

25 August 2017

To: The honourable Minister:  
Mineral Resources and Energy  
Mosebenzi Zwane

Per: E-mail

Dear Honourable Minister Zwane

**CLOSING OF GUPTA OWNED BANK ACCOUNTS BY BANK OF BARODA AND IMPLICATIONS FOR REHABILITATION FUNDS IN CONNECTION WITH MINES RELATED TO OPTIMUM COAL MINE HOLDING (PTY) LTD AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

**OUR REF: SP/ZUMA01/TEGETA  
YOUR REF: UNKNOWN**

**INTRODUCTION**

1. OUTA is a non-profit civil action organisation, funded by tens of thousands of individuals and businesses, whose main aim is to hold government accountable for the abuse of power, corruption and maladministration. In doing our work, we ensure that more tax revenues are made available and protected to benefit all in South Africa, especially the poor and vulnerable.
2. We write in connection with the rehabilitation funds held for the rehabilitation of coal mines in which Tegeta Exploration and Resources (Pty) Ltd (**'Tegeta'**) have an interest. The mines in question are coal mines in Mpumalanga.
3. According to recent reports, the Gupta controlled Oakbay Investment (Pty) Ltd has concluded a sale agreement of Tegeta and will be disposing of its interests therein to Swiss based company, Charles King SA. Tegeta recently took control of Optimum Holdings (Pty) Ltd in April 2016 following a business rescue process.
4. We wish to raise concerns in respect of the rehabilitation funds in light thereof and in light of further recent reports regarding the closure of Gupta linked bank accounts by the Bank of Baroda. As set out below, we request information and prompt assurances in connection with the rehabilitation funds.
5. As you are aware, all mining rights holders are obliged to comply with the requirements of the Mineral and Petroleum Resources Development Act 28 of 2002 (**'the MPRDA'**) and the National Environmental Management Act 107 of 1998 as amended (**'NEMA'**). A critical provision is what is now contained in section 24P of NEMA the effect of which is that a mining rights holder must comply with the

prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts. Furthermore, holders must annually assess their liability in a prescribed manner and must increase their financial provision to the satisfaction of the Minister and also submit an audit report to the Minister on the adequacy of the financial provision from an independent auditor. The Minister and the Department of Mineral Resources ('DMR') also have extensive investigative and monitoring powers and functions under the aforesaid legislation relating to compliance and environmental rehabilitation.

6. These provisions are vital to ensure that at the time of mine closure, there is adequate provision for environmental rehabilitation. Environmental rehabilitation is critical to protect the right of all South Africans to an environment that is not harmful to their health and well-being and to ensure that the environment is protected for the benefit of present and future generations. (Section 24 of the Constitution)
7. These provisions are also critical to ensure that the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment as contemplated by section 2(4)(p) of NEMA.
8. Ultimately, if the financial provision for environmental protection is not properly and duly secured, there is a real and material risk that the need to effect and pay for remediation rests with the State and the tax-payer. (Section 28(7) and (8) of NEMA and section 45(2) of the MPRDA) the financial provision for rehabilitation is designed to ensure that the fiscus and the tax payer do not carry these costs and the burden of rehabilitation does not fall on the State.

## RECENT EVENTS

9. According to the Public Protector's State of Capture report dated 14 October 2016 (report 6 of 2016/2017), there are at least two rehabilitation funds relevant to the Tegeta mines, these being:
  - 9.1 Optimum Mine Rehabilitation Fund
  - 9.2 Koornfontein Rehabilitation Fund
10. According to the report (paragraph 5.344)
  - 10.1 As at 23 May 2016 the value of the Koornfontein Rehabilitation Fund was apparently R280 million.
  - 10.2 As at 21 June 2016, the value of the Optimum Mine Rehabilitation Fund was R1, 469 916 933,63.



