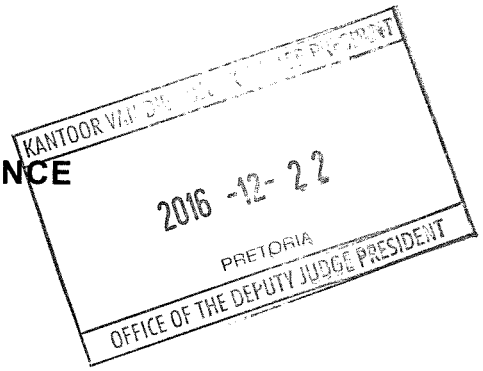
IN THE HIGH COURT OF SOUTH AFRICA

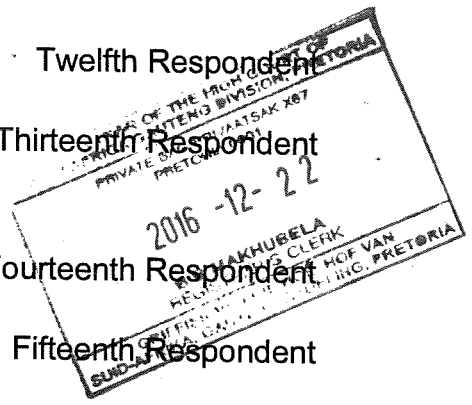
(GAUTENG DIVISION, PRETORIA)

CASE NO: **80978/16**

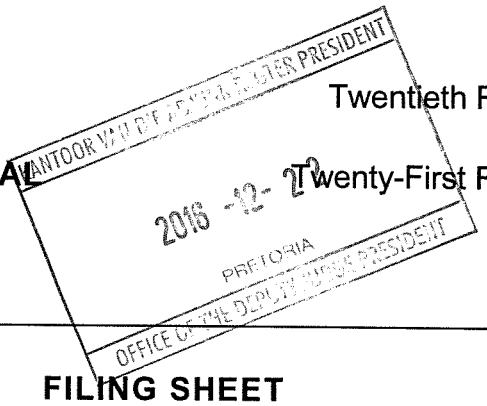
In the matter between:



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



FIRST NATIONAL BANK LTD	Sixteenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-First Respondent



FILING SHEET

Document to be filed: Fifteenth Respondent's Answering Affidavit

Dated at Sandton on this the 22nd day of December 2016.

FILED BY:

EDWARD NATHAN SONNENBERGS

Per:

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WITHOUT PREJUDICE
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Time: 12H42
Signed: .....

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MacRobert
Attorneys

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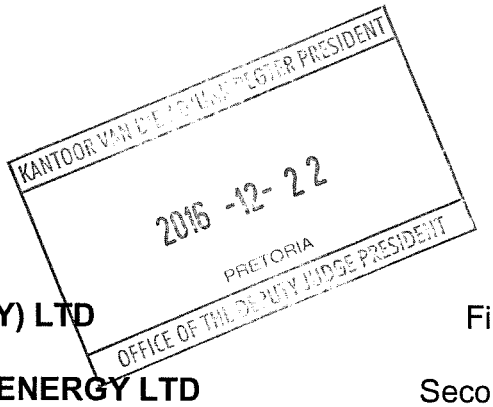
Without prejudice of clients rights
Sonder benadeling van klient se regte
Sign / Geteken .....

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 80978/16

In the matter between:



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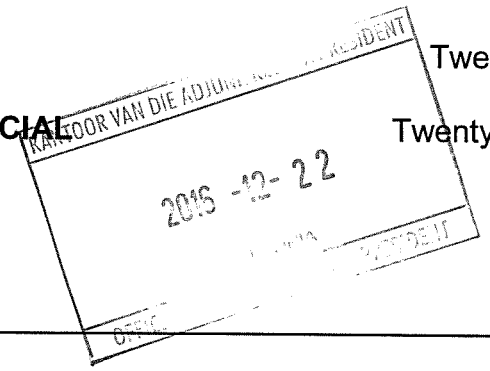

FIFTEENTH RESPONDENT'S AFFIDAVIT

I, the undersigned,

YASMIN MASITHELA

do hereby make oath and state as follows:

1 I am the Head of Compliance for Absa Bank Ltd ("Absa"), the fifteenth respondent, and duly appointed in terms of section 60A of the Banks Act 94 of 1990 (as amended) ("the Banks Act"), read together with Regulation 47 of the Banks Act. I am duly authorised to depose to this affidavit on behalf of Absa.

2 The facts contained in this affidavit are both true and correct, and within my personal knowledge, unless the context provides otherwise. Where relevant, I refer to the confirmatory affidavits of Mr Nicholas Swingler ("Mr Swingler"), the Head of Financial Crime of Absa, and Ms Maria Ramos ("Ms Ramos"), the Chief Executive Officer of Absa, both of whom have personal knowledge of certain facts that I shall refer to herein below.

3 Where I make submissions of law, I do so on the advice of my legal representatives. However, full legal argument in relation to all the issues will be addressed to the Court at the hearing of this matter.

4 I will refer to the fifteenth respondent as Absa and the first to fourteenth respondents, as the Oakbay companies collectively. Absa only banked some of the Oakbay companies, namely the 1st, 2nd, 3rd, 6th, 7th, 11th, 12th, and 14th respondents.

INTRODUCTION

5 This affidavit is filed in response to the founding affidavit of the applicant ("the Minister").

6 It appears from the Minister's founding affidavit that representatives of the Oakbay companies repeatedly asked him to intervene on their behalf in relation to the closure of their banking accounts with the 15th to 18th respondents (collectively referred to as "the Banks").

7 In response, the Minister seeks a declaration that he is not by law empowered or obliged to intervene in the relationship between banks and their clients as regards the closing of those clients' bank accounts.

8 Absa is deeply concerned by the Oakbay companies' efforts to persuade the Minister to intervene. Absa contends that these were attempts to persuade the Minister to act unlawfully by intervening in private banking relationships. If the Minister had acceded to these requests, the consequences would have been significant:

8.1 The Minister's conduct would have been unlawful and *ultra vires* his powers.

8.2 The intervention would have greatly undermined confidence in the banking sector and raised the spectre of state intervention in private commercial relationships, arbitrarily and at the instance of a select group of companies or persons.

8.3 This would have been a dangerous precedent for the banking industry as a whole, would have been contrary to the public interest and would have created real risks for the confidentiality of the relationship between banks and clients.

8.4 Such intervention would also have compromised Absa's contractual relationship as a correspondent bank with its international clearing banks.

9 At paragraph 29 of his founding affidavit the Minister states that:

" ... the grant of the declaratory orders sought is called for, in the public interest. The continued public assertions that registered banks within the regulatory environment in South Africa acted for no adequate reason, irregularly and indeed for improper reasons in closing accounts are harmful to the reputation for integrity of South Africa's financial and banking sectors. So too is the continued uncertainty arising from Oakbay's simultaneous disinclination itself to seek a court's ruling. That uncertainty is prejudicial, as stated, to financial stability and the standing of the South African regulatory authorities, the operation of the banking and financial sectors, the South African economy at large and the employees whose interests Oakbay invokes."

10 Absa agrees with the Minister's position in this regard. It considers that this application and the relief sought in it is essential in order to ensure that there is certainty and clarity regarding whether public functionaries are entitled to intervene in the relationship between banks and their clients. The events set out in the Minister's affidavit, as well as in this affidavit and those of the other banks, demonstrate that this is necessary. Absa therefore endorses the Minister's initiative to place this disputed legal issue before this Court for resolution and determination.

11 In the circumstances, Absa supports the relief sought by the Minister in this application. Absa contends that no member of Cabinet is empowered nor obliged by law to intervene in the relationship between the Oakbay companies and the Banks.

12 In this affidavit, I will begin by outlining the basis on which Absa contends that this is the correct legal position.

13 Absa has also noted the complaints by the Oakbay companies to the Minister (which appear at annexures A, E, G, and L to the founding affidavit) that Absa improperly closed their accounts.

13.1 In light thereof, I will deal with the facts relating to the termination by Absa of its banker-client relationship with the 1st, 2nd, 3rd, 6th, 7th, 11th, 12th, and 14th respondents, as well as other entities and individuals closely associated with the Oakbay companies who are not cited as respondents in the application ("related parties").

13.2 I wish to highlight the fact that the Oakbay companies deliberately – after taking legal advice – made an election not to legally challenge the decision of Absa to close their accounts, as is evident from the correspondence (Annexure E) attached to the Minister's application. They must be held to that election.

14 Lastly, I set out Absa's response to questions raised by representatives of the National Executive Committee of the African National Congress ("the NEC") and meeting requests from the so-called "Inter-Ministerial Committee" ("the IMC") relating to the termination of banker-client relationships. These questions and meeting requests were made to Absa during April and May 2016 after Absa had closed the banking accounts of the Oakbay companies and related parties.

THE MINISTER IS NEITHER EMPOWERED NOR OBLIGED TO INTERVENE

15 As I have indicated, Absa's position is that the Minister (and any other Cabinet member) is neither empowered nor obliged to intervene in the relationship between the Oakbay companies, its related parties, and the Banks.

16 While full argument will be advanced on this issue at the hearing of this matter, for present purposes and by way of outline, I emphasise two points.

17 First, the Minister does not have any such power or duty of intervention conferred on him by law.

17.1 It is trite law that the Executive may exercise no power and perform no function beyond that conferred on them by law. This is a fundamental requirement of the rule of law and the supremacy of the Constitution. It has been a well-established part of our law since the decision of the Constitutional Court in *Fedsure Life Assurance Ltd & Others v Greater Johannesburg Transitional Metropolitan Council & Others* 1999 (1) SA 374 (CC) at para 58.

17.2 There is no provision of the Constitution, national legislation, nor any regulation, that empowers or obliges the Minister to

intervene in banker-client relationships as urged by the Oakbay companies.

17.3 Any attempt to intervene in banker-client relationships would therefore be *ultra vires* the Minister's powers and unlawful.

18 Second, any attempt by the Minister to do so would constitute an impermissible intervention in the banker-client relationship. In terms of our law and the principles laid down in *Bredenkamp and Others v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) ("Bredenkamp judgment"):

18.1 The law of contract governs the relationship between a bank and its clients.

18.2 A bank is entitled to terminate its contractual relationship with any client on reasonable notice.

18.3 No person is entitled to insist that its contractual relationship with a bank should endure against the bank's will.

18.4 Therefore, provided that it gives reasonable notice, a bank is entitled to terminate its banking relationship with any client, and is not obliged to give reasons for its decision to do so.

19 There is accordingly no basis upon which the Minister could have lawfully intervened as the Oakbay companies urged him to do. There is no executive power vested in the Minister, nor a power arising from

statute, that would permit Ministerial intervention at the instance of a client to interfere with the contractual relationship subsisting between a bank and its client.

20 Lastly, I have considered the legal opinions attached to the Minister's application as Annexures C and F. I am advised by Absa's legal representatives that these opinions correctly set out the legal position. I will not repeat same herein.

ABSA'S TERMINATION OF THE BANKER-CLIENT RELATIONSHIPS WITH THE OAKBAY COMPANIES AND RELATED PARTIES

21 In dealing with the above issue, I will address the following matters:

21.1 Absa's obligations to implement financial crime controls to manage the risk relating to money laundering and terrorist financing and to apply customer due diligence to high risk customers including Politically Exposed Persons ("PEPs").

21.2 The basis upon which Absa decided to terminate the banker-client relationship with the Oakbay companies and related parties; and

21.3 The steps/processes followed by Absa to implement its aforesaid decision.

22 I do so in light of the allegations by the Oakbay companies that Absa unlawfully and improperly terminated the banker-client relationships and

their attempts to influence the Minister to intervene which appear at annexures A, E, G, and L to the Minister's application.

Absa's obligations to conduct customer due diligence

23 Absa is registered and licensed as a bank in terms of the Banks Act by the South African Reserve Bank ("SARB"). Absa is 100% owned by Barclays Africa Group Ltd ("BAGL"), and the latter is registered as the bank controlling company, which is listed on the Johannesburg Securities Exchange.

24 Absa, as a registered bank, has a clear and unequivocal obligation in terms of South African law to implement sound risk management processes, procedures and controls to manage financial crime risks, including the risks relating to money laundering and terrorist financing.

25 In this regard I refer to the following two primary legal instruments which contain specific requirements relevant to the duties of Absa, as it relates to this matter:

25.1 Regulation 36[1] issued under section 90 of the Banks Act

25.1.1 Regulation 36 provides that every bank shall have in place comprehensive risk management processes and procedures to prevent the bank from being used for money laundering or other unlawful activity. The SARB

[1] Regulation 36(17)(a)(iv)

("banking regulator") is empowered to revoke the Bank's licence for failure to comply with Regulation 36.

25.1.2 This regulation also requires any foreign branch, subsidiary or operation of the bank to implement and apply anti-money laundering and counter terrorist financing measures consistent with the Financial Action Task Force ("FATF") recommendations, as detailed below. The FATF is an inter-governmental body established by the G20 and it is responsible for the development and promotion of international policies and standards to combat money laundering and terrorist financing.

25.1.3 In addition, the Basel Committee on Banking Supervision's Guidelines on Sound Management of risks relating to Money Laundering and Financing of Terrorism (2014) states that banks should have "*adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the banking sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities*".

25.2 Financial Intelligence Centre Act 38 of 2001 ("the Act")

25.2.1 The Act stipulates that an accountable institution must implement specific controls to combat money laundering

and terrorist financing. As a registered bank, Absa falls within the definition of an accountable institution and must comply with the provisions of Section 21 of the Act read with Regulation 21 of the FIC Regulations. The duties under Section 21 and Regulation 21 are more fully explained under Guidance Note 3A ("the Guidance Note") issued by the Financial Intelligence Centre ("FIC") in March 2013.

