents which should properly be included in a review record and reserves its rights in respect of the aforementioned documentation.

9 In light of the above, we therefore request that your client provide us with confirmation that she no longer persists with the confidentiality claim, failing which we require her to provide clear and comprehensive reasons for confidentiality and which should be specific to each document.

10 We look forward to your urgent response in this regard.

Yours sincerely

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

4



- cc: His Excellency, Mr JG Zuma  
The President of the Republic of South Africa  
c/o The State Attorney  
Email: [Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)
- cc: Special Investigating Unit  
Email: [slucas@siu.org.za](mailto:slucas@siu.org.za)  
[jwells@siu.org.za](mailto:jwells@siu.org.za)  
[pseleka@justice.gov.za](mailto:pseleka@justice.gov.za)
- cc. ABSA Bank Limited  
Webber Wentzel Attorneys  
Email: [Dario.milo@webberwentzel.com](mailto:Dario.milo@webberwentzel.com)  
[Johann.scholtz@webberwentzel.com](mailto:Johann.scholtz@webberwentzel.com)
- cc. Minister of Finance  
c/o The State Attorney  
Email: [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za)  
[TNdihovu@justice.gov.za](mailto:TNdihovu@justice.gov.za)
- cc: National Treasury  
c/o The State Attorney  
Email: [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za)  
[TNdihovu@justice.gov.za](mailto:TNdihovu@justice.gov.za)
- cc: Honourable Baleka Mbete  
The Speaker of Parliament  
Email: [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za)  
[zngoma@parliament.gov.za](mailto:zngoma@parliament.gov.za)
- cc: Honourable Dr Mathole Motshekga  
Chairperson of the Portfolio Committee  
on Justice and Correctional Services  
Email: [eforbes@parliament.gov.za](mailto:eforbes@parliament.gov.za)  
[vramaano@parliament.gov.za](mailto:vramaano@parliament.gov.za)



**DELIVERED BY EMAIL**

Sefanyetso Attorneys  
Email: Nomsas@sefattorneys.co.za

**Johannesburg Office**  
155 5th Street  
Sandton 2196 South Africa  
Private Bag 10015  
Sandton 2146  
Docex 111 Sandton  
Tel +27 11 535 8000  
Fax +27 11 535 8600  
www.werksmans.com  
enquiries@werksmans.com

YOUR REFERENCE: NU Sefanyetso/S82  
OUR REFERENCE: Mr C Manaka/Mr N Nzuzza/nn/SOUT3267.62/#4385935v1  
DIRECT PHONE: +27 11 535 8145  
DIRECT FAX: +27 11 535 8645  
EMAIL ADDRESS: cmanaka@werksmans.com

05 September 2017

Dear Sirs

**SOUTH AFRICAN RESERVE BANK//PUBLIC PROTECTOR AND 5 OTHERS, CASE NOS:  
52883/2017; 46255/2017 and 48123/2017**

- 1 The abovementioned matters and the Rule 53 Record delivered by your client refer.
- 2 The Record delivered by your client is incomplete. We detail hereunder a list of documents that are outstanding/missing/incomplete.

**2.1 File 1:**

- 2.1.1 The letter from Micheal Oatley to Billy Masethla or Tony Seedat dated 23 February 1998 attaches a note on the Correspondence between Dr Stals and Sir Kit McMahon. The note refers to the following documents which are not provided in the Record:
  - 2.1.1.1 the confidential report to which Sir Kit McMahon contributed (page 109); and
  - 2.1.1.2 the first report of the CIEX (page 104).

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**Directors** D Hertz (Chairman) C Andropoulos AL Armstrong BA Aronoff DA Artelro T Bata LM Becker JD Behr AR Berman MNM Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Naldoo J Nicklg JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies



2.1.2 The letter from CIEX to The Governor of the South African Reserve Bank dated 6 March 2002 refers to a "*recently published report of [the] Panel of Experts*", which is not provided in the Record.

2.1.3 The letter from Micheal Oatley to Billy Masethla or Tony Seedat dated 5 March 1998 attaches "*a report on the recent activities of Stals*", which is not provided in the Record.