11. As part of the Tegeta take-over these funds were transferred to the Bank of Baroda on 23 May 2016 and 21 June 2016 respectively. These funds are held by two Trusts, known as the Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) and the Koorfontein Mine Rehabilitation Trust (Registration No IT/7563/07.)
12. OUTA has to hand a letter dated 5 October 2016 from the Bank of Baroda addressed to 'whom it may concern' certifying that Optimum Mine Rehabilitation Trust (Registration No IT/13693/07) is maintaining four accounts with them which are operative and active. The total outstanding balance on these accounts as at 5 October 2016 was R1 470 338 316.18. A copy of this letter is Annexure 'A'.
13. In recent months, there have been certain media reports relating to the closure by the Bank of Baroda of accounts of companies controlled by the Gupta family. The Bank of Baroda reportedly took on the Gupta accounts after South Africa's banks closed their accounts in 2016. According to the reports, supplied as 'B', the Baroda accounts will be closed by the end of September 2017. It is also reported that the Gupta accounts will be moved to an undisclosed 'new bank'.
14. On the information to hand, OUTA has reason to be concerned that the Baroda accounts for the two Trusts may well be amongst the accounts that Baroda Bank will be closing. In this regard, OUTA understands that the Tegeta appointed Trustees initially included Ms Pushpaveni Govender, Mr Emmamally Althaf and Mr Trevor Scott. Each of these individuals were at a stage directors and employees of Gupta-owned companies. The current trustees are, as far as OUTA is aware, Ms Govender and Mr Scott. Ms Govender was employed by the Gupta owned Sahara Computers in 2010 and by Gupta-owned Oakbay Investments (Pty) Ltd in 2017. She is currently a director of Oakbay Investments (Pty) Ltd.
15. Furthermore, OUTA understands that the auditors of the Trust are Sizwe Ntsaluba Gobodo Inc, who are auditors for various Gupta owned companies and have continued with the Oakbay account despite KPMG's exit.
16. On 23 August 2017, Oakbay Investments (Pty) Ltd, which is a Gupta controlled company issued a statement announcing that it has reached an agreement to sell its Tegeta business comprising Optimum, Koorfontein and the Optimum Coal Terminal. Tegeta will be sold to the Swiss based Charles King SA for R2.97 billion.
17. The owner of Charles King SA is a Mr Amin Al Zarooni who Oakbay describes as 'a leading businessman' in the United Arab Emirates. Oakbay has explained publicly that Charles King SA is itself a Special Purpose Vehicle acquired by Mr Zarooni to facilitate further investments like the Tegeta acquisition. It has no financial track record.
18. The related Oakbay releases are supplied as C.

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**ORGANISATION UNDOING TAX ABUSE (OUTA)**

Co Reg: 2012/064213/08 NPO #: 124381NPO

**DIRECTORS:** Wayne L Duvenage (Chairman), Robert N Hutchinson, Leopold J J Pauwen,

**NON EXECUTIVE DIRECTORS:** Phumlani M Majozi, Ms Ferrial Adam



19. Against the background of the likely imminent closure of the Baroda accounts in September 2017 and the intended sale of Tegeta to a SPV with no financial record, OUTA is concerned about whether satisfactory arrangements are in place to secure the financial provision for rehabilitation. OUTA is further concerned about whether these funds are and will be in tact in circumstances where according to OUTA's investigations, the Guptas are indebted to Baroda in material amounts, currently estimated at approximately R811 million.

**RESPONSIBILITY OF THE MINISTER, THE DME AND OUTA REQUESTS**

20. The Minister is ultimately responsible for the security of these funds. This is in terms of the Constitution and in terms of the MPRDA and NEMA.
21. In light thereof, OUTA hereby requests the following information from the Minister:
- 21.1 Confirmation that the Koorfontein and the Optimum Mine Rehabilitation Trust Funds remain fully in tact;
- 21.2 Confirmation that no monies have been transferred out of the Trusts' accounts from the time that they were transferred to Baroda until the present time.
- 21.3 If no such confirmation can be provided, full details are required relating to what payments have been made, when, to whom, for what purpose and upon whose authority. Full documentation should be supplied.
- 21.4 Precisely what amounts are currently in each Trusts' account/s.
- 21.5 What arrangements are in place or are being made to the satisfaction of the Minister to ensure that the funds are not placed in jeopardy by:
- 21.5.1 the imminent closure of the Baroda accounts;
- 21.5.2 the imminent sale of Tegeta.
- 21.6 Without derogation of the generality of the above request, please advise:
- 21.6.1 Whether the financial provision for rehabilitation will be retained under the current trust arrangements, and if so, at what bank or banks will the Trusts' accounts be held and under what arrangements.
- 21.6.2 If the financial provision will not be so retained, what new arrangements will be put in place.
- 21.7 Has any entity lodged a request for consent in terms of section 11 of the MPRDA to approve the transfer or similar transaction in respect of the sale of

Tegeta to Charles King SA. If so, kindly supply all relevant information and documentation.

22. OUTA also seeks the following assurances from you:

22.1 That the Minister will as a priority take steps to ensure that the financial provision for rehabilitation is protected and secured in view of the imminent closure of the Baroda accounts and will keep OUTA informed of such steps.

22.2 If no section 11 application has to date been made, kindly confirm that the Minister (or delegee) will provide OUTA with the application and all relevant documentation when it is made.

22.3 Kindly confirm further that OUTA will be afforded an opportunity to make representations regarding the future security of the funds in any section 11 application.

23. Kindly contact our legal advisor Ms. S Venter at [soretha.venter@outa.co.za](mailto:soretha.venter@outa.co.za) in the event of any queries.

24. We trust that you find the above in order and look forward to receiving your response on or before close of business on 1 September 2017.

25. Kindly acknowledge receipt of this letter.

Yours Sincerely,



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**Stefanie Fick**  
**Head of Legal Affairs**  
**OUTA – Organisation Undoing Tax Abuse**  
**E-mail: [stefanie.fick@outa.co.za](mailto:stefanie.fick@outa.co.za)**