25.2.2 The Guidance Note sets out the controls or mechanisms to identify high risk customers including PEPs. I attach a copy of the Guidance Note 3A as "**YM1**".

25.2.3 It furthermore requires a bank to perform enhanced due diligence in respect of such customers. It stipulates that a bank must *"develop graduated client acceptance policies and procedures that require extensive due diligence for higher risk clients".*

25.2.4 The Guidance Note enjoins banks to apply international best practice and the FATF standards that refer to on-going risk-sensitive programmes to maintain relevant client details. It requires that accountable institutions should apply their client identification and verification procedures to existing clients on the basis of materiality and risk.

25.2.5 The Guidance Note further requires that they conduct due diligence reviews of such existing relationships at appropriate times.

25.2.6 The Guidance Note defines a PEP and sets out the measures that need to be put in place when dealing with a PEP. The definition is very broad and includes an individual who is or has in the past been entrusted with prominent public functions as well as their families and closely associated persons. In terms of this Guidance Note, the bank must put in place appropriate risk management processes and systems to determine whether a customer, a potential customer or the beneficial owner of an entity, is a PEP, and it must then conduct enhanced due diligence on all PEPs and their close associates.

25.2.7 The reason the Bank is required to conduct on-going enhanced due diligence in respect of PEPs and their close associates is because of the higher money laundering risk that PEPs pose. The risks associated with PEPs are that by virtue of their position and the influence that they hold, PEPs may be misused to conceal funds or assets which have been obtained illegally through the misappropriation of public funds or as a result of the PEP's power and influence.

25.3 A failure by Absa to adhere to its obligations to implement adequate financial crime controls would expose it to regulatory sanctions by the regulator. In this regard, Absa has to date incurred two administrative fines from the SARB totalling R20 million, coupled with directives from the SARB that Absa take remedial action by enhancing and strengthening its financial crime controls.

25.4 Absa thus continues to expend extensive resources in the form of people, processes and systems to manage financial crime controls in accordance with international and local best practice.

26 In addition to these obligations which it bears as a South African bank, Absa bears further obligations by virtue of the fact that BAGL is majority owned by Barclays Bank PLC ("Barclays PLC"). In this regard, BAGL and all of its subsidiaries, including Absa, are subject to and bound by the UK and US regulatory requirements and the Barclays Group Policies relating to Anti-Money Laundering and Counter Financing of Terrorism. These policies are based on international standards and best practices.

26.1 In terms of the UK regulatory requirements, notably Regulation 15 of the UK Money Laundering Regulations 2007 and standard SYSC 6.1.1R contained in the UK Financial Conduct Authority Handbook, Barclays PLC exercises oversight and governance over the Absa Financial Crime Risk Management Programme. I attach the relevant extracts of the regulations and standards as "**YM2**" and "**YM3**".

26.2 Absa is therefore subject to the jurisdiction of foreign regulators including, but not limited to, the Financial Conduct Authority, the Prudential Regulatory Authority (in the United Kingdom), the Department of Justice, the Federal Reserve, and the Department of Financial Services (in the United States of America).

26.3 Accordingly, Absa must follow and apply the Barclays Global AML policy and standards to ensure that it applies adequate financial crime controls; in particular, as it relates to customer due diligence.

26.4 A failure by Absa to adhere to the customer due diligence requirements and to implement adequate financial crime controls would expose both Absa and its holding company, Barclays PLC, to regulatory sanctions by international regulators.

26.5 The Barclays Global AML policy and standards states that a high risk customer including a PEP is required to undergo enhanced due diligence at customer on-boarding as well as annually. I attach a statement released by Barclays PLC on Anti-Money Laundering and Counter-Terrorist Financing as annexure "**YM4**".

27 To ensure compliance with the abovementioned international and South African legal obligations, Absa's risk management procedures take into account the risk level of its customers to money laundering activities and apply enhanced due diligence procedures in respect of all PEPs. Accordingly, Absa has a policy of conducting annual reviews of all of its

high risk customers including its PEPs. This applies to, but is not limited to, a number of the individuals and entities associated with the Oakbay companies.

Absa's 2014 annual PEP customer review / due diligence

28 Pursuant to the above domestic and international legal and policy requirements, on 18 November 2014 an internal committee of Absa's Corporate and Investment Banking Division ("CIB") met to conduct an annual review of its customers who had been identified as PEPs and their related entities. The reviews included, amongst others, a review of the Oakbay companies.

29 The PEP committee's review of the Oakbay companies and related parties established that:

29.1 The Oakbay companies were not using Absa as a primary or dual bank and were apparently moving their banking business to alternative financial institutions. As a consequence, Absa was limited in its ability to appropriately monitor and understand the customers' risk profiles in order to discharge its abovementioned obligations effectively.

29.2 There was also evidence of large unexplained transfers of funds between the Oakbay companies and related parties, and to other banks. As already indicated, Absa could not account for these transfers in accordance with its above-mentioned obligations.

29.3 Moreover, the revenue received by Absa from the portfolio of the Oakbay companies' accounts had declined materially over the previous three years. The costs to Absa of fulfilling its monitoring obligations in respect of these accounts would accordingly be significant relative to the revenue that Absa would derive from the accounts concerned.

29.4 There was also adverse media publicity regarding the Oakbay companies and related persons that had occurred prior to the review. This increased the reputational and conduct risk for Absa arising from a continued relationship with these companies and persons.

30 In the circumstances, and after having assessed the risks and rewards involved, it was determined by the PEP review committee that continuing to provide banking services to the Oakbay companies and related parties exceeded Absa's current and forward-looking risk appetite.

31 Accordingly, on 18 November 2014, the committee decided to terminate its banker-client relationship with the Oakbay companies and related parties. The steps followed to close the accounts are set out more fully below.

32 I emphasise that the recent case of *Hlongwane and Others v ABSA Bank Limited and Another* (75782/13) [ZAGPPHC] 928 ("Hlongwane judgment") confirmed that the legal position in this regard is as follows:

"[30] ... [Absa] had no obligation to retain a client whose monitoring in terms of money laundering measures put in place would be more onerous when compared with the benefit, in terms of fees, it would receive from the applicants. I am of the view that [Absa's] bona fides in deciding to close the applicants' accounts cannot be questioned. In the Bredenkamp matter (supra) where the court was faced with facts similar to the facts in this case, the court held that...

> *[65] The appellants' response was that, objectively speaking, the Bank's fears about its reputation and business risks were unjustified. I do not believe it is for this court to assess whether or not a bona fide business decision, which is on the face of it reasonable and rational, was objectively 'wrong' where in the circumstances no public policy considerations are involved."*

33 Absa's termination of the banker-client relationship was consistent with these principles and its legal obligations.

The process of closing the accounts of the Oakbay companies and the related parties

34 After the decision to terminate the banker-client relationships was taken, Absa embarked on the necessary steps to ensure that the various

relationships were terminated in an orderly fashion without introducing any further risks. This included taking the following steps:

34.1 Absa coordinated its efforts across the various divisions within Absa and in the wider BAGL group.

34.2 Absa ensured that appropriate legal processes were applied including additional legal scrutiny of all the relevant Oakbay companies and related parties' contracts with considerations of the relevant notice periods.

34.3 Absa understood that it was entitled to terminate the relationship, provided reasonable notice was provided. Although a period of 30 days' notice would have been reasonable, Absa decided to provide for at least 60 days' notice to the Oakbay companies.

34.4 Absa then prepared the relevant notices to inform the Oakbay companies of the decision to terminate and engaged with the Oakbay companies to the extent set out below.

35 On 18 December 2015, at a meeting with the authorised representatives of the Oakbay companies, Absa gave formal notice of its decision to terminate the banker-client relationship. I attach an example of the termination letters as "**YM5**".

36 During this meeting the Oakbay companies, through their authorised representatives, expressed no objection to the closure of the accounts at the time or any questions regarding the notice period. The

representatives advised that the Oakbay companies had already made a decision to move their banking business to another financial institution.

37 After the meeting, however, some of the Oakbay Companies, addressed letters to Absa recording that the directors of those companies were "*taken aback*" by Absa's sudden decision to close the accounts and asking for the rationale for the decision. I attach the letters dated 21 December 2015 as "**YM6**" and "**YM7**".

38 On 23 December 2015, Absa responded to this correspondence. I attach an example of such a response as "**YM8**".

39 On 29 December 2015, a further letter was addressed to the Chief Executive Officer of Absa recording dissatisfaction with the reasons given by Absa for closure. I attach the letter as "**YM9**".

40 On 29 January 2016, Absa responded to this correspondence. I attach an example of such a response as "**YM10**".

41 During the first week of February 2016, nine of the Oakbay companies wrote to Absa asking that their accounts be closed "with immediate effect". Copies of the letters are attached as "**YM11.1**" to "**YM11.9**".

42 The accounts were formally closed by 16 February 2016. A copy of an example of a letter reflecting such closure is attached as "**YM12**".

43 Thereafter, on 14 April 2016, the Oakbay companies requested an urgent meeting to discuss Absa's decision to terminate their banking services. I attach a copy of this letter as "**YM13**".

44 On 25 April 2016, Absa replied to indicate that it did not consider that a meeting would be of assistance to either party and therefore politely declined the request. I attach a copy of this letter as "**YM14**".

45 In relation to the 2014 PEP review, and the processes followed thereafter to terminate the banker-client relationships and close the relevant Oakbay accounts, I attached hereto a confirmatory affidavit by Mr Swingler who was personally involved in this process as annexure "**YM15**".

ABSA'S RESPONSE TO QUESTIONS RAISED BY THE NEC AND THE MEETING REQUESTS OF THE IMC

46 Between April and May 2016, after the closure of the Oakbay companies and related party accounts, Absa received requests for meetings and information from both the NEC and the IMC respectively.

47 It is appropriate to set out Absa's response to these requests as they demonstrate that Absa has been steadfast in its commitment to preserving the confidentiality of its clients and to avoiding any suggestion of unlawful executive intervention in the banker-client relationship.

The ANC NEC meeting

48 On 20 April 2016, and at the request of the NEC, a meeting was held between representatives of Absa and representatives of the NEC at Albert Luthuli House.

48.1 The Absa team was led by its Chief Executive Officer, Ms Ramos, and I was part of the delegation. A confirmatory affidavit by Ms Ramos is attached hereto marked annexure "**YM16**".

48.2 The NEC delegation was led by Mr Gwede Mantashe and included Mr Enoch Godongwana, Ms Jessie Duarte, and Mr Krish Naidoo, amongst others.

49 Absa's understanding was that the stated purpose of the meeting was to discuss whether the NEC's investigation into state capture had triggered any account closures by Absa.

49.1 At the commencement of the meeting, Ms Ramos emphasised that Absa was legally precluded from discussing any past, present or future clients' confidential information and as such would not discuss any specific clients.

49.2 During the meeting, the NEC confirmed that the purpose for the meeting was not to discuss client or customer details but get an understanding of the following issues:

49.2.1 The *Bredenkamp* judgment and the consistency of the application of the principles of the judgment;

49.2.2 The effects of the account closures on other companies and businesses; and

49.2.3 To get an understanding of the regulatory framework that governs the banker-client relationship.

50 During the meeting, I provided the NEC with a summary of the regulatory context in which Absa operates and the legal and policy framework within which banker-client relationships are managed, including the concept of PEPs.

51 The NEC then raised the issue of alleged collusion amongst the Banks to close the Oakbay companies and related parties accounts. Absa was categorical that it does not interact with other banks in relation to client matters and that it follows its own policies, procedures and the laws that apply to it. Absa invited the NEC to raise any concerns that it may have in this regard with the relevant regulators including the Banking Regulator.

The IMC meeting requests

52 On 22 April 2016, the office of Ms Ramos, the Chief Executive Officer of Absa, received an email request from Ms Zarina Kellerman ("Ms Kellerman"), who purported to be the Acting Secretary to the IMC, inviting Absa to attend a meeting scheduled for 25 April 2016.

53 The email explained that an IMC had been formed by Cabinet to consider "*certain allegations made against certain financial institutions.*" Absa was requested to make a representative available to attend a discussion with the said IMC. It was stated that there was no set agenda for this meeting and that this would be a discussion convened for the purposes of gaining clarity on current media reports ("the first request"). I attach the e-mail request from the Acting Secretary to the IMC sent to Absa as "**YM17**".

54 Absa requested further information relating to the nature of the meeting to be held and notified the IMC of its legal and regulatory obligations which precludes it from discussing any client confidential information. I attach Absa's response to the e-mail as "**YM18**".

55 Ms Kellerman's response did not address the questions raised by Absa in its email. Instead, she conveyed that the *"information shared during the discussion must of course be relayed to Cabinet for it to properly consider the media reports. Outside of that forum, all such information remains strictly confidential*". I attach the response as "**YM19**".

56 Absa did not consider that its questions were adequately answered, particularly its concerns around possible discussions relating to client confidential information. Absa therefore declined the invitation to meet with the IMC on this basis. Absa further reaffirmed, that as a regulated bank and responsible financial institution, Absa would cooperate with the appropriate authorities to discuss any matters which Absa is permitted

by law to discuss. I attach Absa's response recording its position as "**YM20**".

57 Shortly thereafter, on 4 May 2016, a further invitation was extended by Ms Kellerman to Absa to attend a meeting with the IMC ("the second request"). This meeting was to be held on 5 May 2016. The stated purpose of the second request was *inter alia* to discuss public comments purportedly made by Absa around the decision taken by the banks to close the bank accounts of certain of its clients. The second request suggested that the meeting would discuss the deterrent effect that the closure of client bank accounts may have on potential investors who want to do business in South Africa. I attach the second request as "**YM21**".

58 On behalf of Absa, I sent an email to Ms Kellerman declining the request and reaffirmed Absa's position by clarifying, amongst others, that:

58.1 The only public comment made by Absa was to the effect that it could not comment on client confidential issues and that as a regulated financial institution it would be inappropriate to discuss matters relating to prospective, current and past client information.