2.1.4 The letter from Micheal Oatley to Billy Masethla or Tony Seedat dated 6 March 1998 refers to the "*Memorandum which NIA commissioned from Hennie Diedricks*", which is not provided in the Record.

## 2.2 **File 2: Complaint – Adv Paul Hoffman**

2.2.1 The email correspondence addressed by Paul Hoffman to former Public Protector, Thuli Madonsela, on 04 July 2017 refers to a conversation between them earlier on that day.

2.2.2 The document referred to above contains handwritten manuscripts and/or notes that refers to the '*P Hoffman CIEX file*'.

2.2.3 The document titled '*The first report of the commission of inquiry into the affairs of the Masterbond Group and investor protection in South Africa*' dated 19 November 1997 commences only at page 52.

## 2.3 **File 3: Legal advice sought externally**

2.3.1 The document titled '*Addressing certain questions regarding "The ABSA/Bankor Lifeboat"*' by Advocate Pierre le R du Toit refers to the following documents, all of which are not provided in the Record:

2.3.1.1 the fax from Dr Stals responding to comments from a former Bank of England Deputy Governor Sir Klt Macmahon (page 1);

2.3.1.2 the notes sent to the "OPP" on the meaning of the term 'lifeboat as generally used in international central banking practice (page 2); and



2.3.1.3 attachments "A" and "B" (pages 4 and 10 respectively).

2.3.2 The document titled '*Opinion*' by Advocate E Bertelsmann SC purportedly received on 27 March 2013 is incomplete (i.e. the document abruptly ends at page 14) and paragraph 15 thereof is not legible.

2.4 **File 5.3: Responses to the PP's Report by ABSA (Continued)**

2.4.1 The document titled '*Notice in terms of Rule 5 of the Rules to regulate the conduct of proceedings in a special tribunal made under section 9 of Act 74 of 1996 read with Regulation 7 made under section 11 of Act 74 of 1996*' is incomplete.

2.4.2 The document titled '*Circular to shareholders*' of ABSA, dated 3 April 1992 is incomplete.

2.4.3 The ABSA Annual Report for the year ended 31 March 1993 is incomplete.

2.4.4 The Agreement entered into between Sankorp Limited and ABSA on 28 January 1992 is incomplete i.e. all odd numbered pages are missing.

2.4.5 The Addendum to agreement entered into between Sankorp and ABSA is incomplete i.e. it only consists of a cover page and page 3 thereof.

2.4.6 The document marked "*Appendix B*" and titled "*Ciex service to Heads of Government/Senior Officials*" appears to be an extract from another document and is incomplete.

2.4.7 The document titled "*Addendum - Priorities for CIEX attention from commencement of the engagement (to be reviewed monthly)*" appears to be an extract from another document and incomplete. In particular, page numbering runs backwards and is missing all odd numbered pages.

2.4.8 An unidentified document (located after the document referred in paragraph 2.4.7 above) appears to be an extract from another document and is incomplete. In particular, page numbering runs backwards from page 52 and is missing all odd numbered pages.



2.5 **File 6: Correspondence – National Treasury & MoF**

- 2.5.1 The document titled "*Geheim Bystandooreenkoms tussen die Suid-Afrikaanse Reserwebank, Banbol (Eiendoms) Beperk, Bankorp Beperk, Sankorp Beperk en Bankorp, Beherend Beperk*" dated 10 March 1994 is missing the odd numbered pages.
- 2.5.2 The document titled "*Copy of a Resolution Passed at a Meeting of the Board of Directors of ABSA Bank Limited on 14 February 1992*" dated 3 March 1993 is missing all even numbered pages.
- 2.5.3 The document titled "*Geheim wysiging van bystandsooreenkomste tussen die Suid-Afrikaanse Reserwebank, ABSA Bank Beperk en Sankorp Beperk*" dated 20 June 1995 is missing all of the odd numbered pages.
- 2.5.4 The document titled "*Geheim Bystandooreenkoms tussen die Suid-Afrikaanse Reserwebank, Banbol (Eiendoms) Beperk, Bankorp Beperk, Sankorp Beperk en Bankorp, Beherend Beperk*" dated 4 September 1991 is missing the odd numbered pages.
- 2.5.5 The document titled "*Submission by Dr CL Stals, Governor of the South African Reserve Bank, to the section 417 commission of enquiry into the affairs of Tollgate Holdings Limited*" dated 26 February 1996 is missing all of the even numbered pages.
- 2.5.6 An unidentified document appearing to be the second page of a subpoena issued by Mallinck Ress Richman and Cloenberg Inc. dated 8 September 1994 is missing the first page.
- 2.5.7 An unidentified document appearing to be an extract from an approvals document signed by the Minister of Finance dated 08 January 1992 is missing pages 1 to 4 thereof.
- 2.5.8 The document appearing to be a letter authored by the Reserve Bank to the Minister of Finance dated 24 January 1991 consists only of the first page.



2.5.9 The letter from the Legal Services Department of the Reserve Bank to the Public Protector dated 27 September 2013 appears is missing the even numbered pages.

2.6 **File 7: Miscellaneous Correspondence & Research**

2.6.1 The letter from Ben Martins to the office of the Public Protector dated 31 January 2017 is incomplete it only consists of the first page.

2.6.2 The document "*Preliminary Report on apartheid era corruption and other economic crimes*" by BLF dated September 2015 is missing pages 11 to 21 and 23.

2.6.3 The document titled "*Apartheid Gran Corruption Assessing the Scale of Crimes of Profit in South Africa from 1976 to 1994*" by Henny Van Vuuren dated May 2006 is incomplete.

3 Furthermore, the record provided is not comprehensively indexed. Your failure to provide a complete indexed record is highly prejudicial to our client who is meant to file a supplementary founding affidavit by 11 September 2017.

4 We look forward to your urgent response in this regard.

Yours sincerely

Mr Corlett Manaka

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

cc: His Excellency, Mr JG Zuma  
The President of the Republic of South Africa  
c/o The State Attorney  
Email: IChowe@justice.gov.za

cc: Special Investigating Unit  
Email: [slucas@siu.org.za](mailto:slucas@siu.org.za)  
[jwells@siu.org.za](mailto:jwells@siu.org.za)  
[pseleka@justice.gov.za](mailto:pseleka@justice.gov.za)

5



- cc. ABSA Bank Limited  
Webber Wentzel Attorneys  
Email: [Dario.milo@webberwentzel.com](mailto:Dario.milo@webberwentzel.com)  
[Johann.scholtz@webberwentzel.com](mailto:Johann.scholtz@webberwentzel.com)
- cc. Minister of Finance  
c/o The State Attorney  
Email: [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za)  
[TNdihovu@justice.gov.za](mailto:TNdihovu@justice.gov.za)
- cc: National Treasury  
c/o The State Attorney  
Email: [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za)  
[TNdihovu@justice.gov.za](mailto:TNdihovu@justice.gov.za)
- cc: Honourable Baleka Mbete  
The Speaker of Parliament  
Email: [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za)  
[zngoma@parliament.gov.za](mailto:zngoma@parliament.gov.za)
- cc: Honourable Dr Mathole Motshekga  
Chairperson of the Portfolio Committee  
on Justice and Correctional Services  
Email: [eforbes@parliament.gov.za](mailto:eforbes@parliament.gov.za)  
[vramaano@parliament.gov.za](mailto:vramaano@parliament.gov.za)

**Jodie Chaitram**

---

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 05 September 2017 15:00  
**To:** Tina Dhevalall  
**Cc:** "Chowe Isaac"; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; dario.milo@webberwentzel.com; johann.scholtz@webberwentzel.com; Nadia.padayachee@webberwentzel.com; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za; Corlett Manaka; Nzuzo Nzuzo; Chris Moraitis; Sarah Moerane  
**Subject:** RE: The South African Reserve Bank / Public Protector and others, case numbers 52883/2017, 46255/2017 and 48123/2017

Good day;

We are in receipt of your correspondence the contents of which has been noted. We will try our outmost to respond by no later than tomorrow but which to sensitise you that we are aware that there are certain pages missing which on enquiry from client was advised that they also are not in possession thereof as the matter has changed hands between different advisors.