58.2 Absa is regulated by the SARB and its legal obligations arise from various pieces of legislation including, but not limited to, the Banks Act, the Prevention of Organised Crime Act, the Financial Intelligence Centre Act, the Protection of Constitutional

Democracy Against Terrorist and Related Activities Act, the Exchange Control regulations. Absa also has reporting obligations to the South African Revenue Services.

58.3 Absa was willing to cooperate with the appropriate authorities where necessary.

59 I attach Absa's response to the second request as "**YM22**".

60 It is therefore clear that Absa has remained steadfast in its commitment to preserving the confidentiality of its clients and to avoiding any suggestion of unlawful executive intervention in the banker-client relationship.

CONCLUSION

61 In the circumstances, Absa supports the relief sought by the Minister in this application.

62 As is set out above, Absa considers that it is essential that this Court make clear that no public functionary has the power or obligation to intervene in the relationship between banks and their clients.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **SANDTON** on this the 22nd day of December 2016, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

Zamathiyane Mthiyane
155 - 5th Street
Sandown, Sandton, 2196

Commissioner of Oaths
Ex-Officio / Practising Attorney R.S.A.

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

"YM1"

Financial Intelligence Centre Guidance Note 3A
Guidance for accountable institutions on client identification and verification and related matters

PREFACE

Money laundering has been criminalised in section 4 of the Prevention of Organised Crime Act, 1998. A money laundering offence may be described as the performing of any act that may result in concealing the nature of the proceeds of crime or of enabling a person to avoid prosecution or in the diminishing of the proceeds of crime.

Apart from criminalising the activities constituting money laundering, South African law also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These control measures, as contained in the Financial Intelligence Centre Act, 2001 (the "FIC Act"), are based on three basic principles of money laundering detection and investigation, i.e. that:

- intermediaries in the financial system must know with whom they are doing business;
- the paper trail of transactions through the financial system must be preserved;
- possible money laundering transactions must be brought to the attention of investigating authorities.

The control measures introduced by the FIC Act include requirements for institutions to establish and verify the identities of their clients, to keep certain records, to report certain information and to implement measures that will assist them in complying with the FIC Act.

The majority of obligations under the FIC Act apply to "accountable institutions". These are institutions that fall within any one of the categories of institutions listed in Schedule 1 to the FIC Act.

The FIC Act also established the Financial Intelligence Centre ("the Centre") as the agency responsible for the collection, analysis and disclosure of information to assist in the detection, prevention and deterrence of money laundering in South Africa. In addition, section 4(c) of the FIC Act empowers the Centre to provide guidance in relation to a number of matters concerning compliance with the obligations of the FIC Act.

Application of this Guidance Note

This Guidance Note applies to the all accountable institutions that are referred to in Schedule 1 to the FIC Act.

The guidance provided in this Guidance Note is provided as general information only. The Guidance Note does not provide legal advice and is not intended to replace the FIC Act or the Money Laundering Control Regulations ("the Regulations") issued under the FIC Act in December 2002.

The Guidance Note is published by the Centre under section 4(c) of the FIC Act to assist accountable institutions and the relevant supervisory bodies with the practical application of certain client identification and client verification requirements of the FIC Act. Some of the terminology used in this Guidance Note is explained in a glossary attached as an addendum to the Guidance Note.

Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Regulations issued under the FIC Act. Guidance provided by the Centre is authoritative in nature. An accountable institution must apply guidance issued by the Centre, or demonstrate an equivalent level of compliance with the relevant obligations under the FIC Act. It is important to note that enforcement action may

emanate as a result of non-compliance with the FIC Act where an accountable institute does not follow guidance issued by the Centre and cannot demonstrate compliance with the legal obligation to which the guidance relates.

Guidance emanating from industry associations or other organisations, therefore, in the Centre's view, does not have a bearing on compliance with the obligations imposed by the FIC Act or interpretation of its provisions.

ANTI-MONEY LAUNDERING AND TERRORIST FINANCING POLICIES AND PROCEDURES

1. Board/senior management approval of an accountable institution's anti-money laundering and terrorist financing policies and procedures

   Board of directors'/senior management's approval of an accountable institution's own internal policies and procedures to address money laundering and terrorist financing is critical if an accountable institution wishes to be considered serious about its appreciation of, and willingness to, mitigate money laundering and terrorist-financing risks in its daily operations.

   The Centre therefore expects that the internal anti-money laundering and terrorist financing policies and procedures of an accountable institution should be adopted and approved by the board of directors of that accountable institution.

   This will also ensure that the board/senior management of a particular accountable institution takes ownership of its obligations in terms of the FIC Act. The criminal and administrative penalties for failure to comply with the obligations of the FIC Act are severe, and directors/senior management may be held personally liable.

2. Implementation of Guidance Note 1 in respect of a risk-based approach

Although the FIC Act and the Regulations do not expressly make reference to a risk-based approach, these measures allow limited scope to apply a risk-based approach to the verification of certain client particulars. This issue is covered in Guidance Note 1 issued by the Centre in April 2004.

Guidance Note 1 indicates that application of a risk-based approach to the verification of the relevant particulars implies that an accountable institution can accurately assess the risk involved. It also implies that an accountable institution can take an informed decision on the basis of its risk assessment as to the appropriate methods and levels of verification that should be applied in a given circumstance.

Guidance Note 1 further states that the assessment of these risk factors should best be done by means of a systematic approach to determine different risk classes and to identify criteria to characterise clients and products. In order to achieve this, an accountable institution would need to document and make use of a risk framework. Such a risk framework should preferably form part of the accountable institution's internal policies and procedures to address money laundering and terrorist financing referred to in paragraph 1, above.

Risk Indicators

3. Risk indicators to be used to differentiate between clients

The FIC Act and the Regulations require that accountable institutions identify all clients with whom they do business unless an exemption applies in a given circumstance. Accountable institutions, however, are not required to follow a "one size fits all" approach in the methods that

they use and the levels of verification that they apply to all relevant clients.

It is imperative that the money laundering risk in any given circumstance be determined on a holistic basis. In other words, the ultimate risk rating accorded to a particular business relationship or transaction must be a function of all factors that may be relevant to the combination of a particular client profile, product type and transaction.

A combination of the following factors may be applied to differentiate between high risk, medium risk and low risk clients:

- product type;
- business activity;
- client attributes, for example, whether the client is on the United Nations list, duration of client relationship with the accountable institution, etc;
- source of funds;
- jurisdiction of client;
- transaction value;
- type of entity.

This is not an exhaustive list. Please refer to Guidance Note 1 for further particulars on the implementation of a risk-based approach.

4. Client-profiling procedures for high-risk clients

In terms of Regulation 21 of the Regulations, an accountable institution must obtain certain additional information whenever this information may reasonably be required to identify:

- a business relationship or single transaction that poses a particularly high risk of facilitating money laundering activities; or
- the proceeds of unlawful activity or money laundering activities.

In most instances it is a combination of factors, not any one factor that will lead to a conclusion that a transaction or relationship poses a money laundering risk. All circumstances surrounding a business relationship or transaction should be reviewed.

The risk factors referred to in paragraph 3, above, may be helpful to accountable institutions in assessing when additional information may be required in order to enhance the institution's profile of a particular client. In addition there are a number of further factors that may indicate that a business relationship or single transaction poses a high risk of facilitating money laundering activities, or the presence of the proceeds of unlawful activity. The following examples of such activities are applicable to the banking sector but can also be useful for non-banking institutions:

- a client appears to have accounts with several banks in one geographical area;
- a client makes cash deposits to a general account of a foreign correspondent bank;
- a client wishes to have credit and debit cards sent to destinations other than his or her address;
- a client has numerous accounts and makes or receives cash deposits in each of them amounting to a large aggregated amount;
- a client frequently exchanges currencies;
- a client wishes to have unusual access to safe deposit facilities;
- a client's accounts show virtually no normal business related activities, but are used to receive or disburse large sums;
- a client has accounts that have a large volume of deposits in bank cheques, postal orders or electronic funds transfers;
- a client is reluctant to provide complete information regarding the client's activities;

- a client's financial statements differ noticeably from those of similar businesses;
- a business client's representatives avoid contact with the branch;
- a client's deposits to, or withdrawals from, a corporate account are primarily in cash, rather than in the form of debit and credit normally associated with commercial operations;
- a client maintains a number of trustee accounts or client sub-accounts;
- a client makes a large volume of seemingly unrelated deposits to several accounts and frequently transfers a major portion of the balances to a single account at the same bank or elsewhere.
- a client makes a large volume of cash deposits from a business that is not normally cash intensive;
- a small business in one location makes deposits on the same day at different branches;
- there is a remarkable transaction volume and a significant change in a client's account balance;
- a client's accounts show substantial increase in deposits of cash or negotiable instruments by a company offering professional advisory services;
- a client's accounts show a sudden and inconsistent change in transactions or patterns.

The examples referred to above may be legitimate features of certain categories of businesses, or may make business sense if viewed in the context of the client's business activities. However, it is equally possible that these features would be unexpected in relation to certain categories of businesses, or would have no apparent business purpose, given a particular client's business activities. The purpose of obtaining additional information concerning certain clients in these circumstances is to assist the accountable institution to more

accurately identify truly suspicious behavior or relationships and transactions that pose a risk of money laundering, on the basis of a broader profile of the client than the mere client identification particulars.

The information that an accountable institution must obtain in such circumstances must be adequate to reasonably enable the accountable institution to determine whether transactions involving a client are consistent with the accountable institution's knowledge of that client and that client's business activities and must include particulars concerning:

- the source of that client's income; and
- the source of the funds that the particular client expects to use in concluding the single transaction or transactions in the course of the business relationship.

5. Client acceptance policies

Accountable institutions should develop clear customer acceptance policies and procedures, including a description of the type of customer that is likely to pose a higher than average risk to an accountable institution. In preparing such policies, accountable institutions should take into account all risk indicators, including factors such as the customer's:

- background;
- country of origin;
- public or high-profile position;
- linked accounts; and
- business activities.

Accountable institutions should develop graduated client acceptance policies and procedures that require extensive due diligence for higher risk clients. These policies and procedures should form part of an

accountable institution's risk framework, referred to in paragraph 2 above.

ESTABLISHING AND VERIFYING IDENTITIES

NATURAL PERSONS – SOUTH AFRICAN CITIZENS AND RESIDENTS

6. Clarification of an official identity document

The Regulations define an identification document in respect of a natural person who is a citizen of, or resident in, the Republic of South Africa, as an official identity document. The Department of Home Affairs describes an official identity document as a green bar-coded identity document. Therefore, old identity documents may not be construed as official identity documents.

Regulation 4 of the Regulations, however, provides for exceptional cases in which a person is unable to produce an official identity document. In such instances, the accountable institution must be satisfied that the client has an acceptable reason for being unable to produce an official identity document. This reason should be noted in the records of the accountable institution. The note should also reflect the details of the staff member who recorded the information. The accountable institution may then accept an alternative document, which contains the person's:

- photograph;
- full names or initials and surname;
- date of birth; and
- identity number.

It is good business practice for the staff member to also include the date on the note. The purpose of dating documents in this instance is an indication that the verification of the client was done at the take on stage of the relationship.

The following are examples of documents that may be accepted in such exceptional circumstances as an alternative form of verification:

- South African driver's licence; or
- South African passport.

Decisions concerning the reasons for being unable to produce an official identity document, which may be accepted by an accountable institution, and the documents that may be regarded as acceptable alternatives, should be based on an accountable institution's risk framework referred to in paragraph 2 above.

The Regulations furthermore define an identification document in respect of a natural person who is not a citizen of the Republic and not resident in the Republic as a passport issued by the country of which that person is a citizen.

7. Clarification of whether the address slip found in identity documents issued by the Department of Home Affairs provides adequate proof of verification of residential address

Regulation 4(3) of the Regulations requires that an accountable institution use "information which can reasonably be expected to achieve" verification of an address. It is the view of the Centre that the address slips issued by the Department of Home Affairs do not constitute information that can reasonably be expected to achieve verification of a person's current address. The Centre does not regard these address slips as independent source documents. In addition, the information contained in an address slip may be outdated and, therefore, may not reflect current information.

8. Alternate means of verification if identity document has been lost or stolen

This issue is addressed under paragraph 6 above.

9. Acceptable client identification and verification procedures for non face-to-face verification

Regulation 4 of the Regulations concerning the verification of a person's identity is based on a view that the customer is met face-to-face when his or her particulars are obtained.

Regulation 18 of the Regulations provides for instances in which client information is obtained in a non face-to-face situation. In such cases, accountable institutions "must take reasonable steps" to confirm the existence of the client and to verify the identity of the natural person involved.

Additional guidance may be taken from the Core Principles. These indicate that accountable institutions should apply equally effective client identification procedures and ongoing monitoring standards for non face-to-face clients. In accepting business from non face-to-face clients:

- accountable institutions should apply client identification procedures to non face-to-face customers that are as effective as those that were applied to customers who were available for interview; and
- there must be specific and adequate measures to mitigate the higher risk.

According to the Core Principles, examples of measures to mitigate risk include:

- certification of documents presented;

- requisition of additional documents to complement those that are required for face-to-face customers;
- independent contact with customer by the accountable institution;
- third party introduction.

Decisions concerning the additional steps to be taken in cases of a non face-to-face situation should be based on an accountable institution's risk framework, referred to in paragraph 2 above.