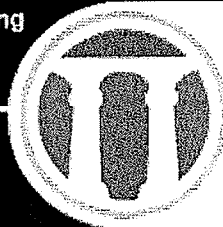
We undertake to check first as client's files are still in our possession and enquire by tomorrow, the 05<sup>th</sup> of September 2017.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



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---

**From:** Tina Dhevalall [mailto:tdhevalall@werksmans.com]  
**Sent:** 05 September 2017 12:12 PM  
**To:** nomsas@sefattorneys.co.za  
**Cc:** 'Chowe Isaac' (IChowe@justice.gov.za); slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; dario.milo@webberwentzel.com; johann.scholtz@webberwentzel.com; Nadia.padayachee@webberwentzel.com; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; 'vramaano@parliament.gov.za'; Corlett Manaka; Nzuzo Nzuzo; Chris Moraitis; Sarah Moerane  
**Subject:** The South African Reserve Bank / Public Protector and others, case numbers 52883/2017, 46255/2017 and 48123/2017

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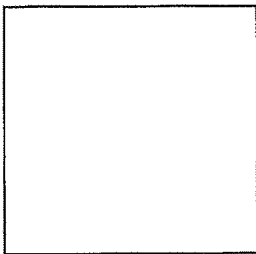


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Dear Sirs

Attached hereto please find our letter for your attention.

Regards



**Tina Dhevalall**

Secretary

T: +27 11 535 8499 | F: +27 11 535 8600 | [tdhevalall@werksmans.com](mailto:tdhevalall@werksmans.com)

---

**Werksmans Attorneys**

155 5th Street, Sandton, Johannesburg, 2196

Private Bag 10015, Sandton, 2146, South Africa

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**Jodie Chaitram**

---

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 05 September 2017 10:03  
**To:** 'Nadia Padayachee'  
**Cc:** 'Chowe Isaac'; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; Corlett Manaka; Chris Moraitis; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; 'Bernadette Lotter'; Sarah Moerane; Tina Dhevalall; Nzuzo Nzuzo  
**Subject:** RE: ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556490]


Good day;

Having consulted with both client and counsels, our instructions are to waive confidentiality in relation to File 1,3 & 8.

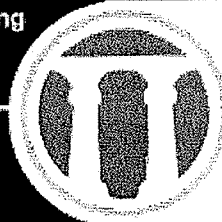
Hope you find the above in order.

Regards.

**PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER**

 1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
 Postnet Suite 152, Private Bag x15, Menlo Park, 0102

 Tel: 012 942 8710  
 Cell: 079 692 6494  
 Fax: 086 536 2387



**Sefany**  
Attorn

---

**From:** Nadia Padayachee [mailto:Nadia.Padayachee@webberwentzel.com]  
**Sent:** 29 August 2017 4:52 PM  
**To:** Nomsa Sefattorneys  
**Cc:** Chowe Isaac; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; 'Corlett Manaka'; 'Chris Moraitis'; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za; Dario Milo; Duncan Wild; Johann Scholtz; Bernadette Lotter; Sarah Moerane; Tina Dhevalall; Nzuzo Nzuzo  
**Subject:** ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556490]  
**Importance:** High

Dear Madam

Please see attached correspondence for your attention.

Kindly acknowledge receipt hereof.

Kind regards

**Nadia Padayachee**  
Associate

# WEBBER WENTZEL

in alliance with > Linklaters

T: +27115305521 F: +27 11 530 6521 M: +27 72 450 0823

E: [nadia.padayachee@webberwentzel.com](mailto:nadia.padayachee@webberwentzel.com)

[www.webberwentzel.com](http://www.webberwentzel.com)

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**Jodie Chaitram**

---

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 06 September 2017 14:50  
**To:** Tina Dhevalall  
**Cc:** "Chowe Isaac"; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; dario.milo@webberwentzel.com; johann.scholtz@webberwentzel.com; Nadia.padayachee@webberwentzel.com; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za; Corlett Manaka; Nzuzo Nzuzo; Chris Moraitis; Sarah Moerane  
**Subject:** RE: The South African Reserve Bank / Public Protector and others, case numbers 52883/2017, 46255/2017 and 48123/2017


Good day all;

We have managed to peruse the record against all the correspondences. We also forwarded to client for their comments. They have requested an indulgence for the 7<sup>th</sup> of September 2017 for their legal advisor to attend our offices to finalise our response.

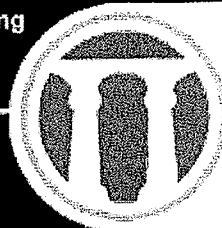
We apologise for the delay herein.

Regards.

**PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER**

 1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
 Postnet Suite 152, Private Bag x15, Menlo Park, 0102

 Tel: 012 942 8710  
 Cell: 079 692 6494  
Fax: 086 536 2387



**Sefany**  
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---

**From:** Nomsa Sefattorneys [mailto:nomsas@sefattorneys.co.za]  
**Sent:** 05 September 2017 3:00 PM  
**To:** 'Tina Dhevalall'  
**Cc:** "Chowe Isaac" (lChowe@justice.gov.za); 'slucas@siu.org.za'; 'jwells@siu.org.za'; 'pseleka@justice.gov.za'; 'dario.milo@webberwentzel.com'; 'johann.scholtz@webberwentzel.com'; 'Nadia.padayachee@webberwentzel.com'; 'TNhlanzi@justice.gov.za'; 'TNdhlovu@justice.gov.za'; 'speaker@parliament.gov.za'; 'zngoma@parliament.gov.za'; 'eforbes@parliament.gov.za'; 'vramaano@parliament.gov.za'; 'Corlett Manaka'; 'Nzuzo Nzuzo'; 'Chris Moraitis'; 'Sarah Moerane'  
**Subject:** RE: The South African Reserve Bank / Public Protector and others, case numbers 52883/2017, 46255/2017 and 48123/2017

Good day;

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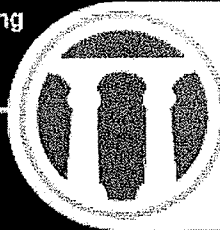
We undertake to check first as client's files are still in our possession and enquire by tomorrow, the 05<sup>th</sup> of September 2017.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

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Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefany  
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From: Tina Dhevalall [<mailto:tdhevalall@werksmans.com>]

Sent: 05 September 2017 12:12 PM

To: [nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za)

Cc: 'Chowe Isaac' ([IChowe@justice.gov.za](mailto:IChowe@justice.gov.za)); [slucas@siu.org.za](mailto:slucas@siu.org.za); [jwells@siu.org.za](mailto:jwells@siu.org.za); [pseleka@justice.gov.za](mailto:pseleka@justice.gov.za); [dario.milo@webberwentzel.com](mailto:dario.milo@webberwentzel.com); [johann.scholtz@webberwentzel.com](mailto:johann.scholtz@webberwentzel.com); [Nadia.padayachee@webberwentzel.com](mailto:Nadia.padayachee@webberwentzel.com); [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za); [TNdhlovu@justice.gov.za](mailto:TNdhlovu@justice.gov.za); [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za); [zngoma@parliament.gov.za](mailto:zngoma@parliament.gov.za); [eforbes@parliament.gov.za](mailto:eforbes@parliament.gov.za); 'vramaano@parliament.gov.za'; Corlett Manaka; Nzuzo Nzuza; Chris Moraitis; Sarah Moerane

Subject: The South African Reserve Bank / Public Protector and others, case numbers 52883/2017, 46255/2017 and 48123/2017

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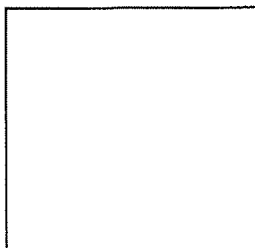


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Dear Sirs

Attached hereto please find our letter for your attention.

Regards



**Tina Dhevalall**

Secretary

T: +27 11 535 8499 | F: +27 11 535 8600 | [tdhevalall@werksmans.com](mailto:tdhevalall@werksmans.com)

**Werksmans Attorneys**

155 5th Street, Sandton, Johannesburg, 2196

Private Bag 10015, Sandton, 2146, South Africa

T: +27 11 535 8000 | F: +27 11 535 8600 | [www.werksmans.com](http://www.werksmans.com)

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**Chris Moraitis**

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**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 07 September 2017 16:19  
**To:** 'Prathik Mohanlall'  
**Cc:** 'Chowe Isaac'; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; Corlett Manaka; Chris Moraitis; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; 'Nadia Padayachee'; Sarah Moerane; Tina Dhevalall; Nzuzo Nzuzo; 'Bernadette Lotter'  
**Subject:** RE: ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556489]

Good day;

We refer to the above and also the telephonic conversation with MS Nhlanzi and Mr Milo regarding the above.