Practical examples that accountable institutions should consider including in their internal rules on the measures to mitigate risk in respect of non-face-to-face clients are:

- obtaining copies of documents that have been certified by a suitable certifier. Consideration should be given as to whether the certifying person is regulated or is otherwise a professional person subject to some sort of regulation or fit and proper person test who can easily be contacted to verify their certification of the documents;
- requiring the first payment for the product or service to be drawn from an accountable institution account in the client's name;
- sending a letter by registered post to validate the address of the client and ensuring that the service is not activated until the signed acknowledgement of receipt is returned;
- making a telephone call to the telephone number provided that has been independently validated;
- using electronic verification to confirm documents provided or using two or three documents from different sources to confirm the information set out in each document.

The above list is not exhaustive and is intended as a guide for accountable institutions when developing internal rules in respect of non face-to face clients.

10. Status of "faxed, scanned and e-mailed copies"

Faxed, scanned and e-mailed copies of documents may be relevant in instances when client information is obtained in a non face-to-face situation. In such cases, the principles discussed in paragraph 9 above would apply. This implies that documents that are certified as true copies of originals may be accepted, but an accountable institution would have to take additional steps to confirm that the said documents are in fact those of the client in question. In such cases mere reliance on a faxed, scanned or e-mailed document for verification, in the absence of other steps to confirm the client's particulars, is not an acceptable form of verification.

In cases when client information is received in a face-to-face situation, the relevant documents will be sighted as part of the verification process. If copies of those documents are not made at that stage for record keeping purposes, they may be faxed, scanned or e-mailed to the accountable institution in question within a reasonable time thereafter. The accountable institution should then record that the originals or certified copies of the documents, as the case may be, were sighted as part of the verification process.

The accountable institution must ensure that the copies of documents received electronically are in a format that is not susceptible to tampering or manipulation.

Client identification and verification must be done at the outset of the business relationship or single transaction. It is good business practice to date documents relating to the verification of a client. This is an indicator that the account opening and verification of the client was done simultaneously.

11. Examples of acceptable documentation to verify residential address of natural person

Regulation 4(3) of the Regulations sets out instances in which the residential address of a natural person needs to be verified. The most secure form of verification of a residential address would be achieved if a staff member and/or agent of the accountable institution were to visit the residential address of such a natural person to confirm that the person resides at the particular residential address.

In most instances, however, it would be sufficient to review the original document and to obtain a copy of a document that offers a reasonable confirmation of the information in question. Since the documentation must be current, a good practice would be to require documentation that is less than three months old.

It has come to the Centre's attention that accountable institutions are applying a restrictive approach in terms of the types of documentation it accepts to verify the residential address of a client. As a result this restrictive approach is frustrating the verification process for clients of accountable institutions.

Below are examples of documents that may, depending on the circumstances, offer confirmation of a residential address. This list is not exhaustive, and other forms of documentation may be used in the verification process. Decisions as to how residential addresses are to be verified should be based on an accountable institution's risk framework, referred to in paragraph 2 above.

Documents that may offer confirmation of residential address include the following:

- a utility bill reflecting the name and residential address of the person;
- a bank statement from another bank reflecting the name and residential address of the person if the person previously transacted with a bank registered in terms of the Banks Act;
- a recent lease or rental agreement reflecting the name and residential address of the person;
- municipal rates and taxes invoice reflecting the name and residential address of the person;
- mortgage statement from another institution reflecting the name and residential address of the person;
- telephone or cellular account reflecting the name and residential address of the person;
- valid television licence reflecting the name and residential address of the person;
- recent long-term or short-term insurance policy document issued by an insurance company and reflecting the name and residential address of the person;
- recent motor vehicle license documentation reflecting the name and residential address of the person; or
- a statement of account issued by a retail store that reflects the residential address of the person.

When a recent utility bill from a telephone or cellular account, Eskom or a local authority does not identify the physical street address of the property owner (that is, if the bill is sent to a postal address), the utility bill will still be acceptable provided the client's name and the erf/stand and township details are reflected on the utility bill. The client's physical

address, erf number and township should be recorded, and the township cross-referenced to the suburb in which the customer resides.

If thereafter there remains any doubt about the client or the physical address of the client, the erf/stand and township details should be verified by reference to the Deeds Office.

If none of the above is available accountable institutions may explore other means to verify a client's address such as an affidavit containing the following particulars from a person co-habiting with the client or an employer of the client:

- name, residential address, identity number of the client and the deponent of the affidavit;
- relationship between the client and the deponent of the affidavit; and
- confirmation of the client's residential address.

12. Acceptable documents for third party verification

In terms of section 21 of the FIC Act, if a client is acting on behalf of another person, the accountable institution needs to establish and verify the identity of that other person and the client's authority to establish the business relationship or conclude the single transaction on behalf of that other person.

In terms of Regulation 17 of the Regulations, the accountable institution must obtain from the person acting on behalf of another person information that provides proof of that person's authority to act on behalf of that other natural person, legal person or trust.

An accountable institution must verify the information obtained by:

- comparing the particulars of the natural or legal person, partnership or trust with information obtained by the accountable institution from, or in respect of, the natural or legal person, partnership or trust in accordance with Regulation 4 (Verification of information concerning South African citizens and residents), Regulation 6 (Verification of information concerning foreign nationals), Regulation 8 (Verification of information concerning close corporations and South African companies), Regulation 10 (Verification of information concerning foreign companies), Regulation 12 (Verification of information concerning other legal persons), Regulation 14 (Verification of information concerning partnerships) or Regulation 16 (Verification of information concerning trusts) of the Regulations, as may be applicable; and
- establishing whether that information, on the face of it, provides proof of the necessary authorisation.

The following are examples of documents that may be accepted to confirm the authority of a person to act on behalf of another person and to confirm the particulars of the person authorising the third party to establish the relationship:

- power of attorney;
- mandate;
- resolution duly executed by authorised signatories; or
- a court order authorising the third party to conduct business on behalf of another person.

13. Legal incapacity

Regulation 3(2) of the Regulations provides for instances in which a natural person needs to be assisted by another person owing to his/her

legal incapacity. Regulation 4 of the Regulations also applies to the verification of the particulars referred to in Regulation 3(2) of the Regulations, namely, the name, date of birth, identity number and residential address of the person assisting the person without legal capacity.

14. Ongoing client detail maintenance

Regulation 19 of the Regulations states that an accountable institution must take reasonable steps, concerning the verification of client identities that may apply to that accountable institution in respect of an existing business relationship so as to maintain the correctness of particulars that are susceptible to change.

Decisions concerning the method by means of which such maintenance is to be achieved should be based on an accountable institution's risk framework, referred to in paragraph 2 above. Some guidance may be taken from international best practice and FATF standards that refer to on going risk-sensitive programmes to maintain relevant client details.

The following procedure for ongoing maintenance of client information may be considered:

- accountable institutions should apply their client identification and verification procedures to existing clients on the basis of materiality and risk, and should conduct due diligence reviews of such existing relationships at appropriate times;
- accountable institutions need to undertake regular reviews of their existing client records. An appropriate time to do so is when a transaction of significance takes place; or when there is a material change in the way the account is operated; and
- if an accountable institution becomes aware at any time that it lacks sufficient information about an existing client, it should

take steps to ensure that all relevant client identification and verification information is obtained as quickly as possible.

NATURAL PERSONS – FOREIGN NATIONALS

15. Identification and verification

Regulation 6(3) of the Regulations provides for instances in which an accountable institution deems it reasonably necessary to obtain, in addition to a person's identity document (foreign passport), further information or documentation verifying the identity of such a person.

In instances when an accountable institution requires further confirmation of the identity of a foreign national, the accountable institution may obtain such confirmation:

- a letter of confirmation from a person in authority (for example, from the relevant embassy) which confirms authenticity of that person's identity document (passport).

Decisions concerning when further confirmation of the identity of a foreign national may be required and the nature of such information should be based on an accountable institution's risk framework, referred to in paragraph 2 above.

LEGAL ENTITIES

16. Identification and verification of subsidiaries of listed companies

Exemption 6(1) of the Exemptions, applies to companies that are listed on a stock exchange mentioned in the Schedule to the Exemptions. This Exemption does not apply to subsidiaries, whether wholly owned or not, of listed companies.

17. Identification and verification of pension and provident funds

As a general rule, an accountable institution has to establish and verify the identity of a pension and a provident fund. A pension and a provident fund will fall into the category of "other legal person" (Regulation 11 of the Regulations).

The accountable institution must obtain from the natural person acting or purporting to act on behalf of the pension or provident fund:

- the name of the pension or provident fund;
- the address of the legal entity establishing the fund;
- the full names, date of birth and identity number or passport number of the trustees or any other persons appointed to act on behalf of the pension and provident fund or who purports to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the pension and provident fund; and
- the residential address of the trustees or any other persons appointed to act on behalf of the pension and provident fund or who purports to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the pension and provident fund.

18. Identification and verification of "off the shelf" companies

Accountable institutions should identify and verify the information pertaining to "off the shelf" companies in the same way they would identify and verify any other company.

PARTNERSHIPS

19. The definition of a partnership

A partnership is a form of business enterprise. A partnership exists when there is a voluntary association of two or more persons engaged together for the purpose of doing lawful business as a partnership, for profit. Partnerships are assumed to exist when the partners actually share profits and losses proportionately, even though there may not be a written partnership agreement signed between the partners.

A partnership is not a legal entity and cannot conduct transactions in its own name. When a person conducts a transaction on behalf of a partnership, the transaction is conducted on behalf of all partners in that partnership jointly. All partners in a partnership are jointly and severally liable for the partnership's liabilities.

20. Clarification of partnership agreements and whether all partners in a partnership should be identified

In terms of Regulation 13(b)(i) of the Regulations, accountable institutions are required to identify all partners within a partnership.

Where a client wishes to establish a business relationship or to conclude a single transaction the accountable institution must obtain the information that it needs for client identification and verification in terms of the FIC Act and the Regulations. In some instances, an accountable institution would be able (and would even be expected) to obtain information from third parties in order to establish and/or verify a prospective client's identity. The accountable institution must have policies and procedures that are designed to capture all the relevant information.

The Centre cannot prescribe to accountable institutions the form that such procedures should take, but the Centre would expect such procedures to inform a prospective client that the relationship with the accountable institution is dependent on them providing all required information (which, in the absence of a written partnership agreement would include disclosing all partners and identifying and verifying all disclosed partners).

Where two or more persons are co-signatories on an account the Centre expects those co-signatories to sign a declaration to the accountable institution that they do not act as a partnership.

Decisions concerning account-opening policies and procedures, in respect of whether confirmation of the identities of partners should be obtained from third parties, should be based on an accountable institution's risk framework, referred to in paragraph 2, above.

TRUSTS

21. Identification of trusts

The following documents are required to identify a trust:

- trust deed or other founding document;
- letter of authority from the Master of the High Court in South Africa or letter of authority from a competent trust registering authority in a foreign jurisdiction;
- trustees' resolution authorising person/s to act;
- personal details of each trustee, each beneficiary, the founder and the person/s authorised to act (refer to applicable the FIC Act requirements).

22. Identification and verification of each trustee of a trust

The following Regulations provide clarity on this matter:

- Regulation 15(d)(i) of the Regulations requires that an accountable institution must establish the identity of each trustee.

- Regulation 15(g) of the Regulations requires that the residential address and contact particulars in relation to each trustee be established.

- Regulation 16 of the Regulations further explains how the identity of a trustee, as well as the residential address, must be verified.

There is therefore an obligation on all accountable institutions to establish and verify the identity and residential address of each trustee.

ORGANS OF STATE INCLUDING GOVERNMENT DEPARTMENTS

23. Identification and verification of Government departments and organs of state

The FIC Act places an obligation on all accountable institutions to establish and verify the identity of their clients. A client of an accountable institution may include a natural person, a juristic person, such as a close corporation and a company, a partnership, a trusts and organs of state including government departments.

There is an obligation on all accountable institutions to establish and verify the identity of their client even if the client is an organ of state including a government department.

Certain organs of state are incorporated as companies and registered with the Registrar of Companies to conduct business and must be identified as companies. In other instances, Government institutions are constituted as legal persons by statute. Regulations 11 and 12 provide for a category of client referred to as "other legal person", which includes organs of state constituted as legal persons by statute.

Sound business practice would indicate that organs of state that are neither incorporated as companies nor constituted as legal persons by a statute should be dealt with in a manner similar to that used in respect of "other legal persons". This would apply to national, provincial and local government departments.

This implies that, among others, the identities of the persons acting on behalf of an organ of state would have to be established and verified. In some circumstances, this may include the Chief Financial Officer ("CFO") acting on behalf of a Government department. In such instances, the full name, date of birth and identity number in respect of individuals acting on behalf of the relevant organs of state should be obtained and verified. In addition, information concerning the contact particulars of such persons should be obtained.

INTERNATIONAL STANDARDS AND BEST BANKING PRACTICE

24. Extent to which international standards (FATF Recommendations, Core Principles) and best banking practice, (the Wolfsberg Principles) apply to South African banks where ever they operate
In interpreting and applying the relevant legislation, international best practice should serve as a reference to clarify what is expected from the banking industry. The FATF Recommendations form the contextual basis for the implementation of the FIC Act. International standards such as the FATF Recommendations and the Core

Principles provide the minimum requirements with which countries must comply.

The international standard for bank supervision is based on the Core Principles, which set out the standards that have been designed to be applied by all countries in the supervision of the banks in their jurisdictions. Similarly, all banks supervised by a banking supervisor that adopt the Core Principles are duty bound to adhere to the Principles as a matter of best banking practice.

The approach of the Basel Committee on Banking Supervision to KYC adopts a wider prudential method of review.

Sound KYC procedures must be seen as a critical element in the effective management of banking risks. KYC safeguards go beyond simple account opening and record keeping and require banks to formulate a customer acceptance policy and a tiered customer identification programme which involves more extensive due diligence for higher risk clients and which includes proactive account monitoring for suspicious activities.

In terms of principle 15 of the Core Principles, banking supervisors must determine that-

"Banks have adequate policies, practices and procedures in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements".