Please note that we are still unable to respond properly to all correspondence at this stage. We were in consultation with the PP's office the whole day and have not completed confirmation of the documents requested. Further our counsels have requested a meeting tomorrow morning at 10h00 to discuss this matter further prior to responding.

We truly apologise and shall try our best to respond tomorrow, having consulted with counsel.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

 1064 Arcadia Street, Unit G01, Metropolitan Life Building Hatfield, Pretoria, 0028		<b>Sefany</b> Attorn
 Postnet Suite 152, Private Bag x15, Menlo Park, 0102		
 Tel: 012 942 8710 Cell: 079 692 6494 Fax: 086 536 2387		

**From:** Prathik Mohanlall [mailto:Prathik.Mohanlall@webberwentzel.com]  
**Sent:** 07 September 2017 12:26 PM  
**To:** Nomsa Sefattorneys  
**Cc:** Chowe Isaac; slucas@siu.org.za; jwells@siu.org.za; pseleka@justice.gov.za; 'Corlett Manaka'; 'Chris Moraitis'; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zngoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za; Dario Milo; Duncan Wild; Johann Scholtz; Nadia Padayachee; Sarah Moerane; Tina Dhevalall; Nzuzo Nzuzo; Bernadette Lotter  
**Subject:** ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556489]

Dear Madam

Please see attached correspondence for your attention.

Kindly acknowledge receipt hereof.



Kind regards

**Prathik Mohanlall**  
Associate

**WEBBER WENTZEL**

In alliance with > Linklaters

T: +27115305552 F: +27 11 530 6552 M: +27 73 205 0731

E: [Prathik.Mohanlall@webberwentzel.com](mailto:Prathik.Mohanlall@webberwentzel.com)

[www.webberwentzel.com](http://www.webberwentzel.com)

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07 June 2017

meeting with Presidency Legal Adviser

- ~~USARCA~~ ~~Supra~~

- CIEX

= SIU - reopen = amend to include

= SIU - proclamation

= speak to matter: (SIU)

- Other ~~case~~ Investigation

= SIU must state proclamation with PP according to SIU Act.

- Powers of referrals

= especially at the end of the investigation

= we can refer the remedial action

= check both Acts -> in terms of referrals

- Remedy

= approach SIU -> SIU must hear out Presidency

= sec. 6

= follow the process - sec. in SIU Act procedure

\* SIU will / can also draft the proclamation

\* can give SIU - section

= amend proclamation, include matters which did

not come to light -> include Nedbank, etc.

state capture

- counsel referring to sign confidentiality Council for Presidency?

= Judge have to make decision



## CIEX

- Dr. Stals - Section 417 Comm. of Enquiry - Tollgate
- leader of last resort - SARB responsibility
    - = damage limitation
  - = special support
  - = avoid danger of systemic risk lead to collapse of banking system
  - = no fixed rules, discretion
  - assistance to Bankorp first in 1985/86
    - = R300 million April 1986 - from June 1988 to May 1990
    - = 1987 Bankorp agreed with SARB rescheduling repayment - from April 1990 to April 1994
  - approached by Bankorp April 1990 for repayment
    - = first instalment postponed to August 1990
  - Meeting Aug 1990 with Bankorp/
    - = Bankorp could not pay
    - = option for SARB was to close bank or assist
    - = section 10 SARB Act 1989 + Delegation Board of Directors
      - agreed to leader of last resort
      - existing loans of R300 mil be increased to R1 billion
      - conditions • close 70 branches by Dec. 1990
        - reduce staff to 3000 before Dec. 1990
        - assets reduced to R5 billion by June 1991
      - dividends only to minority shareholders
      - external auditors to report to SARB
      - quarterly review with Registrar of Banks
      - loans of R1 billion collateral by redepositing funds with SARB or ceding gov. stock to Bank
  - June 1991 Bankorp said loans not sufficient
    - = Bankorp submitted bad book debt of R1.9 billion