As a result it is fundamental to the market integrity and financial stability of the South African domestic banking system that international standards, as set out in the Core Principles and best banking practice,

is adopted by the banking industry as an extra prudential measure when legislation does not adequately address a specific issue. Supervisory bodies should be enforcing the implementation of best practices in the industries that they supervise.

POLITICALLY EXPOSED PERSONS (PEPs)

25. Definition of a politically exposed person (PEP) and the measures that need to be put in place when dealing with a PEP

A Politically exposed person or PEP is the term used for an individual who is or has in the past been entrusted with prominent public functions in a particular country. The principles issued by the Wolfsberg Group of leading international financial institutions give practice guidance on these issues. These principles are applicable to both domestic and international PEPs.

The following examples serve as aids in defining PEPs:

- Heads of State, Heads of Government and cabinet ministers;
- influential functionaries in nationalised industries and government administration;
- senior judges;
- senior party functionaries;
- senior and/or influential officials, functionaries and military leaders and people with similar functions in international or supranational organisations;
- members of ruling or royal families;
- senior and/or influential representatives of religious organisations (if these functions are connected to political, judicial, military or administrative responsibilities).

According to the Wolfsberg principles, families and closely associated persons of PEPs should also be given special attention by the

institution. The term "families" includes close family members such as spouses, children, parents and siblings and may also include other blood relatives and relatives by marriage. The category of "closely associated persons" includes close business colleagues and personal advisers/consultants to the PEP as well as persons, who obviously benefit significantly from being close to such a person.

An accountable institution should conduct proper due diligence on both a PEP and the persons acting on his or her behalf. Similarly, KYC principles should be applied without exception to PEPs, families of PEPs and closely associated persons to the PEP.

26. Treatment of PEPs in relation to other high-risk clients

In terms of the FATF standards, specific action should be taken in relation to PEPs as a category of high-risk client. In addition to performing customer due diligence measures, accountable institutions should put in place appropriate risk management systems to determine whether a customer, a potential customer or the beneficial owner is a PEP. In addition accountable institutions:

- should obtain senior management approval for establishing business relationships with a PEP. When the client has been accepted, the accountable institution should be required to obtain senior management approval to continue the business relationship;

- should take reasonable measures to establish the source of wealth and the source of funds of customers and the beneficial owners identified as PEPs;

- should conduct enhanced ongoing monitoring of a relationship with a PEP.

27. Policies for dealing with PEPs

It is crucial that accountable institutions address the issue of PEPs in their risk framework, referred to in paragraph 2, and group money laundering control policy. PEPs should be regarded as high-risk clients and, as a result, enhanced due diligence should be performed on this category of client. Heightened scrutiny has to be applied whenever PEPs or families of PEPs or closely associated persons of the PEP are the contracting parties or the beneficial owners of the assets concerned, or have power of disposal over assets by virtue of a power of attorney or signature authorisation.

The Wolfsberg principles provide additional guidance on how to recognise and deal with a PEP. In addition to the standardised KYC procedures, the following prompts are appropriate to recognise a PEP:

- the question whether clients or other persons involved in the business relationship perform a political function should form part of the standardised account opening process, especially in cases of clients from corruption prone countries;

- client advisers should deal exclusively with clients from a specific country/region to improve their knowledge and understanding of the political situation in that country/region;

- the issue of PEPs should form part of an accountable institution's regular KYC training programs;

- accountable institutions may use databases listing names of PEPs (and their entourage).

CORRESPONDENT BANKS

28. Measures that need to be put in place in respect of correspondent banking relationships

Correspondent banking is the provision of banking services by one bank (the "correspondent bank") to another bank (the "respondent bank"). Correspondent bank accounts enable banks to conduct business and provide services that the banks do not offer directly.

According to the Core Principles, banks should only establish correspondent relationships with foreign banks that are effectively supervised by the relevant authorities. For their part, respondent banks should have effective customer acceptance and KYC policies.

In particular, the Core Principles provide that banks should refuse to enter into or continue a correspondent banking relationship with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (i.e. shell banks). Banks should pay particular attention when continuing relationships with respondent banks located in jurisdictions that have poor KYC standards or have been identified by FATF as being "non co-operative" in the fight against anti-money laundering.

The Wolfsberg principles sets out the following risk indicators that a Bank shall consider, to ascertain what reasonable due diligence or enhanced due diligence it will undertake:

- the correspondent banking client's domicile - the jurisdiction where the correspondent banking client is based and/or where its ultimate parent is headquartered may present greater risk. Certain jurisdictions are internationally recognised as having inadequate anti-money laundering standards, insufficient

regulatory supervision, or presenting greater risk for crime, corruption or terrorist financing. Institutions will review pronouncements from regulatory agencies and international bodies, such as the FATF, to evaluate the degree of risk presented by the jurisdiction in which the correspondent banking client is based and/or in which its ultimate parent is headquartered.

- the correspondent banking client's ownership and management structures - the location of owners, their corporate legal form and the transparency of ownership structure may present greater risks. The involvement of a PEP in the management or ownership of certain correspondent banking clients may also increase the risk.

- the correspondent banking client's business and customer base - the type of businesses the correspondent banking client engages in, as well as the type of the markets the correspondent banking client serves, may present greater risks. Consequently, a correspondent banking client that derives a substantial part of its business income from higher risk clients may present greater risk. Higher risk clients are those clients of a correspondent banking client that may be involved in activities or are connected to jurisdictions that are identified by credible sources as activities or countries being especially susceptible to money laundering. Each institution may give the appropriate weight to each risk factor, as it deems necessary.

FATF Recommendation 13 states that financial institutions such as banks should, in addition to performing normal due diligence measures, do the following in relation to cross-border correspondent banking and other similar relationships:

- gather sufficient information about a respondent bank to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the bank and the quality of supervision, including whether the institution has been subject to a money-laundering or terrorist-financing investigation or regulatory action;
- assess the respondent bank's anti-money laundering and terrorist-financing controls;
- obtain approval from senior management before establishing new correspondent relationships;
- document the respective responsibilities of each bank;
- with respect to "payable-through accounts" (correspondent accounts that are used directly by third parties to transact business on their own behalf), be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent bank and that the respondent bank is able to provide relevant customer identification data upon request to the correspondent bank.

EXEMPTIONS

29. Clarification of Exemption 5 – foreign clients

Exemption 5 of the Exemptions deals with countries situated in a foreign jurisdiction. According to Exemption 5 accountable institutions are exempted from compliance with the provisions of section 21 of the FIC Act that require the verification of the identity of a client of that institution, if:

- the client is situated in a country, where, to the satisfaction of the relevant supervisory body, anti-money laundering regulation and supervision of compliance with such anti-money laundering

regulation, which is equivalent to that applicable to the accountable institution, are in force;

- a person or institution in that country, which is subject to anti-money laundering regulation confirms in writing, to the satisfaction of the accountable institution that the person or institution, has verified the particulars concerning that client that the accountable institution had obtained in accordance with section 21 of the FIC Act; and

- the person or institution undertakes to forward all documents obtained in the course of verifying such particulars to the accountable institution.

The country in which the client is situated must have anti-money laundering regulation and supervision of compliance with such anti-money laundering regulation in force. All FATF member countries are deemed to have adequate anti-money laundering legislation and supervision of compliance with such legislation in place.

If a country is not a FATF member country, more careful scrutiny of the anti-money laundering/combating of terrorist financing systems in that country should be undertaken to establish whether the requirements applicable to a specific institution are equivalent to the requirements of the South African legislation. If this is not the case, this exemption does not apply, and the entity has to be identified and verified as stipulated in the FIC Act and the Regulations.

30. Clarification of the difference between Exemptions 5 and 16 - identifying an accountable institution or a client of a foreign country or institution

In terms of Exemption 16 of the Exemptions, an accountable institution in South Africa is exempted from having to identify an accountable

institution in another country when the anti money laundering regulation and supervision that applies to that foreign accountable institution is to the satisfaction of the supervisory body for accountable institutions in South Africa, in other words, the South African Reserve Bank. This exemption applies in the case of transactions between the two accountable institutions and not to transactions of the underlying clients of the foreign accountable institution.

Exemption 5 of the Exemptions relates to the underlying clients of a foreign institution. This exemption exempts an accountable institution in South Africa from the verification of a foreign client's identity in cases when a regulated institution in the relevant country can verify that client's identity. The South African accountable institution still has to establish the client's identity, but can rely on the verification undertaken by the foreign institution.

The conditions to this exemption are that the institution providing the verification of the client's identity must be subject to anti-money laundering regulation and supervision to a standard that meets the satisfaction of the relevant supervisory body. The foreign institution should forward all documents relative to the verification of the client's identity to the South African accountable institution, in due course.

Both of these exemptions require an indication from the appropriate supervisory body as to which countries it considers to be applying satisfactory anti money laundering regulation and supervision to the relevant institutions. In the absence of such an indication, as is currently the case, effect may not be given to these exemptions.

GLOSSARY

The term "accountable institution" in this guidance note refers to institutions that are listed in Schedule 1 to the FIC Act.

"The Centre" means the Financial Intelligence Centre established by section 2 of the FIC Act.

"Financial Intelligence Centre Act" (herein referred to as the FIC Act) refers to the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001).

"KYC" means Client Identification and Verification.

Money Laundering Control Regulations (herein referred to as "the Regulations") refers to the regulations made in terms of section 77 of FIC Act and promulgated in Government Notice 1595 published in Government Gazette No. 24176 of 20 December 2002.

Money Laundering Control Exemptions (herein referred to as "the Exemptions") refers to exemptions made under section 74 of FIC Act and promulgated in Government Notice 1596 published in Government Gazette No. 24176 of 20 December 2002.

The Financial Action Task Force ("FATF") is an inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF is both a policy-making and standard setting body. It was created in 1989 and works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. Further information concerning the FATF is available at www.fatf-gafi.org.

The FATF Recommendations refers to the revised FATF Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation. The FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard. The FATF Recommendations are intended to be of universal application and have come to be accepted by organisations such as the World Bank and the International Monetary Fund to be the international standard to benchmark efforts to combat money laundering and terrorist financing. Since its creation the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. The FATF Recommendations can be accessed from www.fatf-gafi.org.

The Core Principles refer to the Basel Core Principles for Effective Banking Supervision which is the comprehensive set of twenty-five Core Principles that have been developed by the Basle Committee on Banking Supervision, a Committee of banking supervisory authorities which was established by the central bank Governors of the Group of Ten countries in 1975, as a basic reference for effective banking supervision. The Core Principles were designed to be applied by all countries in the supervision of the banks in their jurisdictions. The Core Principles can be accessed from www.bis.org.

The Wolfsberg Principles refer to Global Anti Money Laundering Guidelines for Private Banks, which sets out global guidance for sound business conduct in international private banking, Correspondent Banks and Politically Exposed Persons. The principles can be accessed from www.wolfsberg-principles.com.

The United Nations List means the list of individuals and entities as issued by the United Nations 1267 Sanctions Committee. The updated UN list can be accessed from www.un.org/Docs/sc/committees/1267/1267ListEng. This list is published in the Gazette from time to time by proclamation under section 25 of the Protection of Constitutional Democracy against Terrorist and

Related Activities Act, 2004 (Act No. 33 of 2004). The current proclamation can be accessed from http://www.saps.gov.za/docs_publs/legislation/terrorism/gazette27598pg1_32.pdf and http://www.saps.gov.za/docs_publs/legislation/terrorism/gazette27598pg33_64.pdf.

Organs of State as defined under section 239 of the Constitution of the Republic of South Africa 1996 (Act 108 of 1999) means

a) any department of state or administration in the national, provincial or local sphere of government; or
b) any other functionary or institution
   i) exercising a power or performing a function in terms of the Constitution or a provincial Constitution; or
   ii) exercising a public power or performing a public function in terms of any legislation,

   but does not include a court or judicial officer.

Shell Banks refers to a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group.

Payable through accounts refers to correspondent accounts that are used directly by third parties to transact business on their own behalf.

Issued by the Director
Financial Intelligence Centre
28 March 2013

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STATUTORY INSTRUMENTS

2007 No. 2157

FINANCIAL SERVICES

The Money Laundering Regulations 2007

Made - - - - -	*24th July 2007*
Laid before Parliament	*25th July 2007*
Coming into force - -	*15th December 2007*

£7.50

(6) For the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (5)(a), a relevant person need only have regard to information which is in his possession or is publicly known.

Branches and subsidiaries

15.—(1) A credit or financial institution must require its branches and subsidiary undertakings which are located in a non-EEA state to apply, to the extent permitted by the law of that state, measures at least equivalent to those set out in these Regulations with regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of a non-EEA state does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that state, the credit or financial institution must—

(a) inform its supervisory authority accordingly; and

(b) take additional measures to handle effectively the risk of money laundering and terrorist financing.

(3) In this regulation "subsidiary undertaking"—

(a) except in relation to an incorporated friendly society, has the meaning given by section 1162 of the Companies Act 2006(**a**) (parent and subsidiary undertakings) and, in relation to a body corporate in or formed under the law of an EEA state other than the United Kingdom, includes an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that state for purposes connected with implementation of the European Council Seventh Company Law Directive 83/349/EEC of 13th June 1983(**b**) on consolidated accounts;

(b) in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the Friendly Societies Act 1992(**c**) (control of subsidiaries and other bodies corporate).

(4) Before the entry into force of section 1162 of the Companies Act 2006 the reference to that section in paragraph (3)(a) shall be treated as a reference to section 258 of the Companies Act 1985(**d**) (parent and subsidiary undertakings).

Shell banks, anonymous accounts etc.

16.—(1) A credit institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A credit institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(3) A credit or financial institution carrying on business in the United Kingdom must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(4) As soon as reasonably practicable on or after 15th December 2007 all credit and financial institutions carrying on business in the United Kingdom must apply customer due diligence measures to, and conduct ongoing monitoring of, all anonymous accounts and passbooks in existence on that date and in any event before such accounts or passbooks are used.

(5) A "shell bank" means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not part of a financial conglomerate or third-country financial conglomerate.

(**a**) 2006 c. 46.
(**b**) OJ No L 193, 18.7.1983, p. 1.
(**c**) 1992 c. 40. Section 13(9)(aa) was inserted by paragraph 11 of Part II of Schedule 18 to the 2000 Act.
(**d**) 1985 c. 6.

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Financial Conduct Authority

FINANCIAL CONDUCT AUTHORITY

SYSC 6.1 Compliance

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See *http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements*]

SYSC 6.1.1
R
01/07/2011

A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[Note: article 13(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

SYSC 6.1.1A
G
01/04/2013

The *FCA* provides *guidance* on steps that a *firm* can take to reduce the risk that it might be used to further *financial crime* in *FC* (Financial crime: a guide for firms).

SYSC 6.1.2
R
01/04/2013

A *common platform firm* and a *management company* must, taking intoaccount the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *appropriate regulator* to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under *MiFID* or the *UCITS Directive*.

[Note: article 6(1) of the *MiFID implementing Directive* and article 10(1) of the *UCITS implementing Directive*]

SYSC 6.1.2A
G
06/08/2009

Other *firms* should take account of the adequate policies and procedures *rule* (*SYSC 6.1.2 R*) as if it were *guidance* (and as if should appeared in that rule instead of must) as explained in *SYSC 1 Annex 1 3.3 G*.

SYSC 6.1.3
R
01/07/2011

A *common platform firm* and a *management company* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with *SYSC 6.1.2 R*, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and

(2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[Note: article 6(2) of the *MiFID implementing Directive* and article 10(2) of the *UCITS implementing Directive*]

SYSC 6.1.3A
G
06/08/2009

(1) Other *firms* should take account of the compliance function *rule* (*SYSC 6.1.3 R*) as if it were *guidance* (and as if should appeared in that rule instead of must) as explained in *SYSC 1 Annex 1 3.3 G*.

(2) Notwithstanding *SYSC 6.1.3 R*, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. Where a *firm* has a separate compliance function the *firm* should also take into account *SYSC 6.1.3 R* and *SYSC 6.1.4 R* as guidance.

SYSC 6.1.4
R
01/07/2011

In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* and a *management company* must ensure that the following conditions are satisfied:

(1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by *SYSC 4.3.2 R*;

(3) the *relevant persons* involved in the compliance functions must not be involved in the performance of services or activities they monitor;

(4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so

[**Note:** article 6(3) first paragraph of the *MiFID implementing Directive* and article 10(3) of the *UCITS implementing Directive*]

SYSC 6.1.4-A G **01/07/2015**

In setting the method of determining the *remuneration* of *relevant persons* involved in the compliance function:

(1) *firms* that *SYSC 19A* applies to will also need to comply with the *Remuneration Code*;

(2) *BIPRU firms* will also need to comply with the *BIPRU Remuneration Code*;

(3) *firms* that *SYSC 19D* applies to will also need to comply with the *dual-regulated firms Remuneration Code*; and

(4) *firms* that the remuneration part of the *PRA* Rulebook applies to will also need to comply with it.

SYSC 6.1.4A R **26/07/2013**

(1) A *firm* which is not a *common platform firm* or *management company* and which carries on *designated investment business* with or for retail clients or professional clients must allocate to a *director* or *senior manager* the function of:

(a) having responsibility for oversight of the *firm's* compliance; and

(b) reporting to the *governing body* in respect of that responsibility.

(2) In *SYSC 6.1.4A R (1)* compliance means compliance with the rules in:

(a) *COBS* (Conduct of Business sourcebook);

(b) *COLL* (Collective Investment Schemes sourcebook);

(c) *CASS* (Client Assets sourcebook); and

(d) *ICOBS* (Insurance: Conduct of Business sourcebook).

SYSC 6.1.4-B G **22/07/2013**

In setting the method of determining the remuneration of *relevant persons* involved in the compliance function, *full-scope UK AIFMs* will need to comply with the *AIFM Remuneration Code*.

SYSC 6.1.4C R **01/04/2014**

A *debt management firm* and a *credit repair firm* must appoint a compliance officer to be responsible for ensuring the *firm* meets its obligations under *SYSC 6.1.1R* for any compliance function the *firm* has and for any reporting as to compliance which may be made under *SYSC 4.3.2R*.

SYSC 6.1.4-C G **07/03/2016**

(1) This *guidance* is relevant to a *relevant authorised person* required to appoint a compliance officer under *SYSC 6.1.4R*.

(2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.

(3) In the *FCA's* view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the *management body*, including at least a majority of its members who do not perform any executive function in the *firm*.

SYSC 6.1.5 R **01/07/2011**

A *common platform firm* and a *management company* need not comply with *SYSC 6.1.4R (3)* or *SYSC 6.1.4R (4)* if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

[**Note**: article 6(3) second paragraph of the *MiFID implementing Directive* and article 10(3) second paragraph of the *UCITS implementing Directive*]

SYSC 6.1.6 G **06/08/2009**

Other *firms* should take account of the proportionality *rule* (*SYSC 6.1.5R*) as if it were *guidance* (and as if should appeared in that rule instead of must) as explained in *SYSC 1 Annex 1.3.3G*.

SYSC 6.1.7 R **01/10/2011**

(1) This *rule* applies to a *common platform firm* conducting *investment services and activities* from a *branch* in another *EEA State*.

(2) References to the *regulatory system* in *SYSC 6.1.1R*, *SYSC 6.1.2R* and *SYSC 6.1.3R* apply in respect of a *firm's branch* as if *regulatory system* includes a *Host State's* requirements under *MiFID* and the *MiFID implementing Directive* which are applicable to the *investment services and activities* conducted from the *firm's branch*.

[**Note:** article 13(2) of *MiFID*]

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Barclays Bank PLC

Statement of Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) Policies and Principles

Money laundering and terrorist financing have been identified as major threats to the Barclays Group and, indeed, the international financial services community. The United Kingdom, in common with many other countries, has passed legislation designed to prevent money laundering and to combat terrorism. This legislation, together with regulations, rules and industry guidance, forms the cornerstone of AML/CTF obligations for UK firms and outline the offences and penalties for failing to comply.

The requirements of EU/UK legislation apply to the Barclays Group globally. Group Companies may have additional local policies and procedures designed to comply with their local legislation, regulations and any government approved guidance in the jurisdiction(s) in which they operate.

Barclays Bank PLC is authorised and regulated by the UK Financial Conduct Authority (FCA). Its registered number is 122702. Barclays Bank PLC and its branches and subsidiaries trade as Barclays Capital, Barclaycard and Barclays Wealth amongst others. Barclays Bank PLC is listed on the London Stock Exchange and New York Stock Exchange. Further, some branches and subsidiaries are listed and/or regulated in their own right.

Barclays Bank PLC is a member of the Wolfsberg Group (www.wolfsberg-principles.com), an association of eleven global banks that aims to develop financial services industry standards for Know Your Customer (KYC), AML and CTF.

Legal and Regulatory Framework:
The principal requirements, obligations and penalties, on which Barclays Financial Crime Systems and Controls are based, are contained in:

- The Proceeds of Crime Act 2002 (POCA), as amended by the:
    - i. Serious Organised Crime and Police Act 2005 (SOCPA); and the
    - ii. Proceeds of Crime Act (Amendment) Regulations 2007;
- The Terrorism Act 2000, as amended by the:
    - i. The Anti Terrorism, Crime & Security Act 2001; and the
    - ii. Terrorism Act (Amendment) Regulations 2007;
- The Terrorism Act 2006;
- The Bribery Act 2010;
- The Money Laundering Regulations 2007, transposing the requirements of the EU's Third Money Laundering Directive;
- The FCA Handbook of Rules and Guidance, and in particular, the Senior Management Arrangements, Systems and Controls (SYSC) Sourcebook, which relates to the management and control of money laundering risk; and
- The Joint Money Laundering Steering Group (JMLSG) Guidance for the UK Financial Sector on the prevention of money laundering/combating terrorist financing.

Barclays Group Policies & Principles:
Barclays Financial Crime Team owns and is responsible for the following Group Policies covering:

1. Anti-Money Laundering/Counter-Terrorist Financing / Counter-Proliferation Financing;
2. Sanctions;
3. Anti-Bribery & Anti-Corruption; and
4. Introducers.

These policies and principles are designed to ensure that all Group Companies comply with the legal and regulatory requirements applicable in the UK as well as with their local obligations.

Anti-Money Laundering (AML) Policy:
The Barclays Group AML Policy is designed to ensure that all Group Companies comply with the requirements and obligations set out in UK legislation, regulations, rules and Industry Guidance for the financial services sector, including the need to have adequate systems and controls in place to mitigate the risk of the firm being used to facilitate financial crime. The AML Policy sets out the minimum standards which must be complied with by all Barclays Group Companies and includes:

- The appointment of a Group Money Laundering Reporting Officer (GMLRO) and Business Unit Money Laundering Reporting Officers (MLROs) of sufficient seniority, who have responsibility for oversight of Group and Business Unit compliance with relevant legislation, regulations, rules and industry guidance;
- Establishing and maintaining a Risk Based Approach (RBA) towards assessing and managing the money laundering and terrorist financing risks to the Group;
- Establishing and maintaining risk-based customer due diligence, identification, verification and know your customer (KYC) procedures, including enhanced due diligence for those customers presenting higher risk, such as Politically Exposed Persons (PEPs) and Correspondent Banking relationships;
- Establishing and maintaining risk based systems and procedures to monitor ongoing customer activity;
- Procedures for reporting suspicious activity internally and to the relevant law enforcement authorities as appropriate;
- The maintenance of appropriate records for the minimum prescribed periods;
- Training and awareness for all relevant employees; and
- The provision of appropriate management information and reporting to senior management of the Group's compliance with the requirements;

2. Sanctions Policy:
The Barclays Group Sanctions Policy is designed to ensure that the Group complies with applicable sanctions laws in every jurisdiction in which it operates.

All Barclays Group Companies are required to screen against United Nations, European Union, UK Treasury and US Office of Foreign Assets Control (OFAC) sanctions lists at a minimum in all jurisdictions in which we operate, unless to do so would conflict with local legislation.

All employees receive training on the Sanctions Policy at least once a year, with more detailed and advanced training for those whose roles involve heightened sanctions risks. Failure to comply with the policy may give rise to disciplinary action, up to and including dismissal.

3. Anti-Bribery & Anti-Corruption Policy:
Barclays has a zero tolerance policy towards bribery and corruption. Barclays recognises that bribery and corruption have an adverse effect on communities wherever they occur. If endemic, they can threaten laws, democratic processes and basic human freedoms, impoverishing states and distorting free trade and competition. Corruption is often associated with organised crime, money laundering and on occasions the financing of terrorism. In addition, the level and efficacy of investment and financing can be reduced, particularly within economically disadvantaged societies.

Barclays is committed to applying high standards of honesty and integrity consistently across our global operations and in all our business dealings. We are subject to the provisions of the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act, which have extra-territorial effect globally, as well as applicable local anti-bribery laws in relevant jurisdictions.

4. Introducer Policy

In addition to the Anti-Bribery and Anti-Corruption Policy, Barclays has an Introducer Policy. The Policy covers the activities of all third parties that generate or retain business, or secure a business benefit, for Barclays. These third parties are termed "introducers" by Barclays. Potential examples would include senior advisors, lead generators and financial advisers. The Barclays Introducer Policy is designed to protect Barclays against the bribery and corruption risks, reputational risk, and wider operational and conduct risks associated with introducers. Barclays employees must apply the specific controls and procedures set out in the policy.

Group Governance & Conformance:
Regular reviews of the effectiveness of these Group Policies are carried out in addition to audits periodically undertaken by the Barclays Internal Audit function. This provides senior executive management oversight committees and the Board Audit Committee with the necessary assurance regarding the operating effectiveness of the Group's controls relating to these policies.

"YMS"

ABSA

18 December 2015

The Directors
TNA Media (Pty) Ltd
Private Bag X180
Halfway House
1685

Our ref: 2010/006569/07

Dear Sir

RE: NOTICE OF CLOSURE OF BANK ACCOUNT IN THE NAME OF TNA MEDIA (PTY)LTD - (ACCOUNT NUMBER: 407-646-2329)

We refer to the above.

TNA Media (Pty) Ltd has a bank account at Absa Bank Limited ("the Account") which Account is subject to Absa's standard terms and conditions applicable to the opening and use of any cheque account at Absa Bank Limited ("the Bank Account Terms and Conditions").

In terms of the Bank Account Terms and Conditions, Absa is entitled, in its discretion, to close the Account at any time following the expiry of reasonable notice.

We do hereby give you notice that Absa will be closing your bank account number 407-646-2329 as at 16 February 2016.

We urge you to make alternative arrangements in this regard.

Should you have any queries please contact Sefiso Mkhabela on (010) 245-4364.

Yours sincerely,

Temi Ofong
For and on behalf of Absa Bank Limited

"YM6"

21 December 2015

Sefiso Mkhabela
ABSA Bank Limited
15 Alice Lane
Sandton
2196

Your reference: 2011/003219/07

Dear Sefiso

Re: Notice of closure of bank accounts for Infinity Media

The directors of Infinity Media have asked that I write to you with regards to your letter of 18 December 2015, giving us notice of your decision to close our bank accounts.

We were naturally taken aback by the sudden decision to close our accounts with effect from February 16, 2016 as we have had a historical relationship since the launch of Infinity's news channel, ANN7.

Following a discussion among board members, I have been asked to approach you to understand the rationale for closing the accounts. The directors have asked that I request that you please provide them with a briefing note on your rationale in order for them to take remedial action within our business should we be at fault in any way.