QJ

- = SARB increased loan to R1.5 billion to enable bank invest in gov. stock to generate R1.225 billion over 5 years
- = loan R1.5 billion carried interest of 17% and partly invested in gov. stock R1.1 billion and placed on deposit with SARB (16% interest)
- = stock ceded to SARB as security to ensure no loss
- = R400 million redeposited with SARB, not go in money market
- = R1.1 billion - accrued to Treasury
- = books of SARB credit Bankorp and debit loans and advances to Bankorp with R1.5 billion
- = repayment of R225 mil. per annum
- = signed on 5 September 1991
- = agreement in force till October 1995
- amendment in April 1994
  - = transfer agreement to ABSA at new owners
- amendment in June 1995
  - = provide purchase by SARB of gov. bonds and for the depositing of proceeds by ABSA with Reserve Bank for remaining tenure
- 1994 agreement
  - = main reason was for ABSA with effect from April 1992, to take over
  - = all rights and obligations to ABSA
- 1995 agreement
  - = amended 1991 + 1994 agreements
  - = part of stock that was security to SARB would mature ~~date~~ before agreement - prevent amount prematurely to ABSA

QJ

= SARB purchased all gov. bonds from ABSA and  
required proceeds of R1.1 billion deposited and  
cede deposit to Reserve Bank as security for  
loan extended to ABSA

= 25 October 1995 loan R1.5 billion fully repaid  
- all loans recorded in SARB books

Stals interview 08.09.16

= at late stage in 1995 SARB bought  
gov. ~~was~~ bonds and gave 16% interest  
on them to ABSA as they were maturing  
prematurely.

QJ

\* SG

ABNA

- offered to pay in 2002

PP

\* central banks - remedial actions

= change constitutions

= what if state bank

SG

= has given IFP the legislation

= IFP concerns

= It was supposed to be tabled  
in party

= in may will be seeing them

=

PP

= consequences for state bank

\* local media - will rubbish it

\* Pressure be external rather internal  
via the media

SS

benefits

\* jobs

\* more money in circulation

\* hand in hand with Freedom Charter

56

① Cost Nothing to start this

= 6% money circulation

= 94% is credit

= credit based on simulated money

\* with state bank lower credit

= interest is holding people to ransom

= better would help foreign exchange

= platinum

= pre 1990 romania - wheat for oil.

= we can better with Africa

② unfair competition

= no - fractional reserves

= investment accounts

DS

- = bank  $\rightarrow$  credit worthy
- = State will help parastatals
- = potential risks
  - = transition
- = phasing period of 18 months to build reserves
- = gov. loans converted to pay out
- = the state will never borrow again
- money supply
- = when you pay money get devalued  
cause you are borrowing the loan
  - $\rightarrow$  above should not be
  - $\rightarrow$  create more money
  - $\rightarrow$  too much money
- = apolitical statebank

DS

\* must keep portfolio tight

→ Internally

→ poor management

→ social credit m

\* Banking systems

→ basic income

→ put money in people's pocket

\* only nationalize the money

SS

"SFA 3"

meeting with SSA

03.05.2017

\* Agenda

→ SSA - Background

= DG

- early in our democracy
- Dept. was weak at time terms of operations
- context
  - ↳ western power

Obj: Mandela via Gb

\* Heats

= proclamation - make sure we have it

\* Davis

=

\* SARB

- = interest to nations
- = how are they vulnerable
- = institutional mechanism, how

g



1 because I think there is much closer examination of spending. It has  
2 always been there, certainly even before the post of an Inspector  
3 General for Intelligence was created. It was not something that as  
4 the Finance Manager got into the nitty-gritty of, but ditto, you know  
5 if the Department of Transport put out a contract for a construction  
6 of a bridge or roads, the Minister of Finance wouldn't know about  
7 what is in that contract.

8 **Adv T Madonsela** : Thank you. Thank you, Sir. The only reason we thought you would  
9 have been involved is because of the Committee and also because the  
10 contract was with the Government of the Republic of South Africa.  
11 The report ... the CIEX provided reports on the 29<sup>th</sup> of November  
12 1997, another one on the 8<sup>th</sup> of January 1998 and the final one in  
13 December 1999. Did you ever see any of the reports that were  
14 provided by CIEX?

15 **Mr T Manuel** : The first reference to a CIEX Report I had was when your colleague  
16 contacted me in the past two weeks or so. He sent me a copy of this  
17 document, which is actually not titled "The CIEX Report". So I want  
18 to refer to it as a document, not a report and I want to explain why?  
19 Because I think Madam PP, a report must have ... must adhere to  
20 certain requirements in normalcy of reports.

21 This is a 52-page document, 22 pages of which are actually set  
22 aside to describe how to build an intelligence system. That has  
23 nothing to do with what your complainant says this report is about.  
24 It is about how to construct an intelligence system and I draw your  
25 attention to everything from page 31 to page 52.

1 and in the UK. Then he says ... and then he says:

2 *"In spite of all of that" - and I refer to page 10, he says - "Heath*  
3 *has judged the 'lifeboat' to be illegal and due for repayment, but*  
4 *has yielded to pressure not to demand repayment."*

5 And then this person whose information is ... whose skill set is that of  
6 a spy, says:

7 *"It is incontrovertible that payment over a period of time would*  
8 *pose no risk to either the bank or the system."*

9 Now when people are ill equipped to do so without information  
10 available and decide that they are in a position to determine what is  
11 systemically risky and what is not, then you have difficulty. I will  
12 come back to that in a moment, but there is actually very little here,  
13 save to say that in spite of all of the opportunities, you see, that he  
14 had created for Judge Willem Heath to deal with this matter at close  
15 quarters and outside ... I don't know if he discussed this matter with  
16 Mr Masetlha or anybody else. He was informing Judge Willem Heath  
17 about these matters and in spite of all of that, the Judge who was  
18 mandated to do this and presumably had a proclamation to pursue  
19 the matter, opted not to do it.

20 **Adv T Madonsela** : We are going to get to the Heath Commission, former Minister,  
21 *(indistinct - speaking simultaneously).*

22 **Mr T Manuel** : I'm referring only to what is in this document Madam, not to any  
23 discussion I had had with the Heath Commission or anybody else.  
24 I'm saying in this document the author or authors say that they have  
25 done all of this for Judge Heath and he declined to pursue the matter.

"SFA5"

recovering money that was outside of South Africa, it having been acquired corruptly. He said it could be possibly illegal but it required investigation. So a decision was taken, now you have to come back to that matter of the decision, a decision was taken that okay let us take him up on his offer to investigate this thing and if so the money can be recovered, indeed let it be recovered. Then because he was talking about monies outside the country and investigations about that, we then said no he must then deal with the South African Secret Service, SASS because at the time you would recall Intelligence, it took operational arms of civilian intelligence [inaudible 0:15:56] which was dealing with international and the National Intelligence Agency [inaudible 0:16:01]. The reason Billy signed this is because he was head of SASS, because this was to do with monies that had left the country and were outside. However they originated from here [inaudible 0:16:19] Absa, or whatever but the special capacity as is London based [inaudible 0:16:28] company was outside. So as I said that is why we then said okay let the Secret Service work with them, let this money be found... In the end and again from what I recall, he didn't bring any money because the agreement was that he would locate the money, bring it back and then obtain commission on the money that he brought back. At some point a decision was taken that this man was playing games with us, he was not bringing in any money and no likelihood that he was going to bring any money, and we were paying him, at least SASS was paying him, and therefore let us terminate this thing because it is not going to go anywhere. So now when my formal colleagues said some committee constituted, and I don't know, I really don't know about that, but at that time there were three sub-committees of the cabinet. There was a sub-committee on the economic legal affairs, a sub-committee on social affairs, a sub-committee on security matters. So if indeed there was a committee, it would have been not constituted especially for this. It would have been that committee on economic legal affairs where that matter might have been brought up.

ADV MOERANE: How many committees?

MR MBEKI: It was economic, social and security, it is three cabinet sub-committees at that time, in 1987, we expanded them later, but at that time it was these three. So I am saying if there was a committee it would not have been expressly constituted, and the economic Ministers like Tito Mboweni, like Trevor