We look forward to your urgent response to this letter explaining the reasons for the closure of our accounts.

Yours sincerely

Nazeem Howa
Chief Executive

"YM 7"

TNA MEDIA

21 December 2015

Sefiso Mkhabela
ABSA Bank Limited
15 Alice Lane
Sandton
2196

Your reference: 2010/006569/07

Dear Sefiso

Re: Notice of closure of bank accounts for TNA Media.

I write on behalf of TNA Media in regard to your letter of 18 December 2015, giving us notice of your decision to close our bank account.

Given the historical nature of the relationship between yourselves and ourselves, we were naturally taken aback by the sudden decision to close our accounts with effect from February 16, 2016.

The directors of TNA Media have met to discuss your decision and have asked that I approach you to understand the rationale for your decision.

As we are sure sound business reasoning would be the basis for your decision, the directors have asked that you please provide them with a briefing note on your rationale in order for them to take remedial action within our business should we be at fault in any way.

We look forward to your urgent response to our request.

Yours sincerely

Nazeem Howa
Chief Executive

"YM 8"

ABSA

Corporate and
Investment Banking

15 Alice Lane Sandton
Johannesburg 2196
Private Bag X10056 Sandton 2146

Tel +27 (0)11 895 6000
Fax +27 (0)11 895 7802
www.absacapital.com

The Directors
Infinity Media Networks (Pty) Ltd.
52 Lechwe Street
Corporate Park
Midrand

Our ref: Sefiso Mkhabela

23 December 2015

WITHOUT PREJUDICE

Dear Sirs

RE: NOTICE OF CLOSURE OF BANK ACCOUNT IN THE NAME OF INFINITY MEDIA NETWORKS (PTY) LTD - (ACCOUNT NUMBER: 407-081-1352)

We refer to your letter of 21 December 2015.

You will note from our letter of 18 December 2015 that Absa Bank Limited (Absa) has given notice of its intention to exit the relationship on the strength of a clause in the agreement that provides for Absa to do so at its discretion. As such, Absa is not legally obliged to show cause. The brief reasons set out in this letter are therefore provided without any admission of liability to do so and without prejudice to any of Absa's rights. They are further not intended to be exhaustive.

Absa, as part of its risk management framework, periodically reviews its business relationships to ensure that the relationships operate within the risk appetite set by the Absa Board. This includes taking a view on existing and expected future reputation risk.

The review undertaken by Absa in respect of the Sahara Group of companies (the Group), of which Infinity Media Networks (Pty) Ltd. is a member, showed that the Group exceed Absa's current and forward-looking reputation risk appetite.

Yours faithfully

16/1/2017

For and on behalf of Absa Bank Limited

BARCLAYS

568987v1

"YMG" TNA MEDIA

29 December 2015

Maria Ramos
Chief Executive
Absa Bank

Dear Maria

My apologies for directing this correspondence directly to you, especially since we have not been in contact for so many years.

I am currently part of the leadership team at Oakbay Investments, the holding company for the Gupta family's business dealings.

I am reaching out to you now following the unilateral decision by Absa to shut down the bank accounts of all of our group, through the issuing of letters on Friday, December 18, giving us two months to make alternative plans.

We have been trying since then to establish the reasons for the bank's decision, but have only been told it is in terms of the current terms and conditions on which the bank granted us facilities and more lately due to the "risk management" process at ABSA.

We have requested further clarity as we do not believe that this decision could be taken lightly given the consequences for our company, but are yet to receive a response to our last letter sent last week Thursday.

I am sure you are very well aware of the media's coverage of the Gupta family, and I would hope the same discussions we had so many years ago when you were Director General in Treasury will remind you of the need to separate perception and reality when it comes to media coverage.

Naturally, if we have contravened any bank regulation in the management of any of our accounts, we would like to understand that as well in order to ensure that we take remedial steps within our business.

We are happy to meet with you and any of your officials at a time convenient to discuss their decision. Attached to this letter is some of the recent correspondence related to this matter.

I look forward to hearing from you.

Yours sincerely

Nazeem Howa
Chief Executive

TNA MEDIA Pty. Ltd.
52 Lechwe Street, Corporate Park South.
Tel.: 27 11 542 1222
Fax: 086 733 7000
info@tnamedia.co.za
www.thenewage.co.za

"YM10"

ABSA

Corporate and
Investment Banking

CONFIDENTIAL

15 Alice Lane Sandton
Johannesburg
2196
South Africa

Private Bag X10056
Sandton
2146
South Africa

Tel +27 (0)11 895 6000
Fax+27 (0)11 895 7802

www.absacapital.com

The Directors
TNA Media (Pty) Ltd
52 Lechwe Street
Corporate Park
Midrand

Our Ref: Phakamani Hadebe

CONFIDENTIAL

29 January 2016

Dear Sirs

BANK ACCOUNT IN THE NAME OF TNA MEDIA (PTY) LTD – (ACCOUNT NUMBER: 407-646-2329)

We refer to your letter of 23 December 2015, and the subsequent correspondence.

By way of introduction, I am the Chief Executive of Corporate and Investment Banking South Africa, a division of Absa Bank Limited (Absa), and I have been fully mandated to deal with this matter.

As explained in our previous correspondence, Absa has given notice of termination of banking arrangements with the Sahara Group of companies and this is based on a legal right which allows Absa to give notice of termination at its discretion, without providing reasons.

Member of
BARCLAYS

The reasons we provided to you in our letter of 23 December 2015 were provided merely as a courtesy. Absa would prefer not to enter into an exchange regarding the points you have raised in your various letters pertaining to the termination of our banking arrangements with the Sahara Group of companies.

We trust that this clarifies the position.

Yours faithfully

Phakamani Hadebe
Chief Executive, CIB South Africa

wi!nk™

INTERNET • VOICE • DATA

3 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING

15 ALICE LANE

SANDTON

JOHANNESBURG

2196

Dear Sir

Re: CLOSURE OF ACCOUNT - WILINK TELECOMS (PTY) LTD - 4071265849

Your letter dated 18 December 2015 refers.

Kindly close the above mentioned account with immediate effect and note that we will not bear any charges thereafter.

Kindly send us confirmation that the account is closed.

Yours faithfully

DIRECTOR

RONICA RAGAVAN

Wilink Telecoms Pty. Ltd.

52 Lechwe Ave
Corporate Park South
Old Pretoria Main Rd
Midrand Johannesburg

Tel +27 (0)11 314 2003
Fax +27 (0)86 552 8888

info@wilink.co.za
http://www.wilink.co.za

"YM 11.2"

SYSTEMS
ICT SOLUTION PROVIDER

Sahara Systems (Pty) Ltd
Tel: 011 542 2020, Fax. 086 733 4444
e-mail: info@saharasystems.co.za
Web: www.saharasystems.co.za

5 Suni Avenue, Corporate Park, Old Pretoria Main Road, Midrand, Johannesburg

03 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir / Ma'am

REQUEST TO CLOSE BANK ACCOUNT – SAHARA SYSTEMS
405-426-5985

This letter serves to request a closure of bank account number 4054265985. Please be advised that we will not bear any further charges

Kindly provide written confirmation that the account is closed.

Sincerely

Ravendra
Authorized Signatory

Reg. No.:
2000/007320/07
Vat No.:
4720189010

Directors:
A Chawla
R Ragavan

"YM 11.3"

Localiga (Pty) Ltd.

JIC House, 106A, 16th Road, Midrand
PO Box 1501, Halfway House, 1685
Tel. +27 11 564 9400 Fax +27 11 315 378[illegible]

Reg No 2005/031531/07

3 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING

15 ALICE LANE

SANDTON

JOHANNESBURG

2196

Dear Sir

Re: CLOSURE OF THE LOCALIGA PTY LTD -4074574390

Your letter dated 18 December 2015 refers.

Kindly close the above mentioned account with immediate effect and note that we will not bear any charges thereafter.

Kindly send us confirmation that the account is closed.

Yours faithfully

DIRECTOR

RONICA RAGAVAN

"YM 11.4"

SAHARA

SAHARA DISTRIBUTION (PTY) LTD.

Reg. No.:
2002/003031/07

VAT No.:
4420197404

Cape Town
Unit G5-6
Centurion Business Park
Milnerton, Cape Town
Tel: (+27 21) 551 5595
Fax: (+27 21) 551 0185
e-mail: info@cpt.sahara.co.za

Durban
Unit No. 4, 23 Intersite Ave
Umgeni Business Park
Durban
Tel: (+27 31) 263 1885
Fax: (+27 31) 263 1779
e-mail: info@dbn.sahara.co.za

Port Elizabeth
12 4th Avenue
Newton Park
Port Elizabeth
Tel: (+27 41) 365 2911
Fax: (+27 41) 365 2920
e-mail: info@pe.sahara.co.za

03 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir / Ma'am

REQUEST TO CLOSE BANK ACCOUNT – SAHARA DISTRIBUTION – 4055102865

This letter serves to request a closure of bank account number 4055102865. Please be advised that we will not bear any further charges

Kindly provide written confirmation that the account is closed.

Sincerely

Authorized Signatory

website:
www.sahara.co.za

Directors:
A.K.Gupta
SJD Nel

"YMH.5"

SAHARA CONSUMABLES
Imaging • Printers • Supplies

03 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir / Ma'am

REQUEST TO CLOSE BANK ACCOUNT – SAHARA CONSUMABLES
405-449-6374

This letter serves to request a closure of bank account number 4054496374. Please be advised that we will not bear any further charges

Kindly provide written confirmation that the account is closed.

Sincerely

Authorized Signatory

SAHARA CONSUMABLES (PTY) LTD

Reg No.: 2001/019162/07

VAT No.: 4120197043

Head Office
Johannesburg
89 Gazelle Avenue Corporate Park
Old Pretoria Main Road Midrand
Johannesburg South Africa

Private Bag X120
Halfway House
1685 South Africa

Tel: (+27 11) 542 1000
Fax: (+27 11) 542 1100
e-mail: info@sahara.co.za

Cape Town
Unit G5 &
Centurion Business Park
Milnerton Cape Town

Tel: (+27 21) 551 5595
Fax: (+27 21) 551 0185
e-mail: info@capt.sahara.co.za

Durban
Unit No. 6 2 Clarabrick Drive
Riverhorse Valley
Durban

Tel: (+27 31) 534 9600
Fax: (+27 31) 534 1779
e-mail: info@dbn.sahara.co.za

Port Elizabeth

12 4th Avenue
Newton Park
Port Elizabeth

Tel: (+27 41) 365 2911
Fax: (+27 41) 365 2920
e-mail: info@pe.sahara.co.za

Website:
www.consumit.co.za

Directors
A K Gupta
R Govender

LEXMARK SAMSUNG EPSON hp brother Canon

"YM11.6"

SAHARA

03 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

SAHARA HOLDINGS (PTY) LTD.

Reg. No.:
2002/002230/07

Head Office
Johannesburg
89 Gazelle Avenue
Corporate Park South
Old Pretoria Main Road
Midrand
Johannesburg
South Africa

Private Bag X180
Halfway House
1685, South Africa

Tel: (+27 11) 542 1000
Fax: (+27 11) 542 1100

e-mail:
info@sahara.co.za

Dear Sir / Ma'am

REQUEST TO CLOSE BANK ACCOUNT – SAHARA HOLDINGS
407-244-4965

This letter serves to request a closure of bank account number 4072444965. Please be advised that we will not bear any further charges

Kindly provide written confirmation that the account is closed.

Sincerely

Authorized Signatory

"YM 11.7"

Tegeta Resources (Pty) Ltd.
Registration No. 2007/024754/07

Lower Ground Floor, Grayston Ridge Block A,144 Katherine Street, Sandown, Sandton, 2146, South Africa.
Postal Address: Postnet Suite 458, Private Bag X9 Benmore, 2010
Tel: +27 11 262 3870 Email : infor@tegeta.com; joym@tegeta.com
www.tegeta.com

TEGETA

03 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir / Ma'am

REQUEST TO CLOSE BANK ACCOUNT – TEGETA RESOURCES
407-244-4486

This letter serves to request a closure of bank account number 4072444486. Please be advised that we will not bear any further charges.

Kindly provide written confirmation that the account is closed.

Sincerely

Authorized Signatory

AFRICA NEWS NETWORK

INFINITY MEDIA NETWORKS

"YM11.8"

5 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir

Re: CLOSURE OF ACCOUNT - INFINITY MEDIA NETWORKS (PTY) LTD – 407 081 1352

Your letter dated 18 December 2015 refers.

Kindly close the above mentioned account with immediate effect and note that we will not bear any charges thereafter.

Kindly send us confirmation that the account is closed.

Yours faithfully

DIRECTOR
N HOWA

Infinity Media Networks (Pty) Ltd.
Reg No: 2011/023179/07
Directors: N Gupta / A Gupta / N Howa / V Gupta / A Goel
Unit 52, Lechaye Street, Corporate Park South, Midrand, Old Pretoria Main Road, Midrand 1685
Tel +27 11 542 1222
Fax: 086 733 7000
email: info@ann7.com
web: www.ann7.com
PO Box 5778, Halfway House, Midrand, 1685

5 February 2016

Temi Ofong

ABSA CORPORATE AND INVESTMENT BANKING
15 ALICE LANE
SANDTON
JOHANNESBURG
2196

Dear Sir

Re: CLOSURE OF ACCOUNT - TNA MEDIA (PTY) LTD – 407 646 2329

Your letter dated 18 December 2015 refers.

Kindly close the above mentioned account with immediate effect and note that we will not bear any charges thereafter.

Kindly send us confirmation that the account is closed.

Yours faithfully

DIRECTOR
N HOWA

TNA MEDIA Pty. Ltd.
Directors: A Gupta / N Howa / G Naidoo
32 Ferfwe Street
Corporate Park South,
Midrand, Old Pretoria
Main Road, Midrand 1685
Tel: 27 11 542 1222
Fax: 086 733 7000
PO Box 5728, Halfway House, Midrand, 1685

"YM 12"

Business Bank

Barclays Pretoria Campus
1st Floor
Block B
270 Meggs Str
Waltloo
Pretoria
0184

Tel.: 011 354 4157
Fax: 086 753 2080
Swift-Address: ABSA ZA JJ
http://www.absa.co.za

Besigheidsbank

Barclays Pretoria Campus
1st Floor
Block B
270 Meggs Str
Waltloo
Pretoria
0184

Tel.: 011 354 4157
Faks: 086 753 2080
Swift-Adres: ABSA ZA JJ
http://www.absa.co.za

15 February 2016

The Directors
TEGETA RESOURCES (PTY) LTD
PRIVATE BAG X180
HALFWAY HOUSE
1685

Dear Valued Client

Closure of Cheque Account

We confirm that the following bank account has been closed.

Account name:	TEGETA RESOURCES (PTY) LTD
Account number:	40-7646-2329
Date Closed:	12/02/2016

Trust you find the above to be in order.

Yours faithfully

Relationship Support Manager

"YM 13"

OAKBAY

14th April 2016

Phakamani Hadebe
Chief Executive
CIB South Africa
Absa

Dear Sir

We write to you today to request an urgent meeting to discuss your decision to terminate our banking services.

We would like to take this opportunity to share with you various changes that have been made within our business and its structure to set your mind at ease around any concerns you may have had which prompted your decision to terminate our services.

Our delegation will be led by Terry Rensen, the lead independent director and the chair of Oakbay Resources and Energy, another independent director, and Ore's CFO, Trevor Scott. I will accompany the delegate as Oakbay's Chief executive.

We would need no more than 30 minutes in your diary and we hope you will find the time for us to meet as a matter of urgency.

Yours sincerely

Nazeem Howa
Chief Executive

"YM 14"

ABSA

Corporate and
Investment Banking

CONFIDENTIAL

15 Alice Lane
Sandton
Johannesburg
2196
South Africa

Private Bag X10056
Sandton
2146
South Africa

Tel +27 (0)11 895 6000
Fax +27 (0)11 895 7802

www.absacapital.com

25 April 2016

Nazeem Howa
Chief Executive
Oakbay Investments (Pty) Ltd

Our Ref: Phakamani Hadebe

CONFIDENTIAL

Dear Sir

OAKBAY INVESTMENTS (PTY) LTD

We refer to your letter dated 14 April 2016.

We refer you to our previous correspondence in terms of which we advised you of our decision to terminate our relationship with Oakbay Investments (Pty) Ltd.

We do not wish to debate our decision and therefore we do not believe that a meeting would be of assistance to either party, and accordingly we politely decline your request to meet.

Yours faithfully

Phakamani Hadebe
Chief Executive, CIB South Africa

"YM15"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 80978/16

In the matter between:

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

THE STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-First Respondent

---

CONFIRMATORY AFFIDAVIT

I, the undersigned

NICHOLAS SWINGLER

do hereby make oath and say that:

1. I am the Head of Financial Crime at Absa Bank Limited ("**Absa**"), the fifteenth respondent in this matter.

2. The facts contained herein are within my personal knowledge and are true and correct.

3. At the time that the decision was taken to terminate the banker-client relationship with the Oakbay companies and related parties, I was the Chief Operations Officer of Absa's Corporate and Investment Banking Division ("CIB"). I was a member of the PEPs Review Committee which was convened on 18 November 2014 and was involved in the process / steps that followed thereafter.

4. I have read the Answering Affidavit deposed to by **YASMIN MASITHELA** and confirm the correctness thereof insofar as it relates to me or my involvement in the matter.

DEPONENT

I certify that:

I. the Deponent acknowledged to me that :

A. He knows and understands the contents of this declaration;

B. He has no objection to taking the prescribed oath;

C. He considers the prescribed oath to be binding on his conscience.

II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".

III. the Deponent signed this declaration in my presence at the address set out hereunder on 22 December 2016.

COMMISSIONER OF OATHS

Designation and Area: LOURINA WILSON-ERASMUS

Full Names: Commissioner of Oaths Kommissaris van Eed
Practising Attorney Praktiserende Prokureur

Street Address Unit 2 Hemelen-Aarde Craft Village
cnr R43 and Main Road Sandbaai
Hermanus 7200

"YM16"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 80978/16

In the matter between:

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

THE STANDARD BANK OF SOUTH AFRICA LIMITED	Seventeenth Respondent
NEDBANK LIMITED	Eighteenth Respondent
GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK	Nineteenth Respondent
REGISTRAR OF BANKS	Twentieth Respondent
DIRECTOR OF THE FINANCIAL INTELLIGENCE CENTRE	Twenty-First Respondent

---

CONFIRMATORY AFFIDAVIT

I, the undersigned

MARIA DA CONCEICAO DAS NEVES CALHA RAMOS

do hereby make oath and say that:

1. I am the Chief Executive Officer of Barclays Africa Group Ltd and of Absa Bank Limited, the fifteenth respondent in this matter.

2. The facts contained herein are within my personal knowledge and are true and correct.

3. I have read the Answering Affidavit deposed to by **YASMIN MASITHELA** and confirm the correctness thereof insofar as it relates to me or my involvement in the matter.

DEPONENT

I certify that:

I. the Deponent acknowledged to me that :

A. She knows and understands the contents of this declaration;

B. She has no objection to taking the prescribed oath;

C. She considers the prescribed oath to be binding on her conscience.

II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".

III. the Deponent signed this declaration in my presence at the address set out hereunder on 22nd December 2016

COMMISSIONER OF OATHS

Designation and Area:

Full Names:

Street Address

Emile Schmidt
Commissioner of Oaths Practising Attorney
SOHN & ASSOCIATES
11 PITT STREET KNYSNA
REPUBLIC OF SOUTH AFRICA

"YM17"

From: Zarina Kellerman [mailto:Zarina.Kellerman@dmr.gov.za]
Sent: 22 April 2016 11:44
To: Botha, Alison: Barclays Africa
Subject: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Alison

I refer to our brief discussion a short while ago.

As explained, as the Acting Secretary for the Inter-Ministerial Committee set up by Cabinet to look into certain allegations made against certain financial institutions ("the IMC"), I have been requested to make contact with Ms Ramos alternatively a suitable alternative with requisite authority, and request that she please make herself available for a discussion with the IMC on **Monday, 25 April 2016 at 10h00-10h30**. 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. Should Ms Ramos 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 Ms Ramos 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
083 960 9188
012 444 3400
Advisor to the Minister of Mineral Resources and Acting Secretary to the IMC

mineral resources
Department
Mineral Resources
REPUBLIC OF SOUTH AFRICA

"YM18"

From: Botha, Alison: Barclays Africa
Sent: 22 April 2016 16:50
To: 'Zarina.Kellerman@dmr.gov.za'
Subject: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Zarina

On behalf of Ms Ramos, I would like to confirm receipt of your e-mail requesting a meeting.

Kindly advise us of the following:

1. The nature of the discussion anticipated to allow for appropriate preparation. This will also determine the attendees from a Barclays Africa perspective
2. The names and designations of the IMC attendees
3. The status of the committee and the meeting and the treatment of any information shared during the meeting; and
4. The venue for the meeting.

Your request refers to current media reports, within this context, please note that as a Bank we have legal and regulatory obligations which prevent us from discussing any client confidential information.

We confirm that we have informed the South African Reserve Bank our primary regulator of the meeting request.

Kind regards

Alison Botha | Office of Maria Ramos | Chief Executive Officer, Barclays Africa Group Limited
Tel +27 (0 11 350 0304 | Mobile +27 (0)79 504 9939 Fax +27 (0)86 753 1692 | email: alison.botha@barclaysafrica.com
8th Floor, Barclays Towers West 15 Troye Street Johannesburg 2001

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"YM 19"

-----Original Message-----
From: Zarina Kellerman [Zarina.Kellerman@dmr.gov.za]
Sent: Sunday, April 24, 2016 05:29 AM South Africa Standard Time
To: Botha, Alison: Barclays Africa
Subject: Re: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Alison

As the Acting Secretariat for the Committee, I am not mandated to respond to the questions raised below suffice to note the following:-

a. The Committee is constituted by Cabinet; and
b. Information shared during the session must of course be relayed to Cabinet for it to properly consider the media reports. Outside of that forum, all such information remains strictly confidential.

The venue for the discussion is as follows:-

Department of Mineral Resources
The Office of the Minister
4th Floor
70 Trevenna Campus
Building 2C
Cnr Francis Baard & Meintjes Streets
Sunny side
Pretoria

The remainder of the contents of your email are noted and will be brought to the attention of the IMC at its sitting. Please confirm if Barclays will be participating.

Sincerely
Zarina

ZM

"YM20"

Masithela, Yasmin: Barclays Africa

From: Masithela, Yasmin: Barclays Africa
Sent: 24 April 2016 13:44
To: 'Zarina.Kellerman@dmr.gov.za'
Cc: ABMR789; ABCB930
Subject: Inter Ministerial Consultation - Barclays Africa Group Limited

Dear Ms Kellerman

Thank you for your email received by our Alison Botha at 5:29 am today. I note that you are not mandated to respond to the questions of clarification which were sent to you on Friday 22 April 2016, in response to your invitation which was also sent on Friday 22 April 2016. This directly impacts on our decision on whether to attend such a meeting.

You have indicated that it is proposed that current media reports will be discussed at the proposed meeting. I assume that these media reports relate to a particular company. I reiterate that it will not be appropriate for us as a bank, to discuss any matters relating to client / customer confidential information at such a meeting, whether such a client/ customer is a prospective, current or past client.

In the circumstances, we respectfully decline the invitation for a meeting.

As a regulated bank and responsible financial institution, we are obviously more than willing to cooperate with the appropriate authorities to discuss any matters which we are permitted by law to discuss.

Ms Ramos has requested that any future communication on this matter be directed to me and I will respond on behalf of Barclays Africa Group Limited.

Yours faithfully

Yasmin Masithela
Barclays Africa Group Head of Compliance

Sent with Good (www.good.com)

YM

"YM21"

From: Zarina Kellerman [mailto:Zarina.Kellerman@dmr.gov.za]
Sent: 04 May 2016 11:12
To: Botha, Alison: Barclays Africa
Subject: Further meeting of the IMC

Dear Alison

The IMC is holding further sessions and I have been mandated to extend a further invitation to Barclays Africa group (including ABSA) to meet with the IMC on **Thursday, 05 May 2016 at 13h00**. I am now mandated to further advise as follows:-

a. The IMC consists of the Ministers of Labour, Communications, Mineral Resources and Finance; and
b. The engagements will take the form of a discussion with the bank's representatives. The scope of the discussions will centre around public comments made by ABSA and/or Barclays around the decision taken by the institutions to close the banks accounts of certain of its clients. Whilst Cabinet appreciates the terms and conditions of the banks, the acts may deter future potential investors who may want to do business in South Africa. Cabinet has

ZM

endorsed that the Ministers open a constructive engagement with he banks to find a lasting solution to the matter.

I look forward to your response.

Sincerely
Adv Zarina Kellerman
Secretariat to the IMC

"YM22

Masithela, Yasmin: Barclays Africa

From:	Masithela, Yasmin: Barclays Africa
Sent:	04 May 2016 17:04
To:	Zarina.Kellerman@dmr.gov.za
Cc:	Ramos, Maria: Chief Executive Barclays Africa Group; Wheeler, Charles : Barclays Africa; Botha, Alison: Barclays Africa
Subject:	RE: Further meeting of the IMC
Importance:	High

Tracking:

Recipient	Delivery	Read
Zarina.Kellerman@dmr.gov.za		
Ramos, Maria: Chief Executive Barclays Africa Group	Delivered: 04/05/2016 17:04	
Wheeler, Charles : Barclays Africa		
Botha, Alison: Barclays Africa	Delivered: 04/05/2016 17:04	Read: 04/05/2016 17:18

Dear Ms Kellerman

Thank you for your email to our Alison Botha received at 11:12am this morning (04 May 2016), in which you invite us to a meeting at 13h00 tomorrow afternoon (05 May 2016).

(1) In paragraph (b) of your mail you indicate that "*...The scope of the discussions will centre around public comments made by ABSA and/or Barclays around the decision taken by the institutions to close the banks accounts of certain of its clients.*" We must emphasise that neither ABSA nor Barclays has made any public comment as indicated by you. The only public comment we have made is to the effect that we cannot comment on client confidential issues. We have repeatedly stated both to you and the media that as a regulated financial institution it is not appropriate for us to discuss any matters relating to client/customer confidential information whether such a client/customer is prospective, current or a past.

(2) Absa Bank Ltd ('Absa') as a responsible Systematically Important Financial Institution (SIFI) (a financial institution that is so important to the economy such that its failure could lead to a widespread economic crisis) **is committed to complying** with our national laws, rules, regulations and policies as well as international laws.

(3) We are highly regulated by the South African Reserve Bank who supervise our activities and ensure our compliance with regulation on a daily basis. The main legal obligations of a bank relating to customers arise from various pieces of legislation, the main ones being:

- The Banks Act 94 of 1990;
- The Prevention of Organised Crime Act 121 of 1998 (POCA) which creates and prohibits serious money laundering offences;
- The Financial Intelligence Centre Act 38 of 2001 (FICA); The Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 (POCDATARA) creates money laundering and anti-terrorism compliance obligations for financial institutions;
- Exchange Control Regulations; and
- We have reporting obligations to the South African Revenue Services

(4) Your response at paragraph (a) simply indicates the membership of the IMC, this does not adequately address our request for the details of the attendees of the meeting nor address the specific question regarding the status of the meeting.

(5) In the circumstances, we politely decline the request for a meeting for the reasons stated